

GLOBAL FORUM ON
**TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES**



Peer Review Report on the Exchange of Information
on Request

PERU

2020 (Second Round)

Global Forum on Transparency and Exchange of Information for Tax Purposes: Peru 2020 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

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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 160 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

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 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
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CDD	Customer Due Diligence
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
FATF	Financial Action Task Force
GAFILAT	Financial Action Task Force of Latin America
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
RUC	Single Register of Taxpayers
SBS	Superintendence of Banking, Insurance and Private Pension Fund Administrators
SUNARP	National Superintendence for Public Registries (Peru's Public Registry)

SUNAT	National Superintendence of Customs and Tax Administration (Peru's Tax Administration)
SMV	Superintendence of the Securities Market
TIEA	Tax Information Exchange Agreement
UIF	Financial Intelligence Unit of Peru
UIT	Tax Imposition Unit (the measurement of a penalty in Peru)

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Peru on the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 2 December 2019 and the practical implementation of this framework, in particular in respect of EOI requests received and sent during the review period from 1 April 2015 to 31 March 2018. This report concludes that overall Peru is **Largely Compliant** with the international standard.

2. In 2016, the Global Forum evaluated Peru against the 2010 Terms of Reference for the legal implementation of the EOIR standard. No overall rating was given to Peru given that no review of the implementation of the standard in practice was carried out, due to its then recent membership in the Global Forum (see Annex 3).

Comparison of ratings for First Round Report and Second Round Report

Element	First Round Report (2016)	Second Round EOIR Report (2020)	
A.1 Availability of ownership and identity information	In place	Needs improvement	PC
A.2 Availability of accounting information	In place	Needs improvement	LC
A.3 Availability of banking information	In place	In place	C
B.1 Access to information	In place	In place	C
B.2 Rights and Safeguards	In place	In place	C
C.1 EOIR Mechanisms	In place	In place	C
C.2 Network of EOIR Mechanisms	In place	In place	C
C.3 Confidentiality	In place	In place	C
C.4 Rights and safeguards	In place	In place	C
C.5 Quality and timeliness of responses	Not applicable	Not applicable	PC
OVERALL RATING	Not applicable	LC	

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

Progress made since previous review

3. The 2016 Report analysed the legal and regulatory framework in Peru. Since then, Peru made improvements to address the two minor recommendations identified.

4. Firstly, in 2018, Peru clarified the extent of secrecy provisions. According to the introduced legislation, communications between legal, accounting and financial professionals and their clients are only protected by professional secrecy to the extent that these professionals practise their profession. Therefore, such professionals cannot refuse to provide the information requested by the competent authorities, invoking the right to professional secrecy, when they act, among others, as owners of companies, partners, shareholders, administrators, directors or members of the board of directors.

5. Secondly, Peru significantly widened its network of EOI partners by signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 25 October 2017. The Multilateral Convention entered into force in Peru on 1 September 2018.

Key recommendation(s)

6. The main issues raised by this report relate to elements of the standard that have been strengthened in 2016 and to the implementation of the standard in practice: the monitoring of the availability of beneficial ownership information (element A.1); the availability of records containing ownership information and accounting records for struck-off entities for a minimum period of five years (elements A.1 and A.2); the appropriate supervision of inactive companies (elements A.1 and A.2).

7. During the review period, Peru received 11 EOI requests and sent 25 EOI requests. Peru is recommended to provide timely responses to EOI requests and needs to improve communication with partners, notably to adequately inform them when a request is declined for valid reasons (element C.5).

Overall rating

8. Peru has made improvements in the areas of availability of beneficial ownership information by setting up a general obligation for all entities to report the beneficial owner to SUNAT, introduced a strike-off mechanism to liquidate inactive companies, set up an office that is in charge of the exchange of information and clarified the extent of the professional secrecy provisions. On balance, Peru is overall rated Largely Compliant with the EOIR standard.

9. Peru has achieved a rating of Compliant for seven out of the ten elements constituting the EOIR standard (A.3, B.1, B.2, C.1, C.2, C.3, C.4),

Largely Compliant for element A.2 and Partially Compliant for elements A.1 and C.5.

10. This report was approved at the PRG meeting on 25-28 February 2020 and was adopted by the Global Forum on 27 March 2020. A follow-up report on the steps undertaken by Peru to address the recommendations made in this report should be provided to the PRG no later than 30 June 2021 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 needs improvement	Although Peru's law contains a general rule that ensures that ownership information would remain available after an entity ceases to exist, it is not clear how this information will be kept in the case of entities that are liquidated ex-officio under the process established in Legislative Decree No. 1427 of 2018.	Peru should ensure that records containing ownership information of struck-off entities are maintained for a minimum period of five years.
Partially Compliant	So far, only the AML framework ensured the keeping of beneficial ownership information in Peru. Since there is no requirement for all entities and arrangements to engage with an AML obliged person in a continuous relationship, the AML Law does not ensure the availability of beneficial ownership information in all relevant cases. Recently, Legislative Decree No. 1372 established the obligation for all legal entities and arrangements to request and maintain beneficial ownership and to submit this information to a centralised registry kept by SUNAT. Nonetheless, the centralised registry is not yet operational and the monitoring of the new requirements has not yet started.	Peru is recommended to put in place a supervision and enforcement programme of implementation of the legal requirements in Legislative Decree No. 1372 for legal entities and arrangements (including "irregular companies") to request and maintain beneficial ownership information, and report it to SUNAT, as well as the implementation by SUNAT of the centralised registry with beneficial ownership information.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
<p>Partially Compliant <i>(continued)</i></p>	<p>There is a significant percentage of companies and partnerships with legal existence and legal personality not registered with the tax authorities. Whilst some of these may not perform economic activity, this high number, together with the reduced number of sanctions imposed by SUNAT, during the review period, on entities that did not comply with the obligations to register or update information, poses a risk that the ownership information would not be available for a significant set of entities.</p> <p>The government issued Legislative Decree No. 1427 which introduced a mechanism that allows SUNARP to declare ex officio the extinction of companies and partnerships with “prolonged inactivity”. Nonetheless this mechanism is not yet operational.</p>	<p>Peru should monitor the risk that entities not registered with SUNAT pose to the availability of information and ensure that the new strike-off rules are being effectively carried out.</p>
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)</p>		
<p>The legal and regulatory framework is in place but needs improvement</p>	<p>Although Peru’s law contains a general rule that ensures that accounting records and underlying documentation would remain available after an entity ceases to exist, it is not clear how this information will be kept in the case of entities that are liquidated ex-officio under the process established in Legislative Decree No. 1427 of 2018.</p>	<p>Peru should ensure that accounting records and the underlying documentation of struck-off entities are maintained for a minimum period of five years.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Largely Compliant	There is a high number of entities registered with the Registry of Companies (SUNARP) that are not registered with the tax administration (SUNAT) and are therefore not subject to its monitoring activities. The high level of informality and the low level of sanctions imposed by SUNAT to entities that do not register or update their information can lead to cases in which non-registered entities are operating in the informal economy without being effectively monitored. Accounting records for these entities may not exist.	Peru should monitor compliance by companies with their record keeping obligations to ensure that reliable accounting records are kept for all relevant entities and arrangements.
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		
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		
Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
The legal and regulatory framework is in place		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The legal and regulatory framework is in place		
Compliant		
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		
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		
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		
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	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
Partially Compliant	Over the review period, Peru has not always answered EOI requests in a timely manner.	Peru should ensure that its internal EOI procedures are effectively applied and the time limits are respected in order to be able to respond to EOI requests in a timely manner.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Partially Compliant <i>(continued)</i>	During the review period, Peru rarely provided a status update to its EOI partners within 90 days when the competent authority was unable to provide a substantive response within that time. In addition, Peru did not communicate adequately to an EOI partner that requests were declined for valid reasons.	Peru is recommended to improve communication with partners, adequately inform them when a request is declined for valid reasons and send status updates whenever it cannot answer within 90 days.

Overview of Peru

11. This overview provides some basic information about Peru that serves as context for understanding the analysis in the main body of the report.

Legal system

12. Peru is a unitary, representative and decentralised republic. The Peruvian legal system is based on civil law. The hierarchy of the laws is, in decreasing order of rank: (i) the 1993 Constitution; (ii) laws, legislative decrees, emergency decrees and legislative resolutions; (iii) supreme decrees, and (iv) supreme resolutions, ministerial resolutions, vice-ministerial resolutions, directorial and head office resolutions (including the resolutions issued by the Superintendencies). International treaties have the same status as laws (except human rights treaties which have constitutional rank).

13. Peru's government is organised along the principle of separation of powers. The Executive Branch consists of the President and two Vice Presidents. The President is elected every five years by popular vote and cannot be re-elected for consecutive terms.

14. Legislative power is vested in both the executive branch and a unicameral Congress (130 seats). In addition to passing laws, Congress ratifies treaties, authorises government loans (*empréstitos*) and approves the government budget. Congress legislates by passing laws and legislative resolutions, while the President does so through legislative decrees when Congress has delegated such power to him/her. The President may also issue regulations implementing any law passed by Congress or urgent decrees concerning economic and financial matters. Such decrees have the force of law.

15. Peru's judicial system is structured hierarchically with the Supreme Court as the court of highest judicial instance. Peru also has a Constitutional Court, which is tasked with safeguarding constitutional principles and has the power to repeal all or portions of any unconstitutional laws and acts.

16. Peru is a member of the Andean Community (*Comunidad Andina*), a customs union, or trade bloc, along with Bolivia, Colombia and Ecuador, with the aim of promoting greater economic integration among its members. The Andean Community may legislate on specific matters that are directly applicable in Peru without the approval of Congress. One of the pieces of legislation adopted by the Andean Community is Decision 578, dating from 2005, which establishes a regime for preventing double taxation. Article 19 of Decision 578 contains a provision allowing exchange of information for tax matters.

17. Further, according to Article 3 of the *Tratado de Creación del Tribunal de Justicia del Acuerdo de Cartagena* (Treaty creating the Court of Justice of the Cartagena Agreement), decisions of the Andean Community, once published in the official gazette of the Cartagena Agreement, are directly applicable in Peru without being ratified by Congress. Article 5 sets out that member countries of the Andean Community must refrain from adopting any measures contrary to the provisions of these decisions or that would restrict their application. Therefore, in the event of a conflict with an ordinary law, a decision of the Andean Community will take precedence in Peru.

Tax system

18. Peru taxes its residents (companies and individuals) on their worldwide income. Non-resident companies and individuals are taxed only on Peruvian-sourced income. The following legal entities are considered resident in Peru for income tax purposes: (i) companies that are incorporated in Peru and (ii) permanent establishments in Peru of individuals or companies not domiciled in the country (Article 7 Income Tax Law). Nonetheless, permanent establishments and branches of foreign companies are taxed only on their Peruvian-sourced income. Individuals are considered as tax residents when they remain in Peru for more than 183 days in a 12 month period.

19. The Tax Code sets out the general tax principles and the rules for the administration of taxes, penalties, procedures and collections. The imposition of income tax is governed by the Income Tax Law. The national tax administration, Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT), is an independent government agency responsible for revenue collection on behalf of the Government of Peru. The fiscal year runs from 1 January through 31 December. The tax returns for a fiscal year must be filed during the first three months of the subsequent year.

20. Peru imposes a range of taxes which are collected at the national level by SUNAT, the main ones being income tax, a value added tax, and a financial transactions tax. The SUNAT also collects contributions to Social

Health Insurance (Essalud, equivalent to social security) and the National Pension Office (ONP).

21. Legislative Decree 1261, published on 10 December 2016 amended the Income Tax Law and fixed the income tax rate at 29.5% for entities. In addition, Legislative Decree 1269, published on 20 December 2016, established a differential income tax rate for taxpayers whose net proceeds are below 1 700 Tax Units (approx. EUR 1.9 million).

22. The income tax of individuals is calculated using a progressive scale. Depending on the amount of the taxable income, the tax rate goes from 8% up to 30%.

23. Generally, a 30% withholding tax on income is levied on non-residents. However, some business activities are subject to other withholding tax rates. For example, as from 2017, dividends and other forms of profit distributions are subject to a 5% withholding tax. Interest from Peruvian-sourced income paid to non-residents is subject to a 4.99% tax if the debt meets certain conditions. Income from the sale of securities made through a Peruvian stock exchange is subject to a withholding tax of 5%; however, certain income from sales of securities are tax exempt under certain conditions.

24. In regards to capital gains tax, in the case of individuals, Peru only taxes the capital gains derived from the sale of real estate and securities at a rate of 5%. In regards to capital gains tax for companies, the income generated by the lease or transfer of movable goods and immovable goods is subject to a 29.5% tax. These taxes are applicable only to companies and individuals who are resident in Peru.

Financial services sector

25. The Peruvian financial sector comprises public and private financial institutions. The Superintendence of Banking, Insurance and Private Pension Fund Administrators (SBS) is an autonomous public agency in charge of the supervision and control of the commercial banks, financial entities, insurance companies, private pension fund administrators and others entities that accept deposits from the public or that perform similar or related operations by mandate of the law.¹

26. The total amount of financial assets held by the financial sector was PEN 435 billion (approx. EUR 117 billion) as of March 2019. The activities of

1. Such as municipal and rural savings and loans banks, development entities for small and micro businesses, and savings and loans associations authorised to receive deposits from the public.

the financial sector in Peru amounted to 4.7% of GDP in 2019. The number of financial institutions in Peru, as of February 2019, were:

Number of financial institutions

	Number of companies	Assets (millions of PEN)	Participation (%)
Banking companies	16	389 023	83.4
Financial companies	11	14 948	3.2
Municipal savings	12	26 988	5.8
Rural savings and credit institutions	6	1 898	0.4
Entities for the development of small and micro enterprises	9	2 511	0.5
Other institutions	3	30 953	6.7
Total	57	466 321	100

Source: Superintendencia of Banking, Insurance and Private Pension Fund Administrators; www.sbs.gob.pe/estadisticas/sistema-financiero.

27. The supervision and enforcement of the Securities Market Law is ensured by the *Superintendencia del Mercado de Valores* (SMV, Securities Market Superintendence). The SMV grants the authorisations to participate in the securities market. As of 28 February 2019, 22 brokerage companies were operating in Peru under the supervision of the SMV.

28. The Peruvian securities exchange is the Bolsa de Valores de Lima (BVL). The BVL is governed by the Legislative Decree No. 861 (Securities Market Law) which regulates all matters relating to public offerings of securities, investment funds, and other participants in the stock market. In order to negotiate a security in the BVL, it must be registered in the Public Registry of the Stock Market (RPMV). As of 31 March 2018, there were 271 securities registered in the RPMV.

29. The legal persons that are issuers of securities are subject to a series of disclosure requirements in the securities market. As part of the principles of transparency and investor protection, issuers must send to the SMV and disclose to the market, among others: (i) financial information, which must follow the standards adopted by the International Financial Reporting Standards – IFRS; (ii) important facts, which must comply with the requirements of significance, timeliness, veracity and sufficiency of the information; (iii) disclosure of the degree of adherence to the Principles of Good Governance and Corporate Sustainability; and (iv) structure of the property and information about the economic group.

Anti-money laundering framework and evaluation

30. Peru’s AML/CFT Regulatory Framework is contained in Law 27693 and its regulations (Supreme Decree 020-2017 JUS), Decree-Law 29038, and other sectoral regulations and resolutions issued by the SBS and SMV.

31. The Financial Intelligence Unit of Peru (UIF) is a specialised unit within the SBS, incorporated by Law 29038 and responsible for receiving, analysing, processing, evaluating and communicating information to detect money laundering and/or financing of terrorism. In addition, it contributes in helping AML obliged persons to implement systems, policies and practices for the detection of suspicious AML/CFT transactions.

32. The AML/CFT supervision is ensured by several public entities that act as AML/CFT sectorial supervisory and control bodies (such as the SBS and the SMV). The UIF supervises and controls entities not subject to a sector body as well as, notably, notaries and savings and loans co-operatives that are not authorised to accept money from the public. Supervisory functions are carried out based on the risk analysis of each sector, so that resources are channelled to those activities and entities that pose higher AML/CFT risk, while those of lower risk are monitored to ensure they comply with their obligations of registration, recording of operations and reporting of suspicious transactions.

33. Peru is a member of the Financial Action Task Force of Latin America (GAFILAT). In 2019, GAFILAT conducted the Fourth Round of Mutual Evaluation of Peru’s compliance with AML/CFT. Peru was found to be Largely Compliant with Recommendations 10 and 22 (Customer due diligence) and Partially Compliant with Recommendations 24 and 25 (Transparency and beneficial ownership of legal persons and legal arrangements). In addition, Peru’s effective rating in Immediate Outcome 5 (Legal persons and arrangements) was found to be low.²

Recent developments

34. Since the 2016 EOIR report, Peru issued, in December 2016, Legislative Decree 1315 modifying Article 62 of the Tax Code to expressly state that the provision and powers to collect information from taxpayers and third parties were also applicable for purposes of mutual administrative assistance in tax matters.

2. The report is available at www.fatf-gafi.org/publications/mutualevaluations/documents/mer-peru-2019.html.

35. In addition, Legislative Decree No. 1372 of August 2018 established the obligation for all legal entities and arrangements to request and maintain beneficial ownership information. They will have to submit this information to a centralised registry kept by SUNAT for the first time beginning in December 2019.

36. Also, on 16 September 2018, Legislative Decree No. 1427 introduced a mechanism that allows SUNARP to declare ex officio the extinction of companies and partnerships with “prolonged inactivity”, in which case SUNARP will annotate the public registry. If two years elapse since the annotation without any action from the company or from any interested third party, the company would be automatically extinguished. The annotation will be included for the first time in October 2020.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

38. The 2016 Report concluded that Peru’s legal and regulatory framework was “in place” and ensured the availability of legal ownership information at any time from the public authorities (e.g. tax administration), directly from the entities (register of shareholders) or from regulated third parties (banks); some information is publicly available.

39. The transparency standard was strengthened in 2016 and in respect of the aspects that were not evaluated in the Round 1 Report, particularly with respect to the availability of beneficial ownership information, in Peru until recently, only entities subject to the customer due diligence (CDD) requirements of the AML regime were required to maintain beneficial ownership information on their clients.

40. There is no requirement for all entities and arrangements to engage with an AML obliged person in a continuous relationship, therefore the AML Law does not ensure the availability of beneficial ownership information in all cases. In August 2018, the Peruvian government issued Legislative Decree No. 1372, which established the obligation for all legal entities and arrangements to request and maintain beneficial ownership and to submit this information to a centralised registry kept by SUNAT. Nonetheless, the centralised registry is not yet operational and the monitoring of the new requirements has not yet started. According to the regulation issued by SUNAT in the second semester of 2019, first deadlines to file the beneficial ownership information are set in mid-December 2019. Peru is thus recommended to monitor its implementation.

41. The implementation of rules and monitoring for non-compliance on maintaining both legal and beneficial ownership information appear to meet the standard. Nonetheless, there is a high proportion of entities registered with the National Superintendence for Public Registries (SUNARP) that are not registered with the tax administration (SUNAT). Peru explained that this is because many entities register but do not commence economic activities. While Peru has comprehensive legislation to sanction non-compliance with the registration and reporting obligation, in practice this sanction was applied in a low number of cases. In addition, when an entity ceases to exist after an ex officio liquidation, the keeping of information for at least five years is uncertain. Accordingly, Peru is recommended to address these situations.

42. During the three year peer review period, Peru received 11 requests for information from EOI partners, and eight included requests for legal ownership information. Peers were generally satisfied with the information received. The competent authority reports that it has never been unable to respond to a request for information due to the fact that information was not available in accordance with the law.

43. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	Although Peru's law contains a general rule that ensures that ownership information would remain available after an entity ceases to exist, it is not clear how this information will be kept in the case of entities that are liquidated ex-officio under the process established in Legislative Decree No. 1427 of 2018.	Peru should ensure that records containing ownership information of struck-off entities are maintained for a minimum period of five years.
Determination: The element is in place, but certain aspects of the legal implementation need improvement		

Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified	<p>So far, only the AML framework ensured the keeping of beneficial ownership information in Peru. Since there is no requirement for all entities and arrangements to engage with an AML obliged person in a continuous relationship, the AML Law does not ensure the availability of beneficial ownership information in all relevant cases.</p> <p>Recently, Legislative Decree No. 1372 established the obligation for all legal entities and arrangements to request and maintain beneficial ownership and to submit this information to a centralised registry kept by SUNAT. Nonetheless, the centralised registry is not yet operational and the monitoring of the new requirements has not yet started.</p>	<p>Peru is recommended to put in place a supervision and enforcement programme of implementation of the legal requirements in Legislative Decree No. 1372 for legal entities and arrangements (including "irregular companies") to request and maintain beneficial ownership information, and report it to SUNAT, as well as the implementation by SUNAT of the centralised registry with beneficial ownership information.</p>
	<p>There is a significant percentage of companies and partnerships with legal existence and legal personality not registered with the tax authorities. Whilst some of these may not perform economic activity, this high number, together with the reduced numbers of sanctions imposed by SUNAT in practice on entities that did not comply with the obligations to register or update information, poses a risk that the ownership information would not be available for a significant set of entities.</p> <p>The government issued Legislative Decree No. 1427 which introduced a mechanism that allows SUNARP to declare ex officio the extinction of companies and partnerships with "prolonged inactivity". Nonetheless this mechanism is not yet operational.</p>	<p>Peru should monitor the risk that entities not registered with SUNAT pose to the availability of information and ensure that the new strike-off rules are being effectively carried out.</p>
Rating: Partially Compliant		

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

44. Peru's companies (or *sociedades*) are created pursuant to *Ley General de Sociedades* No. 26887 (Companies Law). The Companies Law provides for two types of companies: Joint Stock Companies and Capital Limited Liability Companies.

45. The company law provides for three different forms of **Joint Stock Company**:

- The *Sociedad Anónima* (S.A.) (General Joint Stock Company) has to have at least two shareholders and the share capital is divided into registered shares represented by negotiable share certificates. Shareholders are not personally liable for the company's obligations. As of 31 March 2018, there were 189 320 SAs registered with SUNARP.
- *Sociedad Anónima Cerrada* (S.A.C.) (Closed Joint Stock Company) is a corporation that cannot have more than 20 shareholders and its shares cannot be publicly traded. As of 31 March 2018, there were 480 147 S.A.C.s registered with SUNARP.
- *Sociedad Anónima Abierta* (S.A.A.) (Public Joint Stock Company) is a Joint Stock Company that meets one or more of the following conditions: (i) it has made a primary public offering either of shares or obligations convertible into shares; (ii) it has more than 750 shareholders; (iii) more than 35% of its capital belongs to 175 or more shareholders; (iv) it is incorporated as such in the articles of incorporation; or (v) all voting shareholders unanimously approve the adjustment to that scheme (art. 249 Companies Law). The non-preferential shares of a S.A.A. should be listed on the Lima Stock Exchange (art. 252 Companies Law). As of 31 March 2018, there were 991 S.A.A.s registered with SUNARP.

46. **Capital Limited Liability Company (*Sociedad Comercial de Responsabilidad Limitada or SRL*):** A limited liability company may be established with 2 to 20 partners, who can be individuals or legal entities. All partners have limited liability. Capital stock is divided amongst them and cannot be issued as share capital, but rather is divided as participations. Participations are not tradable on the Peruvian stock exchange. As with SAs, no minimum amount of capital is required for incorporation. SRLs do not have a Board of Directors. Rather, the SRLs are managed by one or more managers. As of 31 March 2018, there were 257 421 SRLs registered with SUNARP.

47. Pursuant to Articles 394 and 403 of the Companies Law, foreign corporations can either re-incorporate as a Peruvian company, establish a

branch in the country or operate as a permanent establishment of the foreign company in Peru. Foreign companies that choose to re-incorporate in Peru are subsequently considered resident in Peru for tax purposes and are taxed on their worldwide income.

48. To establish a branch in Peru or operate as a permanent establishment, at the time of registration with SUNARP, the foreign company is required to submit: (i) a certificate showing that the main company is still in existence in its country of origin, (ii) a copy of the articles of incorporation and by-laws or of the equivalent instruments in the country of origin, and (iii) the agreement to establish the branch in Peru, including information, such as the branch's place of domicile and the appointment of at least one permanent legal representative in Peru. As of 31 March 2018, there were 3 362 branches of foreign companies registered with SUNARP. In addition, branches and permanent establishments of foreign companies are required to register in the Single Register of Taxpayers (RUC) and submit to SUNAT: type and number of identification document (for non-domiciled legal persons, individuals or entities, this refers to the tax identification number of country of incorporation, or country of residence, if different), full names and details of members or partners, company name (where applicable), and percentage of shares held.³ As of 31 December 2018, the number of permanent establishments registered with SUNAT was 1 226.

49. The following table⁴ shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies:

**Legislation regulating legal and beneficial ownership information
of companies**

Type	Company Law	Tax Law	AML Law	BO Register
Joint Stock Companies	Legal – all	Legal – all	Legal – some	Legal – none
	Beneficial – none	Beneficial – none	Beneficial – some	Beneficial – all
Capital Limited Liability Companies	Legal – all	Legal – all	Legal – some	Legal – none
	Beneficial – none	Beneficial – none	Beneficial – some	Beneficial – all

3. This obligation is set in Resolution No. 178-2016/SUNAT.

4. 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.

Legal ownership and identity information requirements

50. The 2016 Report concluded that ownership information in respect of companies, including foreign companies with a sufficient nexus, was required to be available in line with the standard. There are no changes in the relevant rules or practices since the first round review.

Company Law and Registry requirements

51. Companies have to be incorporated through a public deed granted by a Peruvian notary. The incorporation public deed has to be registered with SUNARP within 30 days of issuance, prior to commencing operations. Companies only acquire legal personality when the public deed of incorporation is registered.⁵ It must include the identification (names and addresses) of the founders. Failure to register before SUNARP results in a company acquiring an irregular status and the directors, managers and representatives have joint and several unlimited liability for the contracts and acts of the corporation, whether or not they register with SUNAT.

52. The transfer of shares and bonds of a Joint Stock Company are not acts subject to public registration.⁶ As such, Joint Stock Companies are not required to file such changes before a public notary or inform SUNARP of transfers of shares, although all transfers of shares must be logged in the company's own shareholders ledger. On the other hand, transfers of participations in SRLs are required to be registered with SUNARP as well as executed in a public deed.⁷

53. Companies are obliged to keep a shareholder ledger that contains records of the original shareholders and subsequent share exchanges or stocks splits, as well as the creation of rights ad rem, transfer limitations or other encumbrances thereon. Only the parties entered in such ledger are acknowledged shareholders of the company; when the ownership of shares is disputed, the individual registered in the shareholder ledger will be deemed the lawful holder of the shares unless otherwise stipulated by a court order.⁸

54. The ownership of a company is established by being entered in the register. Therefore, being registered in the ledger is a requirement to receive dividends and to exercise voting rights. Checking whether the registers of shareholders or partners are properly kept is one of the elements that are checked in the course of a tax audit.

5. Articles 423 and 6 Companies Law.

6. Article 4 Resolution No. 200-2001-SUNARP-SN.

7. Article 271 Companies Law and Articles 96 and 97 Resolution No. 200-2001-SUNARP-SN.

8. Articles 91 and 92 Companies Law.

55. The manager of the company is responsible for maintaining the shareholder ledger and failure to do so could result in removal from office. The ledger must be kept throughout the lifetime of the company. When a company is liquidated, the final act of liquidation is to designate a person that will be responsible for keeping the books (including the ledger) and correspondence of the company. The name and address of that person must be registered before SUNARP.⁹ In accordance with Article 49 of the Commercial Code, the ledger must be kept up to five years after the liquidation of the company.

56. SUNARP does not have powers to control the obligation of companies to register, earn their legal status or update the relevant information. There is no authority empowered to enforce these registry requirements. In particular cases, partners, shareholders or third parties could request before a judge the compliance by the entity of these requirements. In addition, SUNAT, when performing tax audits or controls, would oblige or coerce the taxpayer to register in the RUC, and prior to this, taxpayers would have to regularise their situation before SUNARP. SBS and SMV also ensure that the entities carrying out activities they supervise fulfil this obligation.

Tax Law requirements and enforcement measures

57. Legislative Decree 943 and SUNAT Resolution 210-2004 impose the obligation on any new Peruvian entity with fiscal residence in Peru, regardless of whether it has commenced economic activities, to register in the Single Register of Taxpayers (RUC) before SUNAT. When registering in the RUC, the company must submit information on the identification of the directors and administrators; as well as the identification and percentage of participation of each member/shareholder (including full names, identification document, and identification number where appropriate). After registration, entities receive an 11-digit tax identification number.¹⁰

58. Failure to register in the RUC is an offence punishable by a fine of one tax unit (UIT), which in 2019 would amount to PEN 4 200 (approx. EUR 1 130).¹¹

59. Changes in the shareholders/members must be registered in the RUC within ten days of the month following the change. Non-compliance with this obligation is punishable by a fine of 50% of a UIT (PEN 2 100, EUR 565).¹² This obligation is also applicable to Peruvian branches and permanent establishments of foreign companies; therefore they are legally required to update in the RUC the changes to legal ownership information.

9. Article 421 Companies Law.

10. Article 23 SUNAT Resolution 210-2014.

11. Article 173(1) Tax Code; the amount of a UIT changes on an annual basis.

12. Article 23 SUNAT Resolution 210-2004 and Article 173(5) Tax Code.

60. Further, entities domiciled in Peru are obliged to inform SUNAT of issuances, transfers and cancellations of shares and participations, including indirect transfers of shares or participations.¹³ The company must complete Virtual Form 1605 with, inter alia, the type of transfer, date of transfer, the details of the transferor and transferee, identification of shareholders/participants, the number of shares transferred, the unit value of the shares, and the percentage of such shares relative to the total shares of the company.

61. For companies incorporated in Peru, issuances or cancellations of shares must be notarised and included in the public deed. The date of execution of the public deed as well as the full name of the notary before whom it was filed and the deed's registration number in the public registry must also be included in the Virtual Form 1605 to be filed with SUNAT.¹⁴ Failure to submit this documentation constitutes an offence under the Tax Code, punishable by a monetary fine of up to 30% of the UIT (PEN 1 260, EUR 387).¹⁵

62. The following table shows the number of times that SUNAT has imposed sanctions for years 2015 to 2018 for lack of registration and lack of updates:

**Fines imposed by SUNAT to entities having breached
some registration obligations**

Fiscal year	Failure to register in the RUC	Failure to update the information in the RUC	Failure to report information on issuances, transfers, and cancellations of shares and participations
2015	3	3	525
2016	1	4	97
2017	1	3	6
2018	2	1	6

63. The number of fines is very low compared to the number of registered entities. In general, the sanctions mentioned in the table above are only imposed by SUNAT if these breaches are found during a regular tax audit. In 2015 and 2016, the number of sanctions imposed by SUNAT for failure by companies and partnerships to report information on issuances, transfers, and cancellations of shares and participations increased because SUNAT conducted a specific audit campaign to verify the compliance with the obligation to report this information.

13. First Transitional and Final Provision of the Income Tax Law.

14. SUNAT Resolution 169-2014.

15. Article 176(2) Tax Code.

Non-compliance with registration requirements

64. There is a significant number of companies that are registered in SUNARP, and therefore have legal existence, but are not registered before SUNAT, as shown in the following table, as of 31 March 2018:

Companies registered before SUNAT

Type of entity	Entities registered before SUNARP	Entities registered before SUNAT/ RUC ¹⁶	% of companies registered with SUNAT from the overall entities registered before SUNARP
General joint stock company (S.A.)	189 320	74 029	39
Closed joint stock company (S.A.C.)	480 147	469 861	98
Public joint stock company (S.A.A.)	991	538	54
Capital Limited Liability Company (SRL)	257 421	177 254	69

65. The Peruvian authorities consider that the difference between the number of entities registered with SUNARP and SUNAT is mainly attributable to two factors:

- Many entities initially register with the SUNARP and do not proceed to carry on any economic activity and therefore do not proceed to register with the SUNAT.
- Until 2012, SUNARP did not have a national integrated system, therefore some companies that registered before 2012 had a commercial registration in more than one of the 25 regional registries, which leads to the double or multiple counting of some companies in SUNARP statistics. The number of companies in this situation could not be determined by the Peruvian authorities. Peru is recommended to clean up the multiple registrations as these may affect the availability of up-to-date ownership information (see Annex 1).

66. Therefore, prima facie, there is a significant number of companies registered in SUNARP with legal existence and legal personality, which, notwithstanding the view of the Peruvian authorities (see paragraph 65), may perform economic activity or hold assets. This high number, together with the reduced numbers of sanctions imposed by SUNAT on entities that did not comply with the obligations to register or update information, poses a risk that the ownership information would not be available for a significant set of companies.

16. This number does not include the 77 103 irregular entities that are also registered with SUNAT.

67. Entities that are not registered before SUNAT would not obtain a RUC number. According to Peruvian authorities, the absence of a RUC would impede the entity from running a business in Peru in a normal way and limits the participation of the entity in commercial activities, for instance to issue valid invoices.

68. Nevertheless, these entities continue to have legal personality and should comply with tax filing and commercial obligations. In practice, there could be cases in which an entity that is not registered before SUNAT could hold assets or conduct transactions either internally, in the informal economy, or entirely abroad and not maintain or file up-to-date ownership information.

69. In addition, as mentioned above, a requirement for a company to acquire legal personality is registering before SUNARP; therefore, “companies” with irregular status do not have legal personality. Active irregular companies must register in the RUC. As of 31 March 2018 there were 77 103 irregular companies registered in the RUC. Nonetheless, the Peruvian officials said during the onsite visit that it was impossible to determine the number of existing irregular companies that were not registered in the RUC.

70. According to the Peruvian authorities, one way Peru could access the information about companies that have not complied with the obligation to register before SUNAT is through the public notaries. Article 96 of the Tax Code imposes the obligation on the Public Notaries to provide periodically to SUNAT information regarding each instrument they extend in their notarial office (this obligation is regulated in SUNAT Resolution No. 138-99 of 1999). Nonetheless, there is no requirement on Peruvian companies to maintain a continuous relationship with the notaries. In addition, SUNAT could begin an audit process when it finds that these companies have carried out economic activities without registering in the RUC. Also, SUNAT could obtain information through third parties when they file their affidavits with SUNAT. Nonetheless, there is an unknown amount of companies not registered in SUNAT that could also hold assets or conduct transactions either internally, in the informal economy, or entirely abroad without maintaining up-to-date ownership information.

71. To address this problem, on 16 September 2018 the government issued Legislative Decree No. 1427 which introduced a mechanism that allows SUNARP to declare ex officio the extinction of companies and partnerships with “prolonged inactivity”.

72. A company or a partnership is considered to have “prolonged inactivity” if it is under any of the following scenarios:

- has never registered in the RUC, or has not registered a commercial act before SUNARP, during the previous 10 years

- is registered in the RUC but has not complied with filing tax returns during a six-year period, or with filing information returns¹⁷ during a four-year period.

In all cases, in order to be considered under “prolonged inactivity”, the company cannot have any pending debt, claim or procedures before SUNAT.

73. When the company is under “prolonged inactivity”, SUNARP will have to include an annotation on the public registry. If two years elapse since the day of the annotation without any action from the company or from any interested third party, the company would be automatically liquidated. For a transitional period up to 31 December 2020 a company itself can also make a declaration that will achieve the same result.

74. The Peruvian authorities reported that according to preliminary calculations done by SUNARP and SUNAT, approximately 540 000 entities would have the “prolonged inactivity” annotation on their registrar file on the first year of application of this mechanism and, consequently, most of these entities would be liquidated two years after.

75. The SUNARP will include for the first time the “prolonged inactivity” annotation during October 2020.¹⁸ Then, annually it will repeat the process with companies that by 1 January each year are under “prolonged inactivity”.

76. Although not yet carried out, the final dissolution of inactive entities from SUNARP will be a welcome step in reducing the risk that the ownership information would not be available and legal entities misused. As mentioned in paragraph 51, the number of irregular companies not registered either with SUNAT or SUNARP is unknown. Therefore, Peru should monitor the risk that entities not registered in the RUC pose to the availability of information, ensure that the new strike-off rules are being effectively carried out and ensure that ownership information is adequately kept after the entity is liquidated.

77. In addition, it is not clear what will happen to unclaimed assets of extinguished entities in the strike-off process and who will be the person that will be responsible for keeping the records (including the ledger) of the struck-off entity. The Peruvian authorities stated that in application of Article 424 of the Companies Law (which establishes that “administrators, representatives and, in general, those who appear before third parties acting on behalf of the irregular company are personally, jointly and unlimitedly

17. Information returns are communications that taxpayers must submit periodically to the Tax Administration informing some, or all, of their or third party operations.

18. Supreme Decree No. 219-2019-EF.

liable for the contracts and, in general, for the legal acts performed since the irregularity occurred”) it will be the last partners, representatives or administrators who appear to be registered in the registry of the company who must keep the books and records after the company is struck-off. Nonetheless, this is not expressly provided neither in the Companies Law nor in Decree 1427 and no official document supporting this interpretation of Article 424 was submitted. Therefore, Peru is recommended to ensure that companies’ books containing ownership information of struck-off entities are maintained for a minimum period of five years.

Beneficial ownership information

78. Under the transparency standard as strengthened in 2016, beneficial ownership information on companies should be available. In Peru, some beneficial ownership information is collected through the AML framework, but the main mechanism for ensuring the availability of beneficial ownership information for companies is the beneficial ownership register introduced in Legislative Decree No. 1372 of August 2018.

AML law requirements

79. Article 3 of Law 29038 includes a comprehensive list of the institutions considered as AML/CFT obliged persons, including financial institutions.

80. AML/CFT obliged persons are subject to supervision and must comply with the obligation to obtain and keep client identity information, including conducting customer due diligence measures and identifying the beneficial owner(s). The CDD procedure and the definition of the beneficial owner is determined in sectorial regulations.¹⁹

81. SBS Resolution 2660-2015 determines the CDD procedure that financial institutions should apply to all customers, regardless of their specific characteristics or the frequency of transactions conducted. Beneficial owner is defined in Article 28 as:

the natural person on behalf of whom a transaction is conducted and/or who holds or exercises the final effective control of a customer for whose benefit a transaction is conducted. It also includes persons that exercise the final effective control on a legal person or entity

In case of legal entities and arrangements, where it could not be determined who exercises the final effective control with a

19. Articles 19, 20 21 and 21.1 of Supreme Decree 020-2017-JUS.

majority interest, the beneficial owner shall be whoever exercises control by other means. Only in such cases when the natural person cannot be identified, the beneficial owner shall be the natural person who conducts direction and/or management functions.

82. In addition, when the client is a legal entity, the financial institutions must, at a minimum, request information relating to the legal ownership and identity information, including beneficial ownership information, of all shareholders or members owning directly or indirectly more than 25% of the legal entity (Article 30.2(d)). The Peruvian authorities indicated that the expression “could not be determined” covers the case where the threshold is met but there are doubts if the person is the real beneficial owner. The definition is in conformity with the standard.

83. Financial institutions determine, on an AML risk-based approach,²⁰ the periodicity with which they update client information during the CDD process. In practice this is done between one and two years, except in the case of customers subject to enhanced CDD whose update frequency must be higher. Financial Institutions must maintain CDD records for at least ten years after the termination of the client relationship. According to the information provided by Peru, financial institutions are not allowed to rely on customer due diligence previously conducted by a person introducing the customer or by a third party. Financial institutions can outsource the customer identification, but this does not imply a reliance on third parties, as the financial institutions hold responsibility over CDD. For example, if a bank’s customer wants to operate with an insurance company, even if both are part of the same financial group, the insurance company must perform the due diligence again itself.

84. Notaries are also AML/CFT obliged persons²¹ and are supervised by UIF on their compliance with the AML/CFT regime. Article 8.3 of Resolution 5709-2012 establishes that when performing the CDD:

As far as its due diligence allows, the Notary will determine the final beneficiary and will adopt reasonable measures to verify its identity. In the case of legal entities, it will determine the natural persons who ultimately control the legal entity through ownership; failing that, who exercises control of the legal entity by other means; and only when in such cases a natural person is not identified, the natural person who performs management and management functions will be considered.

20. Article 29.1(c) Resolution 2660-2015.

21. Article 2 Resolution 5709-2012.

85. Where a financial institution or service provider fails to properly conduct CDD or maintain the customer’s identity information for the proper maintenance period, non-compliance with the AML/CFT law can result in sanctions of a financial penalty from 20 to 100 UITs (approx. EUR 22 280 to EUR 114 400).

86. The enforcement and oversight of the AML/CFT framework will be analysed below under Section A.3.

87. However, as there is no requirement in Peru that all registered companies maintain a local bank account or maintain a continuous relationship with a notary, there would potentially be a gap in the availability of such information if reliance was placed on application of the AML framework only. To address this issue, Peru introduced a beneficial ownership registry in 2018.

Beneficial Ownership Registry

88. The Peruvian government issued Legislative Decree No. 1372 in August 2018 to compel companies to maintain beneficial ownership information, update it where necessary and file it with SUNAT.

89. Foreign legal entities and arrangements are also subject to this obligation if: (i) they have a branch, agency or other permanent establishment in Peru; or (ii) the individual or entity who manages or has the status of protector or administrator of said legal arrangements is tax resident in Peru.²²

90. Legal entities and arrangements have the obligation to set a mechanism which ensures that the beneficial ownership information is obtained and conserved. Supreme Decree No. 003-2019-EF provides companies with some minimum requirements, including the creation of a form to be sent to all persons they have reasonable grounds to believe to be their beneficial owners. The Legislative Decree establishes that the beneficial owners must reveal their identity to the legal entity or arrangement by providing, at least, their full name, identification number and country of residence.²³

91. Companies must keep their beneficial ownership information up to date “through a continuous follow-up” and at least every year.²⁴ Companies must report their beneficial ownership to SUNAT. Failure to provide or to submit documentation or information by the legal person or arrangement to the tax administration regarding the beneficial owner(s) can be sanctioned

22. Article 3.2 Supreme Decree No. 003-2019-EF.

23. Articles 6.1 and 6.2 Legislative Decree No. 1372.

24. Article 7(f), Supreme Decree No. 003-2019-EF.

with a the fine of 0.6% of net incomes, which may not be less than 5 UITs or greater than 50 UITs (EUR 5 570 to EUR 55 700).²⁵

92. The beneficial ownership registry has a specific definition of beneficial owner, which is not equal to the AML framework definitions. For the beneficial ownership registry, “beneficial owner” is defined as “(i) the individual who effectively and finally owns or controls legal persons or legal entities ... [and] (ii) the individual who finally owns or controls a customer or on whose behalf a transaction is made”.²⁶ For legal entities, the beneficial owner is:

- a. an individual who, directly or indirectly, owns at least 10% of the capital of a legal entity
- b. an individual who, acting individually or with others as a unilateral decision or through other natural or legal persons or legal entities, has powers, by means other than property, to designate or remove most of the organs of administration, direction or supervision, or have power of decision in the financial, operational and/or commercial agreements that are adopted, or that exercise another form of control of the legal person
- c. when no individual is identified under a) or b), the person who occupies the higher administrative position will be considered as beneficial owner.²⁷

93. Peru officials explained that steps a) and b) would be applied cumulatively, nonetheless this approach is yet to be tested in practice. The definition of beneficial owner, contained in Legislative Decree No. 1372, is in line with the standard.

94. The entity or legal arrangement is obliged to verify the identity and condition of the beneficial owner and to request the needed supporting documentation. The signature of the form should be authenticated by a notary or equivalent measure, and the information must be validated against official databases (e.g. national registry of natural persons, SUNARP register, RUC data).²⁸ This supporting documentation, including the chain of ownership, should be kept by the entity or legal arrangement for a minimum five-year period and if the company is liquidated the record keeping rules explained in paragraph 55 apply.²⁹

25. Subparagraph 27 of Article 177 Tax Code.

26. Article 3.1 Legislative Decree No. 1372.

27. Article 4.1 Legislative Decree No. 1372.

28. Articles 7(d) and 7(e), Supreme Decree No. 003-2019-EF.

29. Article 6.3(a) and (c) Legislative Decree No. 1372 and Article 87 (7 and 8) Tax Code.

95. All legal entities (including irregular companies) and arrangements that are tax resident in Peru are obliged to file with SUNAT an informative affidavit (in a format set by SUNAT), which contains the information on their beneficial owners.³⁰

96. Article 8.1 of Legislative Decree No. 1372 expressly permits the use of beneficial ownership information collected by SUNAT for administrative mutual assistance in tax matters purposes.

97. Failure to comply with the obligation to file annually with SUNAT an informative affidavit may result in a financial penalty under Article 176(2) of the Tax Code of 6% of net incomes, which may not be less than 5 UITs and maximum of 50 UITs (PEN 21 000 to PEN 210 000 for year 2019, EUR 5 645 to EUR 56 450). Additionally, Article 176(4) of the Tax Code establishes an offence for the presentation of an incomplete or incorrect informative affidavit, the penalty for which is the same as above.

98. Legislative Decree No. 1372 was enacted in the last quarter of 2018 and the implementing regulation was issued in the second semester of 2019. The obligation to file the informative affidavit is not yet operational. On 25 September 2019, SUNAT issued Resolution No. 185-2019 which establishes the form, term and conditions for the presentation of the beneficial ownership affidavit. This resolution established that *Principales Contribuyentes* (Main Taxpayers) should file the beneficial ownership affidavit from 13 to 23 December 2019. According to this resolution, the rest of the legal entities and arrangements should file the aforementioned affidavit in a schedule that SUNAT would issue through a resolution (at the cut-off date, this resolution had not been issued yet). Afterwards, the affidavit has to be filed when there is a change, within the 30 working days following the change in the beneficial owner or its identity information.³¹ The beneficial owner is under an obligation to inform its identity to the entities or arrangements and to provide accurate, sufficient and update information.³²

99. Even though entities are supposed to be keeping the beneficial ownership information required under the Legislative Decree itself since January 2019, SUNAT does not have a supervision programme in place targeting enforcement of this obligation.

100. According to the people interviewed on the onsite visit, SUNAT has carried out awareness raising programmes for the new beneficial ownership obligations. In addition, a special web portal explains the new obligations

30. Article 7.1 Supreme Decree No. 003-2019-EF.

31. Resolution No. 185-2019/SUNAT and Article 8.4 Supreme Decree No. 003-2019-EF.

32. Article 6.2(a) Decree No. 1372.

and procedures. The representative of the notaries also referenced the awareness campaign done by SUNAT with the notaries regarding the obligation to obtain beneficial ownership information. As the filing of the beneficial ownership information has not started and the law has been in effect for a short period of time, is not possible to determine the level of the awareness of the general public of this recently introduced obligation.

101. Peru, is recommended to put in place a supervision and enforcement programme of the implementation of the legal requirements in the Legislative Decree No. 1372 for legal entities and arrangements (including irregular companies) to request and maintain beneficial ownership information as well as the implementation by SUNAT of the centralised registry with beneficial ownership information.

Availability of ownership information in EOI practice

102. During the current review period, Peru received eight requests for company ownership information and was able to obtain the requested information and exchange it with the requesting partners. The input provided by the peers was positive and no concerns were raised regarding Peru's ability to exchange ownership information.

A.1.2. Bearer shares

103. Bearer shares have been officially prohibited in Peru since 1968. The abolition of bearer shares in Peru is further confirmed by Article 45 of Decision 024/1970 of the Andean Community, which mandates that all shares must be registered. There have not been any changes in this respect since the previous report.

104. In practice, Peruvian authorities have not encountered an incidence of existing bearer shares or company statutes permitting their issuance.

A.1.3. Partnerships

105. A Peruvian partnership is a legal person in which each member agrees to participate taking into consideration each other member in their personal capacity (*intuitu personae*). In Peru, partnerships come under the same provisions of the Companies Law as applicable to companies. Peru's law provides for two types of partnerships, which are:

106. **General Partnership (*Sociedad Colectiva* or **Collective Society**):** In a general partnership, all partners are jointly and severally liable for the obligations of the partnership. As a general rule, all partners have unlimited liability to third parties. As of 31 March 2018, 3 666 general partnerships

were registered with SUNARP. Of these, 142 were registered with SUNAT. The Peruvian authorities indicate that among the reasons for the low number of registration with SUNAT, is that some general partnerships realise they cannot perform the planned business activities because they fail to satisfy the conditions for obtaining the needed licence.

107. **Limited Liability Partnership (*Sociedad en Comandita*):** a Limited liability partnership has two classes of members: one that is jointly and severally liable for the obligations of the partnership (general partner) and one that is liable for the obligations of the partnership only to the extent of its contribution to the capital (limited partner). General partners are responsible for the management of the partnership.³³ Should a limited partner assume management responsibilities, that partner would acquire the status of a general partner. Limited Liability Partnerships may take one of two forms: simple or by shares. In a simple Limited Liability Partnership (*Sociedad en Comandita Simple*), limited partners receive no shares or securities for their contributions to the partnership. The capital of partnerships is represented by “participations”, which are not negotiable instruments as the agreement of other partners is required for their transfer.³⁴ A Limited Liability Partnership by shares (*Sociedad en Comandita por Acciones*) comes under the provisions of the Companies Law applicable to Joint Stock Companies (SAs). The total amount of the capital is divided into shares and can belong to the general or limited partners. As of March 2018, 3 141 Simple Limited Liability Partnerships and 30 Limited Liability Partnerships by Shares were registered with SUNARP; 13 Simple Limited Liability Partnerships and 24 Limited Liability Partnerships by Shares were registered with SUNAT.

Ownership of shares and participations of partners in partnerships

108. The 2016 Report concluded that the rules regarding the availability of identity information in respect of partnerships were in compliance with the standard. There has been no change in the legal framework since the first round review.

109. According to the requirements in Peruvian Commercial Law and Tax Law, SUNARP and SUNAT should have in their files the names of all the partners of General and Limited Partnerships, as they must appear in the deed of incorporation, which must be amended every time a partner changes. The deed must also include the contributions made by each of the founding partners (whether individuals or corporations). The SUNAT is required to

33. Articles 278, 281(3) and 282(2) Companies Law.

34. Article 281(1) Companies Law.

keep the information submitted to it for a period of 30 years³⁵ and SUNARP is required to keep it indefinitely.

110. All commercial entities, including General and Limited Liability Partnerships, must register with the Commercial Register and provide their deeds of incorporation within 30 days of their creation. As with companies, failure to properly register with SUNARP will result in a partnership acquiring irregular status.

111. It is not possible to transfer participations in partnerships without the consent of all the partners. Transfers must be done through a public deed before a notary and must be registered with SUNARP.³⁶

112. The tax obligations of partnerships are the same as those of companies: To register in the RUC, partnerships must submit a copy of the certificate of registration with SUNARP and Form 2054, which requires identity information on partners, as well as the percentage share and date of acquisition of all participants. Following registration with SUNAT, the partnership will obtain a tax identification number, which will be used in all future correspondence with SUNAT.³⁷

113. As for companies, there is an important percentage of partnerships that do not comply with the obligation to register with SUNAT and submit ownership information. Only 3.9% of the total of General Partnerships and 1.2% of the total of Limited Liability Partnerships registered with SUNARP comply with the obligation to register with SUNAT. Therefore the same considerations in paragraphs 67 to 76 apply to partnerships.

Beneficial ownership information

114. As in the case of companies, some beneficial ownership information of partnerships is collected through Peru's AML framework, but the main mechanism for ensuring the availability of beneficial ownership information for partnerships is through the introduction of a beneficial ownership register in Legislative Decree No. 1372.

115. The same requirements and considerations, and recommendations, as described in A.1.1 for beneficial ownership (paragraphs 79 to 101) apply to partnerships.

35. SUNAT Resolution No. 171-2012/SUNAT.

36. Articles 281(4), 282(5), 271 Companies Law and Article 3 Resolution No. 200-2001-SUNARP-SN.

37. Annex 1 Resolution No. 210-2004/SUNAT.

Foreign partnerships

116. Partnerships are treated as companies under the Companies Law. Foreign partnerships establishing a branch or a permanent establishment in Peru would thus be subject to the same registration requirements with SUNARP and SUNAT as foreign companies (see paragraph 48 and 2016 Report for details).

Availability of partnership information in EOI practice

117. In practice, during the period under review, Peru did not receive any request in relation to a partnership.

A.1.4. Trusts

118. The concept of “trust” does not exist under Peruvian Law and Peru is not a signatory of The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. However, Peruvian domestic law does not have obstacles that prevents a Peruvian resident from acting as a trustee.

119. On the other hand, as already described in the 2016 Report, Peruvian law provides for the establishment of a “fideicomiso” arrangement, which shares some common law trust-like features. The fideicomiso is governed by provisions of the Law of the Financial System and Resolution 1010-99 of the SBS.

Fideicomiso

120. The 2016 Report found that information keeping requirements and AML requirements on fiduciaries ensure that ownership and identity information on fideicomisos is fully available.

121. Fideicomisos are contractual arrangements without independent legal personality whereby a *fideicomitente* (settlor), being an entity or an individual, transfers the ownership of an asset to a patrimonio fideicometido, which is a separate arrangement administered by a fiduciary agent (*fiduciario* or trustee) who will hold the property for the benefit of the *fideicomisario* (beneficiary), being a third party (who can be either the settlor or another person).³⁸ The fiduciary agent holds a “real right” (*dominio fiduciario*) to use, dispose of and recover the assets to achieve the settlor’s purpose. Depending on the specific provisions of the act creating the fideicomiso, the fiduciary property will either return to the settlor at the time of the termination of the fideicomiso or the assets will be dispersed to the beneficiaries.

38. Article 241 Law of the Financial System.

122. Several types of fideicomisos can be created under the Law of the Financial System, including fideicomisos to dispose of property from deceased persons, charitable or cultural fideicomisos, and lifetime fideicomisos. Increasingly, fideicomisos are used in Peru for banking transactions and project financing, such as to secure obligations in favour of a bank or other third party.

123. Fideicomisos are financial products, and individuals are prohibited from acting as fiduciary agents for domestic fideicomisos under both the Law of the Financial System and the Securities Market Law. As of March 2018, there were 2 087 fideicomisos.

124. Peruvian law only allows specific entities (banks, financial entities, municipal and rural associations, trust companies and insurance and reinsurance companies), supervised and regulated by the SBS, to act as fiduciary agents. Therefore, the fiduciary agents of the fideicomiso are always AML/CFT obliged persons. These entities must acquire prior authorisation from the SBS before offering and providing such arrangements as a product.³⁹ There are 82 entities in Peru authorised to act as fiduciary agents as at February 2019.

Identity information

125. The fideicomiso arrangement must be in writing and is created by means of either a public deed (before a notary) or through a will, which must identify the assets and persons involved (*fideicomitente*, fiduciary agent and *fideicomisario*).⁴⁰ Further, any changes in the fideicomiso such as in the assets held or the parties to the arrangement must also be in writing and verified before a notary.

126. In addition, the fiduciary agents are subject to the provisions of the AML/CFT law that establishes that all financial institutions are obliged to identify all parties to the trust or similar agreement and keep this information updated for a minimum period of ten years from the moment of the transaction.⁴¹ In the event that this information is not maintained, the AML/CFT regulations establish strict sanctions that may be applied.

39. Article 242 Law of the Financial System.

40. Article 246 Law of the Financial System.

41. Article 11 Resolution 1010/1999 and Article 55 Resolution 2660-2015.

Beneficial ownership

127. In relation to the knowledge of the beneficial ownership information, AML/CFT regulations set forth for companies (mentioned above in paragraph 81) also apply to legal arrangements, including fideicomiso.⁴² In addition, a specific provision applies to legal arrangements, according to which the identity of (i) the beneficiary and (ii) the beneficiary of the property held in the fideicomiso, shall be identified. In case beneficiaries were more than five persons, representatives and solicitors appointed by the boards shall be identified.⁴³

128. As fideicomisos are financial products, Peru's AML/CFT law always had to be applied by the fiduciary agent and enhanced CDD procedures have to be applied always to fideicomisos.⁴⁴

129. Fideicomiso are also covered by the provisions contained in Legislative Decree No. 1372 issued in August 2018, and therefore the same consideration described in paragraphs 88 to 101 would apply to fideicomiso. According to Article 4.2(a) of Legislative Decree No. 1372, the beneficial owner of a fideicomiso will be the natural person who holds any of the following positions: settlor, fiduciary agents, beneficiaries (or group of beneficiaries) and any other natural person that exercises ultimate control over the equity or income of the arrangement. This definition is aligned with the standard.

130. In practice, fideicomisos are commonly used in Peru for different purposes such as collective investment vehicles or special purpose vehicles for the construction industry. Fideicomisos are a highly regulated vehicle treated as a financial product. Only financial institutions can act as fiduciary agents. The availability of both the ownership identity and the beneficial ownership information is assured.

Foreign trusts

131. The 2016 Report concluded that Peru has reasonable measures in place to ensure that identity information on foreign trusts administered in Peru or in respect of which a trustee is resident in Peru was available to its competent authorities.

42. Chapeau of Article 30 Resolution 2660-2015.

43. Article 28 Resolution 2660-2015.

44. Article 32(c) Resolution 2660-2015.

Identity information

132. SUNAT issued Resolution No. 177-2016 establishing the obligation for a trustee domiciled in Peru to file an “informative return” (in nature similar to an affidavit) regarding a trust created under foreign law. This return must be submitted to SUNAT at the time that the trustee commences acting as trustee for the foreign trust and any time thereafter when modifications to the trust, settlor(s) or beneficiaries occur and must contain information on the trust (such as date of creation, country of origin, conditions and purpose) as well as on the settlor(s) and beneficiaries. The sanction for not complying with this requirement is the same sanction applicable to companies already mentioned in paragraph 97.

133. In order to file such a return, the trustee must register in the RUC. Resolution No. 177-2016 applies to all persons acting as trustees of foreign trusts as of 31 December 2016, whether already existing or new. According to the information provided on the onsite visit, foreign trusts are rarely used in Peru. The fact that not a single trustee of a foreign trust has registered before SUNAT may be because they may not be aware of this legal obligation. Notwithstanding, Peru’s authorities reiterated that trustee activity is not widespread in Peru. Participants in the on-site visit indicated that the administration of foreign trusts by resident trustees was probably extremely rare. Peru did not receive any EOI request concerning trusts, neither during the review period nor before. Therefore, the materiality of this possible gap is minor.

Beneficial ownership

134. Foreign trusts are also covered by the beneficial ownership registry set up by Legislative Decree No. 1372, and therefore the same considerations described in paragraphs 88 to 101 would apply to foreign trusts with a resident trustee. According to article 4.2(b) of Legislative Decree No. 1372, the beneficial owner of a trust will be the same as for the fideicomiso (mentioned above in paragraph 129) plus the protector or administrator.

135. The definition of beneficial owners for legal arrangements under the AML/CFT legislation is not aligned with the standard as it does not cover information relating to each of the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust and where any of these persons are not natural persons (e.g. if a beneficiary is a company or other entity or arrangement), information in respect of the natural persons who are the beneficial owners of that entity or arrangement should also be available. Nonetheless, this shortcoming is addressed by Legislative Decree No. 1372 which recently introduced an obligation for all foreign trusts to register their

beneficial ownership with SUNAT and contains a definition of beneficial ownership for trusts aligned with the standard. Peru is recommended to monitor the implementation of the legal requirements in the Legislative Decree No. 1372 in relationship with the availability of beneficial ownership information of foreign trust. In addition, Decree N. 1372 established that the definition of beneficial ownership applicable for the beneficial owner registry (which is aligned with the standard) also applies for AML/CFT purposes;⁴⁵ this is further analysed and explained in element A.3 (please refer to paragraphs 174 to 176).

A.1.5. Foundations

136. 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.

137. The concept of private foundation does not exist under the laws of Peru. Foundations in Peru are governed by the Civil Code. They are non-profit entities established exclusively for listed public-interest purposes. Having non-profit status, foundations are not allowed to make distributions or return assets to their members or founders and they cannot carry out commercial activities. They are not relevant entities for this exercise, as concluded in the 2016 Report.

138. In practice, Peru has not received any information request relating to a Peruvian foundation during the review period.

A.2. Accounting records

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

139. The 2016 Report found that Peru's legal and regulatory framework for the maintenance of accounting records was in place, including underlying documentation, for a minimum period of five years, and accordingly should ensure the availability of accounting information in line with the standard.

140. Since the first round, no relevant changes have been introduced to these legal obligations, but the standard was strengthened and now explicitly requires that accounting information remains available for at least five years even after an entity or arrangement has ceased to exist. Entities are obliged to

45. Article 3.1(a) Legislative Decree No. 1372.

keep accounting records under both the commercial and tax law frameworks but these laws are not specific enough in the case of struck-off companies.

141. With regards to the compliance of entities in maintaining accounting records, SUNAT verifies, through tax audits, that accounting records are being kept. In cases where accounting records are not kept or are kept incorrectly, sanctions are applied.

142. As mentioned in element A.1, there is a high number of entities registered with SUNARP that are not registered with SUNAT and are therefore not subject to its monitoring activities. Peru believes that this is due to the fact that a significant number of registered entities do not commence economic activities but other sources suggest that a large share of Peru's economy is performed in the informal sector. According to the 2019 GAFILAT Mutual Evaluation Report, 60% of Peru's economy is informal. The high level of informality and the low level of sanctions imposed by SUNAT to entities that do not register or update their information can lead to cases in which non-registered entities are operating in the informal economy without being effectively monitored. Accounting records for these entities may not exist.

143. Other entities may become inactive after a period of activity and SUNAT would no longer monitor whether accounting records relating to periods when the company was active continue to be available. Accordingly, Peru is recommended to take appropriate measures to monitor the risk inactive entities pose to the availability of accounting information.

144. During the three year review period, Peru received ten requests for accounting information and did not report any issues in obtaining such information.

145. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	Although Peru's law contains a general rule that ensures that accounting records and underlying documentation would remain available after an entity ceases to exist, it is not clear how this information will be kept in the case of entities that are liquidated ex-officio under the process established in Legislative Decree No. 1427 of 2018.	Peru should ensure that accounting records, and the underlying documentation, of struck-off entities are maintained for a minimum period of five years.
Determination: The element is in place, but certain aspects of the legal implementation need improvement		

Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified	There is a high number of entities registered with the Registry of Companies (SUNARP) that are not registered with the tax administration (SUNAT) and are therefore not subject to its monitoring activities. The high level of informality and the low level of sanctions imposed by SUNAT to entities that do not register or update their information can lead to cases in which non-registered entities are operating in the informal economy without being effectively monitored. Accounting records for these entities may not exist.	Peru should monitor compliance by companies with their record keeping obligations to ensure that reliable accounting records are kept for all relevant entities and arrangements.
Rating: Largely Compliant		

A.2.1. General requirements

146. The Peruvian legal and regulatory framework requires the availability of accounting records in line with the standard but requirements on struck-off companies need improvement.

147. General obligations to maintain accounting records can be found in Law 28708 (General Law of the National System of Accounting and Companies Law), which requires businesses to keep records of transactions in accordance with the principles adopted by the Accounting Standards Board (Article 16).

148. The Commercial Code contains general accounting requirements for all “merchants”. Individuals and entities (including professional and non-professional trustees) conducting commercial transactions must keep (i) an inventory and balance book, (ii) a journal (or “daybook”) recording details of all operations and transactions, (iii) a ledger, and (iv) other books ordered by laws. The inventory book must list: (i) all assets, such as in the form of money, securities, credits, bills for collection, movables and real estate property, goods and effects of all kinds, appreciated at their real value and form; (ii) liabilities, such as in the form of debt and other pending obligations; (iii) the balance between assets and liabilities. Commercial entities are also required to prepare financial statements in accordance with generally accepted accounting principles, which, according to Resolution 013-98-EF/93.01, are the International Accounting Standards (IAS).⁴⁶

46. See in particular Articles 1, 33, 37, 38 and 23 of the Commercial Code.

149. In addition, for tax matters, legal entities formed in Peru (which include partnerships), as well as branches, agencies and other permanent establishments of individuals or legal persons not domiciled in Peru, but having a sufficient nexus to Peru, are subject to the Tax Code.

150. The Tax Code provides that taxpayers must keep books and accounting records required by the laws, regulations or resolutions issued by SUNAT.⁴⁷ The Tax Code states that taxpayers are to keep books and records, as well as “documents and history of operations or situations which constitute facts likely to generate tax obligations or which are related to them” in line with the requirements laid out in Superintendence Resolution No. 234-2006/SUNAT. Accounting records must correctly explain all transactions and reflect details of all expenses, as well as sales and purchases. Accounting books must contain, as minimum, detailed information on transactions and operations (including nature of operation, method of payment, means of payment).⁴⁸ In addition, the Value Added Tax (VAT) Law requires VAT taxpayers to keep a record of sales and income, a purchase record and a log of all consignment transactions.⁴⁹

151. Companies with annual income of up to 150 UITs (for 2019 is equivalent to PEN 630 000, EUR 169 500) are required to keep records of purchases and sales, and a general journal of simplified format (similar to a “cash book”). Companies with annual income from 150-500 UITs (for 2019 is equivalent to PEN 630 000 to PEN 2 100 000, EUR 169 500 to EUR 565 000) are required to keep records of purchases and sales, a journal, and a ledger. Companies with annual income from 500-1 700 UITs (for 2019 is equivalent to PEN 2 100 000 to PEN 7 140 000, EUR 565 000 to EUR 1 921 000) are required to keep all of the above as well as an inventory and balance sheet (containing details of financial accounts and the company’s financial position). Finally, companies with annual income of more than 1 700 UITs (for 2019 is equivalent to PEN 7 140 000, EUR 1 921 000) are required to keep all of the above as well as books specifically prescribed by the Income Tax Law, such as a book to record the withholding of income tax on payments other than those to employees, a fixed asset register, permanent physical inventory, permanent inventory valuation, or others.

152. Failure to keep accounting books or other books and/or records required by the laws, regulations or by Superintendence resolution of SUNAT constitutes an offence sanctioned with a fine of 0.6% of the person’s annual Net Revenue.⁵⁰

47. Articles 87(4) and 87(7) Tax Code.

48. Articles 12.1 and 13.1 Superintendence Resolution No. 234-2006/SUNAT.

49. Article 37 VAT Act.

50. Article 175(1) Tax Code. Net Revenue is defined in article 180 (b) of the Tax Code.

Retention period and entities that ceased to exist

153. The Commercial Code requires that all merchants keep their books throughout the lifetime of the company and records for up to five years after liquidation of their business.⁵¹ The Commercial Code specifies that when a company is liquidated, the final act of liquidation is to designate a person that will be responsible for keeping the books (including the ledger) and correspondence of the company. The name and address of that person must be registered before SUNARP.⁵²

154. The Tax Code also requires taxpayers to keep accounting records as well as the underlying documentation for five years or during the statute of limitations for tax matters,⁵³ whichever is greater.

155. According to the Peruvian authorities, this retention period is not affected by events such as the liquidation of the legal person.

156. Nonetheless, under the strike-off mechanism introduced by Legislative Decree No. 1427 of September 2018 (see paragraph 71 above), it is not clear who will be the person that will be responsible for keeping the accounting books and the underlying documentation of the struck-off entities. According to the Ministry of Justice, in the case of companies extinguished by prolonged inactivity, the last partners, as registered in the public registry, will be in charge of the conservation of the books of the extinct entity, in application of Article 424 of the Companies Law for irregular companies. Nonetheless, this is not expressly provided for, neither in the Companies Law nor in Decree 1427, and no official document is available that supports this interpretation. Therefore, Peru is recommended to ensure that accounting records and the underlying documentation of struck-off entities are maintained for a minimum period of five years.

51. Article 49 Commercial Code.

52. Article 421 Companies Law.

53. Articles 43 to 49 of the Tax Code regulate the statute of limitations for tax matters, i.e.:

4 years if the tax debtor, in the case of the taxes that SUNAT administers, has complied with presenting the tax return

6 years for those who have not submitted the respective return

10 years when the withholding or collection agent has not paid the tax withheld or received.

In the case of Income Tax, the computation of the statute of limitations begins on 1 January of the year following the date on which the deadline for submitting the income tax return expires.

A.2.2. Underlying documentation

157. In tax law, underlying documentation must be maintained in Peru for the same time as the accounting documents that go with it. Article 87(11) of the Tax Code sets out that the taxpayer must maintain proof of payment, payment receipts, copies of contracts and invoices and all documents supporting costs or expenses. Further, it sets out that accounting records must “support the possession of goods with ... invoices, purchase receipts and any other document provided to support possession”. Therefore, taxpayers must keep underlying documentation of transactions (such as invoices, contracts, etc.) in line with the international standard.

Oversight and enforcement of requirements to maintain accounting records

158. SUNAT is, in its tax-collecting role, the institution in charge of compliance for entities in respect of their accounting record keeping obligations, to ensure the quality of the information submitted in tax returns, and has the power to sanction taxpayers in case of non-compliance.⁵⁴

159. SUNAT conducts two types of verification checks: audits to review accounting records, and formal duty controls to conduct inspections to businesses, in particular to review invoices and other underlying documentation.

160. During the review period, SUNAT undertook audits to verify the comprehensive compliance with tax obligations, and applied sanctions as follows:

Audits and sanctions imposed by SUNAT

FY	Comprehensive tax audits	Number of fines for not keeping accounting records	Number of fines for keeping incorrect accounting records (formal breach)	Number of fines for not keeping up to date the accounting records
2015	7 207	107	349	508
2016	26 873	35	152	304
2017	24 540	58	126	249
2018	24 398	1 716	160	2 135

161. Peru has reported that taxpayers’ compliance regarding their accounting and record-keeping obligations is generally good. The tax compliance

54. In addition, the SBS oversees compliance by financial institutions (see Section A.3). The SMV regulates and supervises the operations of the institutions participating in the stock exchanges market.

procedures and fines applied seem to be adequate to ensure availability of accounting records.

162. Nonetheless, as mentioned in element A.1, there is a significant number of companies and partnerships registered in SUNARP with legal existence and legal personality that are not registered with SUNAT, as well as there being irregular companies and partnerships not registered with either body. This high number, together with the reduced number of sanctions imposed by SUNAT during the review period to entities that did not comply with the obligations to register or update information, poses a risk that accounting information would not be available for a significant set of existing entities. Peru is therefore recommended to address this issue.

Availability of accounting information in EOIR practice

163. During the current review period, Peru received 10 requests for accounting records and underlying documentation including financial statements, commercial documents, payment supporting documents, invoices, profit and loss accounts and tax returns. These requests related primarily to companies and none of them related to trusts or partnerships. Peru was able to respond to the received requests. In general, the peers reported that they did obtain the requested information from Peru and were satisfied with Peru's responses.

A.3. Banking information

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

164. The 2016 Report concluded that banks' record keeping requirements were in line with the standard, i.e. the legal framework for element A.3 was determined to be "in place".

165. Banks are subject to the AML/CFT laws. As such, banks are required to identify and verify the identity of their customers and the beneficial owner(s) of their customers. They are required to conduct on-going monitoring and must retain these records for a period of at least ten years after the termination of the business relationship.

166. During the three year review period, Peru received nine requests for banking information. Peers were satisfied with the quality of the responses received. Peru was able to provide the information requested.

167. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

A.3.1. Record-keeping requirements

Availability of banking information

168. Jurisdictions should ensure that banking information, including beneficial ownership information, is available for all account holders. Available information should include all records pertaining to the accounts as well as to related financial and transactional information.

169. The 16 banks in Peru are subject to the regulatory requirements of the SBS, including those prescribed regarding customer identification and record keeping. Peruvian banks can only hold nominative accounts.⁵⁵ The CDD verification is to be performed when establishing business relations (especially the opening of new accounts). Due diligence is required to be carried out on an ongoing basis.

170. Financial entities are required to conduct sufficient CDD to identify their clients and to take reliable measures to verify the “identity, representation, domicile, legal capacity, occupation, and corporate purpose” of their customers.⁵⁶ Documents supporting the identification process are required to be maintained and kept up to date. In the course of carrying out due diligence, financial entities should collect and maintain, amongst other relevant information, the following data from their clients:

- full names
- identification document type and number
- nationality and residence
- address and contact information
- identity of legal representatives and holders of power of attorney.

55. Article 375(1) Law of the Financial System.

56. Articles 27 until 32 Resolution 2660-2015 and Article 375(4) Law of the Financial System.

171. Banks have the obligation to keep registries of clients, account files and commercial correspondence for at least ten years after an account has been closed. Furthermore, they are required to keep for at least ten years the details of all banking transactions including the identity of all persons involved in the banking transactions.⁵⁷

Beneficial ownership information on account holders

172. In Peru, the availability of beneficial ownership information is ensured by AML requirements.

173. As mentioned in A.1.1, Resolution 2660-2015, issued by the SBS, determines the CDD procedure that banks should apply to all customers regardless of their specific characteristics or the frequency of transactions conducted.

174. For legal arrangements (including trusts and fideicomiso), there is a specific provision that in determining the beneficial owner the following persons should be identified: (i) the beneficiaries and (ii) the beneficiary of the property held in the arrangement. If there were more than five beneficiaries the representatives and solicitors appointed by the boards shall also be identified.

175. As noted under Section A.1.4 above, this definition does not meet the Standard. Nonetheless, Decree N. 1372 established that the definition of beneficial ownership contained in the beneficial owners registry (which, as already mentioned, is aligned with the standard) would also apply for AML/CFT purposes.⁵⁸ Therefore, the applicable definition of beneficial ownership for trusts would cover information related to each of the settlor(s), trustee(s), protector(s) (if any), all of the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust, and where any of these persons are not natural persons (e.g. if a beneficiary is a company or other entity or arrangement), information in respect of the natural persons who are the beneficial owners of that entity or arrangement should also be available.

176. During the onsite visit it was evidenced that the awareness of the existence of this new provision, which impacts the CDD that banks shall apply to identify the beneficial owner on foreign trusts, was very limited. To date, the SBS and the UIF have not issued any regulation or guidance implementing or publicising this new provision. The materiality of this gap is likely to be very limited as according to the Peruvian authorities and representatives of the relevant professions met during the onsite visit the number of trusts in Peru with bank accounts is negligible. Nonetheless, Peru is recommended to ensure that banks always apply the definition of beneficial owner

57. Article 375(2) Law of the Financial System and Article 55 Resolution 2660-2015.

58. Article 3.1(a) Legislative Decree No. 1372.

set in Legislative Decree No. 1372 when performing the CDD to identify the beneficial owner of foreign trusts. (See Annex 1)

177. Financial institutions must maintain CDD records for at least ten years after the termination of the client relationship.⁵⁹ Financial institutions determine, on an AML risk-based approach,⁶⁰ the periodicity with which they update client information during the CDD process. In practice this is done between one and two years, except in the case of customers subject to enhanced CDD whose update frequency must be higher. The frequency of update depends on a risk based approach but no specific guidance is provided by the Resolution. Peru's authorities should clarify the rules for updating the information obtained during the CDD process to ensure its proper application in line with the standard (see Annex 1).

178. Regarding the retention period, the AML legal framework requires obliged entities to keep documentation gathered for compliance with the AML framework (including copies of documents obtained through the CDD process) for ten years from the termination of the business relationship or the completion of an occasional transaction. The financial entities must provide the information or documentation requested by the competent authorities within the provided period of time.⁶¹

179. As mentioned in paragraph 83, financial institutions are not allowed to rely on customer due diligence previously conducted by a person introducing the customer or by a third party. Financial institutions can outsource the customer identification, but they keep responsibility over CDD. For example, if a bank's customer wants to operate with an insurance company, even if both are part of the same financial group, the insurance company must perform the due diligence.⁶²

Enforcement measures and oversight

180. In Peru the main regulator and supervisor that oversees compliance with the AML/CFT framework by banks is the SBS.

181. The SBS supervision department developed an evaluation methodology, revised and adjusted annually, that enables determining the level of exposure to AML/CFT risks of financial institutions under its supervision. Based on the outcome of this methodology, the annual plan for the supervision activities is established. Supervision activities can be both by remote monitoring (off-site) or inspections (on-site).

59. Article 55 Resolution 2660-2015.

60. Article 29.1(c) Resolution 2660-2015.

61. Article 375(2) and 376(1) Law of the Financial System.

62. Article 7.3(c) of the Regulation CONASEV Regulation 033-2011-EF/94.01.1.

182. The onsite supervision should cover the following items:

- general framework for risk management of AML/CFT: Evolution of the roles and responsibilities within the financial institutions and Evaluation of Policies and Procedures (internal regulations, group policies, training, etc.)
- due diligence procedures: Evaluation of the CDD procedures applicable to clients, staff and third parties
- AML/CFT Risk Management Methodology: Evaluation of the methodology and identification of AML/CFT risks; evaluation of the AML/CFT risk rating methodology for clients; evaluation of new products and/or changes of products and new technologies; and evaluation of new business in new geographical areas
- information and communication procedures for AML/CFT Risk Management: Reports of the compliance officer; communication channels and conservation of information
- internal and external audit reports and monitoring of observations

183. The following table shows the number of inspections conducted on relevant obliged persons by the SBS during years 2015 to 2018:

Inspection visits per type of entity

Type of entities	2015	2016	2017	2018	Total
Bank (16)	10	13	4	12	39
Insurance company	3	6	2	3	14
Pension fund	4	4	2	2	12
Financial companies (11)	4	6	4	2	16
Municipal savings and loans associations (12)	3	6	2	3	14
Rural savings and loans associations (7)	6	4	0	1	11
Popular credit municipal associations	1	0	0	1	2
Fund transfer companies	4	4	5	5	18
Development entities for small and micro businesses (9)	4	4	2	1	11
E-money issuing companies	0	1	3	3	7
Savings and credit co-operatives	1	1	0	0	2
Total	40	49	24	33	146

Source: Information provided by the SBS on the onsite visit.

184. Even though there was a decrease in the number of inspections during year 2017 (especially for banks), the numbers of inspections increased again in year 2018. The decline in the number of sanctions imposed in years

2016 and 2017 is due to the issuance of AML/CFT Risks Management Regulation 2660-2015 in mid-year 2015. Since the change in the regulation was so drastic (the previous regulation was issued in 2008) the SBS gave a grace period of one year to all financial institutions to adjust their AML programmes to the new regulation. The enforcement of the new regulation started in July 2016. Given that the sanctions process can take up to two years, the issues identified between 2016 and 2017 were sanctioned partially in 2018, and currently in 2019. The frequency of AML/CFT inspections on obliged persons seems adequate to ensure compliance with the AML obligations to maintain beneficial ownership.

185. According to Peruvian authorities, during the audits the supervisors check a sample of CDD files. Where a financial institution or service provider fails to properly conduct CDD or maintain the customer’s identity information for the proper maintenance period, non-compliance with the AML/CFT law would be considered as a “serious infraction” which can result in a financial penalty that can go from 10 to 200 UITs (PEN 42 000 to PEN 840 000 for 2019) (approx. EUR 11 000 to EUR 225 000).⁶³

186. AML/CFT supervision of banks is exercised by SBS. These are the sanctions applied by SBS to banks for non-compliance with the AML/CFT regime in recent years:

Sanctions imposed to banks for AML/CFT infractions

Year	Number of sanctioned entities	Amount of the sanctions in PEN	Amount of the sanctions in USD
2013	5	640 100	236 830
2014	2	152 000	53 333
2015	1	92 400	29 001
2016	0	0	0
2017	0	0	0
2018	1	186 750	57 679
2019 (July)	1	84 000	24 360

Source: Information provided by the SBS.

187. The Peruvian authorities explained that no sanctions were imposed in years 2016 and 2017 as AML/CFT Risks Management Regulation (Resolution 2660-2015) was issued in mid-2015. Since the change in the regulation was so drastic (the previous regulation was issued in 2008) the SBS gave a grace period of one year to all financial institutions to adjust their AML programmes to the new regulation. The enforcement of the new regulation started

63. Annex 1 Resolution 2755-2018 and Article 361 Law of the Financial System.

in July 2016. Given that the sanctions process can take up to two years, the issues identified between 2016 and 2017 were sanctioned partially in 2018, and currently in 2019.

188. The supervision by SBS appears to be generally adequate to ensure that banks obtain and maintain beneficial ownership in accordance with the standard. When the SBS identifies deficiencies, the financial institutions are sanctioned.

Availability of bank information in EOI practice

189. During the review period, Peru received nine requests for banking information such as bank statements and specific bank accounts movements. Peru was able to obtain the requested information and exchanged it with the requesting partner. All the requested information was provided by the account holder when required by the Tax Administration. Therefore there was no need to collect the information from the banks. The input provided by the peers was positive and no concerns were raised regarding Peru's ability to exchange banking information.

Part B: Access to information

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

B.1. Competent authority’s ability to obtain and provide information

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

191. The 2016 Report determined element B.1 to be “in place” and it is still the case. The SUNAT has significant access powers and resources to obtain information at its disposal, including ownership, identity, banking and accounting information.

192. The 2016 Report noted that while the attorney-client privilege set out in Peru’s domestic legislation was found to be in line with the standard, the extent of secrecy provisions as they apply to other professions may have impeded access to information. Since then, Peru introduced Legislative Decree 1372 (issued on 2 August 2018), which satisfactorily clarifies that “communications between legal professionals or professionals in accounting and financial sciences and their clients are only protected by professional secrecy to the extent that these professionals practice their profession”. Thus, the referred professionals cannot refuse to provide the information requested by the competent authorities invoking the right to professional secrecy when they act, among others, as owners of companies, partners, shareholders, legal representatives, administrators, directors or members of the board of directors.

193. In the review period, Peru received eight valid EOI requests for information and was able to access the requested information in all cases. Nonetheless, for answering the EOI requests it was not necessary for the competent authority to request information to legal professionals nor to banks so not all access avenues have been tested in practice.

194. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

***B.1.1. Ownership, identity and bank information and
B.1.2. Accounting records***

195. The delegated competent authority for EOI in Peru is the SUNAT. The 2016 Report analysed the procedures for obtaining information generally and more specific rules for obtaining banking information. Generally, the same rules continue to apply.

Accessing information generally

196. The SUNAT already has some legal ownership and accounting information in its database and will have beneficial ownership once the beneficial ownership central registry is operational (see Section A.1). In cases where the information must be accessed from third parties, the SUNAT has broad access powers to obtain ownership and identity information and accounting records from any person for both domestic tax purposes and in order to comply with exchange of information obligations under Peru’s treaties. The access powers are contained in the Tax Code, Article 62 titled the “Right to Inspect”.

197. According to Article 62, in order to exercise its supervisory function including the inspection, investigation and overseeing of compliance with tax obligations, even for those persons who are exempted or exonerated from paying tax, the SUNAT may:

- demand taxpayers to display and present books, records, documents or any documentation which may relate to a tax liability or accounting
- require third parties to present and display information and books, records or documents and any commercial correspondence, including those identifying the customers of the third party
- require the taxpayer or third parties to provide information in person within five business days

- conduct an inventory (where applicable), carrying out physical checks as well as assessing its valuation and registration
- in the case of the presumption of tax evasion, immobilise books, files, documents and records for a period of up to five days
- seize books, files, documents, records, or documents relating to the generation of a tax liability for a period of up to 15 working days in the case of the presumption of tax evasion
- carry out inspections of any private premises, including private homes, with a court order
- request assistance of police officers where required
- request information via a court order from financial institutions regarding the passive transactions of their clients
- investigate facts that pertain to tax violations, the securing of evidence and identifying the offender
- require public or private entities to report or check the fulfilment of tax obligations of individuals and entities subject to its competence or with whom they perform transactions.

198. In order to add clarity and to avoid any possible discussion with taxpayers, Article 62 was modified by Legislative Decree 1315 of December 2016⁶⁴ to expressly state that the provision and powers under this article are applicable for purposes of mutual administrative assistance in tax matters. In the same sense, Article 102-C of the Tax Code states that if the SUNAT does not have the information requested in a EOI request, it must apply the powers in Article 62 directly to the subject for which the information must be provided or from a third party. In accordance with Article 62, individual, public or private entities cannot refuse to supply the information requested by SUNAT.

Access to ownership and accounting information in practice

199. In practice, the main source of ownership and accounting information for the SUNAT is the wide range of information already collected by SUNAT as part of the registration and filing requirements.

200. In addition, SUNAT can also require the production of information from the SUNARP, the SBS and any government agency for the purposes of mutual administrative assistance in tax matters.

64. Article 4 Legislative Decree 1315.

201. In cases where the information is in the possession or control of a third party, the EOI office requests the information via a notice from the party that has this information, without mentioning in the notice that it relates to an EOI request.

Accessing banking information

202. As established in the 2016 Report, SUNAT may request information from financial institutions. In general, the mechanism for SUNAT to access banking information would be the same as previously described above. Nonetheless, there are special rules for accessing information concerning “passive transactions with its customers”.⁶⁵

203. The SUNAT needs a court order to request information related to “passive transactions”. According to the modification introduced by legislative Decree 1315 in December 2016, the court process must be initiated and resolved in a period of 48 hours. The requested information will be provided in the form and conditions indicated by the tax administration, within 10 business days of the judgment.

204. Although “passive transactions” is not defined, Peruvian authorities have confirmed that it refers to those transactions in which the bank receives funds from the public, other financial entity or the Central Bank. These transactions constitute a debt for the bank and are recorded in its balance sheet as liabilities. Examples of these transactions are: deposit transactions, checking accounts, forwards (including certificates of deposit and bank certificates), savings, in time-of-service compensation accounts, issuance of bonds, debts to other banks and the loans and rebates provided by the Central Bank.

205. In addition, Legislative Decree 1313, published on 31 December 2016, incorporated a provision⁶⁶ which allows SUNAT to access directly, without the need of a court order, information on passive operations of financial companies with their clients regarding balances and/or aggregated values, or averages.

206. Article 62 of the Tax Code and the section introduced by Legislative Decree 1313 both explicitly allow the SUNAT to use these mechanisms to comply with its obligations to exchange information under its EOI agreements. Therefore, Peru’s legislation clearly contemplates the use of the powers contained therein for both domestic and exchange of information purposes, thus enabling bank secrecy to be lifted for exchange of information purposes.

65. Article 62(10)(b) Tax Code for the general provision and Article 62(10)(a) Tax Code for “passive transactions”.

66. Article 143-A Law No. 26702.

207. Notice from the competent authority must specifically indicate: the complete name or business name of individuals or legal persons, domestic or foreigner, and/or the identification number of the account holder, of which lifting of bank secrecy is being requested. The authorities indicated that the type and number of identity document or taxpayer ID will be required only if it is available.

208. Therefore, in cases where banking information related to passive transactions (different from balances and/or aggregated values, or averages) this has to be requested directly from the bank. SUNAT must apply for a court order from a judge permitting them to access the banking information from the financial institution. In total, this process takes 10-15 working days. This process is in line with the standard and ensures that all types of banking information can be accessed in Peru pursuant to an EOI request.

209. In practice, for the nine requests for banking information received during the review period, Peru could access and exchange the information without requiring a court order, as it was requested directly from the taxpayers and the taxpayer provided the information. For domestic tax purposes, Peru has regularly used its access powers for “passive transactions” through a judge and was always granted the requested order. Peers did not raise any issues in this regard.

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

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

211. The 2016 Report concluded that the access powers of SUNAT are not curtailed by any domestic tax requirement. Peru nonetheless passed an amendment expressly providing that the access powers contained in Article 62 of the Tax Code apply for EOI purposes.

212. The Peruvian authorities indicate having already answered EOI requests where the requested information was not relevant for domestic tax purposes. Peers did not raise any issues in this regard.

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

213. Jurisdictions should have in place effective enforcement provisions to compel the production of information. Penalties exist for failure to provide information requested by SUNAT, and SUNAT also has significant powers to compel information.

214. The Tax Code sets out penalties in cases where persons fail to comply with a request to supply information or fail to appear to provide information or evidence. A penalty of up to 0.3% of their Annual Net Income may be imposed. According to Note 11 of the Table of infractions and penalties, the fine will not be less than 10% of the value of a UIT nor more than 12 UITs (PEN 420 to PEN 50 400; EUR 113 to EUR 13 560), except in the case of information related to beneficial ownership where the fine will be not less than 3 UITs nor more than 25 UITs (approx. PEN 12 450 to PEN 103 750; EUR 3 342 to EUR 27 850). Where false information is provided, this is deemed to be an offence and will be liable to the same fine.⁶⁷

215. Penalties or search and seizure powers have not been used for EOI related matters. In practice, taxpayers have provided the requested information. In some cases, the taxpayer requests an extension period to provide the information, where the information is more complex to obtain. This extension request has to be supported with a valid reason. In general, SUNAT approves these requests and grants the taxpayer an extension to provide the information.

B.1.5. Secrecy provisions

Bank secrecy

216. Bank secrecy in Peru is regulated by the Political Constitution of 1993 (Article 2, subsection 5) and Article 140 of the Law of the Financial System. Financial institutions have to keep client information confidential, with certain exceptions. Article 62(10) of the Tax Code expressly provides that bank secrecy does not apply to the Tax Administration. Banks and other financial institutions have an obligation to report information to SUNAT.

217. The SUNAT is authorised to obtain information protected by bank secrecy which is requested by an EOI partner. Therefore, the requirements for accessing banking information in Peru are in line with the international standard.

Professional secrecy

218. The 2016 Report concluded that the extent of professional secrecy in Peru was unclear and could impede access to information. Therefore, it was recommended to Peru to ensure that professional secrecy provisions did not impede the ability of the authorities to access information for the purposes of EOI.

67. Articles 177(5) and 177(6) Tax Code, modified by Legislative Decree No. 1372.

219. Since the last report, new legislation was enacted, in August 2018, which establishes that “communications between legal professionals or professionals in accounting and financial sciences and their clients are only protected by professional secrecy to the extent that these professionals practice their profession”.⁶⁸

220. According to the information in the explanatory notes for Decree 1372, the professional secrecy for accounting and financial sciences professionals only covers the advice given by such professionals but does not cover the documents received for providing such advice. In addition, it is expressly stated in the law that legal professionals or professionals in accounting and financial sciences cannot refuse to provide the information requested by the competent authorities invoking the right to professional secrecy when they act, among others, as owners of companies, partners, shareholders, legal representatives, administrators, directors, or members of the board of directors.⁶⁹ According to the information provided by Peru, ownership information and information pertaining to the incorporation or formation of an entity would not be protected by professional secrecy.

221. With regard to notaries, the Tax Code establishes that notaries have to communicate and provide the SUNAT with information necessary to respond to requests under mutual administrative assistance in tax matters. In practice, Notaries Public periodically submit to SUNAT bulk information contained in the public deeds related to the transfer or cession of goods (such as acts to transfer goods, movable or immovable).

222. In the onsite visit, this interpretation was confirmed by a representative of the notaries and the accountants and the SUNAT has never faced a refusal to provide information for domestic tax purposes. Therefore, professional secrecy provisions are found to be applied in line with the international standard in Peru.

223. During the review period, Peru did not receive any EOI requests which required a request for information from professionals covered by privileges.

68. 3rd Final Complementary Provision, Legislative Decree No. 1372.

69. Second Paragraph of 3rd Final Complementary Provision, Legislative Decree No. 1372.

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.

224. The 2016 Report found that application of rights and safeguards in Peru do not restrict the scope of information that the SUNAT can obtain for the purposes of responding to an EOI request. The legal and regulatory framework was determined to be “in place”. The same provisions continue to apply and do not raise any issue in practice.

225. In Peru, there is no obligation to notify the subject of a request for EOI before or after exchanging the information. In particular, there is no notification requirement in the case that banking information is requested. If the taxpayer is the information holder, Peru also reported that he/she would not be given the reason for the request of information. In respect of the requests received during the review period, the taxpayers were not notified.

226. There are no grounds for objection or appeal in Peru in the case that information is requested by the SUNAT or for challenging any of the actions of the Competent Authority such as the exchange of information under an EOI request. No peers raised an issue with rights and safeguards in an EOI context. Therefore, it is concluded that rights and safeguards are in line with the international standard and do not unduly prevent or delay effective exchange of information in Peru. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

Part C: Exchanging information

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

C.1. Exchange of information mechanisms

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

228. In 2016, Peru’s network of EOI mechanisms was comprised of 2 TIEAs, 7 DTCs and the Andean Community Decision containing EOI provisions. These agreements meet the international standard and therefore element C.1. was found to be “in place”.

229. Since then, Peru signed the Multilateral Convention on 25 October 2017. It was ratified on 28 May 2018 and entered into force on 1 September 2018. This raised the number of EOI partners of Peru to 136 but only bilateral and regional instruments have been applied during the period under review.

230. During the review period, the Foreign Affairs Ministry informed the Competent Authority that the TIEA with Argentina, which was signed in 2004, was not in force as the person who signed the agreement did not have full powers and the agreement did not undergo the appropriate ratification process. Since the Multilateral Convention entered into force, there is an EOI arrangement in force between Argentina and Peru. The situation nonetheless had an impact on three requests made by Argentina before the entry into force of the Multilateral Convention. Argentina and Peru are negotiating a competent authority agreement to extend the application of the Multilateral Convention to taxable periods beginning before the entry into force of the Multilateral Convention.

231. In practice, Peru’s interpretation and application of the EOI provisions of its EOI instruments conform to the standard.

232. The EOIR standard now includes a reference to group requests in line with paragraph 5.2 of the Commentary to the OECD Model Tax Convention. Peru did not receive any group requests during the review period.

233. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

C.1.1. Foreseeably relevant standard

234. 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. Peru’s bilateral instruments follow the OECD Model Tax Convention and are applied consistent with the Commentary on foreseeable relevance.

235. The 2016 Report noted a possible deficiency in the Andean Community Decision and recommended that Peru propose to redraft the EOI Article in the Andean Decision to ensure that it provides for the exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of all of the contracting parties concerning taxes covered by the Andean Community Decision.

236. The EOI Article has not been revised but, in practice, Peru has exchanged information with the other members of the Andean Community (Bolivia, Colombia and Ecuador) and all the member countries of the Andean Community have interpreted and applied Decision 578 in accordance with the foreseeably relevant standard. In addition, as Colombia and Ecuador are parties to the Multilateral Convention, they are also covered by another EOI instrument which is expressly aligned with the standard. Therefore, the in text recommendation from the previous report is removed.

237. In practice, Peru does not require specific information to prove foreseeable relevance. However, the requesting jurisdiction must provide the elements necessary to identify the taxpayer or group of taxpayers. Peru does not require a specific form to be used for EOI requests. Peru interprets and applies the EOI provisions of its EOI instruments in conformity with the standard. No peer indicated any difficulty with Peru on this aspect.

Group requests

238. Peru's internal procedure for incoming EOI requests does not foresee any specificities regarding group requests. Nevertheless, Peru explained that the Competent Authority would deal with group requests in the same manner as individual requests, and would verify a number of elements to consider it relevant, e.g. identity information of the group and the specific facts and circumstances that triggered the request. According to the information provided by Peru, the interpretation of how group requests would be handled by the Peruvian Competent Authority is in line with the standard.

239. During the review period, Peru did not receive any group requests.

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

240. None of Peru's EOI agreements restricts the scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties.

241. During the period under review, Peru has provided information regardless of whether or not the persons concerned were considered residents or nationals of either contracting party and in respect of all types of requested entity.

C.1.3. Obligation to exchange all types of information

242. The OECD Model Tax Convention and the OECD Model TIEA both require the exchange of all types of information, including banking information, information held by a fiduciary or nominee, or information concerning ownership interests.

243. Although some of Peru's EOI instruments⁷⁰ did not specifically include language mirroring Article 26(5) of the Model Tax Convention, its absence did not restrict the types of information that could be exchanged and Peru was able to access and exchange information held by banks and fiduciaries under its domestic law. None of the EOI agreements contain wording excluding one or more types of information from EOI. Peru's powers to access and provide the relevant information are not constrained by a reciprocity requirement.

244. During the current review period, Peru was able to respond to requests for all types of information covered by the standard, including in application of EOI instruments that do not contain such an explicit provision. No issues were raised by peers.

70. DTCs with Canada and Chile, the TIEA with Ecuador and the Andean Community Decision.

C.1.4. Absence of domestic tax interest

245. Peru's agreements with Chile and Ecuador and the Andean Community Decision do not contain wording mirroring Article 26(4) of the OECD Model Tax Convention but are complemented by the Multilateral Convention, except for Bolivia. However, the absence of such a provision does not create any restrictions, provided that there is no domestic tax interest impediment in the case of either contracting party. As discussed under element B.1, Peru's law has no such impediment. As Bolivia is not a member of the Global Forum, it is unknown as to whether it may have a domestic tax interest condition restricting exchange of information for tax purposes. Nevertheless, Peru considers that it will not be impeded from exchanging information as Peru's powers to access and provide the relevant information are not constrained by a reciprocity requirement.

246. No issues arose in practice during the current review period, including with the above partners. Peru reports it would seek to include language similar to Article 26(4) of the Model Tax Convention in any new or renegotiated DTC.

C.1.5. Absence of dual criminality principles and C.1.6. Exchange information relating to both civil and criminal tax matters

247. All of Peru's EOI agreements provide for exchange of information in both civil and criminal matters and, in the latter case, regardless of whether the conduct under investigation, if committed in Peru, would constitute a crime.

248. Peru has responded to requests, during the review period, in respect of both criminal and civil tax matters. Peers have not raised any issues in practice.

C.1.7. Provide information in specific form requested

249. There are no restrictions in Peru's EOI agreements or domestic laws that would prevent it from providing information in a specific form. During the review period, Peru reports that it provided information in the specific form requested by partners, if so indicated. No peers raised any concerns.

C.1.8. and C.1.9. Signed agreements should be in force and in effect

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

251. Peru's EOI network comprises 11 agreements,⁷¹ consisting of 7 DTCs, 2 TIEAs, the Andean Community Decision and the Multilateral Convention.

252. Peru and Spain negotiated a DTC that was signed by the jurisdictions on 6 May 2006. Nonetheless, this DTC has never entered into force. When the DTC was submitted to the Peruvian Congress for its approval it was rejected for reasons not related with EOI. Even though the DTC signed in 2006 has not been terminated, both Spain and Peru informed the assessment team that they considered that it would never enter into force. Accordingly, this DTC is not included in the list of bilateral agreements in Annex 2. Peru and Spain agreed, in 2011, to negotiate a new DTC. The process of negotiation of the new DTC has not yet been concluded. Taking into account that Peru ratified the Multilateral Convention on 28 May 2018, and that it entered into force on 1 September 2018, Peru and Spain could only exchange information based on the Multilateral Convention related to taxable periods beginning on or after 1 January 2019 or charges to tax arising on or after 1 January 2019.

253. The 2016 Report mentioned a TIEA with Argentina. However, during the review period the competent authority was informed by the Peruvian Foreign Affairs Ministry that the TIEA (signed in 2004) was not in force, as the person who signed it on behalf of Peru did not have full powers. Peru contacted Argentina's competent authority to inform them of this issue. For the future, requests can be made based on the Multilateral Convention. In addition, and to try to find a solution for the outstanding requests affected by the fact that the TIEA was invalid, Argentina and Peru are negotiating a competent authority agreement to extend the application of the Multilateral Convention to taxable periods beginning before its entry into force.

254. Peru's authorities informed that they have reviewed all of the other existing EOI instruments and that these agreements were signed by someone with the ability to represent Peru. Peru is recommended to monitor that all of its new EOI instruments are signed by someone that has the ability to represent the state or that has full powers (see Annex 1).

255. The following table summarises the outcomes of the analysis under element C.1 in respect of Peru's EOI mechanisms.

71. The TIEA with Argentina and the DTC with Spain is not counted in the EOI agreements statistics.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	136
In force	120
In line with the standard	120
Not in line with the standard	0
Signed but not in force	16
In line with the standard	16
Not in line with the standard	0
Among which – mechanisms not complemented by the Multilateral Convention	1
In force	1
In line with the standard	1

256. Peru has in place the legal and regulatory framework to give effect to its EOI mechanisms. According to Article 55 of Peru’s Constitution, all treaties concluded by Peru, once in force, become part of the laws of Peru. Article 200(4) of the Constitution specifically refers to international treaties as having the force of law in Peru. Once an international agreement has been ratified, it is granted a “*lex specialis*” status in Peru. Peru does not need to take additional measures to make it effective. In the event of a conflict with an ordinary law, the provisions of the international agreement would prevail.

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

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

257. The 2016 Report found that element C.2 was in place and recommended Peru to continue to develop its EOI network with all relevant partners. Since then, Peru’s treaty network has expanded from 11 jurisdictions to 136 due to signature and ratification of the Multilateral Convention. Peru’s EOI network encompasses a wide range of counterparties, including all of its major trading partners and regional partners.

258. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction advised that Peru refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Peru is recommended to continue to conclude EOI agreements with any new relevant partner which requests it (see Annex 1).

259. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

C.3. Confidentiality

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

260. The 2016 Report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information were in accordance with the standard. The rules remain the same and the present review concludes that they are applied in compliance with the international standard. The table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

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

261. All of Peru's EOI agreements have confidentiality provisions based on the Model Tax Convention or Model TIEA. While the provisions vary in wording, they contain all essential aspects. Similarly, Peru's domestic law is in line with the standard.

262. Article 85(h) of the Tax Code expressly establishes that the information exchanged with the other jurisdictions in compliance with EOI agreements must be kept confidential. In addition, domestic legislation establishes that SUNAT officials "must maintain the confidentiality of all the information they receive during and after their employment relationship in SUNAT, or any activity and confidential information of the employer".⁷² This provision covers information received in an EOI request.

263. SUNAT Resolution No. 002-2016/5E0000 of 15 July 2016 establishes confidentiality measures with respect to the tax information in the SUNAT

72. Subsection f) of Article 38, SUNAT Internal Regulations.

database. In particular, paragraph 7.1.2 states that “access to the accounts must be used exclusively for activities related to the fulfilment of the functions assigned by SUNAT The information cannot be used for different, illegal or unethical purposes”.

264. Peru’s officials confirmed that, in the event that the provisions of the national legislation on general confidentiality rules prove to be less restrictive than those stipulated in the EOI agreements concluded by Peru, the provisions of international agreements will prevail, ensuring that the international standard on the confidentiality is fulfilled.

265. Regarding the sanctions for breaches in confidentiality, when a public official breaches confidential information, it would be considered as an abuse of power and could be punished with imprisonment of no more than three years.⁷³ The SUNAT has also issued Resolution 235-2003 entitled “Internal Work Regulations” which establishes that in the case of undue disclosure and breach of confidentiality, administrative sanctions ranging from verbal reprimand to dismissal would be imposed.

266. The standard was amended in 2016 to indicate that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to expressly authorise its use for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. Such an exception is in accordance with the amendment to Article 26 of the OECD Model Tax Convention introducing this element, which previously appeared in the commentary to this article. In the period under review, Peru reported that there were no requests in which the requesting partner sought Peru’s consent to utilise the information for non-tax purposes and similarly Peru did not request its partners to use information received for non-tax purposes. Other Peruvian authorities have never requested SUNAT to provide information that was provided by an EOI treaty partner.

267. To sum up, the general domestic rules on confidentiality, in conjunction with the confidentiality provisions contained in Peru’s EOI agreements, lead to the conclusion that information exchanged with foreign authorities may only be disclosed to persons or authorities, including courts and administrative bodies, concerned with the assessment, collection, prosecution or enforcement of the tax law in question or in criminal proceedings related to such taxes.

73. Article 377 Criminal Code.

C.3.2. Confidentiality of other information

268. The confidentiality provisions in Peru’s EOI instruments and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Confidentiality in practice

Human resources and training

269. All candidates are required to undergo comprehensive background and security checks to ensure that they will not pose any risk to security. In addition, employees of the competent authority office have to take an induction course which includes a training in confidentiality.

270. The SUNAT has also a departure policy under which all former employees are required to keep the information confidential, and are forbidden to use the information they had access to during the course of their employment. In case of a breach of confidentiality, the above criminal sanctions remain applicable.

Physical security measures

271. In 2018, the SUNAT issued Resolution No. 173-2018, which contains the policy documents, objectives and scope of its information security management system.

272. The competent authority office is an area that has enhanced security measures. First, there are permanent security personnel who watch the door to control access to the premises and access is granted to authorised employees through a biometric iris recognition system. Then, to access the EOI area the employees have to use a fingerprint security system and entrance is video-recorded. Visitors enter the office only when strictly necessary and by authorisation of the head of the office.

273. It is not allowed to enter the competent authority office with cellular equipment or data storage devices such as USB keys and the downloading of information to external devices is not allowed. Work is carried out taking into consideration the policy of “clean desks”, therefore employees are not allowed to leave any type of documentation on their desk unattended, in order to avoid the violation of confidentiality and security. Computer equipment has programmes that monitor its operation.

274. The documentation related to exchange of information files and any other documentation related to the development of the work of the competent authority cannot be extracted from the EOI area in a physical or virtual way.

275. The received information is reviewed by the head of the EOI Office and then it is sent to the requesting audit area, with a Memorandum with the seal “confidential” inside a sealed envelope which also has a “confidential” warning. Nonetheless, the received information is not itself marked with a warning that explicitly states that the use of such information is limited by the treaty provisions and disclosure are governed by the provisions of such treaty. It is possible, therefore, that, once separated from the covering Memorandum in the files of SUNAT, the information received could be disclosed in such a manner that would be contrary to the strict provisions on usage, in accordance with the relevant EOI agreement. Peru is recommended to mark the received information in a way that would clearly state that the use of exchanged information is limited by a treaty provisions. (Annex 1)

276. SUNAT’s Resolution No. 002-2016/5E0000 states that “access to email accounts must only and exclusively be used for activities related to the compliance with tasks assigned by SUNAT They cannot be used for different, illegal or unethical purposes”. In addition, Circular No. 007-2012/4000 establishes policies and regulations for the SUNAT Email Service. This circular contains specific rules for the access, maintenance and transmission of electronic mail, as well as its use.

277. When the Peruvian EOI office send information by email to a treaty partner the information is sent in an encrypted file. The password is transmitted by email to the contact point of the other jurisdiction, once they have acknowledged receipt of the email. Additionally, SUNAT has a guide related to the encryption of information related with the exchange of information process. This guide establishes that information contained in computers used for the exchange of information process must be encrypted using AES NI – AES 256 symmetric encryption, which transforms data automatically to make it illegible for people who do not have the decryption key.

278. Peru indicated that until now there has not been any case of breach of confidentiality, or sanctions imposed in relation to an EOI request. They indicated that sanctions would apply and that the international partner would be informed if such case would arise. No peers raised issues in relation to information confidentiality.

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.

279. The 2016 Report found element C.4 to be in place. With regard to attorney client privilege, the limits within which information can be exchanged are included in Peru’s DTCs, TIEAs and the Multilateral Convention. Information which is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or which would be contrary to public policy, is not required to be exchanged. However, the term “professional secret” is not defined in the EOI agreements and would therefore derive its meaning from Peru’s domestic laws. Therefore, Peru was recommended to clarify the extent of professional secrecy in its domestic laws. Peru introduced such a provision on Legislative Decree 1372 (see Section B.1). The recommendation is considered addressed and is removed. In practice, the rights and safeguards of taxpayers have never prevented exchange of information.

280. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

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.

281. Peru’s organisation and procedures are complete and coherent but this does not fully translate into timely answers to EOI requests. Peru is therefore recommended to ensure that its authorities establish appropriate internal procedures to be able to respond to EOI requests in a timely manner.

282. Peers were generally satisfied with the responses sent, and with their communication with Peru’s competent authority. However, during the review period, Peru rarely provided a status update to its EOI partners within 90 days when the competent authority was unable to provide a substantive response within that time. Peru also did not communicate adequately to an EOI partner that requests were declined for valid reasons. Therefore, Peru is recommended to improve communication with partners, adequately inform them when a request is declined for valid reasons and send status updates whenever no answer can be provided within 90 days.

283. The 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	Over the review period, Peru has not always answered EOI requests in a timely manner.	Peru should ensure that its internal EOI procedures are effectively applied and the time limits are respected in order to be able to respond to EOI requests in a timely manner.
	During the review period, Peru rarely provided a status update to its EOI partners within 90 days when the competent authority was unable to provide a substantive response within that time. In addition, Peru did not communicate adequately to an EOI partner that requests were declined for valid reasons.	Peru is recommended to improve communication with partners, adequately inform them when a request is declined for valid reasons and send status updates whenever it cannot answer within 90 days.
Rating: Partially Compliant		

C.5.1. Timeliness of responses to requests for information

284. Over the current period under review (1 April 2015 to 31 March 2018), Peru received 11 requests for information.⁷⁴ The main EOI partners of Peru were Brazil, Canada, Chile, Ecuador and the United States. The information requested⁷⁵ related to (i) ownership information (8 cases), (ii) accounting information (10 cases), (iii) banking information (9 cases) and (iv) other types of information (11 cases).

74. This number includes the three requests for information declined for valid reasons.

75. Please note that some requests entailed more than one information category.

285. The following table sets out the number of requests received during the period under review and Peru’s response times, together with a summary of other relevant factors impacting the effectiveness of Peru’s EOI practice.

Statistics on response time

	1 April 2015- 31 March 2016		1 April 2016 – 31 March 2017		1 April 2017- 31 March 2018		Total	
	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received [A+B+C+D+E+F]	4		5		2		11	
Full response: ≤ 90 days	0		1	20	0		1	9
≤ 180 days (cumulative)	1	25	2	40	0		3	27
≤ 1 year (cumulative) [A]	2	50	3	60	2	100	7	64
> 1 year [B]	0		1	20	0		1	9
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)	0	0	1	20	0	0	1	9
Declined for valid reasons [C]	2	50	1	20	0		3	27
Requests withdrawn by requesting jurisdiction [D]	0		0		0		0	
Failure to obtain and provide information requested [E]	0		0		0		0	
Requests still pending at date of review [F]	0		0		0		0	

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

b. 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.

286. Peru explained the request that was fully dealt with within 90 days was related with information already at the disposal of the SUNAT. There does not appear to be a direct relationship between the type of information requested and the ability to respond to a request within 90 days or 180 days. The fact of not being able to respond within 180 days may be due to different causes, e.g. where a confirmation that the person signing the EOI request was the competent authority but this clarification was not sent promptly, or if a taxpayer requested a time extension to provide information.

287. In the period under review, one request for clarification regarding the content of the request and the requested information was made by Peru to the requesting jurisdiction. Peru reported that this request for clarification did not generate a delay in the response.

288. In one case Peru answered the EOI request in more than one year. In this case, the Peruvian competent authority collected some partial information and sent it to the requesting jurisdiction. The rest of the information (some contractual information) was requested directly to the taxpayer, but the taxpayer requested a time extension to provide the information. The time extension was provided and the information holder gave the information within a year and the information was sent to the requesting jurisdiction.

289. The requests received by Peru do not seem to be related to complex cases. Nonetheless, Peru usually takes more than 90 days to collect and answer the request for information even in some cases where the information is already in SUNAT's possession.

290. Even though the majority of the requests were answered within a year, Peru was able in only three cases to answer the requests in a 180 day period (see also Section C.5.2 below). Peru should ensure that its authorities establish appropriate internal procedures to be able to respond to EOI requests in a timely manner.

Status updates and communication with partners

291. In the peer inputs provided, Peru's EOI partners were generally satisfied with their EOI relationship and communication with Peru. However, peers reported that status updates were not always sent when Peru was not able to answer in 90 days and in some cases updates were provided only because prompted by the EOI partner. Peru's authorities acknowledge that they do not systematically provide status updates and they are evaluating their procedures to incorporate an automatic status update process.

292. During the review period, it was not possible for Peru to answer three requests from Argentina because in 2015 the Peruvian Foreign Affairs Ministry informed SUNAT that the TIEA with Argentina (signed in 2004) could not be considered to be in force as it had been signed by a person that did not have full powers. To date, this TIEA has not been signed by a representative of Peru with full powers (see also paragraph 253). Therefore, Peru was not able to answer said requests as there was no valid EOI instrument in place (the Multilateral Convention was not yet in force between the two countries). The requests are considered as declined for valid reasons.

293. Nonetheless, for the first two requests, Peru did not explain clearly the problem to Argentina and that the requests were declined for valid reasons. For the last request, there were communications (emails and phone calls) to explain the problem and propose alternative solutions (exchanging publicly available information) but Peru never sent an official answer declining the request.

294. Peru should improve communication with partners, adequately inform them when a request is declined for valid reasons and send status updates whenever a partial or full response cannot be provided within 90 days.

C.5.2. Organisational processes and resources

Organisation of the competent authority

295. In Peru, the exchange of information function is centralised in a single unit called the Office of Mutual Administrative Assistance in Tax Matters which is part of the SUNAT. Peru's competent authority is clearly identified to partners on the Global Forum's secure competent authority's database.

296. The Office of Mutual Administrative Assistance in Tax Matters (EOI Office) was created in 2017 by the Supreme Decree No. 198-2017-EF and started to function on 1 August 2017. The EOI Office comprises four staff working full time in exchange of information (including automatic exchange of information). For the majority of the review period the EOI Office was not in place, the requests were handled by the *Gerencia de Cumplimiento de Grandes Empresas* (Compliance Management of Large Companies), which was an office within the *Intendencia Nacional de Desarrollo de Estrategias de Servicios y Control del Cumplimiento* (National Intendency of Development of Services Strategies and Compliance Control), which was also in charge of other matters. This might have been one of the reasons for the inability of Peru to not always answer requests in an effective manner during the three years under review.

297. The staff responsible for performing information exchange duties has been trained in various courses and workshops, and has taken part in working groups and technical assistance offered by the Global Forum, World Bank Group and the Inter-American Centre of Tax Administrations (CIAT).

298. The EOI Office has an EOI Work Manual based on the Global Forum's model manual. The manual is an important tool to the staff, 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 manual is available to all SUNAT staff on the intranet.

Incoming requests

299. Peru's competent authority utilises a manual database for recording, monitoring and tracking EOI requests (outbound and inbound). The system consists of an Excel file which can only be accessed by the head of the EOI Office. It contains the number of sent and received requests for each year,

date of admission, partner jurisdiction, information requested, taxpayers involved, status of the application, requested documents as well as the time involved in each EOI request.

300. The typical routing of an incoming request is as follows: the EOI Office receives the EOI request and makes a new entry into the Excel database. Then, it is verified if the request is foreseeably relevant. If there is any ambiguity in the request, or if details essential to find the information are missing, the competent authority will communicate with the other competent authority via emails, phone calls or, if necessary, formal communications. Clarification was requested to a partner when it is not clear that the person signing the request was the Competent Authority. In this case the partner took more than 30 days to provide the evidence that the person signing the request was indeed the Competent Authority. Also, there have been cases where the information provided by the EOI partner was not sufficient to identify the information holder, as only a name was provided; in those cases, Peru requested the partner to provide more information about the information holder in order to be able to individualise it.

301. The EOI Office then requires the information from the operational area within SUNAT. If the information is already in SUNAT (and it is not necessary to contact the taxpayer) the operational area should be able to provide it immediately. During the review period, part of the requested information was already in SUNAT database in 2 cases. Nonetheless, in the majority of the cases the operational areas took more than 90 days to collect and send the information to the Competent Authority. It seems that collecting the information to respond to EOI requests is not a priority for the operational areas as they were busy conducting their own audit procedures in order to meet their tax collection goals. According to the Peruvian authorities, this is an issue that SUNAT is trying to fix in order to attend sooner to future EOI requests.

302. If the information is in possession or control of the taxpayer, a third party or another government entity, the audit or control area is asked to collect the information. During the review period, part of the requested information was requested to the information holder in ten cases and to another authority in one case.

303. The deadlines that are foreseen for the information holder to answer the request range from seven to 30 days, depending on the complexity of the request. The information holder can ask for an extension period to provide the information if there is a special situation that impedes it to provide during the period provided by SUNAT. In some cases, SUNAT granted an extension to this period that seems overly generous without applying any sanctions. While in the end the information was provided, for a specific case it took more than a year and no sanction was imposed to the information holder in the long delay in providing the information.

304. Once the person that owns or controls the information provides it, the competent authority verifies that said information answers the questions raised by the requesting jurisdiction. In the event that some information or documentation is missing, the competent authority office would request the audit or control area to send a new request to the person that owns or controls that information, asking for their submission. In those cases, the competent authority will contact the requesting jurisdictions to confirm if the jurisdiction wants to receive a partial answer. In the cases in which the other jurisdiction requests a partial answer, Peru will proceed to send the collected information.

305. The information sent by Peru always has the following seal in every page: “The information is furnished under the provisions of a double taxation agreement (or an exchange of information agreement) with a foreign government. Its use and disclosure must be governed by the provisions contained therein”. The envelope is sent with the confidential seal, through a courier agency.

306. Even though in general the procedures are in line with the standard, they are not always applied in practice, which leads to delays in providing answer to the EOI request. Therefore, Peru should ensure that its internal EOI procedures are effectively applied and the time limits are respected in order to be able to respond to EOI requests in a timely manner.

Outgoing requests

307. Jurisdictions should have in place organisational processes and resources to ensure the quality of outgoing EOI requests.

308. Peru made 25 requests during the review period, mainly to United States, Chile and Brazil. No peers indicated any issues with the quality of requests sent by Peru.

309. The EOI manual used by Peru contains procedures that must be followed in making outgoing requests, including checklists for the information to be included in the request to ensure it meets the foreseeable relevance standard.

310. According to the manual, the audit area prepares the request with an explanation of the case. This is sent electronically, through an internal secure system and marked as confidential in the system, to the EOI Office that will be in charge of reviewing it (the file can only be opened by the head of the Office). If necessary, this office will communicate with the audit area to request modifications or clarifications.

311. If there are no further observations, the EOI Office prepares the request to be sent to the other jurisdiction. All outgoing requests must be approved

by the head of the EOI Office before being signed by the Commissioner. Requests for information are sent in a sealed envelope by postal mail, using an International Courier, with the supporting information either printed or in an encrypted CD.

312. As mentioned in element C.3, when information is received from other jurisdictions, the head of the EOI Office reviews it and sends it to the requesting audit area, with a Memorandum with the seal “confidential” inside a sealed envelope with the “confidential” warning.

313. There is always a paragraph included in the Memorandum establishing the following: “It is necessary to take into account that all appropriate security measures must be maintained in the use or disclosure of the information sent on USB or CD, as well as the printed documentation, since all the information exchanged must be used exclusively for the purposes of the requirement of information, considering international security, reservation and confidential standards”.

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

314. There are no factors or issues identified in Peru laws that could unreasonably, disproportionately or unduly restrict effective EO

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 A1:** Peru is recommended to clean up the multiple registrations as these may affect the availability of up-to-date ownership information (paragraph 65).
- **Element A3:** Peru is recommended to ensure that banks always apply the definition of beneficial owner set in Legislative Decree No. 1372 when performing the CDD to identify the beneficial owner of foreign trusts (paragraph 176).
- **Element A3:** Peru’s authorities should clarify the rules for updating the information obtained during the CDD process to ensure its proper application in line with the standard (paragraph 177).
- **Element C.1:** Peru is recommended to monitor that all of its new EOI instruments are signed by someone that has the ability to represent the state or that has full powers (paragraph 254).
- **Element C.2:** Peru is recommended to continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 258).
- **Element C.3:** Peru is recommended to mark the received information in a way that would clearly state that the use of exchanged information is limited by a treaty provisions. (paragraph 275).

Annex 2: List of Peru’s EOI mechanisms

Bilateral international agreements for the exchange of information⁷⁶

	EOI partner	Type of agreement	Signature	Entry into force
1	Bolivia	Andean Community Decision	4-May-2004	1-Jan-2005
2	Brazil	DTC	17-Feb-2006	14-Aug-2009
3	Canada	DTC	20-July-2001	17-Feb-2003
4	Chile	DTC	08-June-2001	23-July-2003
5	Colombia	Andean Community Decision	4-May-2004	1-Jan-2005
6	Ecuador	Andean Community Decision	4-May-2004	1-Jan-2005
		TIEA	09-Mar-2002	07-Jan-2003
7	Korea	DTC	10-May-2012	03-Mar-2014
8	Mexico	DTC	27-Apr-2011	19-Feb-2014
9	Portugal	DTC	19-Nov-2012	12-Apr-2014
10	Switzerland	DTC	21-Sept-2012	10-Mar-2014
11	United States	TIEA	15-Feb-1990	31-Mar-1993

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).⁷⁷ The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of

76. The TIEA with Argentina is not included in Annex 2 as it was signed by someone that did not had full powers and, therefore, according to the Peruvian authorities, the agreement is not valid.

77. 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

tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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 Peru on 25 October 2017, was ratified on 28 May 2018 and entered into force on 1 September 2018. Peru can exchange information with all other Parties to the Multilateral Convention.

As of cut-off date, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, 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,⁷⁸ Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension

the Protocol amending the 1988 Convention which sets out the amendments separately.

78. 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.

by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Serbia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force: Armenia, Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Gabon, Kenya, Liberia, Mauritania, Mongolia, Montenegro, North Macedonia (entry into force 1 January 2020), Oman, Paraguay, Philippines, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and 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.

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 29 December 2019, Peru's EOIR practice in respect of EOI requests made and received during the three year period from 1 April 2015 to 31 March 2018, Peru's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Peru's authorities during the on-site visit that took place from 4-7 March 2019 in Lima, Peru.

Laws, regulations and other materials received

Constitution of Peru

Civil and Commercial laws

Código de Comercio (Comercial Code)

Ley General de Sociedades No. 26887 (Companies Law)

Financial Sector laws

Ley General del Sistema Financiero N° 27602 (Law of the Financial System)

Ley N° 861 Ley del Mercado de Valores (Securities Market Law).

Ley N° 27693 (Law that creates the Financial Intelligence Unit)

Resolution CONASEV N° 033-2011-EF/94.01.1 (Standard for the Prevention of Money Laundering and Terrorist Financing)

Resolución SBS N° Resolution 1010-99 (Regulation of Trust and Fiduciary Services Companies)

Tax Laws

Código Tributario (Tax Code)

TUO de la Ley del Impuesto a la Renta (Income Tax Law)

Resolución de Superintendencia No. 234-2006/SUNAT (Superintendence Resolution establishing standards referring to books and record linked to tax matters)

Decreto Legislativo N° 943 Ley del Registro Único de Contribuyentes (Law of Single Register of Taxpayers)

Resolución de Superintendencia N° 210-2004/SUNAT (Regulation of the Law of the Single Register of Taxpayer)

Resolución Ministerial N° 586-2008-EF/10 (Resolution designating SUNAT as the authorised representative for the role of EOI within the framework of the agreements to avoid double taxation and prevent tax evasion)

Resolución de Superintendencia N° 235-2003/SUNAT (Internal Work Rules of SUNAT)

Decreto Legislativo N° 1372 Obligación de las personas y/o entes jurídicos de informar beneficiarios finales (Identification of Beneficial Owners)

Miscellaneous

Ley N° 28708 (General Law of the National System of Accounting)

Resolución N° 200-2001-SUNARP/SN (Companies Registry Regulation)

Decisión 486 Comunidad Andina (Andean Community Directive)

Decreto Legislativo N° 1427 Extinción de las sociedades por prolongada inactividad (Extinction of companies and partnerships with prolonged inactivity)

Authorities interviewed during on-site visit

Economic and Finance Ministry

Foreign Affairs Ministry

Justice Ministry

National Superintendence of Customs and Tax Administration (SUNAT)

National Superintendence for Public Registries (SUNARP)

Superintendence of Banking, Insurance and Private Pension Fund Administrators (SBS)

Finance Intelligence Unit (UIF)

Superintendence of the Securities Market (SMV)

Notary representative body

Association of accountants

Current and previous reviews

This report is the second review of Peru conducted by the Global Forum. Peru previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2016. The Phase 1 review was conducted according to the terms of reference approved by the Global Forum in February 2010 and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Adoption by Global Forum
Round 1 Phase 1	Mr Guillermo Nieves from Uruguay; Ms Virginia Tarris from the United States; and Ms Mary O'Leary and Ms Kathleen Kao of the Global Forum Secretariat	n.a.	August 2016	November 2016
Round 2	Mr Rob Gray from Guernsey; Ms Flor Nieto from Mexico; and Mr Jose Mejia from the Global Forum Secretariat	1 April 2015- 31 March 2018	December 2019	March 2020

Annex 4: Peru’s response to the review report⁷⁹

Since its admission to the Global Forum in 2014, the Republic of Peru has been working in its commitment to transparency and effective exchange of information for tax purposes.

In 2016, the Global Forum evaluated the legal and regulatory framework in Peru against the 2010 Terms of Reference for the legal implementation of the EOIR standard and since then Peru has done many improvements in the recommendations received.

In this regard, Peru established the rules and the taxpayer’s obligations regarding Beneficial Ownership, clarified the extent of the professional secrecy provisions and introduced a mechanism to declare ex officio the extinction of companies and partnerships with “prolonged inactivity”.

Moreover, Peru signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and significantly increased its exchange of information network of partners, and it is also among the jurisdictions which have committed to the automatic exchange of information and adopted the Common Reporting Standard.

The Republic of Peru is satisfied by the conclusions and recommendations contained in this Peer Review Report which shows opportunities and strengths, as well as measures that need to be monitored and implemented.

It would like to thank the Global Forum and the World Bank Group for providing with technical assistance in all this process, and to express sincere gratitude to the assessment team for its collaboration in this review as well as to the members of the Peer Review Group for their contributions.

The Republic of Peru supports the work of the Global Forum and remains fully committed to the development of tax transparency and looks forward to continuing working in this regard and to collaborating with other jurisdictions, providing relevant information to assist in the global fight against tax and financial crimes, and against the mechanisms that generate the erosion of tax bases.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request PERU 2020 (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 160 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.

This report contains the 2020 Peer Review Report on the Exchange of Information on Request of Peru.



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