

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information
on Request

THE PHILIPPINES

2018 (Second Round)



Global Forum on Transparency and Exchange of Information for Tax Purposes: The Philippines 2018 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

July 2018
(reflecting the legal and regulatory framework
as at April 2018)

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Please cite this publication as:

OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: The Philippines 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris.

<https://doi.org/10.1787/9789264303317-en>

ISBN 978-92-64-30330-0 (print)

ISBN 978-92-64-30331-7 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes

ISSN 2219-4681 (print)

ISSN 2219-469X (online)

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 145 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic). Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. the implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. the implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

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

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 the FATF definition is used 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 (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (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.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that 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.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and <http://dx.doi.org/10.1787/2219469x>.

Abbreviations and acronyms

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.
AML	Anti-Money Laundering Terrorism
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
AMLA	Anti-Money Laundering Act
AMLC	Anti-Money Laundering Council
BIR	Bureau of Internal Revenue
BSP	Bangko Sentral ng Pilipinas
CDD	Customer Due Diligence
CPA	Certified Public Accountant
DNFBP	Designated Non-Financial Businesses and Professionals
DTC	Double Tax Convention
EOI	Exchange of Information
EOIR	Exchange Of Information on Request
FATF	Financial Action Task Force

GIS	General Information Sheet
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
GPP	General Professional Partnership
IC	Insurance Commission
ITAD	International Tax Affairs Department
ITS	Integrated Tax System
KYC	Know Your Customer
LGU	Local Government Unit
MORB	Manual of Regulations for Banks
MORNBFI	Manual of Regulations for Non-Bank Financial Institutions
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NBFI	Non-Bank Financial Institution
NIRC	National Internal Revenue Code
PRG	Peer Review Group of the Global Forum
RDO	Regional District Office
RIRR	Revised Implementing Rules and Regulations
SDT	Subpoena Duces Tecum
SEC	Securities and Exchange Commission
STR	Suspicious Transaction Report
TIEA	Tax Information Exchange Agreement
TIN	Taxpayer Identification Number
VAT	Value Added Tax

Executive summary

1. This report analyses the Philippines for its legal and practical implementation of the EOIR standard in respect of EOI requests received during the period of 1 April 2014 to 31 March 2017 against the 2016 Terms of Reference. This second round report concludes that the Philippines is rated Largely Compliant overall. In 2013, the Global Forum similarly evaluated the Philippines against the 2010 Terms of Reference and reached an overall rating of Largely Compliant.

2. The following table shows the comparison of results from the first and the second round review of the Philippines' implementation of the EOIR standard:

Comparison of ratings for First Round Report and Second Round Report

Element	First Round Report (2013)	Second Round EOIR Report (2018)
A.1 Availability of ownership and identity information	LC	PC
A.2 Availability of accounting information	PC	LC
A.3 Availability of banking information	C	C
B.1 Access to information	C	C
B.2 Rights and Safeguards	C	LC
C.1 EOIR Mechanisms	LC	LC
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 responses	LC	LC
OVERALL RATING	LC	LC

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

Progress made since previous review

3. The major issues identified in the Phase 2 report issued November 2013 related to: the availability of ownership information in respect of foreign companies (element A.1); the availability of accounting information for all relevant legal persons and arrangements (element A.2); ensuring all of the Philippines' EOI agreements were in line with the standard (element C.1); and the timeliness of responses to EOI requests (element C.5). All other elements were considered Compliant with the standard.

4. Since the last review, the Philippines has addressed several of these recommendations by: requiring resident agents of foreign companies to obtain legal ownership information; extending the requirement for taxpayers to maintain accounting records to ten years; working to renegotiate or add protocols to existing DTCs to bring them in line with the standard; and providing status updates to treaty partners on outstanding requests. Some of these changes are sufficient to remove prior recommendations, while other steps do not fully address the underlying concerns raised in the 2013 report.

5. Despite attempts to introduce operational efficiencies and increase resources to the EOI unit, the overall efficiency of the EOI practice during the period under review remained lagging. The time taken to provide substantive responses to requests remains slow and does not ensure effective EOI in all cases, as was confirmed by peers. Thus, the element C.5 deficiency identified in the first round of review remains to be addressed as the timeliness of responses has not improved significantly.

Key recommendations

6. The four key issues raised by this report relate to: the availability of beneficial ownership information (element A.1); an exception to time-specific post-exchange notification (element B.2); the ratification of the multilateral Convention (element C.1); and timely responses to EOI requests (element C.5).

7. As noted above, the Philippines has largely addressed the recommendations in respect of the availability of legal ownership information. However, the 2016 Terms of Reference contain additional requirements in respect of the availability of beneficial ownership information. In the Philippines, very little beneficial ownership information is required to be kept by legal persons or arrangements themselves, or collected by a government agency at the time of creation or registration. The AML law in theory should require covered persons to maintain beneficial ownership information for any customer, but application of AML rules in the Philippines is not broad enough to necessarily cover all relevant entities and arrangements.

8. The scope of attorney-client privilege in the Philippines was noted as potentially broader than the standard allowed in the 2013 report. Since then, a quasi-privilege claim was initially raised in one EOI case and the use of privilege in practice to avoid disclosing EOI information remains uncertain and should be monitored.

9. The Philippines is required to notify bank accountholders when account information is exchanged with a foreign partner, but has issued a regulation delaying notification until within 60 days after full information has been completely exchanged. However, there is no exception for time-specific post-exchange notification and the Philippines should ensure its notification procedures are in line with the standard.

10. Although the Philippines signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters in 2014, the instrument still has not yet been ratified, preventing the Philippines from having EOI relationships with a large number of jurisdictions party to the Convention.

EOI practice

11. During the review period, the Philippines received 78 requests from approximately 16 treaty partners and sent 14 requests to 7 total partners. Status updates were provided in 100% of cases not receiving a complete response in 90 days. The Philippines only provided complete responses to partner EOI requests in 53% of cases within 180 days of receipt, while 23% of cases took more than one year to receive a complete response.

Overall rating

12. The Philippines has achieved a rating of Compliant for five elements (A.3, B.1, C.2, C.3, C.4), Largely Compliant for four elements (A.2, B.2, C.1, C.5), and Partially Compliant for element A.1. The Philippines' overall rating is Largely Compliant based on a global consideration of the Philippines' compliance with the individual elements.

13. This report was approved at the PRG meeting on 13 June 2018 and was adopted by the Global Forum on 13 July 2018. A follow up report on the steps undertaken by the Philippines to address the recommendations in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	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 (<i>ToR A.1</i>)		
The legal and regulatory framework is in place but certain aspects need improvement.	The requirement to identify and verify beneficial ownership is restricted to the Philippines' Anti-Money Laundering framework and may not adequately make available such information for all relevant legal persons and arrangements. This can occur if the person or arrangement has no on-going relationship with an AML covered person.	The Philippines should ensure that beneficial ownership information is available for all relevant legal persons and arrangements in accordance with the standard.
	The AMLA includes an important exclusion from the definition of covered persons for lawyers and accountants acting as independent legal professionals in relation to information concerning their clients or where disclosure of information would compromise client confidences or the attorney-client relationship, which could impede the availability of ownership information.	The Philippines should ensure that ownership information (both legal and beneficial) is available from lawyers and accountants when such professionals are acting in a role such as a company service provider.
EOIR Rating: Partially Compliant	The Philippines' Anti-Money Laundering Council does not currently supervise or otherwise monitor the responsibilities of all relevant designated non-financial businesses and professions to conduct customer due diligence requirements.	The Philippines should put in place an effective monitoring programme to ensure that all relevant designated non-financial businesses and professions are adequately supervised regarding customer due diligence requirements under the AML Act.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	<p>The AMLA contains a definition of beneficial ownership in line with the standard, and the AMLC and BSP give instructions to covered persons to appropriately identify and verify the true identity of recordholders, including beneficial owners. But a lack of further guidance (such as the meaning of ultimate ownership/control) may cause AML-obligated covered persons to misapply or neglect procedures to correctly identify and verify a customer's beneficial owners.</p> <p>The SEC does not have a mechanism to monitor the activities of suspended companies, which have been non-compliant with reporting requirements for more than five continuous years but continue to retain legal personality. The SEC does not maintain updated legal ownership information for such suspended companies which could be relevant for EOI purposes.</p>	<p>The Philippines should ensure that AML covered persons know how to properly apply identification and verification measures to obtain beneficial ownership information.</p> <p>The Philippines should monitor suspended companies and implement supervision programmes to ensure that companies with legal personality maintain and make available up-to-date legal ownership information in line with the standard.</p>
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
<p>The legal and regulatory framework is in place but certain aspects need improvement.</p>	<p>A large number of companies in the Philippines are revoked or suspended, which means that no annual report and financial statements has been submitted to the SEC for at least five continuous years. Accounting records for suspended companies may not exist or be available.</p>	<p>The Philippines should ensure that accounting records are available for all relevant entities and arrangements, including suspended companies.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
EOIR Rating: Largely Compliant		
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
The legal and regulatory framework is in place.		
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) (<i>ToR B.1</i>)		
The legal and regulatory framework is in place.		
EOIR Rating: Compliant	The Philippines has issued guidance to clarify how the legal privilege applies to information that is subject to an EOI request. However, in one instance during the review period, legal privilege was initially claimed to prevent compliance with an information request, although the Philippines eventually obtained some information from the recordholder. Because there may be continued ambiguity in the private sector regarding applicability of professional secrecy to information sought under an EOI agreement, access to information may be impeded in practice.	The Philippines should monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information in line with the international standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
<p>The legal and regulatory framework is in place, but certain aspects need improvement.</p>	<p>The Philippines requires notification of the accountholder when information is requested from a financial institution pursuant to an EOI request. The BIR interprets the law as not requiring any specific timelines, and has administratively amended its regulations to only provide the accountholder with notification within 60 days after full information has been completely exchanged. No partner has ever requested that the Philippines not provide notification to an accountholder because of concerns of an investigation being undermined. The BIR regulation does not address how to handle a requesting jurisdiction's request that notification be delayed on the basis that an ongoing investigation might be undermined.</p>	<p>The Philippines should ensure that there is an exception from the time-specific, post-exchange notification requirement that would allow it to not notify the accountholder in cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction and the requesting jurisdiction, on reasonable grounds, has made a request for the application of such an exception.</p>
<p>EOIR Rating: Largely Compliant</p>		
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
<p>The legal and regulatory framework is in place but certain aspects need improvement.</p>	<p>The Philippines signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters in 2014, but has not yet ratified the instrument.</p>	<p>The Philippines should work expeditiously to ratify the multilateral Convention on the Mutual Administrative Assistance in Tax Matters.</p>
<p>EOIR Rating: Largely Compliant</p>		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The legal and regulatory framework is in place.		
EOIR Rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The legal and regulatory framework is in place.		
EOIR Rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The legal and regulatory framework is in place.		
EOIR Rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>)		
Legal and regulatory framework determination:	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
EOIR Rating: Largely Compliant	The Philippines has taken steps to improve timeliness of its responses. However, further improvement is needed to ensure exchange of information in a timely manner in all cases, especially with regard to bank information.	The Philippines should endeavour to further streamline its processes so that it is able to respond to all EOI requests in a timely manner.

Overview of the Philippines

1. This overview provides some basic information about the Philippines 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 the Philippines' legal, commercial or regulatory systems.

Legal system

2. The Philippines achieved independence in 1946; it was previously colonised by Spain in the late 16th century and subsequently ruled by the United States. As a result, the governmental system resembles the US in many ways, with some Spanish influences. The 1987 Constitution created a democratic republic with a presidential form of government consisting of three co-equal branches: the Executive, the Legislative, and the Judiciary. The executive branch consists of a President, elected for a six-year term and serving as both chief of state and head of government. The Legislative branch is made up of a bicameral Congress with a Senate and House of Representatives. The Judicial Branch consists of a Supreme Court, a Court of Appeals, regional and municipal trial courts and Anti-Graft Court, and a Court of Tax Appeals.

3. The Philippines legal system is a blend of civil law and common law, as well as indigenous law to a lesser extent. The civil law tradition comes from Spain, while the common law tradition and jurisprudence was influenced by the United States. The two main sources of law are statutes and case law. Agencies are often given the power to promulgate rules and regulations, which have the force and effect of law, so long as they are in pursuance of the procedure or authority conferred upon the administrative agency by law.

Tax system

4. The Philippines' tax laws are contained in the National Internal Revenue Code (NIRC), which is patterned after the US Internal Revenue Code. The NIRC last underwent major revision in 1997 with the passage of

the Tax Reform Act. The Bureau of Internal Revenue (BIR) administers taxation, including assessment, collection, processing, and taxpayer assistance. The BIR is headed by a Commissioner with jurisdiction to interpret the provisions of the Code and other tax laws, and with jurisdiction over assessments, refund, penalties, and fees.

5. The primary forms of taxation in the Philippines are the corporate income tax, individual income tax, value added tax, excise tax and customs duties. The corporate tax applies to both domestic and foreign corporations. Domestic corporations are taxed on worldwide income, while foreign corporations (whether resident or non-resident) are taxed on income derived from sources within the Philippines.

6. All entities doing business and operating in the Philippines are required to register with the BIR. All registered taxpayers are required to file an annual tax return or information return regardless of receiving income or conducting activity; the annual filing requirement only ends upon the BIR accepting cancellation of the taxpayer's registration.

7. Failure to pay a tax, keep required records, or provide requested information can lead to a fine of PHP 10 000 (approximately USD 200) and imprisonment from one to ten years; penalties for failures by corporations or partnerships can lead to additional fines on the responsible officers, partners or employees from PHP 50 000 to PHP 100 000 (approximately USD 1 000 to USD 2 000) (Sec. 256). Wilful failure to respond to a request by the BIR made pursuant to the EOI Act can result in fines from PHP 50 000 to PHP 100 000 (approximately USD 1 000 to USD 2 000) and/or imprisonment for two to five years.

8. At the end of 2016, there were 649 658 legal entities and arrangements registered with the BIR as taxpayers. BIR regional district offices (RDOs) annually visit at least 10% of all registered taxpayers, which resulted in 186 404 visits in 2016. Non-compliance with the requirement to keep books and records was only determined in 3 478 cases in 2016.

Financial sector

9. The Securities and Exchange Commission (SEC) regulates and supervises the financial sector by being the Philippines' regulatory agency charged with the supervision over the corporate sector, the capital market participants, the securities and investment instruments market, and the investing public. The SEC has the authority to issue a primary license, which is necessary in the formation of a legal entity, and monitors compliance by all corporations organised and/or doing business in the Philippines. It also has acts as the registrar of companies and partnerships and has supervisory jurisdiction over such entities.

10. Pursuant to The New Central Bank Act (RA No. 7653) and the General Banking Law (RA No. 8791), the Bangko Sentral ng Pilipinas (BSP) exercises supervision over the operations of banks and exercises regulatory powers over quasi-banks, trust entities, and other financial institutions which under special laws are subject to BSP supervision (such as pawnshops and non-stock savings and loans associations). Banks can be either domestic, resident foreign, or off-shore banks, with resident foreign banks including a branch office of a foreign bank. At the end of 2016, there were 602 operating banks: 21 universal banks, 21 commercial banks, 60 thrift banks, 471 rural banks, and 29 co-operative banks.

AML framework

11. In 2001 the Philippines enacted the Anti-Money Laundering Act (AMLA), RA No. 9160 (as amended¹). Legal entities and arrangements falling under the definition of “covered persons” are mandated to comply with obligations under the AMLA and accompanying Revised Implementing Rules and Regulations (RIRR) to conduct customer identification, record keeping, and reporting of covered and suspicious transactions.

12. As relevant to EOIR, Section 3(E) of the AMLA defines the following, whether natural or legal persons, as “covered persons”:

- Banks, non-banks, quasi-banks, trust entities, foreign exchange dealers, pawnshops, money changers, remittance and transfer companies and other similar entities, and all other persons and their subsidiaries and affiliates supervised or regulated by the central bank, Bangko Sentral ng Pilipinas (BSP)
- Securities dealers, brokers, salesmen, investment houses and other similar persons managing securities or rendering services as investment agent, advisor, or consultant; mutual funds, close-end investment companies, common trust funds and other similar persons; other entities administering or otherwise dealing in currency, commodities, or financial derivatives based thereon, valuable objects, cash substitutes, and other similar monetary instruments or property supervised or regulated by the Securities and Exchange Commissioner (SEC)
- Company service providers, which, as a business, provide any of the following services to third parties:
 - Acting as a formation agent of juridical persons
 - Acting as (or arranging for another person to act as) a director or corporate secretary of a company, a partner of a partnership, or a similar position in relation to other juridical persons

1. As amended by Republic Act Nos. 9194, 10167, 10365, and 10927.

- Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal persons or arrangements
- Acting as (or arranging for another person to act as) a nominee shareholder for another person.
- Persons who provide any of the following services:
 - Managing of client money, securities or other assets
 - Management of bank, savings, or securities accounts
 - Organisation of contributions for the creation, operation, or management of companies
 - Creation, operation, or management of juridical persons or arrangements, and buying and selling business entities.

13. The AMLA includes an important exclusion from the definition of covered persons for lawyers and accountants acting as independent legal professionals in relation to information concerning their clients or where disclosure of information would compromise client confidences or the attorney-client relationship (RIRR Rule 3(E)(4)(c)).

14. Pursuant to RIRR Rule 9(A), a covered person is required to obtain, verify, and maintain the following customer information:

- For individual customers: customer name; date/place of birth; name of beneficial owners; address; nationality; signature or biometrics; source of funds/property; TIN.
- For business entities: customer name; authorised signatory; beneficial owner; address; nature of business; signature or biometrics of authorised signatory.

15. A special rule exists for the identification and verification of beneficial owners, trustees, nominees, and agents. For an opened account or transaction conducted by any person on behalf of another, a covered person must establish and record the true and full identity of both the account holder and beneficial owners.

16. Rule 3(L) of the RIRR defines “beneficial owner” as any natural person who:

1. Ultimately owns or controls the customer and/or on whose behalf a transaction or activity is being conducted; or
2. Has ultimate effective control over a legal person or arrangement.

17. Beyond this definition in the RIRR, there is no additional guidance to covered persons regarding how to further interpret ultimate control or other concepts related to beneficial ownership.

18. Enhanced due diligence is required by RIRR Rule 9(A)(3) if a covered person obtains information during the course of the customer relationship or transaction monitoring that: (i) raises doubts as to the accuracy of any information provided or to the entity's ownership; (ii) justifies reclassifying a customer as high risk; or (iii) justifies filing a suspicious transaction report (STR). A covered person required to apply enhanced due diligence must gather additional customer identification information, obtain more information on the intended nature of the business relationship, conduct validation procedures, obtain senior management approval to continue or commence the relationship, conduct enhanced monitoring, and other reasonable procedures (RIRR Rule 9(A)(2)(b)).

19. Covered persons are required by RIRR Rule 9(A)(3) to update all customer information and identification no later than once every three years (unless enhanced monitoring applies or a risk-based approach so requires).

20. The AMLA imposes strict penalties for failure to comply with its provisions regarding customer identification and transaction reporting. Violations by a covered person (including its officers and employees) can result in fines up to PHP 500 000 (approximately USD 10 000), as well as other administrative sanctions deemed appropriate by the Anti-Money Laundering Council (AMLC).

21. Under certain circumstances, an eligible third party may be relied upon for the Know Your Customer (KYC) and customer due diligence (CDD) documentation (RIRR Rule 9(A)(1)(c)). Third parties that may be relied upon are covered persons or financial institutions or designated non-financial businesses and professions (DNFBPs) operating outside the Philippines that are covered by equivalent customer identification and face-to-face requirements in that jurisdiction. Nevertheless, the ultimate responsibility for identifying the customer remains with the covered person in the Philippines relying on the third party. In the case of high risk customers, the covered person relying on the third party shall also conduct enhanced CDD.

Supervision

22. As noted in the 2013 report (paragraphs 117-123), the BSP and AMLC have in place overlapping supervisory programmes to determine compliance with the AMLA. Each bank is examined by the BSP on an annual basis, including compliance with AML requirements, taking into account the risk profile and complexity of each entity. During the review period, the BSP conducted 2 396 regular onsite examinations of licensed entities. In addition

to the BSP's imposition of sanctions arising from this process, AMLA violations discovered during these examinations that warrant immediate further investigation are passed on to the AMLC for additional appropriate action.

23. During the current review period, the AMLC received a total of 1 659 reports of examinations of banks and non-bank financial institutions (NBFIs) concerning AML compliance. However, from 2015 to August 2017, AMLC was unable to take action on the reports pending adoption of new rules regarding administrative sanctions of the AMLA. Since then, the AMLC has closed 23 of the referred investigations; in all 23 closed reports, the subject licensees received reprimands resulting from AMLA non-compliance. Reprimands are an administrative non-monetary penalty issued when a covered person is found guilty of non-compliance with an AMLA requirement; it serves as a warning that a similar future infraction may receive more severe sanction, such as a monetary penalty.

24. Currently, AMLA covered persons other than banks and NBFIs are not directly supervised by the AMLC but are subject to nominal supervision by the authority responsible for their primary license (e.g. BSP for trust entities; Insurance Commission for insurance companies; SEC for exchange dealers/brokers). The AMLC is in the process of drafting guidance that will create a specific monitoring programme of DNFBPs, but this mechanism is not yet in place.

25. Certified public accountants (CPAs) are supervised by their professional organisation, the Philippine Institute of Certified Public Accountants (PICPA), by the Board of Accountancy (BOA) and ultimately, by the Professional Regulations Commission (PRC); they are also subject to the Code of Ethics for Professional Accountants in the Philippines, which was based on the International Code of Ethics developed by International Federation of Accountants (IFAC). Lawyers, on the other hand, are supervised by their professional organisation, the Integrated Bar of the Philippines (IBP), and finally, by the Supreme Court; lawyers are also guided by the Code of Professional Responsibility. None of these organisations actively monitor the compliance of their regulated professionals with regard to CDD compliance unless a specific ethical complaint is made that raises such an issue.

Updates

26. In light of the Phase 2 recommendation to monitor nominees and non-professional trustees to ensure the availability of ownership and identity information for the persons on whose behalf they act, the Philippines modified RIRR Rule 9(A)(1)(e) in 2016 to require nominees to provide covered persons with written documentation establishing the nominee's relationship and authority. This information must be updated at least once every three years (or more frequently if warranted due to enhanced monitoring). However, no formal monitoring procedures have been put into place.

Part A: Availability of 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.

27. In the 2013 Phase 2 report, the Global Forum made two recommendations regarding the availability of ownership information in element A.1. The first recommendation was for the Philippines to ensure that ownership and identity information was available as it was determined that the legal framework did not specifically require foreign companies to provide the SEC with ownership information if such information was not contained in the legal documents of the incorporating jurisdiction. A second recommendation was for the Philippines to monitor AML obligations for nominees and non-professional trustees as due diligence obligations for these persons were new and untested in practice.

28. The Philippines has taken limited steps to address these recommendations. Although a clear obligation now attaches to resident agents to maintain ownership information for foreign companies, it is still not certain that ownership information is available for all relevant persons and arrangements. Although the Philippines has taken initial steps to implement a supervision programme for relevant AML-obligated covered persons (which includes nominees and non-professional trustees), the monitoring mechanisms are not yet in place, precluding review of effectiveness.

29. Not discussed in the 2013 report, but now an integral part of the 2016 ToR, is availability of beneficial ownership information. This section analyses the legal framework and practice in the Philippines regarding beneficial ownership.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of the legal and regulatory framework	The requirement to identify and verify beneficial ownership is restricted to the Philippines' Anti-Money Laundering framework and may not adequately make available such information for all relevant legal persons and arrangements. This can occur if the person or arrangement has no on-going relationship with an AML covered person.	The Philippines should ensure that beneficial ownership information is available for all relevant legal persons and arrangements in accordance with the standard.
	The AMLA includes an important exclusion from the definition of covered persons for lawyers and accountants acting as independent legal professionals in relation to information concerning their clients or where disclosure of information would compromise client confidences or the attorney-client relationship, which could impede the availability of ownership information.	The Philippines should ensure that ownership information (both legal and beneficial) is available from lawyers and accountants when such professionals are acting in a role such as a company service provider.
Determination: In place, but certain aspects need improvement		
Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of EOIR in practice	The SEC does not have a mechanism to monitor the activities of suspended companies, which have been non-compliant with reporting requirements for more than five continuous years but continue to retain legal personality. The SEC does not maintain updated legal ownership information for such suspended companies which could be relevant for EOI purposes.	The Philippines should monitor suspended companies and implement supervision programmes to ensure that companies with legal personality maintain and make available up-to-date legal ownership information in line with the standard.

Practical Implementation of the standard <i>(continued)</i>		
	Underlying Factor	Recommendations
	The AMLA contains a definition of beneficial ownership in line with the standard, and the AMLC and BSP give instructions to covered persons to appropriately identify and verify the true identity of recordholders, including beneficial owners. But a lack of further guidance (such as the meaning of ultimate ownership/control) may cause AML-obligated covered persons to misapply or neglect procedures to correctly identify and verify a customer's beneficial owners.	The Philippines should ensure that AML covered persons know how to properly apply identification and verification measures to obtain beneficial ownership information.
	The Philippines' Anti-Money Laundering Council does not currently supervise or otherwise monitor the responsibilities of all relevant designated non-financial businesses and professions to conduct customer due diligence requirements.	The Philippines should put in place an effective monitoring programme to ensure that all relevant designated non-financial businesses and professions are adequately supervised regarding customer due diligence requirements under the AML Act.
Rating: Partially Compliant		

Legal ownership

31. The identification and verification of legal owners in the Philippines can arise from several different components of its legal framework. Legal persons (such as domestic companies) may be obligated by law to maintain information in internal records about its shareholders. Or government agencies (e.g. SEC or BIR) may hold information about an entity's owners as part of a registration or reporting process. Finally, legal ownership information may be available from an AML covered person. The various methods for legal ownership information are discussed individually by type of legal person or arrangement in the element subsections below.

Beneficial ownership

AML framework analysis

32. Beneficial ownership information in the Philippines is largely confined to operation of the AML framework in place.

33. Under the AMLA, to the extent that a legal person or arrangement has an account with a covered person, or utilises a covered person in a business relationship, then the covered person would have an obligation to collect and maintain legal ownership information and beneficial ownership information on the customer that is current.

34. The AMLA obligation regarding legal ownership information is consistent with the standard. The definition of “beneficial owner” in RIRR Rule 3(L) is also consistent with the standard. Under the AMLA, RIRR and other guidance, a covered person must identify all beneficial owners of a customer. However, there are concerns whether all relevant legal entities and arrangements will have interactions with an AML covered person so that beneficial ownership will be obtained in all cases.

35. Another potential issue is the extent to which lawyers and accountants are excluded from the definition of “covered person” This exception appears to create a risk that ownership (both legal and beneficial) information held and kept by such professionals may not be available for disclosure regarding their clients for EOI purposes due to application of confidentiality rules and legal privilege.

Peer input

36. One peer expressed initial concern with a request made for beneficial ownership information from the Philippines, although it is now satisfied. The request, regarding an individual taxpayer, resulted in the Philippines contacting record-holders considered to be associated with the subject individual; the record-holders were attorneys who initially claimed privilege in order to avoid turning over the information. The Philippines reports that it informed the treaty partner of the record-holders’ position, but the BIR went back to the attorneys again for the information on the basis that privilege did not apply and has since obtained some information from the attorneys that will be provided to the partner. The peer indicates it is still seeking clarifications and additional information. The Philippines reports that this situation is an isolated incident as other requests to attorneys for information pursuant to the Commissioner’s power under the EOI Act have always been answered without incident.

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

37. Domestic corporations are created by operation of law in the Philippines and consist of either stock or non-stock companies. Stock corporations are those with capital stock divided into shares that are authorised to distribute dividends or allotments of the surplus profits of the company. Essentially anything else is a non-stock corporation. Non-stock corporations may only be formed or organised for charitable, educational or religious purposes and any profits earned must be incidental to the corporation's operations, may not be distributed, and may only be used in furtherance of the corporation's main purpose.

38. A majority of corporations incorporated in the Philippines are regarded as small corporations, with capital between PHP 5 000 and PHP 100 000 (approximately USD 100 to USD 2 000) and primarily geared toward basic services (such as transportation, street retail, etc). Because of their size, industry focus, and lack of education of owners, such corporations often fail to comply with reporting requirements. The Philippines does not view these entities as likely being the subject of an EOI request.

39. At the end of calendar year 2016, there were 356 485 active domestic stock corporations, 188 254 active non-stock corporations, and 101 627 active partnerships registered with the SEC. Foreign corporations can carry out business activities in the Philippines as either a branch office, regional headquarter, or regional operating headquarter (see paragraphs 84-95 of the 2013 report for additional details). At the end of calendar year 2016, there was a total of 4 143 foreign corporations registered with the SEC.

40. Inactive entities comprise a significant number of total entities registered with the SEC. At the end of calendar year 2016, there were a total of 303 453 entities (made up of stock corporations, non-stock corporations, and partnerships) listed by the SEC as inactive. Thus, approximately one-third of the total number of entities registered with the SEC (both active and inactive) are deemed inactive by the SEC. During the 2015-16 calendar years, the SEC revoked the certificates of 10 159 corporations and suspended the certificates of 26 986 corporations. The difference between suspended and revoked corporations involves the status of continued legal personality. Prior to 2015, the SEC would issue revocation orders, which removed the entity's legal personality and ability to carry out any corporate functions and business activity, causing the entity to begin the three-year liquidation process of winding up. Because of the severe nature of revocation, the SEC decided to adopt a more liberal approach for imposing a sanction on non-compliant entities. In 2015, SEC Resolution No. 15 was issued designating "suspension orders" as the method for sanctioning companies for five-year continuous non-compliance with reportorial requirements, rather than the previously used "revocation orders". Suspended entities retain their corporate existence but have certain

aspects of their legal privileges limited. For example, suspended entities cannot receive a certificate of good standing, which prevents them from conducting most business activities within the Philippines. However, suspended entities can change ownership, dispose of assets, and transfer shares even while in suspended status.

41. The Philippines notes that companies with revoked registrations are not able to conduct business in corporate form (except for legitimate winding-up activities). Companies with revoked registrations could continue business activity in the Philippines in the names of the individual owners, creating individual liability for the owners; such individuals would have to operate as sole proprietorships (or as new entities upon proper registration) and obtain the necessary government licenses to conduct business, including registration with the BIR. Corporate assets will remain titled in the name of the company during the liquidation period until final dissolution occurs.

42. However, a suspended company may continue to engage in normal business activity although the Philippines believes that any business activity inside the Philippines would trigger tax filing requirements. In addition, there is a possibility a suspended company, because it retains corporate personality, could conduct business outside of the Philippines without oversight by the Philippines.

43. Both revoked and suspended corporations are given the opportunity to file petitions with the SEC to set aside the respective orders affecting their status as going-concerns. When filing a request to lift a suspension or revocation order, the affected company must also provide the latest financial statements, a GIS, copy of stock registration/transfer book, latest articles of incorporation and bylaws, and payment of any outstanding fines and filing fees.

44. Because suspended companies retain legal personality there is concern that they may conduct business (including ownership changes) outside the view of the Philippines. There is no monitoring or supervision conducted by the SEC of suspended companies. Nonetheless, the Philippines believes that suspended companies pose a low risk because most are small corporations. For example, at the end of fiscal year 2017, approximately 74% of SEC suspended registered entities had share capital under PHP 500 000 (approximately USD 10 000), and approximately 84% of suspended registered companies had share capital under PHP 1 000 000 (approximately USD 20 000).

45. For tax purposes, an inactive company maintains its BIR TIN and has continuing filing obligations even during the period it has a suspended SEC registration. The BIR cancels an entity's TIN only upon accepting an application to cancel the tax registration.

46. Thus, in practice, nearly one-third of registered companies in the Philippines exist in a status of having not complied with reporting requirements

for more than five years. Although dormant companies are not per se inconsistent with the standard, they should be expected to meet their return filing obligations and keep statutory registers up to date. The large number of companies for which the SEC may not have an updated line of sight into ownership information or accounting records raises concerns. The Philippines is recommended to review its policy of permitting long-term non-reporting companies to remain on the registry without strike-off and implement appropriate supervision.

47. The SEC maintains a supervision programme of active registered companies with a light touch as there is continuous monitoring of registered entities to ensure they are in compliance with the reportorial requirements (General Information Sheets (GIS) and financial statements). The Compliance Monitoring Division issues show cause letters for non-compliance and will issue an assessment letter if penalties or other sanctions are applicable under the Corporate Code or SEC rules. In addition, based on risk assessment, the SEC will conduct audits, both desk and on-site, that could involve inspecting books and records of registered companies. The SEC notes that it has not encountered an instance where legal ownership and identity information of a registered company was not available.

48. The following table² shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies:

Type	Company law	Tax law	AML law
Corporation	Legal – all	Legal – some	Legal – all
	Beneficial – none	Beneficial – none	Beneficial – some
Foreign corporation	Legal – some	Legal – some	Legal – all
	Beneficial – none	Beneficial – none	Beneficial – some

Legal ownership

49. As discussed in the 2013 report (paragraphs 56-128), legal ownership information is available through a number of existing mechanisms in the Philippines’ laws. All companies, whether domestic or foreign, must register with the SEC. Domestic companies must submit articles of incorporation,

2. The table shows each type of company and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every company of this type is required to maintain ownership information in line with the standard and that there are sanctions and appropriate retention periods. “Some” in this context means that a company will be required to maintain a portion of this information under applicable law.

which lists the incorporators and initial stockholders, thus providing legal ownership information. Although the SEC similarly requires foreign companies to submit a copy of the foreign incorporation document, such documents may not always directly result in ownership information being provided. The Philippines revised RIRR Rule 9(A)(1)(e) of the AMLA in 2016 to require that covered persons (such as a resident agent) establish the true and full identity (as well as the beneficial owners) of the customer or person on whose behalf the transaction is conducted. Because all registered foreign companies must engage a resident agent in the Philippines, the agent is required under AMLA to have ownership information on the foreign company, which would include legal owners.

50. Domestic stock companies are required to keep a stockholder register which will list the legal owners of the company. The stockholder register must be kept as long as the company maintains its legal personality.

51. All corporations are required to register with the BIR and file tax returns, although the appropriate tax returns and registration forms do not require the submission of ownership information. However, availability of ownership information can be checked in the ordinary course of the BIR's monitoring activities.

52. Any company utilising a company service provider (incorporator, agent, nominee, etc.) will have its ownership information available from such covered person, although perhaps not from a lawyer or accountant (see paragraphs 62-64 below).

53. All companies registered with the SEC must file GIS annual reports. On the GIS, domestic companies must update their list of stockholders, directors and officers (providing legal ownership information), while foreign companies need only update the list of officers.

54. The SEC monitors that the annual company reports are timely submitted, but does not check the quality of the information contained therein. Companies that fail to comply with the annual reporting requirement receive deficiency notices and show cause letters; companies failing to file for five consecutive years are suspended by the SEC following notice and publication of inactive status. Suspended companies can petition the SEC to reinstate their status. The SEC will thus have legal ownership information for all domestic corporations, but may not have updated legal ownership information for suspended companies (as no GIS will have been filed showing current stockholders, directors and officers). The SEC indefinitely maintains ownership records for all entities that have been registered, even following revocation and removal from the registry.

55. Based on these practices and consistent with the determination made in the 2013 report, the Philippines' supervision of the mechanisms for which

legal ownership information is available appears adequate. During the current review period, the Philippines received approximately 51 requests for legal ownership information; it was able to obtain the requested information in each case.

Conclusion

56. Legal ownership information is adequately obtained at the time of registration for companies, but the number of suspended companies not filing annual reports that would provide updated information on legal owners makes it possible that updated information is not available in accord with the standard. The Philippines should implement monitoring and supervision of suspended companies to ensure that this gap is addressed to reduce the possibility of suspended companies that might be relevant for EOI purposes operating (even if outside of the Philippines) without current available ownership information, or failing to keep their statutory registers up to date.

Beneficial ownership

57. Beneficial ownership information for companies in the Philippines is largely dependent upon the function of the AML rules as no other area of law contains an express beneficial owner identification requirement. As explained in the overview, the CDD rules for a covered person's relationship with a business entity require establishing the beneficial owner of a company by means of understanding the control structure and examining corporate documents (articles, registration certificates, etc.). RIRR Rule 9(A)(1)(e) instructs a covered person to “establish and record the true and full identity” of an accountholder and its beneficial owners (if not a natural person). The rule goes on to state that “the covered person shall determine the true nature of the parties capacities and duties by obtaining a copy of the written document evidencing their relationship and apply the same standards of due diligence to be applied to both”; where doubt exists as to the real identity, enhanced CDD procedures should be utilised or a suspicious transaction report filed.

58. But no guidance exists to practically explain how to apply identification measures in determining ultimate ownership or control. The lack of further guidance on how AML covered persons should go about conducting customer due diligence in order to identify and verify the beneficial owners of a customer may cause AML-obligated covered persons to misapply or neglect procedures to correctly identify and verify a customer's beneficial owners although there were no confirmed instances of such occurrence brought to the attention of the assessment team. During the review period, the Philippines only received one request for beneficial ownership information that it attempted to obtain.

59. A company's beneficial ownership information will be available when it maintains a bank account in the Philippines or otherwise has engaged the services of a company service provider. Pursuant to Securities Regulation Code (SRC) Rule 12, the SEC only requires publicly listed companies and registered securities issuers to maintain a local bank account in the Philippines. Thus, it appears that only a small subset of legal persons are legally obligated to have a relationship with an AML covered person that would in turn be required to have beneficial ownership information available. Although many other legal persons likely also have local bank accounts, it is not possible to determine the extent to which AML rules would cover all legal persons and arrangements, including companies.

60. Even if all companies had one or more covered persons with customer due diligence requirements, the lack of robust supervision programmes during the review period creates uncertainty as to the availability of such information in practice. In theory, some small degree of supervision of covered persons is exercised by other supervising authorities to check AMLC compliance (see paragraphs 24-25 above). Although the Commissioner has broad powers under Section 5 of the EOI Act to obtain information from a non-bank covered person – further clarified by Regulation (RMC No. 12-2018 (22 Feb. 2018)) – this does not ensure that companies have an obligation themselves to keep beneficial ownership information.

61. The AMLC has not yet released rules (although anticipated) that would extend direct supervision to relevant DNFBPs. Without any applicable examinations or other oversight mechanisms to assess the adequacy of customer due diligence practices of company service providers (and other non-bank covered persons), there exists a potentially sizable gap regarding what the Philippines could obtain to answer an EOI request.

62. Lawyers and accountants are described as covered persons in RIRR Rule 3(E)(4)(c) when acting as a service provider by providing financial management or company formation and management services. But a subsequent paragraph in the rule then expressly excludes lawyers and accountants from the definition of covered person if they are authorised professionals engaged in independent practice and information relates to the client or risks compromising attorney-client or confidentiality privileges.

63. Although the AMLA tries to differentiate between an attorney or accountant acting in a company service provider role – such as incorporating an entity or acting as a nominee – and providing advice or services involving privilege or confidentiality, the language used in the RIRR provisions is ambiguous and makes it unclear exactly when a lawyer or accountant is legally required and expected to conduct CDD under the AMLA and when such diligence is unnecessary. The exclusionary portion of the rule does not strictly narrow itself to traditionally more limited activity meriting privilege,

such as confidential communications between the client and professional when the professional is engaged in the role of protected professional activity.

64. The AMLC states that it considers lawyers and accountants rendering any business services enumerated under AMLA Section 3(A)(6)(7) as mandated to comply with the principal duties under the AMLA, such as customer identification, record-keeping and transaction reporting. The extension of an exception to “independent legal professionals” – accountants and lawyers working in a private firm or as sole practitioners who by way of business provide purely legal, notarial or accounting services to their clients – only refers to disclosure of information concerning their clients that would compromise client confidences or the attorney-client relationship, but does not extend to remove customer identification and record-keeping obligations. Consequently, the AMLC considers that if services rendered by lawyers and accountants do not strictly and exclusively call for the professional services of licensed professional lawyers and accountants, then they are mandated by law to have information concerning clients and beneficial ownership.

65. It is not clear whether the AMLC’s interpretation is accepted by legal professionals and followed; the lack of supervision compounds the uncertainty regarding potential compliance of such professionals. As a result, the AMLA exception appears to create a risk that ownership (both legal and beneficial) information held and kept by such professionals may not be available for disclosure regarding their clients for EOI purposes. The AMLC expects to issue regulatory guidelines in May 2018 to establish an institutional compliance and supervision framework over defined DNFBPs.

66. For companies that are suspended or removed from the SEC registry, beneficial ownership information will be available to the extent that the entity had engaged a covered person under the AMLA; the covered person must maintain transaction records (including CDD) for five years from the end of the business relationship.

67. As already noted, neither the tax registration nor tax return filing processes obtain beneficial ownership information regarding companies.

68. During the current review period, the Philippines received one request for beneficial ownership information regarding companies. The peer noted (see paragraph 36 above) that the Philippines encountered difficulties in obtaining beneficial ownership information from a person thought to be in possession of relevant records and who made an initial claim of attorney-client privilege; the claim was subsequently dropped and the lawyer record-holder has provided the BIR with some information regarding the non-resident individual, although it is not clear if it is responsive to the request (see further section B.1.5).

Conclusion

69. The Philippines should not only bolster its legal framework to ensure that beneficial ownership is available regarding all relevant entities, but also put in place an effective monitoring programme to ensure that all covered persons are adequately supervised regarding customer due diligence requirements under the AMLA.

A.1.2. Bearer shares

70. As discussed in the 2013 report (paragraph 129), bearer shares are effectively prohibited in Philippines law. Moreover, even if a company did issue bearer shares, RIRR Rule 9-A(3) requires a covered person dealing with bearer share entities to conduct enhanced due diligence on such entities and their existing stockholders and/or beneficial owners at the time of opening of the account, with an ongoing monitoring obligation at all times that includes updating such information within thirty days after every transfer of ownership (see paragraph 19 above).

A.1.3. Partnerships

71. The 2013 report provided a detailed explanation of partnerships in paragraphs 130-144. Generally, partnerships are created under the Civil Code in the Philippines and are a separate legal entity apart from its partners. Partnerships may be either general or limited in nature. A general partnership files a copy of its articles with the SEC but has no obligation to update the SEC regarding any change in members. A limited partnership consists of at least one general partner and one limited partner; the limited partnership must submit a sworn certificate to the SEC listing the name of each member (and whether they are general or limited), and any changes to the members of the limited partnership must likewise be reflected in an amended certificate and provided to the SEC. The NIRC definition of corporation includes partnerships; therefore, partnerships, like corporations, are taxed at the entity level. General professional partnerships (GPPs) are a special entity reserved for certain licensed professionals conducting a business together; under the NIRC, it is the GPP's partners who are taxed (although the GPP files an annual information return). Foreign partnerships doing business in the Philippines would register with the SEC as a foreign company (see section A.1.1 for an analysis of the ownership information available for foreign companies).

Legal ownership

72. All general partnerships with capital of PHP 3 000 (approximately USD 60) or more must register with the SEC (Civil Code, Art. 1772), while all limited partnerships regardless of size must register with the SEC (Art. 1884).

The SEC registration form requires that the partners be identified and that the Articles of Partnership be provided. There is no penalty for partnerships who fail to register with the SEC, but their activity would be considered illegal. Because any change in the composition of partners causes the partnership to dissolve, the addition or loss of partners requires forming a new partnership, which requires new registration with the SEC; thus, updated ownership information may be given to the SEC when changes occur if registration is undertaken by the partnership. At the end of 2016, there were 101 627 partnerships registered with the SEC (including 1 588 GPPs), while only 29 747 registered with the BIR as partnerships. This difference in the number of registered partnerships between the SEC and BIR is because under the NIRC, most partnerships will be classified as corporations for tax purposes unless it is a GPP.

73. All forms of partnerships must register with the BIR in order to secure an operating permit. The registration process for obtaining a BIR TIN requires the partnership to submit a copy of its articles of partnership and SEC certificate of recording, providing ownership information on the partners. In addition, any partnership conducting business in the Philippines would need to obtain approval from the Local Government Unit (LGU) in order to operate; the LGU requires any partnership to be registered with the SEC. So even if a partnership falls below the SEC’s capital registration requirement (which has a low threshold and is not material in practice), the partnership will in practice still need to register with the SEC to operate. These requirements ensure that ownership information regarding a partnership’s partners is available under the Philippines’ legal framework.

Beneficial ownership

74. Apart from the AMLA, there is no requirement for partnerships to keep themselves or provide beneficial ownership information to anyone. Therefore, the availability of beneficial ownership information hinges on the partnership having a local bank account or using a covered person in the course of its operations. As discussed in section A.1.1 for companies, it remains possible for some partnerships to thus end up with no beneficial ownership information available; and even if a partnership has engaged an AML-obligated covered person, the lack of appropriate supervision creates uncertainty as to the true availability of such information.

75. The Philippines should modify its legal framework to ensure that beneficial ownership information is available regarding all partnerships, as well as put in place an effective monitoring programme (in conjunction with the recommendation regarding companies) to ensure that all covered persons are adequately supervised regarding customer due diligence requirements under the AMLA.

A.1.4. Trusts

76. Trusts, whether express or implied, can be formed in the Philippines under Title V of the Civil Code. A company or person acting as a trustee must be authorised by the Monetary Board (the BSP’s governing body) and is subject to the requirement of the General Banking Law (RA No. 8791) and regulated by the BSP. Paragraphs 145-161 of the 2013 report contain additional detailed information on trusts in the Philippines. As at November 2017, there were 42 authorised companies acting as trustees in the Philippines and 3 567 individual trusts registered with the BIR.

77. There is no requirement that each individual trust register with the BSP or SEC, apart from the requirement that an authorised trustee is utilised. However, trusts with income arising in the Philippines must obtain a certificate of registration from the BIR, which requires the trustee to provide the BIR with its name and contact information, as well as a copy of the trust agreement. These processes only obtain information on the trustee as the legal representative of the trust and generally do not provide any information (legal or beneficial) on the settlor(s), protector(s), or beneficiary(ies) of a trust, if not in the trust agreement.

78. Where only the trustee is resident in the Philippines (i.e. all settlors and beneficiaries are foreign residents) and all of the trust’s activities occur outside of the Philippines and assets are held in other jurisdictions such that there is no trust income sourced to the Philippines, the trustee (on behalf of the trust) may not be required to register with the BIR, but if registered, must file a tax return even if no income is received in a particular tax year.

79. Trustees authorised by the BSP to engage in trust and other fiduciary business are covered persons under the AMLA, and they are obligated to identify and verify information regarding a trust’s legal and beneficial owners. This ensures, in theory, that the trustee will have ownership information regarding the trust. The definition of “beneficial owner” in RIRR Rule 3(L) covers natural persons who ultimately own or control a customer and/or on whose behalf a transaction or activity is being conducted, or have ultimate effective control over the customer. The BSP’s Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBF) instruct banks and NBFIs that due diligence must be conducted in a manner to obtain beneficial ownership information concerning the trust’s settlor(s), trustee(s), protector(s), beneficiary(ies), and any other natural persons exercising ultimate effective control over the trust. MORB §X806.2 and MORNBF §4806Q.2.

80. Trust entities must be licensed by and registered with the BSP and are considered covered persons under the AMLA. Consequently, a trustee will be required to maintain beneficial ownership information. Trust entities are

supervised by the BSP, which monitors compliance with their CDD requirements. Each trust entity is assigned a trust rating based on examination assessment.

Conclusion

81. The legal framework appears in place in the Philippines to make available information on all of the deemed beneficial owners of a trust as set out in the standard. There were no requests made for information concerning trusts during the review period.

A.1.5. Foundations

82. Jurisdictions that allow for the establishment of foundations should ensure that information is available identifying the founders, members of the foundation council, beneficiaries, as well as any beneficial owners of the foundation or persons with the authority to represent the foundation.

83. Foundations exist in the Philippines in the form of non-stock, non-profit corporations established for the purpose of extending grants of endowments to support goals or raising funds to accomplish charitable, religious, educational, athletic, cultural, literary, scientific, social welfare or other similar objectives. Contributed assets are irrevocably committed, and generally no financial benefit can accrue to foundation members, trustees or officers (except as specified in the Corporation Code for dissolution). They are subject to the Corporation Code and exempt from income taxation based on Section 30 of the NIRC. Because the profits of non-stock companies, including foundations, are limited to furthering the corporation's non-profit purposes, the 2013 report did not find them to be relevant for EOIR. At the end of 2016, there were 12 262 foundations registered with the SEC that managed PHP 70 billion (approximately USD 1.37 billion) in assets.

84. Foundations must also obtain a secondary license from the SEC by having minimum capital of at least PHP 1 million (approximately USD 20 000). Sources and application of funds are reviewed at least every five years (or any time a complaint is filed). As part of the registration process, the SEC collects a foundation's articles of incorporation and by-laws. These documents identify a foundation's incorporators, initial directors, and names of contributors. The SEC's annual report required of non-stock companies (including foundations) requires that information on all officers and members (and their respective contributions) be provided, and the foundation must provide an audited financial statement. Thus, the SEC will have legal ownership and identity information regarding foundations; however, none of the information obtained in the articles, bylaws, annual report or financial statement necessarily gives indication of any beneficial owners.

85. A foundation’s trustees or directors are not covered persons under the AMLA and would have no obligation to know and maintain information on the foundation’s beneficial owners, but any AML covered person providing services to a foundation would have an identification obligation. Indeed, because foundations have a minimum capital requirement, they must provide a certificate of bank deposit, which thus obligates their bank to maintain beneficial ownership information.

86. As foundations are tax-exempt under Section 30 of the NIRC, there is no requirement to file a tax return.

87. During the period under review, the Philippines received no requests relating to foundations, and no issues were identified by peers.

88. Accordingly, the Philippines should have available legal ownership information for foundations based on information held either by the foundation itself or the SEC. Beneficial ownership information should be available from the bank holding the foundation’s deposits, as well as any other covered person engaged with the foundation, based on obligations under the AMLA.

Summary

89. Legal ownership information acquired at the time of registration for legal persons and arrangements is likely to be available in the Philippines under the existing legal framework. However there is no monitoring of suspended companies where no recent filings have been made and the Philippines should ensure that adequate supervision exists to establish availability of legal ownership information in practice. The availability of beneficial ownership information in the Philippines, however, is less certain as a number of potential gaps exist in the current framework (including singular reliance on AML and the ambiguity regarding exclusion of lawyers and accountants from being covered persons). This may particularly be the case for legal entities without a local bank account. The Philippines should work to expeditiously fix these deficiencies.

A.2. Accounting records

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

90. The 2013 Phase 2 report found that the Philippines’ framework for the maintenance of accounting records, including underlying documentation, for a minimum period of five years was inadequate as the record-keeping requirement did not cover all relevant entities and arrangements for the proper period. Accordingly, element A.2 was determined to be “in place, but certain aspects need improvement” and Partially Compliant.

91. Since the last review, the Philippines has adopted new provisions that require all taxpayers to maintain accounting records for ten years following the filing of a tax return, and also clarify the scope of underlying documents to be kept for tax purposes.

92. However, obligations to maintain accounting records, including underlying documentation, in accordance with the international standard are still not fully in place in the Philippines for all relevant entities and arrangements, as explained below.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of the legal and regulatory framework	A large number of companies in the Philippines are revoked or suspended, which means that no annual report and financial statements have been submitted to the SEC for at least five continuous years. Accounting records for suspended companies may not exist or be available.	The Philippines should ensure that accounting records are available for all relevant entities and arrangements, including suspended companies.
Determination: In place, but certain aspects need improvement		
Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of EOIR in practice		
Rating: Largely Compliant		

A.2.1. Obligations to maintain accounting records

94. Section 232 of the NIRC requires all taxpayers – including corporations, companies, partnerships or other persons (e.g. trusts) subject to pay tax – to keep books of account, or other records, in order for the government to readily ascertain and determine income tax liability. Taxpayers with quarterly sales or earnings less than PHP 50 000 (approximately USD 1 000) can use a simplified set of bookkeeping records authorised by the Secretary of Finance; taxpayers with quarterly sales or earnings more than PHP 150 000 (approximately USD 3 000) must have their accounting records audited annually by an independent CPA and file an account information form with their return.

95. Section 235 of the NIRC requires taxpayers to preserve their accounting records for a period at least as long as the applicable assessment period pertaining to a set of books, which is generally three years for assessment but possibly extended to ten years in certain situations (such as fraud).

96. In 2013, the BIR adopted Revenue Regulation No. 17-2013 to mandate that all taxpayers preserve their books of accounts, including subsidiary books and other accounting records, for a period of ten years following the due date of a return (or from the date of the filed return, if later than the due date).

97. The BIR further modified its record retention policy in Revenue Regulation No. 5-2014, which kept the ten year retention period, but allows taxpayers to maintain the required records in electronic formats following the fifth year. Thus for the first five years following a filed return, taxpayers must maintain hard copies of all books of accounts and underlying documentation, with an option to thereafter keep the records in a permitted electronic format for the remainder of the required retention period.

98. The obligation for taxpayers to keep books and records continues in the case of an audit, protest, or refund claim until the case is resolved. In addition, CPAs engaged in auditing and certifying a taxpayer's financial statements must retain copies of the statements (including audit working papers) for ten years from the date of a filed return.

99. Compliance with tax filing obligations is monitored on a monthly basis by the Revenue District Office (RDO) and Large Taxpayer Service having jurisdiction over the taxpayer. Tax audits and onsite inspections are conducted using risk assessment procedures, which includes review of a taxpayer's books and records. For example, the RDOs use the Tax Compliance Verification Drive (TCVD) to verify that a taxpayer maintains duly registered books of account and accounting records in its principal place of business.

100. Failure of taxpayers to properly maintain accounting records can be punished by the BIR with a fine of between PHP 50 000 to PHP 100 000 (approximately USD 1 000 to USD 2 000) and imprisonment from two to six years. During the review period, the BIR dealt with 9 850 cases involving failure by taxpayers to keep books and records which resulted in the imposition of fines. The BIR's supervision of accounting records seems adequate.

101. For entities or arrangements that are not considered a taxpayer and subject to the NIRC record-keeping requirements, there are a few further mechanisms that might create an obligation to maintain accounting records.

102. Companies (both domestic and foreign) and foundations are required to provide the SEC with an annual report that includes a financial statement of assets and liabilities. In addition to keeping hard copies, these statements

are microfilmed and uploaded into the SEC's i-Report database and retained for five years, and then archived after that. Non-compliance with these rules can result in the SEC issuing administrative sanctions, ranging from monetary penalties up to revocation, depending on the seriousness and pattern of the violations. The SEC has authority in appropriate cases to request that any registered entity provide copies of its books and records for inspection.

103. In the Philippines, in addition to the record-keeping rules in the NIRC applicable to registered trusts, trustees have obligations under both common law and the AMLA to keep proper records and accounts for the trusts they administer; this includes resident trustees of foreign trusts. The BSP requires a trust entity to keep the true and accurate account or record of transactions even if there is no tax return filed, as in the case where the settlors, beneficiaries and assets are foreign.

104. Entities that are dissolved or liquidated remain obligated to maintain copies of the relevant books and records, either for ten years under the tax law, or five years if registered with the SEC or obligated under the AMLA; the liquidator obtains control of company books and records and maintains them for the retention period. In practice, the Philippines has not had issues obtaining accounting information from dissolved companies, and no peer input indicates any issues.

105. But for companies with revoked or suspended licenses (arising from more than five years unfiled annual reports), such entities will not file returns with the BIR and will not file financial statements with the SEC. Suspended companies also keep their legal personality and may continue to conduct business activity (even if they cannot obtain a certificate of good standing and are thus precluded from interacting with the government). As a result, accounting records for suspended companies may not exist or may not be available during the period of suspension until reactivation or dissolution occurs.

106. Given the large number of revoked and suspended companies, this represents a sizable gap for which accounting records may not be available, putting the Philippines outside the standard in ensuring that accounting records for all relevant legal entities and arrangements are available.

A.2.2. Underlying documentation

107. In addition to explaining all transactions, enabling the financial position of an entity to be determined, and allowing for financial statements to be prepared, accounting records should include underlying documentation and should reflect details of all sums of money received and expended, all sales, purchases and other transactions, and the entity's assets and liabilities.

108. As explained in paragraphs 201-207 of the 2013 report, there were substantial ambiguities in the Philippines' legal framework during the last review regarding the scope of underlying documents that entities must maintain. It was determined that the NIRC requirements on accounting records did not fully encompass the underlying documents envisaged by the standard. Outside of the tax law, laws governing the records specific entities must keep were also deemed unclear as to the extent to which underlying documents must be retained.

109. Subsequently, the BIR adopted Revenue Regulation No. 17-2013, which defines the term "other accounting records" as including "the corresponding invoices, receipts, vouchers and returns, and other source documents supporting the entries in the books of accounts". This guidance is an important step forward in meeting the standard; although it only applies to taxpayers, the broad scope of tax filing requirements for any business conducting activity ensures that relevant entities and arrangements will be subject to BIR requirements to keep necessary underlying documentation.

Conclusion

110. The 2013 report recommended that the Philippines ensure both that there is an express requirement for all relevant entities and arrangements to maintain underlying documents, and that the retention period be at least five years in line with the standard. The Philippines subsequently adopted tax regulations that require all taxpayers to maintain accounting records for ten years and clarified the scope of underlying documents to be kept. These are important steps toward meeting the standard. However, accounting records may not be available for companies with suspended SEC registrations.

111. Consequently, the Philippines should further endeavour to introduce obligations that ensure all relevant entities and arrangements have accounting records available and maintain underlying documents in line with the standard.

112. The Philippines received 41 requests during the review period for accounting information. The requests covered records for financial statements and transactions, including asset purchases. The Philippines was able to obtain the requested information in all cases (although several requests are still pending), so there is no apparent issue in practice.

A.3. Banking information

Banking information should be available for all account-holders.

113. The Phase 2 report did not raise any concerns with respect to the availability of bank information in the Philippines. In the report, element A.3 was determined to be “in place” and rated Compliant.

114. Availability of banking information is confirmed in the Philippines’ EOIR practice. During the review period, the Philippines received 14 requests for banking information and was able to provide the information in most cases (although a few cases remain pending); the two instances where the Philippines could not provide the requested information resulted from lack of sufficient information provided by the requesting jurisdiction to identify the specific account holder sought. The Philippines relayed these issues to the partners and asked for additional information to continue searching, but did not receive any follow-up.

115. There has been no change in the relevant provisions or practices since the last review and both the legal framework and practice seems in line with the revised standard. Thus, the table of determinations and ratings remains as follows:

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

A.3.1. Availability of banking information

116. Jurisdictions should ensure that banking information, including beneficial ownership information, is available for all account holders. In the Philippines, banks and financial institutions are regulated by the BSP and are subject to both the General Banking Law and the Corporation Code. At the end of 2016, the BSP supervised a total of 302 banks and 16 353 NBFIs.

117. Banks and financial institutions are also covered persons for purposes of the AMLA, which sets out obligations to retain records on accounts and transactions. The RIRR, amended in 2016, defines transaction to cover any act between parties resulting in a contractual or legal relationship, as well as any movement of funds by a covered institution.

118. Covered persons have an on-going obligation to monitor customers, accounts and transactions. This requires them to ensure that they have established the true and full identity of their customers at the time of account opening and update all identification information and documents at least once every three years (or more frequently based on material risk and enhanced monitoring rules).

119. Section X806 of the BSP's Circular 950 (2017) lists the customer due diligence requirements:

- Identify the customer and verify the trust identity based on official documents or other reliable, independent source documents, data or information; for corporate or legal entities, verify the legal existence and organisational structure, as well as the authority and identification of purportedly authorised persons
- Identify the beneficial owner, taking reasonable measures to verify the identity; for legal entities or legal arrangements, also know the ownership and control structure
- Understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship
- Conduct on-going due diligence on the business relationship and scrutiny of transactions undertaken during the course of the relationship to ensure that the transactions conducted are constituent with the covered person's knowledge of the customer, business and risk profile.

120. For accounts involving trusts, banks and NBFIs must conduct due diligence in a manner to obtain beneficial ownership information concerning the trust's settlor(s), trustee(s), protector(s), beneficiary(ies), and any other natural persons exercising ultimate effective control over the trust. MORB §X806.2 and MORNBF §4806Q.2. These rules thus require a bank in the Philippines to maintain records identifying the beneficial owners of a trust.

121. Section 9 of the AMLA requires covered persons to keep records of all transactions for five years from the date of the transaction. For closed accounts, the applicable records on customer identification, account and business correspondence must be kept for five years from the date of closure.

122. The AMLA imposes a fine of not less than PHP 100 000 but not more than PHP 500 000 (approximately USD 2 200 to USD 11 000) or

imprisonment from six months to one year or both for failure to keep records (Rule 14.b).

123. The AMLC (pursuant to the AMLA) and the BSP (as a supervisory authority under the AMLA and pursuant to the MORB) check and ensure compliance with the obligation of keeping reliable banking information for five years. Under the BSP's legal mandate, it has to examine each bank on an annual basis. The number of regular onsite examinations conducted by the BSP (which included evaluating compliance with AML requirements) was 599 in 2014, 629 in 2015, and 639 in 2016.

124. The AMLC is the Philippines' Financial Intelligence Unit. It is an independent tri-partite government agency tasked with implementing the AMLA. The AMLC requires, receives and analyses suspicious transaction reports and covered transaction reports from covered persons, and acts as an investigative and asset recovery agency regarding suspicious transactions, unlawful activities and money laundering offences. The AMLC also operates as a quasi-judicial body that hears and decides administrative sanctions on covered persons, in co-ordination with other Supervising Authorities (BSP, SEC and IC). At the end of 2017, the AMLC is staffed by 92 personnel.

125. The BSP has the power to issue Enforcement Actions against non-compliant supervised entities under the New Central Bank Act (RA 7653), which can consist of monetary penalties or administrative sanctions. The BSP's MORB Section X009 further highlights that enforcement actions can consist of corrective actions (directives to take or refrain from specific action), sanctions (affecting a bank's privileges, imposing penalties, or taking action against the directors/officers), and other supervisory actions (cease and desist orders, conservatorship, etc.). Between 2012 and 2016, the BSP imposed PHP 3 million (approximately USD 66 000) in total financial penalties against 19 banks/NFBIs for AML weaknesses and non-compliance with BSP directives, as well as issued administrative sanctions to 25 bank officers and reprimands to 15 bank officers.

126. Non-compliance with AML requirements is usually subject to non-monetary sanctions, which can include giving to the entity's board of directors a warning, written reprimand, suspension, removal or disqualification from office. In addition, the BSP can impose monetary penalties based on the overall assessment of the covered person's AML risk management system. Offences of a serious nature can lead to revocation of a license, although this action is taken only in extreme cases (such as when continued banking operations pose a serious threat or loss to the depositors and clients). Between 2014 and 2016, the AMLC conducted 110 bank investigations regarding AMLA compliance. In general, banks co-operated with the investigations and provided the AMLC with copies of the account opening, transaction and other pertinent records subject of the inquiry.

127. Over the three-year period under review, the Philippines competent authority received 14 EOI requests concerning banking information. The Philippines provided the requested banking information in all but two cases (with 4 requests pending at the end of the review period). The two cases for which the Philippines could not provide the requested banking information involved situations in which the banks identified several accountholders that could have been responsive to the request, and so it was necessary to obtain a clarification from the requesting jurisdiction regarding which taxpayer the request referred to. The Philippines requested clarifications from the treaty partner in an acknowledgment letter sent seven days after receiving the request. As there was no reply received from the treaty partner after sending the clarification letter and another clarification request made in the status update, the Philippines closed the cases.

Conclusion

128. The 2013 report found no issues with the availability of banking information in the Philippines. Under the 2016 Terms of Reference, the availability of banking information continues to appear to be in line with the standard. As articulated above, banks are required to conduct customer due diligence in a manner calculated to obtain ownership information, and these obligations are adequately supervised in practice. Accordingly, this element is determined to be “in place” and is rated as Compliant.

Part B: Access to information

129. Effective exchange of information requires that a jurisdiction’s competent authority has adequate powers to access and obtain a variety of information that may be relevant to a tax inquiry. Jurisdictions should also have in place effective enforcement mechanisms to compel production of information. Sections B.1 and B.2 evaluate whether the competent authority has the power to obtain and provide information that is the subject of a request under an EOI arrangement from all relevant persons within their territorial jurisdiction and whether any rights and safeguards in place 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).

130. The Philippines’ tax authorities have broad powers to obtain bank, ownership, identity, and accounting information and to compel the production of such information where needed. The Philippines’ competent authority is empowered to obtain all such information from any person within its jurisdiction who is in possession of the information.

131. The Philippines’ access powers were assessed under the 2010 ToR and found to be generally adequate, although the 2013 report noted that the scope of professional privilege in some instances was broader than that anticipated by the international standard. Consequently, the Philippines was recommended to review its policy regarding access to information held by legal and tax advisors and to monitor requests for information where such privilege rules were implicated. Element B.1 was determined to be “in place” and Compliant.

132. Since the last review, the Philippines has not had any legislative developments affecting the legal framework of element B.1. As described

below, one case involving the assertion of attorney-client privilege has bearing on access to information in practice.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In Place		
Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of EOIR in practice	The Philippines has issued guidance to clarify how the legal privilege applies to information that is subject of an EOI request. However, in one instance during the review period, legal privilege was initially claimed to prevent compliance with an information request, although the Philippines eventually obtained some requested information from the recordholder. Because there may be continued ambiguity in the private sector regarding application of professional secrecy to information sought under an EOI agreement, access to information may be impeded in practice.	The Philippines should monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information in line with the international standard.
Rating: Compliant		

134. In the Philippines, the competent authority for information exchange for international tax purposes is generally designated to be the Secretary of Finance or his/her authorised representative, as set forth in most EOI agreements. Under the EOI regulations, this authority has been specifically delegated to the Commissioner of Internal Revenue (Commissioner). The Commissioner is assisted in this role as competent authority by the BIR's International Tax Affairs Division (ITAD) (which directly handle the EOI requests) and the Office of the Assistant Commissioner for Legal Service (which is involved in gathering information responsive to an EOI request, either directly with other public authorities or through local tax offices). The EOI unit operates within ITAD, with a Section chief and three case officers handling all inbound and outbound EOI requests.

B.1.1. Ownership, identity and bank information

135. Section 5 of the NIRC gives the Commissioner the power to obtain information and to summon, examine, and take testimony of persons “in ascertaining the correctness of any return, or in making a return where none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability or in evaluating tax compliance”. Consequently, the Commissioner may examine any books, records or other data deemed relevant to an inquiry; obtain any third-party or government information regarding taxpayers; make summonses to a taxpayer and take testimony under oath; and have revenue officers review taxpayers in specific districts to determine management or ownership of any property subject to tax. This broad grant of investigative power allows the Commissioner to have access to both ownership information and accounting records.

136. Prior to 2010, the ability to obtain production of bank information was limited by bank secrecy laws (with limited exceptions for death of a taxpayer or a financially incapacitated taxpayer who sought to compromise tax liabilities). Enactment of the Exchange of Information on Tax Matters Act of 2010 (RA No. 10021) (EOI Act) and related regulations (adopted September 2010) removed restrictions on access to banking records for EOI purposes and eliminated any suggestion of a domestic tax interest requirement. Consequently, the EOI Act gives the Commissioner very broad authority to obtain any information necessary for EOI purposes.

137. Although for domestic tax purposes the BIR generally can only make an examination of a taxpayer’s books and records once a year (absent special circumstances, such as fraud), the Commissioner has no such restriction in accessing information for EOI purposes, as made clear in the EOI Act and accompanying regulations.

138. The BIR, including the EOI unit, has access to several databases from which to collect information in responding to an EOI request. The BIR’s Integrated Tax System (ITS) is the main system used for processing the BIR’s core business functions, including tax collection and administration. Thus, EOI officers can query the ITS to directly access taxpayer-related information, such as identity, ownership and accounting information. In addition, the SEC’s i-Report database maintains a central register of all ownership and accounting information for corporations, partnerships and foundations registered with the SEC. The i-Report database can be accessed by the EOI unit using pre-paid accounts.

139. Because of the high volume of taxpayer-related identity, ownership and accounting information available in ITS and i-Report, the EOI unit can obtain a large amount of information requested via a simple inquiry regarding registered taxpayers. For data not available in ITS or i-Report, the EOI

unit may seek information or documentation from public sources, other BIR departments, or government agencies. If a request for taxpayer information is made to another BIR office, that office has 60 days from the date of request to act. Where the information sought is not within BIR's possession, the BIR may also request information from another government agency, including:

- National Statistics Office: registered address of individuals who are not registered taxpayers of the BIR.
- Social Security System: registered address of individuals who are not registered taxpayers of the BIR.
- Land Registration Authority: real properties which are in the name of individuals and companies in the Philippines.
- Securities and Exchange Commission: general information on registered corporations and partnerships in the Philippines; their stockholders, directors and officers; and audited financial statements.
- Bureau of Customs: importation of goods to the Philippines.
- Bureau of Immigration: details of the arrivals and departures of individuals in and from the Philippines.

140. In the Philippines there are 19 regional BIR offices, which oversee 124 Revenue District Offices (RDOs), with another seven RDOs operating under the Large Taxpayers Service. The RDOs have primary responsibility for the front line interaction with taxpayers in auditing and collecting internal revenue taxes. If an RDO is requested to obtain information pursuant to an EOI request, the RDO will issue a records request to the taxpayer or other information holder. RDOs are expected, in most circumstances, to obtain the requested information from the taxpayer within 30 days of service.

141. The Commissioner can also obtain banking information through the information gathering powers in the EOI Act, allowing him to request that a financial institution provide bank deposit and related information. The EOI Regulations require the Commissioner to make a written request to a bank for any requested information involving an EOI request, and gives the bank fifteen days from receipt of notice to provide the information. If the bank is unable to provide the requested information, it must state the reasons for failure to do so and may request not more than 30 days of additional time.

142. In practice, the EOI Unit will first make inquiries of the ITS or i-Report databases for information requested by a treaty partner. In many cases, the databases hold at least some of the necessary information. If the search is not completely successful, the EOI Unit will then determine, in conjunction with ITAD, where the remaining information may reside. If with a third-party, ITAD (as the division in charge of the EOI Unit) will draft a letter requesting the information, which is reviewed and signed by a high-level BIR

official (such as the Commissioner for a bank request). If the information is likely held by the taxpayer, the EOI Unit will send a request to the RDO to obtain the information.

143. RDOs are frequently used by the EOI Unit to obtain information because of the RDOs' proximity and regular interaction with a taxpayer.

144. For banking information, co-operation from banks, taxpayers and other third-parties with BIR requests for information is high given the strict penalties that come from non-compliance.

B.1.2. Accounting records

145. As described in B.1.1. above, the Commissioner has extensive investigative powers regarding taxpayer documents, including accounting records.

146. The Philippines has not experienced any issues accessing accounting information, and no peers indicated any issue in this area during the review period.

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

147. As explained in the 2013 report, the EOI Regulations give the Commissioner clear authority to obtain *any information* necessary to respond to an EOI request, regardless of whether the Philippines needs the information for its own tax purposes. The Philippines and feedback from peers indicated that, apart from delays, no difficulties have arisen in practice with obtaining or providing information requested by foreign competent authorities under an EOI agreement, regardless of whether the Philippines needed the information for its own tax purposes.

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

148. The EOI Act and accompanying regulations provide the Philippines with broad powers to compel information. The EOI Act authorises the Philippines to make income tax returns of specific taxpayers who are the subject of a request for exchange of information open to inspection; this allows the actual tax return of a taxpayer subject to an EOI request to be available to a foreign tax authority.

149. Any officer, owner, agent, manager, director or officer-in-charge of a bank or financial institution that refuses to provide information to the Commissioner on request is subject to a fine of PHP 50 000 to PHP 100 000 (approximately USD 1 100 to USD 2 200) and/or imprisonment of two to five years. The Philippines has never had an access issue to bank information in

practice; no bank has ever refused to provide information requested for EOI and so the BIR has never imposed these fines. Because of the clear statutory authority to access bank information in the EOI Act, the BIR would not hesitate to issue sanctions and pursue other legal remedies as necessary.

150. In addition, the NIRC provides that any person duly summoned to appear, testify, or produce books, records, and other papers who fails to do so can be convicted and fined from PHP 5 000 to PHP 10 000 (approximately USD 110 to USD 220) and imprisonment of one to two years. During the review period, the Philippines encountered only one case (see section B.1.5 below) where a person who was thought to be in possession of the requested information or documents initially challenged the obligation to furnish such information or documents to the BIR.

151. If a person does not respond to a request for information and challenges the request, the BIR can issue a *subpoena duces tecum* (SDT) to compel the information holder to provide information requested for EOI purposes (RMO 2-2013). Failure to comply with the SDT results in the mandatory referral to the Prosecution Division for the filing of appropriate criminal actions against the person. In addition, the BIR can issue an apprehension order to seize books and records from a taxpayer's premises.

152. The Philippines informs that no SDT has ever been necessary to obtain information for EOI purposes. The BIR uses SDTs frequently in its domestic tax functions and so is well versed in their use should it be necessary to issue them in the future in the EOI context. During the review period, the Prosecution Division handled approximately 60 SDT cases involving tax fraud and criminal tax cases.

B.1.5. Secrecy provisions

(a) Bank secrecy

153. Normally, for domestic purposes, bank deposit and government-issued bond investment information is strictly confidential and not subject to disclosure (RA 1405). However, a growing number of exceptions have been enacted, including under the AMLA pursuant to a court order for unlawful activities, as well as examinations conducted by the constitutional Commission on Audit (which reviews all government deposits).³

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3. Other exceptions have been enumerated in the following acts: RA 3019 (the Anti-Graft and Corrupt Practices Act); RA 6426 (the Foreign Currency Deposit act); RA 6770 (the Ombudsman Act); RA 8424 (the National Internal Revenue Code); RA 9576 (amending the PDIC charter); RA 9372 (the Human Security Act of 2007); and Executive Order No. 1 (creating the Presidential Commission on Good Government).

154. Although bank secrecy in the Philippines was once a long-established policy, it was removed for EOI purposes with the enactment of the EOI Act in 2010. As a result of the EOI Act, the Commissioner has specific authority to inquire into the bank deposit account of a taxpayer when necessary to respond to an EOI request from a treaty partner. And once the bank account information is shared with the foreign partner, the BIR is able to use the information for its own domestic purposes.

155. The EOI Regulations echo this authority, stating that for the purpose of complying with an international agreement, the Commissioner has the power to obtain “any information, including but not limited to bank deposits and other related information held by financial institutions”. Consequently, the Philippines tax authorities may undertake inquiries or obtain information, including bank information, that is required only for the purpose of a tax liability in another country with which the Philippines has an exchange of information agreement.

156. Representatives of the banking sector confirmed to the assessment team that financial institutions are well aware of the exception to banking secrecy for EOI requests. The BIR also confirmed that they have not had access issues in obtaining information from banks pursuant to the powers set out in the EOI Act. The issue of timeliness in obtaining bank information (discussed in detail in section C.5.1.) seems isolated to a few instances where archived information had to be retrieved from local branch offices.

(b) Professional privilege

157. The 2016 ToR protects communications which are “produced for the purposes of seeking or providing legal advice”. Under the Rules of Court in the Philippines regarding attorney-client privilege, an attorney cannot, without the consent of his/her client, be examined as to any communication made by the client to him/her, or his/her advice given thereon in the course of or with a view to professional employment. As mentioned in the 2013 report, the privilege in the Philippines might be used more broadly in practice than what the ToR allows as it could cover activity beyond the attorney acting in a role as a legal adviser.

158. The 2013 report (paragraph 262) discussed the Philippines’ Supreme Court decision in *Regala v. Sandiganbayan* (GR No. 105938 September 20, 1996), which found that attorneys assisting in incorporating companies for a client, including acting as nominee shareholders, did not have a duty to disclose the names of their clients in certain circumstances. The *Regala* Court held that although, as a general rule, the identity of the client is not a privileged matter, certain exceptions exist. One such exception includes the situation where revealing the client’s name would implicate that client

in the very activity for which s/he sought the lawyer's advice. The Court determined that attorneys have a strict fiduciary responsibility regarding the exercise of their duties pertaining to a client, and that in the case at hand there was a high probability that releasing the client's name would be contrary to the aim of the protection granted by the privilege.

159. In the 2013 Phase 2 report, the possibility that the attorney-client privilege could extend more broadly than the standard was merely theoretical as there had been no issues in practice regarding a claim of privilege to avoid responding to an EOI request.

160. However, during the current review period, the Philippines encountered difficulty in answering one peer request because the information holders initially claimed attorney-client privilege to avoid providing the requested information. The information holders were attorneys in the Philippines who had allegedly been hired by a non-resident client to create entities in a third jurisdiction. When first contacted by the BIR, the attorneys claimed that their role in creating the entities was protected by the attorney-client privilege and refused to provide information on the identity of the client. When the BIR pushed back by stating that acting as a service provider in creating legal entities formed in a foreign jurisdiction did not constitute activity covered by the privilege, the attorneys dropped the claim and have provided some information to the peer's request. The Philippines has provided the information to the treaty partner, but it is not clear if the information is responsive.

161. Although the Philippines did obtain an answer from the attorneys in order to respond to the EOI request, the case highlights a potential lack of awareness of the provision that the assessment team heard several times during the on-site visit from non-government authorities. During the on-site visit, the assessment team requested to talk to tax professionals regarding application of confidentiality rules in practice. No lawyers were available for discussion, but the assessors talked to accountants from professional associations and the accountancy self-regulatory authority in the Philippines. The accountants expressed the view that common law, the professional code of ethics, and contractual confidentiality privileges inherent to the client relationship would trump any requests for information, even if demanded by the BIR or other government agency pursuant to an EOI request. These views, which are contrary to the government's interpretation of the scope of legal privilege, appear to stem from misunderstanding and professional concern over upsetting clients.

162. The BIR responds that the EOI Act is very clear that the attorney-client privilege cannot be spuriously invoked to avoid providing information in response to an EOI request. Under the EOI Act, the BIR has the power to issue a subpoena to a record holder for information, and if the record holder

refuses to fully answer the request, the BIR can institute a criminal case. A court would then eventually rule on the proper application of the legal privilege on the specific circumstance to avoid answering the EOI request.

163. The Philippines also notes that its Supreme Court has ruled that the attorney-client privilege does not apply to communications not involving pure legal advice. In *Mercado v. Vitriolo* (A.C. No. 5108, 26 May 2005), the Supreme Court held that an attorney should not be disbarred for disclosing information regarding a client as the legal privilege only applies in circumstances in which the legal advice sought from the attorney is done in his/her professional capacity. The Court stated that: “if the client seeks an accounting service, or business or personal assistance, and not legal advice, the privilege does not attach to a communication disclosed for such purpose”. The decision also stated the circumstances in which a client relationship is not covered by privilege: “the legal advice must be sought from the attorney in his professional capacity. The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice”.

164. With regard to a confidentiality privilege between a client and accountant, the Philippines considers that RA No. 9298 (sec. 29) removes confidentiality of client records held by an accountant when “such documents are required to be produced through subpoena issued by any court, tribunal, or government regulatory or administrative body”. In addition, Section 140 of the Code of Ethics for Professional Accountants states that confidentiality of client documents is waived when there “is a legal or professional right or duty to disclose”. The Philippines considers that these provisions establish that when a legal obligation, like the EOI Act, requires a record-holder to provide information to the government, an accountant must render the requested information in spite of the general rule of confidentiality that applies to client information.

165. In order to make clear the broad authority the Commissioner has under the EOI Act to collect information from all individuals for tax purposes, including lawyers, accountants, and other professionals, the BIR issued RMC⁴ No. 12-2018 in February 2018 clarifying that the Commissioner’s power to obtain information under the EOI Act is an exception that overrides privilege in such cases where necessary.

4. BIR Revenue Memorandum Circulars are agency guidelines binding on the BIR and taxpayers. The Supreme Court of the Philippines might view a RMC as persuasive authority, but is not bound by such administrative guidance.

Conclusion

166. At the present time, there has been no case testing whether an attorney (or an accountant with a similar confidentiality obligation) can successfully invoke the legal privilege to avoid answering an EOI request. Some professionals in the Philippines may be unaware of the Commissioner's power to obtain information for EOI purposes in spite of professional secrecy rules. Nevertheless, the BIR considers its legal position is sound and would prevail if tested by challenge.

167. In light of these facts, there remains a possibility in practice that the attorney-client privilege could be used in the Philippines to hinder or obstruct an EOI request, having moved beyond the theoretical with actual invocation of the privilege (at least initially) in at least one case. Accordingly, the Philippines should carefully monitor claims regarding attorney-client privilege to ensure that they do not impede access to the effective exchange of information.

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.

168. Application of rights and safeguards in the Philippines does not restrict the scope of information that the tax authorities can obtain. The 2013 Phase 2 report found the notification rules and safeguards in the Philippines to be in line with the standard. One material change to the applicable legal framework has occurred over the review period to extend the time the BIR has to provide notification to a taxpayer of requested bank information. Because of the addition to the 2016 ToR of an exception for time-specific, post-exchange notification, the notification rules in the Philippines are not in line with the standard.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of the legal and regulatory framework	The Philippines requires notification of the accountholder when information is requested from a financial institution pursuant to an EOI request. The BIR interprets the law as not requiring any specific timelines, and has administratively amended its regulations to only provide the accountholder with notification within 60 days after full information has been completely exchanged. No partner has ever requested that the Philippines not provide notification to an accountholder because of concerns of an investigation being undermined. The BIR regulation does not address how to handle a requesting jurisdiction's request that notification be delayed on the basis that an ongoing investigation might be undermined.	The Philippines should ensure that there is an exception from the time-specific, post-exchange notification requirement that would allow it to not notify the accountholder in cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction and the requesting jurisdiction, on reasonable grounds, has made a request for the application of such an exception.
Determination: In Place, but certain aspects need improvement		
Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of EOIR in practice		
Rating: Largely Compliant		

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

170. Under Section 8 of the EOI Act, the Commissioner must notify a taxpayer in writing when a foreign tax authority requests information held by a financial institution pursuant to a tax convention or agreement to which the Philippines is signatory. The EOI regulations state that the taxpayer must be notified when a foreign tax authority “is requesting” information. There is no similar notification requirement for requests concerning information held by the taxpayer or third parties which are not financial institutions.

171. During the review period covered by the 2013 report, the Commissioner was required to give the taxpayer notification within 60 days of receipt of a request from a foreign tax authority. In 2014, the BIR issued Rev Regs 3-2014 extending the 60-day notification period to 6 months after receiving a request. In February 2018, the BIR issued Rev Regs 10-2018, which revises the notification procedure to only provide notice to a taxpayer within 60 days after the BIR Commissioner has transmitted all information requested to a treaty partner. The Commissioner has authority to issue regulations pursuant to his power to interpret the tax code and other existing tax laws, and such regulations have the force and effect of law. The regulations mentioned above dealing with notification demonstrate the broad scope of the Commissioner's authority to issue regulations as needed to address practical issues, including responding to requests from partners under international agreements.

172. There is no legal requirement preventing the BIR from handing over banking information to the requesting foreign authority before actually notifying the taxpayer. In practice, after the transmission of banking information to a requesting jurisdiction, the taxpayer is notified via a letter signed by the Commissioner that that he or she has been the subject of a request for bank information under the applicable exchange of information provision of the treaty with the requesting jurisdiction.

173. The Philippines advises that during the review period the 6-month notification requirement in the BIR regulation did not delay or prevent exchange of information as the Philippines' tax authorities are allowed to exchange information during that time period, even before actually notifying the taxpayer. In fact, the BIR states that its practice is to always issue the letter after the date of transmission of the banking information to the treaty partner, even if it occurs after the deadline set out in the regulation. In the future, the new regulation makes it clear that taxpayer notice will only occur within 60 days after the requested information is provided to the treaty partner.

174. The 2016 ToR contain a new requirement to have an exception to time-specific, post-exchange notification. As described above, the Philippines' law contains a requirement of notification of the accountholder when banking information is obtained by the tax authority pursuant to a treaty partner's request. Using its broad administrative authority to interpret the law, the BIR has issued an amended regulation to delay notification to an accountholder to within 60 days after the requested information has been completely delivered to the requesting jurisdiction. No partner has ever requested that the Philippines not provide notification to an accountholder because of concerns that an ongoing investigation would be impeded. Nevertheless, because the BIR regulation does not explicitly provide for an exception which would allow the tax authority not to notify the person on whom the information was

requested in the EOI context there is a gap with the standard. The Philippines is recommended to provide for such exception from the notification requirement to bring it in line with the standard.

175. During the review period, no practical difficulties have been experienced by the Philippines with regard to the notification requirement, in the case of banks, or any other rights and safeguards.

Part C: Exchanging information

176. Sections C.1 to C.5 evaluate the effectiveness of the Philippines' EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether they respect the rights and safeguards of taxpayers and third parties, and whether the Philippines could provide the information requested in an effective manner.

C.1. Exchange of information mechanisms.

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

177. The 2013 report found that the Philippines' exchange of information mechanisms were not completely in line with the standard, resulting in a determination of the legal framework as “in place, but needs improvement” and a rating for element C.1 as Largely Compliant. Two recommendations regarding the legal framework were given, in which the Philippines was encouraged to address treaties that did not meet the standard because they limited the type of information that could be exchanged.

178. The Philippines has taken steps to bring the provisions of its existing treaties in line with the standard.

179. Since the 2013 report, the Philippines has signed one new bilateral tax treaty with an existing partner and the multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Philippines' EOI network now covers 43 partners, 35 of which information can be exchanged to the standard. Approximately 75 new partners will be added once the Philippines has deposited its instrument of ratification of the Multilateral Convention.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of the legal and regulatory framework	The Philippines signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters in 2014, but has not yet ratified the instrument.	The Philippines should work expeditiously to ratify the multilateral Convention on the Mutual Administrative Assistance in Tax Matters.
Determination: In Place, but certain aspects need improvement		
Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of EOIR in practice		
Rating: Largely Compliant		

C.1.1. Foreseeably relevant standard

181. 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. This concept, as articulated in Article 26 of the OECD Model Tax Convention, is to be interpreted broadly, but does not extend so far as to allow for “fishing expeditions.” The Article 26 commentary recognises that the standard of “foreseeable relevance” can be met when alternative terms are used in an agreement, such as “necessary” or “relevant”. The Philippines confirmed that it would interpret these terms according to the standard of foreseeable relevance that is consistent with the scope of Article 26(1) of the OECD Model Tax Convention.

182. In the 2013 report, all but two of the Philippines’ DTCs met the “foreseeably relevant” standard. The treaties with Brazil and Germany only provided for exchange of information necessary for carrying out the provisions of those conventions. In addition, the report noted that the Philippines’ DTCs with the Netherlands and Switzerland limited exchange of information to information already at the disposal of tax authorities. Because these four DTCs were not consistent with the international standard concerning robust exchange of information, the Phase 2 report included a recommendation (based on the factors described above) that the Philippines negotiate new DTCs or protocols to fix the highlighted deficiencies.

183. Since the last review, the Philippines has signed a new DTC with Germany (which is in force) that appropriately extends relevance to the parties' domestic laws. The Philippines has also renegotiated its DTC with Brazil to include a similar provision. With regard to the limits present in the Netherlands and Switzerland DTCs, the Philippines advises that it has reached out to these two jurisdictions about negotiating appropriate protocols to bring the DTCs in line with the international standard. These efforts are ongoing. The problems identified in this sub-element will be remedied once the multilateral Convention on Mutual Administrative Assistance in Tax Matters, which has been signed by the Philippines in September 2014, is ratified and enters into force. Until such time as that occurs, the Philippines is encouraged to continue to conform all its EOI arrangements to the standard.

184. For the recommendation concerning the four DTCs that did not expressly indicate access for banking information, the Philippines has discussed bringing these instruments into line with the standard, even though those discussions are ongoing. This issue will be remedied once the Philippines' participation in the Multilateral Convention enters into force.

185. The Philippines continues to interpret and apply its agreements consistent with these principles. All of the Philippines' new EOI arrangements being negotiated include the term "foreseeably relevant" in their EOI articles.

186. During the peer review period, the Philippines did not refuse to answer any EOI requests on the basis of lack of foreseeable relevance and there were no cases where it requested clarification on belief that the request was overly broad or vague.

187. There is no indication that any of the Philippines' EOI agreements contains language prohibiting group requests and the process for responding to group requests is the same as for any other request for information. The Philippines does not require any specific information to be provided by the requesting jurisdiction in the case of a group request. The competent authority interprets foreseeable relevance with respect to group requests in a similar manner as with regular requests. Over the review period, the Philippines received no group requests.

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

188. Philippines law contains no restrictions on persons in respect of whom information may be exchanged. However, the 2013 report found that two of the Philippines' EOI agreements restricted the jurisdictional scope of the exchange of information provisions to persons to which the treaty provisions applied. The Philippines has worked since the last review to remedy these deficiencies in meeting the standard by signing a new DTC with Germany (which is in force) and renegotiating a treaty with Brazil. The

Philippines has received at least one EOI request concerning a non-resident and answered the request; no issues have been raised by peers in the current review period.

C.1.3. Obligation to exchange all types of information

189. Article 26 of the OECD Model Tax Convention and the OECD Model TIEA both require the exchange of all types of information, including bank information, information held by a fiduciary or nominee, or information concerning ownership interests. Although the Philippines' DTCs contain no restriction on exchange of information based on what entity has the information, none of its DTCs specifically include language (except for France and Germany) that a contracting state may not decline to supply information based on the type of person holding the requested information. Nevertheless, the 2013 report recognised that the Philippines has access to bank information and information held by fiduciaries for tax purposes in its domestic law, and is able to exchange this type of information when requested.

190. The 2013 report identified four treaty partners – Austria, Malaysia, Singapore and the United Arab Emirates – that had (or just removed) bank secrecy provisions in their domestic laws that would restrict access to banking information for EOI purposes absent a specific DTC provision requiring access. As a result, the Phase 2 report included a recommendation that the Philippines work with these partners to incorporate Article 26(5) of the OECD Model Tax Convention into these DTCs to guarantee access to banking information for EOI purposes.

191. Since the last review, it has been determined that three of the four jurisdictions are now able to exchange bank information even if the treaty at issue does not contain provisions similar to Article 26(5), and thus the DTCs the Philippines has with these three jurisdictions should be considered in line with the standard. The remaining DTC is not in line because of the partner's legal framework. In any event, the EOI relationship with these jurisdictions will clearly be to the standard once the Philippines will have deposited its instrument of ratification of the Multilateral Convention.

192. No issues have been identified by peers over the present review period affecting the Philippines ability to exchange all types of information pursuant to a request. During the current review period, banking information was requested in 14 cases and obtained by the Philippines; in two cases, notices to the banks resulted in clarifications regarding the proper taxpayer at issue and peers were notified of the need for additional information, but there was no impediment in those requests that came from the legal framework in place or access to the bank information.

C.1.4. Absence of domestic tax interest

193. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction. The 2013 report noted that only four of the DTCs the Philippines had with its partners explicitly included language requiring information-gathering measures without regard to a domestic tax interest, while in practice there was no issue with any partners in exchanging information. The report noted that the EOI regulations removed ambiguity about the domestic tax interest and effectively allowed the DTCs with most treaty partners to be considered as meeting the standard, but it was recommended that Philippines continue to negotiate a provision similar to Article 26(4) of the OECD Model Tax Convention in its DTCs. Since the Phase 2 report, several new EOI agreements have come into force; the Philippines-Sri Lanka does not include language similar to Article 26(4) regarding domestic tax interest, but based on the Phase 2 report conclusion there does not appear to be any limitation to the Philippines exchanging information⁵. The Philippines should continue to ensure that all agreements offering exchange of information are in line with the standard.

194. No issues have arisen in practice over the review period. The Philippines reports that it intends to include language similar to Article 26(4) of the OECD Model Tax Convention as it continues to renegotiate DTCs with its treaty partners.

C.1.5. Absence of dual criminality principles

195. All of the Philippines' EOI agreements require the exchange of information regardless of whether the conduct under investigation, if committed in the Philippines, would constitute a crime. No issues in respect of dual criminality were identified in the 2013 report and no such issues arose over the current review period (the Philippines was able to exchange information arising from requests involving criminal tax matters).

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

196. All of the Philippines' EOI agreements provide for exchange of information in both civil and criminal matters. In practice, the Philippines answered all requests during the review period, whether they related to civil or criminal tax matters. Peers have not raised any issues in practice.

5. Sri Lanka has not been reviewed by the Global Forum to determine what restrictions may apply to exchange of information.

C.1.7. Provide information in specific form requested

197. Although the majority of the Philippines DTCs make no reference to the specific form of the exchange of information, during the review period, the Philippines has advised that it provides information in the specific form requested by a partner, which is confirmed by feedback from peers.

C.1.8. Signed agreements should be in force

198. International agreements are negotiated pursuant to issuance of full powers or special authority by the President. After an agreement is signed, it is then ratified by the President and requires concurrence of the Senate. Following ratification and concurrence, notification is issued to the treaty partner and the agreement enters into force according to its terms.

199. The Philippines' EOI network currently consists of 41 bilateral agreements which are in force, all of which are DTCs.⁶ The Philippines has signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters in 2014 but more than three years later has still not yet ratified the Convention.

200. Due to a change in government in 2016, the Philippines had to restart the ratification process for the Multilateral Convention; the instrument has been submitted to the new President for ratification, after which the Philippines Senate must concur (i.e. give legislative approval), before the domestic procedures are satisfied for the instrument to be deposited.

201. Because signed agreements should be brought into force in a timely manner, the Philippines should work expeditiously to have its prior commitment in force.

6. The Phase 2 report incorrectly stated that the Philippines had 42 EOI agreements in place at the time of the last review. The Philippines DTC with Bahrain has no EOI article (although a protocol amending the DTC to add an EOI article is pending ratification by the Philippines).

EOI bilateral mechanisms

	Total	Total bilateral instruments not complemented by the MAC ^a
A Total number of DTCs/TIEAs (A = B + C)	43	7
B Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force (B = D + E)	1	0
C Number of DTCs/TIEAs signed and in force (C = F + G)	42	7
D Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	1 (Bahrain)	0
E Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard	0	0
F Number of DTCs/TIEAs in force and to the Standard	38	6 (Bangladesh, Kuwait, Qatar, Thailand, Viet Nam, United States)
G Number of DTCs/TIEAs in force and not to the Standard	4 (the Netherlands, Switzerland, Brazil, Austria)	

Note: a. The MAC was signed by the Philippines in 2014, but has not yet been ratified. This table thus reflects, as of the date of the report, which EOI partners of the Philippines would not be affected by entry into force of the MAC.

C.1.9. Be given effect through domestic law

202. For information exchange to be effective, the parties to an EOI arrangement must enact any legislation necessary to comply with the terms of the arrangement. The Philippines has in place the legal and regulatory framework to give effect to its EOI mechanisms. The Philippines enacted the EOI Act in 2010 and promulgated its accompanying Regulations to allow for exchange of information in all cases there is an international convention or agreement in place (such as its DTCs, future TIEAs and the Multilateral Convention).

203. As described in the 2013 report, treaties and international agreements are treated as equivalent to domestic laws in the Philippines. Because tax treaties are ratified by the President and concurred to by the Senate, such a treaty has presumed validity by these branches of government, and will prevail if in conflict with a domestic statute. No issues were raised in the last review 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.

204. The Philippines has a network of EOI agreements in place, covering most of its economically significant partners, with the exception of Hong Kong, China. Overall, the Philippines has a network of 43 DTCs⁷ and has since 2013 been negotiating Tax Information Exchange Agreements (TIEAs) with a number of additional jurisdictions.

205. In addition, the Philippines signed the multilateral Convention for Mutual Administrative Assistance in Tax Matters in 2014.

206. The Phase 2 report included a recommendation that the Philippines continue to develop its EOI network. Since the last review, the Philippines has had discussions with a number of current treaty partners about either updating DTCs (or adopting a protocol) and continues to pursue TIEA negotiations until the Multilateral Convention is ratified. At May 2018, the Philippines is currently negotiating with five treaty partners and/or other jurisdictions.

207. Following the 2016 change in government, there is a renewed focus and priority on implementing DTCs with Association of Southeast Asia Nations (ASEAN). The Philippines is currently engaged in (or close to starting) negotiations for DTCs with the remaining ASEAN jurisdictions for which no current tax treaty exists.

208. The Philippines has never refused to enter into an agreement for exchange of information with any potential partner and continues to actively engage in negotiations with prospective treaty partners. The Philippines is recommended to continue its efforts developing its exchange of information network with all relevant partners.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		

7. The Philippines DTC with Bahrain has no EOI article (although a protocol amending the DTC to add an EOI article is pending ratification by the Philippines).

Practical Implementation of the standard		
	Underlying Factor	Recommendations
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.

210. The 2013 Phase 2 report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in the Philippines regarding confidentiality were in accordance with the standard.

211. Since the 2013 report, the Philippines has continued to ensure that its EOI confidentiality practices meet the high requirements of the standard.

212. The table of determinations and ratings remains as follows:

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

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

213. The 2013 report stated that all of the Philippines' DTCs have confidentiality provisions based on some version of an OECD model tax convention. At the time of the report, some of the DTCs departed from

the text regarding confidentiality in Article 26(2) of the OECD Model Tax Convention, but the Global Forum determined that the operative language used in the DTCs did not, in practice, create any difficulties regarding the use of information exchanged under the DTCs. Nevertheless, the report noted that these DTCs would benefit from improved language when such instruments were next updated with treaty partners. The Philippines continues to have discussions with treaty partners about updating relevant DTCs.

214. Pursuant to Section 5 of the EOI Act (which amended Section 270 of the NIRC), BIR employees and officers are subject to fine or imprisonment for disclosing taxpayer information in violation of the confidentiality laws. The BIR reports that there are no reported cases of improper disclosure of EOI information in the current review period. There is no indication that any changes have occurred that alters the determination in the 2013 report that these provisions are consistent with the standard.

215. All BIR employees undergo multiple trainings that include information on applicable confidentiality policies. For example, employees receive sensitisation to the BIR Code of Conduct, information security training (which covers elements of information awareness and security controls), and security access briefing regarding the ITS database. In adhering to the EOI Act, it is expressly made clear that the confidentiality that applies to any information exchange – of any type, whether information provided in a request, information transmitted in response to a request, and any background documents to such requests.

216. If the EOI officer is unable to directly obtain requested information, but it is within the power of another BIR employee to obtain (such as a regional district officer), the EOI officer will make a request to the BIR employee. The request only includes pertinent information from the requesting jurisdiction's letter and is always drafted by the EOI officer (never copied from the EOI request itself).

217. If the requested information is held by another government agency and cannot be obtained from the BIR's files, the BIR only provides the minimal information necessary to have a request acted on. When dealing with third parties, such as banks, the BIR only discloses the minimum amount of information necessary. Although there is no legal requirement as to the minimum amount of information to be disclosed, in practice, the disclosed information generally is limited to: the name; identification number; date of birth and residential address of the subject of the request; the relevant EOI instrument; the relevant information that is being requested; the time limit given to rely to the request for information and a statement of applicable penalties.

218. The information provided by the BIR in a taxpayer notification of a request for bank information by a foreign tax authority is simply a statement that a treaty partner has requested the taxpayer’s bank information from a Philippines’ financial institution.

219. Access to data received from partners through EOI is limited to only the officers who undertake EOI work. All hard copy information received from taxpayers is retained within the BIR’s premises with restricted access and stamped as confidential. Documents are disposed of securely in accordance with statutory requirements. EOI data is secured within a locked cabinet in a secure room within the access-restricted confines of the BIR. Only the officers of the EOI unit can access the secured room and locked cabinet. Electronic EOI information is only available on a single computer with its own separate database storage in the secure room.

220. A taxpayer does not have a right of access to its tax file. Even if a taxpayer asked the BIR for information in its file, the BIR is adamant that EOI information, including a request letter itself from the treaty partner, is always confidential and cannot be shared in any manner with the taxpayer.

C.3.2. Confidentiality of other information

221. Confidentiality rules should apply to all types of exchanged information, including information provided by a requesting jurisdiction in a request, information transmitted in response to a request and any background documents to such request. The Philippines authorities confirm that in practice they consider all types of information relating to an EOI request confidential (including communications between the Philippines and the requesting jurisdiction).

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.

222. The international standard allows requested parties to not supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege.

223. The 2013 Phase 2 report concluded that the Philippines’ legal framework and practices concerning the rights and safeguards of taxpayers and

third parties was in line with the standard and element C.4 was determined to be “in place” and Compliant, with no recommendations made.

224. The only change in this area since the last review involves a claim of legal privilege by an attorney acting as a company service provider to initially avoid providing information pursuant to an EOI request, causing the peer involved to flag the issue.

225. The table of determinations and ratings remains as follows:

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

C.4.1. Exceptions to requirement to provide information

226. All of the Philippines’ DTCs contain a provision which ensures that the contracting States are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, trade process or information the disclosure of which would be contrary to public policy. The EOI Act does not contain exceptions for attorney-client privilege.

227. As previously discussed in B.1.5., application of the attorney-client privilege in EOI matters could potentially raise issues in obtaining and exchanging information pursuant to the standard in future practice. For the same reasons, although the applicable EOI instruments of the Philippines do not give a definition to the privilege, the Philippines should monitor that attorney-client privilege is not permitted to frustrate the standard in EOI cases.

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.

228. 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.

229. The 2013 Phase 2 report concluded that the Philippines' response times and provision of status updates were not fully compatible with effective exchange of information and the Philippines was recommended to address these issues.

230. The Philippines continues to show difficulty in improving on the length of time in responding to EOI requests. Fifty-three percent of incoming requests were answered in 180 days, with a significant number of requests (nearly a quarter) taking more than a year to obtain a final response for closure. The negative impact of the length of response times on effective exchange of information in certain cases was pointed out by a few peers. The Philippines is therefore recommended to address these concerns.

231. The Philippines has improved in providing status updates in situations where responding to a request takes longer than 90 days. Peer input has been mostly positive. The Philippines made 14 requests during the review period.

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

Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of EOIR in practice	The Philippines has taken steps to improve timeliness of its responses. However, further improvement is needed to ensure exchange of information in a timely manner in all cases, especially with regard to bank information.	The Philippines should endeavour to further streamline its processes so that it is able to respond to all EOI requests in a timely manner.
Rating: Largely Compliant		

C.5.1. Timeliness of responses to requests for information

233. Over the period under review (1 April 2014 to 31 March 2017), the Philippines received a total of 78 requests for information. The following table relates to the requests received during the period under review and gives an overview of response times needed by the Philippines to provide a final response to these requests, together with a summary of other relevant factors impacting the effectiveness of the Philippines' exchange of information practice during the reviewed period. It reflects the status of requests received during the review period as of 6 June 2018.

		Y1		Y2		Y3		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	27	35	23	29	28	36	78	100
Full response: = 90 days		13	48	10	43	10	36	33	42
= 180 days (cumulative)		14	52	13	57	14	50	41	53
= 1 year (cumulative)	[A]	20	74	16	70	19	50	55	71
> 1 year	[B]	7	26	7	30	4	14	18	23
Declined for valid reasons		0		0		0		0	
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		14	100	13	100	18	100	45	100
Requests withdrawn by requesting jurisdiction	[C]	0		0		0		0	
Failure to obtain and provide information requested	[D]	0		0		0		0	
Requests still pending at date of review	[E]	0		0		5	18	5	6

Notes: The Philippines counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, the Philippines counts that as 1 request. If the Philippines received a further request for information that relates to a previous request, with the original request still active, the Philippines 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.

234. The Phase 2 report recommended that the Philippines ensure that its internal procedures result in providing status updates to EOI partners within 90 days in those cases where it is not possible to provide complete response within that timeframe. The EOI Manual adopted by the BIR specifically instructs its EOI officers to provide a status update if a complete response to a request cannot be given in 90 days.

235. In practice, statistics show that status updates were provided during the review period in 100% of cases. Moreover, peer input confirmed that status updates are indeed provided. Thus, the previous recommendation is regarded as sufficiently addressed, although the Philippines should continue to ensure in practice that status updates are provided in accordance with the standard.

236. Several peers commented on the length of response times taken by the Philippines to provide final responses. Nearly a quarter of incoming requests took more than a year to receive a complete response. Although the peer inputs largely acknowledged good quality of the received responses, they pointed out several cases where the long response time prevented effective EOI and led, in several cases, to the closure of the domestic case.

237. The Philippines explains that the scope of requests has evolved since its previous review and that added complexity in the requests being received has led to increased time taken to provide a full response. For example, a single request now might cover identity, property, bank and financial information of a company or group of companies.

238. In particular, it seems that some requests for banking information take a particularly long time to fulfil by the Philippines. Although banks are generally responsive to a request from the BIR to provide information, the Philippines notes that on occasion the requested information is held in a local branch that requires manual investigation to produce (such as an archived signature card). To the extent that several requests for banking information have frequently taken more than a year to answer, this trend appears to demonstrate inefficiency in the procedures used by the Philippines regarding acquiring bank information by either not timely communicating requests to a bank or not enforcing the timelines permitted for banks to respond. The Philippines should review its procedures to ensure that it timely answers all requests.

239. Six percent of requests received during the reviewed period are in the process of being responded to. These requests do not relate to a particular type of information (e.g. banking or ownership information). All of these requests were received during the last year of the period under review. The requests are still being processed due to reasons impacting timeliness of the Philippines responses in general as described above.

C.5.2. Organisational processes and resources

(a) Identification of competent authority

240. The competent authority of the Philippines (the BIR Commissioner) is clearly identified to partners on the BIR website and in the Global Forum's secure competent authorities database.

(b) Resources and training

241. The EOI Unit, which serves under the direction of the Chief of the ITAD, is headed by a Section Chief and has three additional EOI case officers that handle all inbound and outbound requests. The EOI unit staff has grown by two personnel since the last review to assist in the growing number of EOI requests received by the Philippines.

242. The EOI unit is provided with a separate budget by the BIR to cover face-to-face meetings with tax treaty partner officials, EOI seminars and trainings, and technology needs (such as a private computer workstation).

243. The BIR has an EOI Work Manual based on the Global Forum's model manual. The manual is an invaluable tool to the EOI Unit, setting out the proper procedures for handling requests, providing template forms for requesting information to fulfil a partner's request, and information on confidentiality. The work manual has not been revised since 2013; the Philippines should, where appropriate, update the manual, including information on group requests and application of the multilateral Convention (once in force).

244. The competent authority uses several performance measures to monitor the effective operation of the EOI unit. These indicators include: response time (to measure the length of time before a reply is issued); number of requests handled (to measure the EOI unit's workload); number of open cases and case age (to ensure that cases are being continually reviewed); and number of closed cases (to measure EOI unit accomplishments). These performance measures are factored into the biannual performance rating of each EOI officer.

(c) Incoming requests

245. The Philippines competent authority utilises both a manual system of recording EOI requests and a computerised database for easier tracking and monitoring of requests for EOI. All EOI requests (outbound and inbound) are recorded in an EOI logbook and encoded in the computer by an EOI case officer.

246. Reports on the status of EOI cases are manually prepared by the EOI unit on request of the competent authority. The BIR is in the process of setting up a new EOI database capable of generating automatic management reports.

(d) Outgoing requests

247. The 2016 ToR also addresses the quality of requests made by the assessed jurisdiction. Jurisdictions should have in place organisational processes and resources to ensure the quality of outgoing EOI requests.

248. The EOI work manual used by the Philippines contains procedures that the EOI Unit must follow in making outgoing requests, including checklists for the information to be included in the request to ensure it meets the foreseeable relevance standard. All outgoing requests must be approved by the EOI Section Chief and ITAD Chief before being signed by the Commissioner.

249. The Philippines made 14 requests during the review period to 7 treaty partners. No peers indicated any issues with the quality of requests initiated by the Philippines.

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

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

Conclusion

251. Continued difficulty in responding to EOI requests in a timely manner, as verified by peer input, demonstrates that the Philippines should review its EOI processes and make necessary changes to improve the timeliness of its responses to partners. Based on a horizontal analysis of the Philippines' EOI practices, this element is determined to be rated as Largely Compliant.

Annex 1. List of in-text recommendations

Issues may have arisen 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. However, in order to ensure that the Global Forum does not lose sight of these “in text” recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element C.1** (paragraph 207): The Philippines is recommended to continue to ensure that its EOI agreements are in line with the standard.
- **Element C.2** (paragraph 222): The Philippines is recommended to continue its efforts developing its exchange of information network with all relevant partners.
- **Element C.4** (paragraph 241): The Philippines should monitor that attorney-client privilege is not permitted to frustrate the standard in EOI cases.
- **Element C.5** (paragraph 249): The Philippines should continue to ensure in practice that status updates are provided in accordance with the standard.
- **Element C.5** (paragraph 252): The Philippines should review its organisational procedures to ensure that it timely answers all requests.
- **Element C.5** (paragraph 257): The Philippines should, where appropriate, update its EOI manual.

Annex 2. List of the Philippines' EOI mechanisms

1. Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Australia	DTC	11-May-1979	17-Jun-1980
2	Austria	DTC	4-Apr-1981	1-May-1982
3	Bangladesh	DTC	8-Sep-1997	24-Oct-2003
4	Bahrain ^a	Protocol	13-Apr-2017	Not in force
5	Belgium	DTC (+protocol)	11-Mar-1996	24-Dec-1999
6	Brazil	DTC	29-Sep-1983	20-Aug-1991
7	Canada	DTC	11-Mar-1976	21-Dec-1977
8	China (People's Republic of)	DTC	18-Nov-1999	23-Mar-2001
9	Czech Republic	DTC	13-Nov-2000	23-Sep-2003
10	Denmark	DTC	30-Jun-1995	24-Dec-1997
11	Finland	DTC	13-Oct-1978	1-Oct-1981
12	France	DTC (+protocols)	25-Nov-2011	1-Feb-2013
13	Germany	DTC	9-Sep-2013	18-Dec-2015
14	Hungary	DTC	13-Jun-1997	7-Feb-1998
15	India	DTC	12-Feb-1990	21-Mar-1994
16	Indonesia	DTC	18-Jun-1981	20-May-1982
17	Israel	DTC	9-Jun-1992	26-May-1997
18	Italy	DTC	5-Dec-1980	15-Jun-1990
19	Japan	DTC (+protocol)	9-Dec-2006	5-Dec-2008
20	Korea	DTC	4-Jun-1976	20-Oct-1979
21	Kuwait	DTC	3-Nov-2009	22-Apr-2013
22	Malaysia	DTC	27-Apr-1982	27-Jul-1984
23	Mexico	DTC	17-Nov-2015	18-Apr-2018

	EOI partner	Type of agreement	Signature	Entry into force
24	Netherlands	DTC	9-Mar-1989	20-Jul-1991
25	New Zealand	DTC (+protocol)	29-Apr-1980	14-May-1981
26	Nigeria	DTC	30-Sep-1997	18-Aug-2013
27	Norway	DTC (+protocol)	22-May-1989	23-Oct-1997
28	Pakistan	DTC	22-Feb-1980	24-Jun-1981
29	Poland	DTC	9-Sep-1992	7-Apr-1997
30	Qatar	DTC	14-Dec-2008	19-May-2015
31	Romania	DTC	18-May-1994	27-Nov-1997
32	Russia	DTC	26-Apr-1995	12-Sep-1997
33	Singapore	DTC	1-Aug-1977	16-Nov-1977
34	Spain	DTC	14-Mar-1989	12-Jul-1994
35	Sri Lanka	DTC	11-Dec-2000	14-Mar-2018
36	Sweden	DTC	24-Jun-1998	1-Nov-2003
37	Switzerland	DTC	24-Jun-1998	30-Apr-2001
38	Thailand	DTC	14-Jul-1982	11-Apr-1983
39	Turkey	DTC	18-Mar-2009	11-Jan-2016
40	United Arab Emirates	DTC	21-Sep-2003	2-Oct-2008
41	United Kingdom	DTC	10-Jun-1976	23-Jan-1978
42	United States	DTC	1-Oct-1976	16-Oct-1982
43	Viet Nam	DTC	14-Nov-2001	29-Sep-2003

Note: a. The Philippines DTC with Bahrain has no EOI article, but a protocol amending the DTC to add an EOI article was signed by both jurisdictions in 2017 and is pending ratification by the Philippines.

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).⁸ The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

The original 1988 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 Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was signed by the Philippines on 26 September 2014 but has not yet entered into force in respect of the Philippines as the President must ratify the instrument and it must then receive concurrence from the Senate.

Currently, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People’s Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,⁹ Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia,

9. 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.

South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force¹⁰: Armenia, Bahamas (entry into force on 1 August 2018), Bahrain (entry into force on 1 September 2018), Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Gabon, Grenada (signature on 18 May and instruments deposited on 31 May); entry into force on 1 September 2018), Hong Kong (China) (extension by China, entry into force on 1 September 2018), Jamaica, Kenya, Kuwait, Macau (China) (extension by China, entry into force on 1 September 2018), Morocco, Paraguay (signature on 29 May 2018), Peru (entry into force on 1 September 2018), Philippines, Qatar, Turkey (the instruments of ratification were deposited on 26 March 2018, for an entry into force on 1 July 2018), United Arab Emirates (entry into force on 1 September 2018) and the United States (the original 1988 Convention is in force since 1 April 1995 and the amending Protocol was signed on 27 April 2010).

10. Note: While the last date on which the changes to the legal and regulatory framework can be considered was 20 April 2018, changes to the treaty network that occur after that date are reflected in this Annex.

Annex 3. Methodology for the Review

The reviews are based on the 2016 Terms of Reference, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

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 April 2018, the Philippines' EOIR practice in respect of EOI requests made and received during the three year period from 1 April 2014 to 31 March 2017, the Philippines' responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by the Philippines' authorities during the on-site visit that took place from 12-15 December 2017.

List of laws, regulations and other materials received

Commercial laws

- Corporation Code (BP 68)
- New Central Bank Act (RA No. 7653)
- General Banking Law of 2000 (RA No. 8791)
- New Civil Code

Regulatory and anti-money laundering/anti-terrorist financing laws

- Anti-Money Laundering Act of 2001 (RA No. 9160)
- Revised Implementing Rules and Regulations (2016)

Tax laws

- National Internal Revenue Code

Authorities interviewed during on-site visit

Department of Finance
 Bureau of Internal Revenue
 Department of Foreign Affairs
 Securities and Exchange Commission
 Bangko Sentral ng Pilipinas
 Anti-Money Laundering Council
 Insurance Commission
 Association of Bank Compliance Officers
 Board of Accountancy
 Professional Regulation Board
 Philippines Institute of Certified Public Accountants

Current and previous reviews

This report is the third review of the Philippines conducted by the Global Forum. The Philippines previously underwent a review of its legal and regulatory framework (Phase 1) in 2011 and the implementation of that framework in practice (Phase 2) in 2013. The 2013 Report containing the conclusions of the first review was first published in November 2013 (reflecting the legal and regulatory framework in place as of August 2013).

The Phase 1 and Phase 2 reviews were 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.

Summary of Reviews

Review	Assessment team	Period under Review	Legal Framework as of (date)	Date of adoption by Global Forum
Round 1 Phase 1	Ms Sylvia Moses of the British Virgin Islands; Mr Sergio Luis Pérez Cruz of Mexico; and Ms Amy O'Donnell of the Global Forum Secretariat.	n.a.	February 2011	June 2011
Round 1 Phase 2	Ms La Toya James of the British Virgin Islands; Mr Sergio Luis Pérez Cruz of Mexico; and Ms Renata Fontana of the Global Forum Secretariat.	1 July 2009 to 30 June 2011	August 2013	November 2013
Round 2	Mr Suyash Divekar of New Zealand; Mr Maxime Monleón of France; and Mr Jeremiah Coder of the Global Forum Secretariat.	1 April 2014 to 31 March 2017	April 2018	13 July 2018

Annex 4. Jurisdiction’s response to the review report¹¹

The Philippine delegation would like to express its appreciation to the Global Forum Secretariat for its hard work and efforts in writing this Report. We are especially grateful to the Assessment Team, Mr. Jeremiah Coder of the Global Forum Secretariat, Mr. Suyash Divekar of New Zealand, and Mr. Maxime Monleon of France. The Philippines also thanks the Peer Review Group for its work and consideration of the circumstances peculiar to our jurisdiction in the assignment of ratings.

Having a single standard for all jurisdictions has gone a long way in ensuring the ease in exchanging information in order to combat tax evasion. In line with this, the Philippines has enacted several regulations to ensure the accuracy of information being collected and its accessibility for EOI purposes.

Professional privilege

The Philippines has maintained its position, time and again, that the professional privilege is not an impediment to the power of the Commissioner of Internal Revenue, being the Competent Authority, under Section 5 of the National Internal Revenue Code (NIRC) of 1997, as amended, to obtain information from a holder thereof. Even the Lawyer’s Code of Professional Responsibility and the Code of Ethics of Professional Accountants provide, in no uncertain terms, that a lawyer or a professional accountant shall not disclose confidential information or secrets of his client unless required by law or there is a legal right or duty to disclose the same. The power of the Commissioner to obtain information from a holder serves as an exception to the lawyer-client and accountant-client privilege because such power is mandated by law, specifically under Section 5 of the NIRC of 1997, as amended. The BIR has already issued RMC No. 12-2018 to clarify this.

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

In other words, if information is transmitted by a client to his lawyer in the course of providing business or personal services, the lawyer cannot validly refuse to disclose the information acquired by him or her by invoking attorney-client privilege because he or she is required to provide the same pursuant to the Exchange of Information provision of an existing and effective tax treaty.

Further, the very courts in the Philippines have cited the responsibility of lawyers to provide information and the limitations of attorney-client privilege in the case of *Mercado vs. Vitriolo* (A.C. No. 5108) in May 26, 2005, and again in the *Jimenez vs. Francisco* (A.C. No. 10548) case in December 10, 2014.

Likewise, the Board of Accountancy, in its recent Resolution No. 18 Series of 2018, incorporated the adoption of a framework to guide auditors and other professional accountants in deciding what actions to take in the public interest when they become aware of a potential illegal act, known as non-compliance with laws and regulations (NOCLAR) committed by a client or employer.

It is worth noting that in the one case of EOIR where a lawyer cited attorney-client privilege as a reason for not providing the requested information, the Bureau of Internal Revenue of the Philippines (BIR) was still able to gain information from the said lawyer by citing both the powers of the Commissioner, as provided by the domestic laws of the country, as well as the rulings of the very courts that Philippine lawyers are sworn to follow.

To date, the treaty partner whose request for information triggered the citing of said privilege has been provided and is satisfied with the information that the BIR has collected. Given this, the Philippines is treating said request as closed.

Disproportionate difficulty in obtaining bank information when name of bank is undisclosed

Inasmuch as the Philippines would like to assist its treaty partners in every way possible when asked to provide banking information, the practical side in obtaining the same should be taken into consideration. This is why the Philippines always require the requesting treaty partner to provide the specific bank where the account being requested is located. To elicit bank information pertaining to a specific account holder or group of account holders from hundreds of banks in the Philippines would be impractical and difficult.

Despite the difficulties and delays in providing the complete information requested, the Philippines makes it a point to not only exert every effort to

collect any information being requested but also to provide the requesting jurisdictions with status updates, as well as sending them any partially collected information, in a timely manner.

To date, the Philippines has only 5 pending information requests from the initial 14 that are cited in the draft Philippine Report.

Availability of legal and beneficial ownership information of companies

The Philippines appreciates that the assessment team has considered its position, as supported by statistics, that a huge majority of suspended corporations are either small or micro enterprises with very little capitalization or are non-stock, non-profit corporations. Hence, they are highly unlikely to be subject of requests for EOI for tax purposes.

Briefly, as indicated in the report, 74% of these suspended corporations have paid-up capital of P500 000 (approximately US\$10 000) and below and of this number, 63% are non-stock, non-profit entities. Further, using the paid-up capital threshold of under P1 million (approximately US\$20 000) would lower the number of suspended corporations by 84%. And of this number, 53% are non-stock, non-profit corporations.

At any rate, the Philippines is cognizant of the EOIR concerns brought forward and will continue to review its policies and procedures in order to monitor and address these issues. At present, the SEC is already preparing to modify the format of the General Information Sheet required to be submitted annually by corporations to include beneficial ownership information.

Exemption to time-based post-notification to account holders

The Philippines recognizes the importance of having an exemption to the time-based post-notification requirement, the absence of which may hinder the investigation of our partner jurisdictions. However, we still recognize the limitations set by our domestic laws, specifically Republic Act 10021 which requires us to give post-notification to account holders for any requests for their information by partner jurisdiction.

Given all of these, and with the understanding of the Global Forum's Terms of Reference which do not require absolute exemption to post-notification, the Philippines commit to issue a regulation which will provide for a delay in post-notification to account holders, upon specific request by a partner jurisdiction, until such time as the latter's investigation will no longer be obstructed or hindered by the issuance of a notification.

On pending international agreements

The Philippines is still fully committed to the international agreements that it has entered into, specifically the Mutual Administrative Agreement for Tax Purposes. To this end, the Philippines will continue to work with its legislative branch in order for the immediate concurrence of the said agreement which has already been approved by our president.

The Philippines also commits to expand its tax information exchange network through the use of the Tax Information Exchange Agreements (TIEAs). The Philippines has already started finalizing the list of countries with which it would need TIEAs with and plans to start negotiations as soon as possible.

Sending of Philippine assessors to be part of the assessment team

In recognition of its international obligation and commitment, the Philippines has accepted the invitation of the Global Forum to nominate representatives from the Philippines who will be part of the assessment team for the second round of Exchange of Information on Request (EOIR) peer reviews of the Republic of Nauru and Republic of Vanuatu. Names have been forwarded to the Global Forum Secretariat for its consideration.

The Philippines remains committed to the ideals and principles of effective EOI and its role in fostering regional and global economic growth. It will continue working to improve its practices and procedures even further.

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, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request THE PHILIPPINES 2018 (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 150 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 2018 Peer Review Report on the Exchange of Information on Request of the Philippines.

Consult this publication on line at <https://doi.org/10.1787/9789264303317-en>.

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ISBN 978-92-64-30330-0
23 2018 26 1 P



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