GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

# Peer Review Report on the Exchange of Information on Request

# IRELAND

**2017** (Second Round)

OECD

# Global Forum on Transparency and Exchange of Information for Tax Purposes: Ireland 2017 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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(reflecting the legal and regulatory framework as at May 2017)

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# About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit www.oecd.org/tax/transparency.

# Abbreviations and acronyms

## General terms

| | |
|---|---|
| **2010 Terms of Reference** | Terms of Reference related to EOIR, as approved by the Global Forum in 2010. |
| **2016 Assessment Criteria Note** | Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015. |
| **2016 Methodology** | 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015. |
| **2016 Terms of Reference** | Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015. |
| **4th AMLD** | EU Fourth Anti-Money Laundering Directive |
| **AEOI** | Automatic Exchange of Information |
| **AML** | Anti-Money Laundering |
| **AML/CFT** | Anti-Money Laundering/Countering the Financing of Terrorism |
| **CDD** | Customer Due Diligence |
| **CLG** | Company Limited by Guarantee |
| **CRS** | Common Reporting Standard |
| **DTC** | Double Tax Convention |
| **EOIR** | Exchange Of Information on Request |
| **EU** | European Union |
| **EU DAC** | EU Directive on Administrative Co-operation |
| **FATCA** | Foreign Account Tax Compliance Act |
| **FATF** | Financial Action Task Force |
| **Global Forum** | Global Forum on Transparency and Exchange of Information for Tax Purposes |

| | |
|---|---|
| **Multilateral Convention (MAAC)** | Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010 |
| **PRG** | Peer Review Group of the Global Forum |
| **TIEA** | Tax Information Exchange Agreement |
| **VAT** | Value Added Tax |

## Terms specific to Ireland

| | |
|---|---|
| **2010 Report** | 2010 Combined Phase 1 and Phase 2 Peer Review Report for Ireland |
| **2017 Report** | 2017 Peer Review Report for Ireland |
| **AMLCU** | Anti-Money Laundering Compliance Unit |
| **An Garda Síochána** | The Irish Police Force |
| **CA 2014** | Companies Act 2014 |
| **CARB** | Chartered Accountants Regulatory Board |
| **Central Bank** | Central Bank of Ireland |
| **CJA 2010** | Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice (Money Laundering and Terrorist Financing) Act 2013. |
| **CRO** | Companies Registration Office |
| **DAC** | Designated Activity Company |
| **DJEI** | Department of Jobs Enterprise and Innovation |
| **DSP** | Department of Social Protection |
| **ICAV** | Irish Collective Asset-Management Vehicle |
| **ICAV Act 2015** | Irish Collective Asset-Management Vehicles Act 2015 |
| **Irish Revenue** | The Office of the Revenue Commissioners |
| **MiFID** | Markets in Financial Instruments Directive |
| **ODCE** | Office of the Director of Corporate Enforcement |
| **PLC** | Public Limited Company |
| **SI** | Statutory Instruments |
| **TCA** | Taxes Consolidation Act 1997, as amended |

# Executive summary

1. In 2010 the Global Forum evaluated Ireland in a combined review against the 2010 Terms of Reference for both the legal implementation of the EOIR standard as well as its operation in practice. The report of that evaluation (the 2010 Report) concluded that Ireland was rated Compliant overall. This report analyses the implementation of the EOIR standard by Ireland in respect of EOI requests processed during the period of 1 April 2013-31 March 2016 against the 2016 Terms of Reference. This report concludes that Ireland continues to be rated Compliant overall.

2. The following table shows the comparison with the results from Ireland's most recent peer review report:

**Comparison of ratings for First Round Report and Second Round Report**

| Element | | First Round Combined Report (2010) | Second Round EOIR Report (2017) |
|---|---|---|---|
| A.1 | Availability of ownership and identity information | C | C |
| A.2 | Availability of accounting information | C | C |
| A.3 | Availability of banking information | C | C |
| B.1 | Access to information | C | C |
| B.2 | Rights and Safeguards | C | C |
| C.1 | EOIR Mechanisms | C | C |
| C.2 | Network of EOIR Mechanisms | C | C |
| C.3 | Confidentiality | C | C |
| C.4 | Rights and Safeguards | C | C |
| C.5 | Quality and timeliness of requests and responses | C | C |
| | OVERALL RATING | C | C |

**C** = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

## Progress made since previous review

3. The 2010 Report only made recommendations in respect of two essential elements, one regarding share warrants to bearer under element A.1, and two recommendations regarding exchange of information in element C.5. Ireland has addressed each of those recommendations.

## Key recommendation(s)

4. Since the 2010 Report Ireland continues to perform well in all aspects of transparency and exchange of information. Peers have generally been very satisfied with the quality and timeliness of the information provided under Ireland's EOI mechanisms.

5. In respect of the new aspects of the 2016 ToR, Ireland's legal framework and practice meet the standard. In particular, Ireland ensures the availability of beneficial ownership information through a combination of AML and tax laws. A recommendation has been made under element A.3, which is rated Compliant, to ensure that bank account information includes the identity of all beneficiaries of trusts and not only those that hold more than 25% of the capital of the trust. The new requirement to provide for exceptions to time-specific post-exchange notification is met by virtue of the fact that, once an exception to notification is provided there is no obligation to notify the taxpayer at some future point in time. The 2016 ToR now evaluates the quality of requests made and in this regard Ireland has a good system to ensure that its requests meet the requirements of its EOI mechanisms.

## Overall rating

6. Ireland has achieved a Compliant rating for each of the elements. Ireland's peers are generally very satisfied with the quality and timeliness of the information provided during the review period. Ireland's overall rating is Compliant. A follow up report on the steps undertaken by Ireland to address the recommendations made in this report should be provided to the PRG no later than 30 June 2018 and thereafter in accordance with the procedure set out under the 2016 Methodology.

# Summary of determinations, ratings and recommendations

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)* | | |
| **Legal and regulatory framework determination: The element is in place.** | | |
| **EOIR rating: Compliant** | | |
| Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)* | | |
| **Legal and regulatory framework determination: The element is in place.** | | |
| **EOIR rating: Compliant** | | |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)* | | |
| **Legal and regulatory framework determination: The element is in place.** | The CJA 2010 only requires the identification of beneficial owners holding a vested interest in at least 25% of the capital of the trust, or the class of individuals in whose main interest the trust is set up or operates, or a person that has control over the trust. Beneficiaries who are entitled to less than 25% may, in principle, be considered a beneficial owner, however, not necessarily in all cases. | Ireland should ensure that banks are required to identify all of the beneficiaries of the trust which has an account with a bank in Ireland as required under the standard. |
| **EOIR rating: Compliant** | | |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)* | | |
| **Legal and regulatory framework determination: The element is in place.** | | |
| **EOIR 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 *(ToR B.2)* | | |
| **Legal and regulatory framework determination: The element is in place.** | | |
| **EOIR rating: Compliant** | | |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)* | | |
| **Legal and regulatory framework determination: The element is in place.** | | |
| **EOIR rating: Compliant** | | |
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)* | | |
| **Legal and regulatory framework determination: The element is in place.** | | |
| **EOIR rating: Compliant** | | |
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)* | | |
| **Legal and regulatory framework determination: The element is in place.** | | |
| **EOIR rating: Compliant** | | |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)* | | |
| **Legal and regulatory framework determination: The element is in place.** | | |
| **EOIR rating: Compliant** | | |
| The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)* | | |
| **Legal and regulatory framework determination:** | **The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the implementation of EOIR in practice.** | |
| **EOIR rating: Compliant** | | |
| | | |

# Preface

7. This report is the second review of Ireland conducted by the Global Forum. Ireland previously underwent an EOIR Combined review in 2010 of both its legal and regulatory framework and the implementation of that framework in practice. The 2010 Report containing the conclusions of the first review was first published in September 2010 (reflecting the legal and regulatory framework in place as of August 2010).

8. The Combined review was conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. The 2010 Report was initially published without a rating of the individual essential elements or any overall rating, as the Global Forum waited until a representative subset of reviews from across a range of Global Forum members had been completed in 2013 to assign and publish ratings for each of those reviews. Ireland's 2010 Report was part of this group of reports. Accordingly, the 2010 Report was republished in 2013 to reflect the ratings for each element and the overall rating for Ireland.

9. This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 24 May 2017, Ireland's EOIR practice in respect of EOI requests made and received during the three year period from 1 April 2013 to 31 March 2016, Ireland's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Ireland's authorities during the on-site visit that took place from 6-8 December 2016 in Dublin, Ireland.

10. The evaluation was conducted by an assessment team consisting of two expert assessors and two representatives of the Global Forum Secretariat: Mr. Nigel Garland, Deputy Director (Compliance and International), Income Tax, States of Guernsey; Mr. Guillermo Ferraz, International Taxation Co-ordinator, General Directorate for Taxation, Spain; Mr. Andrew Auerbach and Ms. Elaine Leong, Global Forum Secretariat).

11. The report was approved by the PRG at its meeting on 17-20 July 2017 and was adopted by the Global Forum on [date].

12. For the sake of brevity, on those topics where there has not been any material change in the situation in Ireland or in the requirements of the Global Forum ToR since the 2010 Report, this evaluation does not repeat the analysis conducted in the previous evaluation, but summarises the conclusions and includes a cross-reference to the detailed analysis in the previous reports.

13. Information on each of Ireland's reviews are listed in the table below.

**Summary of reviews**

| Review | Assessment team | Period under review | Legal framework as of (date) | Date of adoption by Global Forum |
|---|---|---|---|---|
| **Combined report** | Mr. John Nash, Chief Advisor (International Audit), New Zealand Inland Revenue; Mr. Huw Shepheard, Office of the Attorney-General, Government of Bermuda; and Mr. Andrew Auerbach (Global Forum Secretariat) | 1 January 2007 to 31 December 2009 | August 2010 | September 2010 (republished in November 2013 with ratings) |
| **2017 report** | Mr. Nigel Garland Deputy Director (Compliance and International), Income Tax, States of Guernsey; Mr. Guillermo Ferraz, International Taxation Co-ordinator, General Directorate for Taxation, Spain; Mr. Andrew Auerbach and Ms. Elaine Leong (Global Forum Secretariat) | 1 April 2013 to 31 March 2016 | 26 May 2017 | [August 2017] |

## Brief on 2016 ToR and methodology

14. The 2016 ToR were adopted by the Global Forum in October 2015. The 2016 ToR break down the standard 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) exchanging information. This review assesses Ireland's legal and regulatory framework and the implementation and effectiveness in practice of this framework against these elements and each of the enumerated aspects.

15. In respect of each essential element (except element C.5 *Exchanging Information*, which uniquely involves only aspects of practice) a determination is made regarding Ireland's legal and regulatory framework that either: (i) the element is in place, (ii) the element is in place, but certain aspects of the legal implementation of the element need improvement, or (iii) the element

is not in place. In addition, to assess Ireland's EOIR implementation and effectiveness in practice a rating is assigned to each element of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant. These determinations and ratings are accompanied by recommendations for improvement where appropriate. Finally, an overall rating is assigned to reflect Ireland's overall level of compliance with the EOIR standard.

16. In comparison with the 2010 ToR, the 2016 ToR includes new aspects or clarification of existing principles with respect to:

- the availability of and access to beneficial ownership information;
- explicit reference to the existence of enforcement measures and record retention periods for ownership, accounting and banking information;
- clarifying the standard for the availability of ownership and accounting information for foreign companies;
- rights and safeguards;
- incorporating the 2012 update to Article 26 of the OECD Model Tax Convention and its Commentary (particularly with reference to the standard on group requests); and
- completeness and quality of EOI requests and responses.

17. Each of these new requirements are analysed in detail in this report.

### *Brief on consideration of FATF evaluations and ratings*

18. The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its reviews are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

19. The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as that definition applies to the standard set out in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combatting money-laundering and terrorist financing) are different from the purpose of the standard on EOIR (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

20. While on a case-by-case basis, an EOIR assessment may use some of the findings made by the FATF, the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

21. These differences in the scope of reviews and in the approach used may result in differing outcomes.

# Overview of Ireland

22. This overview provides some basic information about Ireland that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Ireland's legal, commercial or regulatory systems.

## *Legal system*

23. Ireland is a sovereign state located in Europe and is a member of the European Union. Ireland has a written constitution, adopted by referendum, which came into force on 29 December 1937. The Constitution contains the fundamental law of Ireland and laws enacted by Ireland (referred to as statute law) must conform to it, otherwise such laws will be held to be unconstitutional and therefore invalid. The Constitution was amended before Ireland joined the EU in 1973 to ensure that no provision in the Constitution would invalidate any laws enacted by Ireland that were necessitated by its obligations of membership of the EU.

24. Ireland has a single national law. The Oireachtas (Parliament) has the sole right to make statute law but power to make detailed regulations (called Statutory Instruments or S.I.s) is often delegated by statute to ministers of the government. Ireland is a common law jurisdiction and, accordingly, much of Irish law is based on case law, i.e. decisions of judges. Ireland's hierarchy of laws is as follows:

- Constitution;
- Statute law;
- Statutory Instruments and
- Case law.

25. International treaties take the form of a Statutory Instrument, however, the Taxes Consolidated Act 1997 (TCA) provides that treaties are deemed to be part of statute law. Irish Revenue officials indicate that treaties would have primacy over domestic statutes by virtue of the application of the principles of the Vienna convention and the obligation to give effect to a

treaty in good faith. The only way for a treaty to be amended is with consent of the other party in accordance with international law.

### *Tax system*

26. Ireland imposes a wide range of taxes and duties, the care and management of which resides with the Office of the Revenue Commissioners (Irish Revenue). These include direct taxes imposed on worldwide income and gains (corporation tax, income tax and capital gains tax), indirect taxes (such as VAT and excise duties), customs duties and property tax as well as taxes on gifts and inheritances and on transfers of property such as shares and land. A number of retention or withholding taxes are also imposed, including a deposit interest retention tax (deductions from payment of interest earned on deposits held in financial institutions), dividend withholding tax, professional services withholding tax and relevant contracts tax (e.g. deductions from payments by principal contractors to sub-contractors in the construction industry).

27. Individuals are subject to tax (income tax) on their income at a rate of 20% up to a ceiling of income with the balance of income above that ceiling subject to a higher rate of tax of 40%. The tax liability is then reduced by tax credits which are determined by reference to an individual's circumstances.

28. An individual who is resident for tax purposes in Ireland is taxable on his or her worldwide income whereas an individual who is non-resident for tax purposes is taxable on Irish-source income and on income derived from carrying on a trade, profession or employment in Ireland. Individuals are also subject to a separate tax (capital gains tax) on their chargeable gains.

29. The extent to which a company is within the charge to tax or not depends on their tax residency status. A company is resident for tax purposes if it is either formed under Irish law or is managed and controlled in Ireland. Companies that are resident for tax purposes are subject to tax on their worldwide income and chargeable gains (corporation tax).

30. Ireland's rules regarding corporate tax residence have evolved since the 2010 Report. Previously, it was possible in certain circumstances for a company formed under Irish law to be treated as non-resident in Ireland if it was managed and controlled outside of Ireland. The rule was amended in 2013 (TCA, section 23A) such that if due to the interaction between the Irish residency rules and the residency rules of another jurisdiction, a company formed in Ireland were not resident in any jurisdiction, then it would be deemed to be resident in Ireland. In 2014, a further change to the rules now means that all companies formed in Ireland are deemed to be tax resident in Ireland, unless the company is resident in a partner jurisdiction for the purposes of a tax treaty.

31. A single flat corporation tax rate of 12.5% is applied on trading income. For non-trading profits (as well as profits from mining, certain petroleum activities and dealing in or the development of land) the corporation tax rate is 25%. Capital gains are subject to tax at the rate of 33%. Non-resident companies carrying on a trade or business in Ireland through a branch or agency are taxable on the profits of the branch or agency.

### *Financial services sector*

32. Financial services companies operating in Ireland are subject to the normal corporation tax regime with some tax rules and provisions specific to the financial services sector.

33. The Central Bank is responsible for authorising and supervising financial service providers. Among the service providers that require a license, approval or authorisation to carry on financial business in Ireland from the Central Bank are credit institutions (e.g. banks, building societies), insurance/reinsurance intermediaries and undertakings, investment firms and investment intermediaries. The Central Bank is also responsible for authorising and supervising funds and funds service providers.

34. As at end-December 2015 the following firms were authorised by the Central Bank:

| Firm type | Number of firms |
|---|---|
| MiFID Authorised investment firms (including branches of overseas firms) | 132 |
| Non-retail investment business firms | 12 |
| Investment fund service providers | 227 |
| Investment funds (including sub funds) | 6 201 |
| Investment intermediaries | 1 705 |

35. Broadly speaking, the percentage of Ireland's GDP which relates to the financial sector's activities amounted to 7.5% in 2014 and 8.2% in 2013.

| | Total assets* (EUR million) |
|---|---|
| Financial corporations | 4 362 487 |
| Monetary financial institutions | 1 143 519 |
| Investment funds excluding money market funds | 1 740 195 |
| Other financial intermediaries and financial auxiliaries | 1 106 184 |
| Insurance corporations and pension funds | 372 589 |

*Asset data sourced from Central Bank of Ireland Quarterly Financial Accounts; end 2015 data, GDP at current market prices for 2015

### *FATF Evaluation*

36. The Financial Action Task Force (FATF) last published a Mutual Evaluation Report for Ireland in 2006. A series of follow up reports were subsequently published detailing the actions that Ireland had taken to address the recommendations in the 2006 report. Significantly, the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* was passed which was intended to address the requirements of the 3rd EU Money Laundering Directive as well as the results of Ireland's FATF report. That law had already been taken into account in the Global Forum's 2010 Report. The FATF is currently conducting a mutual evaluation review of Ireland and the report is expected to be published in 2017.

## *Recent developments*

37. Since the adoption of the EU 4th Anti-Money Laundering (AML) Directive in May 2015, Ireland has been working towards its transposition into Irish law by June 2017. On 15 November 2016, regulations were made which oblige all Irish incorporated entities to gather and hold beneficial ownership information. This provision is being enacted in advance of the full transposition of the 4th AML Directive in order to allow corporate entities time to prepare for the full transposition which will include the creation of a corporate beneficial ownership register. A similar statutory instrument is under draft by the Office of Parliamentary Counsel in relation to trusts; the intention again being to create an initial legal obligation for trusts which will assist them in preparing for the central filing requirement to a beneficial ownership register for all express trusts administered in the jurisdiction.

38. In 2017, legislation will be in place to transpose the 4th AML Directive provisions for a trust beneficial ownership register. Irish Revenue will be responsible for the trust beneficial ownership register. The Companies (Accounting) Act 2017 was passed with a commencement date of Friday 9 June 2017. One effect of this legislation is that the thresholds for having audited accounts referred to in Section A.1.1 *Supervision of Auditors* has been changed to bring them in line with the EU Directive. These are now turnover greater than EUR 12 million and assests greater than 6 million. The other significant change in this legislation that impacts on EOI is that certain unlimited companies are now obliged to file accounts with the CRO. Previously the obligation was for unlimited companies to prepare accounts. The legislation applies to accounting years that begin after 1 January 2017.

# Part A: Availability of information

39. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

## A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

40. The 2010 Report found that element A.1 was determined to be "in place" and rated Compliant. A recommendation was made for Ireland to take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of share warrants to bearer. In response to this recommendation Ireland has expressly prohibited the issuance of any bearer instrument by an Irish company and created provisions that require the identification of the holder of any existing bearer instruments in default of which the ownership of the instrument passes to the Minister of Finance. Therefore, the recommendation concerning share warrants to bearer has been removed.

41. No issues were identified in the 2010 Report with respect to the availability of ownership and identity information in practice. During the period of 2007-09 Irish Revenue received a number of requests each year relating to the ownership or directorships of Irish companies. Irish Revenue did not receive any requests in those three years regarding the identity of a settlor, trustee or beneficiary of a trust or of a partner in a partnership. Ireland's exchange-of-information partners generally reported that responses to requests for ownership information were satisfactorily delivered during that period. Where there were issues regarding such requests, the availability of the information did not appear to have been a factor in itself. These results continue to be the case during the current review period. Requests for information on relevant entities and arrangements related mainly to corporate entities (18 requests for information on companies, 5 requests[1] for

1. Ireland counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, Ireland count

information on trusts and no requests for information about partnerships) and the peers remain generally very satisfied with the responses.

42. In respect of those new aspects of the 2016 ToR that were not evaluated in the 2010 Report, particularly with respect to the availability of beneficial ownership information, a 2016 provision establishes an obligation on all Irish companies to identify their beneficial owners for the purpose of the creation of a registry of beneficial ownership. In addition, beneficial ownership information is also available where any relevant entity or arrangement engages a person obligated to conduct customer due diligence (CDD) under the anti-money laundering law (AML law). This would include all trusts that have a professional trustee resident in Ireland. Finally, the tax law requires that most companies (close companies) identify their "beneficial owners" (as defined by the tax law) on an annual basis. Beneficial ownership for partnerships will be available where the corporate partner is an Irish company and where a corporate partner is a foreign company then any direct or indirect 10% owner will be identified under tax law. In addition full beneficial ownership information would be available where the partnership engages an AML-obligated service provider. The tax law definition of "beneficial owner" is not identical with that which applies for the purpose of the ToR, however, it would guarantee that information tracing the chain of ownership is available. The records are required to be maintained for at least 6 years and there are penalties and enforcement provisions in place.

43. The oversight of these provisions is adequate, although the rules relating to the collection of beneficial ownership information by companies for the purpose of the beneficial ownership register was only introduced in November 2016, and so it is not possible to come to any conclusion on the effectiveness of its implementation in practice.

44. Overall, the legal framework to maintain beneficial ownership information and its enforcement in practice meet the standard, however, there may be a gap with respect to a small number of partnerships that have not engaged an AML-obligated service provider.

45. During the current peer review period Ireland received 573 requests, of which 23 related to ownership and identity information for relevant entities and arrangements. Peers were generally very satisfied with the information received. Ireland was expressly asked to provide beneficial ownership information on 7 occasions and this information was provided to the satisfaction of the requesting peers. Irish Revenue reports that it has never been unable to

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that as 1 request. If Ireland received a further request for information that relates to a previous request, with the original request still active, Ireland will append the additional request to the original and continue to count it as the same request.

respond to a request for information due to the fact that information was not available in accordance with the law.

46. The new table of determinations and ratings is as follows:

| Legal and Regulatory Framework | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of the legal and regulatory framework** | | |
| **Determination: In Place** | | |
| **Practical implementation of the standard** | | |
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of EOIR in practice** | | |
| **Rating: Compliant** | | |

### *A.1.1. Availability of legal and beneficial ownership information for companies*

47. The 2010 Report analysed the legal framework with regard to company formation in Ireland (see 2010 Report, paras. 34-36). The main piece of legislation at that time was the Companies Act, although this was supplemented by a number of other statutes dealing with company law. Generally, companies formed under the Companies Act could be limited or unlimited and public or private. During the previous review period the vast majority of companies were private limited companies.

48. In addition, the *European Communities (European Public Limited Liability Company) Regulations 2007 (S.I. No. 22 of 2007)* provide for the creation of European Companies. The European Company is based on European Community law intended to be employed by companies with commercial interests in more than one EU Member State.

49. Since then, the Companies Act and most other company law statutes and Statutory Instruments have been repealed and replaced with the Companies Act 2014 (CA 2014), which came into force on 1 June 2015.

50. The CA 2014 is set out in two volumes. The first makes provision for the private company limited by shares, which is placed at the core of the legislation as the default company, and sets out the law applicable to companies generally. Volume 2 applies, disapplies or varies the general provisions

contained in Volume 1 for each other company type. These other company types are the Designated Activity Company (DAC), the Public Limited Company (PLC) including Investment Companies, the Company Limited by Guarantee (CLG) and the Unlimited Company (ULC).

51. In addition, a corporation (an ICAV) may be established under the *Irish Collective Asset-management Vehicles 2015 Act* (the ICAV Act).

### *Legal ownership and identity information requirements*

52. As described in the 2010 Report in section A.1 (see 2010 Report, paras. 32-54), legal ownership and identity requirements for companies are mainly found in Ireland's company law and the tax law. This continues to be the case with the introduction of the CA 2014. While Ireland's AML laws will apply in some circumstances to ensure the availability of legal ownership information, those rules are more applicable to the maintenance of beneficial ownership information and are described in that section, below. The following table[2] shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

**Legislation regulating legal ownership information of companies**

| Type (number) | Company law | Tax law | Aml law |
|---|---|---|---|
| Private company (179 958) | All | Some | Some |
| DAC (3 366) | All | Some | Some |
| PLC (1 415) | All | Some | Some |
| CLG (15 581) | All | Some | Some |
| Unlimited company (4 562) | All | Some | Some |
| ICAVs (238) | All | Some | All |
| Foreign companies | None | All | Some |

#### *Companies Act 2014 requirements*

53. The Companies Act 2014 provides that every company incorporated in Ireland must keep a register of its members (CA 2014, s. 169) which must contain:

2. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" in this context means that every entity of this type created is required to maintain ownership information for all its owners and that there are sanctions and appropriate retention periods. "Some" in this context means that an entity will be required to maintain information if certain conditions are met.

- the name and address of each member,
- the date on which the person was entered in the register as a member,
- the date on which any person ceased to be a member
- a statement of the shares held by each member,
- the amount paid on each share.

54. Failure to maintain the register of members means the company and any officer of the company that is in default is guilty of a category 3 offence. A category 3 offence is a summary offence attracting a term of up to six months imprisonment and/or a Class A fine, which is a fine not exceeding EUR 5 000 (CA 2014, s. 871).

55. All transfers of shares in a company must be made by instrument in writing and a company is prohibited from registering a transfer of shares of the company unless a proper instrument of transfer has been delivered. The transferor is deemed to remain the owner of the shares until the name of the transferee is entered in the register in respect of them (CA 2014, s. 94).

56. In addition, in the case of a PLC, notification to the PLC is required by any person or group that acquires or disposes of any form of an interest in shares that brings their shareholding above or below 5% of the issued share capital of the company (CA 2014, s. 1052).

57. The Registrar of Companies (the Registrar) of the Companies Registration Office (CRO) is responsible for the registration of companies in Ireland. Every company that is incorporated in Ireland must register its constitution (CA 2014, s. 21), which will identify the number of shares taken by each original subscriber, together with a statement that includes details of the directors, the secretary, the registered office and the place where the administration of the company will be carried on (CA 2014, s. 22). The CRO maintains a public record accessible through the company name, business name or company number that the Registrar allocates to each company.

58. In addition, foreign-incorporated companies which have established a branch in Ireland must register with the CRO and with Irish Revenue, although this process does not itself require that ownership information be provided.

59. Any company that allots new shares must file a Form B5 – Return of allotments – with the Registrar within 30 days of the allotment (CA 2014, s. 70(7)). In addition, each company must submit an annual return (Form B1) containing certain prescribed information, including up-to-date details of present members and changes in membership during the year (CA 2014, s. 343).

60. Information held by the CRO on a company is kept so long as the company remains on the register as a live company and for twenty years after a company's dissolution until the CRO is obliged to send all documents filed with it in relation to that company to the public record office (CA 2014, s. 709). In practice all information which was electronically held is still available (therefore up to 30 years of records are readily accessible at present).

61. The CA 2014 requires that the register of members be maintained continuously (CA 2014, s. 169). When a company is in the process of being liquidated there is a requirement for all relevant records to be transferred to the liquidator. Legal ownership is information that would be captured by "relevant records" as a liquidator could not complete their duties without that information. The ownership information is also publicly available from the CRO. Once the company has been formally liquidated the books and papers must be retained by the liquidator for a period of at least 6 years after the date of the dissolution of the company (CA 2014, s. 707(2)). In the absence of a prior direction as to their disposal, the liquidator may then dispose of them as he or she thinks fit. If a liquidator fails to comply with the requirements of this section, he or she shall be guilty of an offence (CA 2014, s. 707).

62. It is a criminal offence to knowingly or recklessly make a false return or lodge a document, false in a material particular, with the Registrar in purported compliance with any provision of the CA 2014 (CA 2014, s. 406 and 876). This is a category 2 offence which means conviction on indictment can result in a term of imprisonment of up to five years and/or a EUR 50 000 fine.

63. In addition, the Registrar may involuntarily strike off a company which has failed to make an annual return as required by section 343 (CA 2014, s. 726(a)). Companies and directors of companies who fail to file an annual return may be prosecuted (CA 2014, s. 865(2)). The Registrar also has the authority to compel a person to comply with the Act (CA 2014, s. 797). Where the annual return is delivered late, a late filing penalty is applied (S.I. No. 213/2015 – Companies Act 2014 (Fees) Regulations 2015).

### *ICAV Act requirements*

64. The Irish Collective Asset-management Vehicles (ICAV) Act was introduced in March 2015. An ICAV is a new corporate vehicle for investment funds which was introduced as an alternative to structuring corporate investment funds as Irish investment companies with variable capital (VCC) under Part 24 of the CA 2014. The sole object of an Irish Collective Asset-management vehicle (ICAV) is the collective investment of its funds in property for the benefits of its members.

65. Under the ICAV Act 2015, the Central Bank is the competent authority for the registration, authorisation and supervision of ICAVs. While ICAVs are new entities in the Irish legal framework, investment funds structured as corporate vehicles have long been regulated by Irish authorities. It should be noted that the registrar function of the Central Bank is a separate function to the authorisation process of the Central Bank. ICAVs which are Undertakings for Collective Investment in Transferable Securities (UCITS) will be authorised by the Central Bank under the European Communities (UCITS) Regulations 2011. ICAVs which are non-UCITS, also known as Alternative Investment Funds (AIFs), will be authorised by the Central Bank under the ICAV Act 2015. UCITS and non-UCITS must submit annual accounts and returns to the Central Bank. Under Part IIIC of the Central Bank Act 1942, the Central Bank has the power to impose sanctions on an ICAV, or a person involved in the management of an ICAV, in respect of breaches of regulatory requirements by ICAVs.

66. Every person who agrees to become a member of an ICAV, and whose name is entered on its register of members, shall be a member of the ICAV (ICAV Act, s. 48). Each ICAV is required to maintain a register of its members (ICAV Act, s. 49). The details in this register are the names and addresses of the members, a statement of the shares held by each member, the date at which each person was entered in the register as a member and the date at which any person ceased to be a member. This information must be updated within 2 days after the date of the conclusion of the agreement with the ICAV to become a member. The register is open to inspection by the Central Bank and the Office of the Director of Corporate Enforcement (ODCE) and by any statutory body which needs to inspect the register in order to exercise any of its functions, including Irish Revenue.

67. Prior to the introduction of ICAVs in 2015, there were four existing legal vehicles within which Irish domiciled funds could be structured including the VCC, the unit trust, the common contractual fund and investment limited partnership. Each of those vehicles would have taken the form of an entity or arrangement already analysed above (e.g. as a limited partnership or company). Although the ICAV is a relatively new corporate entity, it is important to note that it is a form of corporate structure that has many similarities with the VCC in terms of governance and regulatory authorisations. Indeed, the supervision of the investment fund industry in Ireland has been well-established. The ICAV itself, as well as the person that manages the ICAV, are each designated persons under the AML law and therefore subject to CDD measures (described below under *Availability of Beneficial Ownership Information*).

### *Tax law requirements*

68. Every company that is chargeable to tax for a chargeable period (including any foreign company) is obliged to make a return of profits (i.e. Form CT1) chargeable to corporation tax in the period (TCA, s. 959I). The CT1 requires that details of the participators in most companies (close companies, see paragraph 105) be provided. A "participator" is a person having a share or interest in the capital or income of a company, either directly or indirectly. If the foreign company is not a close company or is a branch of a foreign company then details of the legal owners, and beneficial owners if different to the legal owners, of holders of 10% or more of the share capital and loan stock (including debentures) must be provided.

69. As noted in the 2010 Report, all persons holding securities as a nominee must automatically file an information return with Irish Revenue identifying the person on behalf of whom the securities are held (TCA, ss. 892, 894). Taxpayers must maintain these records for 6 years (TCA, s. 886(4)(a)(i)).

70. The TCA provides for a number of penalties/sanctions with regard to tax returns including the failure to file the CT1 return (TCA, ss. 1052, 1077E, 1078, 1084, 1085).

### *Legal ownership information – Enforcement measures and oversight*

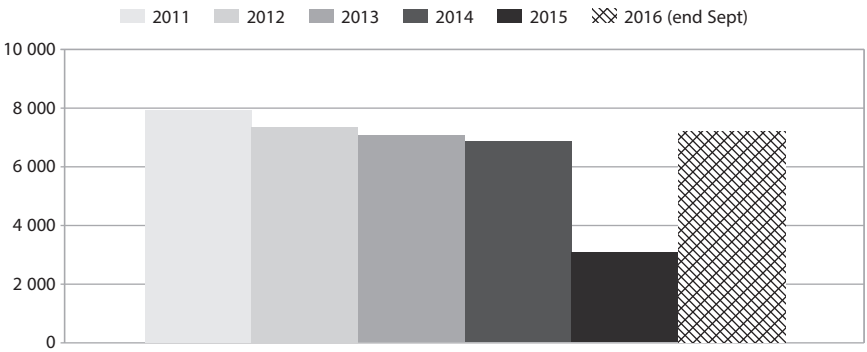
71. The 2010 Report found that the penalties for failure to maintain or report information were dissuasive and that there was active oversight of the obligations to maintain ownership information of companies carried out by the CRO, the ODCE and Irish Revenue. This continues to be the case.

72. The CRO also takes action to enforce the obligations of companies to register and file notices and documentation with the Registrar. The CRO reported that almost 90% of companies were up to date with their annual return-filing obligation as at 31 December 2009, and for 2015 the compliance rate remains around 90%. A company that fails to file an annual return in respect of any one year may be struck off the register and dissolved. In the event that a company has an annual return outstanding, one statutory warning only is required to be issued by the CRO to the registered office of the company. Moreover, the CRO has an automated operating system – the Integrated Enforcement Environment (IEE) – which issues letters to companies reminding them of their requirements to file an annual return, and which initiates strike-off proceedings against companies.

73. Involuntary strike-off is at the discretion of the Registrar and not all non-compliant companies proceed to strike off. For example, CRO may decide to prosecute the company, or the Registrar may have been notified

of legal proceedings or have been advised of investigations by another State Agency.

**Strike-offs of companies for failure to file annual returns**




74. Each year, companies who fail to file annual returns may be struck off the register by the CRO. The reduction in the number of companies struck off in 2015 reflects a cessation of strike off around June 2015. This was because enforcement measures were temporarily suspended in advance of the commencement of the CA 2014 in order to align procedures under the new legislation. In addition to strike off, companies with the poorest compliance rate (companies that have been consistently filing their annual returns late over a number of years) are identified and these are considered for prosecution in the Circuit Court. In the period 2011-12 CRO prosecuted a total of 372 companies. Only 84 companies were prosecuted during 2014-15 for failure to file annual returns. Again this was due to the commencement of the CA 2014 and the need to align procedures under the new legislation. Prosecutions for non-filing of annual returns are due to re-commence under the Companies Act 2014 in the second half of 2017.

75. The CRO also cross-checks information that is in the annual returns to ensure it is consistent with information that it has on file. For example, if the identity of the directors has changed since the previous return, then a separate notification to this effect should have been filed with the CRO and, if not, the annual return cannot be filed until this prior step has been completed.

76. It is noted that, following the strike-off of a company the obligation to maintain the companies' records falls to the "last director" (TCA, s. 886(4A)). This person may or may not be a resident of Ireland and there is no requirement that the records be maintained in Ireland. Consequently, Irish authorities may not have jurisdiction over the last director and while they may contact the director and ask them to supply the information it is possible that the information may not be forthcoming. Nevertheless, prior to

the introduction of the central register of beneficial ownership, the identity of the legal ownership of the company would still be available in the annual returns maintained by the CRO. Furthermore, besides requirements under the tax law, there is a requirement under AML law (CJA 2010, s. 55) for documents and records to be retained by a designated person for a period of not less than five years. Where the company has any business relationship with a designated person, legal and beneficial ownership information would be available, albeit that this would require the Irish Revenue being aware of any such business relationship. In practice, 96.34% of companies have an Irish bank account registered with Irish Revenue or an agent registered with Irish Revenue. This statistical information has been extracted from the tax record of all companies registered with Irish Revenue and was not dependent on tax return filing. Furthermore, Irish Revenue have explained that further sources from their database could have been reviewed, for example, property transactions with details of solicitors, domestic interest reporting with details of financial institutions, and had they done so Irish Revenue envisage that there would have been a further increase in the percentage of companies that had relationships with a designated person. Ireland explained that there has not been any issue in obtaining information from companies that have been struck off during the current or previous review periods. Also, Ireland indicated that about 3.5% of companies (around 7 000 out of a total stock of 200 000 companies) are struck off the Register annually and so this is not a widespread problem.

77. The ODCE is mandated to encourage compliance with the requirements of the Companies Acts. The Director and his staff discharge this role by communicating publicly the benefits of compliance with the law and the consequences of non-compliance. The Director's main legal powers arise in the following areas:

- the initiation of fact-finding company investigations;
- the prosecution of persons for suspected breaches of the Companies Acts;
- the supervision of companies in official and voluntary liquidation and of unliquidated insolvent companies;
- the restriction and disqualification of directors and other company officers;
- the supervision of liquidators and receivers, and
- the regulation of undischarged bankrupts acting as company officers.

78. In the event that a complaint is received by the ODCE that a company is not maintaining a register as required, then it can enforce the sanctions provided for in the CA 2014. While the ODCE doesn't primarily focus on

record-keeping deficiencies, these may be an indicator of more serious offences. During the review period only 30 reports of alleged wrongdoing relating to the register of members were received by the ODCE and were resolved without court sanction. The ODCE has powers (S764 of CA 2014) to investigate and report on the membership of a company including determining the true persons who have a financial interest in a company or who control the company. These powers has been exercised on three occasions in the past leading to three statutory, published reports.

79. The Central Bank, as registrar for ICAVs, monitors compliance with obligations under the ICAV Act 2015. As noted, each ICAV and their fund administrators are designated persons for the purposes of the AML law and are adequately supervised for those purposes (discussed below under *Availability of Beneficial Ownership information*).

80. With respect to the enforcement of obligations to file returns and provide ownership information as required by the TCA, Irish Revenue compare CRO company registrations with Corporation Tax registrations. Up until August 2016, this was a manual exercise, but it has now been computerised. Letters are automatically issued to companies that register with the CRO but that are not registered for tax. Depending on the response and circumstances in each case, appropriate action will be taken by either Revenue or the CRO. These actions vary depending on the circumstances but include tax registration, filing of information with Irish Revenue or company strike-off.

81. Irish Revenue's risk profiling system – REAP (Risk Evaluation Analysis and Profiling) – is also used to highlight discrepancies in tax registrations, for example identifying companies that are registered for Corporation Tax but not registered for VAT.

82. Irish Revenue is also in receipt of numerous sources of third-party data. This data is matched and used in its risk profiling system. Third-party data sources include interest reporting by all financial institutions, suspicious transaction reporting by financial institutions, rent payment information from a number of difference sources, payments by businesses for services in excess of EUR 6 000, vehicle registrations and all government payments.

83. On the ground enforcement and supervisory work targeting failure to register with Irish Revenue is primarily conducted by Joint Investigation Units (JIUs). JIUs have been operating since 1990. Their role is to carry out investigations into tax non-compliance, fraud and the employment status of workers and to address areas where evidence suggests levels of non-compliance which reflect the existence of shadow economy activity. This is a multi-agency approach and Irish Revenue works with the Department of Social Protection (DSP), the Workplace Relations Commission (WRC) and an Garda Síochána. Information and intelligence is, as appropriate, shared

amongst the various agencies and joint visits to businesses are carried out. Interventions range from site visits to joint profiling with DSP in relation to issues such as identity fraud. Results from this work are detailed below.

| JIU interventions | 2013 | 2014 | 2015 | Totals |
|---|---|---|---|---|
| Number of interventions | 5 124 | 4 689 | 5 446 | 15 259 |
| Resulting new tax registrations | 1 455 | 1 992 | 1 789 | 5 236 |
| Tax, interest and penalties collected (EUR million) | EUR 12.0 | EUR 4.7 | EUR 3.64 | EUR 20.34 |

84. Irish Revenue conducts a non-filer programme each year including in respect of Corporation Tax returns. The periods covered are based on the accounting period ended in a specific calendar year period. The compliance rate is then recorded periodically, depending on reporting requirements, after the non-filer programme has been implemented to allow for an evaluation of the non-filer programme and its impact on the level of compliance.

85. A bi-annual CT reminder programme, as opposed to an annual programme, started in 2016 for the accounting periods ending on or before 30 June 2016. The corporation tax filing rate in relation to the years 2013 to 2015 was on average 84.2%.

### *Availability of legal ownership information in Practice*

86. During the current peer review period Ireland received 573 requests, of which 18 related to ownership and identity information of companies. Peers were generally very satisfied with the information received. Irish Revenue reports that it has never been unable to respond to a request for company information due to the fact that information was not available in accordance with the law.

### *Availability of beneficial ownership information*

87. Under the 2016 ToR, a new requirement of the EOIR standard is that beneficial ownership information on companies should be available. In Ireland, this aspect of the standard is met through a combination of AML law, the transposition of the EU 4th AML Directive and tax law. Each of these legal regimes is analysed below.

### *AML law requirements*

88. The main AML law is the Criminal Justice Act 2010 (CJA 2010), which transposed European AML/CFT law and was already in force at the time of the 2010 Report. However, Ireland subsequently launched a consultation process with relevant stakeholders on guidelines that would help

designated persons in Ireland implementing the CJA 2010. Ireland prepared guidelines on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in February 2012. These guidelines are used internally by the Department of Justice and Equality and the Central Bank. Ireland also enacted the Criminal Justice Act 2013. The main provisions of the 2013 Act amend the 2010 Act in relation mainly to customer due diligence measures for designated persons, but also related to politically exposed persons, policies and procedures of designated persons and the prevention of misuse of technological developments.

89. Generally, the CJA 2010 requires designated persons to undertake customer due diligence which includes identification of the customer as well as verification of the beneficial owner of property (CJA 2010, s. 33). In respect of credit/financial institutions designated persons are not permitted to facilitate setting up or maintaining anonymous accounts (CJA 2010, s. 58). Designated persons are obliged to identify and verify the beneficial ownership of their customers on the basis of documentation or information that can reasonably be relied upon. Such documentation includes those issued from a government source or any prescribed class of documents (CJA 2010, s. 33). A designated person includes financial institutions, trust and company service providers and accountants and tax advisers.

90. Designated persons must also obtain information on the purpose and intended nature of a business relationship with a customer, prior to the establishment of a relationship (CJA 2010, s. 35).

91. The CJA 2010 provides for a designated person to rely on certain "relevant third parties" (defined in CJA 2010, s. 40(1)) to carry out due diligence. In order to meet the requirements of the CJA 2010, the designated person relying on the relevant third party must have an arrangement in place confirming that the relevant third party accepts being relied on and that the relevant third party will provide, to the designated person, any due diligence documents or information obtained, as soon as practicable, upon request (CJA 2010, s. 40). A designated person who relies on a relevant third party to apply a measure under section 33 or section 35(1) of the 2010 Act remains liable, under section 33 or 35(1) for any failure to apply the measure.

92. For certain categories of customer or business defined in the CJA 2010, a set of Simplified Customer Due Diligence (SCDD) measures may be substituted for full CDD, to reflect the accepted low risk of money laundering or terrorist financing that could arise from such business (CJA 2010, s. 34). This does not represent a total exemption as, prior to applying SCDD, designated persons have to conduct and document appropriate testing to satisfy themselves that the customer or business qualifies for the simplified treatment, in accordance with the definitions and criteria set out in the Act. It is not necessary for designated persons to identify and verify the identity of beneficial

owners of incorporated entities that are admitted to trading on a regulated market in the EEA as defined in the European Communities (Markets in Financial Instruments Directive) Regulations 2007 (as amended) or on a non-EEA regulated market that is subject to disclosure requirements equivalent to those of the EU (CJA 2010, s. 34). Nevertheless, the obligations of designated persons with regard to ongoing monitoring CDD provided for under section 35 are outside the scope of SCDD and continue to apply.

93. Information maintained pursuant to the CJA 2010 must be preserved for at least 5 years (section 55 of the 2010 Act) following the end of the designated person's relationship with its client. Where a designated person fails to comply with the due diligence procedures as set out in Section 33 of the CJA 2010 they are committing an offence, liable to a fine or imprisonment for up to 5 years, or both. There are also offences of failing to keep records, failing to train staff and failing to file STRs as appropriate.

### *EU 4th AML Directive*

94. The European Union's 4th Anti-Money Laundering Directive provides:

> Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.

95. Ireland has enacted legislation – European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 ("BO Regulations 2016") – to transpose this aspect of the 4th AMLD into domestic law. The BO Regulations 2016 are a statutory instrument made pursuant to the European Communities Act 1972. The regulation was made on 9 November 2016 and came into full effect on 15 November 2016. The BO Regulations 2016 require every corporate or other legal entity to take all reasonable steps to obtain and hold adequate, accurate and current information in respect of its beneficial owners, e.g. name, d.o.b., address, statement of nature and extent of interest held by each beneficial owner and to maintain within the entity's records a register of that information. The regulation applies to every corporate or other legal entity except for those:

- Listed on a regulated market that is subject to disclosure requirements consistent with the law of the EU, or
- Subject to equivalent international standards which ensure adequate transparency of ownership information.

96. While the scope of this exception is not entirely clear from its wording, Irish authorities indicate that only listed companies may qualify for this exception, and that this is consistent with carve outs for listed companies

in the CJA 2010 and the EU AMLD and have made this clear in published guidance.

97. In the BO Regulations 2016, "beneficial owner" means the natural person or persons ultimately controlling a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), is also an indication of indirect ownership.

98. The BO Regulations 2016 provide for a scenario where all avenues for determining the beneficial owner have been exhausted to no avail and in such a case, the names of the senior managing officials of entity will be added to the register.

99. The BO Regulations 2016 provide for mechanisms to keep corporate entities' registers up to date, including notifications and communications concerning relevant changes in beneficial ownership between corporate entities and their beneficial owners.

100. A duty is also imposed upon a natural person who is a beneficial owner or who ought to know that they are one to notify an entity that they are a beneficial owner if they have not received a notice from the entity requesting this information. There is also a duty on natural persons, in certain circumstances to notify relevant changes in beneficial ownership.

101. A natural person who fails to comply with the BO Regulations 2016, or in purported compliance with the BO Regulations 2016, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false, commits an offence and shall be liable, on summary conviction to a class A fine which is a maximum of EUR 5 000. Art 14(1) of the BO Regulations 2016 imposes a duty for a relevant entity (defined as a corporate or other legal entity incorporated in Ireland) to keep and maintain a beneficial ownership register. Art. 14 (2) further states that a relevant entity that fails to comply with the above provision commits an offence and shall be liable, on summary conviction, to a class A fine which is a maximum of EUR 5 000.

102. These rules have only been introduced very recently, and they will be supplemented by a requirement to file the beneficial ownership information with a government authority, via the CRO technology platform.

*Tax law requirements*

103. Irish Revenue requires all companies that are resident in Ireland for tax purposes to file a Corporation Tax return (CT1) each year. Close companies must include details of their "beneficial owners" on this annual return. Beneficial ownership in this context means any person that has a direct or indirect interest in the capital or voting of the company.

104. A close company is defined as a company that is resident in Ireland and is controlled by five or fewer participators or is controlled by any number of participators who are directors (TCA, s. 430). When determining whether or not a participator has control, the legislation also includes the participators' associates. Associate includes any relative or partner of the person, any company that the person has control of, and certain trusts connected to the participator. As a result the vast majority of companies in Ireland are close companies (currently, 91% of companies).

105. The information to be included on the CT1 includes details of the beneficial ownership of the issued shares and loan stock (including debentures) during the accounting period i.e. name, address, tax reference number and percentage of shares/loan stock held.

106. The CT1 also requests the name and tax reference number of all other persons who were participators in the company at any time during the accounting period. A participator is defined as:

- any person who possesses, or is entitled to acquire, share capital or voting rights in the company,
- any loan creditor of the company,
- any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by means of premium on redemption, and
- any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for such person's benefit.

107. This information allows Irish Revenue to understand the chain of ownership in respect of a company, but would it is not clear that this would allow the identification of persons who control the company through other means. Irish Revenue, consider that, in particular, the concept in the fourth bullet point, above, would cover all of the ways that someone could have control over a company. In any event, the attribution rules that apply for making the determination of beneficial ownership under the TCA are quite broad, and

cover, for example, family or business relationships, and common shareholding in any company.

### *Beneficial ownership of foreign companies*

108. The 2016 ToR provide that where a foreign company has a sufficient nexus with a jurisdiction then the availability of beneficial ownership information is also required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR. Where the foreign company has a bank account, engages a trust or corporate service provider, or an accountant/tax advisor in Ireland then each of those persons will be obliged under AML law to conduct CDD and maintain information on the beneficial owner of the company. In addition, in Ireland's case, all foreign companies are required to file an annual Corporation tax return, a CT1 return, which provides information on the owners of the company. If the foreign company is resident for tax purposes and is a close company then the tax law provisions discussed above apply. If the foreign company is not a close company or is a branch of a foreign company then details of the legal owners, and beneficial owners if different to the legal owners, of holders of 10% or more of the share capital and loan stock (including debentures) must be provided.

### *Beneficial ownership information – Enforcement measures and oversight*

109. The beneficial ownership aspect of the 2016 ToR is new and was not specifically evaluated in the 2010 Report. As described above, the main requirements to maintain beneficial ownership information arises under AML law, the transposition of the EU 4th AMLD and tax law. The oversight of these laws are described below.

### *AML Compliance Unit, Department of Justice and Equality*

110. The Anti-Money Laundering Compliance Unit (AMLCU) in the Department of Justice and Equality was established following the enactment of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. One of the roles of the AMLCU is to undertake compliance monitoring of certain "designated persons" under the CJA 2010, including trust and company service providers (TCSPs), tax advisers and accountants.

111. Professional trust and company services providers are required to be authorised by the Department of Justice and Equality in order to provide such services. At the end of 2015 a total of 309 TCSPs were authorised by the Department of Justice and Equality while at the end of 2016 the figure was 301. The number of TCSPs authorised varies as new TCSPs apply for authorisation and others cease operations. The authorisation is valid for a

three year period. The AMLCU cross-checks information held by the CRO to identify companies that appear to be providing TCSP services but have not been authorised.

112. The AMLCU carries out scheduled and unscheduled compliance monitoring inspections, which review all records, transactions, accounts and money laundering policies and procedures. Each TCSP is reviewed at least once every 3 years. The AMLCU established a risk-based approach in October 2015 whereby each TCSP inspected is assigned a risk rating. The TCSPs inspected since October 2015 have been assigned a risk rating of low or medium-low. The sector is generally found to have a medium or high risk rating based on the criteria that the AMLCU uses to judge risk for their purposes, which include the nature of the products and services provided as well as exposure to certain jurisdictions.

113. The AMLCU has four Authorised Officers (being suitably qualified or experienced persons appointed by the competent authority) that carry out scheduled and unscheduled compliance monitoring inspections, which review all records, transactions, accounts and money laundering policies and procedures. In advance of the inspection of a TCSP, the person will be asked to complete an Anti-Money Laundering Compliance Questionnaire. At inspection the Authorised Officer will:

- expect the TCSP to be able to demonstrate full compliance with their obligations under the AML law.
- require the TCSP to have a full list of customers available for inspection together with details of the steps taken to comply with customer due diligence and monitoring requirements for each customer.
- expect the TCSP to have undertaken a risk assessment of its customers.
- examine and assess anti-money laundering policies and procedures and the systems put in place to manage and monitor compliance.
- examine transaction records and related documentation to check that customer due diligence has been undertaken and that suspicious transaction reporting measures are being properly applied.
- expect the TCSP to be able to show that all persons connected with the delivery of the TCSP are sufficiently trained with regard to all their obligations under the Act and to recognise and deal appropriately with suspicious activity.

114. The AMLCU conducted 127 inspections of TSCPs in 2013, 69 inspections in 2014 and 88 inspections in 2015. Where the inspection identifies problems, the Minister for Justice and Equality (as State Competent Authority) issues a letter and follow up actions are specified. For 2015, CDD

issues were identified in 26% of cases and record-keeping issues were identified in 28% of cases. These findings have led to a variety of actions including directions to remedy the failure, and 1 refusal of a licence and the revocation of authorisations in 10 cases.

115. With respect to the requirement of TCSPs to conduct CDD, the focus is on the need to know who is the real owner. The fact that a person has 25% interest in the capital or voting of the client is an indicator of beneficial ownership, but is not the end of the analysis. The officer would always expect to see an organisation chart and evidence that the TCSP understands completely the ownership chain, particularly with regard to complex structures. Legal documentation to substantiate this understanding should be present in the CDD file. During on-site inspections officers conduct random spot-checks and ask the TCSP to explain how the beneficial ownership was established.

116. Tax advisers and external accountants (meaning those that are not members of a designated accountancy body) are "designated persons" for the purposes of the AML law, but are not required to be authorised. Nevertheless, these persons would be supervised either by the Department of Justice and Equality or by another supervisor (for example, a tax adviser who is a lawyer may be subject to supervision by the Law Society).

117. At the inspection of Tax Advisers/external Accountants the Authorised Officer will:

- expect the Tax Advisers/external Accountants to be able to demonstrate full compliance with obligations under the CJA 2010.
- require the Tax Advisers/external Accountants to have a full list of customers available for inspection together with details of the steps taken to comply with customer due diligence and monitoring requirements for each customer.
- examine and assess anti-money laundering policies and procedures and the systems put in place to manage and monitor compliance.

### *Supervision of auditors*

118. Certain Irish companies are required to have their accounts audited under the CA 2014 (depending on turnover (greater than EUR 8.8 million), assets (greater than EUR 4.4 million) and number of employees (more than 50)) (CA 2014, section 350) and therefore would be required to engage an auditor that is subject to AML CDD obligations (note that these thresholds have recently been amended, see *Recent Developments*). Irish authorities are of the view that a very large percentage of those companies that are not required to engage an auditor would do so anyway and may be required to do so under other statutory obligations (for example, if they are engaged in

government tenders) or for commercial reasons (for example, to satisfy credit conditions).

119. All auditors are required to be a member of a recognised accountancy body and are subject to oversight for AML obligations. All accountants will need to conduct CDD for each of their clients. While the monitoring cycle for statutory auditors is generally 6 years, AML review is done on a risk-based approach that looks at the firm structure, nature of the services offered, type of client (including the location of the clients in high-risk jurisdictions) and any previous poor rating.

120. The largest designated/prescribed accountancy body in Ireland is Chartered Accountants Ireland (CAI). CAI regulates its members in accordance with the provisions of its Bye Laws openly and in the public interest. Oversight of this role is performed independently by the Chartered Accountants Regulatory Board (CARB). During 2015, CAI/CARB conducted 248 inspections (out of 1800 member firms) with an 82% satisfaction rate. CAI applies sanctions for non-compliance and provides an annual report to the Department of Justice and Equality as well as reporting suspicious transactions to Irish Revenue and An Garda Síochána. The deficiencies that are generally identified relate to lack of adequate procedures, lack of training, and inadequate CDD procedures carried out. Actions which can be taken by Accountancy Bodies range, depending on the nature and scale of non-compliance, from requiring firms to undertake to update their procedures to more punitive sanctions, such as the payment of a regulatory fine or exclusion from membership. In 2016, the Chartered Accountants Regulatory Board which monitors the largest accountancy body imposed sanctions in 43 cases.

### *Beneficial ownership registry*

121. The rules with respect to the collection of beneficial ownership information introduced as part of the transposition of the 4th EU AMLD only came into effect in November 2016. The information will ultimately have to be delivered to a government registry, but these rules have not yet been finalised. Irish authorities have indicated that the CRO will ultimately be responsible for hosting this registry and that the oversight and enforcement of the information will be subject to the same regime as for information held in the company register. Ireland should monitor the development of these rules and ensure that the oversight and enforcement of the obligation to maintain beneficial ownership information of companies is effective.

### *Tax Compliance*

122. Irish Revenue's REAP programme, which identifies cases suitable for compliance intervention, uses a wide-ranging set of factors to generate a risk score. One of these factors relates to whether record-keeping is being properly implemented. In this regard, REAP contains many rules that focus on whether the taxpayer maintains proper books and records as this often suggests overall tax non-compliance. Revenue's audit and compliance programme is risk-driven using Revenue's REAP system. This system is a rules-based system and includes a number of rules that specifically target close companies who are required to gather and report beneficial ownership information to Revenue. The results of this campaign for the period 2013-15 are shown below.

| | 2013 | | 2014 | | 2015 | |
|---|---|---|---|---|---|---|
| **Intervention types** | **Number** | **Yield** | **Number** | **Yield** | **Number** | **Yield** |
| Audits | 8 037 | EUR 312 400 000 | 7 636 | EUR 338 800 000 | 6 612 | EUR 327 900 000 |
| Risk management Interventions | 217 365 | EUR 186 600 000 | 191 429 | EUR 240 600 000 | 191 089 | EUR 290 800 000 |
| PAYE Compliance Interventions | 45 464 | EUR 30 600 000 | 41 368 | EUR 21 600 000 | 42 493 | EUR 16 000 000 |
| Assurance checks | 355 697 | EUR 19 500 000 | 196 748 | EUR 9 500 000 | 221 391 | EUR 7 800 000 |
| **Totals** | **626 563** | EUR **549 100 000** | **437 181** | EUR **610 400 000** | **461 591** | EUR **642 500 000** |

122. With respect to ownership information specifically, Irish Revenue indicates that audit interventions regarding the tax compliance of companies generally start with interviewing the owners, identifying who the directors are and having an understanding of the corporate structure and business. REAP contains specific rules relating to close companies, including a focus on whether or not the company has maintained the necessary ownership information. If these records are not complete then auditors consider that it is likely that other records are not maintained. In particular, complex transactions or suspicions of fraud often raise questions about ownership and the structure of the organisation.

123. Irish Revenue also uses software (a Social Network Analysis tool) that links various pieces of information that are available internally – addresses, phone numbers, directorships, shareholding – to find links that may not have otherwise been obvious. The results may point to compliance issues. In addition, Irish Revenue has used this tool to assist in identifying information relevant to an EOI request during the review period.

*Availability of beneficial ownership information in practice (Peer experience)*

124. The availability of beneficial ownership information was not evaluated under the 2010 ToR. During the current review period Ireland was expressly asked to provide beneficial ownership information to at least two of its EOI partners, who were satisfied with the quality of the information received.

### *A.1.2. Bearer shares*

125. The 2010 Report found that there was a possibility for a certain, very limited number of companies to issue "share warrants to bearer", and a recommendation for Ireland to take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of share warrants to bearer in such cases in this regard was made. Briefly, only public companies that were neither publicly listed nor closely controlled were able to issue share warrants to bearer.

126. The CA 2014 now clearly states that a company shall not have the power to issue any bearer instrument (CA 2014, s. 66(9)). A bearer instrument is defined as "an instrument, in relation to shares in a company, which entitles or purports to entitle the bearer thereof to transfer the shares that are specified in the instrument by the delivery of the instrument" (CA 2014, s. 66(8)). This would cover both bearer shares and share warrants to bearer. If a company purports to issue a bearer instrument, the shares that are specified in the instrument shall be deemed not to have been allotted or issued, and the amount subscribed therefor shall be due as debt of the company to the purported subscriber thereof.

127. If a company has previously issued a bearer instrument then the name of the holder or holders of the instrument must have been entered in the register of members no later than 30 November 2016 (18 months after commencement of Section 1019) (CA 2014, s. 1019). Failure to do so would result in the Minister for Finance becoming the full beneficial owner. In addition, the instrument would no longer have the quality of a bearer instrument and would thereafter be a registered instrument.

128. In addition, all public companies are required to appoint an auditor (CA 2014, s. 380), who would be subject to anti-money laundering rules and required to identify the beneficial owners of the company (see above, under section A.1.1. *Supervision of Auditors*).

*Bearer shares in practice*

129. The number of companies that would have been in a position to issue share warrants to bearer in the past was noted as very limited in the 2010 Report. As at 30 September 2016 the total number of Public Limited companies (being the only type of company which had been capable of issuing share warrants to bearer) amounted to only 1440, out of 197 345 total companies registered in Ireland. The CRO has recently conducted a survey of 100 (of the 1440 total) public companies in its register and found that only 1 of those companies reviewed had a clause in its Articles of Association that allowed for the issue of bearer instruments, therefore, this sample test suggests that only about 1% of public companies could have issued share warrants to bearer. The one company found in the sample had not issued share warrants to bearer. This means that the total number of companies which were formerly capable of issuing bearer instruments may be around 10 to 15. In any event, the rules effectively transform any share warrants to bearer that may have existed into registered instruments owned either by the current holder or the Minister of Finance. Ireland is not aware of any register of membership pursuant to s169 of CA 2014 having being updated to include the Minister for Finance as a result of a failure of a PLC to comply with s. 1019(7)(a) of that Act. As of the deadline, no companies have reported to the Minister of Finance that outstanding share warrants to bearer have been registered in the Minister's name.

130. During the current peer review period Ireland has received 18 requests for information on the owners of companies. None of Ireland's peers have reported that they have had difficulty obtaining information on the ownership of a company due to the existence of outstanding share warrants to bearer. Irish Revenue has not encountered any difficulty obtaining ownership information due to the existence of bearer shares or share warrants to bearer.

### *A.1.3. Partnerships*

131. In Ireland a partnership is a relationship which subsists between persons carrying on a business in common with a view of profit. Partners may be individuals, bodies corporate or other partnerships. There are three types of partnerships in Ireland: general partnerships, limited partnerships and investment limit partnerships.

132. The 2010 Report (see paras. 58-61) concluded that information on the identity of the partners in a partnership was available and must be maintained for at least 5 years in all cases and that there were adequate penalties for failure to maintain this information. This was determined on the basis of the provisions of the laws governing the formation of LPs and ILPs, as well as the tax law. Generally, updates on the changes of partners in limited partnerships

are required to be reported to the CRO and the tax law requires the precedent partner and each partner to file an individual return where the partnership carries on business in Ireland identifying each of the partners (TCA, s. 880, 951). Since the 2010 Report the legal framework regarding partnerships is unchanged.

133. In respect of beneficial ownership information, there are no requirements for LPs or partnerships carrying on business in Ireland to report the identity of their beneficial owners to a governmental authority or to maintain the information for commercial law reasons. However, any partner of a partnership carrying on business in Ireland would be required to file its own return. Any corporate partner would file a CT1 and, if that were an Irish company beneficial ownership information would be available as described in section A.1.1. In the case of a foreign corporate partner, that company would be required to provide information in respect of any person holding 10% or more of the partnership either directly or indirectly. It is noted that all LPs must conduct business in Ireland in order to register as an LP. Any limited partnerships that do not register with the CRO would be considered general partnerships.

134. Similarly, where the partnership has any connection with a designated person for AML purposes, then the CDD requirements would identify any person that exercises control over the management of the partnership (CJA 2010, s. 27). All partnerships that are relevant for the purposes of the 2016 ToR would, in Ireland's case, be conducting business in Ireland. As a result, these partnerships will have a greater need to engage a designated person, either by opening a bank account, engaging an auditor or obtaining legal services. Notwithstanding, there may be a small number of partnerships that are not subject to any CDD process. In these cases, beneficial ownership information in respect of Irish corporate partners as well as any person holding, directly or indirectly, 10% or more of any partner that is a foreign company will be available. In practice, 790 persons are registered as non-resident partners and of these 651 are individuals and 139 are entities. Where beneficial ownership arises through means other than indirect ownership, Irish Revenue would be able to use its investigative powers against any of the partners, each of which would necessarily be registered for tax purposes.

### *Oversight and enforcement*

135. The availability of legal and beneficial identity information in respect of partnerships is generally assured by the oversight and enforcement activities of the AML supervisory authorities and the tax compliance activities described above in respect of companies. In the AML context this would in particular relate to those circumstances where the partnership is a customer of an Irish financial institution or engages the service of an Irish legal adviser

or auditor. As noted above, all relevant partnerships must be engaged in a business in Ireland, and therefore are required to file tax returns. Moreover, Irish authorities indicate that it would be very difficult to conduct business in Ireland without the services of persons in Ireland that were subject to AML obligations. Irish Revenue have surveyed the partnerships in their records and note that they have details on their files of a bank account or agent in Ireland for almost 95% of them.

*Availability of partnership information in practice*

136. The 2010 Report noted that no requests had been received in the period 2007-09 that asked for information on the partners of a partnership. Similarly, during the current review period Ireland received no requests regarding partnerships and peers did not raise any issue in their input. All persons registered for tax, including partnerships, are required to retain records for 5 years after the entity ceases to carry on a trade or profession or to be chargeable to tax in respect of any income or gains (section 886(4)(aa) TCA 1997).

### *A.1.4. Trusts*

137. As Ireland is a common law jurisdiction, the concept of a trust is part of Irish law. The 2010 Report noted that express trusts are created by the expressed intention of the creator of the trust (the settlor). This may be done by testament or *inter vivos*. Any person competent to deal with property can establish a trust of it. There are no restrictions on who may act as trustees and consequently trustees may be individuals or companies. Trustees are governed by the *Trustees Act 1893* and by the terms of the trust deed. Implicit in their duties as trustees is that they should be fully acquainted with the terms of the trust, including knowing who the beneficiaries are. Moreover, regardless of the law governing the formation of a trust, the trustees are chargeable to Irish income tax on the worldwide income of the trust where the trustee is resident in Ireland and on the Irish-source income where they are not Irish-resident. The trust tax return requires that legal information concerning the trustees, settlors and beneficiaries be provided.

138. The 2010 Report concluded that the extensive tax filing and anti-money laundering requirements in Ireland ensure the availability of information on trusts.

139. With respect to the additional requirements under the 2016 ToR to maintain beneficial ownership information regarding any settlor(s), trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, as noted above under section A.1.1. *Availability of Beneficial Ownership*

*Information*, all professional trustees are designated persons under the CJA 2010. The definition of "beneficial owner" in the CJA 2010 as it relates to trusts, covers any individual who has legal control over the trust. This includes any person who maintains such control indirectly through a corporation or other entity. In particular, "control" in this context means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument concerned or by law to do any of the following:

- dispose of, advance, lend, invest, pay or apply trust property;
- vary the trust;
- add or remove a person as a beneficiary or to or from a class of beneficiaries;
- appoint or remove trustees;
- direct, withhold consent to or veto the exercise of any power referred to above.

140. However, there are at least potentially exceptional instances where the existence of the trust could be unknown and unrecorded and where the statutory due diligence measures (under the CJA 2010) may not arise. An example would be a non-professional trustee, or a lay person who is constituted a trustee of a trust established without professional assistance. That person would not be a designated person and would not be obliged to undertake customer identification measures or retain records. That said, once the lay trustee dealt with the trust funds whether by opening a bank account, making an investment, transacting a cash purchase in excess of EUR 15 000, or even disposing of assets otherwise than by delivery, it is probable that the transaction would entail the engagement of an individual or entity qualifying as a designated person and subject to compliance procedures. Where this is not the case, while much of the information in respect of the trust would be required to be maintained under the common law, this would not necessarily include the beneficial ownership information relative to any non-individual settlors or beneficiaries. Nevertheless, the effect of this on EOI in practice should be monitored by Ireland to ensure that it would not impede effective EOI.

141. It is noted that all EU member states (including Ireland) have to transpose the 4th AMLD into domestic law in June 2017. Article 31 of the 4th AMLD imposes an obligation on EU member states to require trustees of express trusts to hold beneficial ownership information to include the identity of the settlor, trustee(s), protector (if any), beneficiaries or class or beneficiaries and any natural person exercising effective control over a trust.

### *Oversight and enforcement*

142. The oversight and enforcement of rules requiring the maintenance of beneficial ownership information on trusts is generally fulfilled by AML supervision of trust and company service providers and tax compliance activities. These activities are described above in relation to the availability of legal and beneficial ownership information of companies and apply equally in this context. In particular, AML supervision focusses on CDD and in the trust context this would cover any person who has control over the trust as set out in the CJA 2010.

143. Apart from undertaking CDD, a designated person is subject to strict record keeping obligations as prescribed by s. 55 of CJA 2010, requiring the keeping of records evidencing the procedures applied and information gathered in relation to each customer and including documents used to verify customer identity and beneficial ownership. Under s. 55(4) these records must be retained for a period of not less than five years from the date on which the designated person ceased to provide any service to the customer or the date of the last transaction undertaken, whichever is the later.

144. For tax purposes, a trust with a trustee resident in Ireland (whether professional or not) is subject to tax on its worldwide income. Trusts that are resident in Ireland or where the trust holds real property situated in Ireland, must register for tax using a form TR1. The trust is required to file a tax return in respect of any year in which the trust realises any income or gain, makes any distribution, or any new assets are contributed to the trust and identify the settlor, trustees and beneficiaries.

145. While the tax rules require the identification of the trustees, settlors and beneficiaries, Irish Revenue is of the view that "any other person in control of the trust" would be considered a trustee and therefore would need to be identified in accordance with the general rule. Moreover, Irish common law holds that it is a duty of the trustee to have knowledge of any person with control over the trust.

### *Availability of trust information in practice*

146. The 2010 Report noted that no requests had been received in the period 2007-09 that asked for information on trusts. During the current review period Ireland received 5 requests for information concerning trusts and did not report any issues with providing the information requested. In another case, information was sought on the beneficial owners of a company. Irish Revenue identified that the legal owners of the company were trusts. From internal Revenue records they identified the trustees and obtained the beneficial ownership information i.e. details of the settlor and beneficiaries together with the trust deed in respect of those trusts from the trustees

without difficulty. Similarly, peers did not raise any concerns with requests for trust information.

### *A.1.5. Foundations*

147. Irish law does not allow for the creation of foundations.

### *Other relevant entities and arrangements*

148. The 2010 Report identified a number of entities other than companies, trusts and partnerships as relevant for EOIR purposes. These are: Building societies, Industrial and Provident societies, Friendly societies, Credit Unions, Trustee Savings Banks, European Economic Interest Groupings (EEIGs), and Common Contractual Funds. In each case the 2010 Report found that there existed specific legal regimes that ensured the availability of ownership and identity information. Moreover, with the exception of credit unions and EEIGs, all of these entities are charged to tax on the same basis as companies and, therefore, all the tax law provisions that apply to companies apply to these entities.

149. These types of entities and arrangements have not been analysed in other peer review reports in the first round of the Global Forum reviews. In fact, the analysis in the 2010 Report shows that these entities or arrangements are either created in the form of other entities or arrangements (such as a company or partnership) that are analysed in the 2010 Report or are not likely to have significant relevance for EOIR purposes, for example Friendly Societies and Building Societies. At the time of the 2010 Report there were no Trustee Savings Banks and only 8 EEIGs had ever been created since their inception in 1989. Indeed, none of these entities had been the subject of an EOI request during the period 2007-09, nor have any requests been made in respect of these entities during the current review period.

## A.2. Accounting records

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

150. The 2010 Report concluded that all entities and arrangements were required to maintain adequate accounting records, including underlying documentation for at least 5 years (see 2010 Report, paras. 80-91). Element A.2 was determined to be "in place" and rated Compliant and no recommendation was made. The requirements to maintain accounting records were found in both the company law, common law (with respect to trusts) and tax law. The CA 2014 has now replaced the company law requirements in force at the time of the 2010 Report but the requirements have not changed.

151. There were no issues with respect to the availability of accounting information in practice during the period 2007-09. The oversight of relevant entities and arrangements was satisfied through a combination of tax compliance, the supervision of the ODCE with respect to companies and partnerships, and the designated accountancy bodies with respect to accountants.

152. During the current review period Ireland received 191 requests for accounting information and did not report any issues in obtaining such information in practice. A number of peers raised issues in respect of requests for accounting information, however, there is no indication that such issues are the result of accounting information not being available. Rather, the issues related to aspect of elements C.1 (EOI Mechanisms) and C.5 (Timeliness and quality of EOI requests and responses) and are analysed in those sections.

153. The updated table of determinations and ratings is as follows:

| Legal and Regulatory Framework | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of the legal and regulatory framework** | | |
| **Determination: In Place** | | |
| **Practical implementation of the standard** | | |
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of EOIR in practice** | | |
| **Rating: Compliant** | | |

### *A.2.1. General requirements*

154. The Standard is met by a combination of company, partnership and tax law requirements.The various legal regimes are analysed below.

#### *Company law*

155. The 2010 Report noted that, under the company law in force at that time, books and records were required to be kept on a continuous and consistent basis and to set out details of all sums received or expended by the company, the assets and liabilities of the company, the level of sales or services, including all invoices in respect of such sales or services, and a

statement of all the stock in the company. These same rules continue to apply under the CA 2014 (CA 2014, s. 281).

156. Public Companies must file full audited Financial Statements. Private limited companies, DACs and Companies Limited by Guarantee (CLGs) must file full audited financial statements with CRO, unless they qualify as small companies and can claim an audit exemption and/or an abridgment exemption (CA 2014, s. 350). It is noted that a company loses the benefit of the exemption where it fails to file its annual return in a timely fashion. Regardless, all companies must maintain financial statements (CA 2014, s. 276).

157. The penalties for failure to meet these obligations are significant and can be as much as imprisonment for up to 10 years and/or a EUR 50 000 fine (CA 2014, s. 286 and 871(2)).

158. Foreign companies that are registered with the CRO must submit the accounting documents that they are required to maintain in their jurisdiction of incorporation. If there is no obligation in their jurisdiction of incorporation to prepare accounts, they will be required to prepare accounts and a directors' annual report on them under EU or international financial reporting standards. Unless exempt under the EU Directive the company must also arrange for the accounts and the annual report to be audited in accordance with Directive 2006/43/EC. It must also file a copy of the auditors' report on the accounts and annual report (CA 2014, s. 1303). In any event, foreign companies that are resident for tax purposes are required to maintain accounting information to the standard under the tax law.

159. The document retention period under company law is 6 years. The penalties for failure to maintain such records is a category 2 offence and will result in a Class A fine and/or a term of imprisonment of up to twelve months (CA 2014, s. 286). A Class A fine is that within the meaning of the Fines Act 2010 and is a fine not exceeding EUR 5 000.

### *ICAVs*

160. Under Section 109 of the ICAV Act 2015, ICAVs are obliged to maintain accounting records that are sufficient (ICAV Act, s. 109):

- to correctly record and explain the transactions of the ICAV,
- to enable at any time the assets, liabilities, financial position and profit or loss of the ICAV to be determined with reasonable accuracy,
- to enable the directors to ensure that any balance sheet, profit and loss account or income and expenditure account of the ICAV complies with the requirements of this Act, and
- to enable the accounts of the ICAV to be readily and properly audited.

161. The accounting records for ICAVs must be kept on a continuous and consistent basis, i.e. the entries in the accounts must be made in a timely manner and be consistent from one year to the next and for a period of at least 6 years after the latest date to which they relate (ICAV Act, s. 113). Failure to keep accounts is subject to a maximum penalty of a fine not exceeding EUR 500 000 or imprisonment for a term not exceeding 10 years, or both (ICAV Act 2015, s. 114(1) and 186(1)(b)). In addition, a director of an ICAV who fails to take all reasonable steps to secure compliance by the ICAV with the requirements regarding books and records or has by his or her own intentional act been the cause of any default by the ICAV has committed a category 1 offence liable to: (a) on summary conviction, to a class A fine (not exceeding EUR 5 000) or imprisonment for a term not exceeding 12 months, or to both, or (b) on conviction on indictment, to a fine not exceeding EUR 500 000 or imprisonment for a term not exceeding 10 years, or to both.

### *Partnerships and trusts*

162. Partners in general and limited partnerships have a duty to render true accounts and full information of all things affecting the partnership to each other under the Partnership Act. In addition, any partnership or limited partnership where the general partners have limited liability (e.g. an LP where the general partner is a limited company), must maintain and file accounts with the CRO.

163. In the case of trusts, the 2010 Report noted that trustees have a duty under trust law to maintain records and provide accounts to beneficiaries. This continues to be the case. In addition, as mentioned in the section on element A.1 above, the requirement under the CJA 2010 imposes stringent wide ranging obligations on designated persons to obtain, verify and retain information on express trusts.

### *Tax law*

164. The tax law requires all companies, partnerships and trusts carrying on a trade or profession or other activity the profits or gains of which are chargeable to tax, to keep such books and records on a continuous basis as will enable true income tax, corporation tax and capital gains tax returns to be made (Section 886(2) of the TCA). For these purposes, "records" include accounts, books of account, documents and any other data relating to:

- money spent and received and the purpose of such receipts and expenditure;
- sales and purchases of goods and services;
- assets and liabilities of a trade, profession or other activity;
- acquisition and disposal of assets.

165. The document retention period under tax law is 6 years. The penalty for failure to maintain such records is EUR 3 000 (TCA, s. 886(5)).

*Liquidated companies*

166. When a company has been wound up the books and papers must be retained by the liquidator for a period of at least 6 years after the date of the dissolution of the company. In the absence of a direction at that stage from the company about disposal of the books and papers the liquidator may then dispose of them as he or she thinks fit. For these purposes, "books and papers" include all things that are needed to produce accounts which would include underlying documentation such as contracts, invoices and receipts. If a liquidator fails to comply with the requirements of this section, he or she shall be guilty of an offence (CA 2014, s. 707).

167. Section 886 of the TCA, which deals with obligations to keep records, was amended in the Finance Act 2012 to include the requirement that where a company is wound up or dissolved, the liquidator or in the absence of the appointment of a liquidator, the last directors, must retain linking documents and/or records for 6 years and longer if there is there is an ongoing investigation, inquiry appeal or claim. Any person who fails to comply with the above obligations shall be liable to a penalty of EUR 3 000 (TCA, s. 886(5)).

168. It is noted that, where a company is struck off the Register (rather than being formally liquidated), following the strike-off of the company, the obligation to maintain the company's records falls to the "last director". It is the duty of the last director to maintain company records pursuant to s. 223 CA 2014. From a company law perspective, a struck off company can be restored to the register of companies any time up to a period of 20 years. The legal effect of the restoration is as if the strike-off never occurred. If the company is restored and the director is unwilling to hand over the records (and assuming that they have not been kept in the registered office of the company as required by law), then failure to keep accounting records or provide access to them or retain them (Sections 283 to 286) is a category 2 offence (subject on indictment to a maximum of 5 years imprisonment and/or a EUR 50 000 fine). This is sufficient for extradition provided appropriate agreements exist with the other jurisdiction. From a tax perspective, directors in place immediately prior to the strike-off are obliged to keep records (TCA s 886(4A)).

169. In practice, companies have been restored as described above for a variety of reasons, including by Irish Revenue for the purpose of collecting tax. This does not appear to be a remote or rare occurrence. Some of the accounting records may be in the possession of the Irish Revenue or CRO or may be maintained by an accountant resident in Ireland, however this may not cover all cases. Ireland also reports that about 3.5% of companies (around

7 000 out of a total stock of 200 000 companies) are struck-off the Register annually, which shows that even if there is a possible information gap for this category of entities, it would be a remote one.

### *A.2.2. Underlying documentation*

170. The 2010 Report found that both company law and tax law require that underlying documentation in accordance with the standard be maintained to support the accounting records. The tax law requirements are the same and the requirements under company law continue to be the same with the introduction of the CA 2014 (CA 2014, s. 281).

#### *Oversight and enforcement of requirements to maintain accounting records*

171. Limited companies are required to annex accounts to the annual return. These accounts are required to be audited unless the company qualifies for the exemption from audit. An unlimited company is required to attach an auditor's report to the annual return.

172. Certain Irish companies are exempt from having their accounts audited and therefore engaging an auditor, however this exemption is lost if the company fails to file an annual return. Moreover, Irish authorities report that many companies that would be entitled to exemption don't avail of it for a variety of reasons (for example, audited accounts may be a condition imposed by creditors or required by virtue of their activities). Regardless of whether accounts need to be audited, all relevant entities and arrangements are required to prepare financial statements.

173. Each auditor in Ireland is assigned a number for reference on the companies' annual return. For companies that are required to file audited returns, the CRO confirms that the auditor referenced has completed the audit. The CRO detects about 100 cases a year that are wrongly cited and these are referred to ODCE. In addition, the CRO has taken enforcement action against persons purporting falsely to be auditors. The CRO has noted a decrease in non-compliance in this regard.

174. The ODCE's functions include the investigation of suspected offences under the Companies Act as well as suspected non-compliance with the Companies Act. As a failure to keep proper accounting records is an offence under Company Law, company auditors, if they have grounds for believing the offence has taken place, must report this to the ODCE, which reviews all such reports and takes what action it deems appropriate in such circumstances, up to and including criminal prosecution. In the period under review the ODCE received 75 reports from auditors of failure to keep proper books

of account/accounting records. Most of these were dealt with by way of non-judicial rectification, including where appropriate the administration of a caution as to future conduct. One case was prosecuted during the period.

175. In addition, auditors are subject to oversight by the 6 recognised accountancy bodies in Ireland. The Irish Auditing and Accounting Supervisory Authority (the IAASA) is a statutory body which is mandated to:

- supervise how the prescribed accountancy bodies regulate and monitor their members,
- promote adherence to high professional standards in the auditing and accountancy profession,
- monitor whether the financial statements or accounts of certain classes of companies and other undertakings comply with the CA 2014; and
- act as a specialist source of advice to the Minister on auditing and accounting matters.

176. There are 9 designated/prescribed accountancy bodies in Ireland and within this there are 6 "Recognised Accountancy Bodies" (RABs). To perform statutory audits, firms must be authorised or registered with one of the six RABS. The rules and regulations for each of these must be approved by IAASA.

177. Chartered Accountants Ireland is the largest of these recognised accountancy bodies and subjects each of its members to accreditation in order to conduct audit work. Each audit firm is required to file an annual return and is subject to inspection at least once every 6 years. These inspections will generally assess the quality of audit work performed, including the sufficiency and appropriateness of evidence on the audit file to support audit opinions issued. The inspection is risk based, and if a member receives a poor rating and there is no improvement reported since the previous inspection, then a further inspection may be conducted more quickly. Similarly, an inspection may be prompted by 3rd party information or information in the annual return that suggests a lack of compliance. CAI has a Professional Conduct department to investigate complaints.

178. Under the tax law, some companies are required to provide accounting information with the annual return. Irish Revenue also regularly verifies accounting records as part of its audit process (including foreign companies that are resident in Ireland for tax purposes). As described above in section A.1, Irish Revenue regularly conducts audits and that section contains information on the frequency of audits and their results. Irish Revenue's audit and compliance programme is risk-driven using Revenue's REAP system. Many of the REAP rules focus on return filing and record keeping. In addition, each year Irish Revenue initiates a Random Audit Programme, its

primary function being to measure and track compliance with tax legislation. Since 2013, Irish Revenue has processed 32 criminal prosecutions for failure to produce, maintain or retain books and records.

### *Availability of accounting information in practice*

179. No issues arose during the period 2007-09 with respect to the availability of accounting information. In the current review period Ireland received 191 requests for accounting information and in the vast majority of cases the information was provided to the satisfaction of the peers. Irish Revenue does not indicate that there has been any issue in the availability of accounting records. A number of peers raised issues in respect of requests for accounting information, however, there is no indication that such issues are the result of accounting not being available. Rather, the issues related to aspect of elements C.1 (EOI Mechanisms) and C.5 (Timeliness and quality of EOI requests and responses) and are analysed in those sections.

## A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

180. The 2010 Report concluded that element A.3 was in place and Compliant. All requests for banking information had been answered.

181. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) in respect of accountholders be available. In this regard the AML law (CJA 2010, section 55) in Ireland requires that all banks are required to conduct CDD and retain documents and other records in relation to services and transactions carried out for each customer, as well as documents used to verify the identity of customers or beneficial owners for a period of at least five years from the date from which the bank completed a service to the customer or the date on which a service is discontinued. A small gap is noted in respect of information relating to trusts. The CJA 2010 only requires the identification of beneficiaries holding a vested interest in at least 25% of the capital of the trust, or the class of individuals in whose main interest the trust is set up or operates, or a person that has control over the trust. Therefore, beneficiaries who are entitled to less than 25% may, in principle, be considered a beneficial owner, however, not necessarily in all cases. In addition, Irish banks have additional obligations regarding beneficial ownership under FATCA/CRS legislation in relation to non-resident account holders. The compliance by banks with the requirements to maintain beneficial ownership information of their accountholders is subject to supervision and enforcement by the Central Bank.

182. During the previous review period Ireland had no issues in respect of the availability of bank information. During the current review period Ireland received 43 requests for banking information.

183. The updated table of determinations and ratings is as follows:

| Legal and Regulatory Framework | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of the legal and regulatory framework** | The CJA 2010 only requires the identification of beneficial owners holding a vested interest in at least 25% of the capital of the trust, or the class of individuals in whose main interest the trust is set up or operates, or a person that has control over the trust. Beneficiaries who are entitled to less than 25% may, in principle, be considered a beneficial owner, however, not necessarily in all cases. | Ireland should ensure that banks are required to identify all of the beneficiaries of the trust which has an account with a bank in Ireland as required under the standard. |
| **Determination: In Place** | | |
| **Practical implementation of the standard** | | |
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of EOIR in practice** | | |
| **Rating: Compliant** | | |

### *A.3.1. Record-keeping requirements*

184. The 2010 Report noted that Irish AML law requires that all credit and financial institutions retain documents and other records in relation to services and transactions for a period of at least 5 years from the date from which the designated person completes a service to the customer or the date on which a service is discontinued. Records are also required to be kept in respect of occasional transactions, for 5 years after a particular transaction or series of transactions are completed or discontinued. The penalties (CJA 2010, section 55) for failure to maintain these records are (a) on summary conviction, a fine not exceeding EUR 5 000 or imprisonment for a term not exceeding 12 months or both, or (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

### *Beneficial ownership information on account holders*

185. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. A small gap is noted in respect of information relating to trusts. The CJA 2010 only requires the identification of beneficiaries holding a vested interest in at least 25% of the capital of the trust, or the class of individuals in whose main interest the trust is set up or operates, or a person that has control over the trust. Therefore, beneficiaries who are entitled to less than 25% may, in principle, be considered a beneficial owner, however, not necessarily in all cases. It is noted that the CJA 2010 also requires that as part of the bank's CDD it is necessary to understand the client's ownership structure and obtain relevant documentation, in the course of which information regarding all the beneficiaries (regardless of their interest in the capital of the trust) may be obtained. Additionally, if the trustee is resident in Ireland or the trust has other connections to Ireland then other obligations under tax law or common law may apply.

186. All designated persons, including credit and financial institutions, are required to retain documents and other records in relation to services and transactions carried out for each customer, and documents used to verify the identity of customers or beneficial owners for a period of at least five years from the date from which the designated body completed a service to the customer or the date on which a service is discontinued. The Central Bank is responsible for monitoring compliance with the above obligations. In addition, financial institutions have additional obligations regarding beneficial ownership under FATCA and CRS legislation in relation to non-resident account holders.

### *Enforcement provisions to ensure availability of banking information*

187. In Ireland banks are supervised by the Central Bank. The Central Bank adopts a risk-sensitive approach to AML/CFT supervision of financial institutions. The Anti-Money Laundering division (AMLD) is a specialist division in the Central Bank focused on monitoring AML/CFT compliance and taking measures to ensure compliance. The supervision undertaken by AMLD is in addition to supervision undertaken by prudential supervisors under the Central Bank's prudential risk assessment framework.

188. Risk Evaluation Questionnaires (REQs) are compliance questionnaires that are issued to financial institutions for completion and returned to AMLD for assessment annually. The information requested includes details on ML/TF risk assessments, CDD and on-going monitoring, training, policies and procedures, financial sanctions, and suspicious transactions.

189. The information obtained from these returns provides AMLD with data in relation to financial institutions' AML/CFT control frameworks and

the ML/TF risks identified by individual financial institutions and sectors as a whole. AMLD uses this information to implement a risk-sensitive supervisory approach and assist in the selection process of financial institutions for inspection.

190. The primary tool used to monitor compliance by AMLD is through the use of on-site measures that consist of inspections (and follow-up measures) and review meetings. These are held at least once every three years. AMLD uses off-site measures consisting of AML/CFT returns, pre-authorisation reviews and other desktop reviews and an outreach and awareness building programme that maximises supervisory coverage of a wide range of types of financial institutions to promote awareness of and compliance with AML/CFT obligations and ML/TF risk.

191. The objective of AMLD's inspections is to monitor compliance with AML/CFT obligations and to take measures to ensure that compliance takes place. This occurs primarily through attendance at the financial institutions' premises and reviewing financial institutions' policies and procedures and other relevant documentation, interviewing key personnel within financial institutions, sample testing of CDD files and reviewing a sample of suspicious transaction reports (STRs).

192. Any deficiencies that are identified in the inspection process are communicated to financial institutions along with the action required to rectify the deficiency. An inspection will not be considered closed until such time as the financial institution has fully implemented its remediation plan to address all of the findings and required actions.

| Year | No. of on-site inspections | No. of desktop inspections | Total inspections | No. of findings | No. of remedial actions |
|---|---|---|---|---|---|
| 2013 | 22 | 7 | 29 | 252 | 457 |
| 2014 | 30 | 11 | 41 | 301 | 653 |
| 2015 | 32 | 8 | 40 | 280 | 534 |
| Total | 84 | 26 | 110 | 833 | 1 644 |

193. AMLD holds on-site meetings with senior management of financial institutions that are identified as higher risk or where AML/CFT issues have been identified. The meetings are usually held between senior supervisors in AMLD and the financial institution's compliance department (MLRO) to discuss key AML/CFT issues, including ML/TF risk assessment, CDD, Financial Sanctions and Suspicious Transaction Reporting. As at September 2016, 18 meetings have been held by AMLD supervisors with senior management of financial institutions.

194. Between 2013 and 2015, AMLD issued 84 post-inspection letters (PILs). Each PIL contained a number of findings. The Central Bank continues its supervisory engagement with the financial institution until each action item is addressed and the finding is considered remediated.

**Supervisory findings 2013-15**

| Year | Corporate governance | CDD | STRs | Training | Record keeping | Total |
|---|---|---|---|---|---|---|
| 2013 | 112 | 102 | 15 | 22 | 1 | 252 |
| 2014 | 90 | 145 | 37 | 25 | 4 | 301 |
| 2015 | 117 | 103 | 31 | 20 | 9 | 280 |
| Total | 319 | 350 | 83 | 67 | 14 | 833 |

195. On the specific issue of identifying the beneficial owner of accounts, supervisors were clear that identifying the natural person who controls the customer or on behalf of whom a transaction is undertaken is the fundamental question that financial institutions have to answer in conducting CDD. The fact that a person owns a given percentage of an entity is an indication of beneficial ownership but is not dispositive. In complex cases, understanding the ownership and control structure of the customer is vital, as well as the business purpose of both the business activity and the particular structure itself.

196. The CJA 2010 permits financial institutions to rely on 3rd parties in specific circumstances. The 3rd party must be a regulated person in an EU/EEA State or subject to equivalent regulation. Where this is the case, the financial institution remains liable for the CDD obligation, and is required to obtain the identity of the beneficial owner at the outset and obtain an undertaking from the 3rd party that it will deliver the CDD documentation in a timely manner. In the course of its supervision of financial institutions, the AMLD expects that where such an agreement is in place that it should have been tested to ensure that the information can be obtained when requested.

197. From an enforcement point of view, the Central Bank has not had any occasion to take action in respect of failure by a bank to keep and maintain updated records pertaining to the accounts and to financial and transactional information (including information on beneficial owners of clients).

198. AMLD has an outreach and awareness building programme that aims to ensure that financial institutions are aware of their AML/CFT obligations and understand the ML/TF risks relevant to their sectors. To this end, AMLD presents at a wide variety of conferences/seminars/presentations attended by representatives from each of the various financial services sectors. In 2015, the Central Bank spoke at events on topics such as conducting risk assessments, risk factors to be considered, applying a risk-based approach,

AML/CFT compliance obligations and EU regulatory changes in the 4th AML Directive.

199. In the period 2013-15 AMLD also conducted a series of inspections focused on particular sectors; banking, credit unions, funds and life insurance. The Central Bank has issued 4 sectoral reports arising from these inspections and each of the reports outlines key issues identified and the Central Bank's expectations in respect of AML/CFT compliance across key areas.

200. The Central Bank's website, is used to publish guidance, reports and bulletins as well as updates on new developments.

### *Availability of bank information in practice*

201. The 2010 Report found that Ireland had successfully responded to all of its requests for bank information in the period 2007-09. In the current review period Irish Revenue received 43 requests for bank information and has never encountered a situation where records were unavailable. Peers were generally satisfied with Ireland's response to their requests for banking information and did not raise any issue with respect to the availability or quality of bank information.

# Part B: Access to information

202. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

## 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).

203. The 2010 Report found that Irish Revenue had broad and specific powers to access information in order to respond to a request for information in relation to a liability to foreign tax. During the previous review period Irish Revenue used its information gathering powers in order to obtain bank information, but all other information requested during that time period was either in its possession, publicly available (through CRO or land registry databases), or was voluntarily provided by the person in possession of it.

204. Since the 2010 Report, changes have been made to Irish Revenue's access powers to make its access powers more efficient in relation to group requests and in situations where the name of the taxpayer is not known.

205. In the current review period, Ireland received 573 requests and Irish Revenue has not encountered any difficulties in obtaining information.

206. The updated table of determinations and ratings is as follows:

| Legal and Regulatory Framework | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of the legal and regulatory framework** | | |
| **Determination: In Place** | | |
| **Practical implementation of the standard** | | |
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of EOIR in practice** | | |
| **Rating: Compliant** | | |

### *B.1.1. Ownership, identity and bank information*

207. The 2010 Report analysed the procedures applied in the case of obtaining information generally and more specific rules for obtaining bank information. Generally, the same rules continue to apply, however, changes have been made to Irish Revenue's access powers to make the procedures more efficient in relation to group requests and in situations where the name of the taxpayer is not known.

#### *Accessing Information Generally*

208. In respect of information other than information held by a financial institution, Irish Revenue has various powers which can be used to obtain books, records and other documents (such as accounts (including balance sheets), registers and papers) as are in that person's power, possession or procurement that may be relevant (TCA sections 900, 901, 902, 902A, 905, 907A). The changes that have been introduced since the 2010 Report are (a) to allow Irish Revenue officers to seek information from a third party or a financial institution about a taxpayer or group of taxpayers whose identity or identities is or are not known; and (b) for Irish Revenue to request the High Court to direct that the existence of the disclosure order (made to a third party or financial institution) not be made known to the taxpayer.

209. It should be noted that as a standard approach Irish Revenue does not invoke its powers in the first instance. Rather, the first approach is a request for information to be provided voluntarily and this resulted in a positive response in all but 17 cases. This was the case during the previous review period and continues to be the case during the current review period.

210. Out of 573 total requests received from its partners during the reviews, Irish Revenue was able to provide the information in the vast majority of cases on the basis of information that was already held by itself or other governmental authorities or which was provided by third parties voluntarily. In total, Irish Revenue's information gathering powers were invoked only 17 times, and 10 of these cases were requests for bank information.

### *Accessing Bank Information*

211. The 2010 Report described 3 statutory powers available to Irish Revenue to access information from a financial institution with varying degrees of formality and severity in terms of their application. The basic provision is Section 906A of the TCA, which enables an authorised member of Irish Revenue's exchange of information team to issue a notice to a financial institution requiring the financial institution to do either or both of the following:

- make available for inspection by the authorised officer such books, records or other documents as are in the power, possession or procurement of the financial institution, and as contain, or may (in the authorised officer's opinion formed on reasonable grounds) contain, information relevant to a person's liability to foreign tax (TCA, section 906A(2)(a));
- furnish to the authorised officer such information, explanations and particulars as the officer may reasonably require and as are relevant to any such liability (TCA, section 906A(2)(b)).

212. In issuing the Notice the authorised officer:

- must have the consent in writing of a Revenue Commissioner;
- must have reasonable grounds for believing that the financial institution is likely to have information relevant to a liability of a person in relation to foreign tax; and
- must name the person whose liability to foreign tax is being enquired into or, in a case where the name of the person is not known, the notice must contain sufficient information to allow the institution to identify the account(s) by other means.

213. The term "reasonable grounds" is not defined in the legislation but generally there must be some information that links the information being sought to the financial institution. Similarly, "relevant" is not defined but in practice some connection must be established between the information being sought and the person whose liability to foreign tax is being enquired into. Irish authorities indicate that the threshold is not very difficult to meet and that any request which meets the "foreseeable relevance" standard under its

EOI mechanisms would satisfy the test. There is no EOI case law but recent case law for domestic tax purposes that analyses the powers of Irish Revenue in this context support the principle of an expansive interpretation of the powers. An example of such a case is An Inspector of Taxes v A Firm of Solicitors [2013], ITR97 : [2013] IEHC 67.

214. Once the authorised officer has reasonable grounds as above, a submission is drafted to obtain the consent of a Revenue Commissioner. Irish Revenue reports that drafting of the submission and obtaining the consent, if the Commissioner is satisfied with the submission, is an efficient process. The notice is issued as soon as is practicable after the consent is received. The section provides that the financial institution be given at least 30 days to respond to the Notice and, in practice, all Notices are issued with a 31 day time limit to respond (TCA, Section 906A(2)). On occasion, a financial institution has sought an extension of the time period (up to a few weeks) to comply and Irish Revenue granted this. In practice, financial institutions usually deliver the information well within the time period.

215. Section 907 of the TCA provides for an application to the Appeal Commissioners and is similar to Section 906A. The Tax Appeals Commission is an independent statutory body with rights to review certain tax matters. An authorised officer, with the consent of a Revenue Commissioner, may apply to the Appeal Commissioners seeking their consent to permit the authorised officer to obtain similar information to that in Section 906A from financial institutions in relation to a taxpayer, which is defined as a person whose identity is not known to the authorised officer and a group or class of persons whose individual identities are not so known (TCA, s. 907(1)(a)), where the authorised officer has reasonable grounds for suspecting that the taxpayer has failed or may fail to comply with his/her foreign tax obligations. In one recent case which used Section 907, a hearing at the Appeal Commissioners was obtained within a couple of weeks and consent was granted at that hearing. The notice was then served on the bank and the information was subsequently provided to the requesting EOI partner.

216. Section 908 of the TCA is similar to Section 907 and provides for an application to the High Court for an order requiring a financial institution to provide the information. It also allows Irish Revenue to seek an order freezing the assets and/or the accounts to which the order relates as well as an order suppressing the identity of the authorised officer. It further allows for an application by Irish Revenue to the Court to direct that the existence of the disclosure order not be made known to the taxpayer where the officer has reasonable grounds for suspecting that the disclosure of the order to the taxpayer would lead to a serious prejudice to the proper assessment or collection of tax (see further discussion of this aspect in section B.2 *Rights and Safeguards*, below).

217. Section 905 allows Irish Revenue the ability to enter premises and seize information. Previously this power was only used in domestic cases, but a member of the EOI unit is now authorised to use this power in EOI cases. This power has not been exercised yet for EOI cases, although Irish Revenue has experience with this in domestic cases.

218. To date no request for information has involved a court hearing. Revenue will at all times endeavour to have matters dealt with as quickly as possible.

219. During the period 2007-09 Irish Revenue did not have any difficulty obtaining information, either from financial institutions or other information holders. Similarly, there were no cases in the current review period where information could not be obtained.

### *B.1.2. Accounting records*

220. The powers described in section B.1.1. relating to information other than information held by a financial institution can be used to obtain accounting information. There are no particular rules that apply to accounting records that would impede the use of these powers.

221. During the current review period Irish Revenue received 191 requests for accounting information.

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

222. The powers to obtain information in the tax law are complemented by a provision that specifically addresses the situation of how such powers apply in the context of EOIR. This provision essentially deems the foreign tax being administered by the treaty partner to be a tax under Irish tax law for the purposes of applying the information gathering powers described above. Consequently, the issue of a domestic tax interest does not arise. There were no issues in this regard during the period 2007-09 and no such issues have arisen in the current review period.

### *B.1.4. Effective enforcement provisions to compel the production of information*

223. With respect to obtaining all types of information the Irish Revenue have the power to compel production either through the imposition of a fine or by obtaining an order of the High Court to produce the information in the case of failure to comply with a notice. The failure to comply with an order of the High Court constitutes contempt of court and is punishable by imprisonment.

224. This continues to be the case following the changes to the access powers. There were no cases during the period 2007-09 that the Irish Revenue had to resort to such measures in order to obtain information. In the current review period, Irish Revenue similarly did not have to resort to such measures in order to obtain information.

### *B.1.5. Secrecy provisions*

225. There are two types of secrecy or confidentiality provisions that are relevant for the purposes of this section: bank secrecy and professional secrecy. The rules in respect of each of these are analysed below.

#### *Bank secrecy*

226. The 2010 Report noted that there were no statutory bank secrecy rules in Irish law, rather bank information is subject to a duty of confidentiality and in any event the powers granted to Irish Revenue operate notwithstanding any other rules or laws regarding secrecy. This continues to be the case. Specific rules exist to obtain information held by a financial institution (see above).

#### *Professional secrecy*

227. The 2010 Report noted Irish Revenue's access powers do not require a person to provide information that would be protected by legal privilege, that is of a confidential medical nature or which is professional advice of a confidential nature given to a client (see 2010 Report, section B.2.). The 2010 Report found that, while the concept of "professional advice of a confidential nature" clearly extends beyond the solicitor-client relationship and would apply notably in the context of a tax adviser or other professional such as an accountant, this limitation is restricted to the "advice" and would not cover working papers or documents executed in the course of a transaction itself. In other words, this provision could not protect a person from disclosing the evidence of the fact of a transaction, such as contracts, deeds or other instruments. There are two Irish case decisions which support this view:

- Smurfit Paribas Bank Limited v. A.A.B. Export Finance Limited [S.C.No. 138 of 1989]
- Stephen Miley v. Mr. Justice Feargus Flood (the Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments) [2000 No. 310 J.R.]

The position as indicated above is still applicable.

## B.2. Notification requirements, 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.

228. The 2010 Report found that there were no issues regarding notification requirements or appeal rights and the element was determined to be In Place and rated Compliant. The powers relating to access to information have been amended since the 2010 Report to provide more effective powers where the identity of the taxpayer is not known. Notification of the taxpayer is required when Irish Revenue issues a notice for information under sections 902 and 906A of the TCA, that is when obtaining information from a third party or a financial institution respectively. If such notification is to be dispensed with then Irish Revenue would need to make use of specific exceptions available under sections 902A and 908 of the TCA. It should be noted that Irish Revenue only issued notices (under 902 and 906A) to obtain information in 16 out of 573 cases during the current review period.

229. The 2016 ToR have introduced a new requirement in circumstances where an exception to notification has been granted – in those cases there must also be an exception from time-specific post-notification. In Ireland, where there has been an exception to notification as described above then there is no obligation to notify the taxpayer at some future point in time.

230. The updated table of determinations and ratings is as follows:

| Legal and Regulatory Framework | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of the legal and regulatory framework** | | |
| **Determination: In Place** | | |
| **Practical implementation of the standard** | | |
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of EOIR in practice** | | |
| **Rating: Compliant** | | |

### *B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information*

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

#### *Notification*

232. The rules relating to access to information have been amended since the 2010 Report. Notification of the taxpayer was required in certain cases and there were no explicit rules regarding exceptions. During the period 2007-09 there were no requests for exceptions to notification. In any event, Irish Revenue indicate that they could have applied to a court to obtain an exception if necessary.

233. The rules described in Section B.1 require notification as soon as is practicable in all cases where Irish Revenue issues a notice. It should be noted that Irish Revenue only issued notices to obtain information in 16 out of 573 cases during the current review period.

#### *Exceptions to prior notification*

234. The powers to access information generally require the notification of the taxpayer under investigation as soon as practicable. If such notification is to be dispensed with then Irish Revenue would need to make use of specific exceptions available under sections 902A (for third parties) or 908 (for financial institutions). The use of either power necessitates an application to the High Court and the Irish Revenue must demonstrate that:

- there are reasonable grounds for believing that there has been non-compliance, and
- notification would entail "serious prejudice" to the investigation.

235. In addition to providing an exception to notification, the two provisions include an anti-tipping off rule. This means that where an exception to notification is granted, the information holder that is the subject of the notice is also prohibited from informing the taxpayer that the information has been requested.

236. The standard requires that rights and safeguards should not unduly prevent or delay effective exchange of information and states that, "for instance, notification rules should permit exceptions from prior notification (notably, 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)."

237. Irish Revenue has indicated that where information is required urgently from a financial institution or a third party and the requesting jurisdiction does not object to the taxpayer being notified then that notification does not impact on the speed of processing such a request. Where the taxpayer is known then notification will occur at the same time as the notice is served on the information holder. Where the taxpayer name is not known at the time of serving the notice, then the notification will occur as soon as is practicable thereafter. In practice this will usually be at the same time as the information obtained is sent to the requesting country. In this regard, Irish Revenue is of the view that an appeal to urgency would not justify or benefit from seeking an exception to notification since the information would be obtained and provided in the same amount of time, regardless of notification. In cases where the information is both required urgently and the requesting jurisdiction does not wish the taxpayer to be notified then while there is no specific rule that deals with "urgent" cases in sections 902A or 908, Irish Revenue states that an application to the High Court does not entail any procedure that is appreciably lengthier than would be the case in obtaining information generally. In practice, there has not yet been an application to the High Court in these circumstances and there is no reason to expect that it should delay a request in these cases. It should also be noted that a case of "urgency" may still meet the criterion of "serious prejudice" in the right circumstances.

238. With respect to the concept of "serious prejudice" more generally, this provision has not been tested in practice. Indeed, Irish Revenue received no requests for any exception to notification during the review period. However, Irish Revenue indicate that this would likely be judged on both qualitative and quantitative grounds – namely, the amount at stake and the nature of the case being investigated. It seems very likely that circumstances where the taxpayer may destroy evidence or flee the jurisdiction would meet this test. However, it has not been determined whether less extreme cases of "undermining the investigation", which are contemplated under the standard, would also meet this test. It is noted that to date in other Global Forum EOIR reviews, the cases that the Global Forum has determined would undermine the success of an investigation would also meet the "serious prejudice" test.

239. With regard to the need to demonstrate reasonable grounds for believing there is non-compliance, Irish Revenue officials are confident that this would always be satisfied in any EOI case where there was a need to seek exception to notification. Put another way, if there were no indication that the taxpayer had not complied with the law, then it would be very difficult to imagine that notifying the taxpayer would cause serious prejudice to the investigation. However, as noted above, this has not been tested in practice.

240. The rules are specifically designed to apply in serious cases and it appears that the thresholds should not be difficult to satisfy in those circumstances. Moreover, in such cases, the rules go above and beyond the standard in also providing for an anti-tipping off measure that binds the information holder. As a practical matter, this may be much more effective than a provision which matched the letter of the 2016 ToR, but which allowed the information holder to then notify the taxpayer. Finally, it must be taken into account that the notification rule only applies where Irish Revenue issues a notice to the holder of the information and this only occurred in a very small number of cases.

241. Nevertheless, the construction of the rules raises two ambiguities – whether "serious prejudice" is a more demanding threshold than the standard of "likely to undermine" and whether demonstrating grounds for believing there is non-compliance adds a further hurdle. Whether the rules meet the standard will depend on how they are applied by the Irish Revenue and the High Court in practice. Irish Revenue should communicate with its EOI partners to inform them as to the requirements of seeking exceptions to notification and should monitor the application of these rules in practice to ensure that they do not unduly prevent or delay effective exchange of information.

### *Post notification*

242. The requirement to have an exception to time-specific, post-exchange notification was newly introduced to the 2016 ToR and so was not dealt with in the 2010 Report. In Ireland, where there has been an exception to notification as described above then there is no obligation to notify the taxpayer at some future point in time.

### *Other rights and safeguards*

243. Any order made by the High Court may be appealed to the Supreme Court. Judicial review is also possible in principle, but has never been pursued. The 2010 Report noted that, in practice, persons asked to provide information occasionally ask for further justification for the request but have never refused to provide the information. In the case of bank information, the financial institution concerned had sometimes asked for more time than the 30 days given, but has never challenged the use of the power.

244. During the current review period there is one case where an information holder has not complied with a notice issued by Irish Revenue as they believe that it is not based on a valid request. Irish Revenue is not in agreement with their view and are now in the process of applying to the High Court for an Order compelling the information holder to provide the information. It is noted that over the review period, this is the only case (out of a total of 573 incoming EOI requests to Ireland), and the refusal to provide information or appeal to judicial remedy is not a systemic issue in Ireland.

# Part C: Exchanging information

245. Sections C.1 to C.5 evaluate the effectiveness of Ireland's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Ireland's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Ireland's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Ireland can provide the information requested in a timely manner.

## C.1. Exchange of information mechanisms

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

246. The 2010 Report concluded that Ireland's network of EOI mechanisms was "in place" and was rated Compliant. At that time, Ireland had 59 Double Tax Conventions (DTCs) and 15 Tax Information Exchange Agreements (TIEAs). All of these agreements met the standard except for 3 DTCs (with Austria, Belgium and Luxembourg) that did not meet the standard due to limitations on exchange of information in the partner jurisdiction and 1 DTC (with Switzerland) that only provided for EOI in limited cases. In addition to these bilateral mechanisms, Ireland was also able to exchange information pursuant to the EU Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation (EU DAC).

247. Since the 2010 Report, Ireland signed the Multilateral Convention on Mutual Administrative Assistance, as amended in 2010 (MAAC) on 30 June 2011, ratified it on 29 May 2013 and it entered into force on 1 September 2013. In addition, protocols to Ireland's treaties with Austria, Belgium, Luxembourg and Switzerland to include an exchange of information article that meets the EOIR standard have also been ratified by Ireland.

248. The 2010 Report did find that 18 of the EOI agreements that had been signed in the previous 18 months had not yet been ratified by Ireland and Ireland was recommended to bring its agreements into force as quickly as possible. All of the 18 agreements which were listed as not in force in the 2010 Report, were ratified by Ireland with effect from 6 February 2011. This

was the next Finance Act after the publication of the 2010 Peer Review. The 18 agreements are now all in force, having been ratified by both Ireland and its treaty partners. There were no subsequent delays in ratification of signed treaties by Ireland and the recommendation included in the 2010 Report is deleted.

249. In addition, besides entering into the MAAC, Ireland had concluded a further 24 new EOI agreements. To date, Ireland has EOI Relationships to the standard with 131 jurisdictions.

250. The EOIR standard now includes a reference to group requests in line with paragraph 5.2 of the Commentary. In addition, the foreseeable relevance of a group request should be sufficiently demonstrated, and that the requested information would assist in determining compliance by the taxpayers in the group. Ireland was able to process group requests over the review period. It is noted that four peers have raised issues regarding Irish Revenue's application of the foreseeable relevance standard. Some of the outstanding EOI cases are due to issues with the quality of requests and whether the requesting jurisdiction had exhausted all domestic means to obtain the information. Nevertheless, Ireland is in dialogue with peers to try to make progress in the outstanding cases. Ireland's interpretation of "foreseeable relevance" with regard to group requests or individual EOI requests is in line with the standard.

251. The updated table of determinations and ratings is as follows:

| Legal and Regulatory Framework | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of the legal and regulatory framework** | | |
| **Determination: The element is in place.** | | |
| **Practical implementation of the standard** | | |
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of EOIR in practice** | | |
| **Rating: Compliant** | | |

### *C.1.1. Foreseeably relevant standard*

252. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2010 Report found that Ireland's network of DTCs follow the *OECD Model Tax Convention* and are applied consistent with the Commentary on

foreseeable relevance. Similarly, Ireland's TIEAs follow the *2002 Model Agreement on Exchange of Information on Tax Matters*.

253. Ireland continues to interpret and apply its DTCs and TIEAs consistent with these principles. All of the new EOI arrangements which Ireland has signed since the 2010 Report included the term "foreseeably relevant" in their EOI Article, except for Ireland's treaty with Qatar which used the word "relevant" instead. Ireland explained that this term was used at the request of Qatar during treaty negotiations. Ireland confirmed that it would interpret the term according to the standard of foreseeable relevance that is consistent with the scope of article 26(1) of the OECD Model Tax Convention.

254. Ireland requires that the requesting jurisdiction provide sufficient information to demonstrate the foreseeable relevance of their request. Irish Revenue does not use a specific EOI request template apart from the eForm for use with EU member states. Over the review period, no request for information was declined by Ireland. However, some peers indicated that Irish Revenue had sought clarifications regarding the foreseeable relevance of certain requests.

255. Two of these requests (from different partners, Jurisdictions A and B) refer to financial accounting information of a company in Ireland. Ireland indicates that in both cases the requesting jurisdictions sought information that would be foreseeably relevant if the company had a permanent establishment in the requesting state. However, it was not clear to Ireland that the requesting state had determined that a permanent establishment existed. It was Irish Revenue's view that the foreseeable relevance of much of the information requested in each of the cases was dependent on whether a permanent establishment existed. Irish Revenue will provide, in the first instance, any information foreseeably relevant to the determination of whether a permanent establishment exists. If the conclusion on that ground is positive, then Irish Revenue will provide all information that is foreseeably relevant to determining the income of the permanent establishment. While communication issues have delayed the resolution of these cases, both peers report that they are generally satisfied with the manner in which these cases are being handled, although would have preferred the matter to be resolved more quickly without the need for clarification, particularly given the need to proceed quickly with tax examinations. In their views, Ireland's approach to the issue is different from their own understanding, pursuant to which the information requested could have been provided under the EOIR standard in the first instance.

256. Foreseeable relevance should be interpreted to allow exchange of information to the widest possible extent. In this case, the determination of whether the taxpayer had a permanent establishment in either requesting state is a threshold question since without a PE, the requesting jurisdiction would have no basis on which to assert its taxing power. If a PE existed then

there is no disagreement that the information requested would be foreseeably relevant, and the converse is true. Where the requesting jurisdiction is clearly of the opinion that the taxpayer does have a PE in its jurisdiction, then the issue would not arise with respect to the request for any information related to the taxpayer's earnings that are attributable to that PE. In this case, however, it appears that that determination was not clearly made by the requesting jurisdictions. Therefore, for the sole reason that the requesting country did not completely demonstrate that the taxpayer had a permanent establishment, Ireland's approach is not contrary to the EOIR standard, although the expectations of its partners is at the same time not unreasonable.

257. The peers concerned are significant EOI partners of Ireland. Ireland has been in communication with both peers to ensure that its approach is clear and has devoted greater resources to ensuring these relationships are given the appropriate attention and these efforts should be continued.

258. Another peer (Jurisdiction C) sent 12 EOI requests to Ireland over the review period. Ireland indicated that there were some issues regarding the completeness of requests. For example, there were several cases where, in Irish Revenue's view, insufficient information was provided to identify the taxpayer and/or the deadline for the information to be useful was very close to the date that Ireland had received the request. Ten of the 12 requests from Jurisdiction C required clarifications. There were also long periods of delay before Jurisdiction C reverted to Ireland on these clarifications.

259. In respect of the standard on foreseeable relevance, Jurisdiction C mentioned four specific cases which pertained to a company (termed "Company X") in Jurisdiction C. In the first request, Company X had one transaction with an Irish company, and Jurisdiction C requested the ownership information and all the bank records over a number of years for the Irish company. In Irish Revenue's view, Jurisdiction C had not explained the relationship between the Irish company and Company X and therefore it was unclear why the information on the Irish company was foreseeably relevant. After receiving clarification from Jurisdiction C, Ireland provided the details of the one transaction that had occurred between Company X and the Irish company. In three related requests, Jurisdiction C requested ownership and banking information on three other Irish companies because they had the same director in common as the Irish company. Irish Revenue noted that the director in question was director of a number of companies in Ireland. Therefore, in Irish Revenue's view, the fact that the person was director of another Irish company did not mean that information on those companies was, absent any other connection with the Jurisdiction C taxpayer, foreseeably relevant. Ireland was able to provide Jurisdiction C with the legal ownership information of the three Irish companies based on records which are publicly available from the CRO.

260. Irish Revenue has only queried the foreseeable relevance of information sought by its EOI partners in 25 cases out of 573 requests. In these cases, it appears that there were bona fide reasons to revert to the EOI partner to seek clarification on the foreseeable relevance of the information. This is consistent with the EOIR standard, particularly as described in the commentary to Article 26 of the OECD Model Tax Convention.

### *Group requests*

261. Irish Revenue's procedures to deal with group requests are very similar to those used for dealing with an individual request and are detailed in Ireland's EOI Work Manual (see element C.5 for details). The main difference relates to the information that must be included in the request as per paragraph 5.2 of the Commentary to Article 26 of the OECD Model Convention, which includes the following information that the requesting jurisdiction should provide: (i) a detailed description of the group, (ii) the specific facts and circumstances that have led to the request; (iii) an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis; and (iv) a showing that the requested information would assist in determining compliance by the taxpayers in the group.

262. During the review period, Ireland received 7 requests that had the characteristics of group requests. One of the requests pertains to 35 tax residents in another jurisdiction (Jurisdiction D) providing services through a website operated by an Irish company. The individuals were likely to be earning income that was taxable in Jurisdiction D. However, Jurisdiction D had no indication that the individuals had not reported the income. Jurisdiction D was not able to provide the names of these 35 individuals, rather they were identified by their account numbers on the website.

263. Since receiving the request, Ireland has been in contact and had discussions with Jurisdiction D to clarify the scope of its request. Ireland's view was that the information provided initially by Jurisdiction D did not seem to provide reasonable grounds to suggest that these 35 individuals had been non-compliant in fulfilling their tax obligations in Jurisdiction D, as required by the standard in respect of group requests. Furthermore, it was not clear to Ireland whether Jurisdiction D had exhausted all domestic means to identify these 35 individuals to determine whether they had declared all income on their tax returns.

264. Ireland further explained that it does not need the requesting jurisdiction to meet a high bar in terms of how the requested information is foreseeably relevant for the group, rather it is important for the requesting jurisdiction to have demonstrated that some work had been done and that there is a factual element to suggest non-compliance in the tax affairs of

members of the group (even if that were only a certain number of taxpayers identified in the group being investigated concerning their income and the jurisdiction determining that there had been a failure to disclose this income on those taxpayer's tax returns). Both jurisdictions liaised successfully on the issue and the information has now been obtained and sent to the requesting jurisdiction.

265. The inclusion of paragraph 5.2 in the Commentary for Article 26 of the OECD Model Tax Convention states that the foreseeable relevance of a group request should be sufficiently demonstrated such that the requested information would assist in determining compliance by the taxpayers in the group. Where necessary, Irish Revenue would seek clarifications to ensure that the requests for information are not a fishing expedition, and that the request is legitimate and the requested information foreseeably relevant in assisting the tax investigation in its partner jurisdiction.

266. The approach by Irish Revenue in this case is consistent with the EOIR standard.

### *C.1.2. Provide for exchange of information in respect of all persons*

267. The 2010 Report found that none of Ireland's EOI agreements restricts the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties. No issues arose in the period 2007-09 in this regard.

268. The additional agreements that Ireland has entered into since the 2010 Report similarly do not have such restrictions. Peers have not raised any issues in practice during the current review period.

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

269. The 2010 Report did not identify any issues with Ireland's network of agreements in terms of ensuring that all types of information could be exchanged and no issues arose in practice.

270. Ireland's DTC with Thailand (in force since 1 January 2016) does not include an equivalent provision to that provided by paragraph 5 of Article 26 of the OECD Model Tax Convention. This was because during the negotiations in 2008, Thailand signalled an issue with including the provision due to aspects of its domestic law. However, both jurisdictions confirmed their respective abilities to exchange bank information in response to a valid request, thereby achieving the standard contained in paragraph 5 of Article 26 of the OECD Model Tax Convention. This confirmation is set out in the agreed minutes to the treaty negotiations. Regarding Ireland's DTCs with Egypt (in force since 9 April 2012) and Saudi Arabia (in force since

19 October 2011) – both provide for the exchange of bank and ownership information subject to the treaty partner having the enabling domestic law in place. This was because at the time of negotiations these jurisdictions did not have the domestic law in place to allow for exchange of bank information. However based on the text as agreed between Ireland and these two treaty partners, such exchanges would apply automatically once the two treaty partners' domestic laws allowed them to comply.

271. The other additional agreements that Ireland has entered into since the 2010 Report all include paragraph 5 of the Article 26 of the OECD Model Tax Convention which provides that a contracting state may not decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Peers have not raised any issues in practice during the current review period.

### *C.1.4. Absence of domestic tax interest*

272. The 2010 Report did not identify any issues with Ireland's network of agreements regarding a domestic tax interest and no issues arose in practice.

273. The additional agreements that Ireland has entered into since the 2010 Report all include paragraph 4 of the Article 26 of the OECD Model Tax Convention which provides that a contracting state may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes. Peers have not raised any issues in practice during the current review period.

### *C.1.5. Absence of dual criminality principles*

274. The 2010 Report did not identify any issues with Ireland's network of agreements in respect of dual criminality and no issues arose in practice.

275. The additional agreements that Ireland has entered into since then do not include dual criminality provisions. Peers have not raised any issues in practice.

### *C.1.6. Exchange information relating to both civil and criminal tax matters*

276. The 2010 Report found that Ireland's network of agreements provided for exchange in both civil and criminal matters and no issues arose in practice.

277. The additional agreements that Ireland has entered into since then provide for exchange of information in both civil and criminal tax matters.

### *C.1.7. Provide information in specific form requested*

278. The 2010 Report noted that Irish Revenue applies its EOI mechanisms consistent with the OECD Model and so is prepared to provide information in the specific form requested to the extent such form is known or permitted under Irish law or administrative practice. The 2010 Report noted positive experience with this in the period 2007-09. Similarly no issues arose in practice during the current review period.

### *C.1.8. Signed agreements should be in force*

279. The 2010 Report noted that 18 of Ireland's EOI mechanisms were not in force and Ireland was recommended to bring its EOI agreements into force as quickly as possible. However, the 2010 Report did not identify any particular issue with the process through which Ireland ratifies its international agreements and none of those agreements had been signed more than 18 months previously. Since then, Ireland has ratified the 18 agreements. For the current review, two of Ireland's 98 signed agreements are not yet in force – the Belgium Protocol and the Saint Kitts and Nevis TIEA – but have been ratified by Ireland. A third agreement – the TIEA with Macao – has been signed very recently (in September 2016).

**Bilateral EOI Mechanisms**

| | | | |
|---|---|---|---|
| A | Total number of DTCs/TIEAS | A = B+C | 98 |
| B | Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force | B = D+E | 3 (2 have been ratified by Ireland) |
| C | Number of DTCs/TIEAs signed and in force | C = F+G | 95 |
| D | Number of DTCs/TIEAs signed (but pending ratification) and to the Standard | D | 3 (2 have been ratified by Ireland) |
| E | Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard | E | 0 |
| F | Number of DTCs/TIEAs in force and to the Standard | F | 95 |
| G | Number of DTCs/TIEAs in force and not to the Standard | G | 0 |

280. In addition to Ireland's bilateral mechanisms Ireland signed the MAAC in June 2011. The MAAC was ratified and entered into force just over 2 years later in September 2013. The MAAC has 110 participants, including Ireland. Ireland's network of bilateral EOI mechanisms includes agreements with 22 jurisdictions that do not participate in the MAAC, bringing Ireland's total network of EOI partners to 131.

281. Ireland has made good progress in ratifying EOI signed agreements in a timely manner since the last review, and no systemic issues relating to ratification have been identified. Accordingly, the previous recommendation for Ireland to ensure that its EOI mechanisms are brought into force as quickly as possible is removed.

### *C.1.9. Be given effect through domestic law*

282. Ireland has in place the legal and regulatory framework to give effect to its EOI mechanisms. No issues were raised in the 2010 Report in this regard, and similarly no issues arose in practice during the current review period.

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

> The jurisdiction's network of information exchange mechanisms should cover all relevant partners.

283. The 2010 Report found that element C.2 was In Place and rated Compliant. No peers have raised any issues regarding Ireland entering into an EOI mechanism. Ireland's network of DTCs and TIEAs cover a wide group of jurisdictions across Europe, Asia, the Americas and financials centres in the Caribbean and Pacific Islands. Currently, Ireland has an EOI relationship with 131 partners. Since the 2010 Report, Ireland's EOI network has expanded considerably with 24 new agreements (13 DTCs and 11 TIEAs) concluded. Of the few that are not in force, all have been ratified by Ireland (apart from the Macao TIEA which was recently signed in September 2016). In addition, the MAAC is in force for Ireland since 1 September 2013.

284. Ireland reports that negotiations for the revision of the existing agreements with Mexico and the Netherlands have concluded and negotiations are at various stages for the revision of existing agreements with India and South Africa. Costa Rica and Seychelles had earlier approached Ireland for TIEAs, but in both cases, these jurisdictions suspended negotiations as they had signed the MAAC. The Philippines had asked Ireland for a TIEA in response to Ireland's request to open DTC negotiations, but this has lapsed. It is, however, noted that both Ireland and the Philippines are signatories to the MAAC.

285. Ireland should continue to develop its EOI network with all relevant partners.

286. The updated table of determinations and ratings is as follows:

| Legal and Regulatory Framework | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of the legal and regulatory framework** | | |
| **Determination: The element is in place.** | | |

| Practical implementation of the standard | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of EOIR in practice** | | |
| **Rating: Compliant** | | |

## C.3. Confidentiality

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

287. The 2010 Report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in Ireland regarding confidentiality were in accordance with the standard. No issues in practice were found.

288. Some of Ireland's access powers require that the notices sent by Irish Revenue to third party information holders include the name of the taxpayer (where known). The standard provides that all information is confidential, but allows the Competent Authority to disclose the minimum amount of information necessary to the information holder to obtain the information requested. Although Ireland very rarely used its access powers under s902 and s906A of the TCA (they were used in 16 out of 573 EOI cases it received over the review period and information beyond the minimum necessary was disclosed in only one of these cases), the requirement that the name of the taxpayer be disclosed goes beyond the standard and it is recommended that Ireland does not disclose to third parties, information that is not needed to obtain the information requested. It is noted that Ireland has other access powers at its disposal that would not require disclosure of the identity of the taxpayer in these cases and Irish Revenue indicates that it would use these powers as appropriate.

289. The updated table of determinations and ratings is as follows:

| Legal and Regulatory Framework | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of the legal and regulatory framework** | | |
| **Determination: The element is in place.** | | |

| Practical implementation of the standard | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of EOIR in practice** | | |
| **Rating: Compliant** | | |

### *C.3.1. Information received: disclosure, use and safeguards*

290. The 2010 Report concluded that all of Ireland's DTCs require that information exchanged under the DTCs be treated as secret, though the exact language differs depending on the age of the Convention. The majority of Irish DTCs reflect the language in *Article 26 (1) of the 2005 OECD Model Tax Convention* i.e. "information shall be treated as secret in the same manner as information obtained under the domestic laws". The new treaties entered into by Ireland since the 2010 Report all contain appropriate provisions regarding confidentiality and the majority of Ireland's DTCs permit the disclosure of information only for use for tax purposes.

291. The Exchange of Information article in the Ireland-Germany DTC contains the additional provision that the information exchanged may be used for other purposes if the laws of both jurisdictions permit such use and if the competent authority of the state supplying the information authorises such use. This is consistent with the update to article 26 of the OECD Model Tax Convention.

292. The EU DAC also contains safeguards corresponding to those in *Article 26 (1) of the OECD Model Tax Convention* restricting the disclosure of information by the competent authority of the receiving state. Where information is communicated to Irish Revenue under the EU DAC it is subject to the same requirements of secrecy described above in relation to DTCs.

293. The 2010 Report found that Irish Revenue staff were subject to appropriate statutory obligations (under section 4 of the Official Secrets Act 1963, section 851A of the TCA, Data Protection Acts 1988 and 2003 as well as the Civil Service Code on Standards of Behaviour) regarding confidentiality and staff guidelines echo the requirement in Ireland's DTCs and in the EU DAC to keep information secret in the same way as if obtained from domestic sources.

294. Since the 2010 Report, Ireland had has made a number of amendments to its access powers to provide more effective powers where the name of the taxpayer is not known. The access power under s. 902 and 906A TCA requires that the notices sent by Irish Revenue to third party information holders include the name of the taxpayer (where known). However, separate but similar powers under sections 907 and 907A (by application to the Appeals

Commissioners) and sections 902A and section 908 (by application to the High Court) allow Irish Revenue to obtain an order requiring a third party or financial institution respectively to provide relevant documents or make relevant documents available for inspection. None of these powers involve the notification to the third party or financial institution of the name of the person under investigation. However, it should be noted that, for the application of these powers under sections 902A and 908, it is necessary to meet certain threshold conditions that there are (a) reasonable grounds for believing that the taxpayer may have failed to comply and (b) the failure is likely to lead to serious prejudice in the assessment or collection of tax. Additionally, Irish Revenue has a power under section 905 to enter premises and obtain information, including for the purposes of EOI. This power can be exercised by an authorised officer. The head of the EOI unit is such an authorised officer. No disclosure of the taxpayer's identity is required in that case.

295. The standard provides that all information is confidential, but allows the Competent Authority to disclose the minimum amount of information necessary to the information holder to obtain the information requested. In cases, where the name of the taxpayer under investigation is part of the information that must be disclosed in order to obtain the requested information (for example, if the taxpayer is also the accountholder of a bank account), then there is no impact on the standard. However, if the taxpayer under investigation is a connected party and not the person whose information is being sought, then identifying that taxpayer as the person under investigation might not be part of the minimum information necessary to obtain the information requested and the disclosure of the taxpayer's identity in that case would be contrary to the confidentiality requirements of the EOIR standard.

296. Irish Revenue does not invoke its specific statutory powers when seeking information from persons other than financial institutions generally but rather requests that the information be provided voluntarily. According to Irish Revenue, information is provided voluntarily by third party information holders in the majority of cases. Over the review period, Irish Revenue only invoked its statutory powers on 17 occasions. In 16 of these cases s. 902 or s. 906A was used and in 15 of these the name of the taxpayer was included in the notice (but not the fact that the person was the person under investigation) because it was part of the minimum information necessary to obtain the information requested. In only one case, the information was obtained in relation to a person connected with the investigation, and in that case the notice indicated that it was related to the investigation of another taxpayer, whose identity was included in the notice. Therefore, in this case the identity of the taxpayer under investigation was disclosed contrary to the EOIR standard.

297. Irish Revenue indicates that in a similar future case where the identity of the taxpayer would have to be disclosed if their powers under s. 902

or 906A were used, then they would instead invoke other powers, as appropriate, which would not require such disclosure. Although some of these powers require that Irish Revenue satisfy a higher threshold than the powers under s. 902 and 906A require and so may not be available in all cases, Irish Revenue have indicated that it would utilise powers under section 905, when seeking information to respond to EOI requests. Section 905 allows an authorised officer to enter a premises and require the business occupant to produce any records relevant to a tax liability, whether an Irish or foreign tax liability. This is the power routinely used by Irish Revenue officers in the performance of compliance visits to business premises. Irish Revenue have confirmed that there are over 2 000 officers within Irish Revenue (including the head of the EOI Unit) who are authorised to exercise this power.

298. Irish Revenue states that it will recommend amendments to the powers under s. 902 and 906A in the Finance Bill 2017 which is due to be passed into law in December 2017, to allow them to use those powers in accordance with the EOIR standard.

299. In summary, during the period of the review the formal information powers were only used to respond to 17 requests for the exchange of information, out of the total 573 requests. The powers requiring the naming of the taxpayer were used to respond to 16 of those requests and only on 1 occasion was the taxpayer's name given although it was not necessary in order to obtain the relevant information. Given the low proportion of cases in which this issue arose during the review period, and the fact that an established alternative power that would not require the disclosure of the taxpayer's identity is available in future cases, the one case does not reveal a systemic issue and is not considered to be material. It is, however, recommended that Ireland should ensure that the use of its powers does not require disclosure of information that would not be in line with the standard.

### *C.3.2. Confidentiality of other information*

300. The 2010 Report notes that all communications between Irish Revenue and an exchange-of-information partner are treated as confidential in the same way as information received under an exchange of information mechanism. Unauthorised disclosure of information received under an exchange of information mechanism is a breach of the Official Secrets Act 1963, which carries a maximum penalty of seven years in prison. The official involved would be subject to disciplinary measures as set down in the Civil Service Disciplinary Code up to and including dismissal. Further, unauthorised disclosure under Section 851A of the TCA is an offence. Officials found guilty of an offence under section 851A shall be liable to a fine of EUR 3 000 (on summary conviction) or EUR 10 000 (for conviction on indictment).

*Confidentiality in practice*

301. The 2010 Report did not raise any issue with regard to confidentiality in practice. During the current review period, all material provided by partner jurisdictions under information requests is stamped to clearly indicate that the material is provided under an exchange of information mechanism and subject to the confidentiality provisions of that mechanism and may only be disclosed in accordance with that mechanism. Only officers working in the EOI unit have access to the EOI Case Management System. Electronic data is stored on a secure system where access to EOI data is restricted to securely authenticated users in the EOI unit. Officers of the EOI unit operate a clean desk policy – hard copy data is locked away every evening and the location of the keys is known only to EOI unit staff. The EOI unit is housed in a building which has a reception desk which is manned during business hours and has a 24/7 security presence. No-one can access the offices in the building without a security card or being in the company of a person with a security card. Finally, during the review period, Ireland has confirmed that there has been no case where information received from an EOI partner has been improperly disclosed due to such a breach.

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

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

302. The 2010 Report concluded that Ireland's information exchange mechanisms allow the parties to decline to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*). The new EOI mechanisms entered into by Ireland contain the same provisions. In practice, during the current review period Irish authorities confirmed that it did not experience any practical difficulties in responding to EOI requests due to the application of rights and safeguards in Ireland.

303. The updated table of determinations and ratings is as follows:

| Legal and Regulatory Framework | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of the legal and regulatory framework** | | |
| **Determination: The element is in place.** | | |

| Practical implementation of the standard | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies identified in the implementation of EOIR in practice** | | |
| **Rating: Compliant** | | |

### *C.4.1. Exceptions to provide information*

304. With regard to attorney client privilege, Irish Revenue's powers do not permit requests for (a) information with respect to which a claim to legal professional privilege could be maintained in legal proceedings, (b) professional advice of a confidential nature given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose), or (c) information of a confidential medical nature. There are two categories of "legal professional privilege" in Ireland, namely (i) legal advice privilege and (ii) litigation privilege.

305. Irish authorities state that in order to attract "legal advice privilege", the material in question must satisfy four criteria. First, the material must constitute or refer to a communication between a lawyer and client. Second, the communication must arise in the course of the professional lawyer-client relationship. Third, the communication must be confidential in nature. Fourth, it must be for the purpose of giving or receiving legal advice (which is privileged) rather than legal assistance (which is not privileged).

306. Irish authorities further explained that "litigation privilege" concerns communications between either a client or his lawyer and a third party where the dominant purpose of that communication is to prepare for actual, or reasonably apprehended, litigation.

307. Finally, the concept of "professional advice of a confidential nature" extends beyond the solicitor-client relationship and would apply notably in the context of a tax advisor or other professionals such as an accountant. However, this limitation is restricted to the advice and would not cover working papers or documents executed in the course of a transaction itself. In other words, this provision could not protect a person from disclosing the evidence of the fact of a transaction, such as contracts, deeds or other instruments.

308. These principles as they relate to obtaining information for EOI purposes have been litigated in Irish courts and the powers of Irish Revenue to obtain information from lawyers has been interpreted in accordance with the standard. Two Irish case decisions which support this view are (i) Smurfit Paribas Bank Limited v. A.A.B. Export Finance Limited [S.C.No. 138 of 1989] and (ii) Stephen Miley v. Mr. Justice Feargus Flood (the Sole Member of the Tribunal of Inquiry into Certain Planning Matters and Payments) [2000 No. 310 J.R.].

## C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

309. In order for exchange of information to be effective, jurisdictions should request and provide information under its network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions

310. The 2010 Report concluded that Ireland had an effective system for exchanging information and element C.5 was rated Compliant. Irish Revenue is responsible for the exchange of information under all of Ireland's EOI mechanisms. The day-to-day operation was handled by an experienced and competent staff of 5 officers and the system for handling requests efficient and well-organised. Virtually all of Ireland's exchange-of-information partners reported that they had a good relationship with Irish Revenue staff and were satisfied with the quality of the responses provided. In complex cases, it was found that Irish Revenue engages in appropriate dialogue with its counterparts to ensure that the exchange of information is handled efficiently. Overall, response times were somewhat slower than ideal – final answers were provided within 90 days only about half the time – and interim responses and updates were not consistently provided.

311. The 2010 Report did note that one important exchange-of-information partner had concerns regarding the quality and completeness of some of the responses provided. However, there were a great many exchanges between these partners in the previous three years, the vast majority of which appear to have been handled without any difficulty. It appeared that the difficulties in this case resulted from confusions between Irish Revenue and its counterparts and could be addressed through greater communication.

312. The 2010 Report made two recommendations, one with respect to interim responses and updates and one with respect to its relationship with one EOI partner.

313. Ireland has addressed the recommendations made in the 2010 Report. First, Irish Revenue has deployed a new case management system that allows each case to be tracked and creates an automatic reminder ahead of the 90 day deadline. Ireland was able to issue replies or status updates within 90 days in 98% of cases in 2013/14, in 98% of cases in 2014/15 and in 86% of cases in 2015/16. Ireland explained that the small deficit generally relates to cases where a final reply is due to issue shortly after the 90 days. Inputs from peers corroborate these results. The previous recommendation for Irish Revenue to provide status updates within 90 days in all cases has been deleted.

314. Ireland further reported that since 2010, it had worked hard to improve communications with the EOI team in the particular partner flagged in the 2010 Report. This included regular meetings, phone calls and emails. The work has resulted in an improved relationship which was reflected in the peer input provided by the other jurisdiction for this Peer Review.

315. In all other respects Ireland continues to perform to the standard in terms of responding to requests, which totalled 573 during the period under review. The organisation and procedures are complete and coherent and peers were generally very satisfied with the responses sent. Similarly, Irish Revenue's system for sending requests is well developed and peers raised no issues with the quality of these requests.

316. The updated table of determinations and ratings is as follows:

| Determination: Not Applicable | | |
|---|---|---|
| | **Underlying Factor** | **Recommendation** |
| **Deficiencies Identified in the Implementation of EOI in Practice** | | |
| **Rating: Compliant** | | |

### *C.5.1. Timeliness of responses to requests for information*

317. Over the period under review (1 April 2013-31 March 2016), Ireland received a total of 573 requests for information. The information requests in these requests[3] related to (i) ownership and identity information (23 cases), (ii) accounting information (191 cases), (iii) banking information (43 cases) and (iv) other type of information (495 cases). The entities for which information was requested[4] are broken down to (i) companies (289 cases),

3. Please note that some requests entailed more than one information category.
4. Please note that some requests entailed more than one entity type.

(ii) individuals (275 cases), (iii) bearer shares (0 case), (iv) trusts (5 cases), (v) foundations (0 case), and (vi) other entities (4 cases). For these years, the number of requests where Ireland answered within 90 days, 180 days, one year or more than one year, are tabulated below.

**Statistics on response time**

| | 2013/14 | | 2014/15 | | 2015/16 | | Total | |
|---|---|---|---|---|---|---|---|---|
| | Num. | % | Num. | % | Num. | % | Num. | % |
| Total number of requests received | 187 | 32 | 210 | 37 | 176 | 31 | 573 | 100 |
| Full response: ≤ 90 days | 126 | 67 | 147 | 70 | 102 | 58 | 375 | 65 |
| ≤ 180 days (cumulative) | 161 | 86 | 190 | 90 | 134 | 76 | 485 | 85 |
| ≤ 1 year (cumulative) | 177 | 95 | 204 | 97 | 161 | 91 | 542 | 95 |
| > 1 year | 10 | 6 | 5 | 2 | 2 | 1 | 17 | 3 |
| Declined for valid reasons | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Outstanding cases after 90 days | 61 | | 63 | | 74 | | 198 | |
| Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days) | 60 | 98 | 62 | 98 | 64 | 86 | 183 | 92 |
| Requests withdrawn by requesting jurisdiction | 0 | 0 | 0 | 0 | 1 | 0.56 | 1 | 0.17 |
| Failure to obtain and provide information requested | 3 | 1.6 | 1 | 0.4 | 0 | 0 | 4 | 0.6 |
| Requests still pending at date of review | 0 | 0 | 1 | 0.4 | 13 | 7.3 | 14 | 2.4 |

Ireland counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, Ireland count that as 1 request. If Ireland received a further request for information that relates to a previous request, with the original request still active, Ireland will append the additional request to the original and continue to count it as the same request.

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

318. Ireland explained that requests that are not fully dealt with within the 90 days typically relate to complex queries covering a variety of types of information. For this review, a total of 14 cases are still outstanding – 1 received in 2014/15 and 13 received in 2015/16. Ireland indicated that the outstanding case for 2014/15 is a complex request relating to accounting and other information. It has required clarifications and the use of Irish Revenue powers. The 13 open requests for 2015/16 are also complex requests that have required one or more requests for clarification to the requesting jurisdiction. The information requested relates primarily to accounting information. Other types of information requested relate to transfer pricing, general tax information, legal ownership and banking information. These requests are ongoing and all cases have received initial responses.

319. In the period under review, 64 requests for clarification (or 11% of total EOI requests received) were made by Ireland to the requesting jurisdictions. Ireland explained that usually an EOI request contains multiple information items in respect of which information is being sought. Where a request contains multiple information items and clarification is only required on one or some items, processing of the items that do not require clarification will continue and information in relation to these items is supplied as part of an interim reply. Ireland further explained that the primary reason for clarification being sought was to ensure that their understanding of the request was correct.[5] This was caused by language issues or because additional background information was required to understand the request. Finally, Ireland explained that in some cases the request for clarification was made in order to ensure that the request met the standard of being foreseeably relevant. Nevertheless, Ireland has replied to or is in the process of replying to all requests and has never declined a request. Ireland noted that in some cases the time taken for the requesting country to respond to its request for clarification resulted in delays. As noted above in section C.1 regarding the foreseeable relevance standard.

### *C.5.2. Organisational processes and resources*

320. In Ireland, the exchange of information function under DTCs, TIEAs, the MAAC and the EU DAC is centralised in a single unit called the Exchange of Information (EOI) unit which is part of the International Tax Division in Irish Revenue. The EOI unit is responsible for all aspects of exchange of information requests for both incoming and outgoing requests.

321. The Competent Authorities in the EOI unit authorised by the Revenue Board are clearly identifiable to Ireland's EOI partners on the Global Forum Competent Authority website and the secure EU website. The EOI unit have regular contact with Ireland's significant partners via periodic meetings, by telephone and by email including CCN mail with Ireland's EU partners.

322. The EOI unit comprise 8 staff working full time in exchange of information on request (an increase of 3 people since the last peer review), and an additional 2 staff who work full time on automatic exchange of information. All of the staff working in the EOI unit previously worked in another area

5. Ireland stated that it had queried a number of requests from one peer where that peer had indicated that the information would not be useful after a particular date. Ireland explained that achieving data exchange before this date was not possible given that the requests were received within days of the date by which the peer had stated the information would no longer be of use. Ireland had clarified if the peer still wanted Ireland to pursue the requests given that they had indicated that the data would no longer be useful.

of Irish Revenue before being transferred to the EOI unit. The result of this is that the EOI unit has a wide range of technical expertise and skills as well as contacts across the entire organisation which it utilises to deliver effective EOI with Ireland's partner jurisdictions.

323. Irish Revenue undertakes an annual manpower review when the resources of each Division are assessed. Depending on circumstances additional resources may be allocated following the review. With regard to financial resources, the EOI unit receives a budget each year sufficient to conduct its work. On technical (IT) resources, the EOI unit has a dedicated EOI Case Management System which logs and tracks all cases – on request, spontaneous and automatic. All EOI unit staff have online access to all the relevant Irish Revenue systems containing taxpayer information, as well as online access to the Companies Registration Office and Land Registry to get details of company and other property ownership information, respectively. Finally, the EOI unit has access to Irish Revenue's in-house legal team for advice if issues arise.

324. On training, all staff in the EOI unit are provided with EOI on-the-job training when they join the team. In addition, new staff are mentored on joining the team by a more experienced team member. In 2006, a work manual was developed as a guide to all the EOI unit's internal processes and procedures. This manual is continually updated as legislation and standards change and procedures are improved. The on-the-job training focuses on the work manual and staff are encouraged to refer to it and to recommend improvements where appropriate. Furthermore, tax technical training is provided to all staff in the EOI unit, which is essential for the staff to fully understand requests from partner jurisdictions. Technical training completed in the last three years included (i) Diploma Applied Taxation, University of Limerick, (ii) Advanced Diploma in International Taxation, Chartered Institute of Taxation UK, (iii) Tax technical training from the Irish Institute of Taxation and (iv) Revenue internal technical training. Two Assistant Principal Competent Authorities attended the Global Forum Peer Review Assessor training course in London in May 2016.

### *Incoming requests*

325. When a request for information is received, it is stamped with the date of receipt and logged in the EOI Case Management System which generates a unique identification number. The date of receipt, identification number, name of taxpayer and name of requesting jurisdiction are also captured on the system. An acknowledgement letter is then sent to the jurisdiction and the request assigned to a Case Officer.

326. The Case Officer who is assigned the case conducts a preliminary examination of the request to determine the validity of the request.

These include checking the following (i) that the DTC/TIEA/Multilateral Convention is in effect, (ii) that the periods are covered by the applicable legal instrument, (iii) that the competent authority is authorised to make and receive requests, (iv) that the information being requested is foreseeably relevant, and (v) if the information should be available in the requesting jurisdiction and if it should be available check why the requesting jurisdiction was unable to source the information itself. The Case Officer will also take note at this stage as to whether the requesting jurisdiction had requested that the taxpayer not be contacted directly in relation to the request. Furthermore, if there is uncertainty as to what information is being requested, clarification is sought from the requesting jurisdiction. Pending clarification, the elements of the request which are clear will be processed. An interim reply in respect of those elements will be issued.

### *Internal process for status updates*

327. The EOI Case Management System automatically generates an acknowledgement task. The task is in the form of a letter for non-EU countries and an EU e-form for EU member state requests. Any items needing clarification are included in the letter of acknowledgement. The acknowledgement is issued as soon as possible. For EU member states, it is issued within 7 days of receipt of the request. For non-EU jurisdictions, the practice is where the request is received via electronic means, then it is acknowledged within 7 days; and where the request is received by post, then the practice is to combine the acknowledgement with the first letter to the jurisdiction. The first letter will depend on the case but if it is not a final reply it will usually include information that is available publicly or held by the tax authority.

328. One of the recommendations in the 2010 Report related to the provision of status updates for cases where a request could not be answered within 90 days. It is now standard practice within the EOI unit to issue updates to the requesting jurisdiction where Ireland is not in a position to provide a final reply within 90 days of the receipt of a request. This is ensured because the Case Management System sends an automatic reminder to the Case Officer 10-14 days before the 90 day deadline. Interim replies are issued at least every 90 days until the final reply is issued. In addition, if there are significant developments in the case, an interim reply updating the requesting jurisdiction on this development will be issued. This procedure is documented in the EOI work manual. Status updates were provided in virtually all cases in the first 2 years of the review period. In the third year the number falls slightly, however, Irish Revenue indicate that the small number of cases where an update was not sent within 90 days were cases where a final reply was to be sent very shortly after the 90 days. In the 10 cases concerned, 8 were replied to or status updates were provided within 20 days of the 90 day limit.

329. Peer inputs received indicates that peers generally agreed that Ireland provided timely status updates for outstanding requests.

### *Procedure for obtaining requested information which are in the hands of the tax authorities*

330. The Case Officer is responsible for researching, collating and drafting the replies. To the extent possible, the Case Officer sources the information requested by interrogating Irish Revenue systems. The Case Officer completes a checklist and issues an interim reply (if some information is available) or final reply (if all information is available). The target response time for in-house information is to respond within 4-6 weeks from date of receipt of request. However, where tax returns are sought for earlier years and these are in paper form, the response time can be longer as the paper returns are in storage in the Irish Revenue warehouse. Also, where the Case Officer requires input from other Irish Revenue officers, the time can be longer.

### *Procedure for obtaining requested information which are in the hands of another government agency*

331. To the extent possible, the Case Officer sources the information requested by interrogating third party online systems, such as the CRO or land registry.

332. In the event that it is necessary to get the information requested directly from the taxpayer, the Case Officer will draft a letter to the taxpayer requesting the information to be provided voluntarily. The Case Officer will then monitor the case to ensure that the information is received within the specified period (normally 3 weeks). If the requested information is not provided, the Case Officer will contact the taxpayer. Depending on the response to the initial letter, a formal reminder may be issued which would include a reference to Irish Revenue powers and fines applicable. Depending on the response to the formal reminder, Irish Revenue powers will be used, where necessary, to formally require that the information be provided by the taxpayer. The time frame can vary depending on the volume and complexity of the information sought, whether or not the taxpayer provides the information in a timely manner and whether the use of Irish Revenue powers is required.

333. As noted above in sections B.1 and B.2 these procedures are different in cases where information must be obtained from a financial institution or if the requesting jurisdiction were to ask that the taxpayer not be notified.

### *Verification of the information gathered*

334. The Case Officer checks the information supplied by the taxpayer or the third party to ensure that it answers the request. If there are deficiencies or the reply is not clear, the Case Officer will request additional information or clarification from the taxpayer or the third party. This process is repeated when the reply to the requesting jurisdiction is reviewed by the Irish Competent Authority, who will also check that the information supplied answers the request, and would ask the Case Officer to contact the taxpayer or the third party again where appropriate.

### *Practical difficulties Ireland experienced in obtaining requested information*

335. In general, Irish Revenue stated that there have been very few difficulties but occasionally delays occurred: (i) where clarification of the legal basis for exchanging information was sought; or (ii) where Ireland needed to get information from a taxpayer and that information was voluminous, complex or related to prior years.

336. There is one case where the information holder has not complied with a notice issued by Irish Revenue as they believe that it is not based on a valid request. Irish Revenue is not in agreement with this view and are now in the process of applying to the High Court for an order compelling the information holder to provide the information. This case is due to be heard in July 2017.

### *Outgoing requests*

337. An Irish Revenue Officer seeking information from another jurisdiction must complete a standard template provided by the EOI team. A Case Officer from the EOI team will review the request to ensure that it is a valid request and that all necessary information has been provided. This is done with the assistance of a checklist that is included in the EOI work manual. If there are any information gaps or areas that need clarification, the Case Officer will liaise with the Revenue Officer to refine the request.

338. All outgoing requests are reviewed and approved by a Competent Authority before sending. Once the Case Officer has completed the initial assessment, it is reviewed by a Competent Authority to ensure that the request is complete and that it meets the EOI standards. The Competent Authority may raise additional questions and if so the Case Officer will liaise again with the Revenue Officer. The Case Officer will then prepare the request in the appropriate format, for example the request to an EU jurisdiction is completed on the standard E-Form. The outgoing request is transmitted by one of the

following three means of transmission of outgoing requests: (i) CCN mail (for EU countries), (ii) the OECD approved encryption method or (iii) registered mail.

339. Ireland made 271 requests for information during the review period. The 15 peers (Australia, Bulgaria, Canada, Denmark, France, Germany, Hungary, Isle of Man, Italy, Slovenia, Spain, Sweden, Switzerland, United Kingdom and United States) who provided feedback on the quality of Irish EOIR requests were positive – that the requests met the foreseeable relevance standard, were complete, and seldom require clarification. Ireland sent the most requests to United Kingdom (152 requests), Spain (40 requests), France (28 requests) and the United States (11 requests). Where there were requests for clarification these related primarily to complex cases. Most of these cases involved requests for bank information from a particular jurisdiction and Irish Revenue has had ongoing discussions to ensure that the requests contain all the information that its partner needs in order to obtain such information.

340. Ireland shared that requests for clarification are dealt with centrally by the EOI team. Where necessary the Revenue Officer who has initiated the request will be contacted for clarification. The average response time to a request for clarification is 35 days.

### *C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI*

341. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI.

# Annex 1: Jurisdiction's response to the review report[6]

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

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

# Annex 2: List of Jurisdiction's EOI mechanisms

## 1. Bilateral international agreements for the exchange of information

| EOI partner | Type of agreement | Date signed | Date entered into force |
|---|---|---|---|
| Albania | DTC | 16.10.2009 | 12.7.2011 |
| Armenia | DTC | 14.07.2011 | 18.12.2012 |
| Australia | DTC | 31.05.1983 | 21.12.1983 |
| Austria | DTC | 24.05.1966 | 05.01.1968 |
| | Protocol | 19.06.87 | 01.03.89 |
| | Protocol | 16.12.2009 | 01.05.2011 |
| Bahrain | DTC | 29.10.2009 | 09.11.2010 |
| Belarus | DTC | 03.11.2009 | 09.07.2010 |
| Belgium | DTC | 24.06.1970 | 31.12.1973 |
| | Protocol | 14.04.2014 | Not in force (Ratified by Ireland) |
| Bosnia and Herzegovina | DTC | 03.11.2009 | 22.06.2012 |
| Botswana | DTC | 10.06.2014 | 03.02.2016 |
| Bulgaria | DTC | 05.10.2000 | 05.01.2001 |
| Canada | DTC | 08.10.2003 | 12.04.2005 |
| Chile | DTC | 02.06.2005 | 28.08.2008 |
| China | DTC | 19.04.2000 | 28.12.2000 |
| Croatia | DTC | 21.06.2002 | 26.10.2003 |
| Cyprus[1] | DTC | 24.09.1968 | 12.07.1970 |
| Czech Republic | DTC | 14.11.1995 | 21.04.1996 |
| Denmark | DTC | 26.03.1993 | 08.10.1993 |
| | Protocol | 22.07.2014 | 23.12.2014 |
| Egypt | DTC | 09.04.2012 | 24.04.2013 |
| Estonia | DTC | 16.12.1997 | 29.12.1998 |

| EOI partner | Type of agreement | Date signed | Date entered into force |
|---|---|---|---|
| Ethiopia | DTC | 03.11.2014 | 12.08.2016 |
| Finland | DTC | 27.03.1992 | 26.12.1993 |
| France | DTC | 21.03.1968 | 15.06.1971 |
| Georgia | DTC | 20.11.2008 | 06.05.2010 |
| Germany | DTC | 17.10.1962 | 02.04.1964 |
| | Protocol | 25.05.2010 | 03.06.2011 |
| | DTC | 30.03.2011 | 28.11.2012 |
| | Protocol | 03.12.2014 | 30.12.2015 |
| Greece | DTC | 24.11.2003 | 29.12.2004 |
| Hong Kong, China | DTC | 22.06.2010 | 10.02.2011 |
| Hungary | DTC | 25.04.1995 | 05.12.1996 |
| Iceland | DTC | 17.12.2003 | 17.12.2004 |
| India | DTC | 06.11.2000 | 27.12.2001 |
| Israel | DTC | 20.11.1995 | 24.12.1995 |
| Italy | DTC | 11.06.1971 | 14.02.1975 |
| Japan | DTC | 18.01.1974 | 04.12.1974 |
| Korea | DTC | 18.07.1990 | 27.12.1991 |
| Kuwait | DTC | 23.11.2010 | 12.08.2013 |
| Latvia | DTC | 13.11.1997 | 17.02.1998 |
| Lithuania | DTC | 18.11.1997 | 05.06.1998 |
| Luxembourg | DTC | 14.01.1972 | 25.02.1975 |
| | Protocol | 27.05.2014 | 11.12.2015 |
| Macedonia | DTC | 14.04.2008 | 12.01.2009 |
| Malaysia | DTC | 28.11.1998 | 21.09.1999 |
| | Protocol | 16.12.2009 | 15.02.2011 |
| Malta | DTC | 14.11.2008 | 15.01.2009 |
| Mexico | DTC | 22.10.1998 | 31.12.1998 |
| Moldova | DTC | 28.05.2009 | 22.04.2010 |
| Montenegro | DTC | 07.10.2010 | 01.12.2011 |
| Morocco | DTC | 22.06.2010 | 10.09.2012 |
| Netherlands | DTC | 11.02.1969 | 12.05.1970 |
| New Zealand | DTC | 19.09.1986 | 26.09.1988 |
| Norway | DTC | 22.11.2000 | 28.11.2001 |
| Pakistan | DTC | 13.04.1973 | 20.12.1974 |
| | DTC | 16.04.2015 | 11.10.2016 |

| EOI partner | Type of agreement | Date signed | Date entered into force |
|---|---|---|---|
| Panama | DTC | 28.11.2011 | 19.12.2012 |
| Poland | DTC | 13.11.1995 | 22.12.1995 |
| Portugal | DTC | 01.06.1993 | 11.07.1994 |
| | Protocol | 11.11.2005 | 18.12.2006 |
| Qatar | DTC | 21.06.2012 | 13.12.2013 |
| Romania | DTC | 21.10.1999 | 29.12.2000 |
| Russia | DTC | 29.04.1994 | 07.07.1995 |
| Saudi Arabia | DTC | 19.10.2011 | 01.12.2012 |
| Serbia | DTC | 23.09.2009 | 16.06.2010 |
| Singapore | DTC | 28.10.2010 | 08.04.2011 |
| Slovak Republic | DTC | 08.06.1999 | 30.12.1999 |
| Slovenia | DTC | 12.03.2002 | 11.12.2002 |
| South Africa | DTC | 07.10.1997 | 05.12.1997 |
| | Protocol | 17.03.2010 | 10.02.2012 |
| Spain | DTC | 10.02.1994 | 21.11.1994 |
| Sweden | DTC | 08.10.1986 | 05.04.1988 |
| | Protocol | 01.07.1993 | 20.01.1994 |
| Switzerland | DTC | 08.11.1966 | 16.02.1968 |
| | Protocol | 24.10.1980 | 25.04.1984 |
| | Protocol | 26.01.2012 | 14.11.2013 |
| Thailand | DTC | 04.11.2013 | 11.03.2015 |
| Turkey | DTC | 24.10.2008 | 18.08.2010 |
| United Arab Emirates | DTC | 01.07.2010 | 21.07.2011 |
| Ukraine | DTC | 19.04.2013 | 17.08.2015 |
| United Kingdom | DTC | 02.06.1976 | 23.12.1976 |
| | Protocol | 28.10.1976 | 23.12.1976 |
| | Protocol | 07.11.1994 | 21.09.1995 |
| | Protocol | 04.11.1998 | 23.12.1998 |
| United States | DTC | 28.07.1997 | 17.12.1997 |
| | Protocol | 24.09.1999 | 13.07.2000 |
| Uzbekistan | DTC | 11.07.2012 | 17.04.2013 |
| Vietnam | DTC | 10.03.2008 | 24.12.2008 |
| Zambia | DTC | 31.03.2015 | 23.12.2015 |
| Anguilla | TIEA | 22.07.2009 | 11.03.2011 |
| Antigua and Barbuda | TIEA | 15.12.2009 | 04.03.2011 |

| EOI partner | Type of agreement | Date signed | Date entered into force |
|---|---|---|---|
| Argentina | TIEA | 29.10.2014 | 21.01.2016 |
| Belize | TIEA | 18.11.2010 | 11.04.2011 |
| Bermuda | TIEA | 28.07.2009 | 11.05.2010 |
| British Virgin Islands | TIEA | 07.12.2009 | 28.02.2011 |
| Cayman Islands | TIEA | 23.06.2009 | 09.06.2010 |
| Commonwealth of The Bahamas | TIEA | 12.01.2015 | 23.02.2016 |
| Cook Islands | TIEA | 08.12.2009 | 02.09.2011 |
| Dominica | TIEA | 08.07.2013 | 22.09.2015 |
| Gibraltar | TIEA | 24.06.2009 | 25.05.2010 |
| Grenada | TIEA | 31.05.2011 | 03.04.2011 |
| Guernsey | TIEA | 26.03.2009 | 10.06.2010 |
| Isle of Man | TIEA | 24.04.2008 | 31.12.2008 |
| Jersey | TIEA | 26.03.2009 | 05.05.2010 |
| Liechtenstein | TIEA | 13.10.2009 | 30.06.2010 |
| Macao, China | TIEA | 12.09.2016 | Not in force |
| Marshall Islands | TIEA | 02.09.2010 | 10.02.2015 |
| Montserrat | TIEA | 14.12.2012 | 25.08.2016 |
| Saint Kitts and Nevis | TIEA | 20.07.2015 | Not in force. Ireland ratified on 13.10.2015. |
| Samoa | TIEA | 08.12.2009 | 20.02.2012 |
| San Marino | TIEA | 04.07.2012 | 03.05.2013 |
| Saint Lucia | TIEA | 22.12.2009 | 17.02.2011 |
| Saint Vincent and the Grenadines | TIEA | 15.12.2009 | 21.03.2011 |
| Turks and Caicos Islands | TIEA | 22.07.2009 | 25.01.11 |
| Vanuatu | TIEA | 31.05.2011 | 19.02.2015 |

*Note:* 1. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

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

## 2. Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[7] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Multilateral Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Multilateral Convention was opened for signature on 1st June 2011.

Ireland signed the Multilateral Convention on 30 June 2011. It deposited its instrument of ratification with the Depositary on 29 May 2013 and the Convention entered into force for Ireland on 1 September 2013. Currently, the amended Convention is in force in respect of the following jurisdictions [1]:

7. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

# Jurisdictions participating in the Convention on Mutual Administrative Assistance in Tax Matters

| | | Original convention | | | Protocol (P)/Amended convention (AC) | | |
|---|---|---|---|---|---|---|---|
| Country/Jurisdiction* | | Signature (opened on 25-01-1988) | Deposit of instrument of ratification, acceptance or approval | Entry into force | Signature (opened on 27-05-2010) | Deposit of instrument of ratification, acceptance or approval | Entry into force |
| 1 | Albania | | | | 01-03-2013 (AC) | 08-08-2013 | 01-12-2013 |
| 2 | Andorra | | | | 05-11-2013 (AC) | 25-08-2016 | 01-12-2016 |
| 3 | Anguilla [1] | | | | | | 01-03-2014 |
| 4 | Argentina | | | | 03-11-2011 (AC) | 13-09-2012 | 01-01-2013 |
| 5 | Aruba [2] | | | 01-02-1997 | | | 01-09-2013 |
| 6 | Australia | | | | 03-11-2011 (AC) | 30-08-2012 | 01-12-2012 |
| 7 | Austria | | | | 29-05-2013 (AC) | 28-08-2014 | 01-12-2014 |
| 8 | Azerbaijan | 26-03-2003 | 03-06-2004 | 01-10-2004 | 23-05-2014 (P) | 29-05-2015 | 01-09-2015 |
| 9 | Barbados | | | | 28-10-2015 (AC) | 04-07-2016 | 01-11-2016 |
| 10 | Belgium | 07-02-1992 | 01-08-2000 | 01-12-2000 | 04-04-2011 (P) | 08-12-2014 | 01-04-2015 |
| 11 | Belize | | | | 29-05-2013 (AC) | 29-05-2013 | 01-09-2013 |
| 12 | Bermuda [3] | | | | | | 01-03-2014 |
| 13 | Brazil | | | | 03-11-2011 (AC) | 01-06-2016 | 01-10-2016 |
| 14 | British Virgin Islands [4] | | | | | | 01-03-2014 |
| 15 | Bulgaria | 26-10-2015 | | | 26-10-2015 (P) | 14-03-2016 | 01-07-2016 |
| 16 | Burkina Faso | | | | 25-08-2016 (AC) | | |
| 17 | Cameroon | | | | 25-06-2014 (AC) | 30-06-2015 | 01-10-2015 |
| 18 | Canada | 28-04-2004 | | | 03-11-2011 (P) | 21-11-2013 | 01-03-2014 |
| 19 | Cayman Islands [5] | | | | | | 01-01-2014 |
| 20 | Chile | | | | 24-10-2013 (AC) | 07-07-2016 | 01-11-2016 |
| 21 | China (People's Republic of) | | | | 27-08-2013 (AC) | 16-10-2015 | 01-02-2016 |
| 22 | Colombia | | | | 23-05-2012 (AC) | 19-03-2014 | 01-07-2014 |

| | Country/Jurisdiction* | Original convention | | | Protocol (P)/Amended convention (AC) | | |
|---|---|---|---|---|---|---|---|
| | | Signature (opened on 25-01-1988) | Deposit of instrument of ratification, acceptance or approval | Entry into force | Signature (opened on 27-05-2010) | Deposit of instrument of ratification, acceptance or approval | Entry into force |
| 23 | Cook Islands | | | | 28-10-2016 (AC) | | |
| 24 | Costa Rica | | | | 01-03-2012 (AC) | 05-04-2013 | 01-08-2013 |
| 25 | Croatia | | | | 11-10-2013 (AC) | 28-02-2014 | 01-06-2014 |
| 26 | Curaçao[6] | | | 10-10-2010 | | | 01-09-2013 |
| 27 | Cyprus | 10-07-2014 | 19-12-2014 | 01-04-2015 | 10-07-2014 (P) | 19-12-2014 | 01-04-2015 |
| 28 | Czech Republic | | | | 26-10-2012 (AC) | 11-10-2013 | 01-02-2014 |
| 29 | Denmark | 16-07-1992 | 16-07-1992 | 01-04-1995 | 27-05-2010 (P) | 28-01-2011 | 01-06-2011 |
| 30 | Dominican Republic | | | | 28-06-2016 (AC) | | |
| 31 | El Salvador | | | | 01-06-2015 (AC) | | |
| 32 | Estonia | | | | 29-05-2013 (AC) | 08-07-2014 | 01-11-2014 |
| 33 | Faroe Islands[7] | | | 01-01-2007 | | | 01 06 2011 |
| 34 | Finland | 11-12-1989 | 15-12-1994 | 01-04-1995 | 27-05-2010 (P) | 21-12-2010 | 01-06-2011 |
| 35 | France | 17-09-2003 | 25-05-2005 | 01-09-2005 | 27-05-2010 (P) | 13-12-2011 | 01-04-2012 |
| 36 | Gabon | | | | 03-07-2014 (AC) | | |
| 37 | Georgia | 12-10-2010 | 28-02-2011 | 01-06-2011 | 03-11-2010 (P) | 28-02-2011 | 01-06-2011 |
| 38 | Germany | 17-04-2008 | 28-08-2015 | 01-12-2015 | 03-11-2011 (P) | 28-08-2015 | 01-12-2015 |
| 39 | Ghana | | | | 10-07-2012 (AC) | 29-05-2013 | 01-09-2013 |
| 40 | Gibraltar[8] | | | | | | 01-03-2014 |
| 41 | Greece | 21-02-2012 | 29-05-2013 | 01-09-2013 | 21-02-2012 (P) | 29-05-2013 | 01-09-2013 |
| 42 | Greenland[9] | | | 01-04-1995 | | | 01-06-2011 |
| 43 | Guatemala | | | | 05-12-2012 (AC) | | |
| 44 | Guernsey[10] | | | | | | 01-08-2014 |
| 45 | Hungary | 12-11-2013 | 07-11-2014 | 01-03-2015 | 12-11-2013 (P) | 07-11-2014 | 01-03-2015 |
| 46 | Iceland | 22-07-1996 | 22-07-1996 | 01-11-1996 | 27-05-2010 (P) | 28-10-2011 | 01-02-2012 |
| 47 | India | | | | 26-01-2012 (AC) | 21-02-2012 | 01-06-2012 |
| 48 | Indonesia | | | | 03-11-2011 (AC) | 21-01-2015 | 01-05-2015 |
| 49 | Ireland | | | | 30-06-2011 (AC) | 29-05-2013 | 01-09-2013 |
| 50 | Isle of Man[11] | | | | | | 01-03-2014 |

| | Country/Jurisdiction* | Original convention | | | Protocol (P)/Amended convention (AC) | | |
|---|---|---|---|---|---|---|---|
| | | Signature (opened on 25-01-1988) | Deposit of instrument of ratification, acceptance or approval | Entry into force | Signature (opened on 27-05-2010) | Deposit of instrument of ratification, acceptance or approval | Entry into force |
| 51 | Israel | | | | 24-11-2015 (AC) | 31-08-2016 | 01-12-2016 |
| 52 | Italy | 31-01-2006 | 31-01-2006 | 01-05-2006 | 27-05-2010 (P) | 17-01-2012 | 01-05-2012 |
| 53 | Jamaica | | | | 01-06-2016 (AC) | | |
| 54 | Japan | 03-11-2011 | 28-06-2013 | 01-10-2013 | 03-11-2011 (P) | 28-06-2013 | 01-10-2013 |
| 55 | Jersey[12] | | | | | | 01-06-2014 |
| 56 | Kazakhstan | | | | 23-12-2013 (AC) | 08-04-2015 | 01-08-2015 |
| 57 | Kenya | | | | 08-02-2016 (AC) | | |
| 58 | Korea | 27-05-2010 | 26-03-2012 | 01-07-2012 | 27-05-2010 (P) | 26-03-2012 | 01-07-2012 |
| 59 | Kuwait | | | | 05-05-2017 (AC) | | |
| 60 | Latvia | | | | 29-05-2013 (AC) | 15-07-2014 | 01-11-2014 |
| 61 | Lebanon | | | | 12-05-2017 (AC) | 12-05-2017 | 01-09-2017 |
| 62 | Liechtenstein | | | | 21-11-2013 (AC) | 22-08-2016 | 01-12-2016 |
| 63 | Lithuania | 07-03-2013 | 04-02-2014 | 01-06-2014 | 07-03-2013 (P) | 04-02-2014 | 01-06-2014 |
| 64 | Luxembourg | 29-05-2013 | 11-07-2014 | 01-11-2014 | 29-05-2013 (P) | 11-07-2014 | 01-11-2014 |
| 65 | Malaysia | | | | 25-08-2016 (AC) | 03-01-2017 | 01-05-2017 |
| 66 | Malta | | | | 26-10-2012 (AC) | 29-05-2013 | 01-09-2013 |
| 67 | Marshall Islands | | | | 22-12-2016 (AC) | 22-12-2016 | 01-04-2017 |
| 68 | Mauritius | | | | 23-06-2015 (AC) | 31-08-2015 | 01-12-2015 |
| 69 | Mexico | 27-05-2010 | 23-05-2012 | 01-09-2012 | 27-05-2010 (P) | 23-05-2012 | 01-09-2012 |
| 70 | Moldova | 27-01-2011 | 24-11-2011 | 01-03-2012 | 27-01-2011 (P) | 24-11-2011 | 01-03-2012 |
| 71 | Monaco | | | | 13-10-2014 (AC) | 14-12-2016 | 01-04-2017 |
| 72 | Montserrat[13] | | | | | | 01-10-2013 |
| 73 | Morocco | | | | 21-05-2013 (AC) | | |
| 74 | Nauru | | | | 28-06-2016 (AC) | 28-06-2016 | 01-10-2016 |
| 75 | Netherlands | 25-09-1990 | 15-10-1996 | 01-02-1997 | 27-05-2010 (P) | 29-05-2013 | 01-09-2013 |
| 76 | New Zealand | | | | 26-10-2012 (AC) | 21-11-2013 | 01-03-2014 |
| 77 | Nigeria | | | | 29-05-2013 (AC) | 29-05-2015 | 01-09-2015 |
| 78 | Niue | | | | 27-11-2015 (AC) | 06-06-2016 | 01-10-2016 |

| | Country/Jurisdiction* | Original convention | | | Protocol (P)/Amended convention (AC) | | |
|---|---|---|---|---|---|---|---|
| | | Signature (opened on 25-01-1988) | Deposit of instrument of ratification, acceptance or approval | Entry into force | Signature (opened on 27-05-2010) | Deposit of instrument of ratification, acceptance or approval | Entry into force |
| 79 | Norway | 05-05-1989 | 13-06-1989 | 01-04-1995 | 27-05-2010 (P) | 18-02-2011 | 01-06-2011 |
| 80 | Pakistan | | | | 14-09-2016 (AC) | 14-12-2016 | 01-04-2017 |
| 81 | Panama | | | | 27-10-2016 (AC) | 16-03-2017 | 01-07-2017 |
| 82 | Philippines | | | | 26-09-2014 (AC) | | |
| 83 | Poland | 19-03-1996 | 25-06-1997 | 01-10-1997 | 09-07-2010 (P) | 22-06-2011 | 01-10-2011 |
| 84 | Portugal | 27-05-2010 | | | 27-05-2010 (P) | 17-11-2014 | 01-03-2015 |
| 85 | Romania | 15-10-2012 | 11-07-2014 | 01-11-2014 | 15-10-2012 (P) | 11-07-2014 | 01-11-2014 |
| 86 | Russia | | | | 03-11-2011 (AC) | 04-03-2015 | 01-07-2015 |
| 87 | Saint Kitts and Nevis | | | | 25-08-2016 (AC) | 25-08-2016 | 01-12-2016 |
| 88 | Saint Lucia | | | | 21-11-2016 (AC) | | |
| 89 | Saint Vincent and the Grenadines | | | | 25-08-2016 (AC) | 31-08-2016 | 01-12-2016 |
| 90 | Samoa | | | | 25-08-2016 (AC) | 31-08-2016 | 01-12-2016 |
| 91 | San Marino | | | | 21-11-2013 (AC) | 28-08-2015 | 01-12-2015 |
| 92 | Saudi Arabia | | | | 29-05-2013 (AC) | 17-12-2015 | 01-04-2016 |
| 93 | Senegal | | | | 04-02-2016 (AC) | 25-08-2016 | 01-12-2016 |
| 94 | Seychelles | | | | 24-02-2015 (AC) | 25-06-2015 | 01-10-2015 |
| 95 | Singapore | | | | 29-05-2013 (AC) | 20-01-2016 | 01-05-2016 |
| 96 | Sint Maarten [14] | | | 10-10-2010 | | | 01-09-2013 |
| 97 | Slovak Republic | | | | 29-05-2013 (AC) | 21-11-2013 | 01-03-2014 |
| 98 | Slovenia | 27-05-2010 | 31-01-2011 | 01-05-2011 | 27-05-2010 (P) | 31-01-2011 | 01-06-2011 |
| 99 | South Africa | | | | 03-11-2011 (AC) | 21-11-2013 | 01-03-2014 |
| 100 | Spain | 12-11-2009 | 10-08-2010 | 01-12-2010 | 11-03-2011 (P) | 28-09-2012 | 01-01-2013 |
| 101 | Sweden | 20-04-1989 | 04-07-1990 | 01-04-1995 | 27-05-2010 (P) | 27-05-2011 | 01-09-2011 |
| 102 | Switzerland | | | | 15-10-2013 (AC) | 26-09-2016 | 01-01-2017 |
| 103 | Tunisia | | | | 16-07-2012 (AC) | 31-10-2013 | 01-02-2014 |
| 104 | Turkey | | | | 03-11-2011 (AC) | | |
| 105 | Turks and Caicos Islands [15] | | | | | | 01-12-2013 |

| Country/Jurisdiction* | Original convention | | | Protocol (P)/Amended convention (AC) | | |
|---|---|---|---|---|---|---|
| | Signature (opened on 25-01-1988) | Deposit of instrument of ratification, acceptance or approval | Entry into force | Signature (opened on 27-05-2010) | Deposit of instrument of ratification, acceptance or approval | Entry into force |
| 106 Uganda | | | | 04-11-2015 (AC) | 26-05-2016 | 01-09-2016 |
| 107 Ukraine | 20-12-2004 | 26-03-2009 | 01-07-2009 | 27-05-2010 (P) | 22-05-2013 | 01-09-2013 |
| 108 United Arab Emirates | | | | 21-04-2017 (AC) | | |
| 109 United Kingdom | 24-05-2007 | 24-01-2008 | 01-05-2008 | 27-05-2010 (P) | 30-06-2011 | 01-10-2011 |
| 110 United States | 28-06-1989 | 13-02-1991 | 01-04-1995 | 27-05-2010 (P) | | |
| 111 Uruguay | | | | 01-06-2016 (AC) | 31-08-2016 | 01-12-2016 |

* This table includes State Parties to the Convention as well as jurisdictions, which are members of the GFTEI or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

*Notes:* 1. Extension by the United Kingdom.

2. Extension by the Kingdom of the Netherlands.
3. Extension by the United Kingdom.
4. Extension by the United Kingdom.
5. Extension by the United Kingdom.
6. Extension by the Kingdom of the Netherlands. Curacao used to be a constituent of the "Netherlands Antilles", to which the original Convention applied as from 01-02-1997.
7. Extension by the Kingdom of Denmark.
8. Extension by the United Kingdom.
9. Extension by the Kingdom of Denmark.
10. Extension by the United Kingdom.
11. Extension by the United Kingdom.
12. Extension by the United Kingdom.
13. Extension by the United Kingdom.
14. Extension by the Kingdom of the Netherlands. Sint Maarten used to be a constituent of the "Netherlands Antilles", to which the original Convention applied as from 01-02-1997.
15. Extension by the United Kingdom.

## 3. EU Directive on Administrative Co-operation

The European Union has long established rules relating to the exchange of information in tax matters. Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation (the EU DAC) repealed the earlier Directive 77/799/EEC. The EU DAC requires member states of the EU to exchange information in line with the EOIR standard as well as providing for automatic exchange of information in respect of certain categories of information. The deadline for transposing the EU DAC was 1 January 2013. The EU DAC was transposed into Irish legislation by Statutory Instrument no. 549 of 2012. Consequently, Ireland is able to exchange information on request in accordance with the standard with the 27 other Member States of the EU. Since the EU DAC was first issued there have been several amendments relating to the automatic exchange of information.

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

Capital Acquisitions Tax Consolidation Act 2003

Charities Act 2009

Companies Act 2014

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended

Data Protection Act 1988

European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016

Investment Limited Partnership Act 1994

Irish Collective Asset-Management Vehicles Act 2015

Limited Partnership Act 1907

Official Secrets Act 1963

Partnership Act 1890

Pensions Act 1990

Registration of Business Names Act 1963

Taxes Consolidation Act 1997 (TCA)

Trustee Act 1893

Value Added Tax Consolidation Act 2010

# Annex 4: Authorities interviewed during on-site visit

ACCA Ireland
Central Bank of Ireland
Chartered Accountants Regulatory Board
Companies Registration Office
Department of Finance
Department of Jobs Enterprise and Innovation
Department of Justice and Equality
Garda Financial Intelligence Unit
Irish Auditing and Accounting Supervisory Authority
Irish Revenue
- Revenue Information Management
- Revenue International Tax Division, EOI Unit
- Revenue IT Division
- Revenue Legislative Services
- Revenue Planning Division
- Revenue Solicitor's Office

Law Society
Office of the Director of Corporate Enforcement

# Annex 5: List of in-text recommendations

The assessment team or the PRG may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. A list of such recommendations is presented below.

## Element A.1

Paragraph 121: The rules with respect to the collection of beneficial ownership information introduced as part of the transposition of the 4th EU AMLD only came into effect in November 2016. The information will ultimately have to be delivered to a government registry, but these rules have not yet been finalised. Irish authorities have indicated that the CRO will ultimately be responsible for hosting this registry and that the oversight and enforcement of the information will be subject to the same regime as for information held in the company register. Ireland should monitor the development of these rules and ensure that the oversight and enforcement of the obligation to maintain beneficial ownership information of companies is effective.

Paragraph 141: However, there are at least potentially exceptional instances where the existence of the trust could be unknown and unrecorded and where the statutory due diligence measures (under the CJA 2010) may not arise. An example would be a non-professional trustee, or a lay person who is constituted a trustee of a trust established without professional assistance. That person would not be a designated person and would not be obliged to undertake customer identification measures or retain records. That said, once the lay trustee dealt with the trust funds whether by opening a bank account, making an investment, transacting a cash purchase in excess of EUR 15 000, or even disposing of assets otherwise than by delivery, it is probable that the

transaction would entail the engagement of an individual or entity qualifying as a designated person and subject to compliance procedures. Where this is not the case, while much of the information in respect of the trust would be required to be maintained under the common law, this would not necessarily include the beneficial ownership information relative to any non-individual settlors or beneficiaries. Nevertheless, the effect of this on EOI in practice should be monitored by Ireland to ensure that it would not impede effective EOI.

## Element B.2

Paragraph 241: Nevertheless, the construction of the rules raises two ambiguities – whether "serious prejudice" is a more demanding threshold than the standard of "likely to undermine" and whether demonstrating grounds for believing there is non-compliance adds a further hurdle. Whether the rules meet the standard will depend on how they are applied by the Irish Revenue and the High Court in practice. Irish Revenue should communicate with its EOI partners to inform them as to the requirements of seeking exceptions to notification and should monitor the application of these rules in practice to ensure that they do not unduly prevent or delay effective exchange of information.

## Element C.2

Paragraph 285: Ireland should continue to develop its EOI network with all relevant partners.

## Element C.3

Paragraph 301: It is, however, recommended that Ireland should ensure that the use of its powers does not require disclosure of information that would not be in line with the standard.

## ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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

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

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

# Peer Review Report on the Exchange of Information on Request IRELAND 2017 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit ***www.oecd.org/tax/transparency***.

This report contains the 2017 Peer Review Report on the Exchange of Information on Request of Ireland.

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264280229-en***.

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