GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

CHILE

2020 (Second Round)

OECD

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

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

OECD

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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) 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 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

2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2014
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BO	Beneficial ownership or Beneficial owners
CDD	Customer Due Diligence
CLP	Chilean Peso (Chile's currency)
CMF	*Comisión para el Mercado Financiero* (Financial Market Commission)
DASCT	*Departmanto de Analisis Selectivo del Cumplimiento Tributario* (Department of Selective Analysis for Tax Compliance, which includes the EOI Unit)
DFI	International Audit Department
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
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
ROC	Registrar of Companies
SBIF	*Superintendencia de Bancos e Instituciones Financieras* (Chile Superintendency of Banks and Financial Institutions)
SII	*Servicio de Impuestos Internos* (Chile Internal Revenue Service)

SVS	*Superintendencia de Valores y Seguros* (Chile Superintendency of Securities and Insurance)
TIEA	Tax Information Exchange Agreement
TIN	Taxpayer Identification Number (*Rol Unico Tributario* or *RUT*)
UTA	*Unidad Tributaria Anual* (Annual Tax Unit: the constant tax measurement unit in Chile)
UAF	*Unidad de Análisis Financiero* (Financial Analysis Unit)

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request (the "standard") in Chile on the second round of reviews conducted by the Global Forum. It assesses both the legal and regulatory framework in force as at 5 May 2020 and the practical implementation of this framework against the 2016 Terms of Reference, including in respect of EOI requests received and sent during the review period from 1 October 2015 to 30 September 2018. This report concludes that Chile is rated overall **Largely Compliant** with the standard. In 2014, the Global Forum evaluated Chile against the 2010 Terms of Reference for both the legal implementation of the standard as well as its operation in practice. The report of that evaluation (the 2014 Report) concluded that Chile was rated Largely Compliant overall (see Annex 3).

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report (2014)	Second Round EOIR Report (2020)
A.1	Availability of ownership and identity information	LC	PC
A.2	Availability of accounting information	C	LC
A.3	Availability of banking information	C	LC
B.1	Access to information	PC	C
B.2	Rights and Safeguards	PC	PC
C.1	EOIR Mechanisms	LC	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and safeguards	C	C
C.5	Quality and timeliness of responses	LC	LC
	OVERALL RATING	**LC**	**LC**

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

Progress made since previous review

2. Chile made progress on some of the deficiencies highlighted in the last Global Forum report (the 2014 Phase 2 report, the "2014 Report"). Chile received recommendations, under both the legal framework and its implementation in practice, on its ability to access banking information, in particular when it dates back to a taxable period prior to 1 January 2010. Progress was registered on the access to banking information. While the practice is really limited, from a legal point of view the entry into force of the Multilateral Convention removed the legal barrier which, based on the domestic law, would have impeded access to banking information prior to 2010.

3. On the contrary, no progress was registered with regard to notification requirements. Recommendations were made since in the case of requests for banking information, on one hand there is no exception to prior notification, while on the other, the name of the requesting jurisdiction has to always be disclosed to the bank without any exception available.

4. In terms of exchange of information in general, Chile was recommended to monitor the new system put in place, and to generally improve the timeliness of responses and communication with partners. Since then, the timeliness of replies has improved while communication with partners should continue improving.

Key recommendations

5. The main issues identified in the present report concern elements of the standard that have been strengthened in 2016 and the implementation of the standard in practice.

6. Regarding the availability of beneficial ownership information, a requirement that was introduced in the standard in 2016, the following issues were identified: (i) in Chile the obligation to identify beneficial owners does not cover all the relevant entities, (ii) the definition of beneficial owners for legal entities and legal arrangements is not fully in line with the standard and (iii) the supervision of banks (main entities responsible for collecting beneficial ownership information in Chile) has important deficiencies since the supervisor cannot access account holders' information (elements A.1 and A.3).

7. In relationship to the availability of accounting records, there is no obligation to keep the accounting records and supporting documentation for at least five years after entities ceased to exist, which departs from the standard (element A.2).

8. For requests for banking information, the recommendation made to Chile in the 2014 Report to include exceptions for the requirement to notify the taxpayer when a prior authorisation to the bank has not been given by the accountholder is maintained.

9. During the review period, Chile received 61 EOI requests and sent 28 EOI requests. Peers were satisfied with their EOI relationship with Chile and reported a good quality of responses, although sometimes with delays. Peers were also satisfied with the quality of communication with Chile's EOI unit, but Chile did not provide them status updates within 90 days in all the cases when the competent authority was not able to provide a substantive response within that time. It is expected that the implementation of the new internal deadlines will fix these issues (element C.5).

Overall rating

10. Chile has achieved a rating of Compliant for five elements (B.1, C.1, C.2, C.3, C.4), Largely Compliant for three elements (A.2, A.3, C5) and Partially Compliant for two elements (A.1 and B.2). Chile's overall rating is Largely Compliant based on a global consideration of Chile's compliance with the individual elements.

11. This report was approved at the Peer Review Group of the Global Forum on 1 July 2020 and was adopted by the Global Forum on 18 August 2020. A follow up report on the steps undertaken by Chile to address the recommendations made in this report should be provided to the Peer Review Group 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

<table>
<tr><th>Determinations and Ratings</th><th>Factors underlying Recommendations</th><th>Recommendations</th></tr>
<tr><td colspan="3">Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (ToR A.1)</td></tr>
<tr><td rowspan="2">The legal and regulatory framework is in place but needs improvement</td><td>The AML obligation to identify beneficial owners does not cover all relevant entities as required under the standard because not all relevant entities are required to engage an AML obliged person. It is nevertheless noted that the scope of the AML coverage of relevant entities is broad. Nonetheless, beneficial owner(s) information may not be verified in cases where simplified CDD is performed.
In addition, the requirement to identify persons holding a senior managerial position when the beneficial owner cannot be identified is not contemplated in the definition.</td><td>Chile is recommended to ensure that beneficial ownership on all relevant entities is available in all cases in accordance with the standard.</td></tr>
<tr><td>Although Chile's legal framework ensures that identity and beneficial ownership information is required to be collected for trusts in most cases, there is no clear definition of beneficial owner applicable to trusts. Therefore, it is not clear how the concept will be implemented in practice.</td><td>Chile is recommended to ensure that information on beneficial owner(s) of legal arrangements such as trusts is available in all cases in accordance with the standard.</td></tr>
</table>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
EOIR Rating: Partially Compliant	The provision requiring foreign companies with a sufficient nexus in Chile to disclose legal ownership information to the tax authorities, which entered into force on 1 January 2015, is yet to be fully implemented.	Chile should implement, enforce and supervise the Circular on the disclosure of ownership information of foreign companies to the tax authorities.
	Supervision by the Financial Intelligence Unit (UAF) of the requirements for financial institutions to identify the beneficial owners presents important deficiencies since it cannot verify the quality of the information collected due to confidentiality safeguards, while identification of beneficial ownership has not been consistently performed on accounts opened before the obligation was established.	Chile is recommended to strengthen its supervisory activity to make sure that the information is actually kept and up to date in accordance with the standard.
	The significant number of inactive companies raises concerns that ownership information might not be available in all cases.	Chile is recommended to monitor the risk that inactive companies pose to the availability of ownership information.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but needs improvement	The accounting records retention requirements are not clear in the case of entities that are liquidated. While in this case there are no requirements under the company law, the tax authority would require the accounting records to be kept until the statute of limitation for tax audits is expired, which is normally three years. In addition, it is not clear who will be the person that will be responsible for keeping the accounting books and the underlying documentation of liquidated entities.	Chile is recommended to ensure that the record keeping requirements are applied in such a way that accounting records are kept for five years for entities that are liquidated or cease to exist.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
EOIR Rating: Largely Compliant	The significant number of inactive companies raises concerns that accounting records information might not be available in all cases.	Chile is recommended to monitor the risk that inactive companies pose to the availability of accounting records information.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement	Deficiencies identified in the definition of beneficial owners for legal entities and legal arrangements have a direct effect on the availability of beneficial ownership information for bank account holders, since financial institutions strictly apply the requirements under the AML legislation, which do not fully meet the standard.	Chile is recommended to ensure that information on beneficial owners of bank accounts for legal entities and legal arrangements is available in all cases in line with the standard.
EOIR Rating: Largely Compliant	Supervision by the Financial Intelligence Unit (UAF) on the requirements for financial institutions to identify the beneficial owners of bank accounts presents shortcomings when it comes to the quality and depth of these checks.	Chile is recommended to further strengthen its supervision programmes and apply effective, proportionate and dissuasive sanctions in cases of non-compliance, so that the availability of beneficial ownership information on bank accounts in line with the standard is ensured in all cases.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place but needs improvement	The Chilean competent authority must inform the bank of who is the requesting authority and of the basis for the EOI request. No exception exists to this requirement.	Chile is recommended to ensure that appropriate exceptions exist to the notification via the bank of the person concerned by an exchange of information request (e.g. in cases in which informing that person is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).
	When a specific accountholder has not given a general (or specific) authorisation to the bank to disclose any information to the tax authorities, the Tax Code requires the prior notification of the person concerned when there is a court hearing on disclosure of banking information in relation to an EOI request. This prior notification procedure does not allow for any exception.	It is recommended that certain exceptions from prior notification of a court hearing for disclosure of banking information be permitted, e.g. in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction.
EOIR Rating: Partially Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	**This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.**	
EOIR Rating: Largely compliant	Chile did not provide status updates to its EOI partners within 90 days when the competent authority was not able to provide a substantive response within that time.	Chile is recommended to provide updates to EOI partners within 90 days in those cases where it is not possible to provide a partial or complete response within that timeframe.
	The structure of the competent authority and management of the EOI requests has changed in 2014 and new internal deadlines and monitoring procedures have been introduced as of 1 January 2019.	Chile is recommended to ensure that the new internal deadlines enable it to respond to EOI requests in a timely manner.

Overview of Chile

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

Legal system

13. Chile is a representative democratic republic organised as a unitary State with a government headed by a President. The Chilean legal system relies on a unitary national law and is based on the civil law tradition. The Constitution is the primary law of the State. Depending on the matters and quorums required for their adoption and amendment, next in the hierarchy of legal norms are Constitutional Interpretative Laws, Organisational Constitutional Laws, Qualified Quorum Laws, and ordinary laws, which include tax laws. In addition, Decrees with Force of Law are norms enacted by the Executive by virtue of a delegation of powers made by the Congress in certain matters determined by the Constitution. Finally, decrees, regulations and administrative instructions issued by the Executive are the lowest ranking norms.

14. According to the Constitution, an international treaty may only be repealed, modified or suspended through the procedures established in the treaty itself or according to the general rules of International Law (Article 54(1)(5) of the Chilean Constitution). The Chilean authorities thus consider that an international treaty has a higher hierarchical rank than the ordinary law of the country. Nonetheless, the Constitution prevails over treaties.

15. The Judiciary is independent from the Executive and the Legislature and comprises the Supreme Court, 17 Courts of Appeals and First Instance Judges (which include Civil, Criminal, Labor, Family, Environmental and Tax and Custom courts). Currently there are 18 Tax and Customs Courts in Chile. Legislative power lies on both the government and the two chambers of the Congress: Chamber of Deputies (*Cámara de Diputados*) and the Senate (*Senado*). Executive power is exercised by the Government, which has the exclusive prerogative of proposing to Congress any changes relating to tax matters.

Tax system

16. Chile adopts a worldwide tax system. Natural and legal persons resident or domiciled in Chile are subject to income tax on their world-wide income. However, foreign individuals taking up domicile or residency in Chile are taxed only on their Chilean source income for the first three years and are taxed on their worldwide income in the following years (Income Tax Act, Art. 3). That period may be extended by the regional tax authority.

17. A legal person is deemed tax resident in Chile if incorporated in Chile. The Chilean law does not contain the concept of tax residence by management and control. An individual is deemed to be domiciled or resident in Chile if: a) it may be assumed from the activities that he/she wishes to stay in the country on a permanent basis (domicile as defined in the Civil Code, Art. 59) or; b) he/she remains in Chile, consecutively or not, for a period or periods that in total exceed 183 days, within any 12-month period (resident, Tax Code, Art. 8(8)). Persons without domicile nor residency in Chile are taxed on their Chilean source income. Exceptionally, persons not domiciled nor resident in Chile are subject to taxes in Chile on payments made by a Chilean resident for services rendered abroad; some exemptions exist, in these cases the taxes are withheld by the payer.[1] Permanent establishments (PE) of foreign companies operating in Chile are also subject to taxes in Chile on foreign income deriving from activities undertaken by the permanent establishment, or from goods that have been assigned or used by their permanent establishment.

18. Business profits are subject to the First Category Tax (*Impuesto de Primera Categoría*) on an accrued and annual basis that can be credited (fully or partially) against final taxes. The general rate of the First Category Tax (business profits tax) is 27%. Regarding the rules for PEs of foreign entities in Chile, article 38 of the Income Tax Law establishes that Chilean PEs are taxed on any income attributable to such PE regardless of its source. Branches and permanent establishments are subject to the First Category Tax on an accrued basis and Additional Tax.[2]

1. The law does not specifically limit its application to payments made from Chile; it may however be difficult to enforce this requirement if the payment is made offshore. However, if the payment is used as a deduction in Chile the taxpayer will have to show that the tax withholding was made.
2. Additional Tax is a special income tax that applies, in general, to all remittances or payments made abroad from Chile to a non-resident or non-domiciled person. The Additional Tax is withheld by the payer and paid over to the tax authority. This withholding is final and the non-resident recipient is not obliged to file a tax return. The general rate of the Additional Tax is 35%.

19. Transfer pricing rules are incorporated in the Income Tax Law, which follows the OECD 2010 guidelines. The rules contemplate the transfer pricing methods, advance pricing agreements (APAs) and corresponding adjustments, and establish the taxation and penalties imposed on the adjustments. There are also reporting obligations for taxpayers that will provide substantial information to the tax authorities about the compliance with transfer pricing obligations.

20. The Tax on Sales of Goods and Services is Chile's main consumption tax on transactions. It is normally collected by business through a staged process, involving an invoice-credit method. The tax rate is 19%. It is levied on the price or total consideration and the seller or the service provider are obliged to withhold it and to pay it on a monthly basis.

21. The administration of taxes in Chile is undertaken by two agencies: The Internal Revenue Service (*Servicio de Impuestos Internos*, commonly referred to as the "SII") and the General Treasury of the Republic (*Tesorería General de la República*). The administration of customs is undertaken by the National Customs Service (*Servicio Nacional de Aduanas*).

Financial services sector

22. According to the public information provided by the Superintendency of Banks and Financial Institutions (SBIF), as of 2018, 246 financial entities compose the banking sector, and the total assets held by banks is reported to be USD 362.897 billion, which is equivalent to 1.32 times the GDP of Chile.

23. The basic principles of the Chilean banking regulations were established in the 1986 General Banking Law, pursuant to which banks are supervised by the SBIF. The SBIF has broad powers to inspect banks, their properties, books, accounts, files, documents and correspondence.

24. Insurance companies and related entities (brokers, agents, etc.) are supervised and regulated by the Financial Market Commission or CMF (*Comisión para el Mercado Financiero*) in accordance with D.F.L No. 251 of 1931. The CMF has registered 68 companies, with an administered value equivalent to 4.6% of the Chilean GDP. The Financial Market Commission also administers the register of foreign re-insurers, as well as the register of national and foreign reinsurance brokers.

Anti-Money Laundering Framework

25. The Financial Analysis Unit or UAF (*Unidad de Analisis Financiero*) was created by Law No. 19.913 of 2003. It is the agency responsible for requesting, verifying, reviewing and holding information about operations

that may be at risk of money laundering. Banks, financial institutions, stock-brokers and stock exchanges are among the institutions obliged to report to the UAF if they become aware of any suspicious activity, transaction or operation during the course of their activities.

26. Pursuant to article 3 of Law No. 19.913, the following individuals and legal entities are bound to inform any suspicious acts, transactions or operations they might become aware of in the discharge of their duties: banks and financial institutions; factoring companies, leasing companies, securitisation companies, general and investment funds managers, the Foreign Investments Committee (a governmental agency in charge of fomenting foreign investment into Chile), foreign exchange companies and any other entities empowered to receive foreign currencies; credit card issuing and managing companies; securities and money transfer and transportation companies; stock exchanges, stock brokers, over-the-counter securities brokers, insurance companies, mutual funds managers, futures and option market brokers, duty-free zones legal representatives, casinos, gambling places and racetracks; general customs agents; auction sale companies, real estate brokers and companies engaged in the real estate business, public notaries and registrars.

27. Law No. 20.818 of 2015 modified Law No. 19.913 with the aim to improve the prevention, detection control, investigation and judgement mechanisms regarding money laundering. These improvements included: a) a wider catalogue of money laundering offences, b) a new obligation for the public sector to report any operation which could be suspicious, and c) the modification of the threshold to report transactions in cash.

28. Circular UAF No. 49/2012 (modified by Circular UAF No. 59/2019) establishes the ordering and systematisation of the instructions of a general nature given by the UAF to the obliged persons, in relation to: the obligation to report and inform suspicious transactions and cash transactions; the obligation to create and maintain records (registries); the due diligence of the client; politically exposed persons; electronic funds transfers; the internal prevention system and other obligations.

29. Under banking regulations and anti-money laundering legislation, banks are obliged to identify and "know their client" in all types of operations (including occasional clients, clients with international and political exposure); when applicable, they must also obtain a statement regarding the origin of the funds in question.

30. Circular UAF No. 57/2017 provides the obligation of banks and other entities of the financial sector to identify the beneficial owners of their clients and to keep such beneficial ownership information available for the review of UAF and other competent authorities.

31. The AML framework in Chile was evaluated last time in 2010 against the 2003 FATF Standard, within the 3rd round of mutual evaluation of the Financial Action Group of Latin America (GAFILAT). Chile was found to be Partially Compliant with Recommendations 5 (Customer due diligence) and 33 (Transparency legal persons) and Non-Compliant with Recommendation 34 (Transparency of legal arrangements). Chile was, until 2016, under intensified follow-up due to deficiencies identified and an Action Plan was implemented to address them. In 2016 Chile came out of the intensified monitoring process overcoming the deficiencies that had been detected at the time.

32. Chile is currently under a new mutual evaluation within the 4th round of mutual evaluations by GAFILAT, which started on 17 May 2019 and is expected to be over in the second half of 2020.

Recent developments

33. Since the 2014 Report, Chile issued UAF Circular 57 of 2017 which provides the obligation for banks and other entities of the financial sector to identify the beneficial owners of their clients and to keep such beneficial ownership information available for the review of UAF and other competent authorities.

34. In addition, in 24 May 2019, UAF Circular 59 of 2019 was issued. This Circular clarified and gave specific guidance to AML obliged entities regarding the CDD procedure that they should perform to their clients.

35. Furthermore, it is important to note that the Multilateral Convention entered into force with respect to Chile on 1 November 2016. The entry into force of the Multilateral Convention not only enlarged the number of Chile's EOI partners, but also allowed Chile to access and exchange bank information that predated 1 January 2010 with the members of the Multilateral Convention, for assistance related to taxable periods beginning on or after 1 January 2017. Thailand signed the Multilateral Convention after the cut-off date, on 3 June 2020; therefore, the Multilateral Convention now complements the existing EOI instrument between Chile and Thailand.

36. On 24 February 2020, Law No. 21.210 was published in the Official Gazette. This Law amends the taxation system of business profits, introduces a new definition of permanent establishment, incorporates new taxable events for VAT purposes, modifies the definition of tax resident for individuals and establishes taxpayer's rights, amongst other matters.

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. Legal ownership and identity information requirements in Chile are confirmed to be broadly in line with the standard for all legal entities. Currently, there are requirements in force under tax, company law and AML law that are able to secure that up-to-date legal ownership and identity information is available.

39. The 2014 Report concluded that Chile'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. Since the evaluation report was published in 2014, there has not been any major change in the legal framework examined.

40. 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 Chile only entities subject to the customer due diligence (CDD) requirements of the AML regime are required to maintain beneficial ownership information on their clients. However, a specific obligation to identify beneficial owners does not cover all relevant entities and arrangements as not all relevant entities and arrangements are required to engage an AML obliged person. It is nevertheless noted that considerable amount of beneficial ownership information is available and that the scope of the AML coverage of relevant entities is broad as in practice 97.8% of taxpayers required to pay taxes, did this through a Chilean bank account.

41. Nonetheless, AML obliged persons do not need to verify beneficial owner(s) information in cases where simplified CDD is performed and the requirement to identify persons individuals holding a senior managerial position when the beneficial owner cannot be identified is not contemplated in the definition. Therefore, Chile is recommended to ensure that beneficial ownership on all relevant entities and arrangements is available in all cases in accordance with the standard.

42. In terms of implementation, supervision and enforcement of the beneficial ownership requirements, the supervision of Financial Intelligence Unit (UAF) on the accurateness of the beneficial ownership information collected by banks presents important deficiencies since UAF cannot verify the quality of the information collected due to confidentiality safeguards.

43. During the three year peer review period, Chile received four requests for legal ownership information. Peers were satisfied with the information received. Chile has not received any requests for beneficial ownership information during the review period. 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.

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

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	The AML obligation to identify beneficial owners does not cover all relevant entities as required under the standard because not all relevant entities are required to engage an AML obliged person. It is nevertheless noted that in practice the scope of the AML coverage of relevant entities is broad. Nonetheless, beneficial owner(s) information may not be verified in cases where simplified CDD is performed. In addition, the requirement to identify individuals holding a senior managerial position when the beneficial owner cannot be identified is not contemplated in the definition.	Chile is recommended to ensure that beneficial ownership on all relevant entities is available in all cases in accordance with the standard.
	Although Chile's legal framework ensures that identity and beneficial ownership information is required to be collected for trusts in most cases, there is no clear definition of beneficial owner applicable to trusts. Therefore, it is not clear how the concept will be implemented in practice.	Chile is recommended to ensure that information on beneficial owner(s) of legal arrangements such as trusts is available in all cases in accordance with the standard.

<table>
<tr><td colspan="3">Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement</td></tr>
<tr><td colspan="3">Practical Implementation of the standard</td></tr>
<tr><td></td><td>Underlying Factor</td><td>Recommendations</td></tr>
<tr><td rowspan="3">Deficiencies identified</td><td>The provision requiring foreign companies with a sufficient nexus in Chile to disclose legal ownership information to the tax authorities, which entered into force on 1 January 2015, is yet to be fully implemented.</td><td>Chile should implement, enforce and supervise the Circular on the disclosure of ownership information of foreign companies to the tax authorities.</td></tr>
<tr><td>Supervision by the Financial Intelligence Unit (UAF) of the requirements for financial institutions to identify the beneficial owners presents important deficiencies since it cannot verify the quality of the information collected due to confidentiality safeguards, while identification of beneficial ownership has not been consistently performed on accounts opened before the obligation was established.</td><td>Chile is recommended to strengthen its supervisory activity to make sure that the information is actually kept and up to date in accordance with the standard.</td></tr>
<tr><td>The significant number of inactive companies raises concerns that ownership information might not be available in all cases.</td><td>Chile is recommended to monitor the risk that inactive companies pose to the availability of ownership information.</td></tr>
<tr><td colspan="3">Rating: Partially Compliant</td></tr>
</table>

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

45. As described in the 2014 Report, Chile's law provides for the creation of several types of companies, in particular:

- *Sociedad anónima* (SA or Shareholding Company) has a capital divided into freely negotiable shares and its shareholders are liable for the company's debts and liabilities to the extent of their capital contribution. An SA can be classified as public or closed depending on whether its shares are offered to the public, or otherwise held by more than 500 shareholders or at least 10% of the capital (shares) is owned by at least 100 shareholders. A board of directors manages the SA with certain decisions being taken at the shareholders' meetings. The shareholders can be either natural or legal persons. SAs are governed by Law No. 18.046 on Shareholding Companies and Supreme

Decree 702 of 2012. At the time of the review there were 2 275 SA registered with the SII.

- *Sociedad por Acciones* (SpA, Company with share capital) is a commercial company governed in principle by reference to the rules for the SA, though its organisation is simplified and it may be formed by a single individual or company. If the SpA has more than 500 shareholders and at least 10% of its shares are held by 100 shareholders, it becomes a public SA by virtue of law (Commercial Code, Art. 430). The provisions on closed companies of Law No. 18.046 apply to them, unless otherwise provided in articles 424-446 of the Commercial Code. At the time of the review there were 158 917 SPA registered with the SII.
- *Sociedad en Comandita por Acciones* (SCA, Comandite by shares) is formed between two categories of members: i) the general members who are jointly and severally liable for the company's obligations (as in a *sociedad de personas*), and ii) the limited members. At the time of the review there were 70 SCA registered with the SII.
- *Sociedad de Responsabilidad Limitada* (SRL, Limited liability company) is formed by 2 to 50 members, either natural or legal persons, the liability of whom is limited to their capital contributions. Quotas in a SRL are not freely negotiable and cannot be sold without the prior agreement of the other members (they cannot use public subscriptions). At the time of the review there were 83 792 SRL registered with the SII.
- *Empresa Individual de Responsabilidad Limitada* (EIRL, Single person limited liability company) is a commercial entity formed by only one individual, called founder, who is not personally liable for the company's obligations.[3] EIRL are regulated by Law No. 19.857 of 2003, supplemented by the rules for *Sociedades Colectivas* and SRL. At the time of the review there were 94 629 EIRL registered with the SII.[4]

3. Partnerships and other types of companies must have more than one shareholder/member. If their membership is reduced to one person, they are automatically dissolved or must be transformed into an EIRL (Art. 14 of Law No. 19.857 of 2003).
4. For EIRL Law No. 19.857 requires that the natural person who is the sole owner of the company is identified in a public deed (including full name, age, nationality and address), which must be registered in the Register of Companies kept by Conservador de Bienes Raices and published in the Official Gazette. If the company is incorporated through the electronic system of Law No. 20.659, the same data is provided to the Electronic Registry.

46. In line with other reports, *Sociedades Colectivas* and simple comandites are best described as partnerships, considering the level of liability of the partners, even though these entities have legal personality in Chile (see section A.1.3 below).

Legal ownership and identity information requirements

47. The 2014 Report found that ownership information in respect of all companies is required to be available in Chile in line with the international standard. Implementation of these obligations as assessed at that time ensured that the relevant ownership information is also available in practice. There have been no changes since the last report on the requirements to collect, keep and update legal ownership and identity information for legal entities in Chile.

48. The legal ownership and identity requirements for companies are ensured through a combination of company and tax law and supervision of these requirements by the Tax Authority and to a lesser extent by the Registrar of Companies. AML Law is not a primary source of legal ownership information since all information is already available pursuant to tax and company law requirements. The Competent Authority never uses AML sources of information to collect legal ownership information.

Legislation regulating legal ownership of companies [a]

Type	Company law	Tax law	AML law [b]
SA	All	All	Some
SPA	All	All	Some
SCA	All	All	Some
SRL	All	All	Some
EIRL	All	All	Some
Foreign Companies with sufficient nexus	None	All	Some

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

b. The AML Law would ensure the availability of legal ownership information for entities that engage in a relationship with an AML obliged person.

Companies Law requirements

49. Commercial companies can be incorporated either through the traditional system, established by the Commercial Code, or through an online incorporation system established by Law No. 20.659. Information on the identity of the owners of commercial companies is maintained, whether by the Commercial Register (*Registro de Comercio*) kept by *Conservador de Bienes Raices* (the traditional system established by the Commercial Code), or by the online Register of Companies and Enterprises created by Law No. 20.659. In the case of *Sociedades Anonimas* and *Sociedades por Acciones*, ownership information is kept by the companies themselves.

50. For companies incorporated under the traditional system, available to all types of companies, the founders of the entity must sign a deed before a public notary, who will keep a copy in its public registry (protocol) and send an excerpt to the Commercial Registry, accessible to the public. Public notaries and commercial Registrars are public officers. Public deeds granted before public notaries must identify the persons signing it, with their nationality, marital status, profession, domicile and ID or passport number. The deed is void if the parties are not properly identified (*Código Orgánico de Tribunales* – Code of Courts, articles 405 and 412).

51. Alternatively, founders can choose to incorporate, modify and dissolve EIRL, SRL, SPA, SA and SCA via an online Register of Enterprises and Companies administered by the Ministry of Economy. This “e-Register” was created in 2013 as an alternative to the traditional incorporation and registration system provided for by the Commercial Code or the special laws regulating each type of company. The e-Register provides real time information to the SII on each company that is created, modified or dissolved. The type of information that must be provided to the e-Register when incorporating, modifying or dissolving a company is the same data that must be provided if the company is subject to the incorporation and registration rules provided for in the Commercial Code or special law applicable.

52. Information registered in the traditional registry or with the e-register relates to founders of companies, but is not updated when the ownership changes, except for EIRL, SRL and general partners in the SCA. Information on the identity of all of the owners of SRLs and the general partners of the SCAs and of the sole owner of the EIRL, as well any changes of their ownership must be registered in the Commercial Registry and published in the Official Gazette. The same information must be provided to the Electronic Registry as the case may be.[5]

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5. There is a bill of law currently under the approval process at the National Congress, which will introduce a new article 13bis into Law No. 20.659, providing that all the companies subject to the e-registration and which are required by

53. Up-to-date information on legal owners is available with the companies themselves. SA and SpA (and SCA for the limited members) must keep an up-to-date register of shareholders at their principal offices, agencies or subsidiaries, and on the website of the Company[6] if available (Art. 7 of Law No. 18.046 and article 431 of the Commercial Code). Information in the register must include the name, address and TIN number of each shareholder, the number of shares that each shareholder holds, the date on which the shares were registered under the name of that shareholder and, in the case of unpaid shares, the form and payment opportunities of them (Art. 7 of the Regulations of Sociedades Anonimas contained in Decree Ministry of Finance No. 702/2012 (*Reglamento de Sociedades Anonimas*)). Article 34 of the *Reglamento de Sociedades Anonimas* provides that a person buying shares of a *Sociedade Anonima* becomes the owner of such shares and acquires the condition of shareholder when the shares are registered under its name in the register (this rule is also applicable for SCA and SpA).

54. To obtain legal existence, legal entities have to be created through a public deed made in front of a public notary and this deed has to be submitted to the Commercial Registry. This public deed must contain legal ownership information. When a company is incorporated through the electronic system, founders must fill in an electronic form, with all the fields required by the general law to incorporate the company duly completed. If the form is not duly completed and signed within 60 days by all founders, the system does not register the company and the company does not legally exist.

55. Publicly traded companies are regulated and supervised by the CMF. Pursuant to article 7 of Law No. 18.046 and Circular No. 1481 of 2000, all companies registered in the CMF´s Securities Registry (issuers of securities) must keep at their main headquarters and their agencies or branches, at the disposal of their shareholders, an updated list of their shareholders or partners, as the case may be. Furthermore, within five calendar days following the expiration of each calendar quarter, the entity must send to the CMF, through the online system available in its website, an updated file up to the last day of each calendar quarter. This file should provide information from both the shareholders or partners, and depositors and funds behind the former. Changes in ownership must be done through a contract in case of sale of shares (before a notary or two witnesses of legal age or a stockbroker, pursuant to article 38 of the Regulation of Law No. 18.046), and through a public deed in case the capital of the company is not divided into shares.

law to maintain a register of shareholders, shall keep such a register in the above mentioned e-registry.

6. S.A. that have a website shall keep in their website an updated list of shareholders, indicating the residence address and the number of shares held by each shareholder. This list would be accessible by the company`s shareholders.

Tax law requirements

56. Commercial companies have to register with the Tax Authority (SII). Under article 66 of the Tax Code, all persons and entities that may be subject to taxes in Chile must register in Chile´s TIN Registry: "All natural and legal persons and entities or groups without legal personality, but susceptible to be subject to taxes, that by reason of their activity or condition cause or may cause taxes, must be registered in the *Rol Unico Tributario* (TIN Registry) in accordance with the rules of the respective Regulation". Therefore, both the company and each of the shareholders of the company must have a Chilean TIN.

57. Under article 68 of the Tax Code, all taxpayers carrying on business activities within the country and individuals providing independent personal services must also file with the SII a sworn statement declaring their "start of activities", within two months from the commencement of any economic activity. Article 68 paragraph 5 obliges taxpayers to inform the SII of changes to the information provided in this sworn statement.

58. Companies must comply with the registration requirements of articles 66 and 68, depending on whether the company has been incorporated and registered under the traditional system provided by the Commercial Law, or under the e-Register of Law No. 20.659, explained above. The identity of each of the legal owners of the company as well as any modifications of the same, must be reported annually to the SII.[7] The sanction applicable for the non-compliance with this obligation is set in article 97 no. 1 of the Tax Code, which states: "The delay or omission in the presentation of declarations, reports or requests for inscriptions in mandatory roles or records, which do not constitute the immediate basis for the determination or settlement of a tax, with a fine ranging from 1 monthly tax unit to 1 UTA (annual tax unit)".[8]

59. The SII effectively monitored the compliance with the above-mentioned obligation and in cases of non-compliance sanctions were applied. The following table provides information on the accumulated amounts of penalties imposed by SII to companies and partnerships during the review period (from 1 October 2015 to 30 September 2018) for (i) noncompliance with the obligation of TIN registration in a timely manner and (ii) for the delay in communicating the start of economic activities to the SII:

7. Resolution SII No. 80 of 2017.
8. UTA is an amount of money, determined by law and permanently updated, that serves as a tax measure or benchmark (article 8(10) of the Tax Code); as an example, in May 2020 the value of the UTA was CLP 604 464 (EUR 648).

Sanction imposed by SII in application of article 97(1) of the Tax Code

Year	Monetary sanction (CLP)	Monetary sanction (EUR)
2015	494 103	530
2016	14 911 492	15 996
2017	13 142 734	14 098
2018	26 343 057	28 259
TOTAL	**54 891 386**	**58 884**

60. Companies incorporated under the traditional system (please refer to paragraph 50) are subject to Circular SII No. 31/2007 and should provide to the SII information on the identity of its legal owners through Form 4415. Circular SII No. 31/2007 (section 1.5.7) provides that at the time of registration, the entity must provide information on the identity of its "partners, shareholders, participants or members, as the case may be, their TIN number, and the percentage of participation in the capital and the profits of each of them, according to the provisions included in the bylaws or document of incorporation." This information has to be updated, each time there is a change of the ownership structure, in accordance with Circular SII No. 17/1995 (section 2.3.7). Nonetheless, this article establishes that public SAs (SA that are listed on a public stock stage and can issue securities to the general public) have no obligation "to identify its shareholders nor the capital contributed by each of them".

61. Circular SII No. 23/2013 modified by Circular SII No. 60/2015 (Section 1.1) provides that in the case of companies incorporated under the provisions of Law No. 20.659, the registration in the TIN registry is made automatically when the founder or founders of the company submit the incorporation Form through the web site of the Ministry of Economy. Section 1.1 further provides that, through the same website, the SII will provide a TIN number to the company. Since changes in the ownership structure must be carried out through the filing of a form in the website of the Ministry of Economy, they are automatically notified to the SII by the Ministry of Economy. The automatically provided TIN will also require the provision of same details as under the traditional system.

Foreign companies

62. Even though Commercial Law requires foreign companies establishing an agency in Chile to register with the Commercial Registry, it does not require the agency to maintain a register of the shareholders of the foreign company in Chile.[9] The legal requirement for foreign companies with a

9. Articles 447 and subsequent of the Commercial Code and articles 121 and subsequent of Law 18.046.

sufficient nexus to maintain ownership information is set by the Tax Law. Under article 66 of the Tax Code, foreign companies carrying out business activities in Chile must register in the TIN registry and obtain a TIN number through the general procedure established by Circular SII No. 31/2014. Foreign companies that have one or more permanent establishments in Chile must register in the TIN registry and the SII will assign a different TIN to the foreign company and to each of its permanent establishments.[10] In accordance with Circular SII No. 31/2014, foreign companies, except for publicly traded companies or public investment funds or schemes, among other information, must provide the SII through Form 4415.1 identification data on the partners, owners, participants, contributors and beneficiaries of the person or entity constituted or organised abroad. The number of foreign companies registered with the SII per year during the review period are the following:

Number of foreign companies registered with the SII per year during the review period

Year	Number of foreign companies registered with the SII
2015	220
2016	779
2017	894
2018	721

63. This provision is in force since 1 January 2015 and the 2014 Report included a monitoring recommendation for Chile to ensure the implementation of the new requirements. However, the Chilean authorities made clear that the implementation of the new requirement is yet to start in a comprehensive way since, for the time being, only new companies have provided the information requested, while very few existing foreign companies have done it. In addition, while there are no enforcement procedures in the law, the quality of the information provided has not yet been checked. **Chile is therefore recommended to implement, enforce and supervise the Circular on the disclosure of ownership information of foreign companies to the tax authorities.**

Inactive companies and companies that ceased to exist

64. There are no specific requirements in the law for companies that cease to exist in respect of obligations to retain ownership information. However, up-to-date ownership information is kept with the SII for active companies during the whole existence of a company and will be kept for

10. Article 3 of D.F.L. No. 3 of 1969, Ministry of Finance, which creates and regulates the TIN Registry, and Circular SII No. 57/2017.

more than five years after the company is liquidated (the retention period in SII is 6 years for information kept in a paper format and indefinitely for information kept in an electronic format). In case of requests for liquidation, the procedure can go ahead only if the SII has granted the "End of activities certificate" (*Termino de giro*), which requires for the company to provide to the SII the full set of latest legal and accounting information to be lodged with the SII.

65. The Tax Law requires that companies must file a sworn statement with SII notifying the "start of activity" within two months after they begin their economic activities.[11] Nonetheless, there are around 50 000 companies which have never reported to the SII that they have started any economic activity. A company that has not filed the "start of activity" declaration does not have the obligation to update ownership information with SII until the moment they file the "start of activity" return. In addition, during the review period the SII did not have an audit plan for these companies and none of them was audited. Therefore, the availability of current legal (and beneficial) ownership information would be at stake for these inactive entities.[12]

66. According to Chilean authorities, the absence of the "start of activity" declaration would impede the entity from running a business in Chile in a normal way and limits the participation of the entity in commercial activities. A person that carries out economic activity without being registered in the TIN registry, will be deemed to be an illegal merchant and will subject to the fines and criminal sanctions provided for in article 97(9) of the Tax Code. Nevertheless, in practice, there could be cases in which these inactive entities could hold assets or conduct transactions entirely abroad and not maintain or file up-to-date ownership information in Chile. Therefore, **Chile is recommended to monitor the risk that inactive companies pose to the availability of ownership information**.

Nominees

67. As indicated in the 2014 Report, the concept of nominee shareholding does not exist in Chile. However, the Chilean Civil Code provides for the concept of a mandate ("*mandato*"), which is a contract by which a person entrusts another person with the management of one or more business acts for the account of the first person (article 2116). Persons using these contracts in a professional way to acquire shares of companies are strictly regulated

11. Article 68 Tax Code.
12. Chile's legislation does not contain strike-off-provisions or *ex officio* liquidation process for inactive companies. Currently, there is a bill of law, under approval process in Congress, which provides for the dissolution of companies that do not have legal or accounting activity for more than 5 years.

by Law No. 18.045 of 1981 on Stock Market. Only stockbrokers supervised by the Superintendencia de Valores y Seguros (SVS) may acquire shares of public companies limited by shares under their own name, on the basis of a contract/mandate for a third party (clients). Similarly, only securities dealers supervised by the SVS may acquire shares of unlisted companies limited by shares under the same conditions (Law No. 18.045 on Stock Market, Art. 23 and 24).

68. When buying and selling shares, these intermediaries must indicate if they act for their own account (Art. 24) and must indicate in what capacity they act when voting at the shareholders meeting (Art. 179). These financial intermediaries must identify their clients by their full name, tax identification number or passport number, address, marital status, profession, and legal representative (where relevant) and maintain a ledger of all their clients. They must also maintain books that detail all the transactions made for the account of their clients on a daily basis (SVS Norm of General Nature no. 12 and Circular 2.108 of June 2013). In practice, the SVS performs audit onsite visits to its licensees randomly, and checks among other requirements whether the licensees respect their KYC obligations. Sanctions imposed by the SVS (and published on its website) are generally related to insider trading and corporate governance.

69. In the case of shares held by a bank, stockbroker or other person acting under a custody agreement, the SA, SpA and SCA are required to identify the entity acting as a custodian, indicating its TIN, the number of shares it holds and the participation in the company´s capital. Custodians must inform the SII annually of the TIN of each of the investors for whom they hold shares, the TIN of the companies that have issued such shares and the number of shares they hold for each investor (tax information return No. 1885). The SII has not faced any issues regarding the identity of "*mandatos*" for EOI purposes and the peers have not raised any issues on this topic. This element is therefore considered to be in line with the standard.

Legal ownership information – Enforcement measures and oversight

70. As seen above, companies have to register with the SII. If a domestic or foreign enterprise does not register with the SII, it is subject to a fine between CLP 50 021 to CLP 600 252 (EUR 54 to EUR 644; Tax Code, Art. 97 no. 1). In the review period sanctions were imposed for a total amount of CLP 54 891 386 (EUR 58 884). In addition, if an entity undertakes taxable commercial activities without registering and obtaining a TIN, it commits a tax crime punishable by a fine between CLP 180 075 to CLP 3 001 260 (EUR 161 to EUR 2 681), and, where the fraud is intentional, the responsible individual is punishable by imprisonment between 541 days and 3 years, and the confiscation of its installations and products, pursuant to article 97 no. 9

of the Tax Code. During the review period a total of 113 criminal cases were filed for such criminal offence ("*querella criminal*"), covering 247 defendants ("*imputados*").

71. If the register of shareholders of an SA is not properly maintained, directors and managers are liable to sanctions if this caused any damages to the shareholders or third persons (article 7 of the Law 18.046 on SAs). In addition, the SVS can impose an administrative sanction (written warning – *censura* – or fine) on SAs under the SVS supervision (including all public SAs) and their directors for breach of Law 18.046, including for failing to properly maintain the register (Law 18.046 on SAs, Art. 7, and SVS Law, Art. 27).

72. Finally, the Tax Code imposes fines for the failure to comply with the information reporting requirements (Art. 97 no. 1530) between CLP 100 322 to CLP 501 612 (EUR 108 to EUR 538). The SII Taxpayers Assistance Department is in charge of verifying whether the information reported in the tax returns of shareholders and in the sworn statements of companies or financial intermediaries match. It also checks whether information in tax information returns matches with the information provided by the Registrars. The table below contains the figures on the imposition of the above mentioned sanctions during the review period:

Supervisory activity by the SII (legal ownership requirements, register of members)

	Number of entities (companies and partnerships) that informed SII of a change in ownership [a]	Sanction applied for failure to comply with requirements [b]	Monetary sanctions (CLP)	Monetary sanctions (EUR)
2016	29 748	11 725	615 743 539	660 531
2017	38 228	31 797	1 097 403 079	1 177 224
2018	46 318	27 404	974 928 802	1 045 842
Total	**114 294**	**70 926**	**2 688 075 420**	**2 883 597**

Notes: a. SII performs a desk-based supervision of the information submitted by all entities regarding the change in ownership.

b. The number of sanction applied by SII includes sanctions for minor errors in the presentation of the information and for the delay (even by few days) in filing the information in the established deadlines.

73. The verification activities by SII and the number and amount of fines applied seem to be adequate to ensure availability of ownership information records.

Availability of legal ownership information in practice in relation to EOI

74. Chile received 4 requests (out of 61) for legal ownership information during the review period. The information has been provided in all cases to the satisfaction of the requesting party.

Availability of beneficial ownership information

75. The transparency standard was strengthened in 2016 with a new requirement that beneficial ownership (BO) information on companies should be available. In Chile, this aspect of the standard is addressed under the AML law, in particular through the requirement for banks as AML obliged persons to identify and keep up-to-date beneficial ownership information on their clients. There are no other requirements in Chile (e.g. under company or tax law)[13] asking for the identification of beneficial owners of legal entities in line with the standard.

Legislation regulating beneficial ownership information of companies

Type	Company law	Tax law	AML law
SA	None	None	Some
SPA	None	None	Some
SCA	None	None	Some
SRL	None	None	Some
EIRL	None	None	Some

Anti-Money laundering law requirements

76. In Chile, the AML legislation consists of the Anti-money laundering Law of 2003 (AML Law, Law 19.913) and several mandatory orders ("*circular*") by UAF which substantiated its content over time. Circular UAF No. 49/2012 establishes the ordering and systematisation of the instructions of a general nature given by the UAF to the persons and entities obliged by the

13. Chile has implemented the CRS standard, therefore banks and financial institutions are required to collect beneficial ownership information of some of their account holders and report it to the SII. Nonetheless, this obligation would only cover accounts held by, what CRS standard considers as, passive NFE (Art. 62 ter Tax Code, Decree No. 418/2017 Ministry of Finance and Resolution SII No. 48/2018).

    In addition, information with the ROC and the tax authority may be of help and provide information on the natural persons behind simple legal entities. Nonetheless, they might not be the ultimate beneficial owners as per the standard since they are not required to be identified as such.

provisions of the AML law, in relation to: the obligation to create and maintain records (registries) for at least 5 years;[14] the due diligence of the client; politically exposed persons; the obligation to report and inform suspicious transactions and cash transactions; electronic funds transfers; the internal prevention system and other obligations.

77. While the scope of AML obliged persons in Chile is rather wide, covering, among others, financial institutions, professionals providing legal or notarial services, accountants, registrars (see Art. 3 of AML Law), only banks and other financial institutions are required to secure beneficial owners information from their clients by the UAF Circular 57/2017 and thus relevant for the purpose of this report. Lawyers, accountants, auditors, directors are currently not required to perform CDD on their clients. Therefore, even when lawyers act in a capacity of a nominee, trustee or as a mandate, they are not obliged to collect beneficial ownership information of their clients. The focus of the following analysis will be therefore on the CDD by banks and financial institutions to see whether (i) all legal entities are covered (scope of BO requirement), (ii) the requirements are in line with the standard (BO definition), and (iii) the requirements are sufficiently supervised and enforced.

Scope

78. There is no specific requirement in Chile to open and keep a bank account for legal entities incorporated domestically or for foreign companies with a nexus to Chile. According to the Chilean authorities, it is unlikely to have legal entities operating in Chile without a Chilean bank account. In addition, recent data provided by the SII indicated that for the last fiscal year 2018, 97.8% of taxpayers required to pay taxes did this through a Chilean bank account.[15] While it seems unlikely that a legal entity could operate in Chile without a bank account, there is no legal obligation in Chile which ensures that beneficial ownership on all relevant entities is available in all cases. Therefore, **Chile is recommended to ensure that beneficial ownership on all relevant entities is available in all cases in accordance with the standard**.

Definition and identification of beneficial ownership

79. Beneficial owner is defined by UAF Circular 57/2017 as “the individual(s) who finally has, directly or indirectly, through companies or

14. Article 5 Law 19.913 of 2003.
15. Although Chilean taxpayers can use a foreign bank account for the purposes of paying taxes in Chile, in 2019 only two taxpayers payed their taxes from a foreign bank account.

other mechanisms, a participation equal to or greater than 10% of the capital or voting rights of a specific legal entity or legal arrangement. Likewise, the beneficial owners shall be understood as the individual(s) who, without prejudice to directly or indirectly holding a participation of less than 10% of the capital or voting rights of a legal entity or legal arrangement, through companies or other mechanisms, exercises effective control in the decision making of the legal person or legal arrangement." Effective control is defined as the ability of individuals to make relevant decisions and impose them on the legal person or legal arrangement, whether by owning a relevant number of shares, having the necessary participation to designate and/or remove senior management and/or board of directors, and/or for having the use, enjoyment or benefits of the assets owned by the legal person or legal arrangement, among other circumstances. It is expressly said that the list is non-exhaustive.

80. If the client of the AML obliged person is an entity, the obligation to request information about the beneficial owners of the client through the request for the respective declaration must be made before or while establishing a permanent legal or contractual relationship between the client and the relevant AML obliged person, or in the case of occasional transactions for an amount equal to or greater than USD 15 000.[16]

81. Obliged persons have to perform a continuous CDD process.[17] In the case of clients with whom the obligated parties already had a prior and permanent legal or contractual relationship before 12 June 2017, the procedure of identification of the beneficial owner(s) of their clients should be carried out at least once a year, or at shorter intervals if the obligor considers it necessary.[18] Nonetheless, there is no guidance in the Chilean legislation fixing a set time for performing the update of the beneficial ownership information for clients that began a business relationship after 12 June 2017. Chile'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).

82. In terms of procedure to follow for the identification of beneficial owners, the Circular 57/2017 goes on by requiring the obliged persons to request from their clients' legal persons or legal arrangements, a statement that contains sufficient identification data regarding the identity of their beneficial owners. UAF made available a standard form, which may be complemented with new fields by the obliged persons, according to the characteristics and complexity of the businesses they carry out. This form must be completed in good faith by the client, either face-to-face or electronically.

16. The threshold is indicated in US dollars in the legislation.
17. Section 4 UAF Circular 59/2019.
18. Section 2(b) UAF Circular 57/2017.

The service providers must take "reasonable measures" to verify that the beneficial ownership information declared by the client (legal person or legal entity) is accurate and to notify their clients of the obligation to inform of any amendment provided in the self-certification. The legislation does not specify what are the "reasonable measures" that should be undertaken by the obliged person, but they have to determine them in their internal AML Manual.[19] In Chile, the law does not allow the reliance on CDD gathered by third parties.

83. The AML framework does not require identification of people holding senior managerial positions when no beneficial owner is identified after applying the CDD procedure mentioned in paragraph 79 ("ownership" and "control by other means"). In those cases, the AML obliged persons are not required to identify a natural person as the beneficial owner of their clients when no natural persons can be identified through ownership control or through control by other means. Therefore, **Chile is recommended to ensure that beneficial ownership on all relevant entities is available in all cases in accordance with the standard**.

84. Interviews during the on-site visit with representatives from both the UAF and banks clearly confirmed that to identify natural persons through a controlling ownership interest is enough to meet the standard and it is sufficient to satisfy the supervisor. This practice will not allow to identify the beneficial owners in cases where there is effective control through other means. Therefore, Chile should make sure that the definition of beneficial owner under AML law is fully implemented, including the identification of natural persons who exercise control through means other than ownership (see Annex 1).

85. Simplified CDD is allowed to be applied in respect of customers representing low risk for AML/CFT purposes. In order to appropriately apply simplified CDD, obliged persons are required to identify and understand the AML/CTF risks. Nonetheless, simplified CDD allows the obliged persons to postpone the verification of the beneficial owner identification until an "act, operation and/or transaction is carried out above a certain monetary threshold" (section 5(b) UAF Circular 59/2019). The secondary legislation establishing the monetary threshold has not been issued by UAF. As the only source for obtaining entities' beneficial ownership information is the AML CDD performed by financial institutions, the beneficial owner(s) may not be adequately identified in cases where simplified CDD is applied. **Chile is recommended to ensure that beneficial ownership on all relevant entities is available in all cases in accordance with the standard**.

19. Section 2 (c) and (d) of UAF Circular 57/2017.

Implementation, enforcement and supervision of AML requirements

86. The failure of an obliged person to comply with the obligations contained in Circular UAF 57/2017 entails the application of the sanctions established in title II of the AML Law: "Individuals or legal entities that do not comply with the obligations or duties contained in this law, will be sanctioned by the [UAF] Director, taking special and strict consideration of the economic capacity of the offender as well as the seriousness and consequences of the act or omission carried out" (Art. 19 letter a). In case of "minor infractions" (which are the ones for the non-compliance with the instructions by the UAF), article 20 of the AML Law provides first the issuance of a warning and then a fine up to an amount equivalent to 800 *Unidades de Fomento* (EUR 28 000).

87. The UAF is the body in charge of supervising and enforcing the implementation of the AML rules although CMF can also conduct analysis of compliance with these rules. During the review period, the compliance office was made up of 11 people in charge of supervising 7 000 entities, including 15 banks and 8 branches of foreign banks.

88. High-level representatives from the UAF confirmed that while the compliance by AML obliged persons with the beneficial ownership requirements is regularly in the scope of their activities, when it comes to banks and financial institutions they are only able to check whether the internal policies adopted are in line with their instructions since they cannot have access to the information as collected due to confidentiality safeguards. As a result, the UAF indicated that it has not been possible so far to assess the quality of the information collected by banks. In addition, a representative of the banking association indicated that while the work on identifying the beneficial owners of new bank accounts is regularly performed, there are important delays concerning pre-existing bank accounts where banks managed to get the information only with reference to a small portion of these accounts. Chile should ensure a smooth implementation of the requirement to identify and keep up-to-date beneficial ownership information for all legal entities (see Annex 1).

89. Nevertheless, the UAF has undertaken several awareness raising programmes over the last years on beneficial ownership requirements. They have provided training and seminars to a total of 2 126 private institutions in the period 2012-18. In addition, as of 2019 the UAF has launched a new e-learning course which includes a module on beneficial ownership covering, amongst others, the following topics: a) definition of beneficial ownership as provided by Circular UAF 57; b) legal regulation of the beneficial ownership in Chile and its origin; c) analysis of international cases; d) FAQ regarding the practical application of Circular 57; e) instructions for filling the affidavit of BO, with examples; f) warning signs commonly linked to the use of legal persons or legal entities to hide the BO.

90. While no check of the quality of the beneficial ownership information is performed, the UAF undertook several audits on AML obliged persons to check their compliance with UAF Circular 49/2012, which sets the general framework to comply with AML requirements. As of 2018, the audit programmes included the compliance with the UAF Circular 57/2017 (i.e. BO requirements). The results of this activity is summarised in the table below.

Supervisory activity by the UAF (BO requirements)

	Total number of examinations (BO as of 2018)	Examinations on banks and financial institutions	Number of various samples checked	Cases of non-compliance (BO)	Sanctions applied (EUR)
2016[a]	125	63	125	n/a	n/a
2017[b]	130	66	130	n/a	n/a
2018	135	67	135	49	24 870
Total	**390**	**196**	**390**	**49**	**24 870**

Notes: a. The data of years 2016 and 2017 do not include compliance activity referring to Circular 57/2017 which introduce the obligation for financial institutions to collect beneficial ownership information.

b. Ibid.

91. However, as mentioned above in paragraph 88, the AML supervisor could not perform checks on the quality of the information requested and cases of non-compliance reported above only refer to instances where the obliged persons did not have in place internal policies in line with the instructions. Important deficiencies are therefore identified in the supervisory system for the compliance with the requirement to identify, verify and keep up-to-date beneficial ownership information of legal entities. **Chile is therefore recommended to strengthen its supervisory activity to make sure that the information is actually kept in accordance to the standard.**

Availability of beneficial ownership information in practice in relation to EOI

92. Chile has not received any requests for beneficial ownership information during the review period.

A.1.2. Bearer shares

93. The issuance of bearer shares has never been permitted in Chile. This element of the standard is therefore in place in Chile.

A.1.3. Partnerships

94. The 2014 Report found that the legal and regulatory framework in Chile ensures that identity information regarding partnerships is required to be available. The relevant legal provisions were considered to have been properly implemented.

Types of partnerships

95. Certain companies in Chile give more emphasis to their members than others, i.e. *sociedades de personas*. *Sociedades de personas* are legal entities in which the owners have "social rights" or "quotas" and the capital is not divided into shares. There are two types of *sociedades de personas*:

- *Sociedad Colectiva*, formed between two or more collective members (either natural or legal persons, Chilean or non-Chilean nationals) who are jointly and severally liable for the company's obligations.
- *Simple Comandite*, formed by two categories of members: (i) one or more general members who are jointly and severally liable for the partnership's obligations and who are responsible for managing the company, and (ii) one or more limited or silent members who invest capital in the partnership but cannot undertake management, and whose liability to third parties is limited to the capital subscribed by them.

96. Sociedad Colectiva and Simple Comandites are best described as partnerships in English, considering the level of liability of the partners, even though these entities have legal personality in Chile. At the time of the review period there were 8 simple comandites and 365 *Sociedades Colectivas* (only 17 with commercial purpose) registered in Chile.

Identity information

97. The Commercial Code provides that a *Sociedad Colectiva Comercial* and a Simple comandite shall be incorporated through a public deed, registered in the Commercial Code. The public deed must include the name and address of all and each of the partners. Law 20.659 allows the incorporation of a *Sociedad Colectiva Comercial* and its registration through the e-register. In this system, the deed referred to above is replaced by a form which must be signed electronically by all partners and registered. The deed of the entity has to be amended every time a member changes.

98. In addition, the tax obligations of Sociedad Colectivas and Simple comandites are the same as those of companies (see above paragraph 56): when registering in the TIN Registry, they must file a registration application with the SII that indicates their ownership details, and any subsequent changes of ownership and participation must be reported on an annual basis.

Up-to-date ownership information is kept with the SII for active partnerships during the whole existence of the partnership and will be kept for more than five years after the partnership ceased to exist (the retention period in SII is 6 years for information kept in a paper format and indefinitely for information kept in an electronic format).

99. Foreign partnerships carrying on business activities in Chile through a branch or agency established therein or deriving income from Chilean sources must be registered with the SII, as any other entity, and declare their legal ownership structure. They must also register their original deed of incorporation with a public notary and the Commercial Register, pursuant to article 447 of the Commercial Code.

100. The situation is confirmed to be in line with the standard under the legal framework.

Beneficial ownership

101. As for companies, the AML obligation to identify beneficial owners does not cover all relevant partnerships as required under the standard because they are not required to engage an AML obliged person. Although it seems unlikely for a simple comandite or a commercial *Sociedad Colectiva* to operate without a bank account in Chile, the same conclusions reached above for legal entities hold true also in this case and **Chile is recommended to ensure that beneficial ownership on all relevant entities, including simple comandites and *Sociedades Colectivas*, is available in all cases in accordance with the standard**.

Oversight and enforcement

102. Identity information is mainly supervised and enforced by the SII. The sanctions contained in the Tax Code and supervision activities performed by the SII, explained above in the context of companies in paragraph 70 and onwards, apply for partnerships. Beneficial ownership requirements for partnerships are supervised only by the UAF. The same considerations and recommendations above for the supervisory activity performed by the UAF for companies hold true in this case.

Availability of partnership information in EOI practice

103. There have been no requests during the review period concerning partnerships in Chile.

A.1.4. Trusts

104. The 2014 Report clarified that the concept of "trust" does not exist under Chilean Law. However, Chilean domestic law does not prevent a

Chilean resident from acting as a trustee of a foreign trust (or for a foreign trust to invest or acquire assets in Chile). There is no prohibition in Chilean law for a non-professional trustee to act as trustee of a foreign trust. Furthermore, Chilean law includes the concept of *fidecomiso* which has some similarities with trusts. The Civil Code provides for *fidecomiso, usfructo and servidumbre* as limitations over full ownership of property. In the *fidecomiso,* a *constituyente* is the person that establishes the *fidecomiso* over a property, the *fiduciario* is the person that acquires the property subject to the obligation to transfer the property to the *fidecomisario* once the condition as established by the *constituyente* is met. While the condition is pending, the *fiduciario* has the right to benefit from the property. The *fidecomisario* has no right whatsoever to benefit over the property until the condition is met. Once the condition is met, the *fidecomisario* acquires full property rights. This institute is mainly used for inheritance purposes.

Requirements to maintain identity information in relation to trusts and implementation in practice

105. In the case of foreign trusts, pursuant to article 14, letter e), paragraph 2) of the Income Tax Act, individuals and legal entities that are residents in Chile or have been incorporated in Chile and who are or have become in the past year settlor, beneficiary (professional or non-professional) trustee, or administrator of a trust, must annually inform the SII of the name, address, jurisdiction of tax residence and TIN in the jurisdiction of tax residence, of the settlor, trustee, administrator and beneficiaries of such a trust. Resolution SII No. 46/2018, which substituted Resolution SII No. 47/2014, provides for the instructions and the Form that taxpayers should use to comply with these obligations.

106. Failure to declare this information to the SII can be sanctioned with a fine of 10 UTA (EUR 6 480), which is increased by 1 UTA (EUR 648) for each month of delay, up to 100 UTA (EUR 64 800). The same sanction is applicable to the late, incomplete, or erroneous filing of the referred information. The SII is responsible for the enforcement and oversight of compliance with article 14 of the Income Tax Act.

107. Therefore, the SII maintains the identity information on persons involved in trusts with respect to which a resident of Chile is settlor, beneficiary, trustee or administrator. This information will be kept by SII for more than five years after the trust ceased to exist (as mentioned above the retention period in SII is 6 years for information kept in a paper format and indefinitely for information kept in an electronic format). However, to date there are no evidences of foreign trusts with a domestic trustee in Chile.

108. In the case of *fideicomiso*, the act whereby it is created must be a public deed (in front of a notary) or a will and must identify the assets and persons involved (*constituyente*, *fiduciario* and *beneficiaries*). The beneficiary can be a person who does not yet exist at the time of the creation of the *fidecomiso* (Art. 735 and 737 of the Civil Code). The general tax obligations are applicable and bind successively on the constituent, the fiduciary and ultimately the beneficiary in parallel with each transfer (i.e. the declaration of the incomes derived from the shares). A *fideicomiso* never registered on its behalf with the SII.

109. Both in the case of foreign trusts and *fideicomiso*, the identity information is ensured to be available, in line with the standard.

110. The keeping of identity information for foreign trusts and *fideicomisos* is mainly ensured by the SII. Nonetheless, due to the low number of *fideicomisos* and the low risk they present, during the review period no *fideicomiso* was subject to an audit by SII. Chile should monitor the compliance by foreign trusts and *fideicomisos* of their obligation to report information to the SII (see Annex 1).

Beneficial ownership requirements for trusts

111. According to the standard, whenever there are legal entities as parties to a legal arrangement, they have to be looked through for the purpose of identifying the ultimate beneficial owners of the legal arrangements. In Chile, under the AML Law, the general definition of beneficial owner (explained above in paragraph 79) applies for trusts. Under this definition, the concept of beneficial owner includes the individual who, through companies or other mechanisms, exercises effective control in the decision making of the legal arrangement. While the AML Circular 57/2017 prescribes to identify the beneficial owner of legal arrangements (Art. 1 (definitions), letter d), there is no provision or guidance on how the beneficial ownership of all the parties to a trust (such as settlor, trustee, protector (if any) and all beneficiaries), have to be identified as per the standard. These provisions apply only to the extent trusts engage an AML obliged person, which they are not obliged to do. In addition, the identification of the parties of the legal arrangement (settlor, trustee and beneficiaries) have to be reported to the SII annually, as per the obligation explained in paragraph 105, which means that in case these persons are individuals, some beneficial ownership information would be available with the SII.

112. The materiality of these gaps is likely very limited as, according to the Chilean authorities, the number of foreign trusts in Chile is negligible. The use of *fideicomisos* is also limited. In practice, it is more a form of property used for inheritance purposes within Chile without any material impact

on the EOI activity. Nonetheless, **Chile is recommended to ensure that information on beneficial owner(s) of legal arrangements such as trusts is available in all cases in accordance with the standard**.

113. Beneficial ownership requirements on trusts and *fideicomiso* are in the scope of the supervisory activity by the UAF. The same conclusions reached in paragraphs 86 to 91 in the case of legal entities holds true also in this case and therefore **it is recommended to strengthen the supervisory activity to make sure that the information is actually kept in accordance with the standard also in the case of legal arrangements**.

Availability of trust information in EOI practice

114. During the review period, Chile has not received any requests for identity or beneficial ownership information on trusts.

A.1.5. Foundations

115. The 2014 Report concluded that Chilean foundations are not considered to be relevant entities from the perspective of Global Forum's work and have never been the subject of an EOI request. The situation has not changed.

116. The concept of private foundation does not exist under the laws of Chile. *Corporación* (Association) and *Fundación* (Foundation) are recognised under Chilean Law as non-profit entities, meaning that such entities do not distribute profits to their members/founders. When these entities are dissolved, their assets are destined to the institution of same not-for-profit nature specified in their bylaws, or in absence of a specific provision, allocated to the State (article 561 of the Civil Code and article 31 of Decree 110 of the Ministry of Justice). Both types of entities are created under the control of the local authorities (Municipalities) and the Ministry of Justice is given investigative powers to ensure that they pursue their objective in compliance with the rules of the Civil Code (Law 20.500).

A.2. Accounting records

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

117. The 2014 Report found that Chile's legal and regulatory framework for the maintenance of accounting records, including underlying documentation, for a minimum period of five years and its implementation in practice generally ensured the availability of accounting information in line with the standard. Accordingly, Element A.2 was determined to be in place and rated Compliant.

118. Since the first round review, there has been no change in the relevant legal obligations. Entities are obliged to keep accounting records by both the commercial and the tax law framework.

119. With regard to the compliance of entities in maintaining accounting records, SII 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.

120. The standard was strengthened in 2016 to clarify that accounting information should be kept for at least five years even in cases where the relevant entity or legal arrangement has ceased to exist. In Chile, there is no obligation under the commercial law to maintain the accounting records when the entity ceases to exist and the tax law requires entities to keep accounting records until the statute of limitation for tax audits is expired, which is normally three years. In addition, it is not clear who will be the person that will be responsible for keeping the accounting books and the underlying documentation of liquidated entities. Therefore, Chile is recommended to ensure that the record keeping requirements are applied in such a way that accounting records are kept at least for five years for entities that are liquidated or cease to exist.

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

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

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	The accounting records retention requirements are not clear in the case of entities that are liquidated. While in this case there are no requirements under the company law, the tax authority would require the accounting records to be kept until the statute of limitation for tax audits is expired, which is normally three years. In addition, it is not clear who will be the person that will be responsible for keeping the accounting books and the underlying documentation of liquidated entities.	Chile is recommended to ensure that the record keeping requirements are applied in such a way that accounting records are kept for five years for entities that are liquidated or cease to exist.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	The significant number of inactive companies raises concerns that accounting records information might not be available in all cases.	Chile is recommended to monitor the risk that inactive companies pose to the availability of accounting records information.
Rating: Largely Compliant		

A.2.1. General requirements and A.2.2. Underlying documentation

123. The 2014 Report concluded that accounting records and underlying documentation is required to be available in Chile in line with the international standard.

124. The accounting requirements in Chile derive from a combination of company and tax law provisions.

Company law

125. All commercial companies and partnerships[20] as well as sole traders are bound by a number of accounting obligations, under articles 25 to 44 of the Commercial Code, including the requirement to keep: (i) a daybook or journal, (ii) a general accounting ledger, (iii) a balance book, and (iv) a book that records correspondence. Accounting records must correctly explain all transactions and reflect details of all sums of money received and spent, as well as all sales and purchases. They must enable the financial position of the entity to be determined with reasonable accuracy, and reflect details of its assets and liabilities: all traders must make, in the balance book, a statement with an estimation of all of their assets, both movable and immovable, and of all their credits and debts. They must produce a general balance of all of their businesses in the same book at the end of each year (Art. 29 of the Commercial Code). All Chilean companies apply and present their financial statements according to International Financial Reporting Standards.

20. An entity is commercial if its object includes the carrying out of "acts of commerce" (i.e. businesses) as provided for in article 3 of the Commercial Code, or if the law that regulates the respective company type provides that the company shall be deemed a commercial company notwithstanding its object, as it is the case with SAs.

Tax law

126. The Tax Code complements the Commercial Code for both traders and non-traders. Pursuant to article 17 of the Tax Code, any person that has an obligation to prove effective income does it through truthful accounts. This general requirement would encompass resident trustees of foreign trusts. Taxpayers (even those with no taxable income) must submit, together with their tax returns, balance sheets and inventory copies signed by an accountant, as well as other accounting documents that the SII may request (Art. 35). Furthermore, the SII "authorises" (with an official stamp) specific accounting books and ledgers of the companies and when kept electronically, has an access to these accounts. Finally, small businesses with a turnover below EUR 291 000 may keep a simplified accounting system (Income Tax Act, Art. 14 bis). Non-compliance with these accounting obligations is punishable by a fine of CLP 41 801 to 501 612 (EUR 45 to EUR 538) if the taxpayer does not present the documents within the deadline fixed by the SII or if the accounts are not kept in a proper manner (Tax Code, Art. 97 no. 7). In addition, pursuant to article 17 of the Tax Code all documentation that supports the accounting records must be kept. Supporting documentation includes invoices, contracts, etc. Invoices must be kept also pursuant to the Value Added Tax Law (Art. 58).

Companies that ceased to exist, inactive companies and retention period

127. Accounting records, including underlying documentation, must be maintained by the company indefinitely until the full liquidation of its business, pursuant to article 44 of the Commercial Code. The Tax Code provides that accounting books and corresponding documentation be kept for six years (i.e. until the statute of limitations for a tax audit has expired, Art. 17) and must be presented to the SII upon request (Art. 97). However, in the case of liquidated entities, the requirement under the tax law is, for the taxpayer, to keep the accounting records for 3 years from the liquidation since in this case the standard statute of limitation would apply (i.e. 3 years). As the taxpayer (i.e. the company) ceases to exist, it is not clear who will be the person that will be responsible for keeping the accounting books and the underlying documentation for liquidated entities. **Chile is recommended to ensure that the record keeping requirements are applied in such a way that accounting records are kept for five years in all cases.**

128. In addition, around 50 000 of inactive companies have never reported to the SII that they have started any economic activity and do not comply with their filing obligations which raises concerns that accounting records information might not be available in all cases. **Chile is therefore recommended to review its system whereby a significant number of non-complying inactive companies remain with legal personality on the Commercial Registry.**

Oversight and enforcement of requirements to maintain accounting records

129. While accounting records in specific industries are under the supervision of the relevant supervisory authorities (e.g. the CMF for the banking), corporate accounting records are generally under the sole supervision of the SII. The SII is the institution that ensures that all taxpayers keep proper accounting books and records, in respect of obligations under both the Tax Code and the Commercial Code.

130. The filing rates in Chile are high and SII take actions against non-filers. According to the information provided by SII, the tax return filling rate for companies and partnerships is 78.17%. Different actions are carried out against non-filers. The intensity of the action depends on the risk management model that the SII has operated since 2014. The actions range from persuasive emails and simple notices to audit processes or direct collections in the case that domestic legislation allows.

131. During the period under review, the SII performed 20 701 audits and 6 904 Compliance reviews where the proper keeping of accounting records was checked. The table below shows the number of cases of non-compliance detected and the sanctions applied in these cases. The Chilean authorities indicated that the most frequent cases of non-compliance refer to a) taxpayers that did not show their accounting records or impede the inspection of them (Art. 97 No. 6 of the Tax Code); b) taxpayers that do not have any accounting records or auxiliary records or accounting data registered as demanded by the Commissioner's instructions or in accordance with the law (Art. 97 No. 7 of the Tax Code); c) taxpayers that have lost their accounting records or the accounting records cannot be used anymore because of a non-fortuitous event.

Supervisory activity by the SII (Accounting records)

	Number of inspections	Compliance review	Legal entities involved	Number of sanctions imposed
2015	1 700	172	1 872	12 790
2016	6 759	532	7 291	11 764
2017	7 515	2 219	9 734	8 154
2018	4 727	3 981	8 708	6 004
Total	**20 701**	**6 904**	**27 605**	**38 712**

132. With the exception of the issue with inactive entities (described in paragraph 128), the tax compliance procedures and fines applied by the SII (indicated in the table above) seem to be adequate to ensure availability of accounting records. Chile has reported that taxpayers' compliance regarding their accounting and record-keeping obligations is generally good.

Availability of accounting information in EOIR practice

133. Chile received 53 requests for accounting information during the review period. The information was provided in all cases at the satisfaction of the requesting party.

A.3. Banking information

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

134. Obligations to maintain banking information in accordance with the standard and its implementation and supervision is confirmed to be in line with the standard. However, issues identified under section A.1 in relation to beneficial ownership requirements, both under the legal framework and the implementation in practice, have an impact on the availability of accurate beneficial ownership information of bank accounts.

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

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	Deficiencies identified in the definition of beneficial owners for legal entities and legal arrangements have a direct effect on the availability of beneficial ownership information for bank account holders, since financial institutions strictly apply the requirements under the AML legislation, which do not fully meet the standard.	Chile is recommended to ensure that information on beneficial owners of bank accounts for legal entities and legal arrangements is available in all cases in line with the standard.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	Supervision by the Financial Intelligence Unit (UAF) on the requirements for financial institutions to identify the beneficial owners of bank accounts presents shortcomings when it comes to the quality and depth of these checks.	Chile is recommended to further strengthen its supervision programmes and apply effective, proportionate and dissuasive sanctions in cases of non-compliance, so that the availability of beneficial ownership information on bank accounts in line with the standard is ensured in all cases.
Rating: Largely Compliant		

A.3.1. Record-keeping requirements

136. The 2014 Report concluded that Chile law contains requirements to maintain banking information in line with the standard and that banking information should be available in Chile. There has been no change since the last review in respect of the key legal obligations or supervisory practices concerning availability of banking information as required under the standard.

Availability of banking information

137. All banks are subject to **Know-Your-Customer** (KYC) rules in accordance with the Bank Regulations (Chapters 2-2 and 1-14). Among other things, they must get to know and identify their customers; the profile of the activities of the customer; the amounts and origin of the transactions. In case of companies, their tax identification number and legal ownership details must be provided, as well as the proof of their inscription/registration and their deed of incorporation. Special care is also required to properly identify the transferor and beneficiary of a transfer of funds. In case of non-compliance, the Superintendence of Banks and Financial Institutions (SBIF) may apply fines in accordance with article 19 of the General Banking Law.

138. Bank clients must provide at least the following information: (i) personal identity number, passport number or tax number; (ii) passport-size photograph; (iii) fingerprint; (iv) current bank statements; (v) their own signature or that of their representative; and (vi) information about their business activity and solvency. In the case of companies, banks must obtain proof of incorporation and power of attorney. Criminal sanctions apply if false

information is provided. Any broker or dealer, being a bank or stockbroker, are responsible for verifying the identity and legal authority of persons for whom they act as intermediaries.

139. Banks, as any commercial entity, are subject to the accounting requirements of the Commercial and Tax Codes, including the obligation to keep books, correspondence and documentation related to their business. Pursuant to article 155 of the General Banking Act, financial institutions under the supervision of the SBIF[21] are obliged to keep their books, forms, correspondence, documents and slips for six years (as of the date of the last entry made on such books or as of the date when the documents were issued, as the case may be).[22]

140. The SBIF´s supervision model involves both off-site and on-site activities. The former is aimed at constantly monitoring all supervised financial institutions. This process involves analysis of indicators related to credit, financial and operational risk. On the other hand, on-site activities consist of examining, at least once a year, all banking institutions in order to give them grade in terms of solvency and management, fulfilling a requirement established by the General Banking Act. In particular, the maintenance of bank records, such as those indicated above, are part of the matters reviewed in bank´s management evaluation process.

141. In practice, the SBIF audits each bank every year. When the audit involves checking the files of a licensee, the supervision department checks whether the KYC policy has been properly implemented, and, for instance, the recording of cash transactions and international transfers. The SBIF indicated that banks are found to be generally compliant with record keeping obligations pertaining to their clients' accounts as well as to related financial and transactional information. Article 19, of the General Banking Law, modified by article 36 of the Law No. 21.000, gave broad powers to the SBIF (now CMF) to sanction all companies, persons or entities subject to the control of

21. In accordance with the provisions of the ninth transitory article of the Law No. 21.130 and the DFL No. 2 of 26 April 2019, from 1 June 2019 the Commission for the Financial Market (CMF) has taken over the powers of the Superintendency of Banks and Financial Institutions (SBIF).
22. Chapter 1-10 of *Recopilación Actualizada de Normas* ("Consolidated provisions in force applicable to banks") of the SBIF on conservation and elimination of archives indicates the documents to be kept, including: Books, documents and correspondence that are directly or indirectly related with transactions recorded in the bank´s accounting records or with any pending matter or litigation, minutes books of shareholder´s meetings, of board meetings or decision making committees; and in general all documents related to the company´s institutional history.

the CMF that incur in infractions of the laws, regulations, statutes and other norms that govern them or fail to comply with the instructions or orders legally issued by the Commission. During the review period, the SBIF did not detect cases of non-compliance with record keeping obligations during the annual audit processes.

142. The SII itself maintains in its database a certain amount of banking information periodically provided by banks in tax information returns. First, the Chilean law requires banks to annually inform the tax authorities of the interests and other income paid to their clients (Income Tax Act, Art. 101). Second, banks annually submit information to the SII on loans granted (Tax Code, Art. 85). Therefore, even though the tax authorities do not maintain a list of account holders as such, they are informed annually of the name of all the persons that have earned interest income during a fiscal year and a complete record of all these persons is maintained in the SII database. This reporting obligation is respected in practice – all banks file the sworn statements at the due date every year.

143. It is therefore confirmed that the Chilean banks respect their obligations to keep banking information on account holders and on the transactions they perform.

Beneficial ownership information on account holders

144. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) be available in respect of account holders. In Chile, beneficial ownership information is available through AML obligations, which apply to banks and therefore beneficial ownership information is available in Chile on all bank account holders. The analysis and considerations provided for under element A.1, except the one on the scope of application, are applicable here, in the context of beneficial ownership information of bank account holders.

145. Pursuant to the AML Act, banks must apply CDD measures in respect of customers, business relationships and transactions, and conduct on-going monitoring of business relationships as prescribed in regulations. Reporting entities must keep all records in relation to CDD for five years.[23] Banks cannot rely on CDD performed by third party regulated persons.

146. As mentioned in paragraph 81, in accordance with section 2(b) of Circular 57/2017, obliged persons have to undertake the procedure of identification of the beneficial owner at least once a year for business relationships that began before 12 June 2017. Nonetheless, there is no guidance in the Chilean legislation fixing a set time for performing the update

23. Section II of Circular UAF No. 49/2012.

of the beneficial ownership information for clients that began a business relationship since 12 June 2017. Chile'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).

147. Deficiencies identified in section A.1.1 with regard to legal entities and legal arrangements (including partnerships and trusts), have a direct effect on the availability of relevant banking information. It is in fact not clear how banks are identifying or may identify the beneficial owners for legal entities, partnerships and trusts, especially in those complex cases where the legal owners or key persons are legal entities or legal arrangements. **Chile is recommended to ensure that information on beneficial owners of bank accounts for legal entities and legal arrangements is available in all cases in line with the standard**.

148. As described in section A.1.1, beneficial owner(s) of accounts may not be adequately identified in cases where simplified CDD is performed as it allows banks to postpone the verification of the beneficial owner identification until an "act, operation and/or transaction is carried out above a certain monetary threshold". For the application of the simplified CDD, UAF have to issue a regulation in which it determines (based on National AML/FT Risk Assessment and Sectorial Risk Based Approaches – both issued by UAF) the intensity in the application of the CDD measures by obliged persons. According to the information provided by the Chilean authorities, UAF has not issued said regulation, therefore in practice banks cannot apply yet simplified CDD measures. Chile should ensure that, when the application of the simplified CDD is allowed, the beneficial ownership information is collected for all the accounts and is reliable information (see Annex 1).

149. Compliance by banks with their AML/CFT requirements is mainly reviewed by the UAF. As described above under A.1, while the UAF has a structure in place to assess the collection and keeping of this information by banks, no check on the quality of the information requested took place and cases of non-compliance only refer to instances where the obliged persons did not have in place internal policies in line with the instructions. Important deficiencies are therefore identified in the supervisory system for the compliance with the requirement to identify, verify and keep up-to-date beneficial ownership information of legal entities.

Conclusion

150. Documental obligations are properly implemented to ensure that banking information is available in Chile in line with the international standard. This has been also confirmed in practice. However, the deficiencies identified under the legal framework for the identification of the beneficial

owners of bank accounts may have an impact on the quality of the information kept pursuant to AML obligations. The issues identified under A.1 about the intensity and quality of supervisory activity by the UAF over beneficial ownership requirements also apply in this case. **Chile is therefore recommended to strengthen its supervisory activity to make sure that beneficial ownership information on bank account holders is actually kept in accordance with the standard**.

Availability of banking information in EOI practice

151. Chile received 6 requests for banking information during the review period. The requested information related to identification of the account-holder and its representative, copy of the account opening documents and specific bank accounts movements. None of the requests were related to beneficial ownership information. Chile was able to provide the information in all cases.

Part B: Access to information

152. 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).

153. Chile law gives broad access powers to the competent authority to ensure access to the requested information in line with the standard.

154. According to the 2014 Report, Chile was not able to access banking information prior to 1 January 2010, therefore the legal and regulatory framework was determined "in place, but needing improvement" and Chile was rated as Partially Compliant on access to information. Nonetheless, once the Multilateral Convention entered into force in Chile (in November 2016), given its prevalence over Chilean domestic law that limited the exchange of said information, Chilean authorities became able to access and exchange banking information which pre-dates 1 January 2010.

155. In the current review period, Chile received 61 requests and never failed to provide the information due to a lack of access powers, including for information that pre-dates 1 January 2010. The competent authority obtained information from a variety of sources, including the SII database, banks, Commercial Registries and other information holders.

156. 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

157. The 2014 Report concluded that Chile law gives very broad access powers to the competent authority to ensure access to the requested information in line with the standard, except for some banking information (see B.1.5 below).

Accessing information generally

158. The competent authority for exchanging information designated in most of Chile's EOI instruments is the Minister of Finance, and, by delegation, the Director of the SII (Tax Code, Art. 6(6)). The SII therefore gathers information for both domestic and international tax purposes. Within the SII, the department in charge of gathering information for EOI purposes is the International Audit Department (DFI). The competent authority requests other departments to gather information, depending on their area of competence. The competent regional offices gather information from taxpayers or third parties depending on their territorial competence, the Large Taxpayer Audit Unit gathers information from large taxpayers, and the Special Cases Office gathers information from banks. The process for gathering information and sharing of responsibilities in EOI cases is now detailed in a SII Circular 18/2013 of September 2013 (*Oficio Circular*) which reflects the practice developed by the DFI.

159. In accordance with article 63 of the Tax Code, the SII should make use of all legal sources to check the accuracy of tax returns and to obtain the information related to taxes that are or could be due. In addition, pursuant to article 60 of the Tax Code, the SII is empowered to examine books and documents of taxpayers and persons or institutions obliged to withhold taxes. Besides, the SII can require from persons domiciled in Chile a sworn statement with information about facts related to third persons. Individuals obliged to keep professional secrecy are exempted from the referred obligation provided for in article 60 (with respect to information covered by such secrecy, see paragraph 187).

160. In addition, the SII may require information kept by other governmental authorities, and the required authority must collaborate in such request (Art. 5 of the Law of General Administrative Bases of the State). All public officers, from all public entities, must provide information to the SII, upon request and in order to audit tax obligations (Art. 87 of the Tax Code). Under article 76 of the Tax Code, Public Notaries have an obligation to provide information to the SII, related to the transfer of property, mortgages and other elements related to the income of taxpayers. Finally, pursuant to article 84 of the Tax Code, if the account holder has remitted balance sheets and other financial statements to banks, such institutions must upon request remit copies of that documentation to the SII.

161. Information on the ownership of legal entities (companies and partnerships) and *sociedades civiles* (non-commercial entities) that perform economic activities is maintained by the SII, by virtue of the mandatory declarations of creation of these entities, and annual declarations they make. In addition, the Commercial Registers and Legal Archives of public notaries also contain ownership and identity information and are publicly available. The tax authority can access the shareholder's ledgers of Chilean companies to check the correctness of tax returns or to obtain information relevant for tax purposes (Art. 60(1) of the Tax Code). The tax authorities can also request information from any person domiciled in Chile about a third person in order to apply, supervise or investigate the compliance of the tax law. The SII may request "a written sworn statement or summon any person domiciled within its office jurisdiction to declare under oath about facts, data or records of any nature related to third persons" (Art. 60(8)). This provision would capture, among others, the Commercial Registers and Legal Archives of public notaries but also Chilean resident trustees of foreign trusts.

162. It is therefore confirmed that the Chilean competent authority has strong power to obtained and provide ownership and identity information, accounting record and banking information in line with the standard.

Accessing information in practice

163. The Chilean authority indicated that the most commonly used information gathering powers for EOI purposes are articles 63, 60, 76 and 87 of the Tax Code.

164. Chile received 61 EOI requests over the review period, covering 53 legal entities and arrangements. In case of requests for ownership information, the requests have been satisfied by consulting the internal database (*Sistema Integrado de Cumplimiento Tributario*), an internal application that contains whole history ("*ciclo de vida*") of the taxpayer, including all the

business information since the start of its tax activity, all its modifications, and all the sworn statements submitted by the taxpayer.

165. In the case of accounting information, some information has been obtained from the Securities and Insurance Superintendence (SVS), currently CMF (shareholders' meeting minutes, balance sheets, and other financial information) or through the consultation of documents already in possession of the tax authority (sworn statement No. 1847 (balance sheets) and No. 1923). However, in general in the case of accounting information, the competent authority requested various regional offices to gather accounting information from the concerned taxpayers. There is not requirement to open a tax audit and the tax officer does not have to inform the taxpayer that the information is required in relationship to an EOI request. In practice, the regional tax officer contacts the entity to request the information within a given deadline. The representative of the taxpayer entity must then visit the regional office and submit the original documents to the tax officer, who checks the documents, makes copies and certifies the copies. The copies are then forwarded to the competent authority.

166. Banking information was either collected from the SBIF, when information is on its own database (e.g. identification of the account holder), or requested directly to the bank.

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

167. The tax authorities access powers not only "to check the correctness of tax returns" but also more broadly "to obtain information", which encompasses EOI (Art. 60). In addition, article 6(6) of the Tax Code indicates that carrying out exchange information is part of the tasks of the Director of the SII. The Chilean authorities access information for EOI purposes on this basis, since EOI is one of the tasks of its Director, whether or not it would have a domestic tax interest in doing so. SII Circular 18/2013 on EOI also clearly indicates that information should be gathered for EOI purposes absent a domestic tax interest (chapters 2.1.3 and 2.4). In practice, Chile has accessed information for EOI purposes in which it had no domestic tax interest.

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

168. The law in Chile provides for compulsory powers including monetary penalties and use of search and seizure, which can be applied in cases where the requested information is not provided. Further, sanctions under the respective acts for not keeping information required under the act apply as well.

169. The SII can request the court to order imprisonment up to 15 days against the person who does not comply, after having been required twice to come to the SII offices, to provide information (Tax Code, Art. 93, 95 and 99). The non-compliance with the obligation set out in article 34 to provide a sworn statement and in article 60(8) to provide information on third persons is punishable by a fine between 20% and 100% of the UTA, the amount of which is CLP 604 464 in May 2020 (EUR 648). The non-respect of the obligation set out in article 35 to present its books of account to the regional tax office is also sanctioned with a fine between one monthly taxation unit and one UTA, i.e. between CLP 50 372 and 604 464 (EUR 54 to EUR 648).

170. Even though the use of SII compulsory powers has not been needed for the collection of information for an EOI purposes (as information has always been provided when the SII requested it), they have been applied by SII for collection of information for domestic purposes (between 36 and 99 times per year over the last four years).

171. In the case of banking information, if some or all the information requested is not provided or is provided with delay even though the accountholder accepted their disclosure, the bank can be sanctioned by a fine, the amount of which depends on the delay. Pursuant to article 62 of the Tax Code, any delay by a bank as well as partial or total omission in providing the requested information is subject to a fine of CLP 38 827 – 501 000 (EUR 42 to EUR 537). However, if a third party (i.e. the bank) requested by the SII to provide information under a warning measure ("*apercibimiento*") does not comply within 30 days, an additional fine is applicable, the amount of which depends on the delay and the number of persons with respect of whom the information has been omitted or with respect of whom there has been a delay in submitting the respective information. The maximum fine applicable cannot exceed CLP 15 million (EUR 16 091). If the bank does not conform to a court decision for disclosure, the sanctions referred to above are applicable. Paragraph 177 below explains the procedure to access bank information.

172. In addition, if an entity does not provide the information by the deadline despite a reminder, the tax auditor can put the entity under "restricted activity" category, meaning that entity will not be allowed to issue invoices.

173. Articles 60(4) and 60(5) of the Tax Code provide for the power to search premises for the purpose of preparing or checking inventory records; nonetheless, these provisions do not give the SII a right to seize documents and appear to restrict search specifically to inventory records.

174. In practice, there has never been a need to enforce the powers for the EOI activity under review.

B.1.5. Secrecy provisions

175. Secrecy provisions in Chile relate to bank and professional secrecy, and other professional secrecy provisions.

Bank secrecy

Secrecy and exceptions to secrecy

176. Article 154 of the General Banking Law distinguishes between secret and confidential banking information. Bank secrecy covers a broad segment of the banking operations, such as the movements and balance of current accounts, and the deposits and placements of any kind performed by the banks, and this protection extends to savings accounts, time deposits and other forms of placement. Information on the identification of the account holder, the existence of a bank account or the identification of the account can be accessed directly by SII without the intervention of a judge.

177. The General Banking Law lifts the secrecy and confidentiality duties in limited cases: banks can disclose "secret information" to the depositor or whoever is expressly authorised by him/her. Pursuant to this provision, account holders can give the bank an anticipated authorisation to disclose information to the SII. This is rarely done in practice. "Confidential information" can more broadly be disclosed if the requesting person can prove a legitimate interest and that disclosing such information may not cause foreseeable damage to the accountholder. Article 154 further provides that courts may order the remittance of information on specific transactions directly linked to ongoing proceedings or investigations.

178. The Tax Code also provides for various ways to lift bank secrecy and confidentiality. First, the tax authorities of Chile routinely receive information from banks, for instance on interest payments and other income paid to banks' clients (Income Tax Act, Art. 101) as well as information on loans granted (Tax Code, Art. 85). One of the EOI requests was answered with the information routinely received from banks. Second, the Chilean competent authority can obtain banking information from the accountholder pursuant to article 60 of the Tax Code. Third, articles 62 and 62bis of the Tax Code set the procedure for accessing any type of banking information from banks for EOI purposes. Article 62 expressly states that information "related to bank operations of specific persons, including all those covered by bank secrecy or subject to bank confidentiality" can be accessed by SII, "in order to comply with the following information requests: i) Those made by foreign tax administrations, in accordance with what has been agreed to in an International Exchange of Information Agreement signed by Chile and ratified by National Congress.(…)". These three mechanisms has been used in practice to obtain bank information to answer EOI requests.

Procedure for accessing banking information from banks for EOI purposes

179. The procedure for accessing banking information for EOI purposes from banks in application of articles 62 and 62 bis of the Tax Code is detailed in the 2014 Report, paragraphs 209 to 236. It has not changed since then.

180. In the absence of a blanket authorisation from its client to disclose information to the SII, the bank notifies its client within 5 days, and the client can answer within the next 18 days. The law provides for a minimum but no maximum deadline for the bank to provide information when the client agrees with this. The deadline given in practice to the banks, if too long, may unduly delay exchange of information. In four EOI cases during the review period, the account holder gave permission to disclosure of information. In the other two cases, the permission of the accountholder was not needed to obtain and exchange the requested bank information.[24]

181. If the client does not authorise the disclosure of information or does not answer, the bank informs the SII within 5 days, without submitting the information. It happened once in in the past that the account holder could not be found (and thus his consent could not be obtained). In these cases, the SII can solicit a court order from the Tax and Customs Court having territorial jurisdiction (depending on the address of the accountholder). It informs the court of which competent authority submitted an EOI request and provides supporting information (the whole procedure is confidential). The judge decides on the request according to the merit of the information provided by the parties. The overall time for information to be obtained when a court order is needed is not set in the law and the effectiveness of information exchange will depend on the practice of the Tax and Customs Court on summoning the parties to the hearing and of the Court of Appeals. The one case where the information was sought through a court procedure was pending at the time of the 2014 Report and the Chilean authorities have now indicated that in the end the court granted access to the information requested. The procedure took in total two months. None of the requests for banking information received during the current review period was handled through this procedure. Chile should ensure that the process for accessing bank information would not hinder or unduly delay the exchange of information (see Annex 1).

24. In one case, the requesting jurisdiction asked if a person had a bank account in any Chilean Bank. This information was requested to SBIF and it answered that this person did not have an account in a Chilean bank. For the other case, the requested information (the identification of the account holder of an account which number was provided by the requesting jurisdiction) was not subject to the bank secrecy rules and therefore it was obtained from the bank without the authorisation of the accountholder.

Distinction between information pre-dating or post-dating 1 January 2010

182. The procedure, introduced by Law 20.406, is available for bank transactions taking place after 1 January 2010. Information that pre-dates 1 January 2010 is not available for EOI purposes in civil tax matters, even where the information relates to taxable periods or events after that date – Chile's DTCs did not include article 26(5). At the time of the 2014 Report, Chile had declined providing information for this reason.

183. Since then, the Multilateral Convention entered into force in Chile, which requires the exchange of banking information without a restriction on the date of the information, provided it relates to a taxable period post-dating its entry into force. According to the Chilean authorities, the principle that treaties override domestic laws would apply in this situation. Therefore, with the entry into force of the Multilateral Convention in November 2016 and its explicit and precise provisions on which transactions the exchange of information applies to (articles 21 and 28), Chile should be able to provide banking information which dates back before 2010, for assistance related to taxable periods beginning on or after 1 January 2017.[25] The explanatory note sent to the Congress for the process to approve the Convention supports the interpretation by the Chilean authorities.[26]

184. Nonetheless, this interpretation has not been tested, in the absence of any experience in practice in accessing pre-2010 bank information for EOI purposes as Chile has not been asked for this type of information. Chile should monitor the access to banking information for EOI purposes to ensure that it can be obtained in all cases, in line with the standard (see Annex 1).

Other secrecy provisions

185. Both the Code of Civil Procedure and the Code of Penal Procedure recognise an attorney-client privilege. These Codes however do not define the extent of the attorney-client privilege in Chile and do not, in particular, specify whether secrecy applies only to communications produced for the purposes of seeking or providing legal advice or for the purposes of use in

25. All of Chile's EOI partners are signatories of the Multilateral Convention. Thailand signed the Multilateral Convention after the cut-off date, on 3 June 2020.

26. "… **Bank secrecy** cannot be used to deny assistance under the [Multilateral] Convention." "It is understood that information from years prior to the entry into force of the [Multilateral] Convention can be requested if that information is required to determine the payment of taxes accrued in tax years that begin after its entry into force. In the case, … information regarding the purchase of that real property made in years prior to the entry into force of the Convention**, including bank information** regarding the amount actually paid for the purchase."

existing or contemplated legal proceedings, which are the only cases where the standard agrees with the prevalence of secrecy.

186. The Chilean authorities indicate that professional secrecy covers professional persons when acting in their capacity as such with respect to the nature of the information held (professions that by its nature require some degree of confidentiality and only referring to such confidential information). It would only encompass professional communications between an attorney and his/her clients relating to that professional's exercise of his/her profession. As mentioned in paragraph 239 of the 2014 Report, this interpretation is supported by case law and was confirmed by the representative of the bar association.

187. When a lawyer acts as the representative of the taxpayer (outside of legal advice or proceedings), he/she acts as general attorney, rather than lawyer, and therefore the privilege would not apply (Code of Ethics, articles 7 and 15). Similarly, the privilege would not apply if the lawyer would act as nominee or trustee. Finally, the privilege would not apply to documents delivered to a lawyer in an attempt to protect such documents from disclosure. For instance, accounting records (and other documents supporting tax declarations) are not covered by the attorney/client privilege (Tax Code, articles 35 and 60).

188. The attorney-client privilege in Chile is therefore considered to be in line with the standard. The SII has never had to approach a lawyer in relation to an EOI request.

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.

189. Chile law does not provide for notification, post-notification and appeal rights in the case of EOI requests as a general rule. However, as seen in the 2014 Report, in the case of requests for banking information, there is a requirement to notify the taxpayer when a prior authorisation to the bank has not been given. In this instance, the bank will always know the requesting party and the basis for the request. Nothing has changed compared to the situation assessed in 2014, therefore the two recommendations included in that report remain in place.

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

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	The Chilean competent authority must inform the bank of who is the requesting authority and of the basis for the EOI request. No exception exists to this requirement.	Chile is recommended to ensure that appropriate exceptions exist to the notification via the bank of the person concerned by an exchange of information request (e.g. in cases in which informing that person is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).
	When a specific accountholder has not given a general (or specific) authorisation to the bank to disclose any information to the tax authorities, the Tax Code requires the prior notification of the person concerned when there is a court hearing on disclosure of banking information in relation to an EOI request. This prior notification procedure does not allow for any exception.	It is recommended that certain exceptions from notification of a court hearing for disclosure of banking information be permitted, e.g. in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction.
Determination: The element is in place but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
Rating: Partially Compliant		

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

Notification

191. As a general rule, Chilean law does not provide for prior notification procedure to inform the taxpayers that they will be required to produce accounts and records or that a third party will be required to provide such

information. However, in the case of requests for banking information, there is a requirement to notify the taxpayers when they have not given a prior blanket authorisation to the bank to share information with the SII.

General procedure

192. The Chilean law does not require the notification of the person who is the object of a request for information, even though taxpayers have the right to be informed of any auditing against them by the Chilean tax authority (i.e. taxpayers have the right to obtain information regarding the nature and subject matter of the request if the competent authority asks them for information). SII Circular 18/2013 includes a model letter to information holders which indicates that the request for information is based on an EOI request, without mentioning the name of the requesting jurisdiction or the reason for the EOI request. The circular specifies that "in the event that the requesting tax authority asks not to disclose that it is an international exchange of information request because it may impede the success of the audit or investigation of a tax crime", this will be noted in the confidential letter sent by the DFI to the regional tax office.

193. In practice, the person requested to provide information for EOI purposes was not informed of the EOI background of the request during the period under review.

Disclosure of information to the requested bank

194. As clarified in the 2014 Report, in the case of banking information not already available in the SII's databases, the SII must inform the bank of who is the requesting authority and of the basis for the EOI request. Circular no. 46 also specifies that the SII must provide the bank with the elements of identification submitted by the requesting authority. In the past this requirement has been interpreted in practice in a very comprehensive way. In a specific case, prior to the review period (in April 2014), a copy of the foreign competent authority letter was attached to the request and as court procedure was needed, the letter became publicly available when the court order was issued. The Chilean authorities have informed that this was a one-off case and that the letter from the requesting jurisdiction is no longer attached to the request sent to the banks.

195. The bank who is asked to produce information for EOI purposes must be informed of which foreign tax authority had requested the information. This means that it is known to the bank that the information will be exchanged to the foreign tax authority of the identified jurisdiction. It is recognised that, when using their access powers, the tax authorities could state the legal basis used for asking the information from the record holder

(i.e. the domestic law provisions and the international information exchange arrangement) and in practice, this has happened for two requests of information. However, in some cases this could undermine the success of obtaining the information. This is especially true when the bank informs its client of the request. No exceptions exist under the applicable procedure. **The recommendation is therefore that Chile introduce exceptions to the requirement of informing the person who is asked to produce information where this is likely to undermine the success of obtaining the information or to unduly delay the procedure**, as the person concerned may destroy any other relevant documents knowing that otherwise they might be used against him/her in the requesting jurisdiction.

Notification of bank account holders of EOI requests

196. In addition, as seen under B.1, the person has the right to oppose and challenge the disclosure of such bank information pursuant to articles 62 and 62 bis of the Tax Code. If he/she has not provided prior authorisation to the bank to submit any information requested by the SII (which is the case in the great majority of cases), the accountholder is notified of the EOI request and can intervene at two stages: (i) when the bank receives the information request from the SII, and (ii) when the court schedules the hearing. These procedures do not seem to undermine the confidentiality safeguards at this stage as per the standard. However, as seen above, problems could arise if the original letter was submitted to the bank, since it will become part of the public documents attached to the court order, once it is issued. Nonetheless, as mentioned above (paragraph 194), the Chilean authorities indicated that they have taken measure to prevent sending the letter of the requesting jurisdiction when information is sought from a bank.

197. There is not any exception from the prior notification of the person concerned, not even in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. The notification procedure of the Chilean Tax Code therefore does not conform to the standard. **Chile is therefore recommended that certain exceptions from prior notification be permitted** (e.g. in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

In practice

198. Chile was able to access and exchange the requested information without requiring a court order. It is therefore not possible to assess the implementation in practice of the notification and appeal rights. Nonetheless,

for domestic tax purposes, Chile has regularly used its access powers for bank information through a judge. Chile should ensure that the process for accessing bank information would not hinder or unduly delay the exchange of information (see Annex 1).

Part C: Exchanging information

199. Sections C.1 to C.5 evaluate the effectiveness of Chile' network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Chile' relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Chile' network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Chile 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.

200. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Chile, the legal authority to exchange information derives from 36 double tax conventions (DTCs), 4 Tax Information Exchange Agreements (TIEAs) and the Multilateral Convention. Chile has an extensive EOI network covering 136 jurisdictions; the increase from 83 partners in the 2014 Report is due to the increased number of jurisdictions participating in the Multilateral Convention. Chile has also signed eight new DTCs and three new TIEAs, all with jurisdictions covered by the Multilateral Convention, i.e. these EOI relationships meet the standard.[27]

201. The vast majority of these EOI instruments have been ratified by Chile. The only bilateral agreements not in force are the DTCs with India, the United States and the United Arab Emirates. The Multilateral Convention entered into force on 1 November 2016 and Chile's EOI partners are signatories of the Multilateral Convention. The only bilateral EOI instrument not complemented by the Multilateral Convention is the DTC with Thailand.[28]

27. DTCs with Argentina, China, the Czech Republic, Italy, Japan, the United Arab Emirates and Uruguay and TIEAs with Bermuda, Jersey and Uruguay (see Annex 2).
28. Thailand signed the Multilateral Convention after the cut-off date, on 3 June 2020.

202. The interpretation of the concept of foreseeable relevance is in line with the standard. Issues identified in the previous report, in particular with reference to the difficulty to give full effect to the treaties in force with the limitations on the ability to exchange banking information predating 1 January 2010, have been now fixed with the entry into force of the Multilateral Convention, for assistance related to taxable periods beginning on or after 1 January 2017.

203. 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

Other forms of exchange of information

204. Since 2018, Chile is automatically exchanging financial account information in application of the Common Reporting Standard, exchanges automatically Country by Country Reports (CbCR) information and participates in spontaneous exchange of tax rulings. In addition, Chile carries out annual automatic exchanges of information with 13 jurisdictions for different income types under administrative agreements.

C.1.1. Foreseeably relevant standard

205. All of Chile’s EOI instruments provide for exchange of information that is “foreseeably relevant”, “necessary” or “relevant” to the administration and enforcement of the domestic laws of the contracting parties. This scope is interpreted by Chile in a way consistent with the international standard.

206. In particular, SII Circular 18/2013 of September 2013 states that the standard of foreseeable relevance aims to make the tax information exchange as wide as possible and sets a procedure that the DASCT (Department of Selective Analysis for Tax Compliance-*Departmanto de Analisis Selectivo del Cumplimiento Tributario*) must follow when receiving a request (chapter 3.2.1). The conditions for taking action on an EOI request are that the request is based on an instrument in force and comes from a competent authority, that it contains enough elements to allow the identification of the taxpayer or group of taxpayers referred to in the request, and that there is enough information to understand the request. The request must also be “foreseeably relevant”, which is simply referred to as “information covered by the respective Convention and that is available or feasible to be obtained since it may be required from the taxpayer, a third party, or other public institution”. There is no restriction

to its definition in the Circular. The elements of the instructions are clear and conform to information exchange upon request to the widest possible extent.

Clarifications and foreseeable relevance in practice

207. In practice, Chile asked for clarifications from the requesting party in four cases during the review period. Most of the clarifications were due to formal elements missing in the requests, which only in one case led to the closure of the procedure since the requested jurisdiction did not come back with the clarifications required. In the other three cases, the information requested by the EOI partner was provided. In addition, two of the cases declined by Chile had no proper identification of the audited taxpayers, neither sufficient nor detailed reason about why that tax administration was asking for specific information, such as transfer pricing documentation and secret commercial contracts. Chile responded that it would be able to exchange information if more background was provided, but no more information was sent by the requesting jurisdiction and Chile closed the cases.

208. It can be concluded that all of Chile's EOI relations provide for the criteria of foreseeable relevance and no issue in respect of the application of foreseeable relevance was encountered in practice either. In addition, peers did not raise any difficulty on this aspect.

Group requests

209. Chile has not received any group requests over the review period. According to the information provided by the Chilean authorities, 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. The interpretation of how group requests would be handled by the Chilean Competent Authority is in line with the standard.

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

210. All of Chile's EOI agreements allow for EOI with respect to all persons. Where some of its older DTCs[29] do not explicitly provide that the EOI provision is not restricted by Article 1 (Persons Covered), Chile has advised that it interprets the EOI provision to allow exchange with respect to all persons regardless of their residence. In addition, all of Chile's EOI partners, with the exception of Thailand, are signatories of the Multilateral Convention.

29. The DTCs with Malaysia, Switzerland and Thailand.

211. During the period under review, Chile 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

212. The standard requires the exchange of all types of information, including banking information, information held by a fiduciary or nominee, or information concerning ownership interests.

213. The 2014 Report noted that many of Chile's DTCs did not specifically include language mirroring Article 26(5) of the Model Tax Convention and explained that a provision in Chile's legislation and some EOI instruments limited the ability of the competent authority to use its access powers and exchange for some banking information on transactions pre-dating 1 January 2010. That report recommended Chile to ensure that its exchange of information mechanisms allow for effective exchange of information, including exchange of full banking information to the standard, i.e. that information predating that date but relevant for tax years covered by the EOI provisions be exchanged.

214. Since the 2014 Report, all of the treaties negotiated by Chile include language mirroring Article 26(5) of the Model Tax Convention. In addition, all of Chile's EOI partners, with the exception of Thailand, are participating in the Multilateral Convention, which ensures exchange of full banking information to the standard, for assistance related to taxable periods beginning on or after 1 January 2017. Chile should therefore work with Thailand to ensure that their EOI relation is in line with the standard (see Annex 1).[30]

215. During the current review period, Chile was able to respond to requests for all types of information covered by the standard. No issues were identified by peers.

C.1.4. Absence of domestic tax interest

216. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction. It is noted that one of Chiles DTCs[31] lacked a provision, mirroring Article 26(4) of the OECD Model Tax Convention. The 2014 Report noted, however, that the absence of such a provision did not create any restrictions provided that Chile interprets this treaty and its domestic laws in such a way that no domestic tax interest applies.

30. Thailand signed the Multilateral Convention after the cut-off date, on 3 June 2020.
31. The DTC with Malaysia.

217. Chile continues to interpret its treaties and internal law in accordance with the standard. In addition, as already mentioned, in November 2016 Chile ratified the Multilateral Convention, which contains wording akin to Article 26(4) of the Model DTC, and covers most of Chile's EOI partners.

218. Chile has provided information in which it had no domestic tax interest during the review period, and this is consistent with the feedback received from peers.

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

219. All of Chile's EOI agreements provide for exchange of information in both civil and criminal matters. The 2014 Report noted that the DTC with Switzerland required dual criminality as a condition for exchange of information. Nonetheless, both Switzerland and Chile have signed and ratified the Multilateral Convention. Therefore, all of Chile's EOI relationships require the exchange of information regardless of whether the conduct under investigation, if committed in Chile, would constitute a crime.

220. Chile 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 (ToR)

221. There are no restrictions in Chile's EOI agreements or domestic laws that would prevent it from providing information in a specific form. During the review period, Chile 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

222. All EOI treaties signed by Chile and the Multilateral Convention are now in force except for the DTCs with India, United States and United Arab Emirates. Chile has already ratified the agreement with the United States and it is waiting for a notification from the other jurisdiction. Chile has been actively contacting them to receive update on their ratification process. The agreement with India and United Arab Emirates were signed recently (9 March 2020 and 31 December 2019), therefore are still under the ratification process.

223. The ratification process is always smooth in Chile and in general it does not take more than one year and a half for a treaty to be ratified.

Total EOI relationships, **including** bilateral and multilateral or regional mechanisms	**137**
In force	**124**
In line with the standard	**124**
Not in line with the standard	**0**
Signed but not in force	**12**
In line with the standard	**12**
Not in line with the standard	**0**
Among which – Bilateral mechanisms (DTCs/TIEAs) **not complemented** by multilateral or regional mechanisms	**1** [Thailand] [a]
In force	**0**
In line with the standard	**0**
Not in line with the standard	**1**
Signed but not in force	**0**
In line with the standard	**0**
Not in line with the standard	**0**

Note: a. Thailand signed the Multilateral Convention after the cut-off date, on 3 June 2020.

224. For a DTC or TIEA to have effect, it must be approved by the Congress, ratified by the President of the Republic, and published in the Official Gazette (Constitution, Art. 32(15) and 54(1)). The same applied to the Multilateral Convention. Once an EOI instrument comes into force, Chile does not need to take additional measures to make it effective.

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

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

225. Chile has an extensive EOI network covering 136 jurisdictions through 36 DTCs, 4 TIEAs and the Multilateral Convention. The increase in the number of EOI partners compared to the last review, where there were 83 jurisdictions covered, is mainly due to the new jurisdictions participating in the Multilateral Convention.

226. During the review period, Chile has approached three EOI partners in order to update the DTC to comply with the BEPS minimum standard. In addition, it is currently negotiating a number of double tax conventions, all of which include the provision of Article 26 of the OECD Model Convention. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction indicated that Chile 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 Chile should continue to enter into EOI agreements with any new relevant partner who would so require (see Annex 1).

227. 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.

228. Confidentiality of information received is ensured through general confidentiality processes in place at the SII, as well as in other measures specifically dedicated to EOI matters.

229. 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.3.1. Information received: disclosure, use and safeguards and C.3.2. Confidentiality of other information

230. The 2014 Report concluded that Chile's legal and regulatory framework and its practices are compliant with the confidentiality aspects of the international standard.

231. All treaties signed by Chile contain provisions aimed at keeping confidential the information received from a treaty partner. Further, Chile domestic law contains provisions protecting confidentiality of exchanged information in line with the standard.

232. First, all Chilean public officials have a general duty to treat in a confidential way all matters considered as secret by law, regulations, their features or by particular instructions (Administrative Statute Law 18.834, Art. 61(h)). Article 40 of the SII Statute (Decree 7 of 1980) further specifies that "the Internal Revenue Service's employees are under the prohibitions "… c) To reveal, absent the Director's instructions, information included in issued

reports or give to persons not related to the Service information regarding facts or situations known as a result of carrying out their functions". The Tax Code similarly provides that tax officials are prevented from revealing information provided in tax returns, unless such disclosure is necessary to fulfil the provisions of the Tax Code or other legal provisions (Art. 35). Pursuant to article 206 of the Tax Code (recently modified by Law 21.210 of February 2020) "the confidentiality obligations provided for in article 35 or other tax laws, will be maintained with respect to the officials of the Internal Revenue Agency and of the Treasury even after their functions have ceased (i.e. termination of employment)."

233. Disclosure of information to other tax authorities for determining the tax obligations of taxpayers, including to Competent Authorities for EOI purposes, is an exception to these general rules (Tax Code, Art. 6). Exceptions also cover judges and public prosecutors, who may obtain tax return information, for instance in the context of alimony proceedings, tax or criminal matters (Art. 35).

234. The breach of confidentiality duty is subject to administrative, civil and criminal sanctions. Pursuant to articles 101 and 102 of the Tax Code and articles 119-145 of the Administrative Statute Law, sanctions range from fines to suspensions and/or dismissal. Moreover, pursuant to article 246 of the Criminal Code, public officials that reveal confidential information may be subject to suspension from office and a fine which could potentially rise to imprisonment if the disclosure caused serious damage to the public interests. The existence of these obligations and sanctions are reminded to officials involved in gathering information for EOI purposes in SII Circular 18/2013 (see chapter 1.4).

235. In terms of EOI requests, the notice to the information holder does not include information which goes beyond description of the requested information and reference to the legal basis of the notice. However, as seen under element B.2, prior to the review period, in the sole case where a court order was needed to access banking information for an EOI request the letter from the requesting party was attached, which resulted that once the court order was issued, the entire file became public, including the letter. Chile has taken measure to prevent that the letter from the requesting authority will no longer be attached to the request to the bank. However, since it has not been possible to test the new procedure in practice, Chile should monitor the handling of requests for banking information to make sure that the letter from the requesting authority is not sent to the bank and therefore made public if a court order is needed (see Annex 1).

236. In practice, the competent authority has taken practical measures to ensure the confidentiality of the information exchanged. Paper documents are physically kept locked in a dedicated file cabinet placed under

video-surveillance. Designated individuals in the DFI hold a key, and documents must be locked when not in immediate use. Clean-desk policy is adequately followed by EOI personnel, who otherwise work in an open-space environment with people from different units.

237. To further ensure confidentiality, the SII increasingly relies on password protected electronic files, which are archived on a dedicated virtual library. Electronic access to this library is also restricted to the officials in charge of EOI and files are password protected.

238. Communication between the SII and other tax offices that may be involved in the gathering of information, is performed through confidential letter (*oficio reservado*), a form of communication which is given a confidential status by circular. Electronic documents are shared in password protected CD-ROMs. All letters and envelopes received by the competent authority and sent to foreign authorities by regular post are stamped with a "confidential" label, and on the documents it is also indicated that "the information is furnished under the provisions of an income tax treaty signed by Chile with a foreign government, its use and disclosure must be governed by the provisions of that treaty". The Chilean authorities have followed the guidance in the OECD Manual on Exchange of information, and later the Global Forum booklet "Keeping it Safe".

239. The 2016 Terms of Reference clarified 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 authorise the use of information for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. Chile's TIEA with Guernsey as well as the Multilateral Convention provide for the possibility to share information for non-tax purposes. However, both instruments clarify that the information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the requested party. Chile reported that there were no requests where the requesting partner sought Chile's consent to utilise the information for non-tax purposes and, similarly, Chile did not request its partners to use information received for non-tax purposes.

240. Confidentiality rules apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests. Chile's EOI instruments and domestic law specify that the confidentiality rules within EOI instruments apply to all information received (Tax Code, Art. 6(6)). This is also specified in SII Circular 18/2013 (chapter 2.2).

241. There has been no case reported by peers or by Chilean authorities, where exchanged information was unduly disclosed or made public during the period under review.

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.

242. All Chile's exchange of information mechanisms ensure that rights and safeguards of taxpayers and third parties are protected in line with the standard. Each of Chile's exchange of information mechanisms ensures that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, or information which is the subject of attorney client privilege, or the disclosure of information which would be contrary to public policy. Chile's domestic law does not allow any exceptions from the obligation to provide information requested for tax purposes, and no issues in this respect have been encountered in practice (see further section B.1.5).

243. 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.

244. The 2014 Report concluded that Chile's processes and resources appeared adequate to handle the volume of requests expected at that time. However, it was noted that it did not provide status updates when it was not able to furnish a partial or final response within 90 days. Due to an organisational change, which took place in 2012 and introduced new monitoring procedures (including internal deadlines), Chile was recommended to ensure that the new internal deadlines enable it to respond to EOI requests in a timely manner, as well as to continue improving communication with partners.

245. The volume of requests increased considerably compared with the previous review period from 40 requests to 61 requests during the current

review period. However, no changes have occurred in the EOI unit which, for most of the review period, had only one experienced full time person directly dealing with all the requests. This individual was assisted by a junior resource and the manager of the EOI Unit. The new system of internal deadlines, which was supposed to start in 2014, was implemented on 1 January 2019, in conjunction with the implementation of a new electronic system to records and tracking the EOI requests. There are plans to further increase resources in the unit.

246. Out of all inbound requests received, Chile was able to provide a final response within 180 days in 60% of the cases, with a significantly positive trend towards the end of the review period. The majority of the requests received were for accounting information, for which the competent authority had to request the information from third parties, including the taxpayer itself. While Chile needs to continue to monitor the effectiveness of the handling of requests in terms of resources, processes, timeliness of replies and provision of status update, the peers were generally satisfied even as the number and complexity of the requests increased.

247. The table of recommendations and rating is as follows:

<table>
<tr><th colspan="3">Legal and Regulatory Framework</th></tr>
<tr><td colspan="3">This element involves issues of practice. Accordingly, no determination has been made.</td></tr>
<tr><th colspan="3">Practical Implementation of the standard</th></tr>
<tr><th></th><th>Underlying Factor</th><th>Recommendations</th></tr>
<tr><td rowspan="2">Deficiencies identified</td><td>Chile did not provide status updates to its EOI partners within 90 days when the competent authority was not able to provide a substantive response within that time.</td><td>Chile is recommended to provide updates to EOI partners within 90 days in those cases where it is not possible to provide a partial or complete response within that timeframe.</td></tr>
<tr><td>The structure of the competent authority and management of the EOI requests has changed in 2014 and new internal deadlines and monitoring procedures have been introduced as of 1 January 2019.</td><td>Chile is recommended to ensure that the new internal deadlines enable it to respond to EOI requests in a timely manner.</td></tr>
<tr><td colspan="3">Rating: Largely Compliant</td></tr>
</table>

C.5.1. Timeliness of responses to requests for information

248. The most significant partners for incoming requests during the review period were Norway, Spain, Peru, France and Mexico.

249. The following table relates to the requests received during the period under review and gives an overview of response times by Chile together with a summary of other relevant factors impacting the effectiveness of Chile's practice.

Statistics on response time

		01/10/2015-30/09/2016		1/10/2016-30/09/2017		1/10/2017-30/09/2018		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	21	34	17	28	23	38	61	100
Full response: ≤ 90 days		3	14	3	18	2	9	8	13
≤ 180 days (cumulative)		8	38	12	71	17	74	37	61
≤ 1 year (cumulative)	[A]	15	71	15	88	23	100	53	87
> 1 year	[B]	6	29	2	12	0	0	8	13
Declined for valid reasons		1	5	0	0	3	13	4	7
Requests answered after 90 days for which a status update should have been sent		17		14		18		49	
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		6	35	11	79	12	67	29	59
Requests withdrawn by requesting jurisdiction	[C]	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	[D]	0	0	0	0	0	0	0	0
Requests still pending at date of review	[E]	0	0	0	0	0	0	0	0

Notes: a. Chile counts each written request from an EOI partner as one EOI request regardless of the number of taxpayers involved. 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.

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.

250. In general, from the data provided, it can be concluded that while only few requests were replied upon within 90 days (13% of the requests), the performance rate improved significantly for the other requests. The results reflected that in 60% of cases the information was provided within 180 days, with the remaining requests generally replied upon within one year. Only in 8 cases (13%) it took more than one year to provide the information. In addition, there is a positive trend towards the end of the review period. While there were 6 requests in the first year under review for which it took more than a year to provide a response, there were none in the last year. Also, no

peers signalled major problems with the communication or the handling of requests by Chile. Furthermore, 53 out of the 61 inbound requests involved accounting information, which in most of the cases were not in possession of the SII and required access to information held by third parties. It remains that Chile was asked in 18 cases for information held by the SII and the SII sometimes took longer than 90 days to answer these. It is expected that the organisational improvement detailed in section C.5.2 below will improve these results.

251. The four declined cases corresponded to: (i) A case in which the request had incomplete information to identify the taxpayer and Chile sent requests for clarification twice but the additional information was never received; (ii) A case in which the requesting jurisdiction requested information about a taxpayer; however, after discussion between both competent authorities, it became clear to the requesting jurisdiction that it needed information on a taxpayer who was not the person mentioned on the EOI request. Therefore, the requesting jurisdiction issued a new EOI request with the correct taxpayer and the other request was considered as declined; (iii) two cases had no proper identification of the audited taxpayers, neither sufficient and detailed reason about why that tax administration was asking about specific information, such as transfer pricing documentation and secret commercial contracts. Chile responded that it would be able to exchange information if more background was provided, but no more information was sent by the requesting jurisdiction and Chile closed the cases.

Status updates and communication with partners

252. Chile provided status updates to the requesting party only in limited cases. From data received, status updates saw a considerable improvement in the second year under review. However, towards the end of the review period, the situation worsened again with the conclusion that Chile, overall, provided status updates on almost half of the required instances. **Chile is therefore recommended to provide updates to EOI partners within 90 days in cases where it is not possible to provide a partial or final response within that timeframe.**

C.5.2. Organisational processes and resources

253. The competent authorities for the exchange of information in Chile are the Minister of Finance together with the Commissioner of the SII.

Organisation of the competent authority, resources and training

254. The unit dealing with EOI requests currently is comprised of one full time professional and one part time professional, assisted by a legal advisor, by the head of ITA and by the Head of DASCT. Since 2014, the DASCT is in charge of co-ordinating EOI activities. Before, EOI requests were handled by the Internal Audit Department (DFI). People dealing with EOI, with different degrees of involvement, can be summarised as follows: Head of DASCT, who is the EOI Co-ordinator; the Head of International Tax Audit Area; and two Tax officers. Other SII Officials involved in the gathering of information to answer EOI requests include the Regional Offices, Large Taxpayers Unit, and the Tax Compliance Department (DACT). However, in practice, only two persons in the SII are dedicated full-time to the handling of EOI requests, under the supervision of the Head of the DASCT, who is ultimately responsible for the EOI activity (which however is not the only activity under her supervision[32]). Another Unit (Special Case Unit), within another department, Tax Actions Compliance Department, is specifically tasked with handling EOI requests for banking information.

255. Public officers engaged in the handling of EOI requests all have a good understanding of the EOI matters and have attended trainings on this subject matter. As a general rule, all tax officials of the SII have received internal training on audits and other relevant international tax matters including on exchange of information. The EOI team has, on average, 10 years of experience within the SII and also participates in an ongoing English programme to better answer requests received in this language.

256. Moreover, people from DASCT are engaged on a regular basis in providing EOI training to people inside the SII in order to explain and raise the awareness of tax officers on the existence, rules and procedures of the EOI programme. In addition, all new tax officers have to successfully complete an 8 hour EOI related training course as a part of their induction programme before being accepted as officials of the SII.

257. The processes and resources should continue to be monitored to take into account the significant change in the volume of incoming EOI requests. This will ensure that both the processes and level of resources are adequate for an effective EOI in practice (see Annex 1).

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32. The DASCT has among its duties the planning of tax audits on international matters, the planning of Transfer Pricing audits and the planning of systematic controls on taxes with an international dimension.

Incoming requests and verification of the information received

258. When the SII Tax Commissioner office receives an EOI request, it assigns it a reference code and forwards it to the Audit and Compliance Directorate (to which the DASCT belongs) for processing. It is then given another reference number and sent to the DASCT, which registers the EOI letter in an electronic database which assigns it EOI case number. The Minister's cabinet has also now been made aware of the possibility of receiving EOI requests from non-traditional partners and of the importance of forwarding these letters to the SII. The DASCT checks the validity of the request, taking into consideration several factors, in line with the standard.[33]

259. In case of doubt on the validity of the request or interpretation of the underlying EOI instrument, the DASCT can request the assistance of the International Taxation Department within the Legal and Regulatory Directorate. If the information requested is tax information or information available within a public authority of Chile, the DASCT gathers the information itself and provide it within 60 days. Otherwise, it sends a confidential letter of request to the competent department (regional office or special case unit). If the taxpayer concerned is under tax investigation, the DASCT will also consult the Tax Crime Department to check whether it gathered information that might be relevant to the EOI partner (but this situation has not occurred in practice). If the information is not within the tax authority, the SII Circular 18/2013 provides that it has to be gathered and exchanged within 180 days. Out of 61 requests received by Chile during the review period, 43 requests referred to information not held by the SII. Chile should reasonably shorten the 180 days' period provided for collecting information that is

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33. The DASCT checks the validity of the request, taking into consideration the instructions given in the SII Circular No. 18/2013 of September 2013, that indicates in detail the steps to follow in receiving an exchange request, furthermore, the instructions given in the module 1 of the manual on the implementation of exchange of information provisions for tax purposes: 1. That the request comes from the competent authority of a jurisdiction with which Chile has an EOI instrument in force, 2. That it contains enough data to allow the identification of the taxpayer or group of taxpayers referred to in the request, whenever this applies, 3. That there is enough information to understand the request, relevant background information including the tax purpose for which the information is sought, the origin of the enquiry, the reasons for the request and the grounds for believing that the information requested is held in our territory. 4. That it is foreseeably relevant, that is, information covered by the respective Convention and that is available or feasible to be obtained since it may be required from the taxpayer, a third party, or other public institution. 5. That the request should mention the taxes concerned, the tax periods under examination (day, month, year they start and end), and the tax periods for which information is required.

not within the tax authority to enable Chile to respond to more requests in a timely and effective manner (see Annex 1).

260. The regional tax offices and large taxpayer office handle the requests as described above in chapter B.1 on access powers. SII Circular 18/2013 sets intermediary deadlines to them: they have 10 days to request the information from the taxpayer or third party, which has 10 days to answer, and the office then has 10 days to prepare its report to the DFI. Deadlines may be extended with the approval of the DASCT. The information holder must go to the requesting tax office to submit the required documents or sworn statement (affidavit), and then the tax official makes copies that are certified.

261. During the review period, the DASCT monitored the status of EOI requests through electronic system based on the software Share Point, which was then replaced by a new one called "*Gabinete Electrónico*" (an IT platform). The new system, which is operational since 1 January 2019 ensures the collection of detailed data related to inbound requests such as requesting jurisdiction, EOI Convention, Competent Authority identification, dates (letter, reception, response), references, official in charge, matter, taxpayers and taxes involved, and other data related to the gathering of information (Regional Units, Large Taxpayer Department, Tax Action Compliance Department, or another governmental authority). In parallel, the control was also made on the basis of an excel sheet, where the same information was collected.

262. Recently (in January 2019), the IT Directorate of the SII implemented a new system based on the *Gabinete Electrónico* to register the EOI requests (received and sent). This new platform incorporates automatic alerts regarding the reception and due dates, keeps the register up to date from the reception to the end the whole process, maintains a repository with files and digitalised documents, and also keeps track of all the officials that have accessed or are involved in the EOI requests. Currently, the DASCT is preparing new instructions which will take the form of a manual for this system. However, the tax officers are constantly trained on the proper use of this new system.

263. It can be concluded from the above that the new system of alerts, which was announced in 2014, has never been implemented in practice and that only now, with the new version of the *Gabinete Electronico*, an organic system for the monitoring of EOI requests which features automatic alerts has been implemented. Chile should ensure that the new internal deadlines enable it to respond to EOI requests in a timely manner, and continue improving communication with partners.

Practical difficulties experienced in obtaining the requested information

264. Issues commonly encountered by the SII, which prevented it from obtaining and exchanging information in time, were due to several factors,

all linked to the fact that the information was not available within the tax authority and a procedure to collect it from third parties was needed.

265. There were many cases where individual taxpayers could not be located immediately. As explained by Chile, the difficulty derived from the facts that the address mentioned in the request was not the correct one or some of them were not residents in Chile. Furthermore, there have been requests concerning old information, which required more time to be found, since taxpayers normally maintain records in external warehouses. Therefore, the SII had to grant an extension of the period in order to solve these issues.

266. Chilean authorities also mentioned that in general, when the information originates from other public entities there may be delays as they have their own internal procedures or because public entities do not have an obligation to respond within a specific period and therefore, there was some delay to receive the requested information.

Outgoing requests

267. Chile sent 28 outbound requests over the review period and received 6 requests for clarifications (3 for each of the first two years under review). According to peer input, Chile's requests met the foreseeable relevance standard except in three cases: in one case, a formal Competent Authority request letter was missing and in the other two cases, the information provided by Chile in the request was not enough to determine their foreseeable relevance.

268. Written guidance for processing outgoing requests for information is included in the SII Circular No. 18/2013. The EOI request is based on the need for foreign sourced information once all domestic means to secure that information have been exhausted. From that point, there is a pre-evaluation about the possibility of submitting an EOI request with the head of the group/department, which includes the study of the foreseeable relevance, the period for which the information will be requested, and if the answer will be available before the close of the audit process. If this pre-evaluation is approved, the head of department/group sends the EOI request to the Head of the DASCT via the Letter of Exchange Query (included in Annex 1 of the above-mentioned SII Circular), and accompanies it with the report of the Tax Officer in charge of the case along with any underlying documents which support the request. The DASCT has only 10 working days to review these documents and determine whether there is sufficient basis to submit an EOI request. If the DASCT determines that there is insufficient basis or more underlying documents are needed, the petition will be sent back to the tax officer who will have 10 more working days to supplement and correct any objection presented by the DASCT. To ensure the confidentiality and adequate use of the received information (both for requests and requested information), all information received by the DASCT must be stamped with a stamp indicating

that the information has been received as a result of the application of an EOI instrument and mentioning the duty of confidentiality that is applicable (Circular 18/2013).

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

269. Other than those matters identified earlier in this report, there are no further conditions that appear to restrict the effective exchange of information in Chile. There is also no evidence of unreasonable, disproportionate, or unduly restrictive conditions on exchange of information in practice.

Annex 1: List of in-text recommendations

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

- **Element A.1:** Chile'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 paragraph 81).
- **Element A.1:** Chile should make sure that the definition of beneficial owner under AML law is fully implemented, including the identification of natural persons who exercise control through means other than ownership (see paragraph 84).
- **Element A.1:** Chile should ensure a smooth implementation of the requirement to identify and keep up-to-date beneficial ownership information for all legal entities (see paragraph 88).
- **Element A.1:** Chile should monitor the compliance by foreign trusts and fideicomisos of their obligation to report information to the SII (see paragraph 110).
- **Element A.3:** Chile'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 paragraph 146).
- **Element A.3:** Chile should ensure that, when the application of the simplified CDD is allowed, the beneficial ownership information is collected for all the accounts and is reliable information (see paragraph 148).
- **Element B.1:** Chile should ensure that the process for accessing bank information would not hinder or unduly delay the exchange of information (see paragraph 181).

- **Element B.1:** Chile should monitor the access to banking information for EOI purposes to ensure that it can be obtained in all cases, in line with the standard (see paragraph 184).
- **Element B.2:** Chile should ensure that the process for accessing bank information would not hinder or unduly delay the exchange of information (see paragraph 198).
- **Element C.1:** Chile should work with Thailand to ensure that their EOI relation is in line with the standard (see paragraph 214).
- **Element C.2**: Chile should continue to enter into EOI agreements with any new relevant partner who would so require (see paragraph 226).
- **Element C.3:** Chile should monitor the handling of requests for banking information to make sure that the letter from the requesting authority is not sent to the bank and therefore made public if a court order is needed (see paragraph 235).
- **Element C.5.2**: The processes and resources should continue to be monitored to take into account the significant change in the volume of incoming EOI requests. This will ensure that both the processes and level of resources are adequate for an effective EOI in practice (see paragraph 257).
- **Element C.5.2**: Chile should reasonably shorten the 180 days' period provided for collecting information that is not within the tax authority to enable Chile to respond to more requests in a timely and effective manner (see paragraph 259).

Annex 2: List of Chile's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Argentina	DTC	15-May-15	11-Oct-16
2	Australia	DTC	10-March-10	8-Feb-13
3	Austria	DTC	06-Dec-12	09-Sep-15
4	Belgium	DTC	06-Dec-07	05-May-10
5	Bermuda	TIEA	24-Jun-16 21-Jul-16	03-Oct-18
6	Brazil	DTC	03-Apr-01	24-Jul-03
7	Canada	DTC	21-Jan-98	28-Oct-99
8	China (People's Republic of)	DTC	25-May-15	8-Oct-16
9	Colombia	DTC	19-Apr-07	22-Dec-09
10	Croatia	DTC	24-Jun-03	22-Dec 04
11	Czech Republic	DTC	02-Dec-15	21-Dec-16
12	Denmark	DTC	20-Sept-02	21-Dec-04
13	Ecuador	DTC	26-Aug-99	24-Oct-03
14	France	DTC	07-Jun-04	10-Jul-06
15	Guernsey	TIEA	04-Sept-12 24-Sept-12	02Aug-16
16	India	DTC	03-Mar-20	Not in force
17	Ireland	DTC	02-Jun-05	28-Aug-08
18	Italy	DTC	23-Oct-15	20-Dec-16
19	Japan	DTC	21-Jan-16	28-Dec-16
20	Jersey	TIEA	24-Jun-16 21-Jul-16	03-Oct-18

	EOI partner	Type of agreement	Signature	Entry into force
21	Korea	DTC	18-Apr-02	22-Jul-03
22	Malaysia	DTC	23-Sept-04	25-Aug 08
23	México	DTC	17-Apr-98	15-Oct-99
24	New Zealand	DTC	10-Dec-03	21-Jun-06
25	Norway	DTC	26-Oct-01	22-Jul-03
26	Paraguay	DTC	30-Aug-05	26-Aug-08
27	Peru	DTC Protocol	08-jun-01 25-Jul-02	23-Jul-03 17-Nov-03
28	Poland	DTC	10-Mar-00	30-Dec-03
29	Portugal	DTC	07-Jul-05	25-Aug-08
30	Russia	DTC	19-Nov-04	23-Mar-12
31	South Africa	DTC	11-Jul-12	11-Aug-16
32	Spain	DTC	07-Jul-03	23-Dec-03
33	Sweden	DTC	04-Jun-04	30-Dec-05
34	Switzerland	DTC	02-Apr-08	05-May-10
35	Thailand	DTC	08-Sept-06	05-May-10
36	United Arab Emirates	DTC	31-Dec-19	Not in force
37	United Kingdom	DTC	12-07-03	21-12-04
38	United States	DTC	04-Feb-10	Not in force
39	Uruguay	DTC TIEA	01-Apr-16 12-Sept-14	05-Sept-18 04-Aug-16

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

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

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

The Multilateral Convention was signed by Chile on 24 October 2013 and entered into force on 11 November 2016 in Chile. Chile can exchange information with all other Parties to the Multilateral Convention.

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, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[35] 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 by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Qatar, Russia, Saint Kitts and Nevis,

35. 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.

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 the following jurisdictions, where it is not yet in force: Armenia (entry into force 1 June 2020), Benin, Bosnia and Herzegovina, Burkina Faso, Gabon, Kenya, Liberia, Mauritania, Mongolia (entry into force 1 June 2020), Oman, Paraguay, Philippines, Thailand (signed on 3 June 2020),[36] Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

36. This signature took place after the cut-off date of the present report and therefore this EOI relationship is not taken into account in the core text of the report.

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 2014 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 5 May 2020, Chile' EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2015 to 30 September 2018, Chile' responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Chile' authorities during the on-site visit that took place on 28-30 August 2019.

List of laws, regulations and other materials received

Tax Code and Income Tax Act

SII Circular 18/2013 on exchange of information

Decree Law No. 3/1969 creating the Tax Identification Number and establishing rules for its application

Law 19.840 of 2002 establishing tax rules on enterprises with foreign capital making investments abroad from Chile

Circular 31 of 19 May 2014 on the obligation to register for tax purposes and declare starting business, concerning companies without domicile or residence in Chile, as well as other entities with or without legal personality created or organised abroad.

SII Resolution no. 81 of 2013 on requests for information on trusts created abroad and SII Resolution no. 47 of 2014 requesting information on trusts and entities with similar characteristics, created under the provisions of foreign law

Civil Code

Commercial Code

Law 19.913 Creating the Chilean Financial Intelligence Unit and Amending some Provisions on Money Laundering

UAF Circular 49/2012

UAF Circular 57/2017

UAF Circular 59/2019

General Banking Law

Criminal Code

Authorities interviewed during on-site visit

Internal Revenue Service (*Servicio de Impuestos Internos*)

Tax and Customs Court

Ministry of Finance

Ministry of Economy

Registrar of Entities

Superintendency of Securities and Insurance (SVS)

Superintendency of Banks and Financial Institutions (SBIF)

Ministry of Justice

Registrar – *Conservador de documentos*

Association of Accountants of Chile

Bar Association

Bank Association

Current and previous review(s)

This report is the third review of Chile conducted by the Global Forum. Chile previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2011 and the implementation of the framework in practice review (Phase 2) in 2014. The previous reviews were conducted in application of 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	Date of adoption by Global Forum
Round 1 Phase 1	Ms Shelley-Anne Carreira (South Africa), Ms Suwon Kim (Korea) and Ms Gwenaëlle Le Coustumer (Global Forum Secretariat)	n.a.	December 2011	March 2012
Round 1 Phase 2	Ms Shelley-Anne Carreira (South Africa), Ms Suwon Kim (Korea) and Ms Gwenaëlle Le Coustumer (Global Forum Secretariat)	1 January 2010-30 December 2012	May 2014	August 2014
Round 2	Mr Valerio Enriquez (United States), Mr Guillermo Nieves (Uruguay), Mr Francesco Bungaro and Mr Jose Alejandro Mejia (Global Forum Secretariat)	1 October 2015-30 September 2018	5 May 2020	August 2020

Annex 4: Chile's response to the review report[37]

Chile would like to express its appreciation for the work done by the assessment team in evaluating Chile's implementation of the international standard of transparency and exchange of information on request on the second round of reviews conducted by the Global Forum. The vast experience and the collaborative approach of the members of the assessment team facilitated the development of a cordial relationship and a frank and fluid communication with tax officials and other authorities participating in the review. Chile also thanks the Secretariat of the Global Forum for their assistance throughout this process, and the members of the Peer Review Group and its other Exchange of Information Partners for their valuable contributions.

Chile supports the work of the Global Forum and is fully committed to effective exchange of information. Chile is therefore pleased with the improvements acknowledged in the report and will carefully consider the recommendations made with the aim of advancing towards fully complying with the international standard as reflected in the 2016 Terms of Reference.

37. 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 CHILE 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 Chile.

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