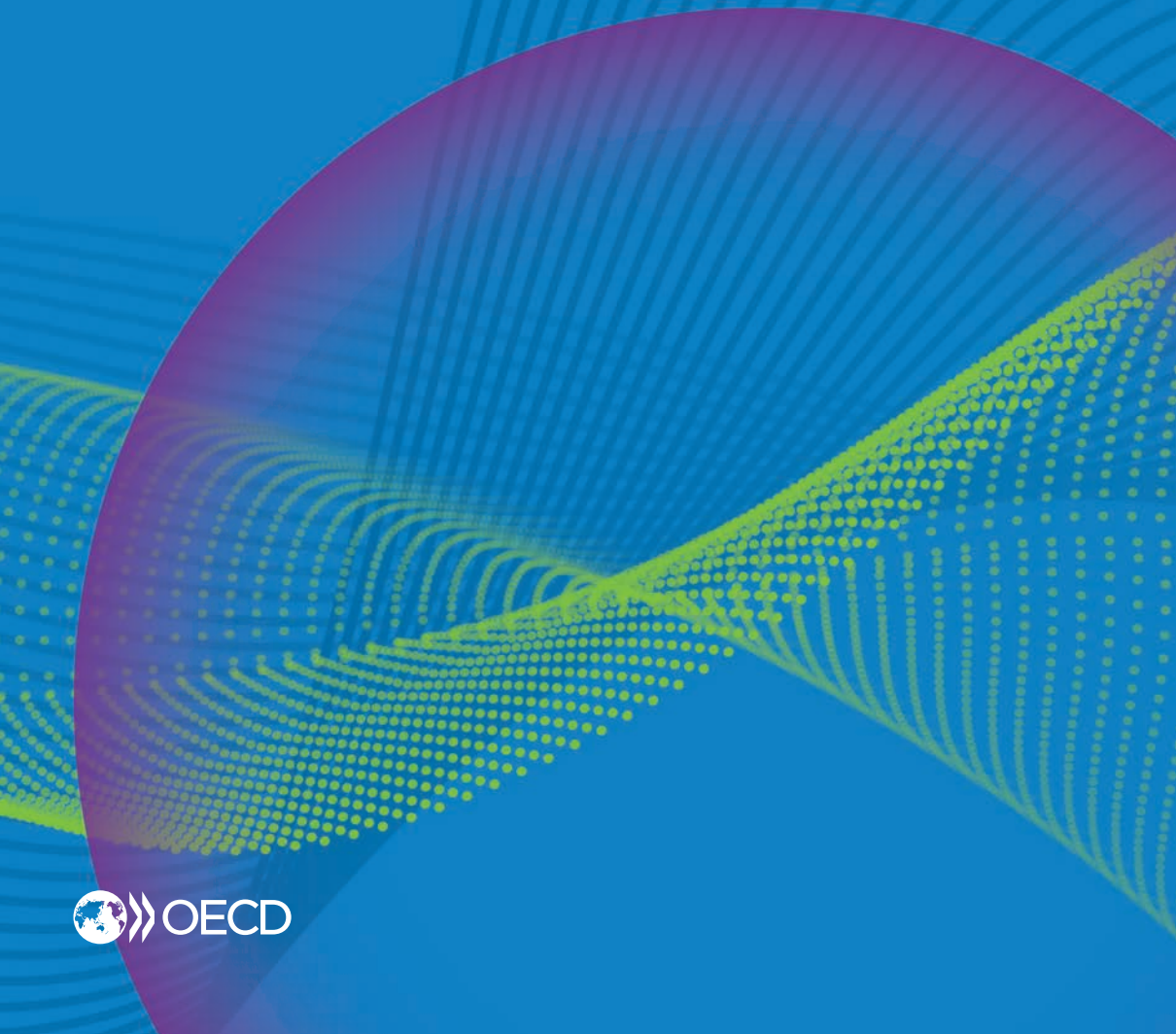
GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

PORTUGAL

2022 (Second Round)



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Global Forum on Transparency and Exchange of Information for Tax Purposes: Portugal 2022 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

BETTER POLICIES FOR BETTER LIVES

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

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

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

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

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

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

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

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

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

Consideration of the Financial Action Task Force Evaluations and Ratings

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

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

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

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

More information

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

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	Anti-Money Laundering
AT	Tax and Customs Authority (*Autoridade Tributária e Aduaneira*)
BO	Beneficial owner
CASES	Cooperativa António Sérgio para a Economia Social (*António Sérgio Cooperative for the Social Economy*)
CDD	Customer Due Diligence
CIRC	Corporate Income Tax Code
CIRS	Personal Income Tax Code
CMVM	Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*)
CP	Civil or Non-trading Partnership
CPPT	Code of Taxation Procedure and Proceeding
CRC	Commercial Registration Code (*Código do Registo Civil*)
CSC	Commercial Companies Code (*Código das Sociedades Comerciais*)
CVM	Securities Code
DSRI/EOI unit	International Relations Department of the Portuguese Tax and Customs Authority (*Direção de Serviços de Relações Internacionais*)
DTC	Double Taxation Convention
EOI	Exchange of Information
EOIR	Exchange of Information on Request

EU	European Union
FATF	Financial Action Task Force
FFL	Foundations Framework Law
FIU	Financial Intelligence Unit
Madeira FTZ	Madeira Free Trade Zone
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
GP	General Partnership
IRN	Portuguese Institute for Registries and Notaries (*Instituto dos Registos e Notariado*)
LLC	Limited Liability Company (*Sociedade por quotas)*
LGT	General Tax Law
LP	Limited Partnership
ML/TF	Money laundering and terrorist financing
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
PLS	Partnership Limited by Shares (*Sociedade em comandita por ações*)
RCBE	Beneficial Ownership Central Registry (*Registo Central de Beneficiários Efetivos*)
RCPIT	Complementary Regime of Tax Inspection Procedure
RCPITA	Supplementary Regime of Tax and Customs Audit Procedure
RGIT	General Regime of Tax Infractions
RNPC	National Registry of Legal Persons (*Registo Nacional de Pessoas Coletivas*)
SA	Joint Stock Company ((*Sociedade Anónima*)
SE	European Companies (*Sociedade anónima europeia*).
SITI	Exchange of Information Integrated System (*Sistema Integrado de Troca de Informação*)
TIEA	Tax Information Exchange Agreement
TIN	Tax Information Number

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request in Portugal on the second round of reviews conducted by the Global Forum. It assesses both the legal and regulatory framework in force as of 6 May 2022 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 2017 to 30 September 2020.

2. This report concludes that Portugal is now overall **Compliant** with the standard.

3. In 2015 the Global Forum evaluated Portugal in a combined review against the 2010 Terms of Reference for both the legal implementation of the standard as well as its operation in practice. That report (the 2015 Report) had rated Portugal as Largely Compliant overall.

Comparison of ratings for First Round Report and Second Round Report

Element	First Round Report (2015)	Second Round Report (2022)
A.1 Availability of ownership and identity information	Largely Compliant	Largely Compliant
A.2 Availability of accounting information	Compliant	Compliant
A.3 Availability of banking information	Compliant	Compliant
B.1 Access to information	Partially Compliant	Compliant
B.2 Rights and Safeguards	Compliant	Compliant
C.1 EOIR Mechanisms	Partially Compliant	Compliant
C.2 Network of EOIR Mechanisms	Compliant	Compliant
C.3 Confidentiality	Compliant	Compliant
C.4 Rights and safeguards	Compliant	Compliant
C.5 Quality and timeliness of responses	Largely Compliant	Compliant
OVERALL RATING	LARGELY COMPLIANT	Compliant

Note: The four-scale ratings are Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.

Progress made since previous review

4. Portugal made progress in all the aspects of the standard since its last review, and more particularly in respect of access to, and exchange of banking information, which now conform to the standard. The 2015 report found that the Portuguese competent authority interpreted the conditions in its domestic law for lifting bank secrecy narrowly and in many instances failed to initiate the process to access banking information in order to reply to requests for exchange of information. It also noted that Portugal had exchanged the banking information requested by peers only in around half of cases. Portugal was recommended to ensure that its access powers and procedures concerning the access to bank information are effective in relation to all requests for bank information, irrespective of when the relevant operations and transactions took place. New internal processes and guidance were formally adopted by a 2016 decision of the Director General of the Tax and Customs Authority. This new guidance is applied to all requests for banking information, irrespective of when the relevant operations and transactions took place. As a result, Portugal's practice in analysing the requests for banking information, accessing such information and exchanging it complies with the standard, to the satisfaction of its partners. This led to the upgrade of the individual ratings for elements B.1 (access to information), C.1 (application of the EOI treaties) and C.5 (timeliness of responses).

5. In addition, with the entry into force of the Multilateral Convention on Administrative Assistance in Tax Matters in Portugal in March 2015, and of a number of bilateral instruments, Portugal greatly expanded its network of partners which can send it requests for information.

6. In terms of transparency of companies, the issuance of bearer shares is prohibited since 2017 and existing bearer shares had to be converted into nominative shares. This is an important legislative step, which needs to be fully concretised in practice (see below).

Key recommendations

7. The standard was strengthened in 2016 to require the availability of information on the beneficial owners of legal entities and arrangements. In Portugal, this requirement is implemented through the anti-money laundering (AML) framework and the centralised beneficial ownership register (centralised BO register), which requires all legal entities to identify and report their beneficial owners. However, deficiencies have been identified on the overall supervisory and enforcement mechanism and responsibilities regarding the centralised beneficial ownership register, so Portugal is recommended to introduce a programme to ensure the availability of accurate and up-to-date

beneficial ownership information for all legal entities and legal arrangements at all times, in line with the standard.

8. In addition, Portugal is recommended to guide companies in cases where not all bearer shares have been converted and to legally ensure that appropriate reporting mechanisms are in place to effectively ensure that the owners of remaining bearer shares can be identified.

Exchange of information in practice

9. During the three-year review period from 1 October 2017 to 30 September 2020, Portugal received 799 requests for information and sent 936 requests to its treaty partners. Communication with partners is positive and the Portuguese authorities are considered by peers as accessible and effective. Partners are generally satisfied with the information they have received from Portugal.

Overall rating

10. Portugal has achieved a rating of Compliant for nine elements (A.2, A.3, B.1, B.2, C.1, C.2, C.3, C.4 and C.5) and Largely Compliant for one element (A.1). Portugal's overall rating is Compliant based on a global consideration of its compliance with the individual elements.

11. This report was approved at the Peer Review Group of the Global Forum on 6 July 2022 and was adopted by the Global Forum on 5 August 2022. A follow-up report on the steps undertaken by Portugal to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2023 and thereafter in accordance with the procedure set out under the Methodology for Peer Reviews and Non-Member Reviews.

Summary of determinations, ratings and recommendations

Determinations and ratings	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	Although filing obligations are in place for the reporting of ownership information in relation to bearer shares, these reporting mechanisms may not sufficiently ensure that the owners of such shares can be identified in the cases where those shares have not been converted after the statutory conversion period.	Portugal is recommended to guide companies in cases where not all their bearer shares have been converted and to legally ensure that appropriate reporting requirements are in place to ensure that owners of bearer shares can be identified in the case of those bearer shares that have not been converted, so ownership information is available in line with the standard in relation to all companies.
Largely Compliant	The beneficial ownership central registry framework does not oblige legal entities and legal arrangements to verify the information collected on their beneficial owners. Portugal is yet to design and implement an appropriate supervisory programme for ensuring the availability and accuracy of beneficial ownership information available on the beneficial ownership central registry. There is lack of clarity on the overall supervisory and enforcement mechanism and responsibilities with respect to beneficial ownership information included in the central registry.	Portugal is recommended to put in place a comprehensive and effective supervision and enforcement programme to ensure the availability of adequate, accurate and up-to-date information in the beneficial ownership central registry for all legal entities and legal arrangements at all times, in line with the standard.

Determinations and ratings	Factors underlying recommendations	Recommendations
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		
Compliant		
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place		
Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
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		
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		
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		
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.	
Compliant		

Overview of Portugal

12. This overview provides some basic information about Portugal that serves as context for understanding the analysis in the main body of the report. Portugal is a State made of mainland Portugal and the archipelagos of Azores and Madeira, which are autonomous regions with separate political-administrative statutes. Lisbon is the capital of Portugal. Portugal has a population of approximately 10.3 million. Gross domestic product (GDP) per capita stands at USD 22 176 in 2020.

13. Portugal has a diversified and service-based economy and is part of the European Union and of the Economic and Monetary Union, having the Euro as its official currency. The great majority of the international trade is done within the European Union (EU). In addition, Portugal's major trading partners are Spain, Germany, France, Angola, the United Kingdom and the United States. Foreign direct investment in Portugal correspond to 4.3% of the GDP.

Legal system

14. The Portuguese legal system is a civil law or continental legal system, based on Roman law. It is similar to other civil law legal systems found in other European countries such as France, Italy and Spain.

15. The Constitution is the supreme law in Portugal. It establishes the fundamental rights that pertain to citizens, the essential principles that govern the Portuguese State, and the major political guidelines with which the public entities and administrations must comply. It also grants the separation of powers among legislative, executive and judicial branches. The corresponding main institutions are the Parliament, i.e. the unicameral Assembly of the Republic (*Assembleia da República*), the President of the Republic and the Government, and the courts.

16. The head of the Government is the Prime Minister, who co-ordinates the work of the different ministers and represents the Government in its relations with the President and the Assembly of the Republic. The Prime Minister is appointed by the President of the Republic and forms the Government. The

Government possesses legislative, administrative and political functions, which include proposing laws, drafting laws and drawing up regulations designed to make it possible to actually implement laws.

17. As a member of the European Union, Portugal respects the principle of the Primacy of European Union Law. This effectively means that Portugal must interpret its law in conformity with the European Union Law. According to article 112 of the Constitution, the hierarchy of laws in Portugal may be summarised, in a descending order, according to the following scale: i) the Constitution; ii) the International Conventions and the European Union Treaties as well as secondary legislative acts enacted by the European Institutions; iii) Laws and Decree-Laws; iv) Regional Legislative Decrees; and v) Regulations (i.e. Regulatory Decrees, Regional Regulatory Decrees, Resolutions of the Council of Ministers, Ministerial Orders and Normative decisions).

18. As regards the application and enforceability of international agreements, the Constitution adopts a Monist system, which means that regularly ratified international, bilateral or multilateral agreements are directly applicable in the Portuguese internal law once they are officially published in the official gazette (*Diário da República*) under Article 8(2) of the Constitution. Therefore, those obligations binding on Portugal are directly enforceable in Portuguese courts and lack of transposition is not considered acceptable grounds to oppose to compliance of the obligations and rights enshrined in such agreements.

19. The Courts administer justice and are independent of the other authorities that exercise power. Judges are not only independent, but also enjoy security of tenure as they cannot be removed from their position. The judges are also immune from personal liability to enable them to decide freely, in accordance with their conscience, and without any duty of accountability to other entities that exercise power. The courts' decisions override those of any other authority.

20. The Portuguese judicial system includes judicial courts and administrative courts. Tax cases are subject only to the jurisdiction of the administrative tax courts. There are three levels of Administrative courts: the Courts of First Instance (*Tribunais de Primeira Instância*), the Courts of Appeal (*Tribunal Central Administrativo*), and the Administrative Supreme Court (*Supremo Tribunal Administrativo*). There are also the Constitutional Court (*Tribunal Constitucional*) which deals with matters concerning the constitutionality of the laws, and the Court of Audits (*Tribunal de Contas*) which reviews legal issues on public expenditure. The Constitutional Court decides on all the cases where a matter of constitutional nature is discussed, including constitution-related tax matters.

Tax system

21. The Tax and Customs Authority (AT) is responsible for managing taxes and custom duties, monitoring the common external border of the European Community and the national customs territory for fiscal, economic and protection purposes (Art. 2 of the Decree-Law 118/2011). The AT is under the purview of the Ministry of Finance who routinely delegates its tax powers and competences to the Secretary of State for Fiscal Affairs.

22. Taxes are subject to the general principles, procedures and rules established by the Constitution and the General Tax Law (LGT) and other tax laws and regulations. The main taxes in Portugal are the Personal Income Tax, the Corporate Income Tax, the Value Added Tax, the Stamp Tax, the Excise Taxes, the Municipal Property Tax and the Municipal Property Transfer Tax.

23. Resident individuals are liable to Personal Income Tax on their worldwide income while non-resident individuals are liable only on income derived in the Portuguese territory, including its autonomous regions of Azores and Madeira (Art. 15 of the Personal Income Tax Code, CIRS). The Personal Income Tax Code defines six categories of taxable income: a) employment income, including fringe benefits, and director's fees; b) independent professional and business income; c) investment income; d) income from immovable property; e) capital gains and other increases in wealth; and f) pensions, including annuities and alimony payments. There are seven taxable income brackets in Portugal with the highest being EUR 80 882 with a top marginal rate of 48% in mainland Portugal. The tax rate is increased by an additional solidarity surcharge of 2.5% for annual taxable income between EUR 80 000 and EUR 250 000 and 5% for annual taxable income above this threshold (Arts. 1, 68, 68-A CIRS).

24. An individual is considered a tax resident in Portugal if he/she meets one of the following two conditions: i) spends more than 183 days within a fiscal year or ii) maintains a residence in Portugal during any day of the above-mentioned period (Art. 16(1) CIRS). Individuals who meet the criteria to qualify as tax resident in Portugal and who have not been taxed as tax resident in Portugal in the previous five years, may apply for a temporary tax regime for non-habitual residents during a 10-year period (Art. 16(8) CIRS), i.e. employment income from Portuguese sources and self-employment income deriving from certain "high value added" activity (as defined by Ministerial Order), are taxed at a flat rate of 20% (Art. 72(10) CIRS). In addition, for certain types of foreign source income, such as for rental income, investment income and capital gains, a tax exemption may apply (Art. 81(5) CIRS). Foreign source pensions are taxed at a flat rate of 10% as of 1 April 2020 (Art. 72(12) CIRS) and the exemption applicable in these cases since 2010 is no longer available.

25. The Corporate Income Tax is levied on legal entities that are resident in Portugal or that derive income sourced in the Portuguese territory, namely through a permanent establishment (Art. 3 of the Corporate Income Tax Code, CIRC). Legal entities are resident in Portugal when they have their registered legal seat or place of effective management in Portugal (Art. 2 CIRC). Resident legal entities are taxable on their worldwide income, including capital gains while non-resident legal entities are taxable only on income derived in the Portuguese territory (Art. 4 CIRC).

26. The general Corporate Income Tax rate in mainland Portugal is 21% as of 30 September 2020. A "state surtax" is levied at a 3% rate on annual taxable profits between EUR 1.5 million and EUR 7.5 million, 5% on annual taxable profits between EUR 7.5 million and EUR 35 million and 9% on annual taxable profits above EUR 35 million. Municipalities may levy a local surtax of up to 1.5% on the annual taxable profits (Arts. 87(1) and 87-A CIRC and art. 18 of Law 73/2013). For small and medium-sized companies, a special rate of 17% applies to annual taxable profits below EUR 25 000 (Art. 87(2) CIRC).

27. A withholding tax at a rate of 25% is levied on dividends, interest, royalties, income from immovable property and from the leasing of equipment, commissions and fees for technical services paid to non-resident companies and other legal entities, which are not attributable to a permanent establishment situated in Portugal (Arts. 94 and 87(4) CIRC).

Autonomous Regions of Azores and Madeira

28. The archipelagos of Azores and Madeira are autonomous regions with separate political-administrative statutes. They are granted the power to establish regional taxes and to adapt the national taxes to their specific regional interests, within the limits of the Constitution and the Regional Statute.

29. Legal entities incorporated in Azores or Madeira are subject to the same legal framework, including registration requirements and tax filing obligations established at the national level and applicable to other Portuguese legal entities.

30. Over the period of review, Portugal has received 799 requests for information. Portuguese authorities report that 38 of these requests related to Madeira and 3 related to Azores. Peer input did not identify any specific issues during the period under review with regard to Madeira or Azores.

Overview of the Madeira Free Trade Zone

31. The Madeira Free Trade Zone (Madeira FTZ) was formally created in 1980 by Decree-Law no. 500/80 to develop the autonomous region. The Madeira FTZ offers a set of tax incentives aimed at attracting inward investment into Madeira to modernise, diversify and internationalise Madeira's regional economy.

32. Entities operating under the framework of the Madeira FTZ are subject to reduced Portuguese corporate tax rates and these tax benefits are applied irrespectively of the existence of additional treaty benefits under the DTCs concluded by Portugal. The Madeira FTZ does not provide for a separate class of companies or entities and all companies incorporated to operate in the Madeira FTZ are considered Portuguese companies and are governed by the same Portuguese law. There is, however, a dedicated commercial registry and notary office within the Madeira FTZ that deal solely with the incorporation and registration of companies and entities operating in the Madeira FTZ (Decree-Law 234/88). As of 30 September 2021, there were 2 359 entities operating in the Madeira FTZ.

33. Business activities in the following fields may be carried out in the Madeira FTZ:

- international services: Trading, consultancy, professional or technical services, holding or any other international services
- industrial free zone: Industrial or storage business activities, as long as they do not endanger public safety or national security
- international shipping register: Maritime transportation, registration of ships, oil rigs and commercial or pleasure yachts.

34. Entities operating in the Madeira FTZ need to comply with substance requirements, notably with the respect to the creation of jobs and/or minimum investment in fixed assets (pursuant to Law 21/2021).

Financial services sector

35. The Portuguese financial sector comprises a wide variety of different financial services providers: credit institutions (undertakings whose business is to receive deposits or other repayable funds from the public and to grant credit), financial companies, payment institutions and electronic money institutions.

36. Portugal is a regional player within Europe in terms of its financial system. Banking institutions are the main source of funding for the domestic economy, with banks performing a wide range of financial activities including: i) acceptance of deposits or other repayable funds; ii) lending, including

the granting of guarantees and other commitments, financial leasing and factoring; iii) money transmission services; iv) issuance and administration of means of payment, e.g. credit cards, travellers cheques and bankers drafts; v) trading on their own account or for customers, in money market instruments, foreign exchange, financial futures and options, exchange or interest-rate instruments, goods and transferable securities; vi) participation in securities issues and placement and provision of related services; vii) money broking; viii) portfolio management and advice, safekeeping and administration of securities; ix) acquisition of holdings in companies and x) trading in insurance policies.

37. The Portuguese financial system is supervised by four regulators: i) the Bank of Portugal (*Banco de Portugal*), ii) the Portuguese Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*), iii) the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários,* CMVM) and the iv) the Finance General Inspection *(Inspeção Geral de Finanças*).

38. The regulation and supervision of credit institutions, financial companies, payment institutions, electronic money institutions and other institutions alike as defined by law is undertaken by the Bank of Portugal; the regulation and supervision of insurance, reinsurance and pension funds is the responsibility of the Portuguese Insurance and Pension Funds Supervisory Authority. CMVM regulates and supervises the securities markets, including public offers, the activities of all the market operators and securities issuers, financial intermediaries in securities and collective investment institutions. The National Council of Financial Supervisors (*Conselho Nacional de Supervisores Financeiros*) was set up by the Decree-law 228/2000 to facilitate co-operation among the three supervisors, facilitate the exchange of information, promote the development of supervisory rules and mechanisms for financial conglomerates and adopt co-ordinated policies with foreign entities and international organisations.

39. The total assets of the financial sector under the supervision of Bank of Portugal, on a non-consolidated basis, is EUR 354 976 million, as at December 2020. The assets held by the five major banks represent nearly 81% of the financial system in terms of non-consolidated assets. The credit institutions form the majority of the total number of financial institutions registered.

40. As at December 2020, 225 Financial Institutions were authorised to perform financial activities under supervision of Bank of Portugal, including credit institutions (banks) and branches, credit providers, e-money institutions, payment institutions and others. The percentage of the financial sector's assets in the GDP of Portugal is 183%, which shows the relevance of the financial sector to the Portuguese economy.

Anti-money laundering framework

41. The anti-money laundering legal framework is composed of a wide range of laws and regulations, with highlight to Law 83/2017 of 18 August 2017 (hereinafter AML Law), lastly amended by Law 58/2020 of 31 August 2020. This last amendment transposed into the Portuguese legal system both Directive 2018/843, of the European Parliament and the European Council, of 30 May 2018 (5th AML directive) and the European Directive 2018/1673, of the European Parliament and the European Council, of 23 October 2018 (6th AML directive), the latter relative to combating money laundering via criminal law.

42. The AML Law establishes preventive and corrective measures to combat money laundering and terrorist financing (ML/TF), partly transposing into the domestic legal system Directive 2015/849/EU (4th AML Directive), of the European Parliament and of the Council, of 20 May 2015, on prevention of the use of the financial system for the purposes of ML/TF. The Directive also establishes implementing measures of Regulation (EU) 2015/847, of the European Parliament and of the Council, of 20 May 2015, related to the information on the originator and the beneficiary that should accompany money transfers. The AML Law imposes obligations on a wide range of entities and professionals and these entities and professionals are required to conduct customer due diligence (CDD).

43. The AML Law establishes a definition of beneficial owner. Information on beneficial ownership is held in a central public register (*Registo Central de Beneficiários Efetivos,* RCBE), regulated under Law 89/2017 of 21 August 2017 (hereinafter "RCBE Legal Regime").

44. In 2017, the Financial Action Task Force (FATF) assessed Portugal's AML/CFT system, based on the 2012 FATF Recommendations. The mutual evaluation report (MER) of Portugal was discussed in the Plenary of November 2017 and published in January 2018.[1] The MER found that Portugal was Largely Compliant with respect to Recommendation 10 (Customer Due Diligence).

45. However, Recommendation 22 was rated partially compliant as important gaps were identified in the regulatory measures in place for some DNFBPs (Designated Non-Financial Business and Professions), in relation to the verification and identification of CDD processes, including when the customer is a legal person or arrangement. Also, the absence of a comprehensive ML/TF risk assessment that covers all types of legal persons and a number of other deficiencies led to a partially compliant rating for Recommendation 24

1. Available at: https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Portugal-2017.pdf.

(Transparency and beneficial ownership of legal persons). In addition, the MER concluded that there were no specific provisions requiring trustees to keep updated and accurate information, or requiring trustees to co-operate rapidly with all law enforcement authorities, which led to a partially compliant rating also for Recommendation 25 (Transparency and beneficial ownership of trusts). The national system for preventing and combating ML/TF was considered by the FATF to be robust, with Portugal being subject to a regular monitoring process. As noted below in the report (see element A.1), Portugal took measures to address some of these deficiencies.

Recent developments

46. Since the 2015 Report, there have been amendments in the company law: since 2017 bearer shares are prohibited and a book entry format was set up for securities, ensuring the identification of respective holders. The conversion of existing bearer shares into nominative shares was imposed by law within a period of six months, until 4 November 2017 (see section A.1.2 below).

47. Portugal also established a unified Registry of Foundations to be maintained and publicly disclosed by the Portuguese Institute for Registries and Notaries (*Instituto dos Registos e Notariado,* IRN), which "imported" the relevant data previously included in the Central File of Legal Persons (*Ficheiro Central de Pessoas Coletivas*), in the Commercial Registry, and in the Foundations Registries maintained by the Secretary General of the Presidency of the Council of Ministers (see section A.1.5 below).

48. In addition, Portugal enacted a new AML Law (Law 83/2017), which establishes measures to combat ML/TF. These amendments provide for mechanisms for the identification of beneficial owners by AML-obliged persons and for the maintenance of beneficial ownership information by all domestic legal persons themselves. These amendments reflect the 4th AML Directive. The Tax and Customs Authority has access to the mechanisms, procedures, documents and information on identification, due diligence and record-keeping obligations regarding beneficial owners, for the purpose of applying and monitoring compliance with the obligations set out in Decree law 61/2013 of 10 May 2013 (last amended by Law 17/2019, of 14 February 2019), and to ensure administrative co-operation in the field of taxation (see section A.1.1 below).

49. Portugal has also established the RCBE Legal Regime, allowing concerned competent authorities in Portugal to access and identify in a timely manner beneficial ownership information (see sections A.1 and A.3 below).

50. Finally, amendments were made to the Madeira Free Trade Zone regulations, to revoke an article on secrecy and confidentiality (by Article 24 of Law 89/2017, of 21 August 2017), thus there are no longer any secrecy provisions applicable to foreign trusts in the Madeira FTZ. In addition, the name and identification of the trust with the indication of the trust object, the date of creation, the duration of the trust, the name and registered office of the trustee and any additional facts modifying the trust, are required to be filed with the Commercial Registry under Article 10 of the Decree-Law 352-A/88 (see section A.1.4 below).

Part A: Availability of information

51. 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 banking 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.

52. The 2015 Report concluded that Portugal's commercial and tax legislation included provisions that supported the availability of legal ownership information on relevant legal persons and arrangements. Portugal was rated Largely Compliant with the standard. The legal and regulatory framework was considered as in place, but certain aspects of the legal implementation of the element needed improvement, particularly in relation to bearer shares.

53. In Portugal, bearer shares could be issued by some companies in paper certificate form, which led to a recommendation in the 2015 Report. Although tax filing obligations were in place for the reporting of ownership information in relation to bearer shares, these reporting mechanisms may not sufficiently ensure that the owners of such shares can be identified within the stipulated timeframes under the tax filing obligation regime. There were also some instances where the owners of bearer shares are required to identify themselves to the issuing entity or the government authorities. Since then, Portugal enacted Law 15/2017 of 3 May 2017, which prohibited bearer shares, imposing the conversion of existing bearer shares into nominative shares.

54. While this measure has remedied a part of the issue, the current review concludes that the recommendation on bearer shares has not been fully addressed and is therefore maintained. Even though Law 15/2017 extinguished bearer shares and made their conversion compulsory, it is not clear the extent of the bearer shares that have not been converted after the conversion period and are still in circulation. This has not been monitored in practice.

55. The 2015 Report noted that, apart from bearer shares, ownership and identity information relating to the different types of legal persons was available with the entities themselves, and in some cases, with the public authorities – the Commercial Registry and the tax authority. The registrar of the Commercial Registry in Portugal is the Portuguese Institute for Registries and Notaries (IRN), which is a public registry under the supervision of the Ministry of Justice. The IRN has a specific registration service for legal persons, named the National Registry of Legal Persons (*Registo Nacional de Pessoas Coletivas,* RNPC). This remains the case.

56. With respect to trusts, information identifying the settlor(s), beneficiaries and trustee for foreign trusts in the Madeira free trade zone is expressly required to be included in the trust deed and is also filed with the Commercial Registry. Since the 2015 Report, the secrecy provision related to the names of the settlor and the beneficiaries has been revoked. Portugal law now fully meets the standard in respect of transparency of trusts.

57. The standard of transparency and exchange of information was strengthened in 2016 to introduce the obligation of availability of beneficial ownership (BO) information. In Portugal, the main mechanisms for the availability of beneficial ownership information are two-fold. First, the AML framework requires AML-obliged persons to perform customer due diligence and identify the beneficial owners of their clients. Second, since 2017, all legal entities are required to identify their beneficial owners and report information about them in the beneficial ownership central register. The two main sources of beneficial ownership information are complemented by the obligation of the legal entities to maintain an internal register.

58. Some deficiencies are identified under the implementation of the BO requirements in practice. Portugal has not yet established concrete procedures for the oversight, effective implementation and verification of the accuracy of the beneficial ownership data provided by legal entities to the centralised BO register.

59. During the current review period, Portugal received 56 requests for ownership information. All of these requests were related to legal ownership and 11 of them included requests on beneficial ownership information. Portugal responded all inquiries satisfactorily and generally peers have not raised any issues in this regard.

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/ Underlying factor	Recommendations
Although filing obligations are in place for the reporting of ownership information in relation to bearer shares, these reporting mechanisms may not sufficiently ensure that the owners of such shares can be identified in the cases where those shares have not been converted after the statutory conversion period.	Portugal is recommended to guide companies in cases where not all their bearer shares have been converted and to legally ensure that appropriate reporting requirements are in place to ensure that owners of bearer shares can be identified in the case of those bearer shares that have not been converted, so ownership information is available in line with the standard in relation to all companies.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/ Underlying factor	Recommendations
The beneficial ownership central registry framework does not oblige legal entities and legal arrangements to verify the information collected on their beneficial owners. Portugal is yet to design and implement an appropriate supervisory programme for ensuring the availability and accuracy of beneficial ownership information available on the beneficial ownership central registry. There is lack of clarity on the overall supervisory and enforcement mechanism and responsibilities with respect to beneficial ownership information included in the central registry.	Portugal is recommended to put in place a comprehensive and effective supervision and enforcement programme to ensure the availability of adequate, accurate and up-to-date information in the beneficial ownership central registry for all legal entities and legal arrangements at all times, in line with the standard.

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

60. Portugal's laws provide for the creation of the following types of companies:

- **Limited Liability Company (LLC**) (*Sociedade por quotas*) is a commercial company incorporated pursuant to Article 197 of the Portuguese Commercial Companies Code (CSC). An LLC may be incorporated by one or several members. "Quotas" of an LLC are not considered "securities" and cannot be freely negotiated according to Article 219(7) of the CSC. The holders of "quotas" are jointly liable for all capital contributions as agreed in the articles of association in addition to the "quotas" allocated to the member. As of 30 September 2020, there were 597 470 LLCs registered in Portugal; out of these, 154 425 were established during the review period.
- **Joint Stock Company (SA)** (*Sociedade anónima*) is a commercial company incorporated pursuant to Article 271 of the CSC. An SA's capital is divided into shares that can be represented by paper certificates issued to the shareholders or as book entries (i.e. shares where no paper certificates are issued). Until 2017, an SA was also allowed to issue bearer shares. Since then, bearer shares can no longer be issued in any circumstance. As of 30 September 2020, there were 30 923 SAs registered in Portugal; out of these, 1 150 were established during the review period.
- **Partnership Limited by Shares (PLS)** (*Sociedade em comandita por ações*) is a legal entity incorporated pursuant to Article 478 of the CSC. It is a hybrid entity having characteristics of a limited partnership and an SA. The liability of the limited partners is limited to the par value of the shares they subscribed for. As of 30 September 2020, there were 67 PLSs registered in Portugal; out of these, 11 were established during the review period.
- **European Companies (SE)** (*Sociedade anónima europeia*). SEs are regulated under Decree-Law no. 2/2005. The laws that apply to SAs apply to SEs as well (EU Regulation 2157/2001). As of 30 September 2020, there were two SEs operating in Portugal.

61. Companies and other entities formed under the laws of another jurisdiction with a registered head office or place of effective management in the Portuguese territory are considered residents in Portugal for tax purposes (Art. 2(3) of the CIRC and Arts. 3(1)(o) and (2)(c) of the Commercial Registration Code (CRC)). As of 30 September 2020, there were 8 630 permanent establishments (branches) of non-resident entities (including foreign companies and foreign partnerships), registered for tax purposes in Portugal.

Legal ownership and identity information requirements

62. The legal ownership and identity information relating to LLCs must be kept and maintained by the Commercial Registry, tax authority and LLCs. Ownership and identity information relating to SAs, PLSs and SEs is filed with the tax authority; it must also be kept by the SAs, PLSs and SEs themselves or by a financial intermediary in the circumstances required by law (i.e. in case of issuing securities that must be registered). When legal entities have a customer relationship with entities subject to AML requirements, they have an obligation to disclose their legal owners to those AML-obliged persons, which are required to conduct customer due diligence (CDD) and keep ownership information.

63. The registrar of the Commercial Registry for legal persons (RNPC)[2] holds the Central File of Legal Persons (*Ficheiro Central de Pessoas Coletivas*) database. This database has all the legal entities that need to have a Tax Identification Number (TIN) attributed, except for the funds that do not have legal personality[3] (that only have a TIN – issued by AT, as they are subject to tax). The legal person number is the same as the TIN. Companies (and some other entities) have their legal person number issued by RNPC and must also register with the Commercial Registry in case they perform commercial activities: they first apply in RNPC for an admissibility certificate of name and receive a temporary number. After commercial registry, that number is no longer temporary.[4]

64. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

2. The Institute of Registration and Notary Affairs (IRN) is a public institute with attributions, several of which are carried out through registration services. The RNPC and the commercial registry offices are registration services of the IRN, with different competencies. RNPC and the local Commercial Registry offices are different units of IRN, with the RNPC being the specific registration service for legal persons.
3. Funds (also known as collective investment undertakings) are entities which are collective investment of capital raised from investors, the operation of which is subject to a risk-sharing principle and to the pursuit of the exclusive interest of the participants (Art 2, para 1(aa), Law No. 16/2015 General Regime for Collective Investment Undertakings).
4. All entities (except funds) are identified in the RNPC and assigned a tax identification number. Entities may or may not be subject to commercial registration. If they are subject to registration, they must be registered within a certain period of time, otherwise the tax identification number allocated by RNPC lapses.

Companies covered by legislation regulating legal ownership information[5]

Type	Company Law	Tax Law	AML Law
Limited liability company	All	Some	Some
Joint Stock Company	All	Some	Some
Partnership Limited by Shares	All	Some	Some
Foreign companies	All	Some	Some

Companies Law requirements

65. Pursuant to company law requirements, legal ownership information is available in the Commercial Register in some cases and the entities themselves in all cases.

66. With regard to commercial companies, all founding legal owners/partners are identified in the by-laws, which are subject to mandatory commercial registration in the registrar of the Commercial Registry for legal persons (RNPC), making such identification publicly available.[6] This information is kept in the RNPC indefinitely. Changes to by-laws must be registered (Art. 59(2) of the CRC), but there is no obligation to inform the RNPC when there is a transfer of ownership of shares (except for LLCs, see below). RNPC information regarding entities which are subject to commercial registration is automatically provided to the commercial registry.

67. LLCs have additional obligations compared to other types of companies. Up-to-date ownership and identity information relating to LLCs is filed with the Commercial Registry and kept and maintained by the LLCs themselves. The change in ownership/partners is subject to approval by the general meeting and implies a change in the by-laws (Art. 199(a) of the CSC) and are subject to mandatory registration with the Commercial Registry, together with the operations of unification and division of the "quotas" of LLCs (Arts. 3(1)(c) and 15 of the CRC; arts. 228, 242-A and 242-B of the CSC). Information needs to be kept by the LLC's legal representative for at

5. 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" means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.

6. If a newly created company is not registered within two months, the existence of the company does not take effect in relation to third parties (Art. 3, 14 and 15(2) of the CRC; Art. 283 of the CSC).

least a 5-year period counting from the date of the LLC extinction (Arts. 2(1), 6(1), 7(1), 8 and 14 of Regulation 14/2000 of CMVM).

68. Legal ownership information must be kept by every company/partnership itself in a register that must be maintained up to date (Art. 72(2) of the CRC). Companies formed under the laws of another jurisdiction with registered head office (*sede*) or effective management in the Portuguese territory and permanent establishments are subject to the same obligations as Portuguese companies (Art. 2 of CIRC). These records need to be kept for at least five years after the companies cease to exist (see further in paragraph 93).This obligation was strengthened in 2017 with Article 4 of Law 89/2017 (beneficial ownership central registry, see paragraph 128). Commercial companies are required to maintain an up-to-date register of the identification items: a) of the partners/shareholders (*sócios*), with a breakdown of the respective shareholdings; b) of the natural persons who have, even if indirectly or through a third party, the ownership of shareholdings; and c) of whoever, in any way, holds the respective effective control. The information referred to above must be sufficient, accurate and up to date (Art. 4(2)).

69. Companies are required to open an account with the issuer in respect of the issue of nominative shares (*registo de emissão*) (Art. 44(1) of the Securities Code (CVM)). In addition, individualised accounts by a holder (*registo de títulos individualizado*) are required under Article 68 of CVM. For this, they must include all information on ownership, transfers, income, usufruct, burdens and costs, inter alia. In relation to SAs, these are required to maintain a register of the shares and to maintain records of the transferor and transferee (Annex IV, Portaria 290/2000). In the case of nominative shares, the issuer has the ability to be constantly informed about the identity of the respective holders. Since 2017, it is only possible to issue nominative securities (Art. 52 of CVM). In addition, book entry securities admitted to trading on regulated markets are mandatorily integrated in the centralised system (Art. 62 of CVM).

Company law monitoring and supervision

70. In practice, as part of the registration process, the RNPC will issue a registry number. This number will also serve as the TIN. In order to ensure that both numbers are actually the same, the Commercial Registry shares the newly issued numbers in real time with the tax authorities and the social security authority (Art. 11-A(1) of Decree-Law 129/98). Portugal states that if companies do not clarify eventual doubts or irregularities with respect to their registration, they are prevented from proving their existence in a legal context and the powers of their directors for any purpose. As further detailed in para. 78, this system is then reinforced by tax law requirements, which

contributes to ensure a high level of compliance with respect to registration requirements.

71. Supervision in this regard is in the hands of the registrars who are competent to decide over the infringements and apply the fines related to compliance with the obligations to register and update ownership information (Art. 17 of CRC; see para. 149, and para. 151 details the IRN supervision work to verify compliance by the registrars and notaries).

72. Regarding validation of the information included in the Commercial Register, the registrars check the lawfulness of the documents presented for the registration, against the information already contained in the public registries, assessing the substantial and formal regularity of the acts and the legitimacy of the parties. Portugal advises that, accordingly, whenever a registration is requested, the documents presented are verified and, if there is any indication of irregularities, the companies are urged to clarify the elements that raised doubts. If they do not do so, the registration can be rejected. The registrars however have no inquiry powers over companies beyond the general verification mentioned above. There is nonetheless the possibility of penalties being applied, for instance, if the company comes to the register to file documents and it turns out that the company did not meet all its registration requirements.

73. In any case, the registration system allows supervision, since, on one hand, it requires prior registration with the RNPC to register as a taxpayer in the AT and activate the respective TIN, on the other hand, it is required to indicate that the TIN as a mandatory element in other acts related to economic activity in Portugal, namely, opening bank accounts, establishing relationship with customers and suppliers, performing mandatory Social Security registration, among other administrative tasks. Thus, in practice, registration with the RNPC is required to obtain the TIN necessary to perform economic activities.

74. A company that, being legally obliged to do so, does not keep the book of registration of the shares, or does not comply in a timely manner with the legal requirements concerning the registration and deposit of shares is punished with a fine between EUR 500 and EUR 49 879.79 (Art. 528(3) of the CSC).

75. In addition, Portuguese authorities report that CMVM can apply penalties in case of infringement of requirements of the CVM and the tax authorities can apply penalties foreseen in the Tax Laws, which are further detailed below. CMVM monitors compliance specifically of SAs, PLSs and SEs qualifying as public companies and the aim of the audit procedure is to verify the level of compliance with obligations from a global perspective. CMVM is entitled to initiate proceedings against the company and shareholders with over 5% of voting rights in case of failure to comply with the

obligation of the shareholder to inform it in case of changes in the qualified shareholding. Portuguese officials from the IRN therefore feel confident that compliance is met and maintained.

Tax law requirements

76. All companies (and other entities subject to tax), before engaging in an activity in Portugal which is subject to any tax, must request and receive a TIN, as mentioned above. All entities that derive income subject to tax, even if exempt, such as the cases described in para. 24, must have one in order to perform any sort of economic or administrative activity. Legal persons must register with the AT within 90 days from the date of enrolment in the RNPC, where it is legally required or, if the taxable person is subject to commercial registration, within 15 days from the date of filing the registration in the Commercial Registry. The legal person number is the same as the TIN.

77. For this registration with the AT, they must provide information on the company name, its legal form, its areas of activities, the address of its registered head office, as well as the name, TIN and function of the directors and members of the Supervisory Board and any persons who perform similar functions (either individuals or legal persons). Some information will be already prefilled, due to the connection between the RNPC and the Tax Authority database. If there are changes to any item in the statement of registration/beginning of activity, the legal person must submit the statement of changes within 15 days from the date of the change. However, if the change is subject to registration with the Commercial Registry or related to entities registered in the Central File of Legal Persons, that are not subject to registration with the Commercial Registry, the update of the information will be done automatically, with the information sent by the IRN (Arts. 117(1)(a), and 118 of CIRC; arts. 31 and 32 of the VAT Code).

78. The tax authority maintains a register of taxpayers based on the statements of registration and any other information available (Art. 135 of CIRC). In addition, under Arts. 117(1)(b) and 120 of CIRC, companies and other legal persons subject to corporate income tax, or their representative for tax purposes (resident in Portugal),[7] must annually send a periodic return of income and a Statement of Simplified Business Information (*Informação Empresarial Simplificada*), which includes ownership information. This allows AT also to obtain ownership information on foreign companies and non-resident taxable persons. Since 2017, information maintained by the

7. Taxable persons resident abroad, as well as entities which cease their activity, must engage a representative for tax purposes resident in Portugal. The appointment of this representative is optional in relation to Member States of the European Union or the European Economic Area (due to the existence of administrative co-operation).

representatives is kept for tax purposes for a minimum period of 10 years from the termination of the relationship with the legal person (Art. 118 of CIRS, modified by Decree Law 28/2019 and arts. 123 and 125 of CIRC).

79. In addition, there are a number of other filing obligations which help to identify the shareholders of SAs, PLSs and SEs under the CIRC. In the case of a transfer of shares, the transferor and transferee of the shares are each personally obliged to identify themselves by submitting a prescribed form containing their identification details to the tax authority, with details on the transfer of shares, including identification information on the transferor and the transferee, within 30 days of the transaction (Art. 138 of the CIRS and Art. 129 of the CIRC).

80. Moreover, the transfer of shares by way of donation, inheritance or gift is subject to stamp duty and according to Articles 26 to 28 of the Stamp Duty Code, according to which the transferee is required to declare the transfer of shares in a prescribed form (*Participação de Transmissões Gratuitas Modelo 1 and Anexo I-04*) and to identify the transferor and the amount of shares transferred. These forms are monitored by different departments within the Portuguese tax administration, and the information is used for pre-filling and cross-checks with the tax returns related to capital gains, in risk analyses and by tax auditors.

81. Another filing obligation relies on notaries, registrars, court clerks, technical secretaries of justice and other professionals or entities who may be involved in the transfer of shares and are required to submit to the tax authority a report in a prescribed form of all actions relating to the transfer of shares carried out by them and of all decisions and judgements handed down (Art. 123 of the CIRS). Also, entities making payments, including dividends that are subject to withholding tax, are required to maintain a register containing the names and tax identification numbers of the income owner (Art. 119 of the CIRS). Finally, entities acting as securities registry or depositary/custodian are required to file a prescribed form with the tax authority containing the TIN and the state of residence of the investor owning the shares (Arts. 125 and 128 of the CIRC). Credit institutions and financial companies acting as intermediaries in securities are also required to file a prescribed form.

82. Companies and other entities formed under the laws of another jurisdiction with registered head office (*sede*) or effective management in the Portuguese territory are considered resident in Portugal for tax purposes and are subject to the same obligations as the Portuguese companies. Permanent establishments of non-resident taxable persons situated in Portugal are subject to the same obligations as the Portuguese companies (Art. 2 of CIRC). This leads to legal ownership being available and updated every year in annual tax returns with respect to foreign companies.

Tax law implementation in practice

83. Monitoring the obligation to register with the tax authorities is done by regional and local offices, but also by the tax audit services. This monitoring is, in a way, simplified by an automatic control imposed on legal persons that make their registration with the RNPC. This system is implemented between the tax authority and the social security services, in which the tax authority informs, by web service, when a legal person initiates its activity. The social security number is issued only after that information is given. Therefore, for pursuing the register of employees at the social security services, a legal person has to previously submit the registration with tax authorities. This control leads to a high level of compliance for companies which are employers in Portugal.

84. Control of compliance with reporting requirements is part of the AT tax audits that aim to verify the level of compliance with obligations from a global perspective.

85. Tax audits include the verification procedures, on the obligations of taxpayers, and other obliged persons and information procedures, which aim to confirm compliance with the legal obligations to provide information or opinion (Art. 12, Supplementary Regime of Tax and Customs Audit Procedure, RCPITA).

86. In addition to this, a number of infringements are detected automatically by IT systems, such as failures to submit/late submission of income tax returns, as well as failures to submit the annual declaration for tax and accounting information, the declaration of official return on income and withholding tax, the declaration on income paid or made available to taxable persons non-resident in the Portuguese territory.

87. For non-compliance of the filing and registration requirements imposed under the CIRC and CIRS, monetary penalties ranging from EUR 75 to EUR 22 500 may be imposed on the offenders under Articles 116, 117 and 119 of the General Regime of Tax Infractions (RGIT).

88. For the obligation to inform the tax authority about the transfer of shares, a monetary penalty ranging from EUR 150 to EUR 3 750 may be imposed on the transferor or transferee if the requisite form is not submitted to the tax authority (Art. 116 and 117 of RGIT). This requirement is further enforced by requiring any person paying any income on the shares to verify that the prescribed form has been submitted to the tax authority before paying out any income on shares (Art. 138(2) of CIRS). The failure to verify this information attracts a monetary penalty ranging from EUR 375 to EUR 37 500 (Art. 125-A of the RGIT). Under Article 26(4) of the RGIT, the minimum and maximum limits of the fines provided for in the different legal types of administrative offences, are doubled where the offender is not an individual.

89. The number of offences punished by each Article of the RGIT amounts and the respective amounts of fines applied are listed in the following table.

Infractions	2017	2018	2019	2020
1. Number of infractions under each relevant article of the General Regime of Tax Infractions (RGIT)				
Article 113 RGIT Refusal to deliver, display or present books and tax relevant documents	595	433	328	207
Article 116 RGIT Failure to deliver or delayed delivery of declarations (tax returns, excluding VAT)	412 843	383 290	391 210	432 958
Article 117 RGIT Failure or delay to present or display of documents or declarations and reports	74 909	120 197	73 462	64 919
Article 119 RGIT Omissions and inaccuracies in declarations or other tax relevant documents	45 114	42 181	38 710	25 458
2. Amounts of fines applied corresponding to the infractions described in each relevant Article of the RGIT (in EUR)				
Article 113 RGIT Refusal to deliver, display or present books and tax relevant documents	344 370	278 227	159 215	60 021
Article 116 RGIT Failure to deliver or delayed delivery of declarations (tax returns, excluding VAT)	68 000 535	64 917 900	66 861 952	75 076 894
Article 117 RGIT Failure or delay to present or display of documents or declarations and reports	10 045 078	14 757 500	9 481 364	8 245 330
Article 119 RGIT Omissions and inaccuracies in declarations or other tax relevant documents	10 635 051	10 814 344	9 943 677	6 089 753

90. The number of offences punished under Article 116 of RGIT (Failure to submit or late submission of declarations) covers non-compliance with general tax filing obligations pursuant to the Personal Income Tax as well as Corporate Income Tax. Failures to submit/late submission of income tax returns, as well as failures to submit the annual declaration for tax and accounting information, the income and withholding tax returns, the declaration on income paid or made available to taxable persons non-resident in the Portuguese territory, are detected automatically, and that explains the relatively high number of infringements indicated in the table. There is no data available regarding the exact number of taxpayers involved under each of the articles mentioned.

Inactive companies

91. The AT has an annual routine process in which it identifies the taxpayers that do not provide signs of being active. The criteria include the lack of compliance with filing tax declarations and the absence of communication of invoices issued during one calendar year (the system allows purchasers to communicate invoices to AT, if this has not already been done by the seller or service provider). Taxpayers that repeatedly fail to comply with tax returns, that do not communicate invoices issued and are not mentioned in third party declarations are classified as being in cessation of activity.

92. After selecting the taxpayers under these pre-determined criteria, the tax authority notifies them on the cessation of their activity, for fiscal purposes, due to inactivity. After the registration of the cessation at the tax administration register, the AT communicates this fact to the competent registry office[8] and the information is sent to Ministry of Justice by the IRN, so that the administrative process of dissolution and liquidation can be initiated within 30 days after the presentation of that statement.

93. In case of ceasing of activities, this change in the status is subject to registration in the Central File of Legal Persons (art. 6 of Regime of the RNPC). Companies then have up to two years to resume the activities (Arts. 143 and 146 of the Companies Code). In any case, they need to keep a legal representative in Portugal, responsible for keeping the relevant information for a period of at least five years from the ceasing of activities (Art. 157(4)).

94. The statistics on cessation of activity of legal persons, for fiscal purposes and dissolution are provided below. As a consequence, registrations are cancelled by the Registrar based on notifications received from the AT.

Cessation of activity of legal persons				
Year 2017	Year 2018	Year 2019	Year 2020	Year 2021
16 102	6 308	6 063	5 725	9 267
Dissolution				
Year 2017	Year 2018	Year 2019	Year 2020	Year 2021
5 572	3 550	206	214	[not available]

Note: Year 2021: provisional estimate.

95. Portugal clarified that due to the COVID-19 pandemic, the 2019 files, communicated to IRN in 2020 and the 2020 files, communicated in 2021, have not yet been systematically treated. As for the files communicated in 2018 (concerning 2017), and 2019 (concerning 2018), they have had

8. As required by Article 83 of the Code of Taxation Procedure and Proceedings.

systematic treatment and the administrative extinction processes are ongoing. This contributed to the reduced numbers in 2019 and in 2020. This demonstrates that Portugal is taking measures to avoid that inactive companies remain with legal personality on the Commercial Register, as keeping inactive companies raises concerns with respect to the availability of information.

Anti-money laundering requirements

96. Portugal enacted a new AML Law in 2017 (Law 83/2017, of 18 August 2017), which provides the framework for countering money laundering and terrorism financing and imposes obligations on a wide range of entities and professionals (Arts. 3 and 4). This includes i) financial institutions; ii) statutory auditors, chartered accountants, external auditors and tax advisors; iii) notaries, registrars, lawyers, solicitors and other independent legal professionals under specific circumstances; and iv) service providers to companies and other legal entities or legal arrangements. The AML CDD requirements are applicable to the companies as customers, with respect to all their transactions and business relationships.

97. The AML-obliged persons are required to conduct CDD to identify and to verify the identity of their prospective customers or their representative under Article 23 of the AML Law before entering into a business relationship or carrying out any transaction for the prospective customer. Moreover, they must take appropriate measures to understand the ownership and control structure of the customer, as regards legal persons or legal arrangements (Arts. 11(1)(b), 23, 24 and 31(4) of the AML Law). Most importantly, under Article 33(1), legal persons establishing or maintaining business relationships with obliged persons or carrying out occasional transactions with them must provide in a timely manner information about their legal owners or formal holders, thus the full legal ownership of company clients should be available with AML-obliged persons.

98. All AML-obliged persons must refuse to proceed with the operation or to establish a business relationship or to carry out any occasional transaction when the customer does not provide information on the customer's ownership and control structure (Arts. 11(1)(e) and 50 of the AML Law).

99. In addition, AML-obliged persons are required under Article 51(1) of the AML Law to maintain documents establishing identity of their customers for seven years from the date of identification or after the business relationship with the customer has ended.

100. As AML is not a primary source of legal ownership information in practice, the developments on supervision and implementation of that framework in practice are available in the section dedicated to beneficial ownership, see from paragraph 115.

Availability of legal ownership information in EOI practice

101. Peers were generally satisfied with the legal ownership information received in relation to their EOI with Portugal. The Portuguese authorities noted that information in many cases is already in the hands of the tax authority in their databases.

Availability of beneficial ownership information

102. The standard was strengthened in 2016 to require that beneficial ownership information be available on companies. In Portugal, the main mechanisms for the availability of beneficial ownership information are the AML framework, and since 2017, the BO central register, which requires all legal entities to identify and also report their beneficial owners according to the AML Law and with the same definition as the one used for CDD purposes. Those mechanisms are complemented by the obligation of companies to maintain an up-to-date internal register. In Portugal, there are no requirements in the annual tax return that capture the beneficial ownership of companies, therefore, the AT does not collect any beneficial ownership information. Each of these legal regimes is analysed below.

Companies covered by legislation regulating beneficial ownership information

Type	Company Law	Tax Law	BO central register and legal entity	AML Law/CDD
Limited liability company	None	None	All	Some
Joint Stock Company	None	None	All	All
Partnership Limited by Shares	None	None	All	Some
Foreign companies[9]	None	None	All	All

Anti-money laundering law requirements

103. The AML framework in Portugal imposes CDD obligations on a wide range of entities and professionals (Arts. 3 and 4 of the AML Law). There is no express obligation for companies in Portugal to have a continuous business relationship with any AML-obliged person, but most companies would have a bank account in practice, if they were conducting any business in Portugal. As an exception, all SAs have such an AML relationship, since annual external auditing is mandatory.

9. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obliged person that is relevant for the purposes of EOIR. (Terms of Reference A.1.1 Footnote 9).

104. AML-obliged persons and legal entities must apply the same definition of "beneficial owner", which according to article 2(h) of the AML Law means "any natural person(s) who ultimately own(s) or control(s) the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted, in accordance with the criteria established in Article 30". Article 30 specifies the criteria to be applied when identifying the beneficial owner(s) (wording amended by Law 58/2020):

> 1 – The following persons shall be considered beneficial owners of collective investment vehicles or corporate entities, other than companies listed on a regulated market subject to disclosure requirements consistent with European Union law or subject to equivalent international standards which ensure adequate transparency of ownership information:
>
> (a) the natural person or persons who ultimately:
>
> (i) owns or controls, directly or indirectly, a sufficient proportion of the units or securitisation units outstanding in that collective investment undertaking;
>
> (ii) owns or controls, directly or indirectly, a sufficient proportion of the shares or voting rights or capital of that entity;
>
> (b) the natural person(s) who exercises control by other means over that collective investment vehicle or that entity;
>
> (c) the natural person(s) who is/are the senior manager if, after having exhausted all possible means and provided that there are no grounds for suspicion
>
> (i) no person has been identified in accordance with the previous paragraphs; or
>
> (ii) Doubts subsist that the person or persons identified are the beneficial owners.
>
> 2 – For the purposes of assessing the status of beneficial owner, when the client is a corporate entity or a collective investment vehicle referred to in the previous number, the obliged entities
>
> a) Consider as evidence of direct ownership the holding, by a natural person, of participations representing more than 25 % of the client's share capital or outstanding units or securitisation units;
>
> b) They consider as evidence of indirect ownership the holding of participations representing more than 25 % of the share capital or of units or outstanding securitisation units of the customer by:
>
> (i) a corporate entity that is under the control of one or more natural persons; or

(ii) Several corporate entities that are under the control of the same person or persons;

c) Verify the existence of any other indicators of control and of the other circumstances that may indicate control by other means.

105. This definition fully meets the standard.

106. On BO identification, article 29 of AML Law establishes that AML-obliged persons must satisfactorily identify the beneficial owner of their customers. Customers are required to provide, in addition to information about their legal owners, information on the beneficial owners to AML-obliged persons, when the AML-obliged persons are taking customer due diligence measures in accordance with Article 33(1) of AML Law.

107. To achieve this, they must during the business relationship or whenever a change occurs, repeat all the procedures of identification of the beneficial owners and communicate to the sectorial AML-supervisory authorities[10] as set forth under AML Law.

108. When the customer is a legal person, AML-obliged persons are required to identify the beneficial owner (Art. 29(3) of the AML Law). Thus, before establishing a business relationship or carrying out an occasional transaction, financial institutions must in particular:

- take all necessary measures to determine the beneficial ownership (Arts. 29(2)(a) and 30 of AML Law)
- collect information on the identity of the customer's beneficial owners, through any document, measure or diligence considered eligible and sufficient. It must be verified on the basis of documents, data or information obtained from a reliable and independent source, in accordance with the specific risk identified (Arts. 29(2)(b) and 32 of AML Law). In proven circumstances of low ML/FT risk, sectorial authorities may allow that the identification data of beneficial owners is verified on the basis of a statement issued by the customer or its legal representative
- take reasonable measures to verify the identity of beneficial owners (Arts. 29(2)(c) and 31 of AML Law). The frequency of information update and measures should not exceed five years for low-risk customers (Art. 40(2)).

10. Sectorial authorities refer to the Insurance and Pension Funds Supervisory Authority, Banco of Portugal, the Portuguese Securities Market Commission, the Finance General Inspection, the General Inspection of the Ministry of Labour, Solidarity and Social Security, the Gambling Inspection and Regulation Service of Tourism of Portugal, the Institute of Public Markets, Real Estate and Construction and the Economic and Food Safety Authority.

109. With respect to the cases of low ML/FT risk, the allowed circumstances are regulated in Article 35 of the AML Law. All AML-obliged persons are allowed to perform simplified CDD, provided that they followed an adequate risk assessment (Art. 35(2)). In relation to banks, the Notice of Bank of Portugal no. 2/2018 sets the following conditions: (a) the financial entity, prior to establishing a business relationship, sets down in writing the circumstances which confirm the existence of a situation in which the risk has been proven to be limited, integrating this finding in the record referred in Article 29(4) of the Law; (b) the information provided to comply with Article 33(1) of the Law offers no doubts that it is up to date and accurate; and (c) the client is established in a limited-risk country or territory, has in place mechanisms to provide information regarding beneficial owners as per AML Law. In addition, CMVM Regulation no. 2/2020, in its article 10, specifies situations of lower risk associated with the identification of beneficial ownership, providing for some examples, which are in line with the standard.

110. In the course of the continuous monitoring of the business relationship and, in particular, in carrying out the updating procedures provided for by the AML Law, the AML-obliged persons must expand the knowledge they have about the customer's beneficial owners and repeat the procedures foreseen in the law, whenever they suspect any relevant change in the customer's beneficial owners or in the ownership and control structure of the customer (Art. 29(4) to (6) of AML Law). Those entities will keep a written record of all actions for compliance with obligations to determine the beneficial ownership and collect information and documents on the identification of the customer's beneficial owners, including any means used to determine beneficial ownership. There is no specific frequency for updating BO information in relation to high-risk and normal-risk customers by AML-obliged non-financial persons, which might lead to updated information not being available when requested. Portugal should clarify how often CDD information for high-risk and normal-risk customers should be updated by AML-obliged non-financial entities and professionals (see Annex 1).

111. Among other specific provisions of AML Law, under Articles 11(1)(e) and 50, all AML-obliged persons must refuse to proceed with the operation or to establish a business relationship or to carry out any occasional transaction when the customer does not provide information on the customer's beneficial owners or information on the customer's ownership and control structure.

112. The AML Law requires AML-obliged persons to retain the documents and records related to BO information for seven years as from the moment of customer identification or, in the case of business relationships, as from the moment of termination of the relationship (Arts. 11(1)(f) and 51). This data must be kept on a durable support, preferably electronic, must

be archived in good storage conditions, and must also be easy to locate and be immediately accessible, whenever the information is requested by the Financial Intelligence Unit (FIU) and judicial, police and sectorial authorities, as well as the AT (Art. 51(3)).

Implementation in practice of the Customer Due Diligence obligations

113. Portugal noted that practitioners have a good understanding of the beneficial ownership definition and related requirements, and this was confirmed during the on-site visit. However, during the on-site visit it was noticed that in practice, in some cases of cross-border complex structures it can be a challenge to identify all the beneficial owners. The Portuguese Securities Market Commission pointed out that the difficulty in identifying the beneficial owners of entities based in foreign jurisdictions may occur due to the existence of alternative forms of holding of participations that reduce transparency, such as nominee arrangements or the absence of centralised registries. The Commission highlighted the complexity associated with structures involving private equity funds, several holding chairs from funds, to general managers, and ultimate beneficial owners, involving different jurisdictions (including offshore), with different regimes regarding the identification of beneficial owners. The Chamber of Notaries pointed out difficulties regarding companies with shareholdings held by offshore companies or trusts.

114. To address these difficulties mentioned in paragraph 113 on identification of beneficial owners when dealing with complex structures, Bank of Portugal issued in November 2020 the Circular Letter no. CC/2020/00000062 on the adoption of enhanced due diligence measures when in face of complex ownership structures. In 2021, Bank of Portugal initiated a new cycle of thematic inspections regarding the use of legal/corporate entities, in particular complex structures, for the purposes of money laundering and all considered sources to identify beneficial owners. Portugal should monitor the application of these enhanced procedures to ensure that when AML-obliged persons have difficulties in understanding, or suspicions with respect to, complex ownership structures, they implement their legal obligation to refuse establishing the relationship and/or issue a suspicious transaction report to the FIU (see Annex 1).

115. The monitoring of the compliance with the AML obligations is attributed to several national authorities. Portugal's AML Law provides for rules to ensure administrative co-operation in the field of taxation and exchange of information at national level among entities (Arts. 122 to 127 of AML Law), including the creation of the AML/CFT Co-ordination Committee. The AML/CFT Co-ordination Committee, part of the Ministry of Finance (Arts. 122 and 123 of Law no. 83/2017) is comprised of over 25

of Portugal's key AML/CFT agencies, including policy makers, the FIU, law enforcement authorities, financial supervisors, non-financial supervisors, the AT, intelligence services, and prosecutorial authorities. Articles 117 and 118 of the AML Law require the collection, keeping and transmission, on an annual basis, to the AML Co-ordination Committee of statistical data.

116. Out of these key AML/CFT agencies, three operational agencies deal with AML obligations and the collection of financial intelligence: The FIU (*Unidade de Informação Financeira*), the Criminal Police (*Polícia Judiciária*), the Prosecutor General's Office (*Procurador-Geral da República*) and its Central Department for Criminal Investigation and Prosecution (*Departamento Central de Investigação e Ação Penal*). They have access, on a timely basis, to the financial, administrative and law enforcement information.

117. The supervision of financial institutions, under Article 84 of the AML Law, is performed by: a) the Insurance and Pension Funds Supervisory Authority, Bank of Portugal, the Portuguese Securities Market Commission and the Finance General Inspection, as mentioned in paragraph 37. Bank of Portugal is also responsible for the preventive supervision of AML in the financial sector.

118. For non-financial institutions, supervision is attributed to Criminal Justice and Operational Agencies, Financial Sector Supervisors and sectorial authorities (Arts. 11(1)(f) and 81 to 102 of the AML Law).

119. According to the Portuguese authorities, there is a good relationship and co-operation between the AML supervisors in general. These supervisors are obliged to send information on supervision to the FIU, which is responsible for preparing and keeping updated statistical data on the number of suspicious transactions reported as well as on the routing and outcome of such communications.

120. Pursuant to Article 95 of AML Law, the sectorial authorities have supervisory powers, including to:

> a) carry out the necessary regular and one-off inspections for verification of the applicable legislative framework;
>
> b) require spontaneous, regular or systematic reporting and other data, as necessary for verification of the applicable legislative framework;
>
> c) issue specific determinations, orders or instructions, as necessary for compliance with the applicable legislative framework or to prevent any breach; and
>
> d) initiate and prepare the respective administrative offence or disciplinary procedures and, as applicable, apply sanctions or suggest their application.

121. The sectorial authorities generally promote awareness and tools for their relevant AML-obligated persons. The Chamber of Statutory Auditors is responsible for registering statutory auditors and auditing companies, as well as conducting professional exams for registered auditors and issuing technical guidance. It promotes awareness, organises training sessions, submits auditors to quality control, among other actions. Auditors keep documentation that they have compiled with these proceedings and the representative noted that even before the new AML Law they had already in place these internal rules for auditors and that they demonstrated a good knowledge on how to meet with the legal requirements. The Chamber has a disciplinary committee that reviews cases of non-compliance. After that, the application of sanctions and non-criminal proceedings against auditors are of exclusive competence of the CMVM (Art. 89(1)(d), (2) and (3) of the AML Law). CMVM analyses the seriousness of a breach and imposes sanctions.

122. In the case of accountants, the Chamber of Chartered Accountants is responsible for overseeing compliance of AML duties in relation to chartered accountants, promoting training, issuing guidance covering ML/CFT and beneficial ownership and for initiating disciplinary proceedings and applying corresponding sanctions for ML non-compliance. They perform desk-based and on-site audits, and they have an internal team to deal with AML matters. The Chamber of Chartered Accountants emphasised that the lack of access to the full information available in the RCBE register always requires alternative means of identification, namely direct enquiries to the clients. This is because accountants would not have access to the information directly filled by the entities in the RCBE register and they should perform CDD. This is especially critical when ownership chain goes abroad, namely outside the European Union. Concerning control "by other means", Chamber of Notaries noted that the powers of attorney, namely with an irrevocable nature, pose a complex challenge because their scope, validity, and revocability differ depending on the legal regime.

123. During the on-site visit, the FIU noted that they analyse samples received in order to focus on the most serious risks to AML and the first step on CDD performed by the AML-obliged persons is generally good, allowing them to identify and understand who the beneficial owner is in most of the reviewed cases.

124. The Bar Association (*Ordem dos Advogados*) is responsible for the AML supervision of lawyer's duties and it has promoted several workshops on compliance, including requirements under the AML framework. Since August 2020, all law firms must have a compliance officer (Art. 13(4) AML Law and Art. 5 of Resolution of the Bar Association 822/2020). There is a duty to inform the president of the Bar Association in cases of non-compliance. Since 2019, 10 disciplinary communications were made including cases related to AML matters and other compliance matters. In addition, the Chamber of

Notaries, which is the professional public association representing notaries, confirmed that they do not sign any deed unless they have reviewed the BO central registry (see also paragraph 148). In order to mitigate eventual problems when verifying BO information and aiming at assisting notaries in the application of the AML law, the Portuguese Notary's Association has developed continuous training actions. With a special focus on practical discussions on the application of the law, the training sessions, both national and international, were attended by magistrates, experts (lawyers, law professors, etc.) and notaries from several countries of the European Union.

125. The failure to keep adequate or complete documents, records, electronic data and other information by obligated persons constitutes a particularly serious administrative offence (Art. 169-A, (dd) and (rrr) of AML Law). This includes the obligation to identify the beneficial owner of clients. These are punishable with fines ranging from EUR 25 000 to EUR 5 million (Art. 169 and 170 of Law 83/2017). Additional penalties may also be applicable such as disciplinary sanctions and criminal liability (Arts. 169-A(q) and 170(1) of AML Law).

126. In addition, sectorial authorities may apply some corrective measures, under Article 97 of AML Law, such as to:

> a) Require the reinforcement of the processes and mechanisms established for the purposes of managing the risks of money laundering and terrorist financing;
>
> b) Prohibit, limit or suspend activities or transactions, in whole or in part;
>
> c) Apply enhanced measures concerning certain transactions; and
>
> d) Require the reporting of additional information or increase the frequency of existing reporting, namely on transactions carried out.

127. The following statistics are available with respect to controls and corrective measures to relevant non-financial AML-obliged persons: 172 in 2017; 111 in 2018, 14 in 2019 and 142 in 2020. Portugal notes that priority in 2019 has been given to preventive and informative actions on some new regulations.

Centralised Beneficial Ownership Register requirements

128. The AML Law establishes that information on beneficial owners must be held in the beneficial ownership central register, which is governed by Law 89/2017 of 21 August 2017 (RCBE Legal Regime).[11] These amendments reflect the transposition of the 4th AML Directive, and the approval of Law 89/2017, of 21 August 2017, according to which it is now mandatory, upon the constitution of legal persons, to identify the beneficial owners. Amendments also include article 24-A, which was introduced to the RCBE Legal Regime (added by Law 58/2020, of 31 August 2020), providing that information on the beneficial owners contained in the beneficial ownership central register is made available, through the Central European Platform set forth by Article 22(1) of the EU Directive 2017/1132, to the corresponding registries of the other EU Member States. For that purpose, criteria to determine or to assess the identification of beneficial owners are provided for in Articles 30 to 34 of the AML Law in line with the criteria set out in the 4th AML Directive.

129. The BO central registry is an autonomous registry independent of the commercial register. All the information included in the central registry remains available until 10 years after ceasing of the company's activities (Art. 24-A(2)).

130. Under Article 3 of the RCBE Legal Regime, companies are obliged to submit a declaration on beneficial owners. The BO central register is a declarative register, whose responsibility falls upon the IRN, which is the managing entity that checks the legitimacy of the declarant. A declarant is always a natural person that is the representative of the entity that is subject to the beneficial owner's legal regime.

131. For the entities subject to commercial registration, there is an automatic validation between both systems. The information regarding the entities registered in the RNPC, such as entity name/designation, TIN and registered headquarters is automatically imported from this database to the beneficial ownership central register. The Declaration of the beneficial owners is completed and submitted online. The registration with the BO central register is also performed online by the representatives of the entities (e.g. members of the board of directors, lawyers, notaries or *solicitadores*) and IRN checks their legitimacy to be considered a declarant (Arts. 6 and 7 of the annex to the RCBE Legal Regime). These must identify themselves by using their citizen's card/digital verified signature (*Chave Móvel Digital*).

11. Further detailed under Ministerial Orders no. 233/2018 of 21 August 2018 and 200/2019 of 28 June 2019.

132. For companies constituted as from 1 October 2018, the registration in the BO central registry has to be completed within 30 days as from: i) incorporation date of the entity subject to commercial registration; ii) registration date in the Central File of Legal Persons of an entity not subject to commercial registration; and iii) date of attribution of a TIN by the AT, for any entity that should not be registered in the Central File.

133. The entities subject to commercial registration, incorporated before 1 October 2018, had to register in the BO central registry by 30 October 2019. The entities not subject to commercial registration had to register by 30 November 2019 (pursuant to Ministerial Order 200/2019). There is an annual filling obligation to confirm or modify the information registered, unless the company had to update the information in the same calendar year and nothing had changed after this last update (Art. 15 of the RCBE Legal Regime).

134. Companies are also required to maintain an internal up-to-date register of the following identification items: a) the partners/shareholders (*sócios*), with a breakdown of the respective shareholdings; b) the natural persons who have, even if indirectly or through a third party, the ownership of shareholdings; and c) whoever, in any way, holds the respective effective control (Art. 4(1) of the RCBE Legal Regime). The information must be sufficient, accurate and up to date, including identification documents, and must be communicated to the sectorial authorities under the provisions of the law (Art. 4(2)) (see para. 107). Also, the information on the tax representative of the persons mentioned therein, where applicable, must be collected (Art. 4(3)) and partners/shareholders have a duty to inform the representative (art. 5(4)). As mentioned in para. 68, companies formed under the laws of another jurisdiction with registered head office (*sede*) or effective management in Portugal and permanent establishments are subject to the same obligations as Portuguese companies (Art. 2 of CIRC) and therefore they must keep beneficial ownership information in their internal register (Arts. 4 and 7 of the RCBE Legal Regime).

135. Moreover, article 5 of the RCBE Legal Regime establishes that companies are obliged to meet the following requirements:

- The partners/shareholders or other beneficial owners must inform the company of all the elements required for the preparation of the beneficial owner register.
- Whenever there is a change to the information provided, the partners/shareholders or other beneficial owners must update it within 15 days from the date of the change of their situation.
- Whenever the company becomes aware of the change, and once the period set in the preceding paragraph has expired, the company may notify the beneficial owners to update their identification items within 10 days.

136. Unjustified non-compliance with the duty of information on BO information and subsequent updates by the partner/shareholder, upon the notification provided for in the preceding paragraph, permits the amortisation of the respective shareholdings with the effect of extinguishing the companies' quota (without prejudice to the rights already acquired and the obligations already expired). The amortisation implies the reduction of the capital of the company, extinguishing the shares amortised on the date of reduction of the capital (Arts. 232 and 347 of the CSC).

137. The same requirements under the RCBE Legal Regime apply to foreign companies that carry out an activity in the national territory, which have a TIN and must engage a representative for tax purposes resident in Portugal in case they are subject to tax (see para. 78), as well as to representations of international or foreign legal entities that carry out an activity in Portugal (Art. 3(1)(a)(b)).

138. Portugal's BO central registry database can be accessed free of charge by AML-obliged persons, for CDD purposes, and with no restrictions at any time by the AT amongst other competent authorities and by the FIU, in a timely manner and without alerting the concerned entity (Arts. 29(5) and 51(3)(b) of AML Law and art. 32 of the RCBE Legal Regime). Moreover, whoever demonstrates a legitimate interest can also access that information that is treated in accordance with data protection rules, is subject to online registration and to the payment of a fee that does not exceed the administrative costs thereof (Arts. 35, 30 and 39 of the RCBE Legal Regime). Also, the AT has access to the mechanisms, procedures, documents and information on identification, due diligence and record-keeping obligations regarding beneficial owners, for the purpose of applying and monitoring compliance with the obligations set out in Decree law 61/2013, of 10 May 2013 (last amended by Law 17/2019 of 14 February 2019), and to ensure administrative co-operation in the field of taxation (Art. 127 of AML Law).

Implementation in practice of the Centralised Beneficial Ownership Register

139. The IRN, in co-operation with other supervisory authorities, promoted initiatives to raise awareness of the existence of the legal obligation on providing BO information and the manner of its compliance. It has published guidance and Frequently Asked Questions;[12] provided a phone number to answer any questions related to the topic; sent direct correspondence to all entities registered in the Commercial Registry online (more than

12. Available at: https://justica.gov.pt/Guias/guia-do-registo-central-do-beneficiario-efetivo-rcbe and https://justica.gov.pt/Guias/guia-do-registo-central-do-beneficiario-efetivo-rcbe#Perguntasfrequentes.

47 000 emails, which partially covered the universe of companies registered in Portugal); contacted the AML-obliged persons' supervisory bodies; sent communications to all Business Associations. In addition, the IRN has also held RCBE workshops for all mediators of the 34 Company Spaces (i.e. supporting service to entrepreneurs) existing in Portugal and awareness raising actions for specific target audiences (such as lawyers, notaries and statutory auditors); it has released information and communication campaigns in the media (Television, radio and internet) and in the ATM network (i.e. advertising platform, including institutional information). These several initiatives have successfully raised awareness on AML-obliged persons, however the reminders were not sent to the full universe of registered companies.

140. In addition, IRN officials explained that they perform a random monitoring to assess quality of information of the BO central registry. Checks are also performed when officials notice a discrepancy. Currently, there are no checks in terms of the content filled by relevant persons or entities. The existent verification is primarily on the fact whether the person who filled the declaration is legitimated to do so. In case there is a chain of ownership, these documents should be included there, as well as a related explanation. IRN officials acknowledged that their plan is to establish a BO central registry compliance system. They are still in the process of designing it, by adding some automatic relevant checks and alerts into the system.

141. The IRN also checks the non-conformities in the central register when a non-conformity is reported (Art. 26 of the RCBE Legal Regime). This includes the omission, inaccuracy, non-conformity or outdated information contained in the central public register, which must be reported to the managing entity of the central public register by any of the following interested parties: a) the entity itself subject to the central public register, in cases where it finds that the declaration was made by a person that, at the time, had no legitimacy or powers of representation; b) the persons indicated as beneficial owners; c) the authorities pursuing criminal investigation purposes, supervisory and inspection authorities, the FIU and the AT; d) the AML-obliged persons, as defined by Law 83/2017, when they detect such omissions, inaccuracies, non-conformities or outdated pieces of information in the exercise of the preventive duties to which they are subject (see below). As of April 2022, over 550 000 entities have active RCBE declarations. The IRN has removed from its database the RCBE entities that were no longer active. According to the IRN, Portugal has a universe of over 713 000 entities, which leads to 77% of coverage, with entities having an active RCBE declaration, showing a good but not yet complete coverage of the system.

142. Whenever an omission, inaccuracy, non-conformity, or outdated piece of information is communicated, other than by the entity subject to the BO central public register, the managing entity of the central public register notifies the company to correct it within 10 days, or to provide a justification

for not correcting it (Art. 26(2)). The communication, declaration of correction and justification must be recorded in the BO central public register (Art. 26(3)). The communications, notifications and declarations of correction is made under the terms to be defined by order of the government members responsible for the areas of finance and justice (Art. 26(4)). In the meantime, these acts follow the general procedure under the Administrative Code.

143. Concerning the consequences in case of failure to comply with the reporting obligations or the absence of a justification that exempts them, a broad range of sanctions may be imposed. This includes restrictions on: a) distributing profits or making advance payments on profits during the financial year; b) concluding supply contracts, public works contracts or purchase of goods and services contracts with the State, autonomous regions, public institutes, local authorities and private charitable institutions mainly financed by the State budget, as well as renewing the term of existing contracts; c) applying for public procurement procedures on the provision of public services; d) allowing to trading on a regulated market any financial instrument representing its share capital or convertible into it; e) launching public offers for the distribution of any financial instrument issued by them; f) benefiting from support from European structural and investment and public funds; g) intervening as a party in any deal to transfer ownership, whether in return for payment or free of charge or to establish, acquire or dispose of any other rights to enjoy or guarantee any immovable property (Art. 37). In case of continued non-compliance, the entity will be included in a non-compliant list that is publicly available in the RCBE website.[13]

144. Under Article 37(2) of the RCBE Legal Regime, failure to comply with reporting obligations or failure to present a justification after the expiry of the deadline to proceed with rectification of information in case the central registry is aware of a case of omission, inaccuracy, non-compliance or outdated information (Art. 26(2)) result in the publication in the central public register of the situation of non-compliance of the obliged entity on the IRN website. All these actions can be taken for those that failed to comply with the filling requirements.

145. In addition, the RCBE Legal Regime establishes that in case of false statements when completing information on the BO central regime, the responsible persons are subject to criminal and civil liabilities (Art. 38).

146. In terms of supervision, there are several layers covering different agencies. First, the AML Law created interactions between the CDD obligations and the BO central register to strengthen the reliability of the

13. The non-compliant list is available online at: https://irn.justica.gov.pt/Sobre-o-IRN/Prevencao-e-Combate-ao-Branqueamento-de-Capitais-e-Financiamento-do-Terrorismo/Registo-Central-do-Beneficiario-Efetivo-RCBE.

information registered. To detect possible information mismatching, AML-obliged persons must systematically proceed to:

- consult the information contained in the BO central registry, whenever the client is obliged to register its beneficial owners on the national territory
- carry out the aforementioned consultations at intervals appropriate to the specific risks identified and, at least, whenever they carry out, update or repeat the identification and due diligence procedures provided for in the law
- collect proof of the information contained in the BO central registry or an extract from the registry
- subject the establishment or continuation of the business relationship, or the carrying out of the occasional transaction, to verification of compliance with the obligation to register, by consulting the BO central registry
- immediately communicate to the IRN any mismatching between the information contained in the registry and that resulting from the fulfilment of the duties provided for in AML law, as well as any other omissions, inaccuracies or out-of-date information that they note in the registry.

147. Second, the AML Law establishes a general duty of keeping documents and records related to BO information that can be accessible by the sectorial AML-supervisory authorities and the AT (Art. 51(3) AML Law). The AT has put in place an internal system of cross-checks involving multiple actors to facilitate the detection of inaccuracies in the information registered by the taxpayer in general. When cross-checking this information, the AT verifies whether the entity has filled information with the BO central registry. A proof of filing the information within the BO central registry is required in all circumstances in which the law requires proof of the regularised tax situation (Art. 36 RCBE Legal Regime).

148. Third, external auditors must include in their audit procedures the review of the information lodged by the entity in the central register. Likewise, banks are required to obtain proof of the legal and beneficial ownership of their clients and an entity is not allowed to open a bank account without such proof. Notaries must refuse to conclude acts in which they intervene whenever information lodged in the central public register is not accurate. Also, article 36 of the RCBE Legal Regime requires that a company must obtain proof that its beneficial owners have been duly registered in all cases where it is required to provide proof that it has no tax debts (e.g. in the case of public procurement procedures).

149. Supervision of notaries and registries is carried out by IRN, from the obligations prescribed by Law 83/2017. All registrars are monitored off site, through the verification of computer applications used and on site by auditors, who verify the compliance with AML obligations. Notaries have now to always include in their audits the AML compliance verifications, even if not exclusively dedicated to beneficial ownership.

150. Therefore, in practice, monitoring compliance occurs whenever a company is required to disclose its beneficial ownership registration. The IRN has yet to improve supervision and enforcement on the accurateness of beneficial ownership information provided by companies as the IRN has not regularly focused the supervision on the availability of accurate beneficial ownership information as per the standard.

151. During the year 2017, 20 audits were carried out by the IRN to private registrars/notaries, focusing exclusively on the verification of compliance with AML obligations in general, including in relation to CDD and the BO central registry. Between 2018 and 2020, the IRN audited 1 196 staff of the private registrar offices (488 audits in 2018, whereas 354 in both 2019 and 2020) and 4 notaries. The IRN notes that these audits were partially dedicated to AML/CFT purposes. As from the 2019-20 period, IRN has more precise information on the number of registrars/notaries that performed actions covered by the AML Law, as a considerable number of these AML-obliged persons have just been audited in previous years, which they state that explains the reduction in the number of audits more recently (reducing from 488 to 354 per year), which were also impacted by the COVID-19 implications. They will continue to be monitored in a regular basis by the IRN. No fines were applied during the review period. In addition, in 2020, Law 58/2020 was published to clarify that the Portuguese Order of Notaries is also responsible for the supervision of notaries. A Working Group was set up to develop initiatives with a view to implementing, quickly and appropriately, the exercise of the Order Notaries supervision.

152. In relation to the financial sector, supervision is undertaken by the Bank of Portugal and the CMVM, responsible for the regulation of the securities markets, including financial intermediaries in securities and collective investment institutions. In addition, since 1 January 2016, CMVM is the responsible body for the supervision of statutory auditors. It oversees the work of the Chamber of Statutory Auditors (*Ordem dos Revisores Oficiais de Contas*) in this field and directly supervises auditors of public interest entities. In addition, the supervisory actions taken by CMVM aim to verify the level of compliance with obligations from a global perspective, and not only to verify the level of compliance with a specific obligation or a specific requirement. They include infringement procedures, fines, recommendations and other corrective measures. CMVM also prepares and constantly updates a National Risk Assessment Plan and it has issued in 2020 the CMVM

Regulation no. 2/2020, concerning the prevention of AML, which, among other aspects, imposes the duty on AML-obliged persons to report suspicious transactions to the CMVM. During the review period, CMVM completed 87 supervisory actions the scope of which included the registration of clients and which covered the review of the procedures associated with AML; 10 infringement procedures, 90 corrective measures, 74 recommendations made; 17 reports made to the public prosecutor and other authorities. Finally, EUR 1 025 000 of fines were charged for various shortfalls.

153. In addition, the following data was reported by the AML/CFT Co-ordination Committee with respect to general AML inspections: 1 078 corrective measures and 79 recommendations (pursuant to arts. 97(1) and 98(2) of the AML Law, between 2019 and 2020). Also, during the 2017-19 period, 953 administrative infringement proceedings; two natural persons convicted by the sectorial authority; 86 legal persons convicted by the sectorial authority; and 122 filed administrative infringements proceedings were initiated. Finally, with respect to sanctions applied in the context of administrative infringement proceedings, 86 persons were sanctioned, leading to a total amount of EUR 2 203 600, during the same period. However, no specific sanctions were applied with respect to the maintenance of accurate information in the BO central registry.

154. Even though supervision measures took place during the review period by the AML-obliged persons, no specific verifications or sanctions were applied to date with respect to the quality and reliability of the information available in the BO central registry. Requirements to identify, maintain and verify BO information have therefore not been sufficiently supervised and enforced by the relevant authorities during the review period. At this stage, supervisors seemed to be satisfied with the existence of a beneficial ownership central register, relying on the information provided therein, instead of performing actual verification of the information filled out in the register.

155. To further strengthen its supervision programmes, by applying effective sanctions in cases of non-compliance, it is necessary to ensure the availability of adequate, accurate and up-to-date beneficial ownership information. In this sense, **Portugal is recommended to put in place a comprehensive and effective supervision and enforcement programme to ensure the availability of adequate, accurate and up-to-date information in the beneficial ownership central register for all legal entities and legal arrangements at all times, in line with the standard**.

Nominees

156. The concept of nominee ownership does not exist in the Portuguese Law and Portugal does not recognise the division between legal and beneficial ownership to property. In this regard, where a person purports to hold property for the benefit of a third person, that third person would have no rights under Portuguese law to claim the property. In the case of share ownership, shares are in principle held by the owners that holds the rightful legal title to the shares that is known to the issuer. Thus, nominee ownership is prohibited with respect to Portuguese companies.

157. In relation to possibility of engaging nominee services in Portugal, under Article 4(3)(c)(e) of the AML Law, AML-obliged persons that engage a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons acting as, or arranging for another person to act as, a nominee shareholder for another person other than a company listed on a regulated market subject to disclosure requirements in accordance with EU law or subject to equivalent international standards are required to conduct CDD and identify and verify the identity of their prospective customers, including the beneficial owners. This can happen in case of foreign companies with nominee shareholders. These kind of cases are considered higher risks related with clients. They are subject to the same obligations and penalties in case of failure to comply with the duties established under the AML Law. Thus, in these cases, the company needs to disclose not only its beneficial owners, but also any person acting as a nominee would be identified for AML purposes.

158. Portuguese authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information regarding nominee ownership during the period under review.

Availability of beneficial ownership information in EOI practice

159. Portugal received 11 requests for beneficial ownership information during the review period. Beneficial ownership information has been provided in all cases. One peer noted that the requests that were not answered within 180 days included among its topics beneficial ownership information. Portugal notes that such requests are usually complex, requiring multiple items of information at the same time, which leads to a considerable time to gather the required information.

A.1.2. Bearer shares

160. SAs, PLSs and SEs were allowed to issue bearer shares by virtue of Article 299(1) of the CSC in paper certificate form or in "book-entry" form until 2017. Law 15/2017 was passed, prohibiting the issuance of bearer shares and imposing the conversion of existing bearer shares into nominative shares within a period of six months, i.e. until 4 November 2017. This law was also passed in the context of the changes in the last few years in Portugal on combating financial crimes and tax fraud and evasion, as the AML Law and the RCBE Legal Regime.

161. In light of this change, Decree-Law 123/2017 regulates the conversion process. As from 4 November 2017, bearer shares which have not been converted into nominative shares into an integrated system or book entries can no longer be transferred, and the corresponding right to receive dividends was suspended. The remaining bearer shares would then only entitle the holder to the right to request their conversion. The amount of dividends, interest or any other income whose payment was suspended due to the non-conversion within the prescribed period is deposited with an authorised financial intermediary. This deposit has to occur in an account opened in the name of the issuer, and is transferred, upon order from the issuer, to the holder of bearer shares when these are converted into nominative shares. Any interest deriving from the deposit accrue to the issuer.

162. It is the issuer's responsibility to decide on a proposal for the amendment of the company's by-laws, the publication of the necessary announcement, the submission of the request to register amendments with the Commercial Registry, the update of the registry and, in the case of (paper) certificated shares, the replacement/change of the paper certificates (Art. 3 of Decree-Law 123/2017). The issuer must perform these formalities unless it has indicated in the announcement that the bearer shares must be handed over/presented to a Financial Intermediary designated for this purpose.

163. The conversion must be publicised, indicating the bearer shares to which it relates and the consequences of their non-conversion. The announcement is published on the company's website and on the Ministry of Justice Portal, or on the information diffusion system of the Securities Market Commission in the case of publicly-held companies and issuers of securities traded on a regulated market or in a multilateral trading system. In a scenario of inertia of the issuers until the end of the transitional period, a conversion mechanism was foreseen both to the cases in which the securities were integrated in a centralised system, or registered with a single financial intermediary. The managing entity of the centralised system, or the financial intermediary, as the case may be, is also responsible for the conversion process.

164. The conversion process operates either through the conversion of the bearer shares or by replacing them. In case of conversion, this occurs through annotation in the account of individual registration of book-entry bearer shares or of the shares integrated in a centralised system, carried out by the custodians. This can also occur by replacement of the paper certificates or by amending the certificates, in the case of shares not integrated in a centralised system, promoted by the issuer. In this last situation, the conversion can only be concluded with the effective replacement or amendment of the shares, which obliges the handing over of the shares, for that purpose, by those who hold them. The certificates will then be destroyed.

165. The following parties can hand over the shares: i) the holders; ii) the custodians, where the account holders order them to do so; iii) other entities that have the shares in their possession and that have legitimate interests in their conversion, such as pledge creditors or, in the case of judicial seizure, the court.

166. If an issuer has not promoted the conversion in a timely manner, bearer shares integrated in a centralised securities depositary were converted by the managing entity of the centralised system on the last day of the transitional period (i.e. 4 November 2017), under the terms defined by the managing entity, which have to be the object of an announcement. Thus, the managing entity of the centralised system, or the financial intermediary, as the case may be, is also responsible for the conversion process (Art. 5 of Decree-Law 123/2017). In any case, the conversion carried out by the managing entity does not exempt issuers from filing any amendments to the articles of association and other documents subject to commercial registration (Art. 6).

167. In case they are deposited with a financial intermediary, the latter has the obligation to warn its customers, through traditional mail or electronic mail, that bearer shares must be converted into nominative shares and explain the consequences of non-conversion. Bearer shares registered with a single financial intermediary were converted by that financial intermediary on the last day of the transitional period, and this fact must be reported by that financial intermediary to the issuer. Bearer shares not integrated in a centralised system, that have not been converted, only give the right to request the registration in the name of their holders, and any other rights of any kind are suspended.

168. In addition, in respect of issuers of shares admitted to trading in a regulated market, the Portuguese Securities Code requires a disclosure duty applicable to any participant holding more than 2% of the voting rights of an issuer subject to CMVM's supervision was set. In respect of issuers having its shares admitted to trading and subject to CMVM's supervision, such conversion required a general meeting of shareholders in order to amend the

company's by-laws, as well as the disclosure of relevant information to the market. This information is required to be disclosed to the market through CMVM's website by a holder of shares with voting rights, or financial instruments (or both) and it is subject to CMVM's supervision.

169. Since then, the issuing regime, registration and the requirements for the transferability of nominative shares are regulated by the CMVM. The Directorate of Planning and Co-ordination of Tax and Customs Audit of the AT is responsible for monitoring compliance with filing obligations in respect of a transfer of shares, including the transfer of bearer shares. This transfer of shares, also applies in case of foreign shareholders, who are requested to register on a special website, or done by a legal representative in Portugal, in case of non EU-residents. Therefore, requirements for the identification of owners of bearer shares in certificate form exists under the tax law.

170. In this sense, CMVM reported that there were 21 listed companies that published an announcement of conversion of their bearer shares into nominative shares during the conversion period in 2017. For the ones traded on a regulated market and integrated in a centralised system, they were necessarily converted in 2017. However, the CMVM clarified that it was not possible to identify the universe of all entities that should carry out such conversion.

171. Pursuant to Article 138 of the CIRS and Article 129 of the CIRC, detailed above in paragraph 79, the transferors and transferees of shares (including bearer shares) must submit a prescribed statement to the tax authority within 30 days with details on the transfer of shares, including identification information of the transferor and the transferee. In case of non EU-residents this should be done by a legal representative in Portugal. While both the transferor and the transferee have to submit their own form in the tax declaration and both forms will include both tax numbers, the AT Directorate of Planning and Co-ordination of Tax and Customs Audit is able to make an analysis of information contained in the two tax returns by cross-checking the information submitted. Further cross-checks are performed by comparing the information submitted with information included in tax returns in respect of capital gains, as well as information included in the annual tax and accounting statement. In case of non-compliance, the person involved will first be asked to submit a correct declaration form. If the person involved does not co-operate, an infringement procedure will be started (see paras. 87-90 on sanctions).

172. However, statistical data is not available on bearer shares integrated in a centralised system converted by the managing entity of the centralised system; nor on bearer shares registered with financial intermediaries converted by the financial intermediaries. In addition, IRN reported that 2 740 companies registered changes to the articles of association concerning

the conversion process of bearer shares during the review period. During the on-site visit, IRN confirmed that they do not have the information of how many companies were able in theory to issue bearer shares before 2017 so there is no estimate of such universe of companies. In theory they would need to go through the registration files, but even if they do so, it is not certain that this information would be available in all cases.

173. Even though Law 15/2017 was enacted, extinguishing bearer securities and determining the book entry format of securities, it is not clear the extent of the bearer shares that have not been converted after the conversion period. This has not been monitored in practice. **Portugal is recommended to guide companies in cases where not all their bearer shares have been converted and to legally ensure that appropriate reporting requirements are in place to ensure that owners of bearer shares can be identified in the case of those bearer shares that have not been converted, so ownership information is available in line with the standard in relation to all companies**.

A.1.3. Partnerships

Types of partnerships

174. The Portuguese law does not provide for entities comparable with common law partnerships as all entities have a legal personality. For purposes of this report, *sociedades de pessoas*, in which the owners have "social rights" or "quotas" and the capital is not divided into shares, are designated as partnerships. There are three types of partnerships that may be formed in Portugal:

- **General Partnership (GP)** (*Sociedade em nome coletivo*): is regulated under Article 175 of the CSC. The partners of a GP are necessarily natural persons, who are not only liable for their capital contribution to the GP, but jointly and severally liable for the GP's debt. A GP is taxed like commercial companies. As of 30 September 2020, there were 1 104 GPs registered in Portugal; 202 of these GPs were established during the review period.
- **Limited Partnership (LP)** (*Sociedade em comandita simples*): is a legal entity formed by one or more general partners with unlimited liability and one or more limited partners with limited liability pursuant to Article 465 of the CSC. The partners of an LP may be a natural person, a LLC or a SA. A LP is taxed like commercial companies. As of 30 December 2020, there were 67 LPs registered in Portugal.
- **Civil or Non-trading Partnership (CP)** (*Sociedade civil*): is formed under an agreement by which two or more natural persons undertake

to contribute goods or services to conduct an economic activity for profit purposes, under Article 980 of the Civil Code. This type of partnership is subject to the "tax transparency" regime and all the partners must file tax returns. As of 30 September 2020, there were 2 041 CPs registered in Portugal.

Identity information

175. The 2015 Report concluded that the rules regarding the availability of identity information in respect of GPs, LPs and CPs in Portugal were in compliance with the standard. There has been no change in the legal framework since then.

176. As Portugal explains, these entities are seen as companies from the Portuguese perspective. This means there is basically no difference being made between companies and these partnerships, except that these entities cannot issue shares under Portuguese law. Partnerships also have to comply with registration requirements applicable to any company incorporated in Portugal.

177. In addition, partnerships which assume a commercial form must register with the Commercial Registry (Art. 1(2) of the CRC) and their information is included in the Central File of Legal Persons. Civil partnerships must be registered with the RNPC, and be included in the Central File (Arts. 1, 2, 4 (1), a), 5, 6 and 11 of the RNPC Regime). The RNPC must inform the tax authority and the social security on the first registration and the subsequent changes (Art. 11-A(1) of the RNPC Regime).

178. Information identifying partners of GPs and LPs is filed with the Commercial Registry, kept and maintained by the GPs and LPs themselves (Arts. 176 and 466 of the CSC). Any updates must be informed and the register with the Commercial Registry updated accordingly (as in the case of companies, see paragraph 68). The partner's interest in a GP can only be transferred with the express consent of all partners of the GP and the transfer becomes effective only after a written notice is given to the GP or when the GP expressly or tacitly recognises the transfer (Art. 182(4) of the CSC). A new partner may be admitted into the GP only if all partners unanimously agree to it.

179. The AT also has identity information on partners of a GP. Information identifying partners must be filed with the tax authority, as it must be registered with the tax authority within 15 days from the date of filing of the registration with the Commercial Registry. GPs are required to inform the tax authority of any subsequent changes to their partners in a prescribed form (*Declaração de alterações*), pursuant to articles 117 and 118 of the CIRC. In practice, the tax authorities check if the information provided matches with the information that is included in the Commercial Registry.

180. When it comes to a LP, this partnership must be registered with the tax authority; on the other hand, there is no obligation to inform the identity of all partners in the registration process, but in case of an update, partners that are taxable persons would have to update identity information with the tax authority (as in the case of companies, see paragraph 77). In practice, the tax authorities would rely on the ownership information that is provided with the Commercial Registry.

181. In the case of CPs, they are required under articles 117(1)(c) and 121 of the CIRC to submit a tax return, which would include any updates with respect to partners' identity information. In addition, the ones that have not adopted a commercial form need to register with the National Registry of Legal Persons, with the IRN, and be included in the Central File of Legal Persons. The CP has to maintain information identifying all its partners to comply with the statutory obligations.

182. In addition, some identity information, must be kept by AML-obliged persons that are subject to the AML Law. When a person commences a relationship on behalf of a partnership with one of the AML-obliged persons, the CDD processes will result in the AML-obliged person obtaining information on the partnership, to understand the ownership and control structure of the customer.

183. The same rules apply to foreign partnerships, as they are deemed to have derived their Portuguese sourced income through a permanent establishment located in Portugal and are subject to the same obligations as Portuguese companies (Art. 2 of CIRC). For instance, under Article 117 of the CIRC, all entities must provide information relating to their partners upon initial registration. The information that has to be furnished is reflected as a required field in the statement of registration/beginning of activity form used for filing with the tax authority. The foreign partnership is also required to inform the tax authority of subsequent changes to its partners in a prescribed form (*Declaração de alterações*) under Articles 117 and 118 of the CIRC. A TIN would be assigned to the foreign partnership (as well as a permanent establishment, more in general) in all these cases. Information identifying partners of foreign partnerships carrying on business activities in Portugal is also filed with the tax authority.

184. As in the case of companies, ownership information must be retained in a register up to date for all partnerships, having to be maintained at least for five years after the partnership has ceased to exist, in line with the requirement for companies mentioned in paragraphs 68 and 93.

Beneficial ownership

185. As for companies, beneficial ownership information for partnerships is collected through a combination of requirements for the AML-obliged persons and under the centralised BO register, complemented by the obligation of maintaining an internal register. First, according to the BO central register regime, all legal entities subject to Portuguese or foreign law that carry out an activity or practice a legal act or business in the Portuguese territory must declare their beneficial owners (Arts. 3(1)(a)(b) and 8(1) of Law 89/2017). Partnerships fall within the scope of legal persons under the definition of this term contained in the Glossary of FATF Recommendations,[14] as they can establish a relationship with a financial institution, as well as own property. Second, financial and non-financial institutions providing services to partnerships are subject to the relevant provisions of the AML Act and they are obliged to conduct CDD when partnerships are their clients. In addition, as all companies including foreign ones, they must maintain an internal up-to-date register, covering information on the beneficial owners (see paragraph 134).

186. Given that partnerships are treated as companies, the same definition of beneficial owner for companies under the AML Act applies to partnerships. However, the principle that should be applied is that the determination of beneficial ownership should take into account the specificities of the different forms and structures of the existing entities.

187. In respect of the structure of GPs, all partners are jointly and severally liable for all the obligations of the GP (Art. 175 of the CSC). Thus, the percentage of quotas subscribed by each partner is not related to its level of control of the GP.

188. In Portugal, the beneficial owner means "any natural person(s) who ultimately own(s) or control(s) the customer and/or the natural person(s) on whose behalf an operation or activity is carried out, in accordance with the criteria set out in Article 30". The criteria of the AML Law establishes that:

> 1 – The following persons are deemed to be beneficial owners of collective investment vehicles or corporate entities, when they are not companies with shares admitted to trading on a regulated market subject to information disclosure requirements complying

14. FATF (2012-19), International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, FATF, Paris, France. The definition of the term legal persons is as follows: "Legal persons refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.

> with European Union law or subject to equivalent international rules that ensure sufficient transparency of information relating to ownership:
>
> the natural person or persons who, ultimately,
>
> (i) hold the ownership or the direct or indirect control of a sufficient percentage of investment or securitisation units in circulation in such collective investment vehicle;
>
> (ii) hold the ownership or the direct or indirect control of a sufficient percentage of shares or of the voting rights or of the ownership interests in such entity;
>
> (b) the natural person or persons exercising control by other means over such collective investment vehicle
>
> or over such entity;
>
> 2 – For the purpose of determining beneficial ownership, when the customer is a corporate entity, obliged entities shall:
>
> (a) consider as an indication of direct ownership an ownership interest of more than 25% in the customer held by a natural person;
>
> (b) consider as an indication of indirect ownership an ownership interest of more than 25% in the customer held by:
>
> (i) a corporate entity, which is under the control of (a) natural person(s); or
>
> (ii) by multiple corporate entities, which are under the control of the same natural person(s);
>
> (c) verify whether there are any other signs of control and any other circumstances that may be an indication of control through other means.

189. Considering this approach, general partners of a GP would not be necessarily identified as beneficial owners under subsection a (control ownership interest threshold), but all general partners would be identified as beneficial owners under subsection b (control by other means) as the subsections apply simultaneously.

190. In addition, under Article 4(1) of Law 89/2017, partnerships are required to maintain an up-to-date register of the identification items:

> (a) of the partners/shareholders ("sócios"), with a breakdown of the respective shareholdings;

> (b) of the natural persons who have, even if indirectly or through a third party, the ownership of shareholdings; and
>
> (c) of whoever, in any way, holds the respective effective control.

191. Under Article 4(2), the information referred above must be sufficient, accurate and up to date. In addition, Article 5 establishes an obligation to inform about changes to the BO information:

> 1 – The persons referred to in paragraph 1 of the preceding article must inform the company/partnership ("sociedade") of all the elements required for the preparation of the beneficial owner register.
>
> 2 – Whenever there is a change to the information provided, the referred persons must update it within 15 days from the date of the change.
>
> 3 – Whenever the company/partnership ("sociedade") becomes aware of the change, and once the period set in the preceding paragraph has expired, the company/partnership ("sociedade") may notify the persons referred to in paragraph 1 to update their identification items within 10 days.
>
> 4 – Unjustified non-compliance with the duty of information by the partner/shareholder ("sócio"), upon the notification provided for in the preceding paragraph, permits the amortisation of the respective shareholdings, under the Commercial Companies Code, approved by Decree-Law 262/86, of 2 September, namely in its articles 232 and 347.

192. In relation to LPs, there is a difference with respect to the level of control when compared to GPs, as it is composed of one or more general partners with unlimited liability and one or more limited partners with limited liability, only liable for their initial contribution (Art. 465 of the CSC). In addition, the partners of an LP may be a natural person, LLC or an SA. Considering that the definition requires the identification of all natural persons exercising control by other means, beneficial owners behind the corporate partners should be identified.

193. In relation to CPs, considering that they are an agreement subject to the "tax transparency" regime, all the partners would be considered as exercising control by other means and therefore, captured by the definition, detailed in article 30 of the AML Law.

194. BO information in the central registry must be kept for at least 10 years from the ceasing of activities (see paragraph 129). As mentioned in paragraphs 139-141, the IRN has taken initiatives to ensure that updated beneficial ownership information is available.

Oversight and enforcement

195. As noted above in the context of the registration of companies, the Commercial Registry has no inquiry powers in regard to oversight and enforcement (see paragraph 72). Portugal noted that, in practice, other authorities such as AML-obliged persons or the tax authorities do check compliance with registration requirements and will apply penalties if needed.

196. In relation to the control and supervision of obligations, **the same recommendations as described in A.1.1 for beneficial ownership supervision and enforcement (paragraph 155) apply to partnerships in Portugal**.

Availability of partnership information in EOI practice

197. During the period under review, Portugal received no requests related to partnerships.

A.1.4. Trusts

198. The concept of trust does not exist under Portugal's legislation and it is not recognised, in general, under Portuguese law (Arts. 601 and 1306 of the Civil Code). Besides, Portugal is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. However, under Portuguese law, there are no legal restrictions for a resident of Portugal to act as trustee or administrator of a trust formed under foreign law. Trusts that have been legally constituted under foreign laws and whose settlor(s) and beneficiaries are non-residents in Portugal, can, exceptionally, be recognised and authorised to perform business activities exclusively in the Madeira FTZ under the provision of Decree-Law 352-A/88, which regulates foreign trusts in the Madeira FTZ. Trusts cannot carry out business activities in other areas of the Portuguese territory. As of 27 September 2020, 47 foreign trusts and 5 trust service providers are registered in the Madeira FTZ.

Requirements to maintain identity information in relation to trusts related to the Madeira free trade zone

199. The acts of settlement, modification or extinction of a trust in the Madeira FTZ are subject to registration with the competent Commercial Registry. The documents of recognition of the trust and all the mandatory elements, such as the name and identification of the trust with the indication of the trust object, the date of creation, the duration of the trust, the name and registered office of the trustee and any additional facts modifying the trust, such as the appointment of new trustees or beneficiaries are required to be filed with the Commercial Registry (Art. 10 of the Decree-Law 352-A/88; arts. 2 and 6 of the Decree-Law 149/94). The requirements referring to the

name, identification and purpose of the trust, the date of its creation (i.e. settlement), its duration, and the date and nature of the modifying and extinction acts concerning the trust are all publicly available. This information remains available after a trust has ceased to exist.

200. The 2015 Report noted that the trust deed must be drawn up in writing and must be signed by the settlor, or by the trustee in representation and information relating to the settlor(s), beneficiary(ies) and trustee is explicitly required to be included in the trust deed under Article 7 of the Decree Law 352-A/88, so the trustee would have access to this identity information. Nonetheless, it was noted that Article 11 of Decree-Law 352-A/88 indicates that names of the settlor(s) and the beneficiaries are subject to secrecy and may only be disclosed by way of a court decision. This article on secrecy and confidentiality has been revoked by Article 24 of Law 89/2017 of 21 August 2017. Thus, there are no longer any secrecy provisions applicable to foreign trusts in the Madeira FTZ.

201. The 2015 Report also noted that specific registration requirements exist for foreign trusts in the Madeira FTZ, but that it does not apply to foreign trusts in the Madeira FTZ with a term of less than one year. Portugal clarified now that all trusts legally constituted under foreign laws recognised and authorised to carry out business activities exclusively in the Madeira FTZ have to register, regardless of the period of their existence in Portugal. In those cases, they must register within one month as from the recognition, with the National Registry of Legal Persons, which assigns the foreign trust a TIN and includes the trust in the Central File of Legal Persons. Thus, there are no exceptions for registration requirements. Failure to comply with this registration obligation is punished with a fine between EUR 1 496.39 and EUR 14 963.94 (Arts. 2, 4(1)(i), 11 and 75 of the RNPC Regime). Any modifications are also subject to registration with the Commercial Registry office.

202. Also, trusts in the Madeira FTZ are also covered by the obligations under the RCBE Legal Regime and have to be registered pursuant to Article 3. In addition, the Tax and Customs Authority can use all the powers and procedures at its disposal to seek and request from the trustee any information concerning the trust (including trust deeds, description of assets of the trust that generate income, identification of beneficiaries and settlors).Finally, as further discussed in paragraph 261, Portuguese resident trustees are subject to record keeping requirements and general accounting obligations under the CIRC and the System of Accounting Normalisation.

Customer Due Diligence obligations related to trusts

203. Under Articles 4(3)(d) and 33(2) of the AML Law, any person who by way of business provides trustee-related services is considered an AML-obliged person subject to AML Law. Such AML-obliged persons are required to conduct CDD and identify and verify the identity of their customers and beneficial owners. This applies to any person acting as a trustee in Portugal, as well as to other AML-obliged persons involved in a business relationship with a trust or who find a trust in the ownership structure of a client.

204. In Portugal, the AML Law (Art. 3) establishes that the beneficial owners of trusts are:

a) the settlor;

b) the trustee(s);

c) the protector, if any;

d) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

e) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

205. AML-obliged persons have to identify these persons as beneficial owners of a trust. These persons must always be individuals (Art. 2(h)).

206. Article 3(1)(d) of the RCBE Legal Regime provides that the trusts registered in the Madeira FTZ are subject to its rules. Thus, BO information, based on the definition of article 3 of the AML Law must be provided in the case of trusts. The AML Law states that in the case of such beneficiaries of trusts, AML-obliged persons must obtain sufficient information concerning the beneficiary to be satisfied that they will be able to fully comply with the relevant provisions (Art. 31(2)).

207. For instance, whenever the trustee opens any bank account or performs any kind of financial operation in Portugal, it is obliged to disclose the beneficial owners of the trust, as provided by the AML Law and RCBE Legal Regime (the trustee is an AML-obliged person pursuant to Art.3(2)d RCBE Legal Regime). In this case, relevant information must be kept for at least 10 years after the termination of a trust (see paragraph 129).

208. Within the context of the AML Law, there is however, no other express obligation for a trustee to maintain information relating to settlor(s) and beneficiaries if the trustee does not fall within the scope of the AML Law. For instance, where a natural person is acting as a trustee in his/her

personal capacity and not by way of a business of providing services, the person would not fall within the definition of an AML-obliged person. Since the coverage of professionals by the AML Law is broad, it is not clear whether the potential gap for identity information for trusts administered by non-business trustees will be material. The 2015 Report noted that this potential gap for information for trusts administered by non-business trustees related only to foreign trusts in the Madeira FTZ with a term of less than one year that are being administered by non-business trustees. Considering that it was clarified now that these trusts register, within one month as from the recognition, with the National Registry of Legal Persons, the potential gap is even smaller.

Oversight and enforcement

209. The Registrar of the Commercial Registry is competent to apply fines in case of failure to comply with the registration obligations (Art. 4 of Decree-Law 149/94). The Commercial Registration Office basically checks compliance with the legal requirements either when it receives the deed of establishment of the trust, or at a later stage when there is an amendment of any of its elements, or at the extinction of the trust.

210. In case of failure to register the settlement, modification or extinction of the trust, the administrative fee is doubled (Art. 4 of the Decree-Law 149/94, as amended by Art. 11 of Law 89/2017 of 21 August 2017).

211. Failure to comply with the reporting obligation regarding the BO central registry gives rise to administrative sanctions under Article 37 (non-compliance with the reporting obligations) of the RCBE Legal Regime.

212. Regarding supervising and overview of these obligations, lawyers acting as trustee or trust protector would be supervised by the Bar Association. Under the AML Law, the financial sector (including banks and branches located in Madeira) is supervised by the Bank of Portugal, the CMVM, the Insurance and Pension Funds Supervisory Authority and the Finance General Inspection.

213. As described in section A.1.1, there is insufficient oversight of the IRN for the verification of compliance of AML obligations and the inclusion of information on the BO central registry. As clients of non-financial entities can include legal arrangements such as foreign trusts, **the recommendation on supervision and enforcement (paragraph 155) under A.1.1 also applies here**.

Availability of trust information in EOI practice

214. The Portuguese authorities have never received a request for information pertaining to a trust.

A.1.5. Foundations

215. In Portugal, foundations are always non-profit legal persons, endowed with sufficient assets irrevocably allocated to the pursuit of an aim of social interest and governed by the Foundations Framework Law (FFL), approved by Law 24/2012 and amended by Law 150/2015. For a foundation to be recognised, the competent administrative authority has to acknowledge that the purpose of the foundation is of social interest (Art. 23 of FFL). Foundations can be "private" or "public", according to the legal nature of their founders (Art. 4 of FFL).

216. A foundation acquires legal personality when it is recognised by the competent administrative authority (Art. 158(2) of the PCC and art. 6(1) of FFL).The competent administrative authority is the Prime Minister or his/her authorised delegate (Arts. 6(2) and 20 of FFL). Portuguese foundations, as well as foreign foundations that carry out their purposes in the Portuguese territory, are subject to registration in a unified database, maintained and made available for public consultation by the IRN. Foreign foundations also have to get a clearance from the Council of Ministers.

217. The 2015 Report concluded that the legal and regulatory framework, in particular the Foundations Framework Law and its practical implementation, ensured the availability of information on the founders, the board members, the directors and any other beneficiaries of a foundation (see paragraph 173 of 2015 Report).

218. Since then, the Foundations Framework Law has been amended by Law 150/2015 and the Decree-Law 157/2019, which establishes the Regime of the Registry of Foundations (RRF) has been enacted. It regulates the constitution of foundations and establishes a unified Registry of Foundations to be maintained and publicly disclosed by IRN, which "imported" the relevant data previously included in the Legal Persons Central File, in the Commercial Registry, and in the Foundations Registry maintained by the Secretary General of the Presidency of the Council of Ministers. This Decree-Law aims to simplify the procedures associated with the life cycle of foundations, from their creation until their extinction, by making publicly available their identification elements and reducing the bureaucratic costs. It allows for the possibility of establishing foundations by means of an authenticated private document, as well as by the application of principles of simplification and co-operation between public administration bodies.

219. Foundations do not constitute relevant entities for the standard if they meet the following criteria, which happens in the case of Portuguese foundations:

- object of the foundation: the foundation must have a non-profit activity/be in the public interest/have no commercial purpose (Art. 3(1) of FFL)
- beneficiaries: the foundation has no identifiable beneficiaries (Art. 23 of FFL)
- distribution: the foundation does not make distributions to its members/founders. All of its assets and liabilities are transferred to a public body or the State upon dissolution (Art. 12 of FFL)
- irreversibility: the transfer of assets is irreversible and the assets cannot be withdrawn or used for a different purpose (Art. 3(1) of FFL)
- tax exemption: the foundation may be exempt from tax if certain conditions are met. Foundations must obtain a status of public interest to be exempted from corporate income tax (Art. 10 of CIRC)
- government oversight: the foundation's constitution is subject to government approval (Arts. 6, 22, 23, 31 and 38 of FFL).

220. As of 30 September 2020, there were 46 public foundations and 868 private foundations registered in Portugal. Portuguese authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning foundations during the review period.

Other relevant entities and arrangements – Co-operatives

221. Co-operatives are legal persons, which perform activities through the co-operation and mutual assistance of their members, aiming to satisfy their economic, social or cultural needs and aspirations on a non-profit basis (Art. 2(1), Law 119/2015). The application for registration is to be made with the RNPC (Art. 15(3)). A co-operative can be composed of co-operative members and investor members. Both can be natural or legal persons (Arts. 19 and 20).

222. A co-operative can be established to perform activities in the following fields: agriculture; handicraft work; marketing; consumers; credit; culture; education; housing and construction; fish industry; workers' production; services; and social solidarity (Art. 4). It must follow principles established by the International Co-operative Alliance (Art. 3). Considering the fields in which the co-operatives can perform activities, they follow

other rules applied to private companies or by other entities of the same nature, taking into account their specificities (Art. 7(3)) and are subject to tax (Art. 2(1)(a) CIRC) and therefore required to submit a tax return. The Commercial Code and in particularly the provisions related to the SAs apply to co-operatives (Art. 9, Law 119/2015).

223. Taking into account their nature and purposes, it appears that the co-operatives in Portugal brings limited risks for transparency purposes, as in case of Portugal they are not materially relevant: most of co-operatives are set up at a local level of most common fields of activity relate to agriculture and social solidarity.

224. Co-operatives are regulated and supervised by the António Sérgio Co-operative for the Social Economy (CASES), overseeing their constitution and operation (Art. 4(4) of Decree Law 282/2009, as amended by Decree-Law 39/2017). The Decree Law allows the dissolution of co-operatives in case they do not respect, either in their constitution or in their functioning, the co-operative principles, in case they make use of illicit means to pursue their objectives or in case they make use of the co-operative form to unduly obtain tax or other benefits granted by public entities (Art. 4(4)).

225. Co-operatives are also subject to requirements to fill out information on their co-operative and investor members with the Commercial Registry, as well as to keep it and maintain it themselves (Arts. 176 and 466 of the CSC). Any updates must be informed and the register with the Commercial Registry updated accordingly (as in the case of companies, see paragraph 68). As for companies and partnerships, beneficial ownership information for co-operatives is collected through a combination of requirements for the AML-obliged persons and under the centralised BO register, complemented by the obligation of maintaining an internal register. Co-operative members are obliged to inform the co-operative in case of any change in the elements of identification (Art. 4(1), art. 7 and art. 30 of RCBE Legal Regime).

226. Portugal notes it has never received in practice a request for information related to co-operatives.

A.2. Accounting records

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

227. The 2015 Report concluded that all entities and arrangements were required to maintain adequate accounting records, including underlying documentation, for at least five years. The legal and regulatory framework on the availability of accounting information was determined to be "in place"

and Portugal was rated Compliant to the standard for Element A.2. No substantial change occurred in Portugal since then. The requirements to maintain accounting records are found in both the company law and tax law.

228. There continues to be no issues with respect to the availability of accounting information in practice. The oversight of relevant entities and arrangements is satisfied through a combination of tax compliance measure and actions taken by the designated accountancy bodies with respect to accountants and AML requirements.

229. During the review period, Portugal received 123 requests for accounting information and did not report any issues in obtaining such information in practice. A few peers raised issues in respect of delays on requests for accounting information, however, as the information was ultimately exchanged, there is no indication that such issues are the result of accounting information not being available. Rather, the issues related to aspect of Element C.5 (Timeliness and quality of EOI requests and responses) and are analysed in that section.

230. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Portugal in relation to the availability of accounting information.

Practical Implementation of the Standard: Compliant

The availability of accounting information in Portugal is effective.

A.2.1. General requirements

231. The Standard is met by a combination of company law and tax law requirements.[15] The various legal regimes and their implementation in practice are analysed below (see also 2015 Report, paras. 227-236).

15. AML Law to some extent supports these accounting obligations. As mentioned under section A.1 above, the 2017 AML Law requires obliged persons to keep documents, including the copies, records or electronic data extracted from all the documents submitted to them by their customers, for compliance with their CDD obligations. This includes the commercial correspondence and records of transactions, for a period of seven years, as from the moment the transaction has been carried out (Art. 51(2) of AML Law).

Company Law

232. The Portuguese accounting standards are set in the System of Accounting Normalisation (*Sistema de Normalização Contabilística*). It follows the IAS/IFRS, as adopted within the EU.

233. The System of Accounting Normalisation is compulsorily applicable to a) all entities (companies and partnerships) set up under the CSC; b) individual enterprises regulated by the Commercial Code; c) individual establishments of limited liability; d) public enterprises; e) co-operatives; and f) complementary grouping of companies and European economic interest groupings. These entities are required to prepare their financial statements in accordance with IAS/IFRS. All companies must register their annual financial statements annually with the Commercial Registry (Art. 15(4) of the CRC)).

234. Under Company Law, companies must maintain full account records, which must be available to their members. In this sense, the directors must prepare and submit internally the management report, the accounts for the year and supporting accountability documents, relating to each financial year, signed by all management members (Art. 65 of the CSC). Further, the law provides for a right of information, according to which managers must provide any member complete information in writing about the management of the company, allowing consultation of bookkeeping, books and documents (Art. 214). The management report and accounting documents must be available to its members (Art. 263). Also, any shareholder who owns shares corresponding to at least 1% of the share capital may consult, at the registered office, management reports and accounting documents provided for by law, relating to the last three years, among other company documents (Art. 288). The same obligations apply to partnerships (see paragraph 176).

235. The non-compliance with the obligation of registering the accounting statements at the commercial registry offices leads to the refusal of registration of other events regarding the entity (Art. 17(3) of CRC). Registration of the accounting statements is also part of the statement of Simplified Business Information that all companies and partnerships, including foreign companies and partnerships must submit (see paragraph 247).

236. Under the CSC, article 528 provides for administrative penalties: the manager or director of the company that fails to submit documents and information required by law to the relevant corporate bodies is punished with a fine between EUR 50 and EUR 1 500 (Art. 528(1)).

237. Further, in relation to SAs, they must be audited annually and its reporting obligations will be verified by an independent auditor. This includes the management report, the year's accounts and other reporting documents duly approved (Art. 70 of the CSC). Every SA needs to engage an

independent auditor. In addition, under Article 420(4) of the CSC, statutory auditors have the duty to carry out all the examinations and verifications necessary for the statutory audit and certification of the accounts. After this examination, they should include his/her opinion and flag any irregularities not spotted by the company itself.

238. Oversight of auditors is in the hands of the National Council for Audit Supervision (*Conselho Nacional de Supervisão de Auditoria*) and of the Portuguese Chamber of Chartered Accountants (*Ordem dos Revisores Oficiais de Contas*), and supervision includes on-site supervision of all auditors. Each auditor is reviewed at least once every six years and penalties have been imposed regarding non-compliant situations.

Retention period and entities that cease to exist

239. With respect to maintaining accounting records, legal persons that assume a commercial form are required to keep the mail sent and received, commercial accounting books and related documents for a period of 10 years (Art. 40(1) of the Commercial Code). Accounting records can be stored via electronic format (Art. 40(2)).

240. In Portugal, dissolution and administrative liquidation procedures are provided in Annex III of Decree-Law 76-A/2006. Dissolution is done through voluntary dissolution (Art. 4) or administrative (ex-officio) dissolution. Administrative dissolution includes cases where the company has not submitted the registered accounting statements or effective activity for a period of two consecutive years. In this case, the tax administration communicates this fact to the competent registry office and initiates administrative proceedings for dissolution and liquidation of the entity, within 30 days after the presentation of that statement (Art. 5). At the end of the dissolution process, the company immediately goes into liquidation, as soon as the deed of dissolution has been executed, which aims to finalise pending business, pay debts, collect debtors and share the result of the liquidation with the partners.

241. The administrative procedure of liquidation in Portugal can be voluntary, beginning at the request of the commercial entity, its members, the respective successors, the creditors of the commercial entities or the creditors of partners and co-operators with unlimited liability in cases that meet the requirements for an administrative liquidation (Art. 15). Judicial liquidation is ruled by the Civil Procedure Code (Law 41/2013), which establishes that the legal personality of the company is retained until the closure of the liquidation.

242. Dissolution and liquidation procedures must be entered in the integrated system for commercial registration, which automatically reports these events to the AT (Art. 72-A of CRC). These events must also be registered in

the RNPC. They are electronically reported unofficially and free of charge to the tax administration and to the social security administration (Art. 11-A of RNPC).

243. Furthermore, in case of liquidation of a company or partnership, the owners or partners (*sócios*) are required to appoint a custodian of the accounting books, documents and of all other accounting elements of the company or partnership which is required to be kept for a period of five years (Art. 157(4) of CSC). The retention period for the accounting records and supporting documents is not affected by any subsequent event, namely, the liquidation of the entity or its relocation to another jurisdiction. This ensures that the accounting records will be available even in case of dissolution or liquidation of the company. Administrative penalties under the CSC apply in case of non-compliance with the requirements concerning the registration and maintenance of relevant documentation, including in case of liquidation. Failure to keep relevant documentation is punished with a fine between EUR 500 and EUR 49 900 (Art. 528(3) CSC). The exceptions of keeping accounting records abroad (see paragraphs 251-254) also apply.

244. As reported by IRN, the number of entities in liquidation (dissolved or insolvent) but not yet cancelled in the Commercial Register at the end of the peer review period (30 September 2020) was 27 030.

Tax Law

245. The tax law complements company law requirements and provides more detailed accounting obligations. Companies, partnerships and other entities which primarily carry on a business activity and which are subject to Corporate Income Tax, either resident in Portugal or Permanent Establishments of non-resident entities, are required to keep organised accounting records under articles 17(3) and 123 to 125 of CIRC. These accounting records must allow the control of the taxable profit and must:

> a) be organised in accordance with accounting standards and other legal provisions for the sector;
>
> b) reflect all transactions carried out by the taxpayer. All entries must be supported by dated documents, the presentation of which may be required by the tax authority where necessary; and
>
> c) be organised by using IT media (mandatory as from 1 January 2018, under Article 17(3)(c) of CIRC, as added by Law 114/2017, of 29 December 2017).

246. In addition, transactions must be recorded chronologically, without amendments or deletions, and any errors must be corrected by accounting entries when discovered. Delays of over 90 days in updating the accounts are not permitted.

247. Moreover, a statement of Simplified Business Information must be submitted to comply with the following four legal obligations (Art. 2(3) of the Decree-law no. 8/2007):

- submission of the annual declaration of accounting and tax information, under articles 117(1)(c) and 121 of CIRC
- registration of the accounting statements at the commercial registry offices under article 15(1) of CRC
- provision of information of statistical nature to the Portuguese Statistics Institute under article 6(1) of the Law of the Portuguese Statistical System
- provision of information regarding annual accounting data for statistical purposes to the Bank of Portugal under article 13 of the Law of the Bank of Portugal.

248. The retention period for which accounting records are required to be kept under tax law has changed over the years. From 2014 until 2016, the retention period for accounting books and records and supporting documents was 12 years.

249. From 2017 until 15 February 2019, the retention period was reduced to a minimum of 10 years (Art. 118 of CIRS). This remains in accordance with the standard, which requires retention of accounting documents for a minimum of five years.

250. As from 16 February 2019, the accounting books, ancillary records and supporting documents must be kept for tax purposes for a minimum period of 10 years (Art. 19(1) of Decree-Law no. 28/2019). However, the retention period may be longer, for instance whenever a taxable person exercises a right whose term is longer than ten years, requiring them to keep the relevant accounting records until the statute of limitation relating to the assessment of the corresponding taxes. Where there is computerised accounting, the same retention requirement also applies to the documentation concerning analysis, programming and running computer programmes, and to the backup copies of the data supporting the invoicing and accounting computer programmes (Art. 19(4) of Decree-Law 28/2019). Accounting must be organised by using IT media, mandatory as from 1 January 2018 (Art. 17(3)(c) CIRC). In the case of entities not resident in Portugal, but with a permanent establishment situated in the Portuguese territory, they are subject to the same obligations as resident entities (Arts. 19 of Decree-Law 28/2019).

251. Records must be kept in Portugal as a general rule, but exceptions are possible under certain circumstances as discussed below in para. 253. Until 2019, accounting or bookkeeping of taxable entities and arrangements had to be centralised in a permanent establishment or installation located in the

Portuguese territory, that had to be mentioned in the Declaration of registration for tax purposes/beginning of activity and, if there were changes to it, in the Declaration of changes (Art. 125 CIRC).

252. As from 16 February 2019, taxpayers with headquarters, permanent establishment or domicile located in the Portuguese territory are required to maintain the invoices issued and received, the books, records and other documents (including those concerning transactions carried out abroad): a) where these are in paper form, in a permanent establishment or installation located in the Portuguese territory; b) where these are in digital form, including the archiving of backup copies of the processed information, in any Member State of the European Union. Taxpayers must mention in the declaration of beginning of activity or in the declaration of changes, as the case may be, the permanent establishment or installation in which the file in paper form is centralised, as well as the location of the file in digital form (Art. 20 of Decree-Law 28/2019). In any case, the taxpayer must also ensure, through terminals located in national territory, online access, download and use of the data by the AT (Art. 31(2)).

253. The Decree-Law 28/2019 allows for the possibility that taxpayers keep the archive of invoices, and other documents relevant for tax purposes, issued and received electronically, outside the territory of the European Union upon prior authorisation from the AT (Art. 20(2) and (4)). In case of location of the archive outside the territory of the European Union, an on-line access to them should be possible from Portugal, ensuring the accessibility and readability of the information by the AT, including the download and use of data and as a safeguard, the jurisdiction should have an EOI relationship with Portugal. Also, in this case of archiving outside the territory of the European Union, the taxpayer must ensure online access, download and use of the data by the AT through terminals located in national territory. The authorisation is also subject to the good standing of the entity, i.e. it regularly files its financial statements, pays taxes due and has not been convicted for tax offences in the past and can be cancelled in case the conditions relating to archiving and accessing the information are not met (Art. 21). Documents kept in digital format are also subject to tax audit following a set procedure (Art. 31).

254. During the on-site visit, AT officials noted that this is a new procedure and not a very common practice. Portugal noted that to date, 5 requests for authorisation to file invoices and other tax relevant documentation outside the territory of the European Union were presented and requests are currently under analysis. Considering that this possibility has not been widely used, this situation remains to be tested in practice. The general tax audit and supervision system ensure the availability of accounting records in general (see paras. 265-266). In addition, the above conditions appear sufficient to ensure that in case the information requested from Portugal is kept abroad,

the risk of it not being available is relatively small. In any case, Portugal should monitor that this possibility of keeping accounting records outside the territory and, in particular, outside the EU does not lead to difficulties in accessing and exchanging information related to accounting records (see Annex 1).

Trusts

255. With respect to the foreign trusts operating in the Madeira FTZ, article 25(1) of the regional regulatory decree 21/87/M establishes that the entities which operate in the Madeira FTZ must prepare and keep their accounts duly organised and are bound to present such accounts whenever requested by the relevant government authorities, including the Portuguese Tax Administration.

256. Under Article 2 of the Decree-Law 352-A/88, the assets of a trust are totally segregated from the assets of the trustee, who is vested with the powers and bound to the obligations to administer, manage and dispose of the assets of the trust, under the terms of the trust deed and in accordance with the law governing the trust, being also bound to render the relevant accounts thereof.

257. The 2015 Report noted (see para. 208) that the Portuguese authorities consider that the record keeping requirements under the CIRC and the System of Accounting Normalisation are also applicable to the business activities conducted by the trust, and the trustee is expected to maintain a set of accounts detailing the business activities of the trust in accordance with the requirement under the CIRC and the System of Accounting Normalisation in addition to the accounts of its own business activities. With regard to foreign trusts operating in the Madeira FTZ, trustees must be formed as SAs, being subject to mandatory auditing requirements, requiring organised and segregated accounting for the trustee and for each registered trust instrument, according to the System of Accounting Normalisation (Decree-Law 352-A/88).

258. Moreover, the system of mandatory audits, consisting of the validation of annual reports by an independent auditor (see art. 70 of the CSC), combined with independent review of the auditors ensures that reliable accounting records are kept with regard to foreign trusts in the Madeira FTZ. For foreign trusts with a Portuguese resident trustee, the trustee would be subject to the obligations under the CIRC and subsequently to the penalties in the RGIT in case of non-compliance, in line with paragraphs 87 and 261 (see also para. 202). Furthermore, accounting information has to be filed with trustees' annual tax return and this would be in the hands of the tax authority (see para. 245).

A.2.2. Underlying documentation

259. The 2015 Report found that both company law and tax law require that underlying documentation in accordance with the standard be maintained to support the accounting records. The requirements remain the same.

260. For entities that are subject to the CIRC (i.e. all companies, partnerships and foundations), underlying documentation must be kept for a period of 10 years as required under Article 17 of the CIRC.

261. With respect to accounting records for trusts operating in the Madeira FTZ, the 2015 Report noted that there is no explicit language obligating the maintenance of underlying records and document in the Regional Regulatory Decree 21/87/M. However, as explained in the 2015 Report, the Portuguese resident trustee (for both trusts operating in Madeira FTZ and other foreign trusts with a Portuguese resident person acting as trustee or trust administrator) is subject to record keeping requirements for the determination of its income under the CIRC and this would include the underlying documentations as required under Article 123(4) of the CIRC. Trusts operating in the Madeira FTZ are also covered by the RCBE Legal Regime and now subject to the requirement of registering all trust assets, regardless the period of duration of the trust, ensuring that underlying records of the trust are available.

Oversight and enforcement of requirements to maintain accounting records

262. Entities subject to the System of Accounting Normalisation are subject to penalties in case of not meeting accounting and/or financial reporting standards, leading to accounting distortions. Distorting individual or consolidated financial statements or not presenting any of the financial statements required by law is punished with a fine between EUR 1 500 and EUR 30 000. In case the infractions are committed as a result of negligence, the fines are halved (Art. 14 of Decree-Law 158/2009). General compliance with the standard is monitored by the Accounting Standardisation Commission (Art. 4(2) of the Legal Regime of organisation and operation of the Accounting Standardisation Commission).

263. Also, the CSC provides for administrative penalties on the manager or director of the company that fails to submit required documents, including accounting documents and information required by law. They can be punished with a fine between EUR 50 and EUR 1 500 (Art. 528(1) of the CSC).

264. Under the tax legislation, several penalties are applicable in case of failure to keep accounting records and related obligations. These cover cases of absence of accounting or tax relevant bookkeeping records and related documents (punishable with a fine between EUR 225 and EUR 22 500 – Art. 120

of RGIT), failure to organise the accounting books (fine between EUR 500 and EUR 10 000) and delays in the implementation of records (ranging between EUR 250 and EUR 5 000 – Art. 121(1) and (2) of RGIT) and failure or delay to submit any statement required by the tax laws (punished with a fine between EUR 150 and EUR 3 750 – Art. 116 of RGIT). In addition, anyone who wilfully refuses to present accounting books or tax relevant documents (where the facts do not constitute tax fraud), is punished with a fine ranging between EUR 375 and EUR 75 000 (Art. 113 of RGIT). Finally, failure to keep accounting books and other accounting related documents is punished with a fine between EUR 75 and EUR 750 (Art. 122(2) of RGIT). Where the offender is not an individual, the minimum and maximum limits of the fines are doubled (Art. 26(4) of the RGIT) and regardless of the proceeding for imposing the fine, the taxpayer is notified to regularise its accounts within 30 days.

265. The tax administration conducts on-site inspections, desk audits, and uses computer software to detect any discrepancies or irregularities in the provided accounting information or accounting information kept by the taxpayer when inspected. Tax audits are based on a risk based approach and covered all relevant entities. Relevant sources include internal databases (tax registration, properties/assets, tax litigation, tax debts, results of audits), tax returns submitted by the taxpayers as well as by third parties, information disclosed by other Government entities (information in external databases can be cross checked with information available within the tax authority), or collected in audits on other taxpayers as well as information that is publicly available in reports, the media or in the internet.

266. The tax authorities have a wide range of tax relevant information available. Compliance with accounting obligations is primarily performed through tax audits. Based on information from all these internal and external sources tax inspectors target taxpayers that represent a higher likelihood of a correction of the taxable amount and the taxes due. Selection of audits is based on centrally defined risk criteria. Portuguese authorities noted that they follow a national audit activities plan, which follows a risk based approach. The system performs cross-checks and the following number of tax audits were carried out by the Tax and Customs Authority during the review period:

	2017	2018	2019	2020
1. Total number of tax audits (2+3)	**114 759**	**127 860**	**130 855**	**71 741**
2. Verification procedures	**31 628**	**32 975**	**30 932**	**25 982**
2.1 On site	15 021	15 046	14 548	8 579
2.2. Desk based	16 607	17 929	16 384	17 403
3. Information and prevention procedures	**83 131**	**94 885**	**99 923**	**45 759**
3.1. On site	69 964	80 344	85 137	13 595
3.2. Desk based	13 167	14 541	14 786	32 164

267. The table below indicates that AT performs cross-checks by comparing the information submitted with information included in tax returns in respect of different types of income, as well as information included in the annual tax and accounting statement:

Cross-checks	2017	2018	2019
Identified mismatches (Personal Income Tax (PIT) declaration model 3)	298 707	271 432	324 872
Identified mismatches (Corporate Income Tax (CIT) declaration model 22)	3 290	291	481

268. These forms are monitored by different departments within the Portuguese tax administration, and the information is used for pre-filling and cross-checks with the tax returns related to capital gains, in risk analyses and by tax auditors.

269. The number of offences punished by each Article of the RGIT amounts and the respective amounts of fines applied are listed in the following table.

Infractions	2017	2018	2019	2020
1. Number of infractions under each relevant article of the General Regime of Tax Infractions (RGIT)				
Article 120 RGIT Absence of accounting or tax relevant bookkeeping records	306	308	602	166
Article 121 RGIT Failure to organise the accounting in accordance with the rules of the accounting standards and delays in its implementation	339	365	245	175
Article 125-A RGIT Payment or making available income or gains derived from or related to securities	0	0	0	1
2. Amounts of fines applied corresponding to the infractions described in each relevant Article of the RGIT (EUR)				
Article 120 RGIT Absence of accounting or tax relevant bookkeeping records	87 338	100 552	260 766	42 021
Article 121.º – Failure to organise the accounting in accordance with the rules of the accounting standards and delays in its implementation	34 524	35 759	20 603	10 059
Article 125-A.º – Payment or making available income or gains derived from or related to securities	0	0	0	281

270. The Chamber of Statutory Auditors reported the following statistical data on supervisory measures to monitor the quality of the services performed by the statutory auditors and auditing companies, carried out pursuant to Article 69 of the Statute of the Chamber of Statutory Auditors:

	2018-19		2019-20	
Cases reviewed	**Number**	**%**	**Number**	**%**
Auditing companies	21	33%	23	34%
Statutory auditors	42	67%	45	66%
Total	**63**		**68**	

271. As reported by the Chamber of Statutory Auditors, the total number of files (cases) selected for analysis was as follows:

	2018-19		2019-20	
Files (cases) selected	**Number**	**%**	**Number**	**%**
Auditing companies	51	55%	64	59%
Statutory auditors	41	45%	44	41%
Total	**92**		**108**	

272. The difference between the two tables above is justified by the method of work in the audit procedure. In effect, the analysis performed for each entity (statutory auditors and auditing companies) is carried out based on the selection of files (cases). Thus, it may happen that each entity, within the scope of the analysis, is selected for more than one file (case).

273. In addition, the Chamber of Chartered Accountants reported the following statistical data:

Number of audits	2015	2016	2017	2018	2019	2020	2021
Partially dedicated desk-based audits	0	0	0	770	358	297	260
Partially dedicated on-site audits	334	470	148	0	0	0	0

274. Articles 5 to 8 of the Regulation for monitoring the implementation of the Accounting Standards, approved by the General Council of the Accounting Standardisation Commission (*Comissão de Normalização Contabilística*) on 27 January 2016,[16] provide for a range of measures for the supervision of compliance with the accounting obligations.

275. The supervision is carried out by the Accounting Standardisation Commission both directly through verification actions and indirectly through the participation in arbitration proceedings, as provided for in Articles 5 to 8 of the Regulation mentioned above. As provided for in Article 8 of said Regulation, supervision measures are aimed at assessing compliance with accounting obligations, namely: i) Assess the accuracy of the financial reports; ii) verify whether there were good practices related to accounting standards; iii) whether an appropriate remedy has been given for the loopholes according with the specific rules and iv) whether the financial statements have been drawn up; and identify any evidence of illegal acts. Accounting records are also subject to the enquiries.

16. Available at: www.cnc.min-financas.pt/pdf/Regulamento_Controlo_Aplica%C3%A7%C3%A3o_Normas.pdf.

276. In conclusion, Portugal requires all relevant entities and arrangements to maintain accounting records and the underlying documents. Portugal has a set of penalties under Companies Law and Tax Law to compel entities and arrangements to meet these requirements and apply them in practice.

Availability of accounting information in EOIR practice

277. Over the period of review Portugal has received in total 799 requests for information, of which 123 requests (15.4%) pertained to accounting information, both with respect to individuals and legal entities, including information on declared income or residence.

278. Portugal's EOI partners who reported having asked for accounting information have in general not reported any specific difficulties. A few peers noted that accounting information was sometimes taking more than 180 days to be provided. Portugal acknowledged that some requests for accounting information tend to take longer than other types of information. As further detailed in paragraph 450, accounting information requests take a longer time to be processed since they require the tax auditors to visit the premises of the taxpayer.

A.3. Banking information

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

279. The 2015 Report concluded that a combination of legal provisions in the AML law and licensing requirements ensured the availability of banking information related to customers and their accounts, as well as related financial and transaction information. Supervision in respect of availability of banking information carried out by the Bank of Portugal was found to be effective. The legal and regulatory framework was considered as in place and Element A.3 was rated Compliant with the standard. There has been no change since the last review in respect of the key legal obligations concerning availability of banking information.

280. The standard was strengthened in 2016 and now requires that beneficial ownership information in respect of account holders be available. The issues identified under section A.1 in relation to beneficial ownership requirements on the implementation in practice of the central BO register may have an impact on the availability of beneficial ownership information in respect of bank account holders as well but Bank of Portugal implements a strong supervision on banks that ensure the information is adequate, accurate and up to date.

281. Portugal received 331 requests for banking information during the review period. Peers noted that some of these requests for banking information were replied with over 180 days (see B.1 and C.5 for details).

282. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Portugal in relation to the availability of banking information.

Practical Implementation of the Standard: Compliant

The availability of banking information in Portugal is effective.

A.3.1. Record-keeping requirements

Availability of banking information

283. Pursuant to the AML Law, banks are required, in line with the standard, to keep all data and written documents related to all their transactions and related CDD measures, for a period of seven years after the termination of the contractual relationship with the customer or after the transaction takes place (Art. 43). This includes documents, records or electronic data extracted by or submitted to banks by their customers or any other persons, including commercial correspondence sent and any other documents, records and analyses. Entities which cease their activities, including banks, must engage a representative for tax purposes resident in Portugal who is in charge of keeping records (see para. 78).

284. The data must be kept on a durable support, preferably electronic, it must be archived in good storage conditions, should be easy to locate and immediately accessible whenever the information is requested by the FIU or judicial, police and sectorial authorities, as well as by the AT (Art. 51(1) and (3) of AML Law). In addition, the original documents, copies, references or any other durable support systems equally admissible in court proceedings must always be kept to enable the reconstruction of the transaction, for a period of seven years as from the date the transaction was carried out, even if the transaction is part of a business relationship that has already ended (Art. 51(2) of AML Law). The obligation to keep required documents is not affected by any subsequent event, including the liquidation of the entity or its relocation to another jurisdiction (see paragraph 243).

285. In addition, the Notice of Bank of Portugal no. 2/2018 of 26 September 2018, provides for other specific situations subject to that obligation, such as

information obtained on the relationship between a third party which deposited in an account and the account holder, under which financial institutions are required to prepare a document or put that information in writing and store it (Art. 51 of AML Law and Art. 31(2) of notice of Bank of Portugal no. 2/2018).

286. When financial entities enter into a business relationship, they are obliged to identify the customers and their representatives (Arts. 24 and 25 of AML Law). In the case of occasional transactions, financial entities are required to verify whether the identification data presented are up to date, regardless of whether they have already collected information on the customer during a previous occasional transaction. Failure to keep adequately or completely documents, records, electronic data and other information by AML-obliged persons constitutes a particularly serious administrative offence (Art. 169 A, (dd) and (rrr) of AML Law).

Beneficial ownership information on account holders

287. The standard was strengthened in 2016 to require that beneficial ownership information be available in respect of all account holders. The AML Law accordingly requires such availability when the customer is a legal person or legal arrangement, or a natural person who may not be acting on his/her own account (Art. 29(3) of the AML Law). Before establishing a business relationship or carrying out an occasional transaction, banks must:

- take all necessary measures to determine and to verify the beneficial ownership of the client (Art. 29(2)(a), 30 and 31 of AML Law)
- collect information on the identity of the customer's beneficial owners, through any document, measure or diligence considered eligible and sufficient, in accordance with the specific risk identified (Art. 29(2)(b) and 32 of AML Law).

288. Banks are also required to keep a written record of all actions for compliance with obligations to determine the beneficial ownership, including any means used to determine beneficial ownership (Art. 29(4) of AML Law).

289. In addition to the identification procedures, banks must apply complementary procedures, as provided for in Article 27 of AML Law and Articles 23, 24 and 25 of Notice of Bank of Portugal no. 2/2018, of 26 September 2018:

> a) Collect information on the purpose and intended nature of the business relationship;
>
> b) Collect information on the origin and destination of funds transferred within the scope of a business relationship or occasional transaction, where the customer's risk profile or the transaction characteristics so require;

> c) Maintain continuous monitoring of the business relationship, so as to ensure that the transactions carried out in the course of that relationship are consistent with the entity's acknowledgement of the customer's activities and risk profile and, where necessary, of the origin and destination of the funds transferred.

290. As from 2017, banks may rely on third parties to perform the identification and due diligence procedures, if certain conditions are met (Art. 41 of AML Law). Such third parties must be financial institutions (Art. 35 of Notice of Bank of Portugal no. 2/2018), also subject to AML requirements and include obliged Portuguese entities, or other similar entities having their head office abroad that apply identification, due diligence and record-keeping procedures that are consistent with those laid down in AML Law. The ultimate responsibility for the CDD measures are with the relying institution (Art. 41(5)(d) of AML Law). Financial institutions must also ensure that third parties are in a position to gather all information and observe all required procedures (Art. 41(6)(a) of AML Law and Art. 35(2) of Notice of Bank of Portugal no. 2/2018). This includes to require the verified identity of the customer, the beneficial owner(s) and the nature of the business relationship when establishing the relationship, following the AML Law requirements. It also has to be able to obtain copies of the underlying documentation upon request. With respect to the identification checks of the beneficial owners, these third parties are required to obtain supporting evidence for identification data (Art. 22(7) of AML Law).

291. In Portugal, financial institutions are prohibited from relying on third parties established in high-risk third countries and in countries that lay down prohibitions or restrictions that prevent or restrict the financial entity's compliance with the legal and regulatory standards on ML/CFT prevention (Art. 41(4) of AML Law and Art. 38(4) of the Notice of Bank of Portugal no. 2/2018).

292. With respect to CDD rules, banks must take into account certain factors to identify the risk profile, which can be considered as high risk, medium risk or low risk. In case of low risk, simplified CDD may apply. This includes flexibility in the verification process, by allowing to verify customer identity and BO information at a later stage, after establishing the relationship (Arts. 26 and 28(4) Notice of Bank of Portugal no. 2/2018). In any case, customer identification remains mandatory, including when offering new products and services to existing clients (Art. 6(1) and (5) of the Notice of Bank of Portugal no. 2/2021) and banks are bound by a duty to refuse to establish a relationship.

293. When carrying out occasional transactions as opposed to establishing a customer relationship, checks must be made when the transaction meets any of the following criteria: i) it amounts to EUR 15 000 or more, whether

that transaction is carried out in a single operation or in several operations which appear to be linked; or ii) it constitutes a transfer of funds exceeding EUR 1 000. In these cases, the financial entities have to implement a computer-based, centralised registry of all occasional transactions, regardless of the amount involved, so as to identify the division of operations. The mentioned registry must contain at least the date and value of the operation and the customer's full name or designation and the customer's identification document type and number. It is immediately updated whenever the financial entities carry out an occasional transaction (Art. 13 of Notice of Bank of Portugal no. 2/2018). Information on occasional transactions is registered in a unified system, which performs automated checks, by raising a flag when several transactions involve the same customer, leading to further checks. In any case, Bank of Portugal noted that occasional transactions are not a common practice in Portugal.

294. Also, financial entities are required to set up procedures to check periodically on whether the information related to their customers is up to date and accurate, based on materiality and risk criteria, bearing in mind *inter alia* the characteristics of the customer, the business relationship and the financial product or service, in the event of the following events: a) change in the composition of the board of directors, b) change in the nature of the activity or business model, and c) expiry of identification documents. Financial entities are also obliged to update the information on their records whenever they have reason to believe that they are outdated (Art. 40 of AML Law and Art. 34 of Notice of Bank of Portugal no. 2/2018). Updates also depend on the risk-level of the customers. A per law, the minimum periodicity is 5 years for low-risk clients, which means that it must be more frequent when the risk is higher. In practice, Bank of Portugal imposes the following timeframe in its risk-based approach: 6 months up to 1 year for high-risk customers, 1 year up to 3 years for medium-risk customers and 3 years up to 5 years for low-risk customers. Bank of Portugal noted that under its risk-based approach to supervision, when conducting an inspection, they select samples and verify if the CDD measures are adequate and implemented in practice. In case expected timelines for updating CDD information are not followed, Bank of Portugal would consider it an infringement and could issue an injunction, identifying the findings and deficiencies. The financial institution would need to update its practices in light of the respective recommendations. During the on-site visit the banks representative noted that when they ask for further documentation and the customer does not comply with the request, they will report this to the FIU and close the relationship.

295. The law and regulations are silent with respect to how often the CDD records of clients must be updated regarding specified timelines or triggers for updating due diligence documentation in all cases, but the AML Law establishes that the frequency of information update for low-risk customers

shall not exceed five years and that time intervals should vary in inverse proportion to the degree of risk identified. Nonetheless Bank of Portugal details specific timelines in its risk-based approach, which ensures the availability of beneficial ownership information with respect to banks.

Relationship with the Beneficial Ownership Central Registry

296. When performing the identification and due diligence checks on beneficial owners and updating or repeating the identification and due diligence procedures, banks must access and check the information in the beneficial ownership central registry (Art. 34(2)(a) and (b) of AML Law). Banks must perform their own CDD measures and cannot rely merely on the information available in the central registry. Banks must immediately report to the IRN any non-conformities between the information in the central registry and that resulting from CDD activities, as well as any other omissions, inaccuracies and outdated information in the RCBE (Art. 34(2)(e) of the AML Law). This periodic check by AML-obliged persons should ensure the availability of up-to-date beneficial ownership information in the central registry.

297. The establishment or conduct of the business relationship or the carrying out of the occasional transaction depends on the verification of compliance with the obligation to maintain records there (Art. 34(2)(c) of AML Law). The beneficial ownership central registry framework does not have yet an appropriate supervisory programme for ensuring the accuracy of beneficial ownership information available. Portugal is recommended under element A.1 to put in place a comprehensive and effective supervision and enforcement programme to ensure the availability of adequate, accurate and up-to-date beneficial ownership information in the central BO registry.

Oversight and enforcement

298. The regulation and supervision of banks is undertaken by the Bank of Portugal. Depending on the type of financial products provided or activities carried out, banks might be subject to regulation and supervision, for AML/CFT purposes, by more than one supervisory authority. Credit institutions providing investment and securities services – i.e. that are also financial intermediaries in accordance with the CVM – are subject to the AML/CFT supervision of both Bank of Portugal and CMVM (Art. 88 of AML Law, and Art. 293(1)(a) of CVM). The powers of supervisors are provided for in the AML Law (Section II of Chapter VII), and include regulatory, supervisory and investigatory powers.

299. The failure to keep, or keeping inadequately or incompletely, documents, records, electronic data and other information constitutes a very serious administrative offence (Arts. 169-A(dd) and (rrr) of AML Law). Bank

of Portugal may issue recommendations (Art. 98), injunctions (Art. 95(2)(c) of AML Law), enhanced corrective measures (Art. 97), such as to require the (re)nforcement of the procedures and mechanisms implemented (Art. 97), countermeasures (Art. 99) and other measures set forth in Art. 72 of Notice of Bank of Portugal no. 2/2018. Countermeasures are proportioned to the risks identified and may not conflict with other countermeasures arising from the legal acts referred above (Art. 99(2) of AML Law).

300. Monitoring actions by the Bank of Portugal take place by means of on-site and off-site supervision following a risk-based approach, where they verify the quality of information, including the quality of the business relationship. Depending on the results, they may request the financial institutions to close the relationship with a group of clients or with a client in particular. The Bank of Portugal performs its monitoring and enforcement actions by adopting a risk based approach, when defining supervision priorities and planning on-site inspections. During the on-site visit they have noted that since COVID started, they had to adapt the onsite inspections, but they are performing videoconferences and still sharing information. They have managed to initiate inspections, both focusing on BO information and full inspections. During the review period, Bank of Portugal has also approved the Report on AML/CFT,[17] which must be filled in and sent by Financial Institutions on an annual basis.

Financial institutions under supervision of Bank of Portugal

Financial institutions – institutional types	2018	2019	2020
Credit institutions	160	159	157
Credit providers (other than credit institutions, e.g. credit financial institutions, investment firms, financial leasing companies, factoring companies)	12	13	9
E-money institutions	12	14	14
Payment Institutions	36	35	38
Bureaux de change	5	5	4
Others (e.g. entities providing postal services)	3	3	3
Total	**228**	**229**	**225**

Credit institutions

Credit institutions	2018	2019	2020
Branch (permanent establishment)	32	33	35
Headquarters/subsidiaries	128	126	122
Total	**160**	**159**	**157**

17. Available at: https://www.bportugal.pt/instrucao/52019.

Supervision activities/actions undertaken

Supervision activities/actions undertaken	2018	2019	2020
On-site inspections	20	16	27
Of-site inspections	350	336	210
Corrective measures (including injunctions)	231	191	665
Recommendations	30	27	7

301. As of 30 December 2020, there were 157 banks in Portugal: 122 local banks and 35 foreign branches (EU banks). Between 2018 and 2020, 63 onsite inspections and 896 offsite assessments were performed by Bank of Portugal, resulting in 1 087 corrective measures (231 in 2018, 191 in 2019 and 665 in 2020, note that a considerable number of measures regarding supervisory work carried out in 2018 and 2019 was approved in early 2020, which explains the considerably higher numbers in 2020) and 65 recommendations (30 in 2018, 27 in 2019 and 7 in 2020). Supervisory actions that detect significant shortcomings lead, as the case may be, to the issuance of injunctions, recommendations and other supervisory measures and must always be subject to a follow-up process. In the same period, 28 administrative pecuniary sanctions were taken: 18 fines in 2018, 9 fines in 2019 and 9 fines in 2020. Bank of Portugal also prepares a unified report on AML, based on self-assessment questionnaires to be yearly submitted by supervised institutions (Instruction of Banco of Portugal no. 5/2019, last amended by Instruction of Banco of Portugal no. 6/2020). Supervision activities by Bank of Portugal seem to be robust and from 2018 to 2020 they have covered all relevant financial and credit institutions through different types, including on-site and off-site inspections, corrective measures and recommendations, allowing that accurate and up-to-date banking information, including beneficial ownership information for all accounts is maintained by all the banks in Portugal, in accordance with the standard.

Availability of banking information in EOI practice

302. Portugal received 331 EOI requests for banking information during the review period, which were all replied. These requests included information on bank statements and transactions, bank account holders and persons authorised to operate the bank account, contracts related to accounts and issued bank/credit cards. Peers were generally satisfied with the information provided. A few peers noted that banking information was among the categories of requests to which Portugal did not answer within 180 days.

Part B: Access to information

303. 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).

304. The Portuguese Tax Authority has broad access powers to obtain relevant information from any person who holds it.

305. However, the 2015 Report identified two issues. First, there were some uncertainties as to whether the professional secrecy applicable to lawyers and solicitors may unduly restrict the access to information by the Competent Authority for exchange of information purposes. A recommendation was made to amend the legislation to remedy this.

306. Since the 2015 Report, the Portuguese authorities continued discussions with the Portuguese Bar Association, which clarified that when a lawyer acts simultaneously in the capacity of a lawyer and on a management role, the duty of confidentiality does not cover information in the possession of the lawyer acting solely in the capacity of a manager. In addition, a 2018 decision of the Supreme Court of Justice confirmed that professional secrecy is not above all other obligations. Portugal has thus fully addressed the recommendation.

307. Second, issues were identified in relation to access to bank information directly from the banks and to the conditions for lifting bank secrecy. Portugal was recommended to ensure that its access powers and procedures

concerning the access to bank information are effective in relation to all requests for bank information, irrespective of when the relevant operations and transactions took place. New internal processes and guidance concerning requests received were formally adopted by a 2016 decision of the Director General of the Tax and Customs Authority. This new guidance is applicable to all requests for banking information, irrespective of when the relevant operations and transactions took place. The recommendation issued in 2015 has been satisfactorily addressed.

308. In the current review period, Portugal received 799 requests for information, and the Competent Authority successfully exercised its access powers when responding to requests (when the requested information was not already directly available with the competent authority). The EOI unit obtained information from a variety of sources, including banks, various registers and other information holders.

309. The conclusions are as follows:

Legal and Regulatory Framework: The element is in place.

No material deficiencies have been identified in the information exchange mechanisms of Portugal in respect of the competent authority's ability to obtain and provide information.

Practical Implementation of the Standard: Compliant

No issues in the implementation of access powers have been identified that would affect EOIR in practice.

B.1.1. Ownership, identity and banking information

310. Portugal's competent authority for exchange of information is the International Affairs Department of the Portuguese Tax and Customs Authority (EOI unit). The EOI unit is responsible for the exchange of information in the fields of direct and indirect taxes. The 2015 Report analysed the procedures for obtaining information generally, which remained the same, and procedures for obtaining banking information more specifically, which have been improved.

Accessing information generally

311. The access powers for the competent authority are derived from the General Tax Law (LGT), the Code of Taxation Procedure and Proceeding (CPPT) and the Supplementary Regime of Tax and Customs Audit Procedure (RCPITA). Article 63(1) of the LGT sets out the general powers of the tax authority to access information. The CPPT provides for governing principles

of the inspection activities, such as the co-operation between the tax administration and the taxpayer (Art. 48) and the co-operation of government entities (Art. 49).

312. The main sources of ownership, banking and accounting information are the tax databases, which are directly accessible by the Portuguese competent authority/EOI unit and contain vast information obtained for domestic tax purposes from the periodic declarations submitted by taxpayers and by third parties. Where the information requested by EOI partners is not included in the databases, in general, it is directly available by acceding to the Commercial Registry, Property Registries and Notary Registry.

313. In practice, in addition to the direct access to the databases in order to reply to EOI requests, the Commercial Registry directly reports to the AT, under the integrated system of commercial registration, information on the events affecting the legal entities (new registration, changes to articles of association, dissolution, etc.) as well as accounting information (financial statements, information on the assets owned by the taxpayer and the number of employees). In case another Portuguese governmental authority holds information, the EOI unit contacts the relevant authority, which is required to co-operate (Art. 49 of Code of Taxation Procedure and Proceedings).

314. If the requested information is not found in the AT's databases or in the Registries mentioned above, the AT uses its broad access powers to send a request to the information holder for obtaining the relevant information outside any tax audit procedure, based on the principle of co-operation between the tax authority and the taxpayers (Art. 59 LGT). In the context of tax audit, tax auditors can also request relevant information and documents, examine items concerning taxpayers, which are likely to reveal their tax situation, take statements from the taxpayers, members of corporate bodies, chartered accountants, statutory auditors or from any other person, where their statement is relevant for establishing the taxable events and testimonials (Art. 29(1) and (3) RCPITA).

315. In case of information held by the taxpayer, the EOI unit usually sends a letter requesting the taxpayer to provide the relevant information and that also serves as notification (see Element B.2). This letter contains the decision stating that information is requested for EOI purposes, the international legal basis for the request, that a tax investigation is conducted in country X and a 20-day deadline for response (the time period is between 10 and 30 days according to Art. 23 of the CPPT),[18] as well as the indication of the entity that took the decision and if it did so in the use of delegation or sub-delegation of powers (Art. 36 CPPT). The information shared in the letter

18. In exceptional circumstances, the deadline may be extended to the upper limit provided by law, i.e. 30 days.

informs the taxpayer, which has the right to appeal such decision (see also in Element B.2). Portugal notes that notices to another public entity were almost never sent in practice as a large amount of data maintained by public authorities is directly accessible by the EOI team. In case the information is in the possession or control of a third party, such as a service provider or business partner, Portugal makes use of its audit powers and the required information is collected directly by the audit team from the relevant third party, as if the request was part of a domestic inquiry. In this case, the existence of an EOI request is not mentioned. The same audit procedure is applied when the requesting jurisdiction has asked not to notify the taxpayer.

316. As a rule, AT carries out supervision and enforcement measures in respect of tax obligations through the tax audit procedure that aims to verify the level of compliance with obligations from a global perspective. Usually, the tax audit procedure is not intended to verify the level of compliance with a single specific obligation or the fulfilment of a single specific requirement. Therefore, the tax audit procedure is not the preferred option to gather the specific information requested in an EOI request. Nevertheless, where the request is complex or when it involves, for instance, a visit to the taxpayers' premises, the EOI unit requests the assistance of other departments or other authorities with tax audit powers, as it happens in cases involving information held by third parties (see para. 314). This typically relates to cases where accounting information is requested. Moreover, there have been instances where the EOI unit has requested information directly from the taxpayer and the taxpayer failed to reply. In those cases, the EOI team has also asked for the intervention of the Tax Inspection Directorate for gathering the information through a tax audit. In Portugal, an audit can be opened for EOIR purposes when the taxpayer has already been audited for other purposes. Audit cases for EOIR purposes are normally handled through the Information and Prevention Procedures (see table in para. 266).

317. The duration of the tax audit varies according to the complexity and type of information to be collected and whether it is performed on-site or desk-based. As a general rule, the audit procedure must be completed no later than six months after its start, being possible to extend it by two periods of up to three months each. In case of an on-site audit where it is necessary to collect information from the taxpayer or a third entity, priority is usually given to direct contact, in order to accelerate the collection of information. In the case of a desk audit, the tax auditor notifies the taxpayer through registered mail with acknowledgement of receipt to send the requested information within a period of 10 to 30 days. If the taxpayer does not reply to the request in an appropriate manner, an on-site tax audit is launched and the tax auditor visits the taxpayer's premises in order to collect the information needed for the request.

Accessing beneficial ownership information

318. The Portuguese Tax Authority can use all its relevant powers described above to access the documents and information on identification, due diligence and record-keeping obligations regarding beneficial owners, for the purpose of applying and monitoring compliance with the obligations set out in Decree law 61/2013, and to ensure international administrative co-operation in the field of taxation (Arts. 127(2) and 129 of AML Law). These access powers include the consultation of the relevant databases and registries containing the beneficial ownership information as well as the request to the relevant service providers for obtaining beneficial ownership information.

319. In addition, Article 24-A of the RCBE Legal Regime provides that information on the beneficial owners is made available through the Central European Platform to the corresponding registries of the other EU Member States, which means the EU partners of Portugal do not need to send an EOI request when the only information needed is beneficial ownership information on a Portuguese entity. Tax officials in the EOI unit have direct access to the central register through individual credentials.

Accessing banking information

320. Some banking information is already available in the AT database, such as financial statements and documents related to banking transactions that were submitted to the tax authority, in particular, information regarding the amount: (i) of transfers made to offshore territories (Art. 63º-A(2), General Tax Law), (ii) received from card payments (Art. 63º-A(4), General Tax Law), (iii) of deposits and financial investments (Art. 10º-A, Decree-Law 64/2016). In addition, since 2019, Portugal has a Compulsory Financial Information Reporting Regime, which requires financial institutions to communicate to the tax authority accounts held by residents in Portuguese territory, whose balance or aggregate value exceeds EUR 50 000 at the end of each year (Law no. 17/2019 and Art. 10º-A, Decree-Law 64/2016).

321. The legal basis and procedures for accessing bank information in Portugal have been significantly amended throughout the years, and different legal regimes and procedures have applied depending on the year the information relates to (see paragraphs 281-284 of the 2015 Report). This has changed since the previous review and now there is a special procedure to be followed in respect of access to information held by banks and other financial institutions irrespective of the period to which the bank information relates, pursuant to AT's internal guidance from 6 February 2015 (see further in para. 326).

322. The tax administration's powers to access banking information or documents are provided in Article 63B of the LGT. This provision has

removed, since 2009, the need for consent of the holder of the protected data or the taxpayer in certain situations (Art. 63B(a) to (g)), in particular where there is an indication of non-compliance with the tax laws, an indication of lack of accuracy of what has been declared, a failure to meet filing obligations, or a communication of suspicious transactions sent to the AT by the Attorney General's Office or by the FIU. Before 2015, the EOI purpose was not explicitly mentioned by the law as a valid condition for issuing a decision to access banking information without the taxpayer's consent and this led to a narrow interpretation by the AT of the explicit situations where banking information could be obtained without the consent of the taxpayer.

323. An amendment to Article 63B of the LGT, effective as of 1 January 2015, complements this provision with the following sub-paragraph that establishes a specific situation for EOI purposes:

> (h) Where it concerns information requested under international agreements and conventions on tax matters to which the Portuguese Republic is bound.

324. This sub-paragraph clarifies that the Portuguese tax authorities can access all banking information or documents, based on an EOI request, without the need for consent of the account holder or the taxpayer, in cases where the request:

- is made on or after 1 January 2015 and
- regards banking operations and transactions carried out after 1 January 2015 (Art. 63B(9) of the LGT).

325. When the AT does not seek the consent of the account holder, it nonetheless notifies the account holder of its intention to ask information directly to the bank. In the cases covered by sub-paragraph (h) on EOI, this notification can be lifted in some circumstances (in the cases covered by paragraphs (a) to (g), the notification can also be lifted under Article 14(4) of Decree-Law 61/2013). There is no notification of the concerned persons nor prior hearing of the relative or third person where (i) the request for information is of an urgent nature or (ii) such hearing or notification may endanger the investigation in the requesting State or Jurisdiction, and that exception to notification is explicitly requested by such State or Jurisdiction (see section B.2 below). These rules apply for all EOI-related requests received since 1 January 2015.

326. In practice, new workflows were established to deal specifically with domestic and EOI-related banking information requests. The Competent Authority works based on the EOI Manual adopted in 2015, which was recently updated in March 2021 and the main change further streamlined process to access bank information (see paragraph 332), explaining its dynamic

and expected timelines,[19] explicitly explaining that a request from another jurisdiction is one of the bases for obtaining the information without the prior consent of the person.

327. In case of an urgent or sensitive request that cannot be disclosed (i.e. application of the exceptions to requesting consent and to notification), the EOI unit will explain the circumstances and seek approval from the General Director for sending the request directly to the relevant bank.

328. In other cases, the EOI unit will contact the taxpayer first to obtain the relevant information. This is not legally mandatory to ask the consent of the account holder, but the Portuguese authorities consider this is more efficient.[20] The taxpayer has 20 days to provide consent. If the taxpayer so authorises, they will contact the bank. In case the taxpayer does not respond or does not give authorisation to disclose the information, the case is assigned to an official specialised in this task who will start the derogation process under sub-paragraph (h), which is treated as a priority, for obtaining the banking information without the consent of the taxpayer. It involves preparing a reasoning for the Director General of the tax administration's approval and once the approval is obtained, a notification is sent to the taxpayer (see B.2). In 2021, Portugal has received 290 requests for bank information. For 78 of those requests, consent for access was given directly by the taxpayer. For all the other cases (212 cases), authorisation from the Director General was required and AT was also able to obtain the information in all cases.

329. The process to ask information to the bank normally takes just a few days, as there are a streamlined process and a model for it, as opposed to the situation in the previous review period (see 2015 Report, paragraph 286). In this case, the EOI unit submits the request to banks, providing a specific timeline of ten working days for them to respond the request (Art. 63(8) of the LGT).

330. The department follows security measures when dealing with banking information: only the person dealing with the request, his/her superior and the Director can access the information. The officer in charge of gathering banking information meets with the Director to discuss the request.

331. The Portuguese authorities acknowledge that it has been a learning process and that they have improved over the years the way they handle the EOI requests for banking information, considering that the amendment

19. Internal EOI unit (DSRI) guidance from 6 February 2015.

20. The letter states that, in case the taxpayer does not authorise access to bank information, a derogation process for bank secrecy will be initiated, in order to enable AT to obtain the information requested by the requesting State or Jurisdiction.

effective since 2015 has brought many changes in the practice of assessing the situations to access banking information and the foreseeable relevance in relation to banking requests processed after 2015.

332. Article 63B(9) of the LGT specifies that the new process applies with regards to banking operations and transactions carried out after 1 January 2015. This limitation was highlighted in the 2015 Report. For bank operations and transactions carried out before 1 January 2015 governed by versions of Article 63B of the LGT effective before this date (detailed in 2015 Report, paras. 281-284) bank information is now accessed without the consent of the taxpayer. This is possible thanks to the adoption of the new internal processes and guidance that streamlined the process for the issuance of a decision by the Director General and therefore this process no longer restricts the effective exchange of bank information that relates to periods up until 2014. There are 187 cases whose information refers to periods prior to 2015, which corresponds to 56.5% of the banking requests processed.

333. As noticed in paragraph 321, procedures applicable to requests for bank information related to years prior to 2015 or 2015 onwards are similar. Portugal noticed that the minor difference in response times, and in particular the lower percentage of requests relating to years prior to 2015 that have been answered within 90 days can be explained by the greater number of years covered in the requests for bank information prior to 2015. For instance, the 187 requests for bank information prior to 2015 covered almost 7 years, on average, while the 144 requests for bank information related to 2015 onwards covered just 2 years on average. In any case, the requests are not treated differently depending on the relevant period. Portugal should continue monitoring the implementation of the provisions relating to access to bank information to ensure an effective exchange of information (see Annex 1).

334. Finally, Portugal further notes that the Competent Authority can access banking information when the bank is not identified in the EOI request and/or the taxpayer is not identified by his/her name, provided that further details are supplied, such as the date of birth or other details that can help to identify him/her. Portugal would ask for clarification to the requesting authority in cases where information provided is not sufficient to identify the account holder.

335. Portugal received 331 inquiries for banking information during the review period, which were all replied (see also para. 302).

B.1.2. Accounting records

336. The powers under the LGT referred to in section B.1.1 can be used to obtain accounting records. The Portuguese Tax Administration can obtain accounting information from the AT databases, which contain a number of

accounting records, including financial statements (balance sheets and profit and loss accounts), information on the assets owned by the taxpayer and the number of employees without the need to follow special procedures to obtain information, due to the existence of annual reporting obligations for tax purposes. Therefore, accounting information is available in many cases directly from the Tax and Customs Authority's databases.

337. If underlying documentation is requested, including copies of invoices, account sheets, or contracts, these need to be obtained from the entity in Portugal (which in practice is likely to be a Portuguese taxpayer). As a rule, if specific documents are being requested by the EOI partner, the EOI team normally sends a letter directly to the entity referenced or its representative, requesting the relevant documents. The tax authority sends a notice to the entity (or its tax representative) to provide the documents. If the EOI request covers a broad range of documents or is more general, the EOI team as a rule requests the intervention of the units with tax audit powers (Regional Tax Directorates, Large Taxpayers Unit and the Regional Tax Audit in the Autonomous Region of Madeira), to gather underlying documentation (see para. 316). During the review period, Portugal received 123 requests for accounting information. In cases of access to accounting information, auditors were involved often, in an average of 70% of the cases. In some rare cases, despite several attempts by the audit teams to obtain the information, it was not possible to obtain all the information because it did not exist or because the elements had been destroyed (i.e. fraud-related cases). Portugal noted that it has informed the requesting jurisdictions in these cases of all the steps taken and the reasons for not obtaining the information, as well as applying relevant penalties accordingly.

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

338. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. The 2015 Report concluded that the Portuguese Tax Administration can obtain all requested information without regards to any domestic tax interest. The situation remains the same. Under Articles 14 and 21 of Decree-Law 61/2013, as amended, the information gathering powers of the Tax and Customs Authority is used for EOI purposes, regardless of domestic tax interest. The RCPITA also ensures that its tax inspection powers cover cases of co-operation for EOI or other treaty-related purposes (Art. 2(2)(j) and art. 29(1)(j)).

339. Portuguese authorities indicated that, during the period under review, all requests were responded to, even in cases where there was an absence of domestic tax interest and this has not created difficulties in practice, as they

do not apply such distinction when dealing with incoming requests. Peers did not raise any issues in this regard.

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

340. The 2015 Report concluded that the RCPIT provided for adequate sanctions to enforce the production of information. Since then, RCPITA replaced the RCPIT on regulating the Tax and Customs audit procedure, but the adequacy of sanctions remains the same today.

341. Taxpayers or third parties (including banks) that refuse to co-operate and the resistance to any actions taken by the tax inspector, where illegitimate, may result in disciplinary, administrative and criminal liability action against the offender.

342. This report notes that in cases where taxpayers can keep accounting records outside the territory of the European Union, Portugal should monitor that this does not lead to difficulties in accessing and exchanging information related to accounting records and enforcing the requirements in practice (see para. 253).

343. Penalties are provided in the RGIT. Article 113 provides that the refusal to deliver, display or present books and tax-relevant documents is punished with a fine ranging from EUR 375 to EUR 75 000, considering different parameters as provided in Article 27 of the RGIT. Under Article 117, failure or delay to present, immediately or within the time limit prescribed statements or supporting documents, even if in digital format, and the failure to provide information or clarifications that are legally or administratively required is punished with a fine between EUR 150 and 3 750. Where the offender is not an individual, the minimum and maximum limits of the fines provided for in the different legal types of administrative offences, are doubled in application of Article 26(4).

344. In case a fraud to Portuguese taxes is discovered, pursuant to Article 103 and the offender colluded with a third party subject to ancillary tax obligations for the purposes of tax audit, punishment with imprisonment between one and five years for individuals and a fine between 240 and 1 200 days for legal persons is applied (Art. 104). Each day of fine is quantified in a penalty which varies from EUR 1 up to EUR 500 for individuals and from EUR 5 to EUR 5 000 for legal entities (art. 15 RGIT). Penalties must take into account the extent of the damage caused by the action taken (art. 13 RGIT).

345. In addition, Article 90 of RGIT provides that the non-compliance with a legitimate order or warrant legally communicated and issued by the Director General of Taxes or the Director General of Customs or their legal

substitutes or by the competent judicial authority in what regards the lifting of banking secrecy is punished as aggravated disobedience. This implies a prison sentence of up to two years or a fine of up to 240 days (under Article 15 of RGIT, the penalty amount is set by the Court, up to EUR 5 000, in the case of legal persons). Under Article 12(3) of RGIT, the limits of the fines provided for the different legal types of crimes are doubled where the offender is not an individual.

346. Portuguese authorities have indicated that, in practice, there is co-operation from taxpayers and information holders and the requested information has been accessed and provided in all but three cases. Portugal has applied sanctions where applicable, as described in paragraphs 89, 337 and 454.

B.1.5. Secrecy provisions

Bank secrecy

347. The banking secrecy laws in Portugal are not absolute and may be lifted for tax purposes (Art. 79(2)(h) Legal Framework of Credit Institutions and Financial Companies).

348. In Portugal, after the initial analysis of the request, if the requesting authority has not asked to refrain from notifying the taxpayer and has not requested an urgent response, a notification is sent to the taxpayer, informing the taxpayer of the request for information and requesting authorisation to access banking information. In this notification, it is indicated that in the event that the taxpayer does not authorise access to banking information, a process of derogation of bank secrecy will be initiated by the AT, in order to obtain the banking information requested.

349. Portugal revised its internal procedures in May 2014 and amended its access powers regarding banking information as of 1 January 2015 (see section Accessing banking information above). The Portuguese Competent Authority had streamlined these procedures for lifting bank secrecy, which resulted in a reduction in the average answering time, with an average of 204 days in 2018, 146 days in 2019 and 11 days in 2020. Portugal does not have statistics of response times with respect to the previous years. The streamlining of its access powers in article 63B of the LGT apply to all requests for banking information received after 1 January 2015.

350. During the Round 1 review period, Portugal rarely accessed bank information directly from the banks in order to reply to an EOI request. The Portuguese Competent Authority interpreted the conditions in its domestic law for lifting bank secrecy narrowly and in many instances failed to initiate the process to access banking information in order to reply to requests

for exchange of information. Portugal noted that at that time, Portugal did not request voluntary authorisation for the waiver of bank secrecy in case of requests related to natural persons. The 2015 Report recommended that Portugal have access powers and procedures concerning the access to bank information effective in relation to all requests for bank information, irrespective of when the relevant operations and transactions took place.

351. Since then, new internal processes and guidance concerning requests received were formally adopted on 6 February 2015 by a decision of the Director General of the Tax and Customs Authority and reflected in the EOI Manual. The process initiates with a preliminary analysis of the request, in order to assess whether the elements provided by the requesting jurisdiction are sufficient to identify the account holder or the bank account and check whether the request is justified. It is followed by internal communication in order to begin the derogation process of bank secrecy. The Administration Department of DSRI initiates a specific process and assigns it to a specialised technician, who analyses the reasoning presented by the requesting jurisdiction. This technician draws up a reasoned proposal, which is forwarded to the decision of the Director General. As soon as it is approved, a request is prepared to the financial institution, which responds with the required information. The information is verified and forwarded to the EOI unit, which proceeds to its replying to the requesting jurisdiction. This new guidance is applicable to all requests for banking information, irrespective of when the relevant operations and transactions took place.

352. Portugal confirmed that bank secrecy was not an impediment to obtaining information in practice during the review period, but as noted in paragraph 281, peers noted that some of these requests for banking information were replied with over 180 days (see C.5 for more details).

Professional secrecy

353. The 2015 Report noted that there were some uncertainties as to whether the professional secrecy applicable to lawyers and solicitors may unduly restrict the access to information by the competent authorities. Portugal was recommended to ensure that the professional secrecy law applicable to lawyers and solicitors conforms to the standard.

354. Lawyers have to adhere to professional secrecy obligation under Article 92 of the Statute of the Bar Association (last amended by Law 23/2020). Article 63(2) of the LGT indicates that the powers to access information which are covered by professional secrecy are, as a general rule, subject to an authorisation granted by the district Court based on a reasoned request submitted by the tax authority (Art. 1000 of the Code of Civil Procedure and Art. 63(6) of LGT).

355. The scope of the professional secrecy applicable to lawyers appears to be wide, covering every act or procedure, judicial or non-judicial, which is developed and performed by the lawyer for the defence and protection of any persons or entities' rights and interests (Art. 87(1)(a) of Law 15/2005). In addition, the scope is not confined to communication between the lawyer and the client but also included communications with third parties (Art. 87(7) of Law 15/2005). Due to this, a recommendation was issued to Portugal to ensure that the professional secrecy law applicable to lawyers and solicitors conforms to the standard and does not unduly restrict the access to information by the competent authorities.

356. The Portuguese Bar Association clarified that when a lawyer acts simultaneously in the capacity of a lawyer and on a management role, the duty of confidentiality does not cover the facts the lawyer becomes aware of solely in the capacity of a manager (Bar Association Opinion no. 49/2006). In addition, a decision of the Supreme Court of Justice[21] stated that the professional secrecy applicable to the lawyer must, exceptionally, give way to other values that are to be superimposed when it comes to the protection and enforcement of the most relevant legal rights or interests. Considering that EOI is provided in the international instruments signed by Portugal, which have force of law, EOI as well as fighting against tax fraud and evasion must be considered relevant legal rights. This was confirmed by the representative of the Bar Association. In this sense, legal privilege should not prevent or delay EOI. These clarifications contribute to restrict the scope of the legal privilege.

357. Portugal confirmed that in practice none of the aforementioned restrictions constitutes an insurmountable barrier that prevents the AT from accessing the information requested for EOI purposes or that impedes effective exchange of information. During the period under review, there have been no instances where attorney-client privilege or other professional privileges have been claimed in Portugal in order to refuse to provide information to the tax authorities as it is not necessary to involve lawyers in the process to obtain information. During the on-site visit, Portuguese authorities noted that in case the relevant information is covered by professional privilege, it goes to a specific department, and then the Treasury's attorney petitions in court to break the secrecy. So far, this procedure was never used in practice for EOI purposes. For domestic purposes, there have been cases in which the Tax Authority has petitioned the court to lift professional secrecy, obtaining favourable decisions. With respect to the time taken to obtain such a court decision, there is no deadline for the decision to be obtained, but it follows an expedited simplified process.

21. Decision from 15 February 2018 (*Supremo Tribunal de Justiça*).

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.

358. The 2015 Report found that there were no issues regarding the existing notification requirements applicable to access information prior to exchange it, or regarding appeal rights. The exceptions to prior notification were in line with the standard and the element was determined to be in place and rated Compliant. There have been no relevant changes in the applicable general rules and the situation as assessed for the current review remains the same.

359. The conclusions are as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Portugal are compatible with effective exchange of information.

Practical Implementation of the Standard: Compliant

The application of the rights and safeguards in Portugal is compatible with effective exchange of information.

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

Notifications and related exceptions

360. The 2016 ToR provide that where jurisdictions have notification rules in place, they should permit exceptions from prior notification and time-specific post-exchange notification. Decree-Law 61/2013 introduced a requirement to notify the person in relation to which the information is requested, applicable to the exchange of all types of information under all EOI instruments (Art. 14(3)).

361. There are exceptions to this prior notification, in general cases and in cases of banking information.

362. In general, first, no notification is made where the information that is the object of the EOI request is available in the AT databases (Art. 14(4) of Decree-law 61/2013). Therefore, the notification procedure must apply only for the cases where the AT uses the relevant statutory provisions, as discussed in section B.1.1, to approach the taxpayers or other persons to obtain the

requested information (see para. 311). Second, an exception to notification applies to cases where the request is urgent or where the notification may undermine the chance of success of the investigation of the requesting jurisdiction (see para. 327). The AT can apply this exception where the request is urgent, even if the requesting jurisdiction does not explicitly require not to notify the concerned person.

363. The notification requirements are checked by the EOI unit official responsible for the analysis and processing of the case/request, who prepares the notification, where applicable. All notifications are signed by the director of the EOI unit. Where the EOI request is sent to the tax audit departments for gathering the requested information, a warning is issued informing these departments whether or not they can inform the person in relation to which the information is requested of the existence of the EOI request to obtain the relevant information, depending on the analysis of the case/request.

364. There is no provision for any procedure requiring post-notification of the taxpayer in Portugal.

365. Where the data requested refers to bank information, the decisions to lift bank secrecy are justified by explicitly stating the specific reasons on which they are based and, where applicable, are notified to the concerned persons within 30 days after the issuance of the decision by the Director General of the Tax and Customs Authority, unless it is one of the exceptional cases indicated in para. 362 (Art. 63-B(4) of LGT). The taxpayer is notified about such decision and is informed about the details of the data shared with the other competent authority. In addition, the provision provides for exceptions from the notification of the decision to lift bank secrecy to the concerned persons, where the request for information is of an urgent nature or such hearing or notification may endanger the investigation in the requesting State or Jurisdiction and that is explicitly requested by such State or Jurisdiction. This applies to EOI requests on banking information made on or after 1 January 2015, and regardless of what period the request relates to.[22]

366. The exceptions conform to the standard. The Portuguese Competent Authority noted that it always grants the exception to the notification process when asked by the requesting jurisdiction. However, Portugal does not have statistics available on the application of exception to the prior notification.

22. Article 63B(9), that provides for a ban of retroactive effect, is only applicable to situations described in the "preceding paragraphs" and not to the application of paragraph 13 of article 63B LGT which provides for the exceptions to the notification process.

Appeal rights

367. Under Article 14(5) of Decree-Law 61/2013, the person object of the request may, within the period prescribed by the AT for that purpose in its notification, object and submit the reasons why he/she considers that the information should not be provided to the requesting authority.

368. In addition, an information holder may appeal against a request for information from the AT in the same way and under the same conditions as an appeal to any other of its administrative acts (Art. 95 LGT). The notified person has 10 days to appeal the decision of the Director General to access banking information.

369. Administrative acts, such as the requests for information sent by the AT to the information holders, may also be judicially reviewed through an appeal with a merely devolutive effect, which does not suspend the effect or execution of an appealable order or decision, and, subject to certain conditions, those acts are subject to a prior hearing of the relative or third person, and may be judicially reviewed through an appeal with suspensive effect, brought by these persons (Art. 63B(5) LGT). If the appeal has suspensive effect, the decision must be awaited and the requesting jurisdiction is informed and asked to not use the information received until the court decision. If the decision is unfavourable to the interested party, then the information will be sent to the requesting jurisdiction; if the decision is favourable, the requesting jurisdiction is informed of the decision. Third persons are those who "are in a special relationship with the taxpayer", which have the power to exercise, directly or indirectly, significant influence over its management decisions, as defined in Article 63(4) of the CIRC.

370. However, there is no notification of the concerned persons nor prior hearing of the relative or third person where the request for information is of an urgent nature or such hearing or notification may endanger the investigation in the requesting State or Jurisdiction and that is explicitly requested by such State or Jurisdiction (Art. 63B(13) LGT), as described in paragraph 325.

371. During the review period, there was one objection made by the person object of the request, but it had no impact on the response times, as the appeal did not have suspensive effect.

372. Portuguese authorities informed that during the period under review, there was no case where EOI decisions appealed against or challenged had impact on response times.

Part C: Exchange of information

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

C.1. Exchange of information mechanisms

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

374. Portugal has a large network of EOI relationships based on various types of EOI instruments.

375. At the time of the 2015 Report, Portugal's network of EOI mechanisms comprised 71 DTCs and 16 TIEAs. In addition, EOI was also possible based on EU instruments.[23] At that time, Portugal had deposited its instruments of ratification of the Multilateral Convention, but the Convention was not yet in force – it entered into force on 1 March 2015.

376. Since then, Portugal has taken active steps to continue updating its network of EOI agreements with seven new DTCs with Barbados, Colombia, Croatia, Ethiopia, Georgia, San Marino and Senegal. Portugal has also initiated negotiations of DTCs or Protocols with several new or existing partners.

377. The entry into force of the Multilateral Convention in Portugal compensates a number of deficient bilateral instruments. All but 12 EOI

23. EU Council Directive 2011/16/EU on Administrative Co-operation in the Field of Taxation and the EU Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

relationships of Portugal are covered by it.[24] Today, based on all its bilateral, regional and multilateral EOI mechanisms, Portugal has EOI relationships with 155 jurisdictions and 145 of those are in force and in line with the standard (see Annex 2).

378. Portugal received a recommendation to ensure that its exchange of information mechanisms are brought into force expeditiously, as a significant number of signed agreements were not yet in force by the time of the 2015 Report. In addition to the entry into force of the Multilateral Convention, Portugal has brought into force 7 DTCs and 2 TIEAs since then. Considering this, the in-box recommendation to bring EOI mechanisms into force expeditiously is now removed.

379. As concerns Portugal's implementation and interpretation in practice of its EOI instruments, the 2015 Report noted that Portugal unduly restricted the exchange of banking information (during the review period from 1 July 2010 to 30 June 2013) and led its partners to anticipate no replies. This was due to a lack of sufficient internal procedures, narrow interpretation of its access powers and miscommunication with its EOI partners. Portugal was recommended to implement the condition of foreseeable relevance in line with the standard in all cases and Element C.1 was rated as "Partially Compliant".

380. During the review period, Portugal has clarified that even though there is not a specific list or template for the formulation of a request to be provided, in order to examine the foreseeable relevance of the requested information, the requesting competent authority should provide identity information and, at least, the tax purpose for which the information is sought and a specification of the information required for the administration or enforcement of its domestic law or for carrying out the provisions of a DTC. Portugal has also issued new guidance applicable to all requests for banking information, irrespective of when the relevant operations and transactions took place. This resulted in peer inputs being now positive about their co-operation with the Portuguese authorities and no longer mentioning difficulties with Portuguese application of the concept of foreseeable relevance.

381. Considering the overall progress made since the 2015 Report, the determination for Element C.1 has been upgraded to be "element is in place" and the rating has been upgraded to Compliant.

382. The conclusions are as follows:

24. The 12 partners not participating in the Multilateral Convention are Algeria, Angola, Côte d'Ivoire, Cuba, Ethiopia, Guinea Bissau, Mozambique, Sao Tome and Principe, Timor Leste, Uzbekistan, Venezuela and Viet Nam.

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms of Portugal.

Practical Implementation of the Standard: Compliant

No issues have been identified that would affect EOIR in practice.

C.1.1. Standard of Foreseeable relevance

383. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic taxes of the requesting jurisdiction. The 2015 Report found that most of the agreements concluded by Portugal complied with the standard, including cases where the text of the treaty used "relevant" or "necessary" as an alternative term to foreseeable relevance (see paragraphs 363-365 of the 2015 Report).

384. Since the 2015 Report, Portugal signed DTCs fully aligned to the standard of foreseeable relevance with Barbados, Colombia, Croatia, Ethiopia, Georgia, San Marino and Senegal. The Multilateral Convention complements those DTCs, with the exception of the one with Ethiopia. Portugal also noted that it has been active in negotiating and amending Protocols or new DTCs to replace old ones in accordance with the standard, even though they are complemented by another instrument that meets the standard.

Clarifications and foreseeable relevance in practice

385. The 2015 Report indicated difficulties with respect to the interpretation of the criteria for foreseeable relevance and a number of peers had indicated that Portugal asked for clarifications regarding the foreseeable relevance requirement, as well as requirements under Portuguese law of the information sought in cases relating to banking information (see paragraphs 366-370 of the 2015 Report). Portugal has sent 81 requests for clarification during the review period.

386. For the current review period from 1 October 2017 to 30 September 2020, no peers have mentioned issues with respect to the interpretation of the concept of foreseeable relevance. Portugal effectively accessed but declined to furnish one request that did not meet the foreseeable relevance requirement (see more details in section C.5.1). One peer mentioned that additional information required to demonstrate the foreseeable relevance of parts of the information requested and to ensure the correct information was provided to the Assessed Jurisdiction. The peer also noted that no significant delay was caused by this clarification request. In practice, Portugal interprets and

applies the EOI provisions of its EOI instruments in conformity with the standard. EOI Unit officials are familiar with the criteria for foreseeable relevance and Portugal's requests for clarifications are appropriate.

Group requests

387. Portugal has indicated that EOI Unit officials are familiar with the Commentary to Article 26 of the Model Taxation Convention. The EOI Manual includes specific documented procedures to determine foreseeable relevance in relation to group requests, listing the elements that can be requested from the requesting competent authority, when missing in the initial request in order to demonstrate the foreseeable relevance of the requested information (Subsection 3.2.2.1 on analysis of the request on behalf of DSRI which is based on the Commentary to the Model Taxation Convention). Portuguese authorities confirmed during the on-site visit that even though they do not have extensive experience handling group requests, they follow their standard procedures.

388. Portugal received nine group requests during the review period. These group requests were duly justified and, after identifying the taxpayers, the requested information was obtained directly from the tax authority's databases (i.e. address of taxpayers) and there was no need for prior arrangements.

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

389. All EOI relationships of Portugal provide for the exchange of information in respect of all persons.

390. Portugal has 11 EOI agreements[25] that restrict the jurisdictional scope of the exchange of information provisions to certain persons, for example to those considered resident in one of the contracting parties. However, to the extent that non-residents are subject to the domestic laws of the Contracting States, these DTCs provide for the exchange of information in respect of all persons. Moreover, all of these treaties are complemented by other EOI instruments, so these would not pose any practical issues for Portugal in exchanging information to the international standard as the scope of the EU Council Directive and the Multilateral Convention extends EOI to all persons.

391. Portugal has indicated that it did not receive any request where the concerned person was neither resident of the sending country nor resident of Portugal and this situation remains to be tested in practice. All requests have been responded including in cases where they concerned non-taxpayers in Portugal.

25. The 11 DTCs are with Austria, Belgium, Finland, France, Germany, Indonesia, Ireland, Italy, Korea, Türkiye and United Kingdom.

C.1.3. Obligation to exchange all types of information

392. All agreements concluded by Portugal since 2015 expressly include a provision that the requested State may not decline to supply information solely because it is held by a financial institution, a nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

393. The 2015 Report found that 49 older DTCs do not include provisions akin to Article 26(5) of the OECD Model Taxation Convention and might have restrictions under their domestic laws on access to bank information, and recommended Portugal to renegotiate those DTCs. However, most of those jurisdictions are now covered by the Multilateral Convention and/or the EU Directive on Mutual Administrative Assistance in Tax Matters, except five of those DTCs that do not have a similar provision and are not covered by the Multilateral Convention.

394. For these remaining five DTCs, Algeria is a Global Forum member not yet reviewed and four[26] are non-Global Forum members. They may have restrictions in accessing information in the absence of an express provision corresponding to Article 26(5) of the OECD Model DTC. Portugal considers there is no legal basis for exchange in the absence of Article 26(5) and it would not be possible to exchange bank information with those partner jurisdictions. Portugal is working to update these treaties in line with the standard and approached the partners with a view to solve the matter and is currently in ongoing negotiations with one of these five partners.

395. The 2015 Report noted limitations on the exercise of access powers in respect of banks for the purpose of EOI that restrict effective exchange of bank information. Portugal has broadened its access powers. New internal processes and guidance concerning requests received were formally adopted by a decision of the Director General of the Tax and Customs Authority.[27] This new guidance has been applicable to all requests for banking information since 2015, irrespective of when the relevant operations and transactions took place, which broadens its access powers.

396. During the period under review, Portugal did not decline any of the requests received because it was held by a bank or other financial institution nor because it related to an ownership interest, related to nominees, persons acting in an agency or fiduciary capacity.

26. The 4 DTCs with non-GF members are Cuba, Mozambique, Uzbekistan and Venezuela.
27. First revision of the EOI Manual, approved by order of 6 February 2015, of the Director General of the Tax and Customs Authority.

C.1.4. Absence of domestic tax interest

397. There are no domestic tax interest restrictions on Portugal's powers to access information in EOI cases. However, the 2015 Report found that 47 DTCs do not contain a provision akin to Article 26(4) of the OECD Model DTC and recommended Portugal to renegotiate those DTCs to include an equivalent provision. The 2015 Report recommended that Portugal work with the concerned DTC partners to amend those restrictions. Most of the concerned jurisdictions are now covered by the Multilateral Convention and/or the EU Directive on Mutual Administrative Assistance in Tax Matters. This leads to the 5 DTCs that do not have such a similar provision and are not covered by these instruments at this stage.

398. For these remaining 5 DTCs, Algeria is a Global Forum member not yet reviewed and four are non-Global Forum members.[28] They may have restrictions in accessing information in the absence of an express provision corresponding to Article 26(4) of the OECD Model Tax Convention. In the absence of a provision equivalent to Article 26(4), Portugal would have no restrictions in accessing information in cases there is no domestic interest. As mentioned in paragraph 394, Portugal has approached the partners with a view to solve the matter and is currently in ongoing negotiations with one of these five partners.

399. The additional agreements that Portugal has entered into since the 2015 Report all include Article 26(4) of the OECD Model Tax Convention which provides that a contracting state may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes.

400. Portugal has reported that during the current review period, it has responded to all requests, including in cases where there was absence of domestic tax interest (e.g. non-taxpayer in the Portugal) and no issues have arisen in practice.

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

401. All of Portugal's EOI agreements provide for exchange of information in both civil and criminal tax matters. None of Portugal's EOI agreements contain restrictions limiting EOI in criminal matters or based on dual criminality provisions.

28. The four DTCs with non-GF members are Cuba, Mozambique, Uzbekistan and Venezuela.

402. During the period under review, Portugal received and answered requests related to criminal matters.

C.1.7. Provide information in specific form requested

403. There are no restrictions in Portugal's domestic laws that would prevent it from providing information in a specific form, to the extent that this is consistent with its own administrative practices.

404. The EOI Unit confirmed that they have received and replied to EOI requests for information to be provided in specific forms requested during the period under review, such as in the form of witness hearings.

C.1.8. and C.1.9. Signed agreements should be in force and be given effect through domestic law

405. Portugal has in place the legal and regulatory framework to give effect to its EOI mechanisms. EOI agreements are given the force of law once they are approved by the Parliament, ratified by the President, and there is an exchange of notes on ratification or deposit of the note of ratification with the relevant EOI partner. They must be published in the Official Gazette of the Portuguese Republic (*Diário da República*), as a condition for their legal effectiveness. The Portuguese Constitution states that the provisions of EOI agreements override domestic laws.

406. Portugal's EOI network comprises 155 relationships, in the form of 81 DTCs, 16 TIEAs, the EU Directive and the Multilateral Convention (see Annex 2).

407. The 2015 Report noted that nine DTCs and nine TIEAs had not been brought into force. Since then, two TIEAs and seven DTCs entered into force:[29] and Portugal ratified three other TIEAs (with Belize, Turks and Caicos Islands and the British Virgin Islands) and the DTC with Timor Leste. However, none of these arrangements are in force, although it can also be noted that the EOI relationship with these jurisdictions is also covered by the Multilateral Convention, with the exception of Timor-Leste.

408. Finally, the Portuguese Authorities advised that the DTC with Uzbekistan signed on 10 February 2001 has not been ratified mainly because of divergences found between the equally authentic English, Uzbek and Portuguese texts and a technical issue concerning the wording of Article 11 of the DTC (on Interest). The solution to rectify these issues is difficult to be

29. The TIEAs with Guernsey and with Saint Kitts and Nevis, and the DTCs with Barbados, Colombia, Croatia, Ethiopia, Georgia, San Marino and Senegal (see Annex 2).

implemented because Uzbekistan had already ratified the DTC. Nevertheless, the Portuguese Authority advised that they approached the Uzbek authorities in 2019 in view of renegotiating this DTC.

409. An analysis of the treaty network of Portugal is presented below.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	155
In force	145
In line with the standard	141
Not in line with the standard	4 [Algeria, Cuba, Mozambique and Venezuela]
Signed but not in force	10
In line with the standard	9
Not in line with the standard	1 [Uzbekistan]
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	12
In force	10
In line with the standard	6 [Angola, Côte d'Ivoire, Ethiopia, Guinea Bissau, Sao Tome and Principe, Viet Nam]
Not in line with the standard	4 [Algeria, Cuba, Mozambique and Venezuela]
Signed but not in force	2
In line with the standard	1 [Timor Leste]
Not in line with the standard	1 [Uzbekistan]

410. Out of the 97 bilateral EOI mechanisms (DTCs and TIEA) of Portugal covering 96 partners, 84 relationships are complemented by the Multilateral Convention and 12 are with countries which have not signed the Multilateral Convention, i.e. Algeria, Angola, Côte d'Ivoire, Cuba, Ethiopia, Guinea-Bissau, Mozambique, Sao Tome and Principe, Timor-Leste, Uzbekistan, Venezuela and Viet Nam. Of these relationships with countries which have not signed the Multilateral Convention, 5 are not in line with the standard. The missing equivalent of paragraphs 4 and 5 of the Model Convention in these DTCs has been discussed in sections C.1.3 and C.1.4.

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

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

411. The 2015 Report found that Portugal had in place a network of information exchange that covered all relevant partners and rated Portugal as Compliant with Element C.2 of the standard. Portugal has developed over the decades an extensive EOI network of bilateral and multilateral instruments, including with its biggest trading partners.

412. In the 2015 Report, Portugal was encouraged to continue to develop its EOI network with all relevant jurisdictions. Since that report, Portugal has expanded its EOI network from 110 to 155 jurisdictions. Portugal's EOI network encompasses a wide range of partners, including all its major trading partners, all the G20 members and all OECD members, through 81 DTCs, 16 TIEAs, the EU Directive and the multilateral Convention.

413. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction indicated that Portugal refused to negotiate or sign an EOI instrument with it. As the standard requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Portugal should continue to conclude EOI agreements with any relevant partner who would so require (see Annex 1).

414. The conclusions remain as follows:

Legal and Regulatory Framework: in place

The network of information exchange mechanisms of Portugal covers all relevant partners.

Practical Implementation of the Standard: Compliant

The network of information exchange mechanisms of Portugal covers all relevant partners.

C.3. Confidentiality

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

415. The 2015 Report concluded that there are adequate provisions in Portugal's exchange of information mechanisms to ensure the confidentiality of the information received. All the new EOI mechanisms entered into by Portugal since 2015 are in line with the standard on confidentiality.

416. Further, Portugal has a strong domestic tax secrecy regime applicable to persons who in the course of their tax administration duties have access to confidential tax information.

417. The present review concludes that confidentiality of information continues to be ensured in Portugal:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Portugal concerning confidentiality.

Practical Implementation of the Standard: Compliant

No material deficiencies have been identified and the confidentiality of information exchanged is effective.

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

418. The 2015 Report concluded that all of Portugal's EOI agreements meet the standard for confidentiality, including the limitations on disclosure of information received and use of the information exchanged, which are reflected in Article 26(2) of the OECD Model Taxation Convention and Article 8 of the OECD Model TIEA. The new EOI instruments signed by Portugal since then also comply with the standard.

419. In domestic law, general confidentiality provisions are set in Article 64 of the Portuguese General Tax Law and tax auditors are punishable with disciplinary sanctions in case of breach of secrecy when exercising their functions (Art. 91 and 115 of the RGIT). Moreover, Article 22(1) and (3) of RCPITA provides that officials who participate in a tax audit procedure must keep strict secrecy on the facts relating to the tax situation of the taxpayer or of any other entities. It also applies on other items of a personal or confidential nature that become known to them during the performance of their duties or due to their duties. This special duty of secrecy does not cease

with the termination of those duties. Article 16-A(1) of Decree-Law 61/2013 also contains confidentiality rules that the Tax and Customs Authority must follow and breaches to the duty of tax confidentiality are punishable with disciplinary sanctions (see paragraph 434).

420. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the underlying EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes and the tax information may be used for other purposes in accordance with their respective laws. The Portuguese authorities have informed that EOI information is disclosed to other authorities only in accordance with the international legislation under which it was obtained. The LGT provides for exceptions to the duty of confidentiality related to tax information (Art. 64 LGT). However, according to the Portuguese Constitution and the Constitutional Court, international treaties take precedence over domestic law in case of conflict, thus, Portuguese authorities always consider that the international rules of confidentiality supersede the domestic obligations.

421. In the period under review, Portugal reported that there were no requests wherein the requesting partner sought Portugal's consent to utilise the information for non-tax purposes and similarly Portugal did not request its partners to use information received for non-tax purposes.

C.3.2. Confidentiality of other information

422. The confidentiality provisions in Portugal's EOI agreements and domestic laws do not distinguish between information received in response to a request and information received in a request. Therefore these provisions apply equally to requests for information, background documents to such requests, and any other document reflecting such information, including communications between the Portuguese competent authority and the competent authorities of the requesting jurisdictions as well as communications within the Tax and Customs Authority.

423. In cases where a notification is sent to the taxpayer (see para. 348), Portuguese authorities disclose the identification of the requesting authority and the nature of the information requested (Art. 14(3) of Decree-Law 61/2013), which is in line with the standard considering that there are exceptions to notification in case this may undermine the chance of success of the investigation of the requesting jurisdiction.

Confidentiality in practice

Human resources and training

424. All personnel in the Portuguese Tax Administration undergo a security screening. Employees must undertake training on information security, which includes periodic information security awareness newsletters and following e-learning activities. Relevant policies to be followed are available in the intranet website and applies to all employees and contractors.

425. Procedures include rules for terminating the access to confidential information for departing employees and contractors. Managers terminate access to all information security resources through the tax administration identity management system and a double check is performed monthly, based on a human resources list.

Physical security measures and communication of the information

426. The Portuguese Tax Authority restricts physical access to its buildings for security and confidentiality reasons. The access policy grants to users only the access strictly necessary for performing the tasks associated with their job. Employees and contractors access the buildings where they perform their duties by using a personal access card. To access the EOI unit premises, all the EOI unit members need to enter a personal identification code to open the access door. Other AT's employees and contractors may have access to these premises only when authorised by the manager. Access by persons external to AT requires authorisation from the unit manager and credentials and a valid identification document, but in no circumstances should the public have access to the EOI unit premises.

427. All information in paper or other physical forms (e.g. CD-ROM) is kept in the EOI unit premises. Information received electronically is stored in a central server with limited and password-protected access. Access to databases containing confidential information is limited to officials who need to use it. Computers are password-protected, passwords must be changed periodically. In addition, access to the computer room is controlled with a card-based access control system. An intrusion detection system is installed for detecting any unauthorised attempt to access, manipulate, and/or disable the system via the web or the internal network. In addition, a Clear Desk and Clear Screen Policy is in place.

428. The taxpayers do not have a right to access the EOI-related information in Portuguese legislation.

429. With respect to the correspondence, all the mail addressed to the Portuguese competent authority must be delivered to the Director of the

International Relations Department and kept in a secured manner. Each file must be kept in an individual locker to which only the designated official and the manager have access. As Portuguese authorities report, a number of general rules and procedures apply for sending information to other units of AT: the information must be sent through the specific computer application for the exchange of information (Exchange of Information Integrated System – SITI application) or via the secure document management system, both secure channels. In the communications made by the EOI unit, it is included an embedded warning that "the information presented was provided under the international conventions and agreements in force, being subject to the confidentiality provisions provided for in these legal instruments and in national legislation, and cannot be used for different purposes of those provided for in these legal instruments". The unit that receives the information is also obliged to comply with the confidentiality rules set out above, namely to ensure that documents must be kept in a safe place.

430. When it is necessary to obtain copies of the information, only those that are strictly necessary are prepared by the official in charge of the file. This procedure must be carried out in the area reserved for the EOI team, following the same security procedures that apply to the original documents. All copies must be destroyed when they are no longer needed. The duty of confidentiality is transmitted to whoever duly authorised person obtains information protected by tax secrecy, under the same terms as those applied in the tax administration (Art. 64 LGT). Tax auditors are punishable with disciplinary sanctions in case of breach of secrecy as stated in paragraph 419.

431. Before sending information to the requesting competent authority:

- First, all documents must mention the statement "information protected by tax secrecy".
- Mail can only be signed by the competent authority or by someone with delegated powers.
- Physical mail must be sent through the national postal services (CTT) or other special service if specifically requested by the other competent authority (i.e. DHL).
- Information contained in e-mails must be encrypted or sent through a secure platform to which only authorised users can access; when these conditions are not assured, e-mail communications cannot include confidential information nor the identification of the taxpayer.

432. These measures comply with the standard.

Monitoring and enforcement

433. The monitoring system to detect possible confidentiality breaches is based on a centralised log management system, database firewalls and an intrusion detection system. The communication of a security incident is handled by the information security team in a centralised manner. In the event that the incident involves a worker from the organisation, the actions vary according to the severity of the incident. Administrative measures include: (i) Direct communication from the security team to the user to correct or stop a certain behaviour; (ii) Network isolation and formatting of the respective workstation; (iii) Blocking access to the organisation's facilities; and (iv) Information for disciplinary or criminal proceedings.

434. Non-compliance with the duty of tax confidentiality is also punishable with disciplinary sanctions, imprisonment or fines (Arts. 91 and 115 of the RGIT; Article 22(1) and (3) of RCPITA and article 16-A(1) of Decree-Law 61/2013. Disciplinary sanctions range from a written warning or fine to suspension and dismissal. Criminal sanctions include fines, suspension and imprisonment (Arts. 91 and 115 of the RGIT; Art. 383 of the Portuguese Criminal Code and Art. 6 of the Cybercrime Law).

435. No case of breach of the confidentiality obligation in respect of EOI has been encountered by Portuguese authorities and no peers raised any concerns.

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.

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

437. All of Portugal's EOI agreements incorporate wording modelled on Article 26(2) of the Model Tax Convention or Article 8 of the Model TIEA.

438. The 2015 Report concluded that in relation to professional secrecy, there are some uncertainties as to whether the professional secrecy applicable to lawyers and solicitors under Portugal's domestic law may unduly limit the access to information for EOI purposes in certain circumstances. In addition, attorney-client privilege had been claimed in order not to provide information in domestic tax cases in one particular case. It was recommended that

Portugal clarify the scope of the professional secrecy applicable to lawyers and solicitors to ensure consistency with the standard.

439. Portuguese authorities clarified that the Portuguese Bar Association (Opinion no. 49/2006), advises that the duty of confidentiality only covers facts that a lawyer becomes aware of in the exercise or performance of his/her functions or services as a lawyer. The duty of confidentiality does not bind a lawyer when he/she is engaged in other professions or activities outside the legal profession, and to the extent that the pertinent facts become known by the lawyer when performing such professions or activities (i.e. outside the legal profession). The Bar Association's decision clarifies that when a lawyer acts simultaneously in the capacity of a lawyer and a manager of a commercial company, the duty of confidentiality does not cover the facts that the lawyer becomes aware of solely in the capacity of a manager.

440. In addition, a decision of the Supreme Court of Justice (15 February 2018) states that professional secrecy applicable to the lawyer must, exceptionally, give way to other values which, in the specific case, are to be superimposed, in particular where the items protected by secrecy prove to be essential for the protection and enforcement of the most relevant legal rights or interests (see B.1.5).

441. Considering this and that there was no instance during the previous or current review period where a person refused to provide the requested information because of professional secrecy or Portugal did not decline to provide the requested information for EOI purposes because it was covered by legal professional privilege or any other professional secret, the recommendation is removed. No peer indicated any issue in this respect.

442. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the information exchange mechanisms of Portugal in respect of the rights and safeguards of taxpayers and third parties.

Practical Implementation of the Standard: Compliant

No material deficiencies have been identified in respect of the rights and safeguards of taxpayers and third parties.

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.

443. The 2015 Report noted that Portugal was Largely Compliant with the standard in terms of effectiveness of exchange. A lack of internal processes and guidance with respect to requests for banking information had led to delays in answering requests for this type of information in a number of cases. In addition, Portugal had not provided status updates within the 90-day period in a number of cases. Portugal was recommended to put in place appropriate resources and measures to ensure that all requests for banking information are answered in a timely manner, and to improve communication with partners.

444. Since then, new internal processes and guidance were formally adopted on 6 February 2015, by a decision of the Director General of the Tax and Customs Authority concerning all requests for banking information, and a new EOI Manual was introduced. This new guidance is applied to all requests for banking information, irrespective of when the relevant operations and transactions took place. As a result, the timeliness of answers to requests for banking information no longer departs from other requests.

445. During the review period, the timeliness of EOI responses has globally slightly improved as compared to the Round 1 report and Portugal has started providing status updates to its EOI partners on a systematic basis within 90 days but no statistical information is available on this matter.

446. The two recommendations issued in 2015 have been satisfactorily addressed. As a result, peers are generally satisfied with their relationship with Portugal.

447. The conclusions are as follows:

Legal and Regulatory Framework

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

Practical Implementation of the Standard: Compliant

No material deficiencies have been identified in exchange of information in practice.

C.5.1. Timeliness of responses to requests for information

448. Over the current period under review (1 October 2017 to 30 September 2020), Portugal received 799 requests for information. The information sought related to i) ownership information (56 cases), ii) accounting information (123 cases), iii) banking information (331 cases), and iv) other types of information (395 cases). Out of these 799 requests, 536 refer to natural persons and 260 to legal persons. The main EOI partners of Portugal were France, followed by Italy, Spain, the United Kingdom and Germany, i.e. predominantly from other EU members.

449. The following table gives an overview of response times of Portugal in providing a final response to these requests, together with a summary of other relevant factors affecting the effectiveness of Portugal's practice during the period reviewed.

Statistics on response time and other relevant factors

		Oct-Dec 2017		2018		2019		Jan-Sep 2020		Total	
		Num.	%	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E+F]	41	100	283	100	320	100	155	100	799	100
Full response: ≤ 90 days		14	34.1	122	43.1	175	54.7	75	48.4	386	48.3
≤ 180 days (cumulative)		30	73.2	181	64	251	78.4	133	85.8	595	74.5
≤ 1 year (cumulative)	[A]	36	87.8	252	89	287	89.7	144	92.9	719	90
>1 year	[B]	4	9.8	23	8.1	5	1.6	0	0	32	4
Declined for valid reasons	[C]	1	2.4	4	1.4	28	8.8	9	5.8	42	5.3
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		Information not available									
Requests withdrawn by requesting jurisdiction	[D]	0	0	3	1.1	0	0	0	0	3	0.4
Failure to obtain and provide the full information requested	[E]		0	1	0.4	0	0	2	1.3	3	0.4
Requests still pending at date of review	[F]	0	0	0	0	0	0	0	0	0	0

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

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

450. The Portuguese authorities have explained that requests that are not fully dealt with within 180 days typically relate to accounting information. As these requests often require the tax auditors to visit the premises of the taxpayer, typically average response times are longer, as a specific process is opened in the competent tax directorate to obtain and send the requested information to the EOI Unit. If there is an audit already on the way, it would not be necessary to complete it before sending the information to the EOI partner. However, an effort was made to improve the communication channels between the competent authority and the tax audit units in order to streamline the procedures, namely with the development of a specific computer application for the exchange of information (SITI), in place since 2018. Requests that take longer are also those for which it is necessary to ask for additional information from the requesting jurisdiction, or where the documentation requested is voluminous (e.g. bank transactions spanning several years).

451. The overall timeliness of EOI responses has improved compared to the last review. The 2015 Report found that in average, 67% of responses were sent within 180 days, against 74.6% in the current review period. Similarly, the proportion of responses provided within one year has raised from 82% to 90%. Response times within 90 days have reduced in a small proportion: 52% versus 48.3% under the current review. Response times within the same 90-day period were higher during year 2019 (54.7%) and lower in the beginning of the review period, between October and December 2017 (34.1%). Portugal stressed that at beginning of the review period, there were more requests referring to accounting information, which tend to take longer to obtain data for response. Response times within the 180-days period were considerably higher during year 2019 (78.4%) and between January and September 2020 (86.5%).

452. Portugal noted that 81% of the 42 requests declined for valid reasons refer to cases in which it was not possible to identify the taxable person object of the request, even after asking and obtaining additional clarifications. The other cases refer to various situations, such as banking requests based on specific bank accounts that did not exist (wrongly identified, even after clarification), one request concerning VAT in the European Union (which was answered afterwards, as a result of the clarification and follow-up process under the right EU instrument), one request in which domestic resources were not exhausted by the requesting jurisdiction and one request in which the "foreseeable relevance" requirement was not justified. The reasons for declining the requests were communicated to the peers.

453. In relation to clarification requests, Portugal explained that most of these cases refer to the difficulty of identifying taxpayers based on the elements provided to the Portuguese competent authority. For instance, the names provided are often not complete or the information about birth dates

is missing, which does not allow differentiating homonyms. In most cases, the competent authority gets a quick answer and more identification data is provided by the requesting jurisdiction, making it possible to validate the identification. However, in some cases, Portugal was not able to obtain additional information from the requesting jurisdiction as quickly as it would be desirable, delaying the resolution of the cases.

454. Portugal notes that by 27 April 2022 it was not possible to obtain information on three requests for information which were concluded as "Failure to obtain and provide the full information requested". Portugal took action in relation to these companies that failed to provide information. First, the companies were ceased by the AT, which then started an inspection procedure (ongoing at the time of the report). Finally, an administrative process was raised for lack of collaboration and a fine was applied.

Exchange of banking information

455. During the previous review period (1 July 2010 to 30 June 2013), Portugal's lack of internal processes and guidance with respect to requests for banking information (see Element B.1) had led to delays in answering requests for this type of information in a number of cases.

456. Portugal was recommended to put in place adequate processes and guidance to ensure that all requests for banking information are answered in a timely manner.

457. New internal processes and guidance concerning all requests for banking information were formally adopted on 6 February 2015, by a decision of the Director General of the Tax and Customs Authority and included in the EOI Manual. During the review period, Portugal has applied in a streamlined manner the guidance issued in 2015 that is applicable to all requests for banking information, irrespective of when the relevant operations and transactions took place. This resulted in a reduction in the average response time. Statistics show that the percentage of requests related to banking information replied within 90 days or within 180 days have improved over the years, and during the review period requests for banking information have been answered within 90 days in 25% of the cases and within 180 days in 74% of the cases, which does not depart from general statistics in the table above (considering that answers within 90 days often relate to information directly available within the tax administration).

458. During the previous review period, a number of peers had indicated that Portugal asked for clarifications regarding the foreseeable relevance as well as requirements under Portuguese law of the information sought in cases in respect of banking information. No such input was received for the current review. Portugal noted that after the internal changes and the streamlined

process to obtain information, it is no longer required to obtain clarifications to move forward with this type of request. Although the changes to the procedures have allowed improvements in the time needed to obtain banking information, some peers mentioned that cases where a response took longer than 180 days included requests related to banking information.

459. The Portuguese authorities acknowledge that they still can improve on the work already done, especially in what concerns communication with financial institutions, and that it will still be possible to improve response times within less than 180 days. Portugal should continue improving its response time to requests for banking information, so that all requests for banking information are answered in a timely manner (see Annex 1).

Communication with partners

460. The 2015 Report noted that Portugal did not provide updates on the status of requests systematically and it was recommended that Portugal continue to ensure that it provides status updates in all cases where it takes over 90 days to provide a response.

461. Since then, new internal processes and guidance were formally adopted in February 2015, by a decision of the Director General of the tax and Customs Authority. Following these new procedures, Portugal has been providing status updates to its EOI partners within 90 days.

462. The procedure of sending updates is not automatic and Portugal does not have a standard electronic form to send status updates. Updates are sent either through CCN-Mail messages in the case of EU Member States or, in the case of other jurisdictions, via email. The status update informs the other competent authority that the Portuguese competent authority is still working on the case and that the reply will be sent as soon as possible. However, the status updates are not sent systematically in all cases where replies cannot be provided within 90 days and the Portuguese competent authority does not yet have a register that allows the retrieval of statistical data concerning status updates sent to the requesting competent authorities.

463. In peer inputs provided, the Portugal's EOI partners were mostly satisfied with their EOI relationship and communication with Portugal. While some peers indicated that they always received status updates when requests took longer than 90 days to respond, some other peers reported receiving status updates "some of the time". Although significant progress with respect to the 2015 Report is acknowledged, the Portugal should continue its efforts to put in place appropriate measures to send updates whenever a partial or full response cannot be provided within 90 days (see Annex 1).

C.5.2. Organisational processes and resources

Organisation of the competent authority

464. In Portugal, the competent authority for exchange of information is the Minister of Finance, the Director General of the Tax and Customs Authority or their authorised representative. Within the AT, this power is delegated to the EOI unit, within the Directorate for International Relations (DSRI), in co-operation with the Tax Inspectorate. The Portuguese competent authority is clearly identified to partners on the Global Forum's secure competent authority's database, as well as on the CIRCABC platform[30] for EU Competent Authorities.

465. Since the 2015 Report, the number of staff in the DSRI staff increased from 43 to 57. The number of EOI officials dealing exclusively with exchange of information comprises six EOI staff, including the head of division, one translator, one administrative official, one supporting official and six operational officials. In addition, this division also has five officials dedicated to exchanging information under the Council Regulation (EU) no. 904/2010, on administrative co-operation and combating fraud in the field of VAT; and seven officials in the Mutual Agreement Procedure (MAP) team. EOI unit officials can work in English and some in French as well. One of the staff is able to translate documents in English, French, German and Spanish. DSRI also works with the Tax Audit in the Autonomous Region of Madeira.

Resources and training

466. Staff in the EOI unit are well qualified to handle EOI work. In addition to their background, staff receives general trainings on an annual basis including on-the-job training, access to e-learning courses and face-to-face training courses. The EOI unit staff attended several trainings during the review period. Trainings covered beneficial ownership, EOIR, as well as international taxation in general. In addition, tax and customs update courses and training sessions are recorded and uploaded in the intranet system so that officials can have access to the materials whenever they need.

467. All tax officials are subject to annual assessment of their performance. The assessment of tax officials in the EOI team takes into account the "implementation rate". This refers to the decrease in the number of pending procedures and the percentage of pending tasks in the cases handled.

30. Communication and Information Resource Centre for Administrations, Businesses and Citizens.

Incoming requests

468. Procedures for the handling of EOI requests are the same for all types of requested information and there is no difference with respect to criminal cases. EOI requests can be received electronically (CCN-Mail or institutional mailbox) or via post. Both physical and electronic requests are entered into the IT system and assigned to an official. An acknowledgement of receipt is sent to the requesting jurisdiction.

469. The requests received are individually assessed by EOI officials on whether they are foreseeably relevant, comply with all the conditions set out in the international EOI instrument (including on the period covered), and are signed by a Competent Authority. According to the EOI Manual, the EOI official in charge assesses the foreseeable relevance by analysing the background information provided and the tax purpose for which the information is requested and a specification of the information necessary for the administration or application of the domestic law of the requesting State or jurisdiction (or for the application of the provisions of the applicable DTC). If there is need for clarifications or the request is not complete, the requesting jurisdiction is asked for more details.

470. The EOI team has a computer application to record and monitor the processing of the incoming and outgoing requests that allows the monitoring of the processing of the requests in their entirety, from their initial registration until their completion. It also allows the monitoring of the time spent on each phase and produces statistical information concerning EOI. It also represents a secure communication channel between the EOI team and regional tax audit units.

471. The Portuguese authorities noted that information, in many cases is already in the hands of the tax authority in their databases. Where the request is sufficiently clear and specific, in case all the requested information is available in the AT's databases the EOI official in charge prepares a response to be sent within a period not exceeding two months.

472. When the request letter contains insufficient information for identifying the person or entity in respect of which the information is requested, a request for clarification or for additional information is included in the acknowledgement of receipt form or letter, which has to be sent within 7 days.

473. The IT system allows control of productivity of the EOI officials, as it allows control of pending tasks on each file, for each tax official. The performance of the tax audit units is also assessed by the rate of reply to the information requests. The response time is part of the performance assessment system of tax auditors.

474. The computer application used by the Competent Authority (DSRI) to record and monitor the processing of the requests also issues a notification to the EOI officials, regarding the timelines for each file, namely warning about the 90 days milestone, as well as subsequent reminders. The EOI officials send status updates in most cases when the competent authority is not able to provide a reply within the 90 days deadline (see para. 463).

475. The information gathered is verified by the competent authority before sending it to the requesting jurisdiction. The replies are assessed in order to check if all the questions were duly replied.

476. Practical difficulties experienced in obtaining the requested information happen occasionally. This includes cases which involve collecting information covering a long period with many detailed elements (like all the supporting elements of a bank statement for several years) and inability to find the taxpayer in any of the addresses known to the tax administration or inability to contact any of the directors or accountants of an entity.

477. In relation to group requests, these are processed in the same way as individual requests, in terms of the procedures for gathering information and for responding.

Outgoing requests

478. Portugal sent 936 requests to its treaty partners during the review period. The EOI Manual contains the procedures to be followed for outgoing requests, comprising group requests. These procedures comprise checklists for the information to be included in the request to ensure it meets the foreseeable relevance standard.

479. Requests for information can come from the AT local, regional or central offices. They are sent to the EOI unit that reviews them and completes or amends them if necessary, in order to meet all the standard requirements. The Portuguese tax administration developed a dedicated platform for tax auditors to submit their requests to the competent authority. Tax auditors have at their disposal standard electronic forms to submit their request for information to the Competent Authority. Tax auditors fill the form according to the partner jurisdiction and upload it in the platform together with the annexes to the request, if applicable. Afterwards, a hierarchical superior with the adequate profile submits the request to the EOI unit.

480. The EOI unit is the only unit with competence to send EOI requests. The Head accesses the platform and assigns the request to an official by uploading it in the respective queues. A file in the IT system is also created to allow recording of all relevant facts and corresponding dates. Requests

are sent by CCN-Mail or by encrypted email and password protected file. If required, requests can also be sent by registered or express postal mail.

481. If it is necessary to contact the tax audit unit that requested the information, the official contacts the concerned tax auditor as soon as possible in order to clarify the request. Portugal notes that there is no record of the time used to answer internal requests for clarifications.

482. Portugal's EOI partners were generally satisfied with the quality of requests received. Nevertheless, one peer noted that the requests for clarification did cause delays in the processing of these requests. Another peer noted that the requests for clarification did not cause great delays. These clarifications contributed to smoothen the handling of requests and provide satisfactory responses and to ensure the quality of the answers. Portugal has no statistics with respect to the requests for clarification received from treaty partners.

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

483. No factors or issues were identified that could unreasonably, disproportionately or unduly restrict effective EOI in the case of Portugal.

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, the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.1.1**:4Portugal should clarify how often CDD information for normal or low-risk customers should be updated by AML-obliged non-financial entities and professionals (paragraph 110).
- **Element A.1.1**: Portugal should monitor the application of the enhanced CDD procedures to ensure that when AML-obliged persons have difficulties in understanding, or suspicions with respect to, complex ownership structures, they implement their legal obligation to refuse establishing the relationship and/or issue a suspicious transaction report to the FIU (paragraph 114).
- **Element A.2.1**: Portugal should monitor that the possibility of keeping accounting records outside the territory, and in particular outside the EU, does not lead to difficulties in accessing and exchanging information related to accounting records (paragraph 254).
- **Element B.1.1**: Portugal should continue monitoring the implementation of the provisions relating to access to bank information to ensure an effective exchange of information (see paragraph 333).
- **Element C.2**: Portugal should continue to conclude EOI agreements with any new relevant partner who would so require (see paragraph 413).
- **Element C.5**: Portugal should continue improving its response time to requests for banking information, so that all requests for banking information are answered in a timely manner (see paragraph 459).

- **Element C.5**: Portugal should continue its efforts to put in place appropriate measures to send updates whenever a partial or full response cannot be provided within 90 days (see paragraph 463).

Annex 2: List of Portugal's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Algeria	DTC	02-12-2003	01-05-2006
2	Andorra	DTC	27-09-2015	23-04-2017
		TIEA	30-11-2009	31-03-2011
3	Angola	DTC	18-09-2018	22-08-2019
4	Anguilla	TIEA	28-02-2011	Not ratified in Portugal
5	Antigua and Barbuda	TIEA	13-09-2010	Not ratified in Portugal
6	Austria	DTC	29-12-1970	27-02-1972
7	Bahrain	DTC	26-05-2015	01-11-2016
8	Barbados	DTC	22-10-2010	07-10-2017
9	Belgium	DTC	16-07-1969	19-02-1971
		DTC Protocol	06-03-1995	05-04-2001
10	Belize	TIEA	22-10-2010	Not ratified in Belize
11	Bermuda	TIEA	10-05-2010	05-04-2011
12	Brazil	DTC	16-05-2000	05-10-2001
13	British Virgin Islands	TIEA	05-10-2010	Not ratified in the British Virgin Islands
14	Bulgaria	DTC	15-06-1995	18-07-1996
15	Cabo Verde	DTC	22-03-1999	15-12-2000
16	Canada	DTC	14-06-1999	24-10-2001
17	Cayman Islands	TIEA	13-05-2010	18-05-2011

	EOI partner	Type of agreement	Signature	Entry into force
18	Chile	DTC	07-07-2005	25-08-2008
19	China (People's Republic of)	DTC	21-04-1998	08-06-2000
20	Colombia	DTC	30-08-2010	30-01-2015
21	Côte d'Ivoire	DTC	17-03-2015	18-08-2017
22	Croatia	DTC	04-10-2013	28-02-2015
23	Cuba	DTC	30-10-2000	28-12-2005
24	Cyprus[31]	DTC	19-11-2012	16-08-2013
25	Czech Republic	DTC	24-05-1994	01-10-1997
26	Denmark	DTC	14-12-2000	24-05-2002
27	Dominica	TIEA	05-10-2010	Not ratified in Portugal
28	Estonia	DTC	13-05-2003	23-07-2004
29	Ethiopia	DTC	25-05-2013	09-04-2017
30	Finland	DTC	07-11-2016	Not ratified in Portugal
31	France	DTC	14-01-1971	18-11-1972
		DTC Protocol	25-08-2016	01-12-2017
32	Georgia	DTC	12-12-2012	18-04-2015
33	Germany	DTC	15-07-1980	08-10-1982
34	Gibraltar	TIEA	14-10-2009	24-04-2011
35	Greece	DTC	02-12-1999	13-08-2002
36	Guernsey	TIEA	09-07-2010	17-02-2017
37	Guinea-Bissau	DTC	17-10-2008	05-07-2012
38	Hong Kong (China)	DTC	22-03-2011	03-06-2012

31. Note by Türkiye: 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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye 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 Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

	EOI partner	Type of agreement	Signature	Entry into force
39	Hungary	DTC	16-05-1995	08-05-2000
40	Iceland	DTC	02-08-1999	11-04-2002
41	India	DTC	11-09-1998	05-04-2000
		DTC Protocol	24-06-2017	08-08-2018
42	Indonesia	DTC	09-07-2003	11-05-2007
43	Ireland	DTC	01-06-1993	11-07-1994
		DTC Protocol	11-11-2005	18-12-2006
44	Isle of Man	TIEA	09-07-2010	18-01-2012
45	Israel	DTC	26-09-2006	18-02-2008
46	Italy	DTC	14-05-1980	15-01-1983
47	Japan	DTC	19-12-2011	28-07-2013
48	Jersey	TIEA	09-07-2010	09-11-2011
49	Kenya	DTC	10-07-2018	Not ratified in Kenya
50	Korea	DTC	26-01-1996	21-12-1997
51	Kuwait	DTC	23-02-2010	05-12-2013
52	Latvia	DTC	19-06-2001	07-03-2003
53	Liberia	TIEA	14-01-2011	Not ratified in Portugal
54	Lithuania	DTC	14-02-2002	26-02-2003
55	Luxembourg	DTC	25-05-1999	30-12-2000
		DTC Protocol	07-09-2010	18-05-2012
56	Macau (China)	DTC	28-09-1999	01-01-1999
		DTC Protocol	21-06-2018	Not ratified in Portugal
57	Malta	DTC	26-01-2001	05-04-2002
58	Mexico	DTC	11-11-1999	09-01-2001
59	Moldova	DTC	11-02-2009	18-10-2010
60	Montenegro	DTC	12-07-2016	07-12-2017
61	Morocco	DTC	29-09-1997	27-06-2000
62	Mozambique	DTC	21-03-1991	05-12-1993
		DTC Protocol	24-03-2008	07-06-2009
63	Netherlands	DTC	20-09-1999	11-08-2000
64	Norway	DTC	10-03-2011	15-06-2012

	EOI partner	Type of agreement	Signature	Entry into force
65	Oman	DTC	28-04-2015	26-07-2016
66	Pakistan	DTC	23-06-2000	04-06-2007
67	Panama	DTC	27-08-2010	10-06-2012
68	Peru	DTC	19-11-2012	12-04-2014
69	Poland	DTC	09-05-1995	04-02-1998
70	Qatar	DTC	12-12-2011	04-04-2014
71	Romania	DTC	16-09-1997	14-07-1999
72	Russia	DTC	29-05-2000	11-12-2002
73	Saint Kitts and Nevis	TIEA	29-07-2010	24-05-2017
74	Saint Lucia	TIEA	14-07-2010	28-10-2011
75	San Marino	DTC	18-11-2010	03-12-2015
76	Sao Tome and Principe	DTC	13-07-2015	12-07-2017
77	Saudi Arabia	DTC	08-04-2015	01-09-2016
78	Senegal	DTC	13-06-2014	20-03-2016
79	Singapore	DTC	06-09-1999	16-03-2001
		DTC Protocol	28-05-2012	26-12-2013
80	Slovak Republic	DTC	05-06-2001	02-11-2004
81	Slovenia	DTC	05-03-2003	13-08-2004
82	South Africa	DTC	13-11-2006	22-10-2008
83	Spain	DTC	26-10-1993	28-06-1995
84	Sweden	DTC	29-08-2002	19-12-2003 but terminated since 01-01-2022
		DTC Protocol	16-05-2019	Not ratified in Portugal but terminated since 01-01-2022
85	Switzerland	DTC	26-09-1974	17-12-1975
		DTC Protocol	25-06-2012	21-10-2013
86	Timor-Leste	DTC	27-09-2011	Not ratified in Timor-Leste
87	Tunisia	DTC	24-02-1999	21-08-2000
88	Türkiye	DTC	11-05-2005	18-12-2006
89	Turks and Caicos Islands	TIEA	21-12-2010	Not ratified in Turks and Caicos Islands

	EOI partner	Type of agreement	Signature	Entry into force
90	Ukraine	DTC	09-02-2000	11-03-2002
91	United Arab Emirates	DTC	17-01-2011	22-05-2012
92	United Kingdom	DTC	27-03-1968	17-01-1969
93	United States	DTC	06-09-1994	18-12-1995
94	Uruguay	DTC	30-11-2009	13-09-2012
95	Uzbekistan	DTC	10-02-2001	Not ratified in Portugal
96	Venezuela	DTC	23-04-1996	08-01-1998
97	Viet Nam	DTC	03-06-2015	09-11-2016

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

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the 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 Portugal on 27 May 2010 and entered into force on 1 March 2015 in Portugal. Portugal 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, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados,

32. 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.

Belgium, Belize, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[33] Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, 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), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, 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: Benin, Burkina Faso, Gabon, Mauritania (entry into force on 1 August 2022), Papua New Guinea, Philippines, Rwanda, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

33. Note by Türkiye: 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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye 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 Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

EU Directive on Mutual Administrative Assistance in Tax Matters

Portugal can exchange information relevant for direct taxes upon request with EU member states under the EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation (as amended). The Directive came into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013, i.e. Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain and Sweden. The Directive was also applicable between Portugal and the United Kingdom during most of the period under review, but the United Kingdom left the EU on 31 January 2020 and hence this directive is no longer binding on the United Kingdom.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and amended in December 2020, and the 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 of 6 May 2022, Portugal's EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2017 to 30 September 2020, Portugal's responses to the EOIR questionnaire, inputs from partner jurisdictions, as well as information provided by Portugal's authorities during the on-site visit that took place 22-26 November 2021 in Lisbon, Portugal.

List of laws, regulations and other materials received

Code of Taxation Procedure and Proceeding (CPPT)

Commercial Code

Commercial Companies Code (CSC)

Commercial Registration Code (CRC)

Complementary Regime of Tax Inspection Procedure (RCPIT)

Corporate Income Tax Code (CIRC)

Decree Law 61/2013, of 10 May 2013 (last amended by Law 17/2019, of 14 February 2019)

Decree-Law 118/2011, of 15 December 2011

Decree-Law 123/2017, of 7 May 2017

Decree-Law 129/98, of 13 May 2021

Decree-Law 149/94, of 25 May 1994

Decree-Law 352-A/88, of 3 October 1988

Decree-law 158/2009 of 15 February 2019, as amended by Decree-Law 98/2015, of 2 June 2015

Decree-law no. 8/2007

4th AML EU Directive

General Regime of Tax Infractions (RGIT), as amended by Law 42/2016, of 28 December, by Law 114/2017, of 29 December

General Tax Law (LGT)

Instruction of Banco of Portugal no. 5/2019

Law 15/2017, of 3 May 2017

Law 83/2017, of 18 August 2017

Law 89/2017, of 21 August 2017, Legal Regime of the Beneficial Ownership Central Registry

Law of the Bank of Portugal (*Lei Orgânica do Banco de Portugal*)

Law of the Portuguese Statistical System (*Lei do Sistema Estatístico Nacional*)

Legal Regime of organisation and operation of the Accounting Standardisation Commission, published as an Annex to Decree-Law 134/2012

Legal regime for the dissolution and liquidation of commercial entities, approved (as Annex III) by the Decree-Law 76-A/2006, as amended by the Decree-law 250/2012, of 23 November 2012

Madeira regional regulatory decree 21/87/M

Ministerial Orders no. 233/2018, of 21 August 2018

Notice of Bank of Portugal no. 2/2018, of 26 September 2018

Personal Income Tax Code (CIRS)

Regulation 14/2000 of CMVM, Portuguese Securities Market Comission

Regulation for monitoring the implementation of the Accounting Standards, approved by the General Council of the Accounting Standardisation Commission (*Comissão de Normalização Contabilística*) on 27 January 2016

Securities Code (CVM)

Sistema de Normalização Contabilística, created by Decree-law 158/2009

Statute of the Bar Association (last amended by Law 23/2020)

Statute of the Chamber of Statutory Auditors

Supplementary Regime of Tax and Customs Audit Procedure (RCPITA)

Value-Added Tax Code (CIVA)

Authorities interviewed during on-site visit

General Directorate of the Tax and Customs Authority (*Autoridade Tributária e Aduaneira* – AT)

- Centre for Tax and Customs Studies (CEF)
- Directorate for International Relations (*DSRI, Direção de Serviços de Relações Internacionais*)
- Directorate of Planning and Co-ordination of the Tax Audit (DSPCIT)
- Large Taxpayers Unit (UGC)
- Directorate of Taxpayer Registration (DSRC)
- Directorate for Tax Justice (DSJT)
- Directorate for Internal Audit Services (DSAI)
- IT security area

Regional tax inspectorate in the Autonomous Region of Madeira (DRAF)

Bank of Portugal (BP)

Portuguese Securities Market Commission (CMVM)

Portuguese Institute for Registries and Notaries (IRN)

Presidency of the Council of Ministers

Financial Intelligence Unit (FIU)

Association of banks

Caixa Geral de Depósitos (CGD)

Bar association (OA)

Chamber of Notaries (ON)

Chamber of Chartered Accountants (OCC)

Chamber of Statutory Auditors (OROC)

Current and previous reviews

Summary of reviews

Review	Assessment team	Period under review	Legal Framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Mr Luis Antonio Gonzalez Flores of Mexico; Mr Andrew Cousins of Jersey; Ms Renata Teixeira and Mr Robin Ng of the Global Forum Secretariat	not applicable	January 2013	April 2013
Round 1 Phase 2	Ms Marycelia Garcia Valle of Mexico; Mr Andrew Cousins of Jersey; Ms Renata Teixeira and Mr Boudewijn van Looij of the Global Forum Secretariat	1 July 2010 to 30 June 2013	2 January 2015	March 2015
Round 2 combining Phase 1 and Phase 2	Ms Elisabeth Meurling of Sweden, Ms Mayuri of India and Ms Juliana Candido of the Global Forum Secretariat	1 October 2017 to 30 September 2020	6 May 2022	5 August 2022

Annex 4: Portugal's response to the review report[34]

Portugal would like to express its high appreciation for the work done by the assessment team in evaluating Portugal for this 2022 Exchange of Information on Request Peer Review Report. Portugal agrees with the contents of the Report and shares its conclusions.

Portugal will work on the recommendations made in the report in order to further improve the legal framework and the practical arrangements for the exchange of information on request.

34. This Annex presents Portugal'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 PORTUGAL 2022 (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 publication contains the 2022 Second Round Peer Review Report on the Exchange of Information on Request for Portugal.

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