

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

EL SALVADOR



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

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 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 El Salvador as well as the practical implementation of that framework. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners. While El Salvador has a well-developed legal and regulatory framework, the report identifies the lack of a mechanism to identify the holders of bearer shares as the main shortcoming in the legal framework of El Salvador and a recommendation has been made in this regard.

2. The Republic of El Salvador as located in Central America is bordered by Guatemala to the north, Honduras to the east, the Pacific Ocean to the west, and Honduras and Nicaragua to the southeast. It is a constitutional republic with a democratically elected President who is both Chief of State and head of the government. El Salvador committed to implement the international standard of transparency and exchange of information in 2011 and is a member of the Global Forum. El Salvador has signed one Double Taxation Convention and is also a signatory to the Convention for Mutual Assistance and Technical Cooperation among Central American Tax and Custom Administrations (Central American Multilateral Convention). In June 2015, El Salvador also signed the Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention).

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

there are a combination of requirements under the Commercial Code, the Tax Code and the regulatory laws in place ensuring the availability of trustee, settlor and beneficiary ownership information in all cases. Foundations are possible in El Salvador but may only be formed as not for profit entities.

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

5. In practice, ownership obligations are overseen by the tax authorities being the General Directorate for Internal Tax (DGII, *Direcciones Generales de Impuestos Internos*), the Superintendence of the Financial System (SFS, *Superintendencia del Sistema Financiero*) and the Notary section of the Supreme Court of Justice (*La Sección del Notariado de la Corte Suprema de Justicia*). Most entities must submit updated ownership information to the DGII on an annual basis and all financial entities are also closely monitored by the SFS. All companies and partnerships are also subject to requirements to maintain an updated shareholder register and in the event of non-compliance with these requirements, there are penalties in place, which have been systematically enforced over the review period. Finally, the Notary section of the Supreme Court of Justice supervises the register (“*protocolo*”) of each notary and the deeds holding shareholder information on a regular basis.

6. All relevant entities are subject to the provisions of the Commercial Code, which requires all “merchants” which extends to all relevant entities (i.e. companies, partnerships, foreign companies and partnerships, trusts and foundations) to maintain a full range of accounting records, including underlying documentation for a period of ten years. As a result, element A.2 was found to be in place. The requirements of the legal and regulatory framework to maintain accounting records and underlying documentation are also appropriately applied in practice and requirements to maintain accounting information are also monitored by the DGII in the course of its audit programme.

7. Full bank information, including all records pertaining to account holders as well as related financial and transaction information, is required to be kept by El Salvadoran banks under AML legislation. As a result, element A.3 was found to be in place. The legal obligations to keep banking information are effectively monitored and enforced by the SFS and the DGII, ensuring that banking information is available in practice.

8. In practice, the obligations in place to ensure the availability of ownership and identity information, as well as accounting and banking information for account holders are accompanied by appropriate penalties for

non-compliance. Over the review period, no issues have arisen in El Salvador with respect to the availability of ownership, accounting or banking information. Nevertheless, as bearer shares continue to exist in El Salvador and may be issued by both joint stock and limited liability companies, without any mechanism in place by which the owners may be identified, element A.1. has been rated “Non-Compliant”.

9. Under El Salvador’s one signed DTC (Spain), the competent authority is the Minister for Finance who delegates this power to the Commissioner of the DGII. Under the Central American Convention and the Multilateral Convention, the competent authority is the Commissioner. The DGII has significant information resources at its disposal, including ownership, identity, banking and accounting information.

10. In respect to access to information, the DGII is invested with broad powers to compel the provision of any information not already contained in its possession. These measures can be used for EOI purposes in the same way as for domestic purposes. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. Whilst there are statutory provisions in place protecting the disclosure of banking information in El Salvador, these can be overridden for the purposes of accessing banking information for exchange of information purposes in which case the DGII can directly access the information without a court order. Secrecy or confidentiality provisions (including attorney-client privilege) do not impede on the powers of the DGII to access all types of information and therefore do not affect the exchange of information in practice. While no request for ownership information has been received in El Salvador over the review period, the access powers of the competent authority are regularly tested for domestic purposes and no issues have arisen in practice.

11. El Salvador has an EOI network which extends to one DTC with Spain, the Central American Convention facilitating the exchange of information in tax matters between Guatemala, Nicaragua, Honduras and Costa Rica and the Multilateral Convention, bringing its network of exchange partners to 93 jurisdictions. Of these agreements, the DTC with Spain and the Central American Convention are in force and meet the internationally agreed standard containing sufficient provisions to enable El Salvador to exchange all relevant information. Further, El Salvador continues to expand its network of exchange of information instruments with three further TIEAs under negotiation.

12. Over the review period, El Salvador did not receive any exchange of information requests. However, as it has now signed the Multilateral Convention, it is expected that it will receive more requests in the future. The processing of requests has been delegated from the Commissioner of the DGII to the Head of the Legal Division who will be responsible for the

processing of EOI requests once they start to receive EOI requests in El Salvador. There are two members of the Legal Division that will be responsible for the processing of EOI requests who have set EOI processes in place in this regard. However, as El Salvador did not receive any requests over the review period, these processes could not be fully tested by the assessment team. Therefore, it is recommended that El Salvador continues to monitor all EOI processes and once an EOI request is received, El Salvador should ensure that all of its EOI processes are utilised efficiently to respond to all EOI request in a timely manner.

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

14. A follow up report on the steps undertaken by El Salvador to answer the recommendations made in this report should be provided to the PRG in accordance with the process outlined under the Methodology for the second round of reviews (2016 Methodology).

Introduction

Information and methodology used for the peer review of El Salvador

15. The assessment of the legal and regulatory framework of El Salvador and the implementation of those standards was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 18 December 2015. El Salvador's responses to the Phase 1 questionnaire and supplementary questions, information supplied by partner jurisdictions and other relevant information. El Salvador's Phase 2 review was launched in July 2015. El Salvador was fully co-operative in course of the preparation of the Phase 2 review including submission of a fully completed questionnaire, attendance and organisation of the onsite visit with the assessment team and supplying all necessary materials.

16. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses El Salvador's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

17. The Phase 1 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mr Lars Aarnes, Senior Advisor, Directorate of Taxes, Norway; Ms. Margarette Edwards, Field Auditor, Inland Revenue Division, Trinidad and Tobago and Ms. Mary O'Leary from the Global Forum Secretariat.

18. The Phase 2 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mr Lars Aarnes, Senior Advisor, Directorate of Taxes, Norway and Ms. Ann O’Driscoll, International Tax Division of the Office of the Revenue Commissioners, Ireland; and Ms. Mary O’Leary from the Global Forum Secretariat.

Overview of El Salvador

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

20. The Executive is composed of a President, who is directly elected by universal suffrage for a five-year term (who may not be re-elected) and a Vice President, elected for a non-extendable period of five years and the Cabinet Ministers as appointed by the President. Each of the 13 appointed Cabinet Ministers is responsible for one of the 13 different cabinet departments, namely, Agriculture and livestock Farming, Economy, Learning, the Environment and Natural Resources, Finance, Foreign Relations, Interior and Territorial Development, Labour and Social Welfare, Justice and Public Security, Public Works, Transportation, Housing and Urban Development, Tourism, National Defence and Health.

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

22. The Judicial Branch is composed of the Supreme Court of Justice, which is the highest court consisting of 15 judges, the Courts of Second Instance, and the remaining Courts that are established by secondary laws.

Other courts consist of constitutional, civil, penal and administrative conflict divisions. No other authority is able to intervene in the administration of justice.

23. El Salvador is the smallest and most densely populated country in Central America covering an area of 21 041km² with an estimated population of 6.14 million as of July 2015¹. The capital city of El Salvador is San Salvador and the official language is Spanish. Although the US dollar became its national currency in 2001, the Salvadoran colon (SVC) is still recognised as a national currency (SVC 8.75 = USD 1 as of 17 December 2015² but is no longer used in practice.

24. El Salvador had a GDP per capita of USD 8 100 in 2014³ with approximately 64.8% derived from services, approximately 24.7% from industry and 10.5% from agriculture. The main exports are offshore light assembly products, coffee, sugar and textiles with its largest export partners being the United States, Guatemala, Honduras and Nicaragua. In terms of imports, Mexico, People’s Republic of China (China) and Germany are also important trade partners.

25. El Salvador ratified the Central American Free Trade Agreement (CAFTA) with Costa Rica, Guatemala, Honduras, Nicaragua and the United States in March 2005. Subsequently the Dominican Republic joined the negotiations, and the agreement was renamed DR-CAFTA. This agreement represents the largest trade group within the region. DR-CAFTA countries are the third-largest Latin American export market for US producers, behind only Mexico and Brazil⁴.

General information on the legal system

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

- The Constitution of the Republic of El Salvador;
- Ordinary laws, treaties and international conventions ratified by Congress;

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

- Regulations issued by the Executive Branch; and
- Jurisprudence concerning the constitutionality of provisions of the Tax Code.

27. Pursuant to Article 168 of the Constitution, international conventions are entered into by the President and must be approved by the legislative assembly. Article 144 of the Constitution specifically sets out that in the event of a conflict between the treaty and any domestic law, the provisions of the treaty shall prevail. Further, a law of a higher rank will prevail over a law of a lower rank when they concern the same subject matter, and a law which is later in time will revoke an older law of equal hierarchy.

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

Taxation

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

30. The imposition of income tax is governed by the Tax Code (*Codigo Tributario*) and the Income Tax Law (*Ley de Impuesto sobre la Renta*) which also sets out the general tax principles, rules for the administration of taxes, penalties, procedures and collections.

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

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

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

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

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

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

Commercial Laws

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

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

Free Trade Zones

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

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

Overview of financial sector and relevant professions

41. The financial sector in El Salvador is regulated by the Central Bank (*Banco Central de reserva*), which controls the currency rate and governs certain economic activities. El Salvador has 14 banks, two of which, the Agricultural Development Bank (*Banco de Fomento Agropecuario*) and Mortgage Bank (*Banco Hipotecario*) are state owned. As at September 2015, banking deposits in El Salvador were valued to be approximately USD 10.3 billion.

42. The Superintendence of the Financial System (*Superintendencia del Sistema Financiero*) is the regulator of all financial institutions such as banks, insurance companies, credit institutions and monitors their compliance with the Banking Laws and the Anti-Money Laundering regime. As of December 2015, there were 121 financial entities under the supervision of the Superintendence of the Financial System.

Recent developments

43. El Salvador is currently drafting an amendment for the Commercial Code to abolish the issuance of bearer shares by joint stock and limited liability companies. As of December 2015, El Salvadoran authorities have reported that these amendments have been submitted to the legal secretariat of the President for submission to Congress. However, no timeline has been made available for the submission of the bill containing these amendments to Congress.

Compliance with the Standards

A. Availability of information

Overview

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

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

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

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

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

48. Enforcement measures consisting of fines are set down in the Commercial Code, the tax law and regulatory laws to ensure compliance with the information keeping requirements. In practice, monitoring of entities ownership information obligations is carried out by the DGII, the SFS and the Notary Section of the Supreme Court of Justice via desktop audits and on-site inspections.

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

50. Compliance in respect of all entities to maintain accounting information is monitored by the DGII and the SFS as the financial surveillance body. Monitoring is carried out via a combination of desktop examinations and onsite inspections. Sanctions are set at the appropriate level to ensure compliance with information keeping requirements and sanctions such as fines are regularly enforced in practice.

51. Banks and other financial institutions have to comply with detailed know-your-customer obligations and must keep all records pertaining to account holders, as well as related financial and transaction information, for at least five years. Element A.3 was therefore found to be in place. A system of oversight of financial entities is in place by the SFS whereby offsite and

onsite inspections are regularly conducted. In the course of the inspections of financial entities, compliance with the customer due diligence requirements under the AML laws is also verified.

52. To date, no requests have been received by El Salvador. However, in the event that ownership information was requested, generally, due to the legal and regulatory framework and the practice in monitoring of these requirements, this information should be available. However in the case of bearer shares it remains that there are inadequate legal requirements to identify the holders of bearer shares. As of December 2015, a draft bill abolishing bearer shares had been prepared and sent to the legal secretariat of the President prior to its entry to Congress. However, a timeline as to when this bill will enter Congress is not available. According to a study of many of the largest companies registered for tax as undertaken by the DGII in November 2015, none of those companies were found to have issued bearer shares. The Registrar of Companies has also reported that none of the companies registered for business purposes have issued bearer shares. Nevertheless, El Salvador is recommended to make all efforts to ensure that the legislation to abolish bearer shares is enacted expeditiously.

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.

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

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

Companies (ToR A.1.1)

Types of companies

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

- *Sociedades anónimas* (SA, Joint Stock or Public Limited Company): The company's capital is divided into nominative shares represented by negotiable share certificates. Shareholders can be either entities or individuals and the SAs are managed and legally represented by a single manager or a board of directors, which may appoint the general or specific manager (articles 191 to 206 of the Commercial Code). As a general rule, shareholders' liability is limited to the amount of their capital contributions (except in case of fraud, and other specific exceptions provided for in the law). As of December 2015, there were 54 585⁵ SAs in El Salvador.
- *Sociedades en comandita por acciones* (SCA, Limited Liability Company): The company's capital is divided into nominative shares represented by negotiable share certificates. SCAs have two different kinds of members: i) general partners (*socios comanditarios or gestores*) with joint and unlimited liability who are responsible for the company's management and (ii) limited partners (*socios comanditarios*) whose liability is limited to the amount of their capital contributions. SCAs are governed by articles 296 to 305 of the Commercial Code. As of December 2015, there were 2 SCAs in El Salvador.

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

56. SAs and SCAs must be formed by a public deed as authorised by a notary (art. 21, Commercial Code). Pursuant to Article 22, the deed must include the name, founders' identity information (name and address), domicile, duration of activities, capital, contributions and shares. In particular, the deed must include information concerning the capital and the share that each of the founding shareholders contributes as well as the terms governing the relationship between the owners. The deed is then registered in the "*protocolo*" or notary's register. Any modification of the deed, is required to be done with the same formalities as the creation of the original deed (art. 21, Commercial Code). The formation of a company via public deed usually takes between 1-10 days.

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

57. In practice, the notary professionals are governed by the Notary section of the Supreme Court of Justice. As of December 2015, there were approximately 5 790 notary officials in El Salvador. Once the register of the notary has reached 500 deeds (*escrituras*) or at the end of every year, the register must be taken to the Supreme Court for review as officially the register actually belongs to the State and not the notary. At the Supreme Court, officials from the Notary Supervision Division then review the book, including the public deeds to ensure that both the notary and the company have complied with all of the legal requirements for company formation via the public deed. This review includes an examination of ownership and any revisions to the ownership information.

58. In the case that the Supreme Court were to find an issue with the deed, it notifies the notary and the Supreme Court commences a sanctioning process against the notary. Officials from the Supreme Court have advised that in practice this occurs regularly and the sanctioning in previous cases has led to suspension of the notary's licence which may be as long as for a period of five years. In addition, the Supreme Court is also empowered to impose fines but this does not occur often in practice. Since 1940, when this practice was implemented in El Salvador, officials from the Supreme Court has reported that they have reviewed 150 000 registers. The registers are retained by the Supreme Court indefinitely. As of December 2015, there were 50 officials in the Notary section of the Supreme Court.

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

60. Previously, the Office of the Commercial Register operated as a centralised Office in San Salvador but since March 2015, there is an office in San Miguel for the eastern region of El Salvador. As of December 2015, there were 114 officials in the office of the Commercial Registrar located in San Salvador. At the time of registration which is performed in person, all companies are required to bring a copy of the above outlined public deed which must contain, amongst other information, all shareholder information, their capital contribution, and the business purpose. While requests for business registration may occur online, all companies have to present themselves in

person in order to be registered and for the company to commence business in El Salvador. Renewals must take place on an annual basis in the month that the companies were originally registered. All information supplied at the time of registration is publicly available at the Office of the Commercial Register. There are also plans for the information to be made available online.

61. Officials from the Commercial Register have reported that there is a compliance rate of approximately 60% with the company renewal obligation. In order to encourage company renewal, the Commercial Registrar has undertaken activities such as public advertising campaigns which were effective in increasing the rate of company renewals. For late renewal there are fines of 25% of the renewal fee for the first month, 50% for the second month and 100% for the third month. At the time of company renewal, all updated ownership information must be supplied to the Commercial Register. In the case of non-renewal for a period of more than one year, the company will be temporarily suspended by court order from the commercial registry. Therefore, the enforcement of the renewal requirement is another means by which ownership information requirements are monitored in El Salvador.

Tax Law

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

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

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

65. In practice, registration with the DGII is performed via the “SIIT” (*Sistema Integral de Información Tributaria*) system which operates as the tax registration system. Tax registration is a requisite for all companies in El Salvador and is usually done after business registration with the Commercial Registrar. The application must be performed in person at the office of the DGII. The forms that are required to be submitted include a copy of the deed and the tax registration form referred to as the RUC (*Registro Unico de Contribuyentes – F-210*). Form 210 requires ownership information pertaining to all shareholders including their name, NIT and amount of capital contribution in the company. Upon completion of all registration forms, officials from the DGII generate a NIT and an official NIT certificate is then issued to the entity.

66. Each year the DGII requires updated ownership information on all shareholders, whether or not there has been a distribution of dividends. In the case that dividends have been distributed, the amount received by the shareholder must also be noted in this form. In the case that this information is not submitted, a fine is imposed.

67. The DGII is responsible for overseeing compliance with the tax obligations of taxpayers which are segmented dependent on size as follows: the large taxpayer unit, medium taxpayer unit, and a third taxpayer unit which captures all other taxpayers. It also features the *Gestion de Cartera* Division within which there are 38 officials who are generally responsible for overseeing compliance with the above requirements and tax obligations. The 38 officials are composed of 5 supervisors and 33 technicians. There is also portfolio management team within the Large Taxpayer Unit consisting of 3 supervisors and 15 technicians responsible for all aspects related to filing of the tax return and the fulfilment of tax obligations of Large Taxpayers.

68. Officials from the *Gestion de Cartera* have advised that the supervision programme for taxpayers with their obligation includes both desktop and onsite visits. In the large taxpayer unit there are 15 *Gestion de Cartera* type auditors and there are 54 field auditors. Each year the chief of each department of the DGII generates a document called an “*Auto*” which empowers

the auditors to perform audits on the taxpayers and also specifies the documents that must be reviewed for each taxpayer. Every auditor is assigned 24-26 cases to complete per calendar year. In the course of carrying out an audit, the officials verify that all 24 cases have complied with their taxpayer obligations and in the event of non-compliance they commence a sanctioning process. This commences with the generation of an administrative order which is a document which permits them to impose sanctions. Once this order has been generated the auditor will proceed to notify the taxpayer and commence a process known as “*audencia y apertura a prueba*” whereby the taxpayer receives a notice and must go to *Sección de Incumplimientos Tributarios* of the DGII (Non Compliance Tax Section) (for more information on sanctions, see also section A.1.6 *Enforcement in practice*).

69. Officials from the *Gestion de Cartera* have reported that generally there is a high level of compliance observed in the course of these visits; for example, in the large taxpayer unit the level of compliance is 98% with record keeping requirements under the Tax Code. However, in the event that breaches are found, the *Gestion de Cartera* passes on the report to the Non-Compliance Tax Division of the DGII.

70. The Non-Compliance Tax Division of the DGII operates under article 260 of the Tax Code which sets out the procedure for the department to follow when they encounter non-compliant taxpayers. In the case that the taxpayer has not provided the proper information (such as the ownership information required under article 126 of the Tax Code) the Non-compliant taxpayers department starts by generating a report outlining the infraction. Then next step is that an “Auto” (assessment) is generated in which it is stated that the taxpayer has three days to either dispute or agree with this document. Then the Department will impose the fines as set out under article 241 of the Tax Code. As an example, in 2013 this department imposed USD 994 468.25 in fines and in 2014, they imposed USD 11 621.52 in fines. This figure for 2012 was USD 63 995.06 (for more information on sanctions, see also section A.1.6 *Enforcement in practice*).

Company ownership and identity information required to be held by companies

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

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

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

73. Article 451 of the Commercial Code sets out that all “merchants” are required to maintain records for a period of at least 10 years. Pursuant to article 2 of the Commercial Code, merchants are defined as natural persons who conduct a commercial enterprise as a sole trader and companies who are referred to as social merchants. Therefore, the obligations to maintain information for at least ten years will apply to all companies in El Salvador. In the case of insolvent companies, all information referring to books and records, including registries of shareholders, must also be kept by the company for at least 10 years (art. 340, Commercial Code).

Regulated entities

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

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

76. The SFS is an autonomous entity which, since 2011, has been responsible for the inspection, surveillance and control of the public and private banks, non-banking financial institutions, savings and loan organisations, insurance companies, pension schemes and the stock exchange. As of December 2015, there were 300 officials working at the SFS. As of December 2015, there were 121 entities under the supervision of the SFS.

77. Prior to registration with the Commercial Registrar, the supervised entities are required to be authorised by the SFS. The licencing process by the SFS for companies aiming to perform financial activities requires the requesting entity to comply with a number of obligations. At the time of requesting authorisation to operate in this industry, financial entities need to supply detailed shareholder information. Once the complete application is submitted, the SFS first performs a background check (law enforcement, DGII etc.), and will generally issue authorisation to operate in the financial industry in a timeframe of up to 3 months for banking entities.

78. In regards to monitoring of the supervised entities, at the beginning of each year the SFS prepares a supervision programme to be carried out over the calendar year. The selection of entities is done based on factors such as

when the entity was most recently audited, the type of products it handles, and the size, market and the type of clients with whom it engages. The oversight programme includes a combination of onsite and desktop inspections.

79. In the course of the surveillance programme, should the SFS discover that the entity has committed a violation of its obligations; the SFS will commence an administrative sanctioning process which may be brought at a personal or institutional level, ranging from a warning to a fine or the removal of the entity's licence (for more information regarding the sanctions imposed during the review period, see section A.1.6 *Enforcement provisions to ensure availability of information*).

80. The SFS is also the body responsible for overseeing compliance with the AML regime and in this respect, there is a department that oversees all aspects of entities compliance with AML obligations. As of August 2015, there were 8 officials within this department and there are plans to have 6 more officials by the end of 2015. In regards to the onsite inspection programme, they have a risk map by industry which generates a map by entity. Generally, they perform 6-8 visits of regulated entities per year. The amount of time spent on the onsite visits depends on the entity and the level of risk but can last for up to a month and a half. During an onsite visit, the AML department looks at certain points such as; co-operative governance, compliance with regulatory requirements, technology requirements, training, and internal and external audits. Officials from the AML department have reported that in regards to banks, they also do checks as to the origin of bank account payments.

81. Officials from the AML department of the SFS have reported that there are varying levels of compliance depending on the entity and the industry but that there is a very high level of compliance amongst the banks. Further, El Salvador is a member of the *Grupo de Accion Financera del Caribe* (GAFIC) and its most recent Mutual Evaluation Report, which took place in 2010 (with its most recent follow-up report in November 2014), reported on a satisfactory level of compliance in the application of customer due diligence procedures in this regard.

82. The SFS also has the power to impose sanctions when there is non-compliance with the requirements of the AML regime which can take either an administrative or economic form. An administrative fine includes restrictive requirements that are imposed on the entity. There are also economic fines that may be imposed on an individual or at entity level. Officials from the AML department of the SFS have reported that the highest sanction that has been imposed was USD 500 000 on a bank for non-compliance to implement AML regime correctly (for more information regarding the sanctions imposed during the review period, see section A.16 *Enforcement provisions to ensure availability of information*).

Foreign companies

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

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

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

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

86. For tax purposes, foreign companies that have branches or other permanent establishments in El Salvador are subject to the Tax Code and similar to domestic companies would also be required to register with the Tax Administration (DGII) within 15 days of the commencement of a commercial activity (art. 86, Tax Code). All foreign companies will be under the obligation to provide an annual tax return including updated shareholder information and details of any transfer of shares (art. 124, Tax Code). Further, details of all share transfers must also be provided to the DGII within 10 days of the modification of shares (art. 86, Tax Code).

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

88. Officers from the Office of the Commercial Registrar have reported that all foreign companies have to have a legal representative in El Salvador. The legal representative must first be registered and then they must submit

certain documents. Before registering the foreign company, the legal representative must go to the Ministry of Economic Affairs to register the fact that there is foreign investment in El Salvador. At this stage the legal representative must present the Constitution deed from the foreign jurisdiction in which the company is incorporated – this may or may not have shareholder information. Once they receive the authorisation from the Ministry of the Economy, they must then present the following documents to the Commercial Registry: authorisation from the Ministry of the Economy, the application form, the company by-laws and the initial general balance of the branch of the company. Foreign companies generally tend to originate from other Spanish speaking jurisdictions such as Colombia, Guatemala and Spain.

89. Further, as all foreign companies must be registered with the DGII, similar to the system in place for domestic companies, they are obliged to submit ownership information at that time. In addition, all foreign companies are also obliged to submit an annual return with updated shareholder information. All foreign companies come under the supervision of the DGII and are also subject to the DGII's onsite programme. Officials from the DGII have confirmed that as of December 2015, there were 580 foreign companies registered with the DGII and they are mainly involved in service and financial industries.

Nominees

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

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

and third parties. The *mandato mercantil* arrangement must be in writing and must clearly identify both the *mandatario* and the *mandante*.

Bearer shares (ToR A.1.2)

92. Closed corporations (i.e. those not open for public subscription) (SCA) and joint stock companies (SA) may issue bearer shares in El Salvador (art. 153, Commercial Code) as well as bearer coupons (art. 680, Commercial Code). The transfer of bearer shares requires only the physical transfer of the share certificate (Commercial Code, art. 154). Bearer shares must be fully-paid and may only be issued in those cases where the governing laws of the company expressly provide for it (art. 134, Commercial Code). For SAs and SCAs, there is an obligation for the shareholder register to make mention of where nominative shares have been converted into bearer shares (art. 154, Commercial Code). However, this obligation does not ensure the maintenance of any ownership information.

93. Pursuant to the Tax Code, the DGII must be notified of all share transfers by the company. However, as the requirement to submit information regarding share transfers lies with the legal entity and not with the shareholder, the effect of this requirement in respect of ensuring ownership information for bearer shares is unclear. There is currently no other mechanism in place in El Salvador to ensure that ownership and identity information on the holders of the bearer shares is being kept.

94. As noted above (A.1. *Ownership information provide to government authorities*), at the time of registration with the Commercial Registrar, all companies are required to provide a copy of their shareholder register and this must have noted in it any cases where the company has issued bearer shares. Officials from the Commercial Registrar have reported that they have never encountered bearer shares in the course of the registration process.

95. A copy of the company deed containing shareholder information must also be provided to the DGII at the time of registration and the DGII must also be notified by the company of all share transfers. According to a study of those companies undergoing an audit procedure which was undertaken by the DGII in November 2015, no companies were found to have issued bearer shares. It is noted that this study was confined to approximately 200 of the largest companies although in practice, there are approximately 55 000 companies that may issue bearer shares in El Salvador. Further, authorities from the DGII and the SFS have reported that they have never encountered bearer shares in the course of their work in El Salvador. Finally, no requests concerning companies that may have issued bearer shares were received over the review period and peer input confirms that there were no bearer share related issues in El Salvador over the review period.

96. Nevertheless, the situation remains that all types of company in El Salvador are permitted to issue bearer shares and while companies are obliged to inform the DGII of any share transfers, as this obligation lies with the company, the extent to which this mechanism is sufficient to require ownership information pertaining to the issuance of such shares is unclear. El Salvador is a member of the *Grupo de Accion Financera del Caribe* (GAFIC) and its most recent Mutual Evaluation Report, which took place in 2010 (with its most recent follow-up report in November 2014), also identified a deficiency regarding the availability of ownership information for bearer shares in El Salvador.

97. As of December 2015, a draft bill abolishing bearer shares had been prepared and sent to the legal secretariat of the President prior to its entry to Congress. Officials from El Salvador have reported that the draft bill contains a one year transitional period for the conversion of bearer shares to nominal shares whereby holders of bear shares will have to approach the company in order that the shares are converted to nominal shares. In the event that the shareholder does not approach the company within one year, the shareholders' right to the bearer share will be extinguished and will revert to the issuing company where the share is converted to a nominal share. Nevertheless, the timeframe for the introduction of this bill to Congress is not clear. Therefore, El Salvador should make all efforts to ensure that the legislation to abolish bearer shares is enacted expeditiously.

Partnerships (ToR A.1.3)

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

- *Sociedad Colectiva* (SC) is a commercial entity with at least two members (either natural or legal persons), who are jointly, personally and severally liable for the partnership's obligations without any limitation. Partners can be represented in the shareholders' meeting by a proxy. SCs are governed by articles 73 to 92 of the Commercial Code. As of December 2015, there were 281 SCs in El Salvador.
- *Sociedad de responsabilidad limitada* (SRL) is a commercial entity whose capital is divided into quotas rather than shares. SRLs are governed by articles 101 to 125 of the Commercial Code. The quota holders can be either entities or individuals. The quota holders' liability is limited to the amount of their capital contributions except for tax and labour liabilities. As of December 2015, there were 350 SRLs in El Salvador.
- *Sociedad en comandita simple* (LLP, limited liability partnerships) is a commercial entity whose capital is divided into parts or quotas

(rather than shares). LLPs are governed by articles 93 to 100 of the Commercial Code. The transfer of quotas requires an amendment to the partnership's by-laws. The partnership has two kind of members: i) *socios gestores* which are jointly and severally liable for the partnership's obligations such as in the *Sociedad Colectiva*, and (ii) *socios comanditarios* who are the equivalent to quota holders in a *Sociedad de responsabilidad limitada*; hence their liability is limited to the amount of their capital contributions except for tax and labour liabilities. As of December 2015, there were 34 LLPs in El Salvador.

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

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

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

102. In practice, all partnerships in El Salvador must be formed by public deed by a notary as recorded in the *protocolo* which is subject to inspection by the Supreme Court of Justice on an annual basis. Further, officials from the Supreme Court of Justice check individual deeds to ensure that legal formalities, such as requirement to have updated ownership information, have been complied with. Further, as all partnerships must be registered with the DGII, they are subject to the same monitoring and enforcement programme as that for companies (see section A.1.1 Tax Law).

103. In the three year review period, El Salvador has not received any EOI requests for information relating to the identity of the partners in a partnership. However, as there are sufficient legal and regulatory requirements for this information to be maintained both by the partnership and government authorities and as the maintenance of this information and any subsequent changes is monitored, in the event that partnership ownership information was requested, it should be available.

Foreign partnerships

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

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

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

Trusts (ToR A.1.4)

107. The concept of “trust” as it is under the common law does not exist under El Salvadoran Law and El Salvador has not signed the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. There is, however, no obstacle in El Salvadoran domestic law that prevents a resident from acting as a trustee, or for a foreign trust to invest or acquire assets in El Salvador.

Fideicomisos

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

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

Ownership information provided to the government authorities

Commercial Code

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

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

Tax Law

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

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

Foreign trusts

114. The El Salvadoran authorities have advised that the situation of an El Salvadoran resident acting as trustee for a foreign trust has not yet arisen in El Salvador. This is attributable mainly to the fact that as El Salvador does not recognise the concept of trusts, this creates a legal risk for any persons who would act as trustee of a foreign trust and it is unlikely that an El Salvadoran resident would take on such a liability. However, the fiduciary relationship between the trustee, settlor and beneficiaries may be relevant in specific situations, in which case the resident trustee will be subject to information keeping requirements under the AML regime, Commercial Code and Tax Code as further outlined below.

AML Regime

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

- Every society, company or entity of any kind, domestic or foreign, who integrates an institution, association or financial body supervised and regulated by the Superintendence of the Financial Sector;

- Institutions and individuals that make systematic or substantial fund transfers;
- Imports or exports of agricultural products and raw materials and new vehicles;
- Casinos and Gambling Houses;
- Persons dealing in precious stones;
- Real estate agents;
- Travel and shipping agencies;
- Construction companies;
- Private security agencies;
- The Hospitality industry;
- National and international investors; and
- Trust and Company Service providers (*this refers to fiduciaries in a fideicomiso arrangement*).

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

117. Pursuant to a 2014 amendment to the AML Law, trust and company service providers are now named persons subject to the scope of the AML Law in El Salvador. All persons subject to the AML Law are required to conduct CDD on those clients for whom they act and to maintain information on the identity of their customer. In the course of performing CDD those institutions subject to the AML regime must verify the identity, name of the client and the beneficial owner, age, occupation or corporate purpose, marital status, address, nationality and legal capacity of the client. (art. 13, AML Law). With regard to beneficial ownership, the rules specifically require the maintenance of information concerning “the identification of the beneficiary or recipient of the transaction” (art. 13, AML Law).

Commercial Code

118. El Salvador has indicated that in the case that an El Salvadoran resident was to act as a professional trustee who performs services of administering assets on behalf of another person for profit then that person would be considered a merchant (*comerciante*) for the purposes of the commercial law (art. 2(I), Commercial Code). As a merchant, the trustee must register with the Commercial Registry, providing his/her identification, and

a description of the activity carried on. Further, a merchant must keep records relating to the business administered including any contracts or agreements relating to the trusteeship. Therefore, in these cases it is possible that ownership and identity information on the settlor, trustee and beneficiary would be maintained by the trustee.

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

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

Tax Law

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

122. El Salvadoran authorities have indicated that for income tax purposes, the assets and income of a foreign trust, as well as any benefit attributed to the beneficiaries, would be subject to tax. Firstly, the trustee would be required to register with the DGII and keep accounting records (see section A.2. *Accounting Information* below). In the event that a trustee claimed that a portion of his taxable income was generated from assets he held on trust, the resident trustee could only avoid the tax liability for that revenue by providing evidence of the existence of such a fiduciary relationship (most typically the trust deed) and disclosing the identity of the settlor

and beneficiaries to the DGII. El Salvadorian authorities have reported that in that case, the income would be classified as income of a “non-domiciled” entity and article 158 of the Tax Code (“Withholding tax for non-domiciled entities”) would apply. The trustee would then be subject to an obligation to withhold tax on income earned in El Salvador (art. 158, Tax Code) and would be obliged to submit a tax return to the DGII by means of a “Form 910” which requires information pertaining to the owner of the asset as well as the person acquiring the income. Therefore, information on the settlor and the beneficiaries of the trust would be made available in these cases.

Trust ownership information in practice

123. In the case of a *fideicomiso*, being an entity specific to El Salvador sharing some trust like features, only financial entities are permitted to act as fiduciaries and must acquire prior authorisation from the financial regulator before entering into such an arrangement (art. 1238, Commercial Code). Therefore, all fiduciaries of a *fideicomiso* will be subject to the supervision programme of the SFS whereby onsite inspections are regularly performed and in the case of non-compliance sanctions are actively imposed (see section A.1.6 Enforcement provisions to ensure availability of information). Therefore, both the legal requirements for all parties in a *fideicomiso* arrangement to be identified in a public deed as authorised by a notary as well as the oversight programme in place by the SFS should ensure that in the case that ownership information was requested in regards to a *fideicomiso*, this would be made available.

124. In regards to foreign trusts, the above outlined legal requirements under the Commercial Code, the tax law and the AML regime should ensure that where required, identity and ownership information regarding trusts would also be made available. In practice, these obligations are monitored by the SFS and the DGII both of which have a comprehensive oversight and in particular, onsite inspection programme in place (for more information regarding the supervisory activities of the SFS and the DGII, see section A.1.6, *Enforcement provisions to ensure availability of information*). Authorities from both the DGII and the SFS have reported that in the course of their oversight programme, they have never encountered a foreign trust being administered by an El Salvadoran individual or entity.

Conclusion

125. El Salvador does not recognise the common law concept of trust. However, the Commercial Code provides for a *fideicomiso* which is an arrangement with certain trust like features. Only financial entities may act as the fiduciary in a *fideicomiso* and must obtain prior authorisation from

the Superintendence of the Financial System at which time full ownership information on the *fideicomiso* will have to be submitted. In addition, all fiduciaries of a *fideicomiso*, as financial entities, will come under the AML regime and be subject to due diligence procedures in order to maintain full ownership information in respect of the *fideicomiso*. Therefore, the information keeping requirements in the Commercial Code, together with the AML requirements for fiduciaries outlined under the AML laws ensure that ownership information on *fideicomisos* is fully available.

126. Further, in the event that a resident person was acting in the capacity as trustee of a foreign trust, El Salvador has reported that this activity would be deemed to be that of a *fideicomiso* and in the event that the trustee was not authorised to engage in fiduciary services, there are strict enforcement measures and penalties in place for failing to do so. In addition, the combination of the requirements of the AML Law for trust service providers, the tax obligations to maintain and submit information to the DGII and obligations under the Commercial Code permit that information regarding the settlors, trustees and beneficiaries of all trusts will be available to the El Salvadoran authorities. It can, therefore, be concluded that El Salvador has reasonable measures in place to ensure that ownership information is available to its competent authorities in respect of foreign trusts administered in El Salvador or in respect of which a trustee is resident in El Salvador.

127. In the three year review period, El Salvador has not received any EOI requests for information relating to trusts. However, as there are sufficient legal and regulatory requirements for this information to be maintained both by the trustee and government authorities and the maintenance of this information and any subsequent changes to it is monitored, in the event that trust ownership information was requested, it should be available in El Salvador.

Foundations (ToR A.1.5)

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

129. Foundations must be formed by a public deed or will which must include the name and address of the foundation, the names and addresses of the founders, the names and identity numbers of the legal representatives and the board of directors, the object of the foundation and details on how it will be administered (art. 26, Non-profit Associations and Foundations Law). In the event of a change in this information, the public deed must be

updated within 14 days of the change (art. 28, Non-profit Associations and Foundations Law). El Salvadoran foundations are not considered to be relevant entities under the terms of reference.

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

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

Companies and Partnerships

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

132. All companies and partnerships must be registered and file an annual income tax return with the DGII. Under the Tax Code, penalties are quantified in regards to the monthly minimum salary, which is defined at a set level as determined each year by the DGII. The monthly minimum wage in El Salvador for 2014 was USD 251.70 (Decree 104/13). At the time of registration, shareholder information must be provided and in the event of non-registration with the DGII, every taxpayer will be subject to a fine of 3 times the monthly minimum salary. In January of each year every company and partnership must update shareholder information with the DGII. In the event of non-compliance with this tax filing obligation, the entity may be subject to a fine of 8 times the monthly minimum salary (art. 235, Tax Code) and in the case of continued non-compliance, this fine will be applied each year.

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

Trusts

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

135. All entities, including persons or business that may carry on services as a professional trustee in El Salvador are considered “merchants” under the Commercial Code. In the event that a merchant does not maintain accounting books and other books required by law, a penalty of 4 times the minimum monthly salary (USD 251.70) may be applied (Art. 242(a) Tax Code).

Enforcement in practice

136. All companies, partnerships and *fideicomisos* must be registered with the Commercial Registrar; until such time, no rulings, agreements or company documents have any legal effect against third parties. Applicants are required to provide the Commercial Registrar with information on the proposed business including ownership information. All subsequent changes made to the particulars of business are to be filed within 15 working days. Further, in the case of partnerships, changes in ownership do not have legal effect until the changes are also reflected in the public deed as filed with the Registry. Over the review period, officials from the Commercial Registrar have indicated that as it did not have a system in place in order to monitor entities compliance with registration requirements; penalties for non-compliance were not enforced in practice. Nevertheless, all entities must also be registered for tax purposes and are subject to the oversight and enforcement programme in place by the DGII as outlined below.

Tax Law

137. As outlined above, the DGII requires ownership information both at the time of registration and at the time of company renewal, and in the case of non-compliance with these requirements, enforcement measures are generally in place. As outlined above (section A.1.1 *Tax Law*), the DGII has a comprehensive system of monitoring via both desktop audits and onsite inspections in place. Further, in the case of non-compliance with tax obligations, the DGII is active in the enforcement of fines. The number and amount of sanctions for non-compliance imposed by the DGII during the review period are as follows:

Year	Number of sanctions	Total amount of the sanctions
2012	13	USD 63 995.06
2013	11	USD 994 468.25
2014	7	USD 11 621.52

138. Within the DGII, there is a special branch referred to as the Criminal Investigation Unit (*Unidad de investigacion criminal tributaria*) which is dedicated to the enforcement of sanctions for non-compliance with obligations of the Tax Code. There are currently 20 officials in the Criminal Investigation Unit. The Unit has two principal functions; the first one is the receipt of cases from the auditors of the DGII where there may be a suspicion of tax evasion or other related crimes such as money laundering and the second is the enforcement of sanctions for non-compliance with obligations under the Tax Code as set out above.

AML Law

139. As mentioned above, the SFS is the body responsible for regulation of the financial industry as well as being the body responsible for overseeing entities' compliance with the obligations set out under the AML regime. The SFS conducts both desktop and onsite surveillance of entities. Over the review period the number of onsite inspections performed by the SFS was as follows:

Year	Number of onsite inspections
2012	32
2013	34
2014	37

140. The number and amount of sanctions imposed during by the SFS over the three year review period amounts to 21 sanctions and a total of USD 817 226.08 being imposed in fines.

Notary supervision

141. All relevant entities in El Salvador must be formed via public deed as authorised by a notary. As of December 2015, there were 5 790 notaries in El Salvador. Each year the *protocolo* of the notary, in which all deeds it has formalised in that year are recorded must be submitted to the Supreme Court of Justice and is subject to inspection. In the event that deeds are found not to be notarised in accordance with the legal requirements, there are penalties in place under the Notary Law. The notary may also be suspended

or disqualified. Over the review period, a number of notary licences were suspended by the Notary section of the Supreme Court of Justice as follows:

Year	Number of notary licenses suspended
2012	5
2013	10
2014	19

Conclusion

142. Enforcement provisions are in place in respect of the relevant obligations to update and maintain ownership and identity information for all relevant entities and arrangements with the tax authorities and with the regulator of the financial sector, being the SFS. While ownership information is also required by the Commercial Registrar and this must be updated, there is no clear system of surveillance of these obligations in place by the Commercial Registrar and over the review period, sanctions were not imposed.

143. However, in any case, the DGII, the SFS and the Notary Section of the Supreme Court of Justice have an active oversight system in place in the form of monitoring of entities' compliance with the obligation to submit annual returns as well as a comprehensive onsite inspection programme which will cover all relevant entities and arrangements. In the event of non-compliance with the obligation of registration of changes in ownership, sanctions have been systematically imposed by the DGII, the SFS and the Notary Section of the Supreme Court of Justice over the review period. Therefore, it can be concluded that the legal requirements for all relevant entities and arrangements to maintain ownership information in El Salvador are also closely monitored in practice and in the case of non-compliance, penalties have been systematically enforced.

144. Nevertheless, it remains that all types of company in El Salvador may issue bearer shares. Although draft legislation is currently underway to abolish bearer shares, as of December 2015, this legislation had not yet advanced to Congress for approval. While the DGII must be notified in the case of a share transfer, as this obligation lies with the company and not the actual shareholder, this mechanism does not ensure that the holders of bearer shares will be able to be identified in El Salvador, in particular because there is no requirement that a shareholder notifies the issuing company of a share transfer of a bearer share after such transfer takes place. This deficiency has also been identified in the most recent follow-up report of El Salvador as undertaken of the Caribbean Financial Action Task Force (CFATF). Therefore, due to the materiality of this issue, element A.1 is rated overall as "Non-Compliant".

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Bearer shares may be issued by joint-stock and limited liability companies in El Salvador and there are no mechanisms to ensure that the owners of such shares can be identified.	El Salvador should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares.
Phase 2 Rating	
Non-Compliant	

A.2. Accounting records

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

General requirements (ToR A.2.1)

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

Commercial Code

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

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

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

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

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

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

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

153. Sole traders whose asset value is equal to or higher than US 12 000 are obliged to deposit their annual year-end financial statements to the registry of Commerce and must be duly signed by the owner of their legal representative and their accountant. In the case that assets amount to more

than US 34 000 the accounts must be certified by an external auditor (art. 441, Commercial Code).

154. In the case of failure to comply with the accounting record requirements as set out under the Tax Code, a penalty of 9-16 times the minimum monthly salary (approximately USD 2265 to 4 027) may be applied (art. 242(c) (4) Tax Code. Further, in the case that failure to comply with the requirements to maintain accounting information was deemed to be a serious offence (such as in the case of falsification of documents), merchants may be subject to a sanction of up to three years imprisonment (art. 283, Penal code).

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

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

Tax Code

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

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

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

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

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

Underlying Documentation (ToR A.2.2)

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

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

Document retention (ToR A.2.3)

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

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

Availability of accounting information in practice

165. Both the Commercial Code and the Tax Law provide legal obligations for all relevant entities to maintain reliable accounting records and underlying documentations. In regards to the requirements under the Commercial Code, the Commercial Registrar is the body that presides over these requirements.

Officials from the Commercial Registrar have indicated that over the review period, an audit programme of entities compliance with requirements under the Commercial Code was not undertaken by the Commercial Registrar. However, all relevant entities in El Salvador are also required to register with the DGII and are subject to the accounting record retention requirements of the Tax Code and will be subject to the oversight programme in place by the DGII as outlined below.

166. All entities registered with the DGII are subject to the surveillance programme in place by the *Gestión de Cartera* unit of the DGII which includes a comprehensive programme of both desktop audits and onsite inspections. Officials from the *Gestión de Cartera* unit of the DGII have reported that in the course of an onsite inspection, amongst the documents that they examine, are the financial statements and accounting records which are maintained by the entity as well as any reports and statements prepared by any external auditor.

167. Over the review period, the number of onsite inspections performed by the *Gestión de Cartera* was as follows:

Year	Number of onsite inspections carried out by the <i>Gestión de Cartera</i> Division	Number of onsite inspections by <i>Gestión de Cartera</i> Larger Taxpayer Unit
2012	2 173	---
2013	2 345	326
2014	1 599	318

168. In the course of performing onsite inspections, auditors have reported to have found a high level of compliance with accounting record requirements. In the case where breaches with obligations under the Tax Code were found, the *Gestión de Cartera* proceeded to impose fines. The fines imposed by the DGII over the review period are outlined in the table below. Officials from the *Gestión de Cartera* have reported that the below fines are not strictly related to non-compliance with accounting record requirements but are an aggregate amount of all fines imposed for non-compliance with accounting provisions under the Tax Code including calculation of tax liability over the review period.

Year	Total amount of fines imposed (USD)
2012	3 554 676.82
2013	7 900 667.04
2014	17 554 171.67

169. In addition, pursuant to article 129 of the Tax Code, every year, taxpayers with assets valued at over USD 1 142 857.14 or with income over USD 571 428.57 and legal persons which undergo a process of merger or acquisition or any other restructuring process must appoint an appraiser known as “Dictaminador Fiscal” (a public accountant authorised by the *Consejo de Vigilancia de la Contaduría Pública y Auditoría*). The appraiser is obliged to assess such individuals and legal entities’ compliance with their accounting record requirements under the Commercial Code and Tax Code and must issue an appraisal note (*Dictamen Fiscal*) concluding on the accuracy of the financial statements and all underlying documentation. The *Dictamen fiscal* must be submitted to the DGII by May 31st of the following year. The number of legal persons subject to this requirement over the review period are as follows:

Year	Total Legal Persons with an obligation of a <i>Dictamen Fiscal</i>
2012	5 192
2013	5 295
2014	5 182

170. There is a designated office, “*Oficina del Dictamen Fiscal*” which is mandated to oversee the *Dictamen Fiscal* process. First, this office verifies the content of the *Dictamen Fiscal*, that all required documentation has been submitted and it is then cross-checked with the opinion issued by the appointed appraiser. If any inconsistency or technical deficiencies in the elaboration of the *Dictamen Fiscal* has been found, the appointed appraiser will be subject to sanctions.

171. Further in those cases where a financial institution provides a loan of over USD 40 000, it is obliged to submit the customers’ financial statements and balance sheet to the DGII by February of each year (Art. 120, Tax Code).

Conclusion

172. Over the review period, El Salvador did not receive any requests for accounting information. However, in the event that such information was requested, given the requirements for extensive accounting information to be maintained both under the Commercial Code and the Tax Code and the supervision of entities by the DGII in complying with the accounting information requirements, this information should be made available, including that of foreign trusts when administered by a resident of El Salvador, in which case they would be deemed as merchants and thus subject to the all the requirements in the Commercial Code and Tax Code

Determination and factors underlying recommendations

Phase1 Determination
The element is in place
Phase 2 Rating
Compliant

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

173. Banking information should be available for all account-holders and should include all records pertaining to the accounts as well as to related financial and transactional information.

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

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

176. The *Banco Central de Reserva* (Central Bank) is the authority responsible for monetary policy and price control (Central Bank Organic Law, art. 3), and the SFS, provides vigilance and inspection to banks, credit institutions, financial companies, bonding companies, insurance companies and other financial institutions (art. 3, Financial Supervision and Regulation Law).

AML Regime

177. Pursuant to the AML regime, Customer Due Diligence (CDD) measures must be applied by all financial institutions not only for regular business relationships, but also for occasional customers, regardless of the amounts

involved. Pursuant to article 10 of the AML Law, banks must maintain all account holder and transaction information including:

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

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

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

179. El Salvadoran authorities indicate that this requirement is interpreted as requiring financial institutions to maintain information concerning all transactions related to any account in all cases. El Salvador is a member of the *Grupo de Accion Financera del Caribe* (GAFIC). Its most recent Mutual Evaluation Report, which took place in 2010 (with its most recent follow-up report in November 2014), also analyses the AML requirements for banks to maintain updated client information and has found these requirements to be sufficient. Therefore, it is clear that banking information is available for all account holders in El Salvador.

Updating and record keeping

180. Article 12 of the AML regime sets out that all information should be maintained for a period of 15 years from the date of completion of every transaction. There is no limitation of this requirement to transactions over a

specific amount. Article 14 of the AML regime sets out that institutions must ensure the maintenance and updating of all records and forms set out under the Law, including the information collected in the course of carrying out CDD. In summary, banking information, including records of all transactions is available in El Salvador.

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

Availability of banking information in practice

182. The legal obligations in place to maintain banking information, under both the Banking Law and the AML regime require banks to maintain account holder and transaction information.

183. Under the Financial Supervision and Regulation Law, the SFS is the body responsible for the licencing and on-going supervision of all banks and non-banking financial institutions carrying on business in El Salvador. As of December 2015, there were 121 financial entities under the supervision of the SFS and of these, 14 were banks. Within the SFS, there are 405 officials of which 30 are responsible for the ongoing oversight programme to ensure that licensed entities are complying with their regulatory requirements.

184. Within the SFS, there is a department specifically responsible for the oversight of entities compliance with the requirements of the AML regime (AML department) within which there are 30 officials dedicated to carrying out the supervision programme of the SFS. The supervisory activities of the SFS include both desktop inspections of the annual reports that licensed entities are required to submit as well as having a comprehensive oversight programme in place under which officials from the SFS aim to visit at least 6-8 licensed entities per year in order to thoroughly inspect all processes, documents and compliance with their legal requirements. Officials from the SFS have reported that onsite visits may take up to 1.5 months and that while minor breaches have been found, generally compliance with regulatory and legal requirements, especially by banks, is found to be between 95 and 100%.

185. Non-compliance with AML obligations set forth under the AML Act may be punished with a number of penalties depending on the seriousness of the offence, ranging from warnings to fines. Pursuant to article 4 of the AML Act entities in breach of the AML Act may incur a fine of 50 to 2 500 times the minimum salary. Further, all entities subject to the requirements under the AML regime are subject to the general sanctions contained in the Penal Code for breach of the obligations (AML Law, art. 26).

186. Ultimately, a bank may even lose its licence and its officers and managers may also face penalties or disqualification. In very serious cases, the SFS may also commence judicial proceedings against the entity or its officers. The fines are fixed at an appropriate level to be dissuasive enough to promote effective compliance. Over the three year review period, there was 21 fines imposed on regulated entities by the SFS amounting to USD 817 226.08.

Conclusion

187. The comprehensive obligations as set out under the AML regime for financial institutions ensure that all records pertaining to accounts as well as related financial and transactional information are available. These obligations are closely monitored in practice by the SFS who monitors all financial entities including all banks via a desktop audit and onsite inspection programme. These obligations should result in El Salvador being able to provide banking information to its exchange of information partners when requested. El Salvador actively undertakes monitoring of financial institutions and penalties are applied in practice in order to ensure that entities are complying with ownership information keeping obligations.

188. Over the review period El Salvador did not receive any request for banking information from treaty partners. However, in the event that they did receive a request, El Salvador should be able to provide all the necessary banking information to its treaty partners.

Determination and factors underlying recommendations

Phase1 Determination
The element is in place
Phase 2 Rating
Compliant

B. Access to information

Overview

189. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether El Salvadoran legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

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

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

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

192. Over the three year review period, El Salvador did not receive any requests for information from its treaty partners. Nevertheless, officials from the DGII have reported that they regularly request ownership, accounting and banking information from individuals and entities and they have not experienced issues with their access powers under the Tax Code. As the same powers are to be used for accessing information for the exchange of information with treaty partners, it is not foreseen that there will be any issues in the exercise of the access powers under the Tax Code. Nevertheless, as the access powers could not be tested by the assessment team, it is recommended that El Salvador continues to monitor its access powers for EOI purposes to ensure that they are effective in all cases. Element B.1 is rated as “Compliant”.

193. Application of rights and safeguards in El Salvador do not restrict the scope of information that the DGII can obtain and there are no notification procedures in El Salvador, nor have there been any issues in this regard in practice. Therefore, element B.2 was found to be in place and rated as “Compliant”.

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).

194. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction’s authorities or is within the possession or control of persons within the jurisdiction’s territorial jurisdiction, ownership information on all such persons in an ownership chain.⁶ Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.⁷

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

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

7. See JAHGA Report paragraphs 6 and 22.

Convention and the Multilateral Convention, the competent authority is the Tax Commissioner of the DGII. Therefore, the acting competent authority in El Salvador is always the Tax Commissioner.

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

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

All authorities, administrative and judicial entities, as well as institutions, estates, trusts, individuals and legal persons, whether taxable or not, are required to provide the Tax Administration with any information, documentation, data, explanations, history or evidence as requested by them. The tax authorities may then carry out any necessary investigations in order to verify the data and reports which have been provided to them. Information may be requested by the DGII in either original form or via a certified copy.

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

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

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

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

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

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

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

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

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

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

Accounting records (ToR B.1.2)

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

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

Gathering information in practice

207. To date, El Salvador has not received any EOI requests. However, El Salvador has a formal structure in place within the Legal Division of the DGII (EOI Unit) which is mandated by the Commissioner as the competent authority to process future EOI requests. The EOI Unit has an EOI manual in place which sets out the procedures that must be followed for gathering information pursuant to an EOI request. The Manual also contains templates such as a template for the notice to produce information.

208. As outlined above (see section A.1 *Ownership information in practice*) the DGII already has a lot of information at its disposal such as ownership and some accounting information. All entities are obliged to provide ownership information at the time of registration and this must be updated on an annual basis in their annual return. Certain accounting information is also required to be submitted at the time of filing the annual return with the DGII. In the case where information is already in the hands of the DGII, the approach of the EOI Unit would be to access this information and provide it to the treaty partner within 15 working days of receipt of the request.

209. In regards to information held by other government departments such as the Ministry of Immigration or the Commercial Registrar, the DGII is empowered to request information via an internal memorandum in which it outlines the information sought and the reason. For domestic cases, information is generally provided expeditiously to the DGII, within one month. On this basis, the EOI Unit would also be in the position to send the information to the requesting jurisdiction in a speedy manner.

210. In cases where information must be requested from a third party, the EOI Unit would undertake this process by means of the “Notice” template. The only information stated in this document is a description of the information being requested, and the deadline (15 working days) in which the third party has to provide the information to the DGII but not the reason for which it is been requested nor the taxpayer to whom it relates. However, in the case that the identity of the taxpayer was required (e.g. such as to access banking information), El Salvador would disclose this information with prior authorisation from the requesting jurisdiction. This is similar to the process in place for gathering information from third parties for domestic purposes. Officials from the DGII have stated that where possible, an auditor from the DGII delivers the notice in person to the third party in order to be able to explain its contents where necessary. The EOI unit has reported that to the extent possible, this will also be the process used for EOI.

211. Where delivery of the notice by hand by the DGII is not possible due to the information holder residing outside of San Salvador, the legal technical officer (EOI Officer) will proceed to send an internal memorandum via

secure internal DGII mail, to an auditor in one of the departments of the DGII – as to which department will depend on the third party from whom the information is being requested (i.e. small, medium or large taxpayer unit). The auditor will then proceed to hand deliver the notice to the third party. The nature and urgency of the request will be outlined to the auditor and they are allocated a timeframe of 21 days in which to produce the information to the EOI Unit.

212. In the case that information is required from a bank, the legal technical advisor would send a memorandum to an auditor (generally in the large taxpayer unit for banking information) requesting the information. This auditor then proceeds to deliver the notice in person to the bank in which the bank is given 10 days in which to provide the information. Although this process has not yet had to be utilised for the purposes of EOI, in cases when it is requested for domestic purposes, the bank has always complied. Usually, in cases where banking information is requested, an official from the bank delivers the information in person to the DGII.

213. Officials from the DGII have indicated that generally, when information is requested from third parties, the timeframes are respected. While in some cases the holder of the information may request an extension of a few days, this does not occur often. In the case that the third party does not comply with this requirement, having being requested three times to provide the information to the DGII, the case is passed over to the Non-compliance Department of the DGII (*Sección de Incumplimientos Tributarios*) in order to commence a disciplinary procedure and to impose the appropriate sanctions.

Use of information gathering measures absent domestic tax interest (ToR B.I.3)

214. 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.

215. Pursuant to article 120 of the Tax Code, the Tax Administration is authorised to request or require any information, documentation, data, explanations, history or evidence, either for incorporation into their databases or for use in the lawful exercise of its powers of control, verification, investigation, inspection, control, billing, collection and other matters relating to the taxes administered. A definition of the “taxes administered” is not provided for in the Tax Code. El Salvador has stated that reference to “taxes administered” in this provision is not restricted to taxes assessed under the Tax Code but also extends to those taxes that may be assessable in the jurisdiction of the treaty partner. There is no time limitation in respect of which the powers under article 120 may be exercised by the DGII.

216. The use of El Salvador’s domestic powers for EOI purposes is based on treaties and the way in which they have been given effect in domestic law. Both the Constitution and certain provisions of the Tax Code include specific provisions on the integration of El Salvador’s international treaty obligations into domestic laws such as the Tax Code. In particular, article 144 of the Constitution provides that:

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

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

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

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

Compulsory powers (ToR B.1.4)

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

220. Pursuant to article 241(a) of the Tax Code, taxpayers are obliged to provide all requested information either relating to their own activities or to those of a third party. In the event, that this obligation is not complied with persons will be subject to a fine equivalent to 0.5% of the amount of the equity shown on the balance sheet which may not be less in value than the average monthly wage (USD 251.70).

221. In addition, the DGII can also obtain a judicial order to oblige the requested person to provide the information (art. 176 and 177, Tax Code) and in case of non-compliance the person may incur criminal liability (art. 338, Criminal Code).

Use of compulsory powers in practice

222. As El Salvador has not received any EOI requests, the DGII has never had to use search and seizure for EOI purposes. However, officials from the DGII have reported that it has increasingly made use of enforcement measures and sanctions for domestic purposes where third parties have not complied with requests for information. In the case of non-compliance with requests for information there are a variety of sanctioning measures at the disposal of the DGII including the imposition of fines and the commencement of court proceedings against legal entities and individuals.

223. In practice, in the case that a third party does not comply with a notice for information, having being requested three times to provide the information to the DGII, the case is passed over to the Non-compliance Department of the DGII (*Sección de Incumplimientos Tributarios*). Over the review period, the Non-compliance Department imposed the following fines and other sanctions for non-compliance with the requirements to provide requested information to the DGII:

Year	Number of sanctions	Total amount of sanctions imposed (USD)
2012	13	63 995.06
2013	11	994 468.25
2014	7	11 621.52

Secrecy provisions (ToR B.1.5)

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

Bank Secrecy

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

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

227. Previously, in order to access banking information, a tax audit had to be opened by the tax authorities (art. 232, Banking Law). However, pursuant to a 2014 amendment to article 120 of the Tax Code which contains the access powers of the DGII (see section B.1.1 *Bank, Ownership and identity information* above), even in those cases where information is expressed as being confidential in nature, the DGII is enabled to access this information directly. The DGII has reported that this new provision was inserted into the Tax Code in 2014 to ensure that the DGII has direct access to all types of information, including banking information.

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

229. While previously, the DGII had to open an audit process to access information for tax purposes, following a 2014 amendment to the Tax Code, this is no longer required. Officials from the DGII may now make a request for banking information directly and as of December 2015, officials from the DGII had utilised this process for 38 cases in 2015 in order to access banking information directly. As yet, this process has not been used for accessing information for exchange of information purposes. However, in the case that this process was required to access banking information directly for exchange of information purposes, it is foreseen that there would be no issues in practice.

Professional secrecy and attorney-client privilege

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

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

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

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

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

233. Therefore, the scope of attorney-client privilege in El Salvador does not impede on the effective exchange of information as even in those cases where the holder of information did not provide information to the tax authorities as they claimed it was subject to attorney client privilege, this would not be accepted by the tax authorities.

Operation of attorney-client privilege in practice

234. Officials from the DGII have reported that to date, non-provision of requested information for reasons of attorney-client privilege have never arisen in El Salvador. In the case that the DGII requested information and the person claimed this information was subject to attorney-client privilege, the case would be referred to the Non-compliance Division (*Sección de Incumplimientos Tributarios*) and the appropriate sanctions would be imposed for non-compliance with the request for the information.

235. Further, officials from the *Procuraduría General de la República* (State Attorney-General office) have affirmed that claims of attorney-client privilege do not arise often even for domestic purposes in El Salvador.

Therefore, in practice, secrecy provisions are found to be applied in line with the international standard in El Salvador.

Conclusion of information gathering powers

236. As no EOI requests have been received by El Salvador over the review period, it has not had cause to utilise its access powers to retrieve information for an EOI request. However, as it uses the same powers for domestic and EOI purposes, in the event of a receipt of an EOI request, the DGII should have no issues in accessing all requested information. Nevertheless, as the access powers could not be tested by the assessment team, it is recommended that El Salvador continues to monitor its access powers for EOI purposes to ensure that they are effective in all cases.

Determination and factors underlying recommendations

Determination
The element is in place.
Phase 2 Rating
Compliant

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)

237. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

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

239. Further, it is noted that there are no grounds for objection or appeal in the case that information is requested by the DGII and there is no specific appeal procedure to challenge any of the actions of the Commissioner such as the exchange of information under an EOI request. Therefore, it is concluded that rights and safeguards should not unduly prevent or delay effective exchange of information in El Salvador.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 Rating
Compliant

C. Exchanging information

Overview

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

241. El Salvador’s EOI network consists of 1 Double Taxation Convention (DTC) with Spain and it is also a member of the Mutual Assistance and Technical Cooperation among Central American Tax and Custom Administrations Convention (hereafter referred to as the “Central American Multilateral Convention”). El Salvador signed the Central American Multilateral Convention’ on April 25th 2006 with the other members of the Central American Common Market (CACM), namely; Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua of which Costa Rica, Guatemala and Honduras are amongst its largest trading partners. The Convention provides for exchange of information in all tax matters. To date, this convention has been ratified and brought into force by all members. El Salvador joined the Multilateral Convention in June 2015 bringing its network to 93 EOI partners. Elements C.1 and C.2 were found to be in place and both are rated “Compliant”.

242. Both the Central American Multilateral Convention and its one DTC, as signed with Spain, contain confidentiality provisions to ensure that the information exchanged can be disclosed only to persons authorised. Further, the Central American Multilateral Convention does not contain the possibility of declining a request for information and the reasons for declining a request under its DTC with Spain are in line with the international standard. Although no EOI requests were received by El Salvador over the review period, there are strict confidentiality measures in place for the DGII and in particular for the officials the Legal Division of the DGII who are mandated

with the processing of EOI requests. There are also secure storage and physical security measurements in place. Further, in practice rights and safeguards are found to be appropriately applied in El Salvador. Elements C.3 and C.4 were found to be in place and are rated “Compliant”.

243. With respect to the timeliness of responses to EOI, there are no legal restrictions on the ability of the El Salvadoran competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. Two officers within the Legal Division of the DGII have been charged with the processing of EOI requests in El Salvador. There are formal procedures in place for the processing of EOI requests and EOI tools such as an EOI manual. Therefore, once El Salvador commences receiving EOI requests, the organisational processes are in place to ensure that request should be answered in an efficient and timely manner. However, as El Salvador did not receive any EOI requests over the review period the organisational processes for EOI have not been sufficiently tested in practice. A monitoring recommendation has been issued in this regard and element C.5 is rated “Largely Compliant”.

244. Details of all of El Salvador’s EOI agreements are set out in Annex 2 to this report, including their dates of signature and entry into force. The terms of El Salvador’s laws and agreements governing the exchange of information are set out below.

C.1. Exchange-of-information mechanisms

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

Foreseeably relevant standard (ToR C.1.1)

245. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions,” i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 1 of the OECD Model TIEA set out below:

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

246. El Salvador’s DTC with Spain and the Multilateral Convention use the language “foreseeably relevant” and both are therefore in line with the international standard regarding foreseeable relevance.

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

248. Although the language differs from article 1 of the OECD Model TIEA, it does not automatically mean the Central American Multilateral Convention does not comply with the standards. The Commentary to article 26 of the OECD Model Tax Convention (para. 5) states that Contracting States may agree to an alternative formulation of this “foreseeable relevance” standard that is consistent with the scope of the article, for instance by replacing “foreseeably relevant” with “necessary” or “relevant”. In view of this recognition, the Central American Multilateral Convention meets the standard by using the word “related”. The term “related” seems to have a wider meaning than “foreseeably relevant”, but it still requires a certain level of connection.

249. Article 4 of the Central American Multilateral Convention does not restrict the type of taxes covered by the agreement. It refers to “taxes in effect and all the legislation that modifies them or establishes new taxes after the signature of this Convention.” The Explanatory Note indicates the Central American Multilateral Convention covers all taxes currently levied in each country, including direct, indirect, customs duties and excise taxes. Further, El Salvador, and other parties to the Central American Multilateral Convention that have already been assessed by the Global Forum interpret the wording of “*information and documentation related to taxes*” to apply to all foreseeably relevant information and therefore in practice the Central American Multilateral Convention is applied in line with the international standard.

In respect of all persons (ToR C.1.2)

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

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

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

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

253. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Tax Convention and the OECD Model TIEA which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

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

255. Pursuant to the Central American Multilateral Convention, information that may be exchanged on request includes information and documentation related to:

- general or identification information of natural or legal persons in their capacity as taxpayers, legal representatives, as well as shareholders, partners or participants in other social or collective entities without legal personality; or as clients, creditors or suppliers of other taxpayers;
- commercial, financial, industrial, intellectual property transactions or operations or those pertaining to any other economic activity;
- any other [information] aimed at guaranteeing the correct levying and collection of taxes (Convention, article 8).

256. The reference to commercial, financial, industrial and intellectual property transactions or those pertaining to any economic activity is broad enough to encompass bank information as envisioned by the international

standard. Further, the Explanatory Note to the Central American Multilateral Convention provides that information held by banks or financial entities cannot be considered a professional or commercial secret solely for this reason, even though some banking information may contain some secrets.

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

Absence of domestic tax interest (ToR C.1.4)

258. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must be able to use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. The term “information gathering measures” means laws and administrative or judicial procedures that enable a contracting state to obtain and provide the requested information.

259. El Salvador’s DTC with Spain includes the provision contained in paragraph 4 to Article 26 of the OECD Model Tax Convention, which states that the requested party “shall use its information gathering measures to obtain the requested information, even though that [it] may not need such information for its own tax purposes”. Therefore, the exchange of information without the requirement for a domestic tax interest in the requested information is permitted under this agreement.

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

261. During the onsite visit, officials from the DGII have reported that they would be in a position to provide information to treaty partners regardless of whether or not it had an interest in the information for its own purposes.

Absence of dual criminality principles (ToR C.1.5)

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

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

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

264. 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").

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

266. Officials from the DGII have reported that they would be in a position to provide information to treaty partners regardless of whether it related to civil or criminal tax matters.

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

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

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

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

270. To date, El Salvador has not yet been requested to provide requests in a specific form to a treaty partner. However, in the event that information is requested in a specific form, officials from El Salvador's competent authority have reported that they will provide information in the specific form requested to the extent permitted under El Salvadoran law and administrative practice.

In force (ToR C.I.8)

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

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

273. Both its DTC with Spain and the Central American Multilateral Convention are in force in El Salvador.

274. As of December 2015, El Salvador has three TIEAs under negotiation, two being with South American jurisdictions and one with a Caribbean jurisdiction. Officials from the DGII have reported that these should be concluded shortly.

275. Generally, in El Salvador, the procedure to negotiate an EOI agreement commences via diplomatic channels of the Ministry of the Foreign Affairs. Once the decision is taken to enter into negotiations, the first step is to exchange draft agreements, after which the Legal Division of the DGII analyzes the agreement proposed by the other jurisdiction and sends their comments back via diplomatic channels. Further negotiation tends to take place via email and conference call for TIEAs while DTCs tend to be negotiated in person.

276. Once agreement on the substance of the agreement has been reached, an arrangement is made for the two parties to sign and after signature, the process as outlined under the Constitution is the one that must be followed. First, the agreement, alongside accompanying documents as prepared by the Ministry of Finance or the Ministry of Foreign Affairs, must pass through the Legislative Assembly. There is no time limit for agreements to be approved by the Legislative Assembly and timing will largely depend on its agenda.

277. In regards to the Multilateral Convention, as of December 2015, the Ministry of Foreign Affairs is preparing the reservations to the Convention and once this process with the coordinating body for the Convention has been complete, the Convention will also be prepared for submission to the Legislative Assembly.

In effect (ToR C.I.9)

278. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

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

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

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

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place
Phase 2 Rating
Compliant

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

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

281. 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.

282. To date, the policy of El Salvador with respect to expanding its EOI network has been to focus on jurisdictions with which El Salvador has commercial relations.

283. Through the Central American Multilateral Convention, El Salvador has signed EOI agreements with its most relevant partners, namely Guatemala, Costa Rica, Nicaragua and Honduras, all of whom have ratified the agreement. Further, El Salvador also has a DTC in place with Spain, which it has signed and ratified, another one of its main trading partners. Further, as El Salvador has now signed the Multilateral Convention, once this agreement is in force in El Salvador, it will extend its network of treaty partners to 93 jurisdictions.

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

285. As of December 2015, El Salvador was negotiating TIEAs with three jurisdictions located in the South American and Caribbean regions. In addition, El Salvador signed the Convention on Mutual Administrative Assistance in Tax Matter in June 2015 enhancing significantly its EOI treaty network.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	El Salvador should continue to develop its EOI network with all relevant partners.

Phase 2 Rating
Compliant

C.3. Confidentiality

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

Information received: disclosure, use, and safeguards (ToR C.3.1) and all other information exchanged (ToR C.3.2)

286. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

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

Exchange of information agreements

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

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

in Article 2 include “management, audit and collection” but Article 16 adds that information obtained may also be used as evidence in administrative and judicial proceedings.

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

Domestic law

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

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

292. Confidentiality for all members of the Tax Administration is also provided for under Article 31 of the Civil Service Law which sets out the duty of confidentiality for all public officials and employees even after the term of their employment has ended. In the event of breach of confidentiality, there are a number of administrative penalties set out ranging from suspension without pay to dismissal. Further, Article 324 of the Penal Code provides that any public official or employee who divulges confidential information or documentation shall be subject to imprisonment for a period of four to six years. Further El Salvadoran authorities have confirmed that there is no right of inspection to taxpayer files by taxpayers in El Salvador.

Ensuring confidentiality in practice

Human resources

293. In regards to the confidentiality obligations of persons who may be involved with the exchange of information in El Salvador, prior to any formal appointment with the DGII, all candidates are required to undergo comprehensive background and security checks to ensure that they will not pose any risk to security. Once appointed, all employees are subject to

confidentiality obligations as set out in the terms of their employment. All confidentiality obligations, processes and procedures are clearly outlined and explained during the induction training that all employees must undertake at the commencement of their employment with the DGII. Internal training is also systematically provided to remind and update employees on their confidentiality obligations and procedures. As a result, officials from within the DGII have reported that breaches of confidentiality within the DGII are rare.

294. As outlined above, domestic legislation in El Salvador provides for confidentiality obligations and strict sanctions in the case of breach. All persons who are concerned with tax matters in El Salvador are required under the Tax Code to maintain all information relating to the financial or tax affairs of taxpayers as strictly confidential and breaches of this obligation are subject to sanctions ranging from fines to imprisonment for a term of six years. The obligation to maintain tax secrecy continues after the end of the employment relationship with the DGII and former employees who breach confidentiality are also subject to strict sanctions. Officials from the DGII have reported that sanctions for breaches of confidentiality have not been imposed on tax officials over the review period.

Facilities

295. As of December 2015, no EOI requests had been received in El Salvador. However, there is an EOI Unit in place based within the Legal Division of the DGII which is located within the main building of the DGII in San Salvador where physical security for the confidentiality of all information/documents and computer equipment is strictly maintained. Generally, the public are not authorised to enter the building except for limited areas, accompanied at all times by DGII officials. The Legal Division is contained within its own secure area where access is limited to employees of the Legal Division only. Further, as of December 2015, there are plans to locate the EOI Unit as well as all storage cabinets for EOI documents, within its own secure room at the DGII building.

IT Measures

296. The DGII has its own computer system called “Integrated Tax Information System” (SIIT, *Sistema Integral de Información Tributaria*), within which a subsystem, “Documentary Control” (*Control Documentario*) operates. The Documentary Control System verifies the traceability (“tracking”) entry of all documents, their physical location, the responsible person for their control and the transfer thereof ensuring that all documents within the system of the DGII, including any EOI requests or related documents are traceable and subject to the highest levels of confidentiality. The access to the

information contained in the SIIT is restricted by position meaning that not all tax officials have full access to information contained in the SIIT. There are also internal manuals and procedures in place to maintain the confidentiality of all information maintained by the DGII.

297. Although no requests were received over the review period, there is an EOI manual in place in El Salvador carefully setting out all procedures to be implemented for the processing of all EOI requests. On receipt of all EOI requests, a hard file is to be opened and kept in a secure cabinet within the office of the Legal Division of the DGII which is locked with a key at all times. As there is a “clean desk” policy which operates throughout the DGII, hard files or information pertaining to an EOI request will never be left exposed on the desk of an official.

298. On the request for information from other branches of the DGII, officials from the DGII have reported that a copy of the request will never be dispatched to auditors but rather, the EOI official will draft a letter setting out the requested information which is sent via secure internal mail in a sealed enveloped marked confidential. Similarly, when information is sent back to the EOI Unit, this will also be via secure internal mail and marked confidential.

Provision of requested information to EOI partners

299. Once the Legal Division of the DGII receives the request, this information will be copied and placed in the hard file belonging to that request. The EOI official responsible for overseeing the processing of the request will ensure to maintain copies of the information produced as well as an inventory of all information produced and copies of the requests which are stored in the hard files in the EOI officer’s office which is securely locked with limited access. It is foreseen that all requested information will be provided to EOI partners along with an accompanying cover letter from the Commissioner via registered mail. Once El Salvador establishes working relationships for EOI with its treaty partners, it may commence to send information via secure encrypted mail.

Conclusion

300. No issues were raised by peers regarding confidentiality as it relates to EOI requests. Further, the El Salvadoran authorities have confirmed that breaches of confidentiality for tax matters are rare in El Salvador. Taking all of this into account as well as the strict security measures that are in place, it can be concluded that all EOI requests and information pursuant to the requests will be subject to strict confidentiality measures in El Salvador.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place
Phase 2 Rating
Compliant

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

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

301. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other legitimate secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative.

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

303. The EOI agreements concluded by El Salvador meet the standards for protection of rights and safeguards of taxpayers and third parties, which are provided in Article 26(3) of the OECD Model Tax Convention and Article 7 of the OECD Model TIEA. These rights and safeguards are also reflected in domestic law provisions.

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

Exchange of information agreements

304. The limits with which information can be exchanged, as provided for in Article 26(3) of the OECD Model Tax Convention, are included in El Salvador's DTC with Spain. That is, information which would disclose any

trade, business, industrial, commercial or professional secret or trade process; or which would be contrary to public policy, is not required to be exchanged. Professional secrecy is not defined under the agreement. Therefore, it is necessary to look to the domestic laws of the jurisdiction which are discussed further below.

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

306. The Central American Multilateral Convention expressly provides that when the parties exchange information, they must take into account the requirements for the protection of information obtained which is of a personal nature (article 19).

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

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

Domestic Law

309. Pursuant to Article 120 of the Tax Code, which sets out the obligation for all entities and individuals to share any information as requested with the Tax Administration, secrecy provisions or should the information have been classified as “reserved information” (as discussed above under Section B.1) shall not be accepted as a reason for not providing the requested information to the DGII.

310. In El Salvador, provisions concerning the protection of industrial and commercial secrets are provided for in the *Ley de Propiedad Intelectual* (Intellectual Property Law). The law sets out that “all information having

commercial value of industrial application or trade ... which a person or entity guards as confidential and conveys a competitive advantage with means adopted to preserve their confidentiality shall be considered an industrial or commercial secret” (art. 177, Intellectual Property Law).

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

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

Attorney-Client privilege

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

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

314. As noted previously in section B.1 of the report, the scope of professional secrecy in El Salvador is interpreted broadly, and at the very least would appear to cover lawyers, notaries, accountants and other professionals. However, by operation of the access power provisions under the Tax Code, professional privileges in El Salvador would not prevent access by the DGII to information requested in order to respond to an EOI request.

Secrecy provisions in practice

315. Officials from the office of the Attorney-General (*Procuraduría General de la República*) have affirmed that claims of attorney-client privilege do not arise often even for non-tax related matters in El Salvador. Further, officials from the DGII have reported that, even for domestic purposes, they have never encountered attorney-client privilege being utilised for the non-provision of information to the DGII. In the case that a lawyer or taxpayer did not provide requested information to the DGII for either domestic or EOI purposes claiming that it was subject to attorney-client privilege, the DGII would determine that this was not valid and that the information had to be produced. In the case that the information holder continued to withhold the information for reasons pertaining to it being privileged, the DGII would seek a court order for this information.

316. In conclusion, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice in El Salvador and from the EOI partners that provided peer input, no issues have been raised in this regard.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 Rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

317. 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.

318. Article 15 of the Central American Multilateral Convention provides for a deadline to respond to a request for information as short as 15 working days from the receipt of the request. This is considerably shorter than the deadlines set in 5(6) of the OECD Model TIEA, where a party is given 60 days to confirm receipt of the request and notify the applicant party of any deficiencies in it and an initial 90 days from the receipt of the request to provide the information. The Central American Multilateral Convention is, therefore, easily in accordance with the standard in this point.

319. Because of the short deadline, it is important to have a mechanism in place in case information cannot be provided within the deadline. Under article 15 it is possible to extend the deadline, but no special extension term is indicated. To this end, the requested state has to inform the requesting state about the reasons for not providing the information on time. The Explanatory Note mentions as reasons, the complexity of the actions to obtain the information, the volume of data required or other administrative circumstances.

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

Responding to EOI in Practice

321. El Salvador did not receive any requests over the review period (January 2012-December 2014). However, El Salvador has an EOI Unit in place with two officials responsible for the processing of EOI and also has an EOI manual in place which sets out the guidelines to be followed in order to respond as effectively as possible to all EOI requests. When information is available within the DGII, it is set out that the EOI request should be answered in 15 working days.

322. In the case where information is in the hands of third parties, they are allocated a timeframe of 15 working days within which to produce the information to the DGII. These timelines should ensure that in the case that an EOI request is received by El Salvador, the information would be able to be made available in a timely manner. Nevertheless, it is noted that as no requests were received over the review period, timeliness could not be evaluated by the assessment team.

Organisational process and resources (ToR C.5.2)

323. It is important that a jurisdiction have appropriate organisational processes and resources in place to ensure a timely response. El Salvador's competent authority under its one signed DTC (Spain) is the Minister for Finance

who delegates this role to the Director of the DGII (Tax Commissioner). In the case of the Central American Multilateral Convention and the Multilateral Convention, the competent authority is the Tax Commissioner of the DGII. Within the DGII this role has been delegated to the Legal Division and for which there are two officials within this department who are responsible for the processing of all EOI requests. The manner in which the EOI Unit will process requests is set out below.

324. On receipt of an EOI request at the EOI Unit, it will first be stamped confidential and then registered in a hard copy book with the time, date, name of the requesting jurisdiction and a reference number will be assigned. The request will also be noted in an Excel spreadsheet in order for the EOI officer to monitor and track its progress. The request will then be reviewed by one of the two officers' from the Legal Division to ensure that it meets the conditions of the EOI agreement and to determine the most appropriate sources from which the requested information can be obtained. In the case that a request were found to be incomplete or unclear, officials from the Legal Division charged with overseeing EOI have reported that they would inform the treaty partner and ask for either additional information and/or clarification either by phone or encrypted email.

325. In the case that the requested information was available within the DGII, this information would be accessed by the EOI officer and the requesting jurisdiction would be responded to within a timeframe of 15 working days.

326. . In the case that the information was not available within the DGII, but was with either another government agency or a third party, a notice will be delivered in person to the information holder who will be allocated a timeframe of 15 working days within which to produce this information to the EOI unit. In those cases where the information holder resides outside of San Salvador, the procedure would be for the notice setting out the required information to be sent via secure internal mail to an auditor within the local branch of that department where the information holder resides. Once received by the auditor, the EOI officer will explain via phone contact to the auditor the urgency and nature of the request and that they are allocated a timeframe of 21 days in which to produce the information to the EOI Unit. The auditor will deliver the notice via hand to the information holder. Once the requested information is received at the office of the auditor, this will then be sent via internal secure mail with a covering note to the EOI Unit where it will then be copied into a letter and sent to the Commissioner to exchange with the requesting jurisdiction. All information received at the office of the auditor is subject to the same level of confidentiality measures as those in place at the EOI Unit.

327. Officers from the EOI Unit have reported that in urgent cases, the deadline in which to produce the information to the EOI Unit may be shorter. If the information were not provided, then either the EOI officer or the auditor responsible for requesting the information would follow up with a phone call or visit in person. For any excessive delays, a penalty in the form of a fine would also be enforced. Officials from the EOI unit have reported that in exceptional cases, an extension may be granted to the information holder in providing the information to the DGII, but valid reasons would have to be set out and the maximum extension allocated would be 10 days.

328. Once the information is obtained at the DGII, the EOI officer will verify the information to make sure it is complete, and will transfer the responses to the Head of the Legal Division in order to perform a second verification. The information will then be drafted into a letter and alongside an accompanying cover letter from the Tax Commissioner, and will then be sent via secure registered mail to the office of the requesting competent authority. A copy of all requests and transmitted information will be maintained in the hard files as kept in locked cabinets within the EOI Unit.

Resources

329. To date, El Salvador has not received any EOI requests. However, once El Salvador starts receiving requests, there are two officials within the Legal Division of the DGII assigned to carrying out the EOI function. Both of the officials are senior employees of the DGII with years of experience in collecting information for domestic tax purposes and have attended specific training on EOI as provided by the Inter-American Centre of Tax Administrations (CIAT). Further, these two officials have benefited from technical assistance programmes provided by the Global Forum and via the Euro social programme through which they have received extensive training on how to respond to and send EOI requests. In sum, the staff resources for EOI in El Salvador are set at the appropriate level.

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

330. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no aspects of the Convention that appear to impose restrictive conditions on exchange of information except for constitutional limitation. As noted in Part B of this report, there are no laws, regulations or practices in El Salvador that would impose unreasonable, disproportionate, or unduly restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

Phase 1 Determination	
In place	
In place	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
El Salvador has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with EOI requests. Nevertheless, El Salvador did not receive any EOI requests during the period under review. Consequently, the organisational processes have not been sufficiently tested in practice.	El Salvador should continue to monitor all EOI processes and once an EOI request is received, El Salvador should ensure that all of its EOI processes are utilised efficiently to respond to EOI requests in a timely manner.

Summary of determinations and factors underlying recommendations

Overall Rating		
LARGELY-COMPLIANT		
Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The element is not in place.	Bearer shares may be issued by joint-stock and limited liability companies in El Salvador and there are no mechanisms to ensure that the owners of such shares can be identified.	El Salvador should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares.
Phase 2 Rating: Non-Compliant		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The element is place		
Phase 2 Rating: Compliant		
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is place		
Phase 2 Rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) <i>(ToR B.1)</i>		
The element is in place		
Phase 2 Rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information <i>(ToR B.2)</i>		
The element is in place.		
Phase 2 Rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information <i>(ToR C.1)</i>		
The element is in place		
Phase 2 Rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners <i>(ToR C.2)</i>		
The element is in place		El Salvador should continue to develop its EOI network with all relevant partners.
Phase 2 Rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received <i>(ToR C.3)</i>		
The element is in place		
Phase 2 Rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties <i>(ToR C.4)</i>		
The element is in place		
Phase 2 Rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
<p>Phase 1: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</p>		
<p>Phase 2 Rating: Largely Compliant</p>	<p>El Salvador has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with EOI requests. Nevertheless, El Salvador did not receive any EOI requests during the period under review. Consequently, the organisational processes have not been sufficiently tested in practice.</p>	<p>El Salvador should continue to monitor all EOI processes and once an EOI request is received, El Salvador should ensure that all of its EOI processes are utilised efficiently to respond to EOI requests in a timely manner.</p>

Annex 1: Jurisdiction’s response to the review report⁸

This annex is left blank because El Salvador has chosen not to provide any material to include in it.

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

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

List of EOI agreements signed by El Salvador as at 18 December 2015, including one Double Tax Convention, a Mutual Assistance Convention with four other Central American countries and the Convention on **Mutual Administrative Assistance in Tax Matters, as amended** (MAC). El Salvador has signed but not yet ratified the MAC. The EOI agreements listed below do not limit, nor are they limited by, provisions contained other EOI arrangements between the same parties concerned or other instruments which relate to co-operation in tax matters.

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

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
1	Albania	MAC	Signed	In force in Albania 01-Dec-2013
2	Andorra	MAC	Signed	Not yet in force
3	Anguilla	MAC ^b	Extended	In force in Anguilla 01-Mar-2014
4	Argentina	MAC	Signed	In force in Argentina 01-Jan-2013
5	Aruba	MAC ^c	Extended	In force in Aruba 01-Sep-2013
6	Australia	MAC	Signed	In force in Australia 01-Dec-2012
7	Austria	MAC	Signed	In force in Austria 01-Dec-2014
8	Azerbaijan	MAC	Signed	In force in Azerbaijan 01-Oct-2004
9	Barbados	MAC	Signed	Not yet in force

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
10	Belgium	MAC	Signed	In force in Belgium 01-April-2015
11	Belize	MAC	Signed	In force in Belize 01-Sep-2013
12	Bermuda	MAC ^b	Extended	In force in Bermuda 01-Mar-2014
13	Brazil	MAC	Signed	Not yet in force
14	British Virgin Islands	MAC ^b	Extended	In force in British Virgin Islands 01-Mar-2014
15	Bulgaria	MAC	Signed	Not yet in force
16	Cameroon	MAC	Signed	In force in Cameroon 01-Oct-2015
17	Canada	MAC	Signed	In force in Canada 01-Mar-2015
18	Cayman Islands	MAC ^b	Extended	In force in Cayman Islands 01-Jan-2014
19	Chile	MAC	Signed	Not yet in force
20	China (People's Republic of)	MAC	Signed	Not yet in force ^e
21	Colombia	MAC	Signed	In force in Colombia 01-July 2014
22	Costa Rica	Central American Mutual Assistance Convention	25 Apr 2006	31 Oct 2012
		MAC	Signed	In force in Costa Rica 01-Aug-2013
23	Croatia	MAC	Signed	In force in Croatia 01-June-2014
24	Curaçao	MAC ^c	Extended	In force in Curaçao 01-Sep-2013
25	Cyprus ^a	MAC	Signed	In force in Cyprus 01-April-2015
26	Czech Republic	MAC	Signed	In force in Czech Republic 01-Feb-2014

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
27	Denmark	MAC	Signed	In force in Denmark 01-Jun-2011
28	Estonia	MAC	Signed	In force in Estonia 01-Nov-2014
29	Faroe Islands	MAC ^d	Extended	In force in Faroe Islands 01-Jun-2011
30	Finland	MAC	Signed	In force in Finland 01-Jun-2011
31	France	MAC	Signed	In force in France 01-Apr-2012
32	Gabon	MAC	Signed	Not yet in force
33	Georgia	MAC	Signed	In force in Georgia 01-Jun-2011
34	Germany	MAC	Signed	Not yet in force ^f
35	Ghana	MAC	Signed	In force in Ghana 01-Sep-2013
36	Gibraltar	MAC ^b	Extended	In force in Gibraltar 01-Jan-2014
37	Greece	MAC	Signed	In force in Greece 01-Sep-2013
38	Greenland	MAC ^d	Extended	In force in Greenland 01-Jun-2011
39	Guatemala	Central American Mutual Assistance Convention	25 Apr 2006	31 Oct 2012
		MAC	Signed	Not yet in force
40	Guernsey	MAC ^b	Extended	In force in Guernsey 01-Aug-2014
41	Honduras	Central American Mutual Assistance Convention	25 Apr 2006	31 Oct 2012
42	Hungary	MAC	Signed	In force in Hungary 01-Mar-2015
43	Iceland	MAC	Signed	In force in Iceland 01-Feb-2012

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
44	India	MAC	Signed	In force in India 01-Jun-2012
45	Indonesia	MAC	Signed	In force in Indonesia 01-May-2015
46	Ireland	MAC	Signed	In force in Ireland 01-Sep-2013
47	Isle of Man	MAC ^b	Extended	In force in Isle of Man 01-Jan-2014
48	Israel	MAC	24 November 2015	Not yet in force
49	Italy	MAC	Signed	In force in Italy 01-May-2012
50	Japan	MAC	Signed	In force in Japan 01-Oct-2013
51	Jersey	MAC ^b	Extended	In force in Jersey 01-June-2014
52	Kazakhstan	MAC	Signed	In force in Kazakhstan 01-Aug-2015
53	Korea	MAC	Signed	In force in Korea 01-Jul-2012
54	Latvia	MAC	Signed	In force in Latvia
55	Liechtenstein	MAC	Signed	Not yet in force
56	Lithuania	MAC	Signed	In force in Lithuania 01-June-2014
57	Luxembourg	MAC	Signed	In force in Luxembourg 01-Nov-2014
58	Malta	MAC	Signed	In force in Malta 01-Sep-2013
59	Mauritius	MAC	Signed	Not yet in force ⁹
60	Mexico	MAC	Signed	In force in Mexico 01-Sep-2012
61	Moldova	MAC	Signed	In force in Moldova 01-Mar-2012
62	Monaco	MAC	Signed	Not yet in force
63	Montserrat	MAC ^b	Extended	In force in Montserrat 01-Oct-2013
64	Morocco	MAC	Signed	Not yet in force

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
65	Netherlands	MAC	Signed	In force in Netherlands 01-Sep-2013
66	New Zealand	MAC	Signed	In force in New Zealand 01-March-2013
67	Nicaragua	Central American Mutual Assistance Convention	25 Apr 2006	31 Oct 2012
68	Nigeria	MAC	Signed	In force in Nigeria 01-Sept-2015
69	Niue	MAC	27 November 2015	Not yet in force
70	Norway	MAC	Signed	In force in Norway 01-Jun-2011
71	Philippines	MAC	Signed	Not yet in force
72	Poland	MAC	Signed	In force in Poland 01-Oct-2011
73	Portugal	MAC	Signed	In force in Portugal 01-Mar-2015
74	Romania	MAC	Signed	In force in Romania 01-Nov-2014
75	Russia	MAC	Signed	In force in Russia 01-July-2015
76	San Marino	MAC	Signed	Not yet in force ^h
77	Saudi Arabia	MAC	Signed	Not yet in force
78	Seychelles	MAC	Signed	In force in Seychelles 01-Nov-2015
79	Singapore	MAC	Signed	Not yet in force
80	Sint Maarten	MAC ^c	Extended	In force in Sint Maarten 01-Sep-2013
81	Slovak Republic	MAC	Signed	In force in Slovak Republic 01-Mar-2014
82	Slovenia	MAC	Signed	In force in Slovenia 01-Jun-2011
83	South Africa	MAC	Signed	In force in South Africa 01-Mar-2014

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
84	Spain	DTC	7 Jul 2008	1 Jan 2010
		MAC	Signed	In force in Spain 01-Jan-2013
85	Sweden	MAC	Signed	In force in Sweden 01-Sep-2011
86	Switzerland	MAC	Signed	Not yet in force
87	Tunisia	MAC	Signed	In force in Tunisia 01-Feb-2014
88	Turkey	MAC	Signed	Not yet in force
89	Turks and Caicos Islands	MAC ^b	Extended	In force in Turks and Caicos Islands 01-Oct-2013
90	Uganda	MAC	Signed	Not yet in force
91	Ukraine	MAC	Signed	In force in Ukraine 01-Sept-2013
92	United Kingdom	MAC	Signed	In force in United Kingdom 01-Nov-2011
93	United States	MAC	Signed	Not yet in force

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

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

b. Extension by the United Kingdom.

c. Extension by the Kingdom of the Netherlands.

d. Extension by Kingdom of Denmark.

e. On 16 October 2015, China (People’s Republic of) deposited their instrument of ratification of the Convention as amended by the Protocol at the OECD (Paris). In accordance with article 28, the Convention shall enter into force on 1 February 2016.

f. On 28 August 2015, Germany deposited their instrument of ratification of the Convention as amended by the Protocol at the OECD (Paris). In accordance with article 28, the Convention shall enter into force on 1 December 2015.

- g. On 31 August 2015, Mauritius deposited their instrument of ratification of the Convention as amended by the Protocol at the OECD (Paris). In accordance with article 28, the Convention shall enter into force on 1 December 2015.
- h. On 28 August 2015, San Marino deposited their instrument of ratification of the Convention as amended by the Protocol at the OECD (Paris). In accordance with article 28, the Convention shall enter into force on 1 December 2015.

Annex 3. List of all laws, regulations and other material received

Fiscal Legislation and Regulations

Tax Code

Income Tax Law

Primary Government Authorities

El Salvadorian Constitution

Commercial Laws

Commercial Code

Co-operatives General Law

Law of the Commercial Registrar

Law of the Industrial and Free Trade Zones

Intellectual Property Law

The Financial Sector

Banking Law

Law of Supervision and Regulation of the Financial System

Law of Co-operative Banks and Savings Societies

Anti-money laundering Law

Other Legislation

Penal Code

Civil Code

Notary Law

Annex 4: List of persons interviewed during onsite visit

Officials from the *Dirección General de Impuestas Internas* (DGII)

Officials from the Banco Central de El Salvador

Officials from the *Superintendencia del Sistema Financiero*

Officials from the *Registro Comercial*

Official from the *Superintendencia de Notarios*

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: EL SALVADOR

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

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

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