

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information
on Request

GUATEMALA

2019 (Second Round)



Global Forum on Transparency and Exchange of Information for Tax Purposes: Guatemala 2019 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

July 2019

(reflecting the legal and regulatory framework
as at May 2019)



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Table of contents

Reader’s guide	5
Abbreviations and acronyms	9
Executive summary	11
Overview of Guatemala	23
Part A: Availability of information	29
A.1. Legal and beneficial ownership and identity information	29
A.2. Accounting records	64
A.3. Banking information	70
Part B: Access to information	77
B.1. Competent authority’s ability to obtain and provide information	77
B.2. Notification requirements, rights and safeguards	85
Part C: Exchanging information	89
C.1. Exchange of information mechanisms	89
C.2. Exchange of information mechanisms with all relevant partners	95
C.3. Confidentiality	96
C.4. Rights and safeguards of taxpayers and third parties	99
C.5. Requesting and providing information in an effective manner	100
Annex 1: List of in-text recommendations	105
Annex 2: List of Guatemala’s EOI mechanisms	107
Annex 3: Methodology for the review	110
Annex 4: Guatemala’s response to the review report	113

Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multi-lateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 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 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015
2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
2012 Report	Guatemala’s Phase 1 Report assessing the legal implementation of the standard for transparency and exchange of information in tax matters as approved by the Global Forum in 2012
2015 Report	Guatemala’s Phase 1 Report (Supplementary report) as approved by the Global Forum in 2015
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CDD	Customer Due Diligence
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IMD	Information Management Department of the SAT (Guatemalan EOI competent authority)
IVE	Special Verification Intendancy (Guatemalan FIU)

OP	AML-obliged person
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
PRG	Peer Review Group of the Global Forum
SAT	Superintendency of Tax Administration (Guatemalan tax authority)
SIB	Superintendency of Banks (Guatemalan financial system supervisor)
TIEA	Tax Information Exchange Agreement
TIN	Tax Identification Number
VAT	Value Added Tax

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Guatemala in the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework in force as at 6 May 2019 and the practical implementation of this framework, in particular in respect of EOI requests received and sent during the review period from 1 January 2015 to 31 December 2017. This report concludes that Guatemala is overall **Non-Compliant** with the international standard.

2. In 2012, the Global Forum evaluated Guatemala for its implementation of the EOIR standard against the 2010 Terms of Reference (Phase 1, legal framework). Guatemala was blocked from moving to Phase 2 (review of practical implementation) because it did not have in place elements of the legal framework which are crucial to achieving an effective exchange of information. A Phase 1 Supplementary Report published in October 2015 reached the same result. Guatemala then underwent a special Fast-Track review in 2017, which concluded that Guatemala would likely be assigned an overall rating of “largely compliant” should it undergo a peer review under the 2010 Terms of Reference at that stage.

Comparison of determinations and ratings for the First Round Supplementary Report and the Second Round Report

Element	First Round Report (2015) determination	Second Round Report (2019) determination	Second Round Report (2019) rating
A.1 Availability of ownership and identity information	Needs improvement	Not in place	NC
A.2 Availability of accounting information	In place	In place	LC
A.3 Availability of banking information	In place	Needs improvement	PC
B.1 Access to information	Not in place	Not in place	NC
B.2 Rights and safeguards	Needs improvement	Needs improvement	PC
C.1 EOIR mechanisms	Not in place	Not in place	NC
C.2 Network of EOIR mechanisms	Not in place	Not in place	NC
C.3 Confidentiality	In place	Needs improvement	PC

Element	First Round Report (2015) determination	Second Round Report (2019) determination	Second Round Report (2019) rating
C.4 Rights and safeguards	In place	Needs improvement	PC
C.5 Quality and timeliness of responses	Not applicable	Not applicable	LC
OVERALL RATING	Not applicable	Not applicable	Non-Compliant

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

Progress made since previous review

3. Guatemala made progress concerning access to banking information through the enactment in 2016 of amendments to both its bank law and tax law which allowed for access to this information by the tax authority, including for exchange of information (EOI) purposes. These amendments included exceptions to notification requirements to access banking information. However, these amendments, which allowed Guatemala to be rated Largely Compliant under the 2017 Fast-Track Review, are currently provisionally suspended by the Constitutional Court.

4. Guatemala also made significant improvements as far as the EOIR international legal instruments are concerned with the ratification of the Multilateral Convention, in force as of 1 October 2017. For bearer shares, an administrative blockade has been issued which revokes any rights and benefits pertaining to bearer shares until these are converted into nominative shares through a court order.

5. No other significant progress has been reported for any of the other issues identified.

Key recommendation(s)

6. In terms of deficiencies identified in the domestic legal and regulatory framework, Guatemala is still to take concrete steps regarding all of the deficiencies identified in the Round 1 reports.

7. The main issues identified in the present report concern: 1) the availability of legal and beneficial ownership information in all cases, 2) access to information when the information is covered by domestic confidentiality safeguards (including banking information and information covered by professional secrecy) or is not related to a tax obligation in Guatemala, and 3) the ability to exchange information when the information is covered by domestic confidentiality safeguards or is not related to a tax obligation in Guatemala.

8. Regarding the availability of ownership information, significant deficiencies have been identified concerning the tax authority's supervision and enforcement of legal ownership requirements for all legal entities and arrangements. Guatemala is recommended to make sure that requirements to have up-to-date legal ownership information to the standard are actually implemented, supervised and enforced in all cases.

9. Regarding bearer shares, although the issuance of new bearer shares has been prohibited since 2011 and rights and benefits associated with the shares can no longer be enjoyed if the shares have not been converted into nominative shares, since there is no time limit to request a court order to obtain a full reinstatement of all rights and benefits associated with the shares, Guatemala is recommended to make sure that definitive steps are taken regarding those not yet converted to ensure the identification of the owners of bearer shares in all cases.

10. Inactive registered companies, as well as companies that operate without any official registration, are a significant concern in Guatemala. Although these companies cannot perform economic activities through official means, their existence may pose significant risks for the availability of up-to-date ownership and accounting information. Guatemala is therefore recommended to introduce and implement definitive countermeasures against companies which are no longer active but still registered or are active without any formal registration.

11. No actions have been reported to ensure the availability of legal ownership information in the case of foreign companies, foreign partnerships and foreign trusts. Guatemala is recommended to make sure that requirements to have up-to-date legal ownership information to the standard are actually implemented, supervised and enforced in all cases.

12. In respect of the new aspects of the 2016 ToR, Guatemala's legal framework relies completely on its anti-money laundering (AML) regime for the identification of beneficial owners of legal entities and legal arrangements, in particular through the opening of a bank account in Guatemala. Although the official instructions issued by the Guatemalan authorities to AML-obliged persons generally refer to the elements of the standard, some issues are identified in these instructions on how to identify the ultimate beneficial owners of legal entities and arrangements, in particular in the case of complex structures involving legal arrangements, or where the reliance on mechanical approaches might not be adequate to capture all beneficial owners. In addition, the supervision and enforcement of these requirements appear weak. Guatemala is therefore recommended to address the legal gaps in the identification of ultimate beneficial owners and to further strengthen its supervision programmes. Since bank accounts are the primary means in Guatemala to collect and keep beneficial ownership information, these issues

are also equally relevant for the availability of banking information under the standard.

13. The significant deficiencies identified in previous reports regarding the ability of the tax administration to access certain information (e.g. banking information and information covered by professional secrecy) for the purpose of exchanging it in the context of EOI requests have been confirmed in practice. In addition, the absence of powers to enforce access to information if the information is not related to a tax obligation in Guatemala was confirmed during the recent on-site visit. Finally, since beneficial ownership information is always considered to be banking information in Guatemala, it is protected by bank secrecy, and therefore cannot be accessed by the tax administration in any case. Guatemala is recommended to remove its legal limitations on access to information held by banks that prevent effective exchange of information in tax matters. The significant gaps identified regarding access to information also have a direct impact on the effectiveness of exchange of information (elements C.1 and C.2 of the standard).

14. Other gaps have also been identified concerning notification requirements and the confidentiality of information received and exchanged. If a request concerns banking information or information related to criminal proceedings, a court order is always required to access the information. When a court order is required in these cases, the taxpayer must always be notified. Since no exceptions are currently available to this procedure, a recommendation is made for Guatemala to introduce such exceptions where notification would unduly prevent or delay effective exchange of information. In addition, if a court order to access information is obtained, this order is normally made public. Guatemala is therefore recommended to establish and document detailed policies and procedures for protecting the confidentiality of information received and exchanged in all cases in line with the standard.

Overall rating

15. Guatemala has improved its international network of instruments for the exchange of information by ratifying the Multilateral Convention, which made the number of EOI partners of Guatemala raise from 4 to 130 at the end of the review period. However, the operation of this legal instrument is fundamentally limited by the serious deficiencies identified in Guatemala's domestic legal framework and its implementation in practice regarding both availability and access to information to be exchanged, as demonstrated in practice by the only EOI request received during this review period, which was partially denied due to domestic confidentiality safeguards. There are also fundamental impediments to the availability of ownership information. For these reasons, elements A.1, B.1, C.1 and C.2 are rated Non-Compliant;

elements A.3, B.2, C.3 and C.4 are rated Partially Compliant; and elements A.2 and C.5 are rated Largely Compliant. On balance, Guatemala is rated overall Non-Compliant with the EOIR standard.

16. The report was approved by the Peer Review Group at its meeting from 25-28 June 2019 and was adopted by the Global Forum on 29 July 2019. A follow-up report on the steps undertaken by Guatemala to address the recommendations made in this report should be produced by 30 June 2020, in accordance with the procedures set in the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The legal and regulatory framework is not in place	Although the issuance of bearer shares has been abolished in Guatemala and the conversion process terminated in June 2013, due to the reinstatement court procedure for future reinstated bearer shares, there is a slight risk that ownership information for all holders of bearer shares may not be available.	Guatemala should make sure that bearer shares are converted to nominative shares in all cases and that definitive steps are taken regarding those not yet converted to ensure the identification of the owners of bearer shares in all cases.
	There is no provision requiring foreign companies with sufficient nexus to Guatemala to maintain ownership information in line with the standard.	Guatemala should ensure the availability of ownership information for all foreign companies with sufficient nexus to Guatemala.
	Ownership and identity information on foreign partnerships may not be available in Guatemala, even when the foreign partnership carries on business in Guatemala or has income, deductions or credits for tax purposes in Guatemala.	Guatemala should ensure that information that identifies the partners in a foreign partnership that carries on business in Guatemala or has income, deductions or credits for tax purposes in Guatemala is available to its competent authority.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	Ownership and identity information on the settlor and beneficiaries of a foreign trust may not be available in Guatemala.	Guatemala should take measures to ensure that information is available that identifies the settlors and beneficiaries of foreign trusts.
	Beneficial ownership information in Guatemala is available pursuant to the AML regime, but not all Guatemalan legal entities are obliged to maintain a relationship with a Guatemalan AML-obliged person, which is the only way to obtain beneficial ownership information in Guatemala. In addition, the definition of beneficial ownership in Guatemala is not up to the standard, since the definition considers the identification of natural persons through a threshold of controlling ownership interest to be sufficient to not move to the following steps of the identification process (i.e. control by other means and senior management positions). This shortcoming has an effect in practice on the identification of all appropriate beneficial owners for both companies and partnerships, both domestic and foreign.	Guatemala is recommended to ensure that beneficial ownership on all relevant entities and arrangements is available in all cases in accordance with the standard.
	Acting as a trustee for a foreign trust does not necessarily trigger AML obligations. There are no specific requirements in Guatemala on the identification of beneficial owners applicable to trusts in line with the standard. Therefore, it is not clear how AML-obliged professionals should identify the appropriate beneficial owners of trusts, especially in cases of complex structures where one or more of the key persons are legal entities or legal arrangements.	Guatemala is recommended to ensure that information on beneficial owner(s) of trusts and similar legal arrangements is available in all cases in accordance with the standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
EOIR Rating: Non-Compliant	Supervisory and enforcement activity on legal ownership information in Guatemala is ensured only by the tax administration. However, this is not an element consistently checked during audits. In addition, while the tax administration is the only government body who is actually enforcing legal ownership requirements to some extent, its action is limited by a four-year statute of limitations period, thus limiting the enforcement of requests for information referring to more than four years prior. This gap is relevant for all legal entities including partnerships and for legal arrangements.	Guatemala is recommended to make sure that requirements to have up-to-date legal ownership information to the standard are actually implemented, supervised and enforced in all cases.
	Supervisory activity on beneficial ownership requirements has been weak and primarily focused on making sure that supervised entities adopt internal policies in line with the instructions of the Special Verification Intendancy (Guatemalan Financial Intelligence Unit) on customer due diligence procedures. This is relevant for both legal entities and legal arrangements.	Guatemala should further strengthen its supervision programmes and apply effective sanctions in cases of non-compliance, so that the availability of beneficial ownership information in line with the standard is ensured in all cases.
	The large number of inactive companies that maintain legal personality and of companies that seem to operate in Guatemala without any formal registration raises concerns that both legal and beneficial ownership information might not be available in all cases.	Guatemala should ensure that up-to-date legal and beneficial ownership information is available in all cases, including for companies which are no longer active but still registered or are active without any formal registration.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The legal and regulatory framework is in place	In the case of a trustee of a foreign law trust who is not subject to AML, it is not clear that accounting information would always be available.	It is recommended that Guatemala clarify its laws to ensure that accounting records are maintained in all cases.
EOIR Rating: Largely Compliant	Although both the tax administration and the Business Registrar have among their duties the enforcement of accounting record keeping requirements, only the tax administration has confirmed to be actually enforcing these requirements. However, since tax audit is limited by a four-year statute of limitations period, this may limit the enforcement of requests for information referring to more than four years prior with a negative impact on the actual implementation of the retention period requirements.	Guatemala should make sure that the accounting records requirement in terms of retention period consistent with the standard (i.e. five years from the end of the period to which the information relates) is enforced in all cases.
	Companies which are no longer formally active (i.e. companies that no longer declare activities and/or file tax returns with the authorities) may still not be formally liquidated, and may still be operating in breach of the law. There is no information available on the actual number of these companies. Updated accounting information may not be available for these companies.	Guatemala should ensure that for companies that have ceased to exist or that are otherwise no longer active, relevant accounting information is available in all cases in line with the standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
<p>The legal and regulatory framework is in place but certain aspects need improvement</p>	<p>The definition of beneficial owners of bank accounts and the instructions on how to identify them are not up to the standard, since the definition considers the identification of natural persons above the 10% threshold of ownership interest to be sufficient to not move to the following steps of the identification process (i.e. control by other means and senior management positions).</p>	<p>Guatemala is recommended to introduce a definition of beneficial ownership whereby ultimate beneficial owners of bank accounts are identified in accordance with the standard in all cases.</p>
	<p>There are no specific requirements in Guatemala on the identification of beneficial owners of bank accounts applicable to trusts in line with the standard. Therefore, it is not clear how AML-obliged professionals should identify the appropriate beneficial owners of bank accounts applicable to trusts, especially in complex cases where one or more of the key persons are legal entities or legal arrangements.</p>	<p>Guatemala is recommended to ensure that information on beneficial owner(s) of bank accounts of trusts and similar legal arrangements is available in all cases in accordance with the standard.</p>
<p>EOIR Rating: Partially Compliant</p>	<p>Supervisory activity on beneficial ownership requirements on bank account holders has been weak and primarily focused on the adoption of internal policies in line with the instructions of the Special Verification Intendancy (Guatemalan Financial Intelligence Unit) on customer due diligence procedures by the relevant banks and financial institutions. No cases of non-compliance are reported, nor have sanctions been applied.</p>	<p>Guatemala should further strengthen its supervision programmes and apply effective sanctions in cases of non-compliance, so that beneficial ownership information of bank account holders is available in all cases in line with the standard.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
The legal and regulatory framework is not in place	The power of the Guatemalan tax authority to obtain information for both domestic and exchange of information purposes is limited by constitutional rights, bank secrecy and professional secrecy, which cannot be lifted for exchange of information purposes.	Guatemala should ensure that its legal limitations on access to information do not prevent effective exchange of information in tax matters.
	Beneficial ownership information is considered banking information in Guatemala, and for this reason the relevant access powers of the competent authority are limited by bank secrecy.	Guatemala should ensure that its competent authority has access to beneficial ownership information for the purpose of effective exchange of information in tax matters.
	Although the Tax Code authorises the tax administration to obtain information that forms the basis of a tax obligation in Guatemala, this power does not apply for exchange of information purposes in the absence of a domestic tax interest.	Guatemala should ensure that it has the power to obtain information for exchange purposes regardless of a domestic tax interest.
EOIR Rating: Non-Compliant	The legal limitations to access to information prevent access to information for exchange purposes in practice.	Guatemala should ensure that it has no limitations in its access powers so that it does not prevent effective exchange of information.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
The legal and regulatory framework is in place but certain aspects need improvement	Where a judicial order is needed to obtain banking information or information related to criminal proceedings, the taxpayer must in all cases be notified.	Guatemala should introduce exceptions to this notification procedure where notification would unduly prevent or delay effective exchange of information.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
EOIR Rating: Partially Compliant		
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The legal and regulatory framework is not in place	Guatemala has domestic law limitations, including confidentiality of accounting records, bank and professional secrecy, and a domestic tax interest requirement, which prevent it from giving full effect to its EOI mechanisms.	Guatemala should ensure it can access and exchange all information relevant for tax purposes in accordance with the standard, such that it may give full effect to its EOI mechanisms.
EOIR Rating: Non-Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The legal and regulatory framework is not in place	Guatemala, due to its domestic law limitations, including confidentiality of accounting records, bank and professional secrecy, and a domestic tax interest requirement, cannot exchange information with its partners in accordance with the international standard under any of its agreements.	Guatemala should ensure that it gives full effect to the terms of its EOI arrangements in order to allow for full EOI to the standard with its relevant partners.
EOIR Rating: Non-Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The legal and regulatory framework is in place but certain aspects need improvement	There are no rules or instructions protecting the confidentiality of information when a court order is necessary to obtain it.	Guatemala should establish and document detailed policies and procedures for protecting the confidentiality of information received and exchanged in all cases in line with the standard.
EOIR Rating: Partially Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The legal and regulatory framework is in place but certain aspects need improvement	The rights and safeguards of taxpayers in Guatemala extend well beyond the standard, undermining the effective exchange of information.	Guatemala should make sure that the rights and safeguards of taxpayers do not extend beyond what is provided under the standard.
EOIR Rating: Partially Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>)		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
EOIR Rating: Largely Compliant	Guatemala has committed sufficient resources and put in place sound organisational processes to handle inbound EOI requests in a timely manner. Nevertheless, this system has not been sufficiently tested in practice.	Guatemala should monitor the practical implementation of the organisational processes of the EOI unit, in particular taking into account any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

Overview of Guatemala

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

Legal system

18. Guatemala is a constitutional republic. The President of the Republic and the Vice President are directly elected by universal suffrage. The President is both the Chief of State and the Head of the Government. The President directly appoints ministers, vice ministers and secretaries. Guatemala has 22 administrative subdivisions (Departments) administered by governors appointed by the President. These subdivisions have no competence on tax matters. There are 340 municipalities governed by mayors which are also democratically elected and, differently from the administrative departments, enjoy autonomy from the central government for the matters which are delegated to them. The Legislative branch is composed of the universal Congress of the Republic made up of 158 members elected for four-year terms. The Judiciary power is composed of the Supreme Court of Justice and the tribunals established by law (i.e. the courts of first instance and the courts of appeal). Tax issues are dealt with within specialised judicial bodies.¹

19. Guatemala’s legal system is based on civil law tradition. Art. 175 of the Constitution states that: “No law can contradict the provisions of the Constitution. Laws that violate or distort the constitutional mandates are null and invalid *Ipso Jure*”. In addition, Art. 9 of the Judicial Branch Law, Decree 2-89, establishes that: “Courts of justice shall always observe the principle of regulatory hierarchy and supremacy of the Political Constitution of the Republic

1. Tribunal Administrativo Tributario y Aduanero, Juzgado (octavo) de Paz Penal en materia Tributaria, Tribunal de Sentencia Penal en materia Tributaria y Aduanera, Sala de la Corte de Apelaciones del Ramo Penal en materia Tributaria y Aduanera.

over any other law, or international treaty, except the treaties or conventions on Human Rights ratified by Guatemala, that have prevalence over internal law. The provisions that contradict a law of superior rank are not valid”.

20. Custom fulfils a supplementary function when there are gaps in the legislation. Jurisprudence also fulfils a supplementary function but needs five continuous rulings by the Supreme Court of Justice to become mandatory. Constitutional jurisprudence is considered established with three uniform decisions by the Constitutional Court.

21. In terms of hierarchy of the law, with particular reference to the laws governing the tax system, Art. 2 of the Tax Code, Decree 6-91, sets the following rank order:

- the Constitution of the Republic of Guatemala
- Constitutional laws
- ordinary laws, treaties and international conventions ratified by the Congress
- regulations issued by the Executive Branch through government agreements.

22. Based on this ranking and the explanation given by the Guatemalan tax authority, a conflict between a tax treaty and an ordinary law would be treated as a conflict between two ordinary laws, meaning that the subsequent legislation would prevail, since tax treaties do not specifically deal with human rights.

Tax system

23. Taxes in Guatemala are levied by the central government through the Superintendency of Tax Administration (*Superintendencia de Administracion Tributaria* – SAT). Guatemala adopts a territorial tax system whereby income is subject to tax whenever it is obtained from sources within Guatemala. Guatemalan Income Tax Law defines Guatemalan source income as that obtained through any capital, assets, services and rights of any nature invested or utilised in the country, or originated by activities developed in Guatemala (Income Tax Law, Art. 4).

24. Direct tax is in the form of general income tax which is levied on both residents and non-residents. Companies and individuals may choose between a general tax regime, which provides for a flat tax rate of 5% on their gross income for monthly taxable income up to GTQ 30 000² (EUR 3 450)

2. The official currency is the Quetzal (GTQ); GTQ 1 = EUR 0.11 as of 8 January 2019.

and of 7% for monthly taxable income above this threshold, and an optional tax regime, which provides for a standard corporate income tax, with a rate of 25% on net taxable income.³

25. Under the general tax regime, taxpayers are subject to a final withholding tax at the two rates considered above (5% or 7%). Under the optional tax regime, withholding taxes apply for payments made to non-residents without a permanent establishment in Guatemala at a rate that varies between 3% and 25% depending on the type of payment.⁴

26. In addition, an alternative minimum tax on net assets called ISO (*Impuesto de solidaridad*) is levied on a quarterly basis at the rate of 1% on companies that derive a gross profit margin of more than 4% of their income.⁵ Real estate is subject to a progressive tax at a rate of 0.2% to 0.9%. In January 2015, transfer pricing rules also entered into force. Taxpayers must have a transfer pricing report related to each transaction with non-resident related parties. The tax authority has the power to request this report within the four-year audit limitation period, and taxpayers usually have 20 days to submit it (see A.1 and A.2).

27. VAT is levied on domestic taxable supplies of goods and services as well as on imports of goods. VAT applies to all stages of the production or distribution process. Taxable persons are in general any person or entity carrying out taxable transactions in Guatemala. The VAT rate is currently 12%, with a relevant declaration to be filed by the taxable person monthly.

Financial services sector

28. The financial system of Guatemala is composed of the Banco de Guatemala (the central bank), commercial banks (18 local and 6 offshore), 13 financial companies, 28 insurance companies, and an unspecified number of brokerage houses, exchange houses, bonded warehouses, companies specialising in leasing, factoring and issuing credit cards, credit co-operatives and savings and credit co-operatives. The financial system, with the

3. Net taxable income under the optional regime is defined as gross income minus necessary costs and expenses to generate such income or to preserve the revenue source. Under this regime, capital gains are subject to a 31% tax. This optional tax regime is limited to lucrative activities.
4. Dividends and profit distributions are subject to a 5% withholding tax, while interest is subject to a 10% withholding tax. However, interest payments made to non-resident banking and financial institutions are not subject to withholding tax.
5. ISO applies to the greater amount between 25% of the value of net assets and 25% of the gross income. Taxpayers whose net assets are four times greater than their gross income pay the tax on 25% of their gross income.

exception of the stock exchange and brokerage houses that do not belong to financial groups and co-operatives, is supervised by the Superintendency of Banks (SIB), under the direction of the Monetary Board. The banks are authorised by the Monetary Board of the SIB, and must comply with the requirements established in the Law of Banks and Financial Groups and in the regulation issued by said Board.

29. The supervised financial system, as of June 2017, registered assets of GTQ 342 591 million (EUR 38 920 million), which is equivalent to 61.5% of Guatemala’s GDP, and includes all 101 entities supervised by the SIB. The total assets of the banks amounted to GTQ 289 797 million (EUR 32 923 million).

AML framework

30. Guatemala was jointly evaluated in 2016 by the Financial Action Task Force of Latin America (GAFILAT) and the Caribbean Financial Action Task Force (CFATF) in accordance with the 2012 Recommendations of the Financial Action Task Force (FATF),⁶ on the basis of the 2013 Methodology. Most recently, in October 2018, the GAFILAT published a Third Enhanced Follow-up Report on Guatemala.⁷ This follow-up report does not address the progress made in improving effectiveness, since a new upcoming evaluation is foreseen to analyse this aspect. The assessment of the Immediate Outcomes thus remains the one included in the 2016 Report.

31. The follow-up report confirmed the Largely Compliant rating for Recommendations 10, 24 and 25, as well as the Partially Compliant rating for Recommendation 22. For Immediate Outcome 5, the conclusion of the 2016 Report remains valid, according to which Guatemala has a “moderate level of effectiveness” since it has concrete access to only basic ownership information, without companies and complex legal structures being required to identify their beneficial owners.⁸

32. As to what is relevant for this report, no concrete progress is recorded for Recommendation 22, in particular on the need for lawyers and notaries to be considered AML-obliged persons in Guatemala. However, there is an

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6. The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its reviews are based on a country’s compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.
 7. www.fatf-gafi.org/media/fatf/documents/reports/fur/GAFILAT-3rd-Follow-Up-Report-Guatemala-2018.pdf.
 8. See *2016 GAFILAT report*, paragraphs 392 and 394.

expectation also recorded in this report that the situation would improve with the bill for a “Law for the Updating and Strengthening of the Legal Framework for the Prevention, Control and Suppression of Financial Crimes”, which is still awaiting formal approval.

33. Supervision of the prevention of money laundering is carried out by the SIB through its Special Verification Intendancy (IVE), which is considered the FIU in Guatemala according to Art. 19 and 32 of the Law Decree 67-2001 (the AML Law). The IVE performs its activities through the issuance of official documents called “Oficios” and the performance of both on-site and off-site audits whereby compliance with the AML requirements is checked.

Recent developments

34. The amendments discussed under element B.1 allowing for access to banking information by the SAT were enacted in 2016 and led to the establishment of a new department within the tax administration which worked on access to information from third parties, in particular banking information, until these new laws were recently provisionally suspended by the Constitutional Court following an action by a taxpayer who claimed the new provisions were unconstitutional, since the powers of the tax administration to access banking information would have been broadened beyond constitutional rights. The new law was provisionally suspended in August 2018, and at 6 May 2019, the Constitutional Court has still to issue a final decision on this matter. As a direct consequence, the new unit in the tax administration is currently unable to proceed with requests for access to banking information. While Guatemala has not received any EOI requests for banking information in the review period, nor are any such requests pending, this limitation has nonetheless had a significant impact on the enforcement of domestic tax obligations.

35. The Guatemalan authorities indicated that the draft law covering the issues highlighted in the last GAFILAT report mentioned above is currently under consideration and is expected to include new requirements on beneficial ownership.

Part A: Availability of information

36. 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.

37. The Supplementary Round 1, Phase 1 report of 2015 (hereinafter the 2015 Report) concluded that Guatemala’s legal and regulatory framework ensured the availability of legal ownership information for domestic companies with registered shares, partnerships and trusts in line with the standard, but not for foreign companies with a sufficient nexus to Guatemala, foreign partnerships and foreign trusts. The issuance of bearer shares was abolished in Guatemala in 2011 and the conversion process officially terminated in June 2013, but the 2015 Report highlighted the risk that ownership information for all holders of bearer shares may not be available due to the reinstatement court procedure. The conclusions remained the same as in the original Phase 1 report of 2012 (hereinafter the 2012 Report); i.e. the legal and regulatory framework was not in place.

38. Since then, Guatemala passed a new law in January 2018 which required the registration of foreign companies with the General Mercantile Registry (hereinafter, the Business Registrar). In addition, an amendment to the Law on Banks and Financial Groups entered into force in 2016 introduced an obligation for foreign companies to provide upon request to the tax administration information on depositors and investors. These new requirements however do not address the issues previously identified. No further significant updates are reported for the issue of ownership information for foreign partnerships and trusts.

39. The issue of bearer shares was of significant importance in Guatemala, since a very large number of companies had issued bearer shares.

Although formal steps in the right direction have been taken over recent years, no definitive solutions to the identified deficiencies regarding this aspect of the standard have yet been implemented, and as a result, today a considerable number of bearer shares remain outstanding in Guatemala which have not been converted or otherwise immobilised, while no concrete dissuasive consequences on the activities of the relevant companies exist.

40. In addition, a new issue has been identified concerning the significant number of companies that are not filing tax returns or providing any updates to the relevant authorities, while still maintaining their legal status and remaining registered as active with the relevant government bodies (e.g. the tax authority and the Business Registrar). A high-ranking representative from the Business Registrar indicated that it is a concern for them the relevant number of entities doing business in an illegal way without any formal registration.

41. Under the 2016 ToR, beneficial ownership information on relevant entities and arrangements should now be available. In Guatemala this aspect of the standard is addressed only through AML-specific obligations, in particular through the obligation to have a bank account in Guatemala for the vast majority of legal entities and arrangements doing business in Guatemala, thus rendering these entities subject to customer due diligence measures.

42. A general definition of beneficial ownership is included under the AML Law, while official instructions issued by the AML supervisor (the IVE) provide for more details. However, this definition is not fully in line with the standard, since the definition considers the identification of natural persons through a given threshold for controlling ownership interest to be sufficient alone to meet the standard without the need to identify natural persons exercising control through other means, to the extent there is a doubt as to whether the person(s) with the controlling ownership interest are the beneficial owners.

43. In the case of trusts, there are no clear instructions on the identification of beneficial owners. It is not clear how AML-obliged professionals would identify the appropriate beneficial owners in these cases.

44. Gaps exist in the Guatemalan tax administration's supervision and enforcement of the legal ownership information requirement. In addition, the supervision and enforcement of the AML requirements to identify, collect and keep up-to-date beneficial ownership information appears weak, and primarily focused on the supervised entities' adoption of general internal policies rather than on the actual implementation of the rules.

45. During the current peer review period, Guatemala received only one request for information. The request was partially related to ownership and identity information. The peer concerned was generally satisfied with the

information received regarding legal ownership, although it was not satisfied with the lack of information received on accounting records, which in its opinion represented the most important information to obtain from the EOI request but which was denied by Guatemala (see elements A.2 and B.1 for more details).

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	Although the issuance of bearer shares has been abolished in Guatemala and the conversion process terminated in June 2013, due to the reinstatement court procedure for future reinstated bearer shares, there is a slight risk that ownership information for all holders of bearer shares may not be available	Guatemala should make sure that bearer shares are converted to nominative shares in all cases and that definitive steps are taken regarding those not yet converted to ensure the identification of the owners of bearer shares in all cases.
	There is no provision requiring foreign companies with sufficient nexus to Guatemala to maintain ownership information in line with the standard.	Guatemala should ensure the availability of ownership information for all foreign companies with sufficient nexus to Guatemala.
	Ownership and identity information on foreign partnerships may not be available in Guatemala, even when the foreign partnership carries on business in Guatemala or has income, deductions or credits for tax purposes in Guatemala.	Guatemala should ensure that information that identifies the partners in a foreign partnership that carries on business in Guatemala or has income, deductions or credits for tax purposes in Guatemala is available to its competent authority.
	Ownership and identity information on the settlor and beneficiaries of a foreign trust may not be available in Guatemala.	Guatemala should take measures to ensure that information is available that identifies the settlors and beneficiaries of foreign trusts.

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
	<p>Beneficial ownership information in Guatemala is available pursuant to the AML regime, but not all Guatemalan legal entities are obliged to maintain a relationship with a Guatemalan AML-obliged person, which is the only way to obtain beneficial ownership information in Guatemala. In addition, the definition of beneficial ownership in Guatemala is not up to the standard, since the definition considers the identification of natural persons through a threshold of controlling ownership interest to be sufficient to not move to the following steps of the identification process (i.e. control by other means and senior management positions). This shortcoming has an effect in practice on the identification of all appropriate beneficial owners for both companies and partnerships, both domestic and foreign.</p>	<p>Guatemala is recommended to ensure that beneficial ownership on all relevant entities and arrangements is available in all cases in accordance with the standard.</p>
	<p>Acting as a trustee for a foreign trust does not necessarily trigger AML obligations. There are no specific requirements in Guatemala on the identification of beneficial owners applicable to trusts in line with the standard. Therefore, it is not clear how AML-obliged professionals should identify the appropriate beneficial owners of trusts, especially in cases of complex structures where one or more of the key persons are legal entities or legal arrangements.</p>	<p>Guatemala is recommended to ensure that information on beneficial owner(s) of trusts and similar legal arrangements is available in all cases in accordance with the standard.</p>
Determination: The element is not in place		

Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified	Supervisory and enforcement activity on legal ownership information in Guatemala is ensured only by the tax administration. However, this is not an element consistently checked during audits. In addition, while the tax administration is the only government body who is actually enforcing legal ownership requirements to some extent, its action is limited by a four-year statute of limitations period, thus limiting the enforcement of requests for information referring to more than four years prior. This gap is relevant for all legal entities including partnerships and for legal arrangements.	Guatemala is recommended to make sure that requirements to have up-to-date legal ownership information to the standard are actually implemented, supervised and enforced in all cases.
	Supervisory activity on beneficial ownership requirements has been weak and primarily focused on making sure that supervised entities adopt internal policies in line with the instructions of the Special Verification Intendancy (Guatemalan Financial Intelligence Unit) on customer due diligence procedures. This is relevant for both legal entities and legal arrangements.	Guatemala should further strengthen its supervision programmes and apply effective sanctions in cases of non-compliance, so that the availability of beneficial ownership information in line with the standard is ensured in all cases.
	The large number of inactive companies that maintain legal personality and of companies that seem to operate in Guatemala without any formal registration raises concerns that both legal and beneficial ownership information might not be available in all cases.	Guatemala should ensure that up-to-date legal and beneficial ownership information is available in all cases, including for companies which are no longer active but still registered or are active without any formal registration.
Rating: Non-Compliant		

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

47. As described in the 2012 Report, Guatemala’s law provides for the creation of companies in the form of both individual and joint companies. Five kinds of commercial entities (*sociedades*) are currently provided for under the Commercial Code (Art. 10):

- *Sociedad colectiva* (SC – i.e. General Partnerships)
- *Sociedad en comandita simple* (SCS – i.e. Limited Partnerships)
- *Sociedad de responsabilidad limitada* (SRL – i.e. Limited Liability Companies)
- *Sociedad anónima* (SA – i.e. Joint Stock Companies)
- *Sociedad en comandita por acciones* (SCPA – i.e. Joint-Stock Limited Companies)

48. For the purposes of this report, SRLs, SAs, and SCPAs are treated as “companies”, since their organisation is based on capital. The organisation of SCs and SCSs is based on their membership, and therefore they are dealt with as partnerships under section A.1.3, even though they do not correspond to the common law concept of partnerships.

49. The Guatemalan authorities indicated that during the review period there were 120 869 domestic commercial companies registered in Guatemala (1 870 limited liability companies, 118 965 joint stock companies and 34 joint-stock limited companies).

Legal Ownership and Identity Information Requirements

50. The 2012 Report evaluated the availability in Guatemala of legal ownership information as required under its legal and regulatory framework, but the practical implementation of the relevant rules was not assessed in that report. The 2015 Report did not address this matter, as no changes had been made. The following section of the report deals with the availability of legal ownership information from the perspective of legal and regulatory requirements and, unlike prior reports, also covers their implementation in practice.

51. The 2012 Report concluded that Guatemala’s legal and regulatory framework ensured the availability of legal ownership information for domestic companies with registered shares in line with the standard. Although there are no specific rules for the update of ownership information to be filed with governmental authorities, there are requirements under tax law (in particular in the context of information to be available during tax audits), civil and commercial law (information to be kept by the company itself, information to be provided in the context of the deed of incorporation by a notary and

the registration process with the Business Registrar, as well as under AML requirements, as clarified in the relative paragraphs below), which, taken together, ensure that ownership information is available for domestic companies registered in Guatemala.

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

Legislation regulating legal ownership of companies

Type	Company law	Tax law	AML Law
Joint stock companies	All	Some	Some
Joint-stock limited companies	All	Some	Some
Limited liability companies	All	Some	Some
Foreign companies	None	Some	Some

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

Company law requirements

53. All commercial companies must be formed through a public deed by a notary (Commercial Code, Art. 16). The Notary Code specifies the details contained in the deed (Art. 46 and 47), which must include, for companies with registered shares, the company’s purpose, name, founders’ identity information (name and address), domicile, duration of activities, capital, contributions and shares (Notary Code, Art. 47). For limited liability companies, there is not a specific requirement to indicate the full ownership structure; however, this requirement is indirectly covered by the need to indicate upon registration how capital is allocated amongst members.⁹ The deed is then registered in the “*protocolo*” or notary’s register (Notary Code, Art. 18 et seq.). Modifications are required to be done with the same formalities as the original deed. Companies must also register with the Business Registrar within one month from the date of their incorporation (Commercial Code, Art. 17 and 334), but there are no requirements to register with the Business

9. Notary Code, Art. 46, number 5 states that the articles of association of new companies must include (unofficial translation): “Social capital and the share contributed by each partner in money or in kind; the value assigned to it or the way in which it has to be calculated in case they have not been assigned any value”.

Registrar subsequent changes in the ownership structure. A company is considered incorporated and then active from the date of the registration onwards (Commercial Code, Art. 17 and 24).

54. The creation process starts with a notary. The shareholders can be both individuals and legal entities. In the latter case, the following information has to be provided to the notary (and in turn to the Business Registrar): the name of the legal entity shareholder, name of the legal entity shareholder's legal representative, and an official document proving the appointment of the legal representative and his/her powers and limitations. The legal representative of a legal entity must have sufficient powers to create a company; otherwise an act by the shareholders' assembly must be presented in which the powers are clearly granted (Commercial Code, Art. 47, 163, 164 and 655).

55. Once the notary has verified that there are no other companies with the same name, a bank account has to be opened in Guatemala in the name of the company seeking registration. The notary has to make this request to the selected bank and proceed with the deposit of the initial capital. According to Art. 92 of the Commercial Code, a bank account in the name of the company is compulsory when the capital contribution is higher than GTQ 2 000 (EUR 226); the Code explicitly requires this contribution to be deposited in a bank in this case. Joint stock companies must have a minimum contribution of GTQ 200 (EUR 23¹⁰) (see paragraph 95 for further details). However, there are no mechanisms in place to monitor the need to open a bank account should the company's initial capital begin below this threshold and subsequently be increased beyond this threshold. In all other cases, the amount in cash can be kept in custody by the administrator. Foreign companies are required to open a bank account in all cases (see below).

56. After the initial notarial stage, to initiate the process of registration of a new company, an application must be submitted before the Business Registrar, which will in turn send it to the Superintendency of Tax Administration (SAT). The registration of a company with the Business Registrar can be made both in written form and through a specific electronic platform (<https://minegocio.gt/>). The registration of commercial companies will be made on the basis of information included in the notarised public deed, which must indicate the identification data of the applicant (in the case of a company, its legal representative); the capacity in which it acts; the form of the company's organisation; the denomination or company name and commercial name, if any; the company's domicile, including the domicile of its branches; the company's object; the company's duration; the company's capital; the authorising notary; and the place and date. In addition, the registration must

10. Art. 90 of the Commercial Code was modified in 2018. Before this amendment, the minimum contribution was GTQ 5 000 (EUR 571).

report information on the governance of the company, including the duties and faculties of administrators and their supervisory bodies. Information relating to the tax registration such as financial data, applicable value added tax regime, income tax regime, other taxes and the relevant accounting books¹¹ must also be submitted at the time of the registration for their initial validation.

57. In practice, registration with the Business Registrar involves acquisition of the official hard copies of the articles of association, which are scanned and uploaded to the Registrar’s internal electronic database. However, hard copies of all these documents are also always maintained by the Registrar in physical folders.

58. Applications and underlying documents presented to the Business Registrar are first assessed by an officer of the Business Registrar. If there is information missing or mistakes, the application is rejected, and there is a period of five days to correct the application (Commercial Code, Art. 342).

59. If the application file is accepted and determined to be fully correct and in accordance with the law, it is then sent to the delegate of the SAT, which has a branch office located in the same building as the Business Registrar per an inter-institutional co-ordination agreement between the SAT and the Business Registrar. New legal entities can be registered with the Registrar only after they have been granted a TIN by the SAT delegate. After having been granted a TIN, the company is provisionally registered and the Registrar assigns it official identification numbers (book number “*tomo*”, page number “*folio*”, etc.), under which it is registered. The Guatemalan authorities explained that once the company has obtained a provisional registration, it needs to have its corporate books officially stamped by both the Business Registrar and the SAT before it can start its activities.

60. There are no means to facilitate electronic queries of information by the Business Registrar or the SAT, including ownership information in the articles of association such as the names of founders. This information can only be obtained after manual consultation of the scanned copies, since no electronic database exists reporting granular ownership information for registered companies.

61. There are no requirements to subsequently update the ownership information initially provided to the Business Registrar at the time of incorporation, and the officials interviewed during the on-site visit stated that there is no interest in keeping this information up to date within the Registrar, as the maintenance of updated ownership information is a legal requirement upon the company itself.

11. Inventory, general ledger, journals (see Commercial Code, Art. 368, for the list of all accounting records to be generally kept by legal entities in Guatemala).

62. The following information must be maintained by joint stock companies and joint-stock limited companies themselves (Commercial Code, Art. 125 and Art. 196):

- each shareholder’s name, share class, series, and number
- the physical address and email address of each shareholder
- payments associated with the shares
- changes in ownership
- liens that affect the shares
- cancellations of shares.

63. A person can only be considered the owner of a registered share if he/she is registered as such in the company’s books (Commercial Code, Art. 119). Only the transfers of shares which are registered in the shareholders’ books are effective (Commercial Code, Art. 128).

64. Company books and records, including registers of shareholders, must be kept by the company in Guatemala during its entire duration and until liquidation (Commercial Code, Art. 376). An express obligation on the company itself to keep ownership information up to date is available only for joint stock companies and joint-stock limited companies. No similar requirements seem to exist for limited liability companies, for which there is however a requirement for the names of all the partners (“*socios*”) to be published at the time of the registration (Commercial Code, Art. 341), and for the modification to the articles of association to be registered with the Business Registrar (Commercial Code, Art. 17). Failure to comply with any of the obligations on traders (including the obligation on joint stock companies and joint-stock limited companies to maintain up-to-date ownership information noted above) is sanctioned with a fine from GTQ 25 to 1 000 (EUR 2.8 to 113), which will be imposed by the Business Registrar (Commercial Code, Art. 356). However, the Business Registrar clarified during the on-site visit that in practice there is no subsequent update of the ownership information initially provided by limited liability companies upon registration. The Guatemalan authorities are of the view that this information can be obtained through a request to the “General Archive of Protocols” (“*Archivo General des Protocolos*”) where all notarised public deeds have to be sent and collected. Notwithstanding the low number and materiality of limited liability companies in Guatemala (representing around 1.5% of companies), considering the lack of implementation in practice of this backstop procedure, including in the context of EOIR requests, Guatemala is recommended to monitor the implementation of the rules requiring the General Archive of Protocols to keep and provide upon request ownership information to ensure that updated ownership information is available for companies in all cases (see Annex 1).

Tax law requirements

65. Legal entities may carry out economic activities in Guatemala only if registered with the tax administration (SAT) and after having obtained a Unified Tax Registry registration. Ownership information is not included in this registration. Guatemalan rules require legal entities to update the information filed with the SAT once a year when filing annual returns or 30 days after any amendments to the filed information. Filed information includes information on directors, legal representatives, accountants, domicile for tax purposes, and branches.

66. Companies must register with the SAT as part of their overall registration process, described above.

67. The procedure to follow for registering with the tax administration can be found on the SAT website.¹² According to Art. 120 of the Tax Code, the following information has to be provided when registering a company with the tax administration:

- a. full name and surname in the case of individuals, company name or legal name and commercial name, in the case of legal entities
- b. full name of the legal representative of the company and of the individuals, who according to the charter of incorporation, as amended, are administrators, managers or representatives of such individuals, as well as a legalised copy of the document that accredits the representation
- c. tax domicile
- d. main economic activity
- e. date of initiation of affected activities
- f. if it is a foreign legal entity, it must be specified if it acts as an agency, branch or any other form of action.

68. Under this rule, there are no requirements to provide the tax administration with information on the ownership structure of legal entities. The Guatemalan authorities stated that a new web portal (“*Virtual Agency*”) was recently launched which gives taxpayers the possibility to perform online a set of activities relevant for tax purposes. The Guatemalan tax authority moreover indicated that taxpayers could use this portal to update information with the tax authority; however, its use is not compulsory, and most importantly, as seen above, there are no requirements to keep ownership information up to date with the tax authority.

12. <https://portal.sat.gob.gt/portal/requisitos-tramites-agencias/inscripcion-sociedades/>.

Foreign companies

69. The 2015 Report found that no progress had been made by Guatemala in respect of the recommendation included in the 2012 Report which underlined the absence of ownership information in accordance with the standard for foreign companies with sufficient nexus to Guatemala. In particular, it was found that while foreign companies such as those that have their headquarters in Guatemala or whose main focus of business is in Guatemala must have their deed of incorporation notarised and registered with the Business Registrar in the same manner as for a domestic company, this has to be done in accordance with the formalities of their place of incorporation. Therefore, the ownership information that is available would depend on the requirements of foreign company law and would not guarantee that ownership information will be available for all foreign companies.

70. To date, there are 596 foreign companies registered in Guatemala (i.e. branches of foreign companies). Foreign companies which are operating in Guatemala are also required to register with the tax administration (SAT) before starting or resuming activities. However, as clarified before, there is no requirement in this registration process for companies (including foreign companies) to provide information on their shareholders.

71. Art. 352 of the Commercial Code regulates the registration of foreign companies in the Commercial Register in Guatemala, in particular by referring to Art. 215¹³ of the same code for the information to be provided.¹⁴

72. In order for a foreign entity to be registered and start operations in Guatemala, it is necessary for the foreign parent company to allocate funds to capitalise the branch through a deposit of no less than USD 50 000 (EUR 44 250) under the form of guarantee in a bank account in Guatemala which must be accredited at the time of requesting the registration (Art. 215 and 352 of Commercial Code). In the context of creating this guarantee, the obliged person must perform due diligence on the client, which includes the form to start a new relationship (IVE-IR-02, see paragraph 103), which

13. The Business Registrar when registering a foreign company has to check that it is properly constituted in accordance with the laws of the country in which it was organised; obtain a certified copy of its articles of incorporation and its bylaws, if any, as well as any modifications; obtain the resolution as duly adopted by its competent body; check the designation of a legal representative in Guatemala; and check that a guarantee of no less than USD 50 000 (EUR 44 250) has been constituted.
14. In addition, in 2016 Guatemala passed an amendment to the Law on Banks and Financial Groups which introduced an obligation for foreign companies to provide to the tax administration upon request information on depositors and investors in the bank account the foreign company is required to open in Guatemala.

includes collecting BO information, IVE Official Document 4471-2014. However, it is unclear whether the information needed for the opening of this bank account includes all legal ownership information of the foreign company in line with the standard, to complement the information included under Art. 215 of the Commercial Code. The recommendation for Guatemala to ensure the availability of legal ownership information for all foreign companies with sufficient nexus to Guatemala is therefore maintained.

Nominees

73. The concept of nominee does not exist in Guatemalan law. However, the Civil Code regulates the “mandate” contract according to which a person entrusts to another the accomplishment of one or more acts or businesses (Civil Code, Art. 1689-1727). The deed must be notarised and kept in the notary’s register or *protocolo*. It is also registered in the Electronic Mandate Registry of the General Archive of Protocols of the Judicial Branch. The notarised deed must include the name, domicile, activity, age, civil status and nationality of the parties (Notary’s Code, Art. 29). In addition, if the mandate is granted by a trader, it should be registered in the Commercial Register. The penalty for failure to register is a fine of GTQ 25 000 (EUR 2 824).

74. A “mandatary” (“*mandatario*”) is considered the responsible party for the purposes of reporting to and communicating with the SAT in respect of the tax obligations derived from acts performed by the mandatary on behalf of the principal (Tax Code, Art. 26). As the responsible party, the mandatary would be required to maintain all relevant information concerning the mandate in order to provide the SAT with information regarding the principal’s tax obligation, including the contract related to the mandate (Tax Code, Art. 112A). In addition, where the mandatary is a financial intermediary (i.e. a stock broker), the mandatary would be subject to customer due diligence obligations under Guatemala’s anti-money laundering law (AML, Art. 18, 21 and 22).

75. The information on the existence of a mandate and parties to the mandate is therefore available in Guatemala with notaries, and depending on the nature of the act or parties, can also be available in the Commercial Register.

Companies that ceased to exist and inactive companies

76. According to the law of Guatemala, both the Business Registrar and the SAT keep indefinitely all records comprising information provided by taxpayers. This requirement seems to guarantee that even when a company

is liquidated, information with these two government bodies is kept in line with the standard.¹⁵

77. However, for ownership information, as discussed above, only the company itself has an explicit obligation to keep the information up to date. For companies that explicitly requested liquidation, there is an obligation to provide to both the SAT and the Business Registrar the final accounting information (including copies of relevant books – see the paragraph on companies that ceased to exist under A.2). However, this requirement does not include the register of shareholders, i.e. updated ownership information. The procedure to be followed with the SAT is stipulated under PR-IRE/DRE-1.2-3, which does not include the book of shareholders.

78. Additional requirements can be found under AML law now that accountants are included among the obliged persons (Art.5 of the AML Regulation 118-2002 as amended in 2013 by the Governmental Agreement 443-2013) and are also required to perform CDD on their clients and keep registries of them, including of their beneficial owners (Art. 21 and 22 of the AML Law). However, AML requirements for legal ownership are limited to shareholders holding 10% or more of the shares in the applicant entity (see point 6.2 of the IVE-IR-02 form for the beginning of relationships with new clients), and representative Guatemalan accountants made clear during the on-site visit that in practice they do not collect beneficial ownership information for their clients.

79. Guatemala is recommended to introduce new rules to ensure that up-to-date ownership information is kept for at least five years from the moment the company ceased to exist (see Annex 1).

80. Companies with no economic activity have in any case an obligation to report to the tax administration. There are no definitive remedies in the law of Guatemala either for the Business Registrar (e.g. striking off the registry) or the SAT (e.g. revocation of the TIN) to deal with companies that, even if not liquidated, do not comply with their reporting obligations (including when they are formally no longer active and do not declare activities and/or file tax returns). The only way to remedy this situation would be for the company itself to request a formal liquidation and declare the cessation of its activities to the SAT. In addition, the Guatemalan authorities interviewed

15. In the case of information with the tax administration, this is specified under Directory Agreement 17-2009 and Resolution SAT-S-600-2010 of the SAT, in which it is established that the elimination of documents which are part of the General Archive of the SAT is prohibited except if there are technical issues (including IT) or legal opinions by a joint committee of SAT and the Business Registrar which allow for the documents' destruction (e.g. in cases of documents which are damaged or no longer relevant).

during the on-site visit stated they are deeply concerned about entities operating in breach of the law, such as companies which are not officially registered that nevertheless operate through the use of fake certificates (e.g. falsified invoices and business licences).

81. Notwithstanding these concerns, no actions have been taken or are currently planned by the Guatemalan authorities to either strike inactive companies off the registry or revoke inactive companies' tax identification numbers. Companies which are inactive cannot use the official invoicing system, and the Guatemalan authorities are of the opinion that this is enough to deal with this issue (for instance, invoices have annual or biannual validity for VAT purposes, and cannot be used once their validity has expired and the taxpayer has not normalised its position with the SAT). Guatemala confirmed that the number of inactive companies is significant, although the authorities were not able to provide official figures. In addition, as confirmed by the Guatemalan authorities, illegally active, but non-registered, companies do operate in the economy without access to the official invoicing system, which suggests that lack of access to the system may not be a sufficient disincentive in practice.

82. Senior representatives from the Business Registrar mentioned a draft bill still to be passed, currently before the Legislative Directorate of the Guatemalan Congress, to deal with companies operating in breach of the law such as those operating with fake or no longer valid documents and certificates. This new law will allow all companies in Guatemala to operate (and for banks to open and keep for them a bank account) only if the official business certificate from the Business Registrar ("*Patentes de comercios*") has been granted and is kept up to date. Based on the draft bill, this certificate will now have to be renewed every five years, thus addressing activities in breach of the law by those companies which are not officially registered. However, even if enacted, this law does not cover the situation of companies which remain officially registered although they are no longer active.

83. Given the lack of any specific legal measures regarding inactive companies, Guatemala is recommended to ensure that up-to-date legal and beneficial ownership information is available in all cases, including for companies which are no longer active but still registered or are active without any formal registration.

Implementation of obligations to maintain legal ownership information in practice

84. Currently the implementation of obligations to maintain legal ownership information in Guatemala relies mainly (if not exclusively) on the SAT to the extent this is part of tax audits or preventive tax-related programmes.

The Business Registrar, which has direct access to some information (i.e. that submitted at the time of registration of the public deed; see above) does not currently have programmes or undertake verifications or inspections to assess compliance with the obligation to maintain up-to-date ownership information (although these activities and relevant sanctions are provided under the law; see Commercial Code, Art. 17).

85. Art. 94, paragraph 14, of the Tax Code sets the sanctions to be applied for the failure to register with the tax administration. In particular it sanctions with GTQ 10 000 (EUR 1 134) the performance, without being registered, of activities for which the tax code establishes the obligation to be registered. From the information received during the on-site visit, it is understood that the possibility of such activities is of the utmost importance for the authorities in Guatemala, since the phenomenon of companies operating without any licence and registration using fake documents (including invoices) is a priority for the relevant law enforcement agencies (see above under “companies that ceased to exist”). In addition to failure to register with the tax authority, the Tax Code establishes sanctions that may be imposed by the SAT in case the entity does not comply with the other formal obligations established under the tax law and company law (Art. 94 of the Tax Code). These include, among other things, the failure to keep registries prescribed by the Commercial Code in the form therein stipulated (Art. 94, paragraph 4). This includes the register of shareholders and the information to be kept therein, which as discussed above, includes ownership information on shareholders to be kept up to date by the company (Commercial Code, Art. 125).¹⁶ A sanction of GTQ 5 000 (EUR 572) for each wrong entry is to be applied in the case of non-compliance.

86. Although, as discussed above, ownership information should be retained for the minimum period of five years according to tax law, company law, and AML law, it was confirmed during the on-site visit that only the SAT may be checking in practice the implementation of these obligations to some extent. However, Art. 47 of the Tax Code¹⁷ indicates that the relevant powers of the tax administration are barred by statute after four years. Senior representatives from the tax administration confirmed during the on-site visit that this provision would limit their ability to request information related to

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16. Sanctions are also provided for the failure to inform the SAT of any changes in the information previously provided by the company, such as official domicile, appointment or change of accountant, within 30 days after the date of the change (Art. 94, para. 1), with a sanction of GTQ 30 (EUR 3.4) for each day elapsed up to a maximum sanction of GTQ 1 000 (EUR 113).
 17. Art. 47 of the Tax Code: “The right of the Tax Administration to make verifications, adjustments, rectifications or determinations of tax obligations, liquidate interest and fines and demand compliance and payment to taxpayers or those responsible, must be exercised within four years.”.

a period for which they cannot exercise their investigative powers. Since the statute of limitations applies after four years, requests for information referring to more than four years prior cannot be enforced. This is also relevant for accounting information (see section A.2).

87. In addition, the tax administration does not seem to have a concrete interest in checking whether this ownership information is kept up to date, the focus of tax audits being more on cases of failures to register with the tax authority, omission of payments, late payments and anomalous declarations, without the real ownership structure being a fact necessarily checked during these audits, as confirmed by the SAT representatives interviewed during the on-site visit.

Conclusion on supervision

88. Although some form of supervision is undertaken, it is not clear to what extent this involves the enforcement of requirements to keep identity and ownership information. It seems that audits by the tax administration under Art. 93 and 94 of the Tax Code do not actually check the availability of up-to-date ownership information. In addition, the four-year statute of limitations *de facto* limits the enforcement of the requirement to keep up-to-date ownership information to a period of 4 years, instead of five years as provided for under the standard. The SAT checks that individuals and legal entities performing economic activities are registered and regularly report to the tax administration. During the review period, 36 preventive programmes (12 per year) have been performed leading to sanctions of GTQ 840 000 (EUR 96 500), GTQ 1 260 000 (EUR 144 770) and GTQ 740 000 (EUR 85 025) for the years 2015, 2016 and 2017 respectively. However, there are no indications suggesting that the requirement to keep legal ownership information up to date is actually checked during these programmes, or that any of the sanctions applied referred to the failure to keep up-to-date ownership information.

89. The depth of these supervision and enforcement activities is particularly relevant, since information not already in the possession of the tax administration can be difficult to obtain from the taxpayer for exchange purposes (see sections B and C on the issue of domestic tax interest in Guatemala). For these reasons, Guatemala is recommended to make sure that requirements to have up-to-date legal ownership information to the standard are actually implemented, supervised and enforced in all cases.

Availability of legal ownership information in practice in relation to EOI

90. Guatemala received only one EOI request during the review period, which only partially related to legal ownership information. The request was about the legal representatives of a joint stock company resident in

Guatemala, together with accounting information able to reconstruct the business activities of this company and its commercial partners, since there were doubts as to the tax position of a resident of the requesting party likely to be conducting business with this Guatemalan company. The peer concerned was satisfied with the information received regarding legal ownership, although it was not satisfied with the lack of information received on accounting records, which in its opinion represented the most important information to obtain from the EOI request but which was denied by Guatemala (see A.2).

Availability of beneficial ownership information

91. Under the 2016 ToR, a new requirement of the EOIR standard is that beneficial ownership information on companies should be available. The only source of beneficial ownership information for legal entities and arrangements in Guatemala is information to be collected and kept pursuant to AML law, in particular through the obligation on banks and other financial service providers as AML-obliged persons to perform CDD and identify beneficial owners of account holders.

92. Apart from obligations under AML law, there are no other requirements in Guatemala to collect and keep beneficial ownership information under civil, company or tax law. The Guatemalan authorities indicated that discussions are currently ongoing for a new piece of legislation which would provide for a central registry of beneficial ownership information. However, this bill is still under consideration, and its entry into force is not yet known.

93. The population of AML-obliged persons seems to be limited in Guatemala, since lawyers and notaries are not among these, while accountants now are, but indicated during the on-site visit they were not collecting this kind of information in practice.

94. The focus of this analysis is then on beneficial ownership information collected by banks and other financial institutions, which, according to the Guatemalan authorities, guarantees that this information is available for all legal entities and arrangements in Guatemala. For this reason, most of the considerations that usually are covered under element A.3 are anticipated here and only briefly discussed in that other section.

95. As discussed above, all joint stock companies incorporated in Guatemala with a capital contribution of more than GTQ 2 000 (EUR 225), as well as foreign companies with sufficient nexus to Guatemala, must open a bank account in Guatemala to be able to proceed with all the steps required to set up a newly operating legal entity. Before the 2018 amendment to the Commercial Code, joint stock companies (*sociedad anonimas*) had a minimum contribution of GTQ 5 000 (EUR 583), and therefore a bank account would always be needed and beneficial ownership information always

collected and kept for joint stock companies (which form the majority of Guatemalan companies). With the amendment's new threshold of an initial minimum contribution of only GTQ 200 (EUR 23) for joint stock companies, there is a potential risk that new joint stock companies will be created without any deposits in bank accounts, thus impacting the ability to identify the beneficial owners of these entities. There are no specific requirements for limited liability companies to open a bank account in Guatemala, although according to the Guatemalan authorities, in practice a bank account in Guatemala will always be opened.

96. However, even for joint stock companies, there are no specific requirements in the law to keep the bank account open throughout the life of a company. According to the Guatemalan authorities, this is an implicit requirement, since the main activities involving the life of a company, including the payment of taxes, must be done through a Guatemalan bank account. Payment of taxes in Guatemala can only be made through a web platform called BANCASAT, which requires a Guatemalan bank account registered with the tax administration for this purpose. During the on-site visit, representatives from the SAT made a demonstration of this IT platform and how it works in practice. Only Guatemalan banks are accepted by the system. Tax officials are able to see through this platform the bank used by the taxpayer to pay taxes, but the details of the bank accounts are not visible. Although it seems unlikely that a legal entity will be incorporated and operate without a bank account, given the lack of any specific requirements for limited liability companies, the possibility to incorporate new joint stock companies without the need to deposit the initial minimum contribution with a bank, and the reported high rate of non-compliant entities (i.e. those not reporting to the tax administration) Guatemala is recommended to ensure that beneficial ownership information is collected in all cases in accordance with the standard.

97. After having conducted an investigation making sure that there are no other entities with the same name (Commercial Code, Art. 26), the notary will send a request to a bank in Guatemala to open a bank account in the name of the company and subsequently will proceed with the deposit of the company capital within that account. However, beneficial ownership information will be provided to the bank by the legal representative of the legal entity under formation through the form IVE-IR-02. There are no beneficial ownership identification procedures performed by the notaries, which are not AML-obliged persons in Guatemala.

98. The only source of beneficial ownership information as understood under the standard are requirements under Guatemala's AML law. The following table shows a summary of the legal requirements to maintain beneficial ownership information in respect of companies.

Legislation regulating beneficial ownership information of companies

Type	Company law	Tax law	AML Law
Joint stock companies	None	None	Some
Joint-stock limited companies	None	None	Some
Limited liability companies	None	None	Some
Foreign companies	None	None	All

Anti-money laundering law requirements

99. Guatemala has in place since 2001 legislation against the laundering of money and other assets (Decree no. 67 of 2001 – the AML Law). To implement this law, the Superintendency of Banks (SIB) through the Special Verification Intendancy (IVE, which is the FIU in Guatemala) issues prudential regulations provided for under the AML Law called Official Documents (“*Oficios*”), which are mandatory and binding instructions which establish the measures of due diligence over clients that the AML-obliged persons (OPs) must apply.

100. According to Art. 18 of the AML Law, OPs in Guatemala are “[t]he entities subject to the surveillance and inspection of the Superintendency of Banks”. Art. 5 of the Regulation of the AML Law, Governmental Agreement no. 118-2002, as modified by Governmental Agreement no. 443-2013, provides an exhaustive list of all OPs in Guatemala, which are subdivided into two groups as shown below:

“Group A

- a. Bank of Guatemala
- b. Banks
- c. Financial companies
- d. Exchange houses
- e. Individual or legal persons engaged in brokerage or intermediation in the negotiation of securities
- f. Issuers and credit card operators
- g. Offshore entities.¹⁸

18. Article 112 of the Law of Banks and Financial Groups, Decree 19-2002 of the Congress of the Republic of Guatemala, clarifies that offshore entities have to be considered those entities dedicated mainly to financial intermediation, constituted or registered under the laws of a foreign country, which carry out their activities mainly outside that country.

Group B

- a. Companies engaged in systematic or substantial transfers of funds and/or capital mobilisation
- b. Insurance and bonding companies
- c. Companies that dedicate themselves to the carrying out of systematic or substantial check redemption operations
- d. Insured Mortgage Development Institute (“Instituto de Fomento de Hipotecas Asegurados”)
- e. Entities that are engaged in factoring
- f. Entities that are engaged in financial leasing
- g. General warehouses
- h. Others that the legislation specifically submits to the surveillance and inspection of the Superintendency of Banks
- i. Co-operatives that carry out savings and credit operations, regardless of their denomination
- j. The entities authorised by the Ministry of the Interior to carry out lotteries, raffles and similar, regardless of the denomination they use
- k. Non-profit legal entities, regardless of their denomination, that receive, administer or execute State funds and/or receive or send funds from or to abroad
- l. Insurance intermediaries referred to in subparagraphs b) and c) of article 80 of Decree Number 25-2010, of the Congress of the Republic, Law of Insurance Activity
- m. Individual or legal persons that carry out the following activities:
 - i. Activities of real estate promotion or purchase of real estate
 - ii. Sales activities of automotive, land, sea or air vehicles
 - iii. Activities related to the trade of jewels, stones and precious metals
 - iv. Activities related to the trade of objects of art and antiquities
 - v. Armouring of goods of any type and/or lease of armoured motor vehicles
- n. Public Accountants and Auditors who provide services related to any of the following activities:
 - i. Administration of money, securities, bank accounts, investments or other assets
 - ii. Accountancy and audit activities in general

- o. Individuals or legal entities that provide services, by instructions and/or in favour of their clients or third parties, related to any of the following activities:
 - i. Acting, by itself or through third parties, as owner of registered shares, partner, associate or founder of legal entities
 - ii. Acting, by itself or through third parties, as director, member of the board of directors, administrator, attorney-in-fact or legal representative of legal persons
 - iii. Provision of physical address, so that it appears as the fiscal domicile or seat of legal persons.”

101. Notaries and lawyers are not covered by AML law in Guatemala, which deprives Guatemala of a complementary source of beneficial ownership information in Guatemala, given the lack of alternative means to obtain the information from government sources. In any case they are protected by an attorney-client privilege and it would be not possible to obtain the information from them (see further under section B.1 and C.4). As discussed in the section on the AML framework, this issue is also underlined in the relevant GAFILAT reports, including the recent follow-up report of October 2018.

102. According to Art. 19, paragraph d), of the AML Law, banks as AML-obliged persons must develop, adopt, and perform suitable programmes, rules, procedures and internal controls to avoid the use of their services and products in activities comprising the laundering of money or other assets. These programmes should include, among others, the development and implementation of specific measures to know and identify clients. Likewise, the OPs must appoint managers in charge of supervising the compliance of the programmes and internal procedures, as well as the maintenance and remittance of proper registries and the communication of suspicious and unusual transactions to the FIU. According to these rules, managers will be a link with the corresponding authorities. The SIB, through the IVE, supervises compliance with these requirements.

103. There is no definition of beneficial owner in the AML Law, which only provides for general requirements for “liable persons” (i.e. AML OPs) to “adopt the necessary measures to obtain, bring up to date, verify and maintain the information about the real identity of third parties in whose benefit an account is opened or if a transaction is performed when there is doubt that such third parties may be acting for their own benefit or, at the same time, they may be doing it in benefit of other third party, specifically in the case of legal persons that do not perform commercial, financial or industrial transactions in the country or in the country were they have their central office or domicile” (AML Law, Art. 22). In accordance with the provisions included in the AML Law as well as in the Regulation of the AML Law, the

IVE has issued several binding instructions which establish the due diligence measures that the OPs must apply to their clients. Of particular relevance for this analysis is IVE Official Document 4471-2014, which is considered by the relevant authorities as the guidance to be followed for the purpose of identifying the beneficial owners of legal entities and legal arrangements. In addition, the form to start a new relationship with new clients-legal entities (IVE-IR-02) contains the information an ALM-obliged person has to collect from a client (legal entity), including the information required to identify the entity's beneficial owners (e.g. names of shareholders holding more than 10% of the entity's shares). No other guidelines are available.

104. IVE Official Document 4471-2014 establishes the definition of beneficial ownership and procedure to follow for the identification of the beneficial owners of clients by OPs. According to this official instruction, OPs must consider as “final beneficiaries” of the persons or legal structures “those individuals that have possession or control of a client (constituted as a person or legal structure). This definition also includes persons who exercise ultimate effective control over a person or legal structure”. The Guatemalan authorities clarified that they interpret this provision as covering situations of both direct and indirect control.

105. For this purpose, obliged persons must implement and execute, as part of know-your-customer measures, specific procedures to obtain reliable information on their clients constituted as a person or legal structure, such as the name, denomination or commercial name, legal form, place of incorporation, domicile, and proof of existence. This information must be obtained from the beginning of the business relationship and kept up to date. In addition, it is required that the above-mentioned measures provide for the obliged person to “understand the nature of the commercial activity of the person or legal structure, as well as the structure of ownership and control of the same”.

106. According to the IVE instructions mentioned above, obliged persons have to first determine “the identity of the individual or individuals who exercise control of the legal entity, through the ownership of shares or participation equal to or greater than 10%, paying special attention to the identity of those individuals who ultimately have a majority participation in the share capital that allows them to exercise control of the legal entity”. The instructions then continue by stating that “[t]o the extent that the individual or individuals cannot be identified in accordance with the previous procedure, the OP must adopt and execute reasonable procedures that it deems necessary, that allow the identification of the individual(s) exercising control over the legal entity”. In case this effort also does not produce the expected outcome, the OP shall “identify the directors or senior management of the person or legal structure”. The IVE official document clarifies that these three procedures are not alternatives, but rather “gradual procedures that the obligated persons must adopt and execute, insofar as it has not been possible

to identify the final beneficiary of the legal entity with whom they intend to initiate or maintain a business relationship”.

107. This approach seems to broadly mirror the three steps approach per the FATF standard, where first a controlling ownership interest is checked, also with the assistance of ownership thresholds, then control through other means is considered, and finally the senior management of the legal entity is considered. However, the way this instruction prescribes to move from the first step to the second step is not fully in line with the standard, since it seems that complying with the first step through a mere mechanical approach (i.e. natural persons are identified with more than 10% ownership interest) satisfies the test. People from both the private (banks) and public (IVE) sectors interviewed during the on-site visit seemed to confirm this is the way this test is conducted. The FATF approach provides instead for a need to move to the second step “to the extent *there is a doubt* as to whether the persons with the controlling ownership interest are the beneficial owners”. Guatemala is therefore recommended (for example, by amending its instructions on the identification of the ultimate beneficial owners of legal entities) to introduce a definition of beneficial ownership whereby ultimate beneficial owners are identified in accordance with the standard in all cases.

108. This procedure does not have to be applied when 1) the customer is a publicly traded company that is subject to disclosure requirements which impose obligations ensuring “adequate transparency of the final beneficiary” or when the company at stake is owned more than 50% by a publicly traded company as described above; 2) when the client is “a duly recognised international or multilateral organisation”; and 3) when the client is subject to the surveillance and inspection of the SIB. This is in line with the standard. Simplified CDD (IVE 721-2011) does not apply to legal persons, its scope being limited to individuals and therefore is not relevant for this analysis.

109. With reference to the updating and keeping of records, Art. 23 of the AML Law establishes that registers of registered accounts (Art. 20), records of the beginning of a commercial relationship with natural or legal persons, whether they are regular customers or not, particularly those related to the realisation of fiduciary transactions (Art. 21), and the identity of third parties in whose benefit an account is opened or a transaction is conducted (i.e. the identity of beneficial owners, Art. 22), must be updated throughout the duration of the commercial relationship, and must be kept for at least 5 years after the transaction has been completed or the account has been closed.

110. With respect to the periodicity of the updating of the registers, Art. 20, paragraph 3, of the AML Regulation, on the knowledge and identification of clients, indicates that OPs must review and, where appropriate, update the data of the form indicated in this article, at least once a year, leaving a written record of the date on which such revision and/or update is made.

There are no indications in the AML Law or in the AML Regulation which indicate that this operation has to be done in accordance with the level of risk of the clients.

111. Likewise, Art. 13 of the AML Regulation indicates that the records referred to by the Law must be ordered according to an adequate archiving system, in documents, magnetic media or any other electronic device, so that they can be used efficiently by the entity and meet the requirements of the competent authorities. When using magnetic media or any other electronic device, backup copies should be kept.

Beneficial ownership information – Enforcement measures and oversight

112. According to Art. 31 of the AML Law, obliged persons are responsible for non-compliance with the requirements imposed under this law and will be punished by the proper administrative authority with a fine ranging from USD 10 000 (EUR 8 850) to USD 50 000 (EUR 44 250). According to Art. 1 of the Agreement no. 43-2002 of the SIB, a fine of USD 10 000 (EUR 8 850) applies for failure to update the information requested under Art. 23 of the AML Law (i.e. beneficial ownership information) and a fine of USD 20 000 (EUR 17 702) applies for not keeping the same information or not keeping it in the way prescribed by the authority.

113. AML supervision is carried out by the Superintendency of Banks (SIB), through the Special Verification Intendancy (IVE), in accordance with the provisions of Art. 19 last paragraph and 32 of the AML Law. The IVE, through the Department of Prevention and Compliance (DPC), performs the supervision of compliance with AML requirements by obliged persons.

114. Both the SIB (through the Department of Prevention and Compliance of the IVE) and the national association of banks (through its own school, the “*Escuela Bancaria de Guatemala*”, the EBG) have awareness-raising programmes in place whereby trainings are offered to OPs on the application of the AML requirements. The SIB stated that almost all the trainings delivered in the review period to both financial and non-financial OPs included training on the requirements to identify beneficial owners (85 out of 88 in 2015, 72 out of 79 in 2016, and 100 out of 109 in 2017). There are no detailed figures available for trainings offered by the EBG during the review period, but it delivered 35 trainings in 2018 on AML legislation in general. In general, from the interviews conducted during the on-site visit, OP representatives from the private sector appear to have a sufficient level of awareness about beneficial ownership requirements, in line with the instructions currently in force.

Supervision of AML requirements conducted by the SIB (DPC of IVE)

115. The DPC of the IVE has made several verifications (including on-site verifications) of compliance with the AML regulations, in banks and financial companies as well as non-financial entities. The table below gives figures for these activities, where it can be seen that specific checks on the beneficial ownership requirements have been done in 22 cases out of 262 inspections. When deficiencies are identified, the DPC prepares an action plan for the OP to address by a certain date. In accordance with Art. 31 of the AML Law, during the review period, the IVE issued sanctions to banks and financial institutions for non-compliance with AML/CFT requirements for an overall amount of USD 435 000 (EUR 385 042).

IVE Supervision of BO requirements under AML Law

	2015	2016	2017	2018	Total
On-site on banks and FIs	41	35	32	44	108
Check of compliance with BO requirements				37	22
Inspections on non-financial entities	103	83	76		262
Sanctions					11 for USD 435 000
Sanctions for BO					Action plans (no sanctions)

116. However, it is reasonable to conclude that these sanctions do not refer to non-compliance with beneficial ownership requirements, since the IVE indicated that even when non-compliant cases were detected, there was no need to issue sanctions, since compliance was easily re-established after the issuance of a formal notice (e.g. an internal policy in line with the IVE instructions was always adopted).

117. Specifically, the audit verifies 1) whether a final beneficiary is reported in the annex to the form to start a new relationship (in particular under “*Comentarios, observaciones o campos adicionales de la Persona Obligada*”), 2) whether the three-step approach has been described in the policy in the right order (i.e. first the 10% threshold, then control by other means, and finally the senior management), and 3) whether the form has been signed by the legal representative of the client. In the course of this policy review, the identification of natural persons above the threshold of 10% of ownership interest (i.e. the first step) is mechanically considered as satisfying the requirement, as discussed earlier. Concerning beneficial ownership requirements, the DPC of the IVE also verifies how the internal policy is implemented in practice, although no specific indications have been given on this additional activity.

Conclusion on supervision of beneficial ownership requirements

118. From the elements above, it can be concluded that the supervision of beneficial ownership requirements in Guatemala by the relevant AML supervisory authority has been minimal, and primarily focused on the ability of supervised entities (e.g. banks and financial institutions) to adopt general internal policies in line with the instructions issued by the supervisor. Guatemala is recommended to further strengthen its supervision programmes going beyond formal compliance with the instructions and apply effective sanctions in cases of non-compliance, so that the availability of beneficial ownership information in line with the standard is ensured in all cases.

Availability of beneficial ownership information in practice in relation to EOI

119. Guatemala has not received any EOI requests during the review period concerning beneficial ownership information.

A.1.2. Bearer shares

120. The 2012 Report concluded that Guatemalan law does not allow for the issuance of bearer shares, since this has been prohibited with effect from 29 June 2011 with a requirement for outstanding shares to be converted into nominative shares within two years. However, even after the two-year conversion period, it was still possible for a holder of bearer shares to request a court order to regain all the rights associated with the shares. For this reason, it was recommended in both the 2012 and the 2015 Reports that Guatemala ensure that appropriate reporting mechanisms are in place to effectively ensure the identification of the owners of bearer shares in all cases. The situation remains the same in 2019. The Guatemalan authorities indicated that to date, 20 126 companies have converted their bearer shares while 4 458 have yet to do so, but the authorities were not able to provide the value of the outstanding bearer shares. Evidence indicates the reinstatement court procedure continues to take place (as of November 2018, 4 736 companies had yet to convert their bearer shares, as opposed to 4 458 per the most recent available data).

121. In practice, the Business Registrar explained that shareholders which have not presented the conversion of their bearer shares are prohibited from exercising their rights. The administrative blockade can be lifted upon presentation of a court order reinstating the shares. There are no final deadlines for this procedure. In the authorities' opinion, the fact that rights cannot be exercised by the holders of non-converted shares is considered a sufficient dissuasive measure.

122. The concerned companies are “active” in the Business Registrar (and keep their TIN), and nothing would prevent them from operating, holding assets and liabilities unless a decision of these shareholders is necessary (e.g. when all shares are still in bearer form). The Guatemalan authorities stated that they asked banks to increase the level of due diligence towards clients which still appear in the list of companies with bearer shares not converted and to take appropriate countermeasures in these cases, such as refusal to accept the companies as new clients, imposition of enhanced due diligence, and closure of the bank account. These measures should be based on the application of IVE 4471-2014 (see above) on the identification of the beneficial owners of a bank account. However, no concrete evidence of the application of these countermeasures has been provided.

123. No significant changes can therefore be reported, and Guatemala is still recommended to make sure that bearer shares are converted to nominative shares in all cases and that definitive steps are taken regarding those not yet converted to ensure the identification of the owners of bearer shares in all cases.

A.1.3. Partnerships

Types of partnerships

124. Certain entities under Guatemalan law are known as “*Sociedades No Accionadas*”, which are characterised according to the relationship between their partners. These entities are considered for the purposes of this report under the concept of “partnerships”, despite having legal personality (contrary to the traditional common law concept of partnership). Guatemala’s law recognises two types of partnerships: (i) general partnerships (*Sociedades Colectivas*) and (ii) limited partnerships (*Sociedades en Comandita Simple*). These types of commercial entities are regulated by Art. 10 of the Commercial Code.

125. “*Sociedades Colectivas*” (SC) (Commercial Code, Art. 59): members have joint, several and subsidiary liability without limit. Partners can be represented in the partners’ meeting by a proxy.

126. “*Sociedades en Comandita Simple*” (SCS) (Commercial Code, Art. 68): contributions are divided between the general partner(s), who have unlimited liability, and limited partner(s), who are liable only to the extent of their contribution.

127. SCs and SCSs are taxed at the entity level in Guatemala, and are taxpayers subject to registration and record keeping obligations under the Tax Code (Tax Code, Art. 21). Currently, there are 42 SC and 3 SCS registered in Guatemala.

Identification of partners

128. Each partnership must be formed by a deed certified by a notary (Civil Code, Art. 1729 and Commercial Code, Art. 16). The laws applicable to notaries specify the details that must be contained in the deed (Notary's Code, Art. 46), which must include the partnership's purpose, name, domicile, duration of activities, capital, contributions and distributions of rights and liabilities among partners. There are no specific requirements to identify each of the partners, as in the case of companies (Notary's Code, Art. 47); however, the requirements to identify "the contributions of each of the partners" (Art. 46, point 5), as well as "the part of benefits and losses assigned to each of the partners" (Art. 46, point 7), may serve a similar purpose. The Guatemalan authorities clarified that in this case, the full name, age, address, marital status, and identification documents will be requested of the partners.

129. The deed, including ownership information as well as the terms governing the relationship between the partners, is then registered in the "*protocolo*" or notary's register (Notary's Code, Art. 8 et seq., Commercial Code, Art. 16). Any modification of the deed, including a change of ownership, is required to be done with the same formalities as the original deed and so must also be notarised. In the case of SCs, Art. 341 of the Commercial Code states that it is compulsory to publish the names of all the partners in the Commercial Register.

130. This deed and its modifications must be registered not only in the notary's register but also with the Business Registrar within one month (Art. 17, 334, 341 Commercial Code). The lack of registration and failure to comply with any of the obligations on traders is sanctioned with a fine from GTQ 25 to 1 000 (EUR 2.8 to 113), which will be imposed by the Business Registrar (Commercial Code, Art. 356).

131. While the names of all partners have to be provided upon the registration of a new partnership (notarised deed to be registered with the Business Registrar), as in the case of limited liability companies (see above), there are no specific requirements for this information to be kept up to date. Changes to the articles of association have to be made through a notarised deed and registered with the Business Registrar, as for all legal entities (Commercial Code, Art. 17). However, no notaries participated in the on-site visit to confirm actual practice, while representatives of the Business Registrar confirmed they do not register any changes in the ownership structure of registered entities. Guatemala is recommended to make sure that updated ownership information is available for domestic partnerships in all cases (see Annex 1).

132. SCs and SCSs that carry on business in Guatemala or have income, credits or deductions for Guatemalan tax purposes are also regularly audited by the SAT for their compliance with tax obligations. However, as in the

case of companies, partnerships' ownership structure does not seem to be consistently verified by the tax auditors. In addition, as with companies, the four-year statute of limitations *de facto* limits the enforcement of the requirement to keep up-to-date ownership information to four years, instead of five years as provided for under the standard.

Foreign partnerships

133. Foreign partnerships that carry on business in Guatemala or have income from a Guatemalan source, credits or deductions for Guatemalan tax purposes are required to register with the tax administration (SAT) before starting or restarting a taxable activity (Tax Code, Art. 120). However, there is no requirement in this registration process for the foreign partnership to provide information on its owners. According to the Guatemalan authorities, the same procedure for foreign companies (Commercial Code, Art. 215) would apply also in these cases, and therefore the same issues highlighted before are relevant also in this case.

134. There are no figures available on foreign partnerships since Guatemala would consider them among foreign companies. In addition, the Guatemalan authorities suggested that where foreign partnerships carry on business in Guatemala, they would in effect constitute a “*sociedad*” and would be subject to the rules applicable to domestic partnerships described above. However, the law in this regard is not explicit, and it is not clear how this would apply to arrangements that do not correspond to a Guatemalan entity. The previous recommendation for Guatemala to ensure that information that identifies the partners in a foreign partnership that carries on business in Guatemala or has income, deductions or credits for tax purposes in Guatemala is available to its competent authority is therefore retained.

Beneficial ownership information

135. As discussed above in the case of companies, there are no requirements in Guatemala for partnerships to collect and keep information on their beneficial owners. The only means to obtain beneficial ownership information is through AML requirements. According to the Guatemalan authorities, it is very unlikely that partnerships will operate without a bank account in Guatemala. However, there is no specific requirement for partnerships to do so. The same conclusion reached for companies therefore holds true also in the case of partnerships in terms of shortcomings in the legal framework for the identification of beneficial owners of legal entities. Guatemala is therefore recommended to make sure that reliable and up-to-date beneficial ownership information is available in line with the standard for all partnerships that carry on business in Guatemala or have income, deductions or credits for Guatemalan tax purposes, and for limited partnerships formed under the law of Guatemala.

Oversight and enforcement of beneficial ownership requirements

136. As in the case of companies, the supervision of beneficial ownership requirements in Guatemala by the relevant AML supervisory authority has been minimal, and focused only on the ability of certain supervised entities (i.e. banks and financial institutions) to adopt general internal policies in line with the instructions issued by the supervisor. Guatemala is therefore recommended to further strengthen its supervision programmes going beyond formal compliance with the instructions and apply effective sanctions in cases of non-compliance, so that the availability of beneficial ownership information in line with the standard is ensured in all cases.

Availability of partnership information in EOI practice

137. Guatemala has not received any requests concerning the identification of partners or the beneficial ownership of partnerships.

A.1.4. Trusts

138. As explained in the 2012 Report, the concept of “trust” as it is understood in common law does not exist under Guatemalan law, and Guatemala has not signed the Hague Convention on the Law of Trusts. There is, however, no provision preventing a Guatemalan resident from acting as a trustee of a foreign trust.

Fideicomisos

139. Guatemalan law provides for a commercial contract that is similar to a trust, called a “*Fideicomiso*” (Commercial Code, Art. 766 to 793). The *fideicomiso* is an act by which the settlor (*fideicomitente*) transmits certain rights and assets to the trustee (*fiduciario*) for a particular purpose. The beneficiary is called “*fideicomisario*” (Commercial Code, Art. 766). The main difference from a trust is that the beneficiary does not have a direct ownership interest in the property of the *fideicomiso*, but rather a right against the settlor, who is required to transfer the property of the *fideicomiso* to the beneficiary in accordance with the terms of the contract. For tax purposes, a *fideicomiso* is a taxable arrangement (Income Tax Law, Art. 13); however, it is the trustee (*fiduciario*) who is responsible for ensuring the *fideicomiso* meets its obligations under the tax laws, such as registration with the SAT, filing of tax returns, and payment of any taxes due (Tax Code, Art. 22). *Fideicomisos* and trusts are given a specific TIN and are then easily identifiable in the unified tax registry of the SAT.

140. Guatemalan law provides for three types of *fideicomisos*: State, Municipal, and Private. For what is relevant for this report, there are currently

169 private *fideicomisos* administered in Guatemala for a total reported asset value of GTQ 3 498 million (EUR 408 million).

Requirements to maintain identity information in relation to fideicomisos

141. The act of creating the *fideicomiso* must be written in a notarised deed and must identify the *fideicomitente*, the *fiduciario* and the *fideicomisario*. If the *fideicomisario* is not known at the time of the creation of the *fideicomiso*, the deed must contain rules sufficient for it to be identified (Commercial Code, Art. 769).

142. The *fiduciario* (the trustee) can only be a bank or a credit institution authorised by the Monetary Board, which would in either case be a person subject to anti-money laundering rules (Commercial Code, Art. 768).

143. With regard to controls with respect to trusts, IVE Official Document 624-2010 of 29 March 2010 sets the requirements for obligated persons willing to start relationships with trusts (*fideicomiso*). In particular, the obligation to fill out the forms to initiate relations and the provision of supporting documentation applies to all the parties of the contract except the trustee (*fiduciario*), since it has to be “a bank or a credit institution”. Adequate identity information for domestic trusts (*fideicomiso*) is therefore available in Guatemala.

Foreign trusts

144. A Guatemalan resident can act as a trustee of a foreign trust. If a Guatemalan OP acts as the trustee for a foreign trust, there is an obligation to conduct customer due diligence and to maintain information on the identity of the customer (AML Law, Art. 21, and Regulation, Art. 12).

145. If somebody habitually acts as a trustee or performs services of administering financial assets on behalf of another person for profit, then that person would be considered a “trader” for purposes of the commercial law (Commercial Code, Art. 2). As a “trader”, the trustee must register with the Business Registrar, providing his/her identification and a description of the activity conducted. A “trader” must keep records relating to the business administered, including any contracts or agreements relating to the trusteeship.

146. A Guatemalan resident acting as a trustee would also be the responsible party for purposes of reporting to and communicating with the SAT in respect of any tax obligation arising from the trust in Guatemala (Tax Code, Art. 26), and would be subject to the obligation to keep underlying documentation regarding the trust’s activity. Generally, this information would include the identification of the settlor and beneficiary in order to justify the

trustee's tax obligations. However, the trustee's tax obligations would only apply in respect of Guatemalan source income. If the foreign trust only generates foreign-source income, there would be no requirement for the trustee in Guatemala to report this income to the SAT.

147. This gap (i.e. the availability of information on the settlors and beneficiaries of a foreign trust that has only foreign-source income), already identified in the previous reports, has not been addressed, and therefore the recommendation that Guatemala should take measures to ensure that information is available that identifies the settlors and beneficiaries of foreign trusts is retained.

Beneficial ownership information

148. Availability of beneficial ownership information in respect of trusts operated by a resident trustee (or otherwise administered in Guatemala) depends on AML obligations (see AML Law, Art. 22, examined above).

149. In particular, according to IVE Official Document 4471-2014, in the case of legal arrangements such as trusts, “the obligated persons must adopt controls and/or procedures to determine the identity of the trustor, the fiduciary, the beneficiaries and any other individual that exercises final control over the trust. However, from this instruction it is not clear how the ultimate beneficial owner for all the parties of a trust would be identified, in particular in the case of complex structures where other legal arrangements might interpose.

150. In general, the requirements for the identification of beneficial owners of legal entities under CDD as specified by the same IVE instruction (the three-step cascading process examined before) do not seem to apply to trusts or to legal arrangements similar to trusts. Also, the instructions included in IVE Official Document 624-2010 for the filling out of forms to start relations with new clients in the context of trusts do not provide any relevant specific guidance.

151. The Guatemalan authorities explained that since only AML-obliged persons (i.e. banks and credit institutions) can act as trustees of domestic trusts (*fideicomisos*), general beneficial ownership requirements (i.e. those applicable to the identification of beneficial owners of customers that are legal entities) also apply in the case of trusts. However, there are no specific requirements for the identification of beneficial owners to the parties of a trust (either domestic or foreign), and even for domestic trusts (i.e. *fideicomisos*), the domestic trustee, according to the law, would apply only general procedures for the identification of the beneficial owners that do not seem to require the same level of information as the standard requires in the case of legal arrangements.

152. In light of the above, three deficiencies are identified in the law of Guatemala with reference to beneficial ownership information for trusts:

- The applicable legal framework (AML Law and related instructions) does not contain clear indications on the specific procedure to follow for the identification of the beneficial owners of a trust.
- Acting as a trustee for a foreign trust does not necessarily trigger AML obligations, since the requirement to have a bank in Guatemala to act as a trustee only applies to *fideicomisos* (i.e. domestic trusts), and therefore a non-professional trustee of a foreign trust will not be subject to any such requirement.
- For foreign trusts, even when the trustee is considered a “trader”, its legal obligations (i.e. registration with the Business Registrar as a trader, as well as tax obligations) do not provide for the collection and maintenance of identification and beneficial ownership information in all cases (e.g. information on settlors and beneficiaries when the trust has foreign-source income).

153. Guatemala is therefore recommended to ensure that information on beneficial owner(s) of trusts and similar legal arrangements is available in all cases in accordance with the standard.

Oversight and enforcement

154. *Fideicomisos* are among the priorities for the supervisory activities conducted by the supervisor of the financial system in Guatemala (SIB). The SIB verifies that banks and financial companies that act as fiduciaries comply with (i) the provisions of Agreements 14-2006 and 12-20016, both of the SIB, (ii) the Manual of Accounting Instructions for Entities Subject to the Surveillance and Inspection of the SIB, and (iii) the Banking Reserve Regulation, in particular concerning the information banks and financial companies must regularly provide to the SIB about the trusts they administer, in accordance with the general provisions for the submission of information contained in the above-mentioned agreements.

155. The SIB through the Superintendency of Supervision ensures that the persons subject to its surveillance and inspection comply with their legal and regulatory obligations regarding liquidity, solvency and financial strength.

156. In addition, the SIB makes sure that the obligations of trustees as set by the Commercial Code (Art. 785) are respected, such as whether trustees are executing the trust according to its constitution and purposes, performing their duties with due diligence, taking possession of the trust’s assets as stipulated in the relative contracts, keeping a detailed and separate account for the trust they are administering, reporting annually to whom it concerns, etc.

157. Concerning compliance with AML legislation, in particular as far as the identification of beneficial ownership is concerned, the SIB through the IVE concentrates its activity on making sure that adequate know-your-customer internal policies are adopted. The IVE indicated that during the review period it issued sanctions totalling USD 435 000 to banks and credit institutions for non-compliance with AML/CFT legislation. However, none of these sanctions involved trust activities. As in the case of companies and partnerships, the supervision of beneficial ownership requirements in Guatemala by the relevant AML supervisory authority has been minimal, and focused only on the ability of certain supervised entities (i.e. banks and financial institutions) to adopt general internal policies in line with the instructions issued by the supervisor.

158. Guatemala is therefore recommended to further strengthen its supervision programmes going beyond formal compliance with the instructions and apply effective sanctions in cases of non-compliance, so that the availability of beneficial ownership information in line with the standard is ensured in all cases.

Availability of trust information in EOI practice

159. Guatemala has not received any EOI requests involving information relating to trusts.

A.1.5. Foundations

160. In Guatemala, foundations may be formed only for public interest (Civil Code, Art. 15 and Art. 18). Foundations are regulated mostly by the Civil Code and the Non-Governmental Organisations Law (Decree no. 02-2003, the “NGO law”). Foundations must be formed by a public deed or will (Civil Code, Art. 20) that should identify the foundation’s assets, its purpose and administration.

161. The NGO law (Art. 11) establishes that the public deed of NGOs (including foundations) must be registered with the Municipal Civil Registry, which in turn, within 30 days from the registration, must inform the Ministry of Economy, which keeps a registry of NGOs. This registry must be updated every six months.

162. Government authorities monitor the proper implementation of the foundation’s purposes. Foreign foundations are under the same requisites of authorisation and operation as domestic foundations (Civil Code, Art. 22). They also must be registered, keep accounting records and are under SAT tax control.

163. In Guatemala, foundations are of limited relevance to exchange of information for tax purposes since they can be formed only for a public interest, they do not have identifiable beneficiaries, they seem to be mainly constituted as non-profit entities, and as non-profit organisations, upon liquidation have their remaining assets devolved to the state budget (or other similar non-profit organisation; NGO law, Art. 22).

A.2. Accounting records

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

164. The 2012 Report concluded that the legal and regulatory framework ensures the availability of accounting information in line with the standard, and the 2015 Report noted no changes to that framework. However, in the case of a trustee of a foreign law trust who is not subject to AML, there is no clarity as to whether accounting information would always be available. In addition, since accounting records requirements are *de facto* only enforced by the tax administration in the course of tax audits, the four-year statute of limitations for these activities does not allow for the possibility to enforce the requirement to keep the records and underlying documentation for at least five years.

165. During the review period, Guatemala received one request for information, which included accounting information. Guatemala did not exchange this information, for reasons related to confidentiality of this kind of information (see Section B in the report).

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

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendations
	In the case of a trustee of a foreign law trust who is not subject to AML, it is not clear that accounting information would always be available.	It is recommended that Guatemala clarify its laws to ensure that accounting records are maintained in all cases.
Determination: The element is in place		

Practical Implementation of the standard		
Deficiencies identified	Underlying Factor	Recommendations
	Although both the tax administration and the Business Registrar have among their duties the enforcement of accounting record keeping requirements, only the tax administration has confirmed to be actually enforcing these requirements. However, since tax audit is limited by a four-year statute of limitations period, this may limit the enforcement of requests for information referring to more than four years prior with a negative impact on the actual implementation of the retention period requirements.	Guatemala should make sure that the accounting records requirement in terms of retention period consistent with the standard (i.e. five years from the end of the period to which the information relates) is enforced in all cases.
	Companies which are no longer formally active (i.e. companies that no longer declare activities and/or file tax returns with the authorities) may still not be formally liquidated, and may still be operating in breach of the law. There is no information available on the actual number of these companies. Updated accounting information may not be available for these companies.	Guatemala should ensure that for companies that have ceased to exist or that are otherwise no longer active, relevant accounting information is available in all cases in line with the standard.
Rating: Largely Compliant		

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

167. Accounting record requirements in Guatemala are addressed by a combination of company and tax law requirements. The various legal regimes are analysed below.

168. The 2012 Report concluded that Guatemala's legal and regulatory framework ensures the availability of accounting information in line with the standard, and that accounting information including underlying documentation is required to be kept for at least five years from the end of the period to which it relates.

Company law requirements

169. All domestic and foreign companies and partnerships (SAs, SCPAs, SCs, SCSs, and SRLs) are considered “traders” under the commercial law in Guatemala. *Fiduciarios* (trustees of domestic trusts, i.e. *fideicomisos*) must in all cases be financial institutions, and thus are also considered traders. Trustees of trusts formed under foreign law that perform their duties professionally and are resident in Guatemala will also be considered traders. Traders must keep an organised accounting system using generally accepted accounting double entry principles (Commercial Code, Art. 368). International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) are applicable. All bank accounts used by these entities must be registered in the accounting records (Commercial Code, Art. 368 bis).

170. The following accounting books must be kept: journal, inventory book, general ledger, and financial statements. Other books, depending on the specific requirements of the entities’ activity, must also be kept (Commercial Code, Art. 368). Traders must keep their accounting documents in a truthful and clear way, in chronological order, without spaces, interpolations, erasures or deletions (Commercial Code, Art. 373).

171. All traders with total assets higher than GTQ 20 000 (EUR 2 300) are required to have their accounting records prepared by an accountant who has to be registered in the unified registry of the Guatemalan tax administration (Commercial Code, Art. 371). Public accountants, auditors and expert accountants in Guatemala are subject to the CFT and AML regimes, and therefore must keep records available to the SIB (AML Law, Art. 38 and CFT Law, Art. 18). The trader must establish the trader’s financial situation, both at the beginning of their operations and at least once a year, through the balance sheet and also the profit and loss statement, which must be signed by the trader and the accountant (Commercial Code, Art. 374).

172. All traders, including foreign companies and partnerships authorised to operate in Guatemala, must publish their general balance sheet in the Official Journal (*Diario Oficial*) at the close of operations for each financial year (Commercial Code, Art. 380). The accounting books must be initially authorised by the Business Registrar, which entails that each page of the book is stamped by the Registrar (Commercial Code, Art. 372). These books must be kept at the address declared for tax purposes, unless the Registrar authorises another place within the country.

173. Art. 376 of the Commercial Code states that “traders, their heirs or successors, must keep the books or records of the general business of their company throughout the time it lasts and until the liquidation of all its businesses and related commercial activities”. This requirement covers the underlying documents.

174. Art. 370 of the Commercial Code punishes non-compliance with the above accounting records requirements with a sanction between GTQ 100 (EUR 13) and GTQ 1 000 (EUR 129).

Tax law requirements

175. Accounting records requirements are also provided for under tax law (Tax Code, Art. 112 and 112 A). In particular, taxpayers and their responsible persons are obliged to facilitate the activity of the tax administration for the determination, collection, inspection and investigation it carries out. For this purpose, among other things, they have to keep books and records referring to activities and operations that are linked to taxation (Art. 112, paragraph 1, letter a). Art. 112A¹⁹ further specifies the requirements to keep accounting records while the statute of limitations period has not elapsed (i.e. for four years, according to Art. 47 of the Tax Code). The tax authority must check the compliance with both the tax and company law requirements (Art. 94(4) of the Tax Code, see also paragraph 181 below). A fine of GTQ 5 000 (EUR 582) can be imposed by the SAT for the failure to keep accounting records in the manner prescribed. In addition, taxpayers must provide annually to the tax administration basic accounting information at the moment of filing their tax return using a form available on the IT platform of the SAT.²⁰ This information, which allows the tax administration to have a general and updated overall picture of the economic situation of a taxpayer, is readily available on the IT platform used by the tax administration.

176. These requirements are sufficient to correctly explain all transactions, enable the trader's financial position to be determined with reasonable accuracy, and allow the trader's financial statements to be prepared. The requirements apply to all relevant entities and arrangements.

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19. According to art 112 A of the Tax Code, taxpayers and their responsible persons must, among other things: 1- “Keep in an orderly manner, while the statute of limitations period has not elapsed, books, documents and files, bank account statements or computer systems of the taxpayer, which are related to their economic and financial activities, to establish the taxable base of the taxes and check the cancellation of their tax obligations”. 2- “Keep for the term of the statute of limitations, the documents that show compliance with their tax obligations.” 3- “[...]Allow the Tax Administration to review the computer records that contain information related to the performance of tax-generating events or the registration of its accounting and tax operations, either online or at a specific period of time established by the Tax Administration, for purposes exclusively linked to the proper tax control; for this purpose, the Tax Administration shall formulate the pertinent requirement.”
20. “*ISR Anual*”, Form 1411, <https://declaraguatate.sat.gob.gt/declaraguatate-web/>.

Foreign trusts

177. Trustees of a domestic trust (*fideicomiso*) are considered traders, and have to keep accounting records in line with the standard. However, in the case of a trustee of a foreign law trust, it is not clear whether the requirement to keep accounting records is that the trustee maintain accounts detailing his/her own business operations, or maintain accounting records for the trust. If the trustee is a financial institution and therefore subject to AML law, the trustee would have to keep a record of all transactions of the trust. However, in the case of a trustee of a foreign law trust who is not subject to AML, it is not clear whether accounting information would always be available. It is therefore recommended that Guatemala clarify its laws to ensure that accounting records are maintained in all cases.

Entities that ceased to exist

178. As discussed earlier, company law provides for accounting books and records to be kept for the entire duration of an entity's activities until the entity's liquidation. Under tax law, accounting records have to be kept for four years (see below).

179. Companies and partnerships that want to be liquidated are requested to submit copies of all their books and accounting records for the last four years to the SAT following the procedure which starts with the filling out of the form for the cease of activity (SAT-2175).²¹ Similarly, Art. 247 of the Commercial Code lists among the duties of a liquidator the need to “deposit at the Business Registrar the final balance sheet, once approved, and obtain cancellation from the Registry itself”. There are no sanctions or other consequences associated with failure to provide these documents. In this case, the relevant entities will continue to be considered as active.

180. These requirements seem to guarantee that even after an entity has ceased to exist through liquidation, relevant accounting information will still be available. However, as explained earlier, entities which are no longer formally active (i.e. entities that no longer declare activities and/or file tax returns with the authorities) may still not be formally liquidated, and may still be operating in breach of the law. Updated accounting information will not be available for these entities. Guatemala is therefore recommended to ensure that for entities that have ceased to exist or that are otherwise no longer active, relevant accounting information is available in all cases in line with the standard.

21. <https://portal.sat.gob.gt/portal/requisitos-tramites-agencias/cese-de-negocios-inscritos-con-actividad/#1539980151392-5a664ee4-6eff>.

Oversight and enforcement of requirements to maintain accounting records

181. As with identity and ownership information (see above), it is only the tax administration in the context of tax inspections that is actually checking compliance with accounting records requirements in Guatemala. According to Art. 94, paragraph 5, of the Tax code, the SAT may impose a sanction of GTQ 5000 (EUR 575) each time a company is found in non-compliance with “the requirement to keep or maintain accounting books and records ... as required by the Commercial Code and the relevant tax laws”.

182. As accounting information forms the basis for corporate income tax, the availability of accounting records is verified during tax audits. As discussed in section A.1, the tax administration has in place a tax audit program which comprises off-site and on-site audits. However, the Guatemalan authorities were not able to provide figures on the audits performed and on the level of compliance with accounting records requirements.

183. In addition, according to the Tax Code (Art. 47, 48 and 49), the tax administration can exercise audit functions only within a period of four years from the date of expiration of the obligation to pay the related tax.²² In practice, then, although the retention period as per the standard is provided by the law (in particular, company law), since it is mainly the tax administration that ensures the enforcement of this requirement, there is a concrete risk, confirmed by the Guatemalan tax authority during the on-site visit, that the last year (out of the five provided under company law) will never be checked by any supervisory authority in Guatemala. Since the statute of limitations for audits applies after four years, and, as seen above, accounting record keeping requirements under tax law are limited to four years, the legal obligation under the Commercial Code to keep accounting records for five years may not be enforced for requests for information referring to more than four years prior. The SIB’s supervisory activities regarding AML OPs do not seem to address this issue, since in any case there is no specific requirement under the law of Guatemala for third parties (e.g. accountants) to keep accounting records other than those required by AML law (e.g. registry of cash transactions exceeding the threshold USD 10 000 (EUR 8 850), as described above). Moreover, third parties interviewed during the on-site visit, in particular accountants, stated that information on their clients that does not refer to a tax

22. Art. 47: “Deadlines. The right of the Tax Administration to make verifications, adjustments, rectifications or determinations of tax obligations, liquidate interest and fines and demand compliance and payment to taxpayers or those responsible, must be exercised within four (4) years. In the same period, the taxpayers or those responsible must exercise their right of appeal, as to what was excessively or unduly paid for taxes, interest, surcharges and fines.”

obligation in Guatemala would not be disclosed to the tax administration for the purpose of an EOI request (see part C on domestic tax interest).

184. Guatemala is therefore recommended to make sure that the accounting records requirement in terms of retention period consistent with the standard (i.e. 5 years from the end of the period to which the information relates) is enforced in all cases.

Availability of accounting information in EOIR practice

185. The only EOI request received by Guatemala during the review period concerned, in part, accounting information. Although the accounting information was in the possession of the tax administration, the request for accounting information was denied: due to confidentiality safeguards under the Constitution of the Republic of Guatemala, the information could not be disclosed to third parties in the context of an EOI request. See element B.1 for more details.

A.3. Banking information

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

186. In terms of banking information, the 2012 Report concluded that banks' record keeping requirements in Guatemala were in line with the standard. General record keeping requirements in respect of all account holders are contained in AML regulations. The availability of transaction records is primarily ensured through accounting rules and bank law obligations. There has been no change in the relevant provisions since then.

187. The supervision of banks' record keeping requirements is carried out by the Superintendency of Banks (SIB), which performs prudential supervision and AML inspections of banks, credit institutions, financial companies, bonding companies, insurance companies and other financial institutions.

188. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership information) in respect of account holders be available. This aspect has been deeply analysed under element A.1, since AML obligations pertaining to bank accounts represent the only means in Guatemala to obtain beneficial ownership information for legal entities and arrangements. For this reason, the same conclusions reached under element A.1 hold true under this section. The general reference to beneficial ownership requirements in AML law and the definition included in the official instructions issued by the supervisor are broadly in line with the standard as far as legal entities are concerned, although clarifications are needed.

189. For legal arrangements such as trusts, no specific official instructions clarify how to obtain beneficial ownership information for all the parties to a trust as per the standard.

190. In addition to the shortcomings identified in the legal and regulatory framework, it is concluded that supervision and enforcement actions by the supervisor are weak and do not make sure that the appropriate beneficial owners of legal entities and arrangements are properly identified by the obliged persons in all cases.

191. During the current review period, Guatemala did not receive requests for banking information.

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

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendations
	The definition of beneficial owners of bank accounts and the instructions on how to identify them are not up to the standard, since the definition considers the identification of natural persons above the 10% threshold of ownership interest to be sufficient to not move to the following steps of the identification process (i.e. control by other means and senior management positions).	Guatemala is recommended to introduce a definition of beneficial ownership whereby ultimate beneficial owners of bank accounts are identified in accordance with the standard in all cases.
	There are no specific requirements in Guatemala on the identification of beneficial owners of bank accounts applicable to trusts in line with the standard. Therefore, it is not clear how AML-obliged professionals should identify the appropriate beneficial owners of bank accounts applicable to trusts, especially in complex cases where one or more of the key persons are legal entities or legal arrangements.	Guatemala is recommended to ensure that information on beneficial owner(s) of bank accounts of trusts and similar legal arrangements is available in all cases in accordance with the standard.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		

Practical Implementation of the standard		
Deficiencies identified	Underlying Factor	Recommendations
	Supervisory activity on beneficial ownership requirements on bank account holders has been weak and primarily focused on the adoption of internal policies in line with the instructions of the Special Verification Intendancy (Guatemalan Financial Intelligence Unit) on customer due diligence procedures by the relevant banks and financial institutions. No cases of non-compliance are reported, nor have sanctions been applied.	Guatemala should further strengthen its supervision programmes and apply effective sanctions in cases of non-compliance, so that beneficial ownership information of bank account holders is available in all cases in line with the standard.
Rating: Partially Compliant		

A.3.1. Record-keeping requirements

Availability of banking information

193. The 2012 Report concluded that banks' record keeping requirements are in line with the standard. General record keeping requirements in respect of all account holders are in place through AML obligations. The availability of transactional information is ensured by accounting rules and bank law obligations.

194. According to AML and CFT legislation in place, Customer Due Diligence (CDD) measures must be applied by banks for both regular business relationships and occasional customers, regardless of the amounts involved. Banks must verify in a trustworthy manner, and maintain information on, the identity, business name or denomination, age, occupation or social purpose, civil status, domicile, nationality, representation, legal capacity and personality of their customers (AML Law, Art. 21, and CFT Law, Art. 15). The information is verified against a national official identification document.

195. Financial institutions must collect information related to transfers of any amount if they are systematic, substantial, cablegram or electronic fund transfers (CFT Law, Art. 17). The Guatemalan authorities indicate that this requirement is interpreted as requiring banks to maintain information concerning all transactions related to any account in all cases. Banks must also report to the SIB on a monthly basis all transactions exceeding USD 10 000 (EUR 8 850) and keep a specific daily registry of all cash transactions that exceed this amount (AML Law, Art. 23 and 24, AML Regulation, Art. 14).

196. Banks must keep the information collected in the CDD process continually up to date. Art. 23 of the AML Law states that all records kept for AML purposes (e.g. registries of clients, beneficial ownership information, cash transactions over the threshold) must be updated throughout the life of the commercial relationship, and retained for at least five years after the end of the transaction or the closure of the account. In addition, all persons subject to AML law must review and update information about their clients at least once a year and maintain a record of the revision and/or update (AML Regulation, Art. 20). In case of non-compliance, there is (a) a penalty of a fine from USD 10 000 (EUR 8 850) to USD 50 000 (EUR 44 250) or its equivalent (depending on the seriousness of the offence), (b) a requirement to meet the original obligation, and (c) any criminal or civil liability incurred (CFT Law, Art. 19).

197. These elements together support the conclusion that banking information (including all records pertaining to the accounts as well as to related financial and transactional information), as well as legal ownership information for account holders, is available in Guatemala.

Beneficial ownership information on account holders

198. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. Since AML obligations pertaining to bank accounts represent the only means to obtain and keep beneficial ownership information for both legal entities and arrangements in Guatemala, this aspect has already been deeply examined under element A.1 above, to which the reader should refer for details.

199. In brief, AML law requires holders of bank accounts (almost all companies, partnerships and trusts) to provide information on their beneficial owners on the basis of the requirements included in the official instructions (*Oficios*) issued by the IVE (the FIU of Guatemala), based on specific forms also issued by the same authority. There is no definition of beneficial owner within AML law.²³ However, the official instructions issued by the IVE (in particular, IVE Official Document 4471-2014) provide clear instructions on how to identify “[t]hose individual (s) that have possession or control

23. Art. 23 of the AML Law states that: “The liable persons must adopt the necessary measures to obtain, bring up to date, verify and maintain the information about the real identity of third parties in whose benefit an account is opened or if a transaction is performed when there is doubt that such third parties may be acting for their own benefit or, at the same time, they may be doing it in benefit of another third party, especially in the case of juristic persons that do not perform commercial, financial or industrial transactions in the country or in the country were they have their central office or domicile.”

of a client (constituted as a person or legal structure). This definition also includes persons who exercise ultimate effective control over a person or legal structure”.

200. As discussed under element A.1, the instructions provided by the IVE for the identification of beneficial owners of bank accounts are not in line with the standard, since the definition considers the identification of natural persons above the 10% threshold of ownership interest to be sufficient to not move to the following steps of the identification process, i.e. control by other means. The FATF standard requires a move from a “controlling ownership interest” approach to a “control by other means” approach “to the extent that there is a doubt as to whether the persons with the controlling ownership interest are the beneficial owners”.²⁴ Guatemala is therefore recommended to introduce a definition of beneficial ownership whereby ultimate beneficial owners of bank accounts are identified in accordance with the standard in all cases.

201. With specific reference to legal arrangements, it has been concluded under element A.1 that the lack of clear instructions on the identification of beneficial owners of legal structures such as trusts leads to a deficiency regarding the availability of this information in Guatemala. Guatemala is therefore recommended to ensure that information on beneficial owner(s) of bank accounts of trusts and similar legal arrangements is available in all cases in accordance with the standard.

Enforcement provisions to ensure the availability of banking information

202. The Bank of Guatemala (Central Bank) is the authority responsible for monetary policy and price stability (Central Bank Organic Law, Art. 3), and the SIB performs prudential supervision and AML inspections of banks.

203. As discussed under section A.1, the SIB regularly performs both on-site and off-site inspections to check that general banking as well as AML requirements are properly followed by banks. The Guatemalan authorities clarified that new AML requirements (including on beneficial ownership) have been reviewed for all banks in Guatemala, but they have not been able to provide granular figures for the review period. Regarding beneficial ownership requirements, the supervisor has primarily focused its enforcement actions to ensuring that banks have adopted internal policies in line with the instructions issued by the IVE. The SIB does not verify the quality of the information maintained by banks in detail. In addition, of the total amount of sanctions imposed by the SIB over the review period (USD 435 000,

24. *FATF Guidance on Transparency and Beneficial Ownership*, p. 225 of the EOIR Handbook for Peer Reviews 2016-20.

EUR 385 000), the Guatemalan authorities confirmed that none related to non-compliance with beneficial ownership requirements, since those entities found without internal policies on beneficial ownership requirements in line with their instructions were requested to correct this aspect, and after this action, compliance was ensured in all cases.

204. Guatemala is therefore recommended to further strengthen its supervision programmes and apply effective sanctions in cases of non-compliance, so that beneficial ownership information of bank account holders is available in all cases in line with the standard.

Availability of banking information in EOI practice

205. Guatemala did not receive any EOI requests for banking information during the review period.

Part B: Access to information

206. 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).

207. The 2012 and 2015 Reports identified two main deficiencies in the legal and regulatory framework in Guatemala concerning the powers of the competent authority to obtain information. First, secrecy provisions did not allow information held by certain categories of information holders (e.g. lawyers and notaries) or information held by banks and financial institutions to be obtained by the competent authority. In addition, only information pertaining to a tax obligation in Guatemala could be obtained.

208. In 2016, Guatemala amended its legislation to address the issue of access and exchange of banking information. However, these amendments have been provisionally suspended by the Constitutional Court of Guatemala, and as a consequence they are temporarily no longer in force.

209. The constitutional limitations (Art. 24 of the Constitution) which protect the inviolability of correspondence, documents and books are interpreted as protecting banking information in all cases. Thus, banking information cannot be accessed by the tax authority even for domestic tax purposes. In addition to the limitations identified in 2012, the current review identified a further limitation, on access and exchange of accounting information. The constitutional limitations extend to accounting information: while accounting information can be accessed for domestic tax purposes, its disclosure to third

parties such as in the context of an EOI request is forbidden. This distinction was not clear until the scope of the constitutional rights had been tested in practice through an EOI request: in the current review period, Guatemala received one EOI request dealing with accounting information, which was denied due to these constitutional limitations.

210. In addition to the lack of any concrete changes to the legal and regulatory framework, the practice of exchange of information for tax purposes confirmed that there are major impediments in Guatemala to access information for the purpose of exchanging it with treaty partners.

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

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendations
	The power of the Guatemalan tax authority to obtain information for both domestic and exchange of information purposes is limited by constitutional rights, bank secrecy, and professional secrecy, which cannot be lifted for exchange of information purposes.	Guatemala should ensure that its legal limitations on access to information do not prevent effective exchange of information in tax matters.
	Beneficial ownership information is considered banking information in Guatemala, and for this reason the relevant access powers of the competent authority are limited by bank secrecy.	Guatemala should ensure that its competent authority has access to beneficial ownership information for the purpose of effective exchange of information in tax matters.
	Although the Tax Code authorises the tax administration to obtain information that forms the basis of a tax obligation in Guatemala, this power does not apply for exchange of information purposes in the absence of a domestic tax interest.	Guatemala should ensure that it has the power to obtain information for exchange purposes regardless of a domestic tax interest.
Determination: The element is not in place		

Practical Implementation of the standard		
Deficiencies identified	Underlying Factor	Recommendations
		The legal limitations to access to information prevent access to information for exchange purposes in practice.
Rating: Non-Compliant		

B.1.1. Ownership, identity and banking information

212. The 2012 and 2015 Reports analysed the procedures applied in the case of obtaining information generally, and more specifically rules for obtaining banking information. Generally, the same rules continue to apply without any concrete changes.

Accessing information generally

213. The SAT has a general power to obtain information from taxpayers and third parties, including ownership, identity, accounting and banking information. However, this power is limited by banking and professional secrecy provisions, confidentiality rules and constitutional protections. Guatemala’s constitution protects from disclosure the correspondence, books and records of all persons. Nevertheless, this is not an absolute protection, since disclosure would still be possible if requested through a court order when the disclosure would be in accordance with the law.

Access powers in law

214. The Tax Code gives access powers to the SAT towards taxpayers and third parties.

215. Art. 98 of the Tax Code states that in order to verify compliance with tax law obligations, the tax administration possesses powers, among which is the power to obtain information on a taxpayer as included within “books, documents and files of taxpayers and withholding or collecting agents that are related to the determination and payment of tax obligations” (Art. 98, paragraph 13). The Guatemalan authorities clarified during the on-site visit that these obligations are understood as tax obligations in Guatemala.

216. Art. 30 A of the Tax Code (“Information regarding third parties”) establishes that the SAT “may require from any individual or legal entity, the periodic or ad hoc provision of information regarding acts, contracts or

commercial relations with third parties, generators of taxes, in written form, electronically, or by other suitable means, whenever they are related to tax matters, and do not violate the professional secrecy nor the guarantee of confidentiality established in the Political Constitution of the Republic, special laws and the provisions of this Code. In any case, the Superintendency of Tax Administration will receive the information subject to confidentiality”.

217. Both of the above provisions imply a domestic tax requirement (see B.1.3 below).

Access powers mainly used in EOI cases

218. In the case of the only EOI request received during the review period, the competent authority sent a formal request to the Business Registrar to obtain information about the legal representatives of a company registered in Guatemala. The Business Registrar provided the information to the SAT in five days.

Accessing banking information

219. According to Art. 63 of the Banks and Financial Groups Law, banks (including foreign bank branches operating in Guatemala) cannot provide information in any form to any person, individual or entity, public or private, which would reveal the confidential nature of the identity of depositors of banks, financial institutions and financial groups, as well as information provided by account holders to these entities. Exceptions apply only to information to be provided to the Monetary Board, Banco de Guatemala and the SIB, as well as information which is exchanged among banks and financial institutions.

220. An amendment to this article was introduced by Decree 37-2016 of the Congress of the Republic of Guatemala, in force as of 23 February 2017 (Law for the strengthening of fiscal transparency and the governance of the Superintendency of Tax Administration), which added the SAT among the subjects entitled to obtain the information included in the abovementioned Art. 63 under the procedure established by the Tax Code. The same law also amended the Tax Code, adding a new article (Art. 30 C, “Financial information in possession of third parties”) which established the process for the SAT to obtain information from banks and financial institutions. In particular, the new article refers to the right of the SAT to obtain information on “banking movements, transactions, investments, available assets, or other operations or services carried out by any person, individual or legal entity, in those cases where there is a reasonable doubt about the activities or operations that merits an investigation, including control and audit actions, under the confidentiality guarantees established in the Political Constitution of the Republic”.

221. The procedure requires the SAT to go before a judge and ask for a court order authorising the request of the information from the relevant bank. In the case of requests covered by international agreements for the exchange of information for tax purposes ratified by Guatemala, the SAT will have to detail to the judge the kind of information requested and the terms upon which it has been requested by the treaty partner. A copy of the relevant international agreement will have to be attached to the request (Tax Code, Art. 30 C, n.1 “Request”).

222. However, the Constitutional Court of Guatemala temporarily suspended the application of this new law on 2 August 2018 following an appeal by a taxpayer on grounds of the unconstitutionality of the new Art. 30 C of the Tax Code (in a domestic tax case). The final decision is still pending; therefore, based on the law currently in force as well as current practice in Guatemala, banking information cannot be accessed by the tax authority, either for domestic or exchange of information tax purposes.

Accessing beneficial ownership information

223. Representatives from the SIB clarified during the on-site visit that beneficial ownership information in Guatemala is always considered to be banking information, since CDD on bank accounts is the only means in Guatemala to obtain this information. Therefore, to the extent limitations apply to access by the competent authority to banking information in general, these limitations apply in an equal manner to access to beneficial ownership information.

224. Guatemala is therefore recommended to ensure that its competent authority has access to beneficial ownership information for the purpose of effective exchange of information in tax matters.

B.1.2. Accounting records

225. As discussed above, the tax administration can access accounting records for the purposes of assessing the domestic tax liability of Guatemalan taxpayers (Tax Code, Art. 98 and 30A). In addition, basic accounting information is sent to the tax administration each year in the context of the filing of tax returns, which is then readily and directly available to the tax administration. The tax administration also has direct access to the accounting books and records of liquidated companies, as discussed in Section A.2

226. However, in accordance with Art. 24 of the Constitution, this information cannot be disclosed to third parties, including treaty partners in the context of EOI requests, since accounting information is considered “inviolable” (see B.1.5 below). Senior representatives from the SAT interviewed during the on-site visit confirmed that they cannot exchange accounting information with foreign partners.

227. Guatemala was requested to exchange accounting information during the review period. Although the information was in the possession of the tax administration due to a tax audit performed on the same taxpayer, the request for accounting information was denied: due to confidentiality safeguards under the Constitution, the information could not be disclosed to third parties in the context of an EOI request.

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

228. The concept of “domestic tax interest” describes a situation where a party can only provide information to another party if it has an interest in the requested information for its own tax purposes. Art. 98 of the Tax Code limits the powers to obtain information from taxpayers to information that forms the basis of a tax obligation in Guatemala, and, in the case of information obtained from third parties, the powers are limited to information relating to acts, contracts or commercial relations that give rise to taxes in Guatemala. Therefore, the reference to a tax obligation and tax generating elements indicate that the access powers under the Tax Code could not be enforced in those cases where the SAT did not have any domestic tax interest in the information requested via an EOI request.

229. Guatemala has not implemented the earlier recommendation to ensure that it has the power to obtain information for exchange purposes regardless of a domestic tax interest.

230. During the on-site visit, representatives from both the SAT and the private sector confirmed that the SAT could try in practice to ask an information holder to provide information not related to a domestic tax interest on a voluntary basis. Representatives from the private sector (accountants) however confirmed that they would not provide such information to the SAT.

231. Guatemala is therefore recommended to ensure that it has the power to obtain information for exchange purposes regardless of a domestic tax interest.

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

232. Jurisdictions should have in place effective enforcement provisions to compel the production of information. As stated in the 2015 Report, penalties exist in Guatemala for failure to provide information requested by the SAT, and the SAT also has a wide range of powers to compel the provision of information to the extent it relates to the payment of taxes in Guatemala (see under A.1 and A.3 the paragraphs on the powers of the tax administration to request ownership or accounting information in the context of tax audits).

233. As discussed above, when the information does not relate to a tax obligation in Guatemala, the tax administration has no enforcement provisions to compel the production of information. Representatives from the SAT clarified that they would in any case request the information, but if the taxpayer would deny its provision, the SAT would not have any legal means to enforce their request.

234. Guatemala is therefore recommended to ensure that it has the power to obtain information for exchange purposes regardless of a domestic tax interest (see B.1.3).

B.1.5. Secrecy provisions

235. The main secrecy provisions relevant in the exchange of information context are rules governing the confidentiality of accounting information, bank secrecy, and legal professional privilege.

Inviolability of books and records

236. A general confidentiality protection applicable to certain information exists in Guatemala in Art. 24 of the Constitution of the Republic of Guatemala. The first paragraph establishes that “the correspondence of any person, his documents and books are inviolable and can only be inspected or seized pursuant to a judicial order, and that it is a punishable offence to disclose the amount of taxes paid, earnings, losses, expenses or any other data referring to audited accounts of individuals or juridical persons”. The same article continues by saying that “books, documents and records relating to the payment of taxes can be reviewed by the competent authorities in accordance with the law”.

237. The Tax Code provides for the competent authority (SAT) to review accounting records. However, Art. 24 of the Constitution refers to “the payment of taxes”, which is interpreted as the payment of taxes in Guatemala, and the information so obtained can be used only for such purpose, and therefore not for EOI purposes.

238. The representatives of the accounting profession met during the on-site visit confirmed they would not provide accounting information to the SAT for EOI purposes.

Bank secrecy

239. In addition to the general protection given by the Constitution, which applies also to banking information, there are specific provisions under both tax law (Art. 30 A of the Tax Code, examined above) and bank law (Art. 63 of the Bank Law, also examined above) which restrict access to banking

information (tax law) and the provision of banking information to third parties (bank law). These general restrictions apply for both domestic and EOI purposes. Representatives of the banking sector confirmed during the on-site visit that this is the rule in Guatemala, although in their opinion, there is no bank secrecy in Guatemala, but rather the confidentiality of certain information which could still be obtained through a court order. However, this interpretation does not correspond to the actual situation now that the law explicitly providing for access to banking information through a court order has been provisionally suspended, further weakening a broad interpretation of the Constitution by the authorities in Guatemala according to which banking information could have been accessed even before the new law was passed.

Professional secrecy

240. The 2015 Report confirmed that the scope of professional secrecy in Guatemala is very broad, covering lawyers, notaries and accountants. As with the secrecy provisions in the Constitution, it is not clear whether professional secrecy provisions could be overridden with a court order, and if so, in what conditions such an order would be granted. While the Guatemalan authorities suggest that professional secrecy could be lifted within the scope of a criminal investigation related to offences covered by the AML/CFT regime (i.e. for tax evasion and tax fraud, which are predicate offences to money laundering in Guatemala), this would not cover other tax offences.

241. During the on-site visit, senior representatives from the SAT confirmed that there are no means to obtain any information from professionals covered by professional secrecy, with no distinction between information which should be possible to obtain per the EOIR standard and information allowed to remain confidential per the standard.

242. Guatemala is therefore recommended to ensure that its legal limitations on access to information do not prevent effective exchange of information in tax matters.

Conclusion

243. Access powers of the tax administration are significantly limited in Guatemala. Banking information and information covered by professional secrecy cannot be accessed for domestic or EOI tax purposes due to restrictions provided in tax law, bank law, and the Constitution. Beneficial ownership information is always considered banking information in Guatemala, since CDD on bank accounts is the only means in Guatemala to obtain this information. As a consequence, beneficial ownership information cannot be accessed by the tax administration to the extent banking information cannot. Accounting information can be accessed for domestic tax

purposes, and in some cases is already in the possession of the tax administration, but cannot be exchanged due to constitutional safeguards. In addition, the domestic tax interest requirement has now been confirmed in practice by representatives from both the tax administration and the private sector during the on-site visit. Finally, these legal limitations prevent Guatemala from accessing information for exchange of information purposes in practice, and when such information does not relate to a tax obligation in Guatemala, the tax administration is not able to compel the production of information. Therefore, the legal and regulatory framework for access to information for EOI purposes is not in place in Guatemala.

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.

244. The 2015 Report found that information could only be accessed via court order in Guatemala in a number of situations. Where a court order was required to access banking information or information related to criminal proceedings, the taxpayer must be notified. The amendments to the tax and bank law recently introduced removed the requirement to notify the taxpayer of a request for banking information. However, with the provisional suspension of the new law, the situation is again that described in the 2015 Report.

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

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendations
	Where a judicial order is needed to obtain banking information or information related to criminal proceedings, the taxpayer must in all cases be notified.	Guatemala should introduce exceptions to this notification procedure where notification would unduly prevent or delay effective exchange of information.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
Rating: Partially Compliant		

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

246. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification and time-specific post-exchange notification (e.g. in cases when the information request is of very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction). There are no time-specific post-exchange notification requirements in Guatemala.

247. In the case of accounting information, the tax administration will not exchange accounting information in any case for EOIR purposes due to the constitutional safeguards analysed under element B.1 above.

Prior notification

248. The Guatemalan authorities confirmed that when information is already with the tax administration or with third parties (e.g. the Business Registrar), there is no requirement to notify the taxpayer of access to the information, except in certain cases where the SAT must obtain a court order to access the information. The law which allowed for access to banking information by the SAT through a court order did not provide for a requirement to notify the taxpayer. Since this law has been provisionally suspended, it is understood that a court order is always required for the SAT to access (a) banking information, including beneficial ownership information, and (b) information related to criminal proceedings. In these cases where information must be accessed through a court order, a prior notification to the taxpayer is always required.

Exceptions to prior notification

249. The amendment to the tax law and bank law which entered into force on 23 February 2017 and is examined under element B.1 removed the requirement to notify the taxpayer when banking information has to be obtained by the SAT through a court order. The SAT confirmed that in the period (from February 2017 to August 2018) during which the new law applied before it was suspended by the Constitutional Court, the procedure to obtain banking information did not involve any prior notification to the taxpayer (in domestic cases – there were no EOI requests to test the new procedure).

250. With the suspension of the new law, the situation is again that described in the 2015 Report. Therefore Guatemala is recommended to introduce exceptions to this notification procedure where notification would unduly prevent or delay effective exchange of information.

Appeal rights

251. The Guatemalan authorities confirmed that there are no rights for taxpayers to appeal decisions that allow the SAT to access information requested pursuant to an EOI request.

Part C: Exchanging information

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

C.1. Exchange of information mechanisms

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

253. In 2012, Guatemala had only one instrument in place for the exchange of information, the Central American Mutual Assistance Convention (the CA-MAC). The 2015 Report concluded that Guatemala’s network of EOI mechanisms was growing, with the signing of nine new bilateral agreements (one DTC and eight TIEAs)²⁵ and of the Multilateral Convention. However, none of these agreements had been ratified. In addition, the significant deficiencies identified under element B.1 (bank secrecy, professional secrecy, domestic tax interest) would have impeded Guatemala from exchanging all types of information to the international standard. For these reasons, element C.1 was confirmed to be not in place.

254. Since then, Guatemala ratified the Multilateral Convention, which entered into force on 1 October 2017. The nine bilateral agreements referenced above have yet to be ratified.

25. 8 TIEAs with Denmark, Sweden, Finland, Norway, Iceland, Australia, Greenland and Faroe Islands, and one DTC with Mexico.

255. To date, Guatemala has EOI relationships with 130 partners, of which 128 are to the standard.²⁶

256. However, as discussed in Part B, no concrete changes are reported regarding the restrictions on the competent authority's access powers. These restrictions have now also been confirmed in practice with the only EOI request received over the review period, as in this request Guatemala denied exchanging accounting information covered by confidentiality safeguards.

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

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendations
	Guatemala has domestic law limitations, including confidentiality of accounting records, bank and professional secrecy, and a domestic tax interest requirement, which prevent it from giving full effect to its EOI mechanisms.	Guatemala should ensure it can access and exchange all information relevant for tax purposes in accordance with the standard, such that it may give full effect to its EOI mechanisms.
Determination: The element is not in place		
Practical Implementation of the standard		
Rating: Non-Compliant		

Other forms of exchange of information

258. Guatemala is a developing country which has not been requested to commit to the standard of automatic exchange of financial account information. Internal discussions are ongoing in Guatemala to consider options for committing to this standard.

C.1.1. Foreseeably relevant standard

259. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2015 Report found that Guatemala's network of EOI relations, which

26. Relationships with Honduras and Nicaragua are not fully to the standard (see C.1.3).

at that time was solely based on the Central American Mutual Assistance Convention, followed the OECD Model Tax Convention regarding the standard of foreseeable relevance. This conclusion is further reinforced now that the Multilateral Convention has also entered into force in Guatemala.

Interpretation in practice

260. The Guatemalan authorities stated that they interpret the concept of foreseeable relevance as it is provided for under the Multilateral Convention. However, Guatemala has almost no practical experience with the actual implementation of this concept. There was no internal guidance developed for this purpose until April 2019, when existing guidance for incoming requests (PR-GIF-DGI-RAM-01) was updated to introduce the main aspects to be checked when evaluating the foreseeable relevance of a request, in line with the standard.

Clarifications and foreseeable relevance in practice

261. The SAT has two official internal forms for the handling of incoming and outgoing EOI requests (PR-GIF-DGI-RAM-01, seen before, and PR-GIF-DGI-RAM-02). These are the forms to be referred to for guidance by the officials involved with the handling of EOI requests, as further specified under element C.5.2. The forms also include general instructions on the specific processing steps to be followed when handling such requests (“*actividad*”). *Actividad 7.1* of PR-GIF-DGI-RAM-01 establishes that if the request does not comply with the requirements of the underlying legal instrument, the head of the IMD and the competent authority of the requesting party are informed accordingly, and the request is considered closed.

262. For the only request received during the review period, there was no need to clarify the content of the request with the requesting party. With the update of the guidance PR-GIF-DGI-RAM-01 of April 2019 a process for a constructive dialogue with the requesting jurisdiction is now envisaged, in case there is a need to clarify with the requesting party the foreseeable relevance of the request.

Group requests

263. As with the concept of foreseeable relevance in general, the Guatemalan authorities stated that they simply follow the requirements of the MAC, without being able to clarify how the Guatemalan competent authority would in practice interpret the concept in relation to group requests. The update of April 2019 of the PR-GIF-DGI-RAM-01 now also includes a general reference to the need to evaluate the foreseeable relevance of group requests.

264. Guatemala is recommended to monitor the application of the new guidance for the handling of incoming requests to make sure that the foreseeable relevance of requests, including group requests, is applied in accordance with the standard, and that the requesting party is regularly consulted in case of need for clarifications (see Annex 1).

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

265. None of Guatemala's EOI agreements restrict the scope of exchange of information to certain persons. In practice, the one EOI request received related to companies and individuals resident in Guatemala and in the requesting jurisdiction.

C.1.3. Obligation to exchange all types of information

266. The OECD Model Tax Convention Article 26(5) and the Model TIEA Article 5(4), which are authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

267. The legal instruments in place for Guatemala (the MAC and the CA-MAC) both provide for all types of information to be exchangeable. However, the 2012 Report identified a formal issue with the CA-MAC since, according to its Art. 10, information cannot be exchanged when this is not allowed under constitutional provisions. Now that the MAC is in force, this issue would only have a potential impact on the two EOI relationships which are based only on the CA-MAC (i.e. Honduras and Nicaragua).

268. In any event, banking and accounting information, as well as information covered by professional secrecy, cannot be exchanged by Guatemala based on the current domestic legal framework as assessed under element B.1.5 on the basis of any of the international exchange instruments currently in force.

269. The practice of EOI during the review period confirmed that accounting information requested by a treaty partner under the CA-MAC was denied by Guatemala because of the constitutional provisions described in element B.1 (Art. 24 of the Constitution).

C.1.4. Absence of domestic tax interest

270. As discussed under element B.1.3, the competent authority in Guatemala has powers to enforce its access to information only if the information relates to a tax obligation in Guatemala.

271. Although none of Guatemala’s international legal instruments in force for the exchange of information cite a domestic tax interest, they cannot on their own give rise to access powers if these powers have not been given effect through domestic law. The presence of a domestic tax interest in the domestic law of Guatemala, confirmed during on-site interviews with representatives from both the tax administration and the private sector, thus limits the ability to exchange information when the information is not related to a tax obligation in Guatemala.

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

272. Guatemala’s network of agreements provides for exchange in both civil and criminal matters. All of Guatemala’s EOI instruments provide for exchange of information regardless of whether the conduct under investigation, if committed in Guatemala, would constitute a crime. No request related to criminal tax matters was received during the period under review; the request received related to a civil matter.

C.1.7. Provide information in specific form requested

273. There are no impediments in Guatemala’s domestic law or EOI agreements that would prevent Guatemala from providing information in the specific form requested. The Guatemalan authorities stated they are prepared to provide information in the specific form requested, to the extent such form is known or permitted under Guatemala’s law or administrative practice. They moreover stated that during the peer review period, Guatemala did not receive any request of this type; however, based on internal instructions, the Guatemalan competent authority would always ask the requesting jurisdiction for information on the format in which the requesting jurisdiction would like to receive information in response to a request before sending the information.

C.1.8. Signed agreements should be in force

274. The 2015 Report noted that with the signing of the MAC, Guatemala increased the number of its EOI relationships to 88. However, since neither the MAC nor the nine bilateral agreements signed between 2012 and 2015 had been ratified at that time, the number of agreements in force was limited to only those countries with whom the CA-MAC was in force on both sides during the review period.

275. The MAC, signed on 5 December 2012, entered into force for Guatemala on 1 October 2017. As of 6 May 2019, this brings the number of Guatemala’s EOI relationships to 130.

276. Concerning the nine bilateral agreements signed by Guatemala, representatives of the Ministry of Foreign Affairs, which is responsible for the negotiation of tax treaties, stated that, due to the entry into force of the MAC, all nine relevant partners have been contacted to check the need for Guatemala to ratify the relevant bilateral agreements. However, the five-year time to ratify the MAC and the lack of ratification of any of the signed bilateral agreements (in particular, during the long period between the signature and the entry into force of the MAC) suggest an issue with the ratification process in Guatemala, which is however of less relevance now that the MAC is in force. Nonetheless, Guatemala is recommended to ensure that it brings its signed EOI instruments into force expeditiously (see Annex 1).

EOI bilateral mechanisms

EOI relationships, including bilateral and multilateral (MAC) or regional mechanisms	130
In force	114
In line with the standard	112
Not in line with the standard	2 ^a
Signed but not in force	16
In line with the standard	16
Not in line with the standard	0
Bilateral mechanisms (DTCs/TIEAs) not complemented by multilateral or regional mechanisms	0

Note: a. Honduras and Nicaragua are covered only under the CA-MAC.

C.1.9. Be given effect through domestic law

277. The 2012 Report noted that several pieces of domestic legislation in place in Guatemala did not allow the international instruments in force to be effective. This conclusion is reinforced by the evidence of EOI practice assessed in this report.

Conclusion

278. Although Guatemala now has an extensive network of EOI relationships in line with the standard due to the recent ratification of the MAC, the significant deficiencies identified in the domestic legal framework concerning access powers of the competent authority do not allow it to provide for effective exchange of information. This conclusion has been confirmed by EOI practice. Guatemala is therefore recommended to ensure it can access and exchange all information relevant for tax purposes in accordance with the standard, such that it may give full effect to its EOI mechanisms.

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

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

279. The 2015 Report found that element C.2 was not in place, since although the MAC and nine bilateral agreements had been signed, only the CA-MAC was in force with two other parties to it.

280. With both the MAC and the CA-MAC in force, Guatemala now has a large network of information exchange mechanisms. Guatemala has never refused to enter into an agreement with any potential partner, although, as discussed under element C.1 above, the length of the ratification process, which for all signed bilateral agreements is not yet concluded, limited in practice the opportunity for treaty partners to make requests to Guatemala. Nevertheless, the analysis of Guatemala's EOI instruments made in section C.1 above shows that Guatemala is not able to exchange certain information (e.g. banking and accounting information) to the standards with any of its partners. Guatemala should ensure that it removes the limitations in its domestic law to give full effect to the terms of its EOI arrangements. Guatemala should also continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

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

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendations
	Guatemala, due to its domestic law limitations, including confidentiality of accounting records, bank and professional secrecy, and a domestic tax interest requirement, cannot exchange information with its partners in accordance with the international standard under any of its agreements.	Guatemala should ensure that it gives full effect to the terms of its EOI arrangements in order to allow for full EOI to the standard with its relevant partners.
Determination: The element is not in place		
Practical Implementation of the standard		
Rating: Non Compliant		

C.3. Confidentiality

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

282. The 2015 Report concluded that the treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in Guatemala regarding confidentiality are in line with the standard.

283. There are adequate confidentiality provisions protecting tax information in Guatemala's domestic tax laws, and these are adequately applied in practice. These provisions also apply to information exchanged under Guatemala's EOI instruments.

284. The confidentiality rules also cover incoming EOI request letters, and only information necessary to obtain the requested information is disclosed in notices to information holders. However, for information which requires a court order to be obtained, Guatemala is yet to establish and document detailed policies and procedures for protecting the confidentiality of information received and exchanged.

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

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendations
	There are no rules or instructions protecting the confidentiality of information when a court order is necessary to obtain it.	Guatemala should establish and document detailed policies and procedures for protecting the confidentiality of information received and exchanged in all cases in line with the standard.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
Rating: Partially Compliant		

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

286. As found in the first round review, there are robust confidentiality provisions supported by sanctions protecting all tax information under Guatemala's domestic tax laws, and these also apply to information in respect of EOI requests. There has been no change in the relevant rules since then.

287. Exchanged information represents information protected by tax secrecy, and in accordance with the domestic law (Art. 24 of the Constitution, Art. 98 A of the Tax Code), it is classified as information with limited access which cannot be disclosed. Further, internal correspondence, instructions by officials, and any other information intended for internal administrative use such as EOI request letters should not be subject to disclosure.

288. There is no legal requirement to disclose to an information holder any information from the EOI request which goes beyond the description of the requested information. Although there is no significant practice in this regard, the identity of the requesting party is considered information which must always be disclosed to the information holder.

289. With reference to the scope of information to be disclosed to courts and in turn to banks when requesting banking information (see element B.1), there are no instructions or detailed policies and procedures for protecting the confidentiality of information received and exchanged. It is expected that the same information will be disclosed as is the case when requesting information from banks in the context of a domestic tax audit; however, given the lack of any practical guidance, there is uncertainty regarding the exercise of these new access powers. In addition, when a court order is issued allowing for the SAT to request the banking information, this order is usually made public in accordance with judicial law. Since there is not yet any practical experience with a court order on the basis of an EOI request, it is not clear what kind of information may be included in the court order and made public in such a case.

290. In practice, court orders issued for a domestic request based on the new law (currently suspended) allowing the SAT to access banking information include at least the name of the account holder for which the request is made, the general reasons for the SAT to request the information, and the kind of banking information requested. This information is then made public once the order is issued. The same would apply in EOI cases. Guatemala is therefore recommended to establish and document detailed policies and procedures for protecting the confidentiality of information received and exchanged in all cases in line with the standard.

291. The EOI request letter can be disclosed only if a court proceeding necessitates its disclosure. As there were no court proceedings linked to EOI requests during the review period, Guatemala was not required to disclose any EOI requests in practice. Guatemala does not have any practice in contacting the requesting jurisdiction before disclosing a request. Further, although there are no rules which would prohibit Guatemala from asking the requesting jurisdiction whether a request can be disclosed, there is no guidance to request such approval or to clarify how to proceed in cases where the requesting jurisdiction indicates that the EOI request letter should not be

disclosed. In view of these uncertainties, Guatemala should ensure that the requesting jurisdiction is contacted before the disclosure of an EOI request (see Annex 1).

292. The 2016 Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement allows the authority supplying the information to authorise the use of information for purposes other than tax purposes where tax information may be used for such other purposes in accordance with their respective laws. Such an exception is in accordance with the amendment to Article 26 of the OECD Model Tax Convention introducing this element. The MAC contains such provision. In the period under review, there were no requests where the requesting partner sought Guatemala's consent to utilise the information for non-tax purposes, and similarly Guatemala did not ask its partners for authorisation to use information received for non-tax purposes.

C.3.2. Confidentiality of other information

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

Confidentiality in practice

294. All information handled by the IMD (which is also responsible for EOI requests, as clarified below under element C.5) is kept in a dedicated office of the SAT which is equipped with adequate safety features (internal and external cameras, access allowed only to personnel of the same office using their badges, a guard on the same floor). Recently, a more sophisticated CCTV, biometric entry systems and alarms have been installed. The IMD follows a clean-desk policy, and the on-site visit to the IMD office gave the general impression that information is appropriately secured. Training sessions covering confidentiality requirements are organised regularly for IMD personnel. IMD officials are all notaries and lawyers who have attended courses on the ISO/IEC 27001 standard.

295. EOI requests are worked based on electronic files (i.e. scanned copies), to which only the official who has been assigned the case and the head of the department have access.

296. The Guatemalan authorities stated that no cases of non-compliance with confidentiality rules have been identified to date. However, this refers only to personnel within the IMD unit (which was created only in February 2017), and interviewed personnel were not able to provide the same data covering confidentiality audits performed regarding all SAT personnel which may also be involved in the procedure of EOI requests. Moreover, there is no policy in place (either for the IMD, or for the SAT as a whole) for monitoring confidentiality breaches. Guatemala is therefore recommended to adopt a general policy for the monitoring of confidentiality requirements within the tax administration as a whole (see Annex 1).

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.

297. The 2015 Report concluded that all of Guatemala's EOI agreements contain provisions allowing the parties not to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

298. However, as noted above under section B.1.5, access to information in Guatemala is significantly restricted by secrecy rules under Guatemala's domestic law. These rights and safeguards go well beyond what is expected under the standard. Guatemala should therefore make sure that the rights and safeguards of taxpayers do not extend beyond what is provided under the standard.

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

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendations
	The rights and safeguards of taxpayers in Guatemala extend well beyond the standard, undermining the effective exchange of information.	Guatemala should make sure that the rights and safeguards of taxpayers do not extend beyond what is provided under the standard.
Determination: The element is in place but certain elements of the standard need improvement		
Practical Implementation of the standard		
Rating: Partially Compliant		

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

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

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

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

301. The 2015 Report did not identify any issues relating to Guatemala's ability to respond to EOI requests within 90 days by providing the information requested or providing an update on the status of the request, organisational processes and resources, or any restrictive conditions on the exchange of information.

302. Guatemala has committed sufficient resources and put in place sound organisational processes to handle inbound EOI requests in a timely manner. Nevertheless, this system has not been sufficiently tested in practice. Guatemala should monitor the practical implementation of the organisational processes of the EOI unit, in particular taking into account any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

303. The new table of recommendations and rating is as follows:

Legal and Regulatory Framework
This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the standard		
Deficiencies identified	Underlying Factor	Recommendations
	Guatemala has committed sufficient resources and put in place sound organisational processes to handle inbound EOI requests in a timely manner. Nevertheless, this system has not been sufficiently tested in practice.	Guatemala should monitor the practical implementation of the organisational processes of the EOI unit, in particular taking into account any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.
Rating: Largely Compliant		

C.5.1. Timeliness of responses to requests for information

304. All exchange arrangements signed by Guatemala adopt wording foreshadowing the timeframes in Article 5(6) of the Model TIEA regarding request acknowledgements, status updates, and provision of the requested information.

305. Over the period under review (1 January 2015-31 December 2017), Guatemala received only one request for information. The request related to ownership information and accounting information regarding a company resident in Guatemala with possible connections to tax residents of the requesting party.

306. Guatemala's only EOI partner for the period under review was a Central American jurisdiction. The reply to the only request received was provided approximately 60 days after Guatemala's receipt of the request, with constant informal contacts with the requesting party during that period.

C.5.2. Organisational processes and resources

Organisation of the competent authority

307. The Guatemalan competent authority for EOI requests is the IMD of the SAT, which has as its main role access to information from third parties for domestic tax purposes, while also dealing with EOI requests (although marginally, given the limited number of EOI requests to date). This unit, which was first established in February 2017, comprises seven officials (all notaries and lawyers) and the head of the department. Given the very limited number of EOI requests to date, the SAT considers that there is currently no need to establish a unit fully dedicated to EOI requests.

308. In Guatemala, the exchange of information function under the MAC, the CA-MAC, and any other agreement for the exchange of information is centralised in the IMD of the SAT, which may rely on other departments to collect the information requested.

Resources and training

309. The Guatemalan authorities stated that all of the personnel of the IMD regularly attend trainings according to an annual plan, in particular for the handling of information (e.g. confidentiality). The head of the department attended an EOI training organised by the Global Forum in 2018, and has shared this knowledge with IMD staff.

Incoming requests

310. Once a request is received via mail, it is first collected by the official in charge of receiving official correspondence for the IMD, and is then stamped (with “confidential” label), scanned and sent to the head of the IMD, who analyses it and assigns it to an IMD official, in line with the workflow described under the relevant internal guidance form (PR-GIF-DGI-RAM-01; see also section C.1.1). Other than the head of the IMD, this official is the only person with access to the documents for this request. An Excel sheet is maintained on a shared IT platform and is accessible to all staff in the EOI unit listing general information on all requests received, including, for each request, the date when the request was received, the name of the requesting authority, the name of the taxpayer involved, the name of the IMD official working on the request, and the expected date for closing the request (i.e. sending the information to the requesting party), with an indication that transmission of the information to the requesting party should happen within 90 days from the receipt of the request.

311. There were no specific written instructions on how to perform the activities involved in processing an incoming request, or detailed time-frames for such processing. The only relevant guidance available in the form (PR-GIF-DGI-RAM-01) indicated that the official was to prepare a roadmap for each case, but no instructions were given on how to do this. With the update of April 2019, the form now describes with more details the basic steps involved, the deadlines for contacting the requesting jurisdiction and the persons in charge of each action in a step-by-step workflow, from the receipt of the request to the reply to the requesting party.

312. The Guatemalan authorities consider this system to be appropriate for their purpose, considering the very low number of requests received. However, given the likely increase in the number of requests, in particular now that the network of EOI partners with whom an agreement is in force

greatly increased from 2 to 114 at the end of the review period, Guatemala is recommended to monitor the application of the new guidance on the handling of incoming requests to make sure that information requested is provided in an effective manner (see Annex 1).

Practical difficulties Guatemala experienced in obtaining the requested information

313. The Head of the IMD stated that for the only request received, the process went smoothly, and the information was obtained from the Business Registrar in five days. The sending of the partial response to the partner was then delayed because of the legal analysis on the constitutional issue (see B.1). However, it is anticipated that possible delays could arise in future in case information has to be obtained through a court order (e.g. banking information), since in this case, even for domestic requests, the process is usually delayed due to the workload of the courts. Guatemala should monitor the situation to ensure that information is timely provided in accordance with to the standard in all cases (see Annex 1).

Outgoing requests

314. Guatemala did not send any requests during the review period. However, as with incoming requests, an appropriate internal guidance form has been developed for this purpose (PR-GIF-DGI-RAM-021). This form is identical in structure to the one used for incoming requests analysed above. Once the head of the IMD receives a request from another office of the SAT which asks for information from a foreign jurisdiction for the purpose of an ongoing tax audit, the head assigns the file to an official in the IMD, who is the only person with access to the documents for this request.

315. As with incoming requests, there were no written instructions on how to perform the specific activities involved in processing an outgoing request, or the timeframes for such processing. The only relevant guidance available in the form (PR-GIF-DGI-RAM-02) indicated that the official was to prepare a roadmap for each case, but no instructions were provided on how to do this. This form has also been updated in April 2019, and now describes with more details the basic steps involved with deadlines, from the receipt of the request from an office of the SAT to the reply to the same office once the information has been received from the requested foreign partner. All outgoing requests sent to the competent authority of the requested party must be signed by the head of the IMD, who is officially delegated the powers of competent authority in Guatemala.

316. Guatemala is recommended to monitor the new internal guidance on the handling of outgoing requests, to ensure that they are complete and accurate, in line with the standard (see Annex 1).

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

317. Other than those matters identified earlier in this report in section B.1, there are no further issues that would appear to restrict EOI in Guatemala.

Annex 1: List of in-text recommendations

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

- **Element A.1:** Notwithstanding the low number and materiality of limited liability companies in Guatemala, considering the lack of implementation in practice of this procedure, including in the context of EOIR requests, Guatemala is recommended to monitor the implementation of the rules requiring the General Archive of Protocols to keep and provide upon request ownership information to ensure that updated ownership information is available for companies in all cases.
- **Element A.1:** Guatemala is recommended to introduce new rules to ensure that up-to-date ownership information is kept for at least five years from the moment the company ceased to exist.
- **Element C.1:** Guatemala is recommended to monitor the application of the new guidance for the handling of incoming requests to make sure that the foreseeable relevance of requests, including group requests, is applied in accordance with the standard, and that the requesting party is regularly consulted in case of need for clarifications.
- **Element C.1:** Guatemala is recommended to ensure that it brings its signed EOI instruments into force expeditiously.
- **Element C.2:** Guatemala should continue to conclude EOI agreements with any new relevant partner who would so require.

- **Element C.3:** Although there are no rules which would prohibit Guatemala from asking the requesting jurisdiction whether a request can be disclosed, there is no guidance to request such approval or to clarify how to proceed in cases where the requesting jurisdiction indicates that the EOI request letter should not be disclosed. In view of these uncertainties, Guatemala should ensure that the requesting jurisdiction is contacted before the disclosure of an EOI request.
- **Element C.3:** Guatemala is recommended to adopt a general policy for the monitoring of confidentiality requirements within the tax administration as a whole.
- **Element C.5:** Guatemala is recommended to monitor the application of the new guidance on the handling of incoming requests to make sure that information requested is provided in an effective manner.
- **Element C.5:** It is anticipated that possible delays could arise in future in case information has to be obtained through a court order (e.g. banking information), since in this case, even for domestic requests, the process is usually delayed due to the workload of the courts. Guatemala should monitor the situation to ensure that information is timely provided according to the standard in all cases.
- **Element C.5:** Guatemala is recommended to monitor the new internal guidance on the handling of outgoing requests, to ensure that they are complete and accurate, in line with the standard.

Annex 2: List of Guatemala’s EOI mechanisms

1. Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Denmark	TIEA	15-May-2012	Not ratified
2	Sweden	TIEA	15-May-2012	Not ratified
3	Finland	TIEA	15-May-2012	Not ratified
4	Norway	TIEA	15-May-2012	Not ratified
5	Iceland	TIEA	15-May-2012	Not ratified
6	Australia	TIEA	01-Sep-2013	Not ratified
7	Greenland	TIEA	15-May-2012	Not ratified
8	Faroe Islands	TIEA	15-May-2012	Not ratified
9	Mexico	DTC	13-Mar-2015	Not ratified

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

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).²⁷ 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.

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

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

The Multilateral Convention was signed by Guatemala on 5 December 2012 and entered into force on 1 October 2017 in respect of Guatemala.

As of 6 May 2019, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,²⁸ Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain,

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

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

Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions where it is not yet in force: Armenia, Brunei Darussalam (entry into force on 1 July 2019), Burkina Faso, Dominica (entry into force on 1 August 2019), Dominican Republic, Ecuador, El Salvador (entry into force on 1 June 2019), Gabon, Kenya, Liberia, Mauritania, Morocco (entry into force on 1 September 2019), North Macedonia, Paraguay, Philippines, United States²⁹ (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

3. Central American Convention

The Central American Convention on Mutual Administrative Co-operation (“*Convenio de Asistencia Mutua y Cooperacion Tecnica entre las Administraciones Tributarias y Aduaneras de Centroamerica*”) was signed on 25 April 2006 by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, and has been ratified and brought into force by all parties.

29. Since the United States is a Party to the original Convention only and Guatemala is not a member of the OECD or of the Council or Europe, the Multilateral Convention cannot be considered as an EOI instrument between the two jurisdictions, especially as they did not consult to reach a meeting of the minds on its application.

Annex 3: Methodology for the review

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

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 6 May 2019, Guatemala’s EOIR practice in respect of EOI requests made and received during the three year period from 1 January 2015 to 31 December 2017, Guatemala’s responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Guatemala’s authorities during the on-site visit that took place from 9 to 12 December 2018 in Guatemala City, Guatemala.

List of laws, regulations and other materials received

Commercial laws

Commercial Code (Decreto 2-70, as amended)

Taxation laws

Tax Code (Decreto 6-91, as amended)

Civil laws

Civil Code (Decreto 106-63)

Anti-money laundering laws

Anti-Money laundering law (Decreto 58-2005, as amended)

Anti-Money laundering regulation

FIU’s regulations (“oficios”) (Oficio IVE n. 4471-2014, Oficio IVE 624-2010, Oficio IVE 721-2011)

Other laws

- Constitution of the Republic of Guatemala (1985, as amended)
- Banking law (Decreto 19-2002, as amended)
- Notary code (Decreto 314-1946, as amended)
- NGOs law (Decreto 02-2003, as amended)

Authorities interviewed during on-site visit

- Ministry of Economy
- Superintendency of Tax Administration (tax authority)
- Business Registrar
- Ministry of Foreign Affairs
- Superintendency of Banks
- Financial Intelligence Unit
- Banking association
- Accountants association

Current and previous review(s)

This report is the third review of Guatemala conducted by the Global Forum. Guatemala previously underwent an EOIR review through two assessments during the first round of reviews: the 2012 Phase 1 Report and the 2015 Phase 1 Supplementary Report. In addition, in 2017 Guatemala underwent a fast-track review.

The Phase 1 and the fast-track reviews were conducted according to the Terms of Reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by the Global Forum
Round 1 Phase 1	Ms Maria Graça Pires, Tax Officer of the International Relations Department, Ministry of Finance of Portugal; Mr Avvari Rao, Director of Foreign Tax and Tax Research, Department of Revenue, Ministry of Finance of India; Mr Sukesh Jain, Director of Foreign Tax and Tax Research, Department of Revenue, Ministry of Finance of India; and Ms Maria Francisca Villaman from the Global Forum Secretariat	Not applicable	December 2011	April 2012
Round 1 Supplementary Report	Ms Maria Graça Pires, Tax Officer of the International Relations Department, Ministry of Finance of Portugal; Mr A. Sreenivasa Rao, Director of Foreign Tax and Tax Research, Department of Revenue, Ministry of Finance of India; and Ms Mary O'Leary from the Global Forum Secretariat	Not applicable	August 2015	October 2015
2 nd Round	Mr Michael Richard, Tax Officer of the Internal Revenue Service (USA); Mr Martin Barreiro Cavaco, Tax Officer, Revenue Service (Argentina); and Mr Francesco Bungaro from the Global Forum Secretariat	1 January 2015 to 31 December 2017	6 May 2019	July 2019

Annex 4: Guatemala’s response to the review report³⁰

On behalf of the Ministry of Public Finance of The Government of Guatemala, we are very pleased to thank the Global Forum and the assessment team for the support during the on-site visit and for sharing with us the opportunities for improvement. We would take these recommendations very seriously. Our country is in a very complex political and social situation due to the general elections in June 2019, in which we will elect our new President, Congress and other authorities for the next 4 years. We would like to let you know that, we are interested in closing the identified gaps in access, availability and exchange of information.

On the other hand, the governance of tax administration was changed in 2016. There were changes in the organic law of the Tax Authority allowing a reinforcement of the capacities especially in the ability to exchange information for tax purposes and the access to banking information for domestic and exchanges purposes.

We are making the best efforts to have an adequate and modern system to ensure compliance of taxpayers, including cooperation and mutual assistance with other administrations in line with good practices.

We also want to inform you that the Guatemalan government ratified the Multilateral Convention on Mutual Administrative Assistance for Fiscal Purposes (MAC) in June 2017. The convention is a very important instrument to strengthening tax administration capacities.

The unit in charge of the exchange of information within the tax administration was established in 2017. Nowadays this unit has the technological and human capacities to carry out its work. We can assure you that this unit has an adequate management of confidentiality and the protection of the information exchanged.

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

As you know, the report states that the Constitutional Court has temporarily suspended access to banking information. However, as Government we expect a favourable resolution from the court to eliminate this restriction.

Also, Guatemala implemented diverse regulations and institutional structures that allow it to face money laundering and financing of terrorism. In the Mutual Evaluation Report of Guatemala in November 2016, GAFILAT highlighted that the level of compliance with most of the technical criteria of the FATF Recommendations.

Additionally, Guatemala sent GAFILAT the First Follow-Up Report detailing the progress as of March 31, 2017, based on the information provided by Guatemala, the Plenary acknowledged the efforts and progress made by the country, demonstrated political commitment and urged the continue working to overcome the identified shortcomings.

We hope this message will serve to demonstrate the commitment of the Government of Guatemala to adopt, develop and execute in the short and medium term the highest standards in transparency and exchange of information for tax purposes. Our main objective is to get back the capacities of the tax administration and improve our fiscal policy.

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request GUATEMALA 2019 (Second Round)**

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

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

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

This report contains the 2019 Peer Review Report on the Exchange of Information on Request of Guatemala.

Consult this publication on line at <https://doi.org/10.1787/5ce22634-en>.

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