GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard in Practice

GEORGIA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Georgia 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

March 2016
(reflecting the legal and regulatory framework
as at January 2016)

OECD
BETTER POLICIES FOR BETTER LIVES

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries or those of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:
OECD (2016), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Georgia 2016: Phase 2: Implementation of the Standard in Practice*, OECD Publishing.
http://dx.doi.org/10.1787/9789264250772-en

ISBN 978-92-64-25076-5 (print)
ISBN 978-92-64-25077-2 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: *www.oecd.org/publishing/corrigenda*.

© OECD 2016

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to *rights@oecd.org*. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at *info@copyright.com* or the Centre français d'exploitation du droit de copie (CFC) at *contact@cfcopies.com*.

Table of Contents

About the Global Forum 5

Executive summary 7

Introduction 11

Information and methodology used for the peer review of Georgia 11
Overview of Georgia 12
Recent developments 19

Compliance with the Standards 21

A. Availability of information 21

Overview 21
A.1. Ownership and identity information 24
A.2. Accounting records 55
A.3. Banking information 63

B. Access to information 69

Overview 69
B.1. Competent Authority's ability to obtain and provide information 70
B.2. Notification requirements and rights and safeguards 88

C. Exchanging information 91

Overview 91
C.1. Exchange of information mechanisms 92
C.2. Exchange of information mechanisms with all relevant partners 100
C.3. Confidentiality 101
C.4. Rights and safeguards of taxpayers and third parties 104
C.5. Timeliness of responses to requests for information 106

Summary of determinations and factors underlying recommendations 111

Annex 1: Jurisdiction's response to the review report 115
Annex 2: List of exchange of information mechanisms 116
Annex 3: List of all laws, regulations and other Relevant material 122
Annex 4: Authorities interviewed during the on-site visit 124

About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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 review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Georgia as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three-year period (from 1 July 2011 to 30 June 2014). The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners.

2. Georgia is an independent country with a territory of 69 700 square kilometres and a population of around 3.7 million located in the Caucasus, at the crossroad between Europe and Asia. Georgia's economy has grown in the past three years at an average rate of 4.8% with its gross domestic product reaching USD 16.53 billion in 2014. Georgia joined the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2011.

3. Relevant entities that can be formed in Georgia include: limited-liability companies, joint-stock companies, co-operatives, general partnerships, limited partnerships, and civil law partnerships. Georgian legislation does not provide for the establishment of foundations. The availability of ownership information in respect of relevant entities is ensured either with the public authorities or with the entity itself. The tax authorities have full ownership information of any type of partnership carrying on business in Georgia through registration and/or reporting requirements. Full ownership information on limited-liability companies, co-operatives, and limited partnerships is available with both the tax authorities and the commercial registry. Ownership information of joint-stock companies is ensured at the level of the entity. Companies incorporated in a foreign jurisdiction with sufficient nexus to Georgia have to register with the National Agency of Public Registry (NAPR) and the tax authorities when establishing a branch in Georgia, however, they are not required to maintain or provide to these authorities information on the owners in all cases, and a recommendation

is made in this respect. Nominees must be obligated institutions under anti-money laundering legislation and would maintain information on the person for whom they hold shares.

4. In practice, all companies and partnerships in Georgia are only considered to be incorporated once registered with the NAPR. Moreover, in relation to limited liability companies, co-operatives and limited partnerships, a shareholder/member/partner is only recognised as such once it is registered with the NAPR. The system put in place by Georgia allows the NAPR (and the tax administration) to have full oversight and up to date ownership information in relation to all limited liability companies, co-operatives and limited partnerships. However, in the case of joint stock companies and general partnerships, there was a limited oversight of the compliance with the obligation to maintain respectively a share registry and a partnership agreement. Therefore, Georgia should ensure that the obligation of joint stock companies and general partnerships to maintain accurate and updated ownership information is monitored in practice.

5. Even though the concept of a trust is not recognised in Georgia, residents may act as a trustee or trust administrator of a foreign trust, and Georgian legislation does not require the keeping or furnishing of identity information in respect of the trust. Georgia should ensure the availability of information identifying the settlors and beneficiaries of foreign trusts which are administered or in respect of which a trustee is resident in Georgia. A trust-like arrangement exists under the laws of Georgia, namely “entrusted property”. Identity information in respect of this trust-like arrangement is available in the contract required to be signed by the parties and with the tax administration where tax liabilities arise.

6. A general obligation to keep accounting records for six years is in place for all relevant entities and arrangements pursuant to tax obligations and specific accounting legislation.

7. Georgian authorities generally had adequate oversight of the obligation to file and maintain accounting information and underlying documentation, and this information was found to be available when requested for exchange of information purposes.

8. Full banking information is available through a combination of commercial legislation and AML legislation. Anonymous accounts are explicitly prohibited.

9. The authority competent to collect information and reply to an exchange of information (EOI) request is the Department for Administration of the Revenue Service, within the Ministry of Finance. The Revenue Service in many circumstances already possesses information relevant to EOI purposes. In that case, it is readily accessible to the competent authority.

10. When the information is sought from persons, the competent authority is vested with the powers to obtain information directly from taxpayers and/or to perform audit in respect of any person. These access powers are enforced through penalties. The access powers under Georgia's tax law can be used for the purposes of giving effect to an international agreement and since December 2014 Georgian tax law is explicit in this regard.

11. Secrecy provisions in the law do not generally hinder the access and exchange of information by the Georgian competent authority. With regard to banking secrecy, since December 2014 there is an explicit exception in the banking law for disclosure to the tax authorities via a court procedure.

12. The scope of professional secrecy attaching to advocates and accountants is broader than that established in the international standard of exchange of information. Georgia should ensure that secrecy provisions are consistent with the standard and do not hinder effective exchange of information. The rights and safeguards that apply to persons in Georgia are compatible with effective exchange of information and no issues have been identified in practice.

13. Georgia's network of EOI mechanisms covers 102 jurisdictions through 54 bilateral DTCs, three TIEAs and the Convention on Mutual Administrative Assistance in Tax Matters as amended (Multilateral Convention), which entered into force in respect of Georgia since 1 June 2011. Each of Georgia's EOI relationships contains sufficient provisions to enable Georgia to exchange all relevant information. Georgia's network of exchange agreements covers all its main trading partners. Each of Georgia's EOI agreements contains confidentiality provisions that meet the international standard and its domestic legislation also contains appropriate confidentiality provisions and enforcement measures. Where domestic law provisions on general confidentiality rules are less restrictive than those provided under the EOI agreements concluded by Georgia, the provisions of the international agreements will prevail ensuring that the standard is met. Georgia's EOI agreements protect rights and safeguards in accordance with the standard, although the scope of attorney-client privilege found in domestic legislation is wider than the international standard.

14. During the review period (from 1 July 2011 to 30 June 2014), Georgia received 38 requests related to direct taxes from 14 jurisdictions. Georgia was able to provide a final response within 90 days to 76% of the requests, and within 180 days to 97% of the requests. In relation to one request, which involved the access of banking information pursuant to a new law (enacted after the review period), Georgia was able to provide a complete response within 11 months. Peers acknowledged the responsiveness and efficiency of the Georgian competent authority.

15. Georgia has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Georgia's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Georgia has been assigned the following ratings: Compliant for elements A.2, A.3, B.2, C.1, C.2, C.3 and C.5; and Largely Compliant for elements A.1, B.1 and C.4. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Georgia is Largely Compliant.

16. A follow up report on the steps undertaken by Georgia to answer the recommendations made in this report should be provided to the PRG by June 2017 and thereafter in accordance with the process set out under the Methodology for the second round of reviews.

Introduction

Information and methodology used for the peer review of Georgia

17. The assessment of the legal and regulatory framework of Georgia and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews.

18. The assessment has been conducted in two stages: the Phase 1 review assessed Georgia's legal and regulatory framework for the exchange of information as at May 2014 (the report was adopted and published by the Global Forum in August 2014), while the Phase 2 review assessed the practical implementation of this framework during a three year period (July 2011 through June 2014) as well as amendments made to this framework since the Phase 1 review up to 4 January 2016. The following analysis reflects the integrated Phase 1 and Phase 2 assessments.

19. The Phase 2 assessment looked at the practical implementation of Georgia's legal framework, as well as any amendments made to the legal and regulatory framework since the Phase 1 review. The assessment was based on the laws, regulations, and EOI mechanisms in force or effect as at 4 January 2016. It also reflects Georgia's responses to the Phase 1 and Phase 2 questionnaires, other information, explanations and materials supplied by Georgia during and after the Phase 2 on-site visit that took place in Tbilisi from 20-24 April 2015 and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of Georgia's Ministry of Finance, the Revenue Service, Ministry of Justice, the National Agency of Public Registry, the Chamber of Notaries, the Federation of Accountants and Auditors and the Council of the Advocates Association (see Annex 4).

20. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchange of information. This review assesses Georgia's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of findings against those elements is set out at the end of this report.

21. The Phase 1 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Ms Evelyn Lio from the Inland Revenue Authority of Singapore; Mr Suhua Huang, from the State Administration of Taxation of the People's Republic of China (China); and Mr Francesco Positano from the Global Forum Secretariat.

22. The Phase 2 assessment was conducted by a team which consisted of two assessors and two representatives of the Global Forum Secretariat: Ms Evelyn Lio from the Inland Revenue Authority of Singapore; Mr Suhua Huang, from the State Administration of Taxation of China; and Ms Wanda Montero Cuello and Ms Kanae Hana from the Global Forum Secretariat.

Overview of Georgia

23. Georgia is an independent country with a territory of 69 700 square kilometres and a population of around 3.7 million located in the Caucasus, at the crossroad between Europe and Asia. Georgia borders Armenia, Azerbaijan, the Russian Federation, and Turkey, and faces the Black Sea. Tbilisi is the largest city and the capital. Formerly part of the Soviet Union, Georgia became an independent state on 9 April 1991.

24. In recent years, Georgia has implemented significant economic reforms in order to create an attractive entrepreneurial environment. Georgia's economy has grown in the years 2012-14 (4.8% growth on average) with its gross domestic product reaching USD 16.53 billion in 2014. The largest share in the sectorial structure of GDP is held by trade services (17.5%), industry (16.9%), transport and communication services (10.4%), public administration (9.9%), agriculture, forestry and fishing (9.3%), construction (7.1%), and health and social work (6.0%).[1] The unemployment rate in 2014

1. http://geostat.ge/cms/site_images/_files/english/nad/pres-relizi_2014_ENG.pdf.

was 12.4%[2]. With income per capita at USD 3 570 (based on gross national income in 2013), Georgia ranks as a lower middle-income country.[3] The currency in use is the Georgian Lari (GEL).[4]

25. The main partner countries in total trade turnover in 2013 were Turkey (17.2%), Azerbaijan (10.3%), Russian Federation (7.4%), China (7.2%) and Ukraine (6.0%).[5] Foreign direct investment by sector in 2014 was: transports and communications (27%), construction (23%), manufacturing (13%), energy sector (8%), financial sector (6%), other sectors (23%).[6]

26. Georgia joined the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2011. Georgia is also a member of the Council of Europe since 1999. Among other international organisations of which Georgia is a member are the United Nations, the World Bank, the World Trade Organisation, the Organisation for Security and Cooperation in Europe, the Asian Development Bank, and the Organisation of the Black Sea Economic Cooperation.

Governance and legal system

27. Georgia is a civil law country based on the Constitution adopted on 24 August 1995. The Constitution provides for a democratic republic and a separation of powers between the legislative, the executive and the judicial authorities. The Head of State is the President, elected directly by the people. The Georgian Parliament is the highest legislative authority, comprising of 150 deputies. The executive power lies with the Prime Minister, who is the head of government, and subsequent to a constitutional reform taking effect from 2013, is responsible only to the Parliament (while previously the Prime Minister was responsible to both the Parliament and the President).

28. The judicial power is exercised by a system of courts. The Constitutional Court reviews the compliance of laws and normative acts to the Constitution. The Supreme Court is the highest and final instance for the administration of justice. Below the Supreme Court are the Appeal Court and the City Court.

29. The Georgian legal system is based on civil law. The Constitution is the supreme law and all laws must conform to it (Constitution, Art. 6). Georgian legislation must also conform to generally accepted principles

2. http://geostat.ge/index.php?action=page&p_id=146&lang=eng.
3. Sources: World Bank, http://data.worldbank.org/country/georgia.
4. On 28 August 2015: EUR 1 = GEL 2.64.
5. Sources: http://economy.ge/en/economy-in-figures/foreign-trade.
6. Source: www.geostat.ge/index.php?action=page&p_id=140&lang=eng and www.geostat.ge/cms/site_images/_files/english/bop/FDI_2014Q4-2014-ENG.pdf.

and rules of international law. International treaties or agreements take precedence over domestic legislative acts unless they contradict the Constitution. The hierarchy of normative acts is: Constitution of Georgia and Constitutional Law of Georgia (i.e. a constitutional law providing for autonomy to certain regions of the country); Constitutional agreement of Georgia (act issued by the President and approved by the Parliament in matters that concern the relationship between the state and the Orthodox Church); international treaties and agreements in force; Organic law; Law of Georgia, a decree of the President of Georgia, Rules of Procedures of the Parliament of Georgia; sub-legislative acts. Sub-legislative acts may be issued for the execution of Georgian legislative acts and include orders, internal instructions, and methodological directions regarding the application of law.

Tax system

30. There are five taxes imposed at the national level and one local tax. The taxes levied at national level are the corporate profit tax, individual income tax, excise tax, import tax and value added tax. The tax levied at local level is the property tax.

31. The corporate profit tax is levied on a resident enterprise and a non-resident enterprise that carries out activity in Georgia through a permanent establishment and/or receives income from a source in Georgia (Tax Code, Art. 98). Any activity that is undertaken with the intent of generating profit, income, or compensation, regardless of the outcomes of such activity, shall be considered to be the economic activity (Tax Code, Art. 9). The placement of funds by an individual at banks or other credit institutions on deposits, and certain types of transactions and/or complex of transactions established by the Ministry of Finance are not considered to be economic activities. An enterprise is defined as an entity that carries out economic activity or has been established to perform economic activity, and includes: "(a) legal entities established in accordance with the legislation of Georgia; (b) corporations, companies, firms, and other entities established in accordance with the legislation of foreign states, irrespective of their status of a legal person; as well as a permanent establishment of a foreign enterprise; (c) associations, partnerships and other similar entities that are not envisaged under Subparagraphs (a) and (b) of this Paragraph" (Tax Code, Art. 21). Profit tax is levied on the worldwide income of Georgian resident entities. Non-resident entities are subject to tax on income from Georgian sources and on worldwide income derived through a permanent establishment that is located in Georgia. Entities are treated as residents if they have their place of state registration or the place of effective management in Georgia. The profit tax is generally fixed at the rate of 15% of the taxable profit, calculated as the difference between the gross income of a taxpayer and the amounts of

deductions stipulated under the Tax Code (Tax Code, Art. 98). Certain types of income as defined under article 99 of the Tax Code are exempt from profit tax.

32. Residents and non-residents individuals are subject to income tax only on their Georgian source income. An individual qualifies as a resident for income tax purposes if the individual stays in Georgia for more than 183 days in any continuous 12 calendar-month period ending in a tax year. The general rate of individual income tax is 20%, which is applicable to employment income, business income, income from immovable property, and capital gains.

33. Dividends paid to resident individual shareholders and all non-resident shareholders are subject to a final withholding tax of 5%. Capital gains for enterprises are taxable as normal business income at the general corporate profit tax rate, which is 15%. In general, interest paid to resident companies and individuals is subject to withholding tax at a rate of 5%. Non-resident individuals and non-resident enterprises who receive income from a source in Georgia and are taxed at the source of payment do not have to submit to the tax authorities an income/profit tax declaration (Tax Code, Art. 153(1)(c)). Interest received from financial institutions is exempt from both withholding tax and corporate profit tax. No withholding tax is levied on royalties paid to resident companies. Royalties received by non-resident companies are subject to withholding taxation of 5%, as determined in article 134(b^1) of the Tax Code.

34. Property tax is levied on the following types of property located in Georgia: fixed assert listed on balance sheet, uninstalled equipment, buildings and uncompleted constructions and property leased out by a resident company through a financial lease agreement. The rate of property tax is established by the local authorities and cannot exceed 1% of the average residual value of the assets on the annual basis.

35. Alcoholic beverages, tobacco products, oil and gas, mobile telecommunications, and cars are generally excisable goods and are subject to excise taxation. Georgia also levies the import tax that is based on either the customs value or per physical volume of goods. The rate applicable to the customs value of goods is fixed at 0%, 5% or 12%.Value added tax (VAT) is levied on supplies of goods and services at all stages of supply. Input value added tax is deductible in computing the final tax liability. The standard rate of VAT is 18%.

36. The 2014 tax revenues comprised of 29.4% of VAT, 26.8% income tax, 16.2% VAT customs, 11.4% profit tax, 8.3% excise customs. The

remaining comes from, property tax, customs tax, land (agricultural and non-agricultural), and others.[7]

37. There is a system of beneficial tax regimes in Georgia. Companies can optimise their tax effectiveness in Georgia by obtaining the status of International Financial Company, Special Trade Company, or Free Industrial Zone enterprise. The Georgian tax authorities grant these statuses to eligible companies based on the rules defined by the Minister of Finance of Georgia. The rules regarding availability of ownership and accounting information are the same for companies outside beneficial tax regimes (see elements A.1 and A.2 below).

38. An International Financial Company (IFC) is a financial institution established outside of a Free Industrial Zone (see below) that, based on the certificate of status granted by Georgian fiscal authorities, generates income from financial operations/services from the source in Georgia not exceeding 10% of its worldwide income. Profit gained by an IFC from financial transactions and/or financial services is tax exempt (Tax Code, Art. 99). Exempt from tax are also capital gains on the securities issued by IFCs and dividends paid by IFCs. As of February 2014, there were five IFCs registered with the tax authority.

39. A Special Trade Company is a company that conducts operations in a customs warehouse in Georgia. A foreign company operating in Georgia through a permanent establishment therein may register another local permanent establishment for the purpose of warehouse operations and obtain the status of Special Trade Company upon registration. Special Trade Company implies importation of goods into customs warehouse for the purposes of re-export and provision of foreign goods to special trade companies as well as other persons. Goods imported into warehouse are exempted from all taxes related to re-export and supply of goods. Special Trade Companies are exempt from profit tax (Tax Code, Art. 24(1)). In order to apply for Special Trade Company status, a company must first obtain a “Customs Warehouse” permit, which is issued by the tax authority. As of October 2015, there were 59 Special Trade Companies registered with the tax authority.

40. A Free Industrial Zone (FIZ) enterprise is an enterprise that is formed under the Law on Free Industrial Zone and, based on the certificate of status granted by Georgian fiscal authorities, conducts permitted operations. A Free Industrial Zone Company benefits, among others, from manufacture, process and export goods free of taxation and is exempted from profit tax, property tax, VAT. Interest and dividends are exempted from withholding taxes. Any person can operate in a FIZ zone if it is incorporated in the zone. An entity formed outside the zone (either in Georgia or elsewhere) can also

7. Source: http://rs.ge/5905.

operate in a FIZ by setting up a permanent establishment therein. The Law on Free Industrial Zone requires that the registration of an organisation with any organisational-legal forms and forms of ownership in the FIZ must be commensurate with the provisions laid down by the Georgian legislation for the registration of enterprises (Art. 7), which means that any enterprise willing to operate in a FIZ will have to be registered in the commercial register, either as a Georgian or a foreign enterprise. The operation in a FIZ may also be subject to licensing from the administrator of the FIZ. The rules for incorporation of a business person in a FIZ, as well as the provisions concerning the maintenance of ownership and accounting information, are the same for entities formed in Georgia. There are currently two Free Industrial Zones: Kutaisi FIZ and Poti FIZ. There are currently 147 companies licensed to operate in FIZ (46 in Kutaisi and 101 in Poti).

41. The Tax Code envisages other beneficial treatment for Virtual Zone, Tourist Zone Entrepreneur and Tourist Enterprise.

42. The Tax Code defines a taxpayer as a person who has the liability to pay a tax set forth under the Tax Code (Tax Code Art. 20(1)). A tax liability shall be a person's obligation to pay a tax prescribed under this Code, as well as those introduced by a representative body of local self-government (Tax Code, Art. 53(1)). A person becomes "liable for tax obligations from the instance of the emergence of the circumstances prescribed under the tax legislation of Georgia that envisage the payment of a tax" (Tax Code, Art. 53(2)). The taxes listed in the Tax Code are: income tax, profit tax, value added tax, excise tax, import tax, property tax, as well as other local taxes introduced by a local self-government (Tax Code, Art. 6). The local self-government is only authorised to introduce the property tax within the thresholds established under the Tax Code.

43. Even though some persons (such as International Financial Companies, Special Trade Companies, and Free Industrial Zone enterprises) are exempted from paying certain taxes, they are considered taxpayers in Georgia and have to comply with relevant provisions of tax legislation. Any legal entity incorporated in Georgia is automatically registered as taxpayer with the tax authorities at the time of incorporation and registration with the commercial register (see below). Enterprises can obtain their status and tax exemptions only by applying to the tax authorities. Moreover, article 96 of the Tax Code indicates that any resident enterprise, as well as a non-resident enterprise that carries out activity in Georgia through a permanent establishment and/or receives income from a source in Georgia, is considered as a taxpayer of profit tax. The Georgian authorities have confirmed that even if an entity is exempt from paying certain taxes, it would still be considered a taxpayer of Georgia.

Overview of commercial laws and the financial sector

44. The Law on Entrepreneurs (LOE) regulates the legal forms of persons engaged in entrepreneurial activities (LOE, Art. 1(1)). Entrepreneurial activity is defined by the LOE as a legal activity which is not a one-off activity carried out to generate income, in independent and organised manner (LOE, Art. 1(2)). Legal persons engaging in entrepreneurial activity can take the form of: general partnership, limited partnership, limited liability company, joint stock company, and co-operative (LOE, Art. 2(2)).[8] These entities must register in the Register of Entrepreneurial and Non-Entrepreneurial (Non-Profit) Legal Entities, located at the National Agency of Public Registry, and are automatically registered with the tax authorities (LOE, Art. 4(1) and 4(3)). Civil law partnerships are regulated under the Civil Code and are formed under a contract (written or oral) by two or more persons to act jointly for the accomplishment of common economic or other objects (Civil Code, art. 930). They are not legal persons and are not required to register with the Register of Entrepreneurial and Non-Entrepreneurial (Non-Profit) Legal Entities.

45. It is not possible to create a trust under Georgian legislation, and Georgian legislation does not recognise the concept of trusts. Nonetheless, under the Civil Code, a trust-like arrangement exists in the form of a contract, whereby a settlor transfers property to a trustee, who holds and manages it in accordance with the interests of the settlor (Civil Code, art. 724).

46. The Georgian legislation does not provide for the concept of foundation. Under the Civil Code non-commercial legal entities can be formed with the aim of conducting non-profitable activities. Commercial activities are authorised only to support the realisation of the goals of the entity.

47. The financial sector comprises banking, insurance, capital market and pension schemes.

48. Commercial banking is regulated by the Law on Activities of Commercial Banking (LCB), as well as other laws. Carrying on the business of commercial banking is a regulated activity in Georgia, for which a banking license has to be granted by the National Bank of Georgia (which is also the supervisory authority) (LCB, Art. 2). Commercial banks can only carry out the activities established in Article 20 of the LCB, which include receiving interest-bearing and interest-free deposits, extending consumer loans, mortgage loans and other credits, brokerage services on financial market, trust operations on behalf of clients, attraction and placement of funds. Banks

8. Sole proprietors can engage in entrepreneurial activity. They exercise their rights and liabilities in business relations as physical persons and are not considered as legal persons (LOE, Art. 2(3)).

in Georgia must be established under the form of joint-stock companies. As of December 2013, there were 21 banks operating in Georgia, with a participation of non-resident beneficial owners in banks' assets up to 85%. The total amount of assets held by banks was approximately GEL 17.3 billion (approximately EUR 6.5 billion).

49. Insurance market comprised 15 insurance companies as of December 2014. Eleven companies are involved in both non-life and life insurance business, while 4 companies provided only non-life insurance. 27 insurance companies provided brokerage services. As of December 2014, six pension schemes formed by insurance companies were operating in Georgia, covering 19 632 members, with total pension scheme contributions amounting to GEL 3.5 million (approximately EUR 1.5 million).

50. As of December 2014, the Georgian securities market included the following: 1 Stock Exchange, 1 Central Securities Depository, 8 brokerage companies, and 3 securities registrars (legal entities licensed by the National Bank of Georgia which maintain a securities register for an issuer and perform such other functions as are specified in the agreement between the issuer and the registrar). The number of joint-stock companies registered in the stock market was 258. The total assets of the operating brokerage companies equalled GEL 33.7 million (approximately EUR 12.9 million).

Recent developments

51. In December 2014, Georgia amended its Tax Code to make explicit the powers of the tax administration to exchange information with jurisdictions that Georgia has an EOI instrument in force.

52. Georgia also modified the Tax Code, the LCB and the Administrative Procedures Code, in order to address the deficiencies outlined in the Phase 1 report regarding access to banking information. The amendments introduced a court procedure for the Georgian tax authorities to obtain information held by banks.

53. In terms of EOI instruments, Georgia signed a memorandum of understanding on EOI on request with Argentina and the Netherlands, three TIEAs with Belarus, Latvia and the Seychelles. Georgia has also initiated DTCs with Korea, Lebanon, Morocco, Oman and Saudi Arabia, signed DTCs with Cyprus, Iceland and Liechtenstein, and is negotiating with Jordan and Moldova.

Compliance with the Standards

A. Availability of information

Overview

54. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority[9] may not be able to obtain and provide it when requested. This section of the report describes and assesses Georgia's legal and regulatory framework for availability of information. It also assesses the implementation and effectiveness of this framework in practice.

55. Relevant entities that can be formed in Georgia include: limited liability companies, joint-stock companies, co-operatives, general partnerships, and limited partnerships. The availability of ownership information in respect of these entities is ensured either with the public authorities or with the entity itself. Companies and co-operatives incorporated in Georgia must register with the National Agency of Public Registry (NAPR), which then transmits this information to the tax authorities. Full ownership information on limited

9. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange agreement.

liabilities companies and co-operatives is available with the authorities. Ownership information of joint-stock companies is at the level of the entity. Foreign companies also have to register with the NAPR and the tax authorities when establishing a branch in Georgia, however, they are only required to provide to the tax authorities information on the owners when distributions of dividends are made to shareholders. As such, a recommendation is made that Georgia introduces obligations that would ensure the availability of ownership information on foreign entities with sufficient nexus in Georgia in all cases (and not just when the company has distributed dividends). Nominee shareholding is regulated and ownership information on the person for whom nominees hold shares is available pursuant to AML law, commercial law, and the Civil Code.

56. The shares of joint-stock companies must be "dematerialised nominative securities", which rules out the possibility of issuing bearer shares. Between 1994 and 1999, joint-stock companies were authorised to issue bearer shares, which nonetheless have no legal value in Georgia. In practice, as a consequence of legal requirement where all shares must be dematerialised nominative securities, bearer shares have no legal value in practice, and no companies with bearer shares have been identified by the Georgian authorities.

57. General partnerships and limited partnerships formed in Georgia must register with the NAPR and the tax authorities. Civil law partnerships have to register with the tax authorities only. The tax authorities have full ownership information of limited partnerships, and civil law partnerships through registration and/or reporting requirements. Ownership information of general partnerships is available in the partnership agreement.

58. In practice, all companies and partnerships in Georgia are only considered to be incorporated once registered with the NAPR. Moreover, in relation to limited liability companies, co-operatives and limited partnerships, a shareholder/member/partner is only recognised as such once he/she is registered with the NAPR. The system put in place by Georgia allows the NAPR (and the tax administration) to have full oversight and up to date ownership information in relation to all limited liability companies, co-operatives and limited partnerships. However, in the case of joint stock companies and general partnerships, there was limited oversight of the compliance of the obligation to maintain a share registry or updated partnership agreement. Therefore, Georgia should ensure that the obligation of joint stock companies and general partnerships to maintain accurate and updated ownership information is monitored in practice.

59. Trusts cannot be formed in Georgia, although nothing in the law prohibits a Georgian resident to act as a trustee or administrator of a trusts created abroad. The tax treatment of a foreign trust will be the same as a

foreign enterprise carrying out an economic activity in Georgia. As such the trustee must ensure that the trust complies with Georgian tax legislation, which does however not include the keeping or furnishing of identity information in respect of the trust. A wide range of service providers including financial institutions, lawyers and accountants are subject to AML obligations and are required to maintain information on the settlors and beneficiaries of trusts if they are engaged with the administration of a trust in Georgia or if they were to act as a trustee of a trust.

60. A trust-like arrangement exists under the laws of Georgia, namely "entrusted property", whereby a settlor designates a person (trustee) to hold and manage property in the interest of the settlor. Identity information is available in the contract required to be signed by the parties and with the tax administration where tax liabilities arise.

61. The Georgian legislation does not provide for the concept of foundation, although non-commercial legal entities can be formed. The aim of a non-commercial legal entity is non-profitable activities and commercial activities are authorised only to support the realisation of the goals of the entity. The profits earned as a result of commercial activities cannot be distributed to the founders, members, donors, as well as the managers. As non-commercial legal entities are only established for charitable purposes in Georgia, it may be concluded that they are not relevant for the Global Forum's purposes.

62. A general obligation to keep accounting records for six years is in place for all relevant entities and arrangements pursuant to tax obligations and specific accounting legislation adopting the International Financial Reporting Standards. Compliance in respect of all entities to maintain accounting information is monitored by the Revenue Service of Georgia. Monitoring is carried out via a combination of desktop examinations and on-site inspections. Georgian authorities had adequate oversight of the obligations to file and maintain accounting information and underlying documentation, and this information was found to be available when requested for exchange of information purposes.

63. Full banking information is available through a combination of commercial legislation and AML legislation. Anonymous accounts are explicitly prohibited. A system of oversight of financial entities was put in place by the National Bank of Georgia whereby off-site and on-site inspections are regularly conducted. There are sanctions to ensure compliance with information keeping requirements such as fines and they are regularly enforced in practice.

64. During the three year review period (1 July 2011-30 June 2014), Georgia received a total of 38 requests (each letter is counted as one request).

Those requests contained 32 inquiries concerning ownership information, 25 concerning accounting information and 28 concerning banking information. Georgia was able to provide all the requested information and no issues regarding its availability have arisen in practice. The availability of information in Georgia was also confirmed by peer input.

A.1. Ownership and identity information

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

Companies (ToR ***10*** *A.1.1)*

65. The Law on Entrepreneurs (LOE) regulates entrepreneurial activities in Georgia (LOE, Art. 1(1)). Pursuant to Article 2(3) of the LOE, companies can be established under three legal forms:

- **Limited-liability company** (LLC). An LLC is a company whose liabilities towards its creditors are limited to its entire property. It may be established by one or more person, either individual or legal entity. The capital of a LLC is divided into shares, which are transferable rights. As of 5 November 2015, there were 102 287 LLCs.
- **Joint-stock company** (JSC). A joint stock company is a company the capital of which is divided into class and quantitative shares. The shares are dematerialised nominative securities that confirm the liability of a joint stock company to a shareholder and the rights of a shareholder in the joint stock company. The liability of a joint stock company to its creditors is limited to its entire property, while a shareholder of the joint stock company is not liable for the liabilities of the company. In the establishment of a joint stock company, the charter capital of company may be determined by any amount. It may be established by one or more person, either individual or legal entity (LOE, Art. 51). As of 5 November 2015, there were 1 248 JSCs.
- **Co-operative**. A co-operative is a company based on the labour activity of its members and incorporated for the purpose of developing common business and increase the profits of its members. The main objective of a co-operative is to meet the interests of its members and is not primarily oriented to generation of profit (LOE, Art. 60). The minimum share of a co-operative member shall be

10. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.

determined by its founders (Art. 61). The co-operative is liable to its creditors only to the extent of its assets (Art. 61(2)). As of 5 November 2015, there were 1 677 co-operatives.

Information held by the authorities

66. All types of companies must register with the Register of Entrepreneurial and Non-Entrepreneurial (Non-Profit) Legal Entities (hereafter referred to as "Register"), located at the National Agency of Public Registry (NAPR), within the Ministry of Justice (LOE, Art. 4). The Minister of Justice issued Order 241 approving the "Instructions on Registration of Entrepreneurs and Non-Entrepreneurial (Non-Profit) Legal Entities" (NAPR Instructions) regulating the registration procedures and complementing the LOE.

67. Information on the founding owners of JSCs, LLCs, and co-operatives is communicated to the Register at the time of registration. The application for registration must be signed by all legal members of a company and must include, among others: the name, legal form and address of the company; the full name, address and personal number of the members; and information on the number of shares of the members. The application must also include the name and address of the managers and authorised persons of the company, validity of power of attorney (LOE, Art. 5(1)(h)), and the identity of the person, if any, authorised to apply to the NAPR on behalf of the company for amendments to the information provided to the Register (LOE, Art. 5(1)(k)). Companies are considered as incorporated after registration in the Register (LOE, Art. 4(3)) at which time the registry issues an extract verifying the existence of the company. Any incorporated company is assigned a nine-digit identification number (Art. 4(5)). This number serves also as the tax identification number (TIN).

68. In the case of LLCs, the application should also include information about the number of shares of the members and the unlimited members (Art. 5(1)(e)), liabilities based on limitation of ownership of the shares (Art. 5(1)(g)), and information on company partners and shares of members in limited-liability companies (NAPR Instructions, Art. 1(2)). The shares of members in an LLC need to be expressed in percentages and their total must equal 100% (Order 241, Art. 11(7)).

69. LLCs and co-operatives will have to report to the NAPR any change in ownership: the LOE provides that an interested person "shall have the right" to request the registration of amendments to the registered information (Art. 5-1(1)). JSCs do not have an obligation to report to the NAPR ownership change. As for LLCs, Article 5-1(5-1) of the LOE establishes that "the share ownership right and related liabilities of partners of limited liability company […] shall be regarded as originated, amended, or terminated following their

registration" in the Register. As such, the rights of the owners of an LLC will not be recognised until their names are entered in the NAPR. Therefore, in case of an ownership change, an LLC will have to report to the NAPR any share transfer in order for the ownership change to take legal effect. As for co-operatives, the LOE provides that when any member in a co-operative transfers his or her shares, the co-operative must immediately inform the NAPR for records in the Register (Art. 62(3)). The transfer of a contribution shall be immediately added to a list of a person who makes this transfer. The registration date shall be considered as a withdrawal date.

70. The tax authorities also have the information maintained in the Register. The Tax Code requires any taxpayer in Georgia to register with the tax authorities or to be registered with the Register (Art. 43). The NAPR sends electronically the information maintained in the Register related to entities (registration, ownership information, amendments to registered data, and registration termination) to the Revenue Service (LOE, Art. 4(3)(1)).

Information held by companies

71. JSCs must maintain a register of shareholders (LOE, Art. 51(3)). Any JSC with more than 50 shareholders, as well as a JSC that is an "accountable enterprise" (i.e. a legal entity that has issued public securities, Law on Securities Market, Art. 9) regardless of its shareholding, must keep the register of shareholders through an independent registrar (who is a legal person licensed by the National Bank of Georgia who is responsible for keeping securities register and performing other functions provided for in the contract between the issuer and securities registrar) on the basis of a contract. Where the number of shareholders is 50 or less, a JSC may choose to keep such register by itself or through an independent registrar. The shares registry of a JSC must be maintained in accordance with the relevant rules defined by the National Bank of Georgia (LOE, Art. 51(4), and Law on Securities Market, Art. 9(2)). The National Bank of Georgia has adopted these rules in Order No. 5 of the Head of the Financial Supervision Agency of Georgia on Approval of the Rules of Management of Securities Registry 2008. These Rules only apply to JSC that are traded on the stock market. Among the provisions attaching to the maintenance of the register of shareholders JSCs that are traded on the stock market are: the registrar must be a person licensed by the National Bank of Georgia; the register must be kept in both paper and electronic versions; each shareholder must have a personal account which would identify any nominee where relevant (Order No. 5, Art. 3, 4, and 5). Once entered in the company registry, the shareholder will be issued either the extract from the company shares registry or extract of nominee holder (LOE, Art. 51(2)).

72. The LOE does not specifically prescribe LLCs or co-operatives to keep a register of shareholders/members. Updated information on the owners

of an LLC or a co-operative is nonetheless available to the authorities as the law requires LLCs and co-operatives to report to the Register any ownership change. If the information is not reported to the Register, the ownership change does not take legal effect.

Registration in practice

Register of Entrepreneurial and Non-Entrepreneurial Legal Entities (NAPR)

73. In Georgia, registration of all types of companies (LLCs, JSCs and co-operatives) is carried out in person by one of the founding members of the company, an appointed director or a representative at the offices of the NAPR or at any of the 240 authorised registration offices (including notaries and commercial banks). At the time of registration, the applicant must submit a complete registration form, a proof of payment of the registration fee and the articles of association or other document containing similar information. The articles of association need to be executed before a public notary and must include the name, address and personal number of the members; information on the number of shares of the members; the name, address and e-mail of the managers and authorised persons of the company. Only after a company has completed the registration process and the approval from the NAPR has been issued, will it be considered registered and incorporated as a company in accordance to Georgia's Law.

74. When registration is performed through one of the 240 authorised registration offices, the officials from the authorised registration office are instructed to first perform a check to verify the completeness of the information and later will proceed to fill an electronic application at the NAPR's computerised system. All the accompanying documents must be submitted in printed version to the NAPR. After verifying the filed information and authorising the registration the NAPR issues an extract evidencing the existence of the company and assigns it a nine-digit number, which is the same number that will be used as the tax identification number. The registration process is fast, generally taking up to four days from the time the application for registration has been submitted in the system to the time the registration certificate is issued, if no irregularities are identified by the NAPR during the verification process. There is a possibility of an expedited registration within the same day, which is subject to additional fees.

75. Similar to the incorporation process, all changes in shareholders of LLCs and members of co-operatives must be registered with the NAPR in order to become effective. For registration of changes in the articles of association, the changes must first be certified by a notary. Changes must be performed at any of the offices of the Register or its 240 authorised offices. At the time the changes are registered, the rights of the owners/registered

shareholder are recognised and they also become liable vis-à-vis third parties. If an entity fails to register the change in shareholders, the original shareholder would still be considered subject to all shareholders rights and obligations. Therefore, both the new and the previous shareholders will be interested in ensuring that all changes in ownership are registered as soon as they occur.

76. The NAPR must update the Registry and duly amend the information as requested by the interested person. When changes made subject to registration in the NAPR, the interested person should submit an application including for instance identification information of the interested person, certified documentation concerning the changes submitted for registration. The NAPR must verify the application within two days from its submission and if the application is accepted, the information at the Registry is updated accordingly and an electronic extract is generated in the system. The applicant is also notified in this regard. The NAPR also makes changes to the Registry based on information received from third parties, such as a court (e.g. court decision regarding ownership of a company, bankruptcy decisions). Interested parties also act as a check on the performance of the NAPR and in a few cases have taken action in Georgian courts to ensure that the NAPR has correctly executed its obligations under the law.

77. Initial registration and registration of changes in the ownership of LLCs and co-operatives are mainly done through electronic means by the officers of the NAPR. Most information included at the Register's database is publicly accessible through the NAPR website. This includes information on directors, founder and shareholders identity (in the case of LLCs and co-operatives) and the number of shares issued.

78. Under Georgia's registration system for LLCs and co-operatives, a new shareholder is only recognised when the transfer is registered. If an entity fails to register a change in shareholders, the original shareholder would still be considered subject to all shareholders rights and obligations and therefore there is a strong motivation for both the new and the previous shareholders to ensure that all changes in ownership are registered as soon as they occur. Therefore, the system in place in Georgia ensures that the NAPR has updated information on the shareholders of LLC and members of co-operatives at all times.

79. As regards JSCs, as described in paragraph 71 above, a share register is to be maintained by the entity itself or by an independent register (the Securities Registers), as the LOE requires.

80. In the case the register is maintained by the JSCs, the responsibility falls on the directors of the company, who will be liable for any events resulting from failure to keep and update the register. The NAPR does not conduct oversight of the compliance of JSCs and their directors with the obligations to

maintain accurate and updated ownership and identity information. As noted in paragraphs 85 and 86, the Georgian authorities have oversight of these obligations under certain circumstances.

81. For JSCs whose share registers are maintained by a Securities Registrar, they must provide the share register and notify all subsequent changes to such Registrar. A Securities Registrar is an independent and private entity that falls under the supervision of the National Bank of Georgia. There are currently three Securities Registrars operating in Georgia. As at December 2014, there were 818 JSCs keeping their share registry with Securities Registrars. During the review period, there was no monitoring of the three Securities Registrars on whether they kept complete and updated share registers on behalf of the JSCs. There was also no monitoring of the compliance of the underlying JSCs in relation to the obligation to provide the Securities Registrar with all necessary information to update the relevant share registers. Officials from the National Bank of Georgia reported that they are currently in the process to develop a mechanism for monitoring the Securities Registrars and JSCs' compliance with the requirements in the law.

Tax authorities

82. Tax registration is automatically performed by the NAPR upon registration in the Register of Entrepreneurial and Non-Entrepreneurial (Non-Profit) Legal Entities. Any legal entity at the time of registration with the NAPR will be also registered with the tax office and will obtain a TIN from the NAPR. The TIN number is required in order to carry out a number of activities, including opening a bank account.

83. As a consequence of registration requirements, updated identity and ownership information regarding LLCs and co-operatives and information on founders of JSCs is available with the tax authorities.

84. Information from the NAPR database is the main source of companies' ownership information for the tax authority, including the competent authority. All information maintained by the NAPR is kept in a centralised database which is submitted electronically to the Revenue Service and updated automatically. Transmission of data from the NAPR to the Revenue Service is immediate. The NAPR database allows the Revenue Service to search for entities by name, place of registration or TIN.

85. Shareholder information is also available with the tax administration upon distribution of dividends to shareholders, as such distribution entails the filing of a dividend distribution form for withholding tax purposes. All companies resident in Georgia are subject to income tax filing requirements. The detection of a taxpayer's failure to submit returns would lead to the imposition of fines.

86. The Revenue Service performs regular checks of the information filed by taxpayers with the information available with the NAPR. The Risk Management Division extracts information from the NAPR database (on LLCs and co-operatives) to cross check against information submitted by taxpayers in their income tax returns and withholding tax returns. Information in the withholding tax return includes information of the recipient of the payment made such as name, identification number, country of residence, the amount of withholding tax and type of income. As at April 2015, the Risk Management Division consists of 15 officials. During the review period, officials from that Division reported having identified cases where a dividend was paid and the beneficiary was not registered as a shareholder. This may be explained by a difference in the rate of withholding tax applicable to dividends (5%) and withholding rate for all other type of payments (20%), leading taxpayers to attempt to disguise the payments made as dividends. Such cases are sent to the Audit Department, which in most cases ultimately reclassified the payment as another type of payment/income. In relation to LLCs and co-operatives, the tax authorities consider the shareholders/members registered with the NAPR as the actual shareholders/members of the entity. Given the higher withholding rates that would apply for payments other than dividends, shareholders of these entities have an incentive to be registered with the NAPR.

87. In the case of JSCs, the oversight by the tax authorities concerning their ownerships information would generally be limited to situations where these companies distributed profits to their shareholders. As the NAPR does not maintain updated information of the shareholders of JSCs, no cross-checking of information would be possible. As JSCs, as other companies, may not always distribute dividends or may only make distributions to certain shareholders, Georgia would only have limited oversight on whether a share register is being maintained and updated. It is recommended that Georgia ensure that the obligation imposed on JSCs to maintain updated ownership information is sufficiently monitored in practice.

Information held by service providers

88. Under the anti-money laundering legislation, service providers will hold some information on companies, though not necessarily full ownership information of their clients. Pursuant to Article 3 of the Law on Facilitating Prevention of Illicit Income Legalisation (AML Law), entities that must conduct monitoring activities in the framework of countering money-laundering include: commercial banks, non-bank depositary institutions, microfinance organisations, broker companies and securities' registrars, insurance companies, lawyers, notaries, and persons conducting accountancy and/or auditor activity.

89. The AML Law prescribes that when a transaction[11] is suspicious, it exceeds GEL 3 000 (approximately EUR 1 130), or when doubts arise regarding the veracity or adequacy of previously obtained client identification data, monitoring entities must carry out identification and verification of a client and its beneficial owner, taking reasonable measures to verify the identity by means of reliable and independent sources (AML Law, Art. 6). Identification of a client is defined as obtaining information on the person, which, when necessary, allows tracing such person and distinguishing from other person (AML Law, Art. 2(k)). When ascertaining a beneficial owner, the monitoring entity will have to identify the natural person(s) representing an ultimate owner(s) or controlling person(s) of a person and or a person on whose behalf the transaction (operation) is being conducted (AML Law, Art. 2(q)). The beneficial owner of a business legal entity (as well as of an organisational formation not representing a legal entity provided for in the Georgian legislation) is defined as the direct or indirect ultimate owner, holder and or controlling natural person(s) of 25% or more of such entity's share or voting stock, or natural person(s) otherwise exercising control over the governance of the business legal entity.

AML obligations in practice

90. As noted in paragraphs 88 and 89 above, obliged entities under AML Law are required to perform customer due diligence (CDD) measures and keep transactional records. Compliance with these obligations is monitored and supervised by several units. Supervision of financial banking and non-banking institutions is monitored by the Money Laundering Inspection and Supervision Department within the National Bank of Georgia; lawyers are monitored by the Board of Lawyers; notaries by the Ministry of Justice and accountants and accounting firms by the Georgian Federation of Accountants and Auditor Professionals.

91. As of June 2015, the Money Laundering Inspection and Supervision Department had 21 officials and was responsible for supervising 21 commercial banks, 17 non-bank depository institutions, 1 116 currency exchange bureaus, 70 microfinance entities, 51 remittances, eight brokerage companies and three securities register.

11. Georgian equivalent of the word "transaction" used in the AML Law has the meaning as it is defined under Article 50 of the Civil Code: "[a] transaction is a unilateral, bilateral or multilateral declaration of intent aimed at creating, changing or terminating legal relations". Accordingly, transaction refers not only to financial operations but also to any agreement concluded by the parties on the basis of the Civil Code.

92. The Department conducts on-site and off-site (desk) inspections on supervised entities. These inspections are conducted by two separate units, the Off-site Inspection Unit and the On-site inspection Unit. The Off-site Inspection Unit, created in March 2015, has the role of preparing the risk assessment programme and assigns to the Inspectorate Unit the cases to be subject to an on-site inspection. The unit developed a risk assessment tool based on a risk matrix for financial institutions. The matrix is expected to allow the unit to identify the level of risk and assign a risk rating to the supervised entities. The Off-site Inspections Unit conducts inspections on large amount transactions, which represent higher risks. During the inspection process, the inspector requests underlying documents of these transactions, including documentation concerning the ownership of legal entities. From January 2012 to December 2014, 776 AML specific on-site inspections (including the entire banking and non-banking sector) were conducted by National Bank of Georgia and the total amount of AML specific fines imposed was around EUR 807 000.

93. Regarding monitoring of the security registrars, by the end of 2014, there were three independent securities registrars operating in Georgia. The security registrars maintained the registry of shares of 818 joint-stock companies out of a total of approximately 1 200 joint stock companies in Georgia. No securities registrars were inspected in relation to AML and combating the financing of terrorism (CFT). Nevertheless, the National Bank of Georgia advised that it will produce a risk matrix for these entities by the end of 2016, containing information, for instance, regarding transfer of shares.

94. Regarding the Supervision of Notaries, there is a special unit within the Ministry of Justice that supervises notaries, the General Inspectorate. The General Inspectorate conducts two different types of controls, the first according to its planning and the second based on complaints. In years 2012 to 2014, the General Inspectorate exercised inspection in respect of 130 notaries out of the 252 notaries of Georgia. AML related items are part of the regular inspections. Inspections during the review period included a variety of issues such as checking CDD, availability of copies of identification documentation, checking of contents of the files in connection to the notarial deeds and checking that proper notarial records are kept. After the examination, they sum up the conclusion and will impose sanctions in accordance with the Law of Notaries and its by-laws.

95. The most common failure observed is non-reporting of suspicious transaction regulated by AML. If the General Inspectorate finds that a certain transaction was the subject of monitoring and the information was not sent to the Financial Monitoring Service, the inspector immediately notifies this Service. From July 2011 until June 2014, the General inspections revealed 13 violations (including AML related types of offenses) and sanctions were imposed against notaries, as follows: eight notaries received warnings, three

were reprimanded and two notaries were suspended from their duties (from two to eight months).

96. The Ministry of Justice is also the responsible authority for monitoring compliance of the NAPR with the AML obligations. In August 2010 a person from the Ministry of Justice was appointed to the internal control unit of the NAPR. This person is in charge of monitoring transactions concluded for the purpose of purchasing intangible assets such as shares using a special electronic programme. The inspector is able access to information such as registration code, registration time, the price of transaction, place where the transaction was conducted. All transactions (above GEL 30 000 equivalent to EUR 11 335) are covered by the programme. From 1 January 2011 until 6 May 2015, 27 772 transactions made by the NAPR were considered to be unusual, the information about this was send to Financial Monitoring Service.

97. The General Inspectorate annually and randomly checks the activity of the inspector performing monitoring service at the NAPR. No violations have been detected at this time.

98. Regarding lawyers, the Board of Lawyers is the responsible entity for monitoring their compliance with AML obligations since November 2013. The Committee of Ethics from the Board of Lawyers supervises the conduct of lawyers and has been appointed as the responsible unit for monitoring AML compliance. During the period under review, no monitoring regarding AML was conducted. Sanctions have been imposed in other type of violations related with the supervision of lawyers' conduct, such as canceling of the license for certain period, suspension and fines.

99. The Georgian Federation of Accountants and Auditor Professionals is a non-governmental organisation responsible for monitoring of these professionals. Similar to Board of Lawyers, the Federation implemented measures for monitoring its members in 2014, and no monitoring for the purpose of AML compliance of these professionals was in place at the time of the review period. Although not related with AML Law, the Federation conducts some periodic monitoring of members. From December 2014 to June 2015 five reviews were conducted to monitor whether auditing firms and accountants were executing their duties in compliance with the international standards. Disciplinary measures such as cancelation of the licence can be imposed in case of infringements (see section A.2.2 Accounting records in practice). No sanctions have been applied to date.

100. In its EOI experience, Georgia has not requested ownership information from a service provider such as a lawyer, notary or accountant. During the review period, ownership and accounting information sought for EOI purpose was obtained from the Revenue Service database or directly from the taxpayer.

Foreign companies

101. According to the Tax Code, a foreign entity is resident for tax purposes when it has Georgia as its place of its activity and/or management (Art. 22) and then it would be required to file a tax return and will be subject to profit tax on its worldwide income. Non-resident companies are subject to tax on income from Georgian sources and on worldwide income derived through a permanent establishment that is located in Georgia.

102. The establishment of a branch in Georgia by foreign corporate entities is regulated under the LOE and the tax legislation. Under the LOE, foreign branches must be registered in the Register maintained by the NAPR, providing an application for the registration of the branch, decision of the enterprise on appointment of the branch director or the power of attorney authorising a person to manage the branch, and information on the enterprise and its management (LOE, Art. 16(4)). No ownership information has to be provided to the NAPR at the time of registration of a foreign branch. The LOE also does not prescribe that ownership information must be maintained by branches of foreign companies.

103. Under tax law, pursuant to Article 29(11) of the Tax Code and Article 3 of Decree No. 996, foreign enterprises/organisations, permanent establishments of foreign enterprises as well as permanent establishments of non-resident physical persons must also register with the Revenue Service for tax purposes. Foreign branches, unless already registered with the NAPR (by which case, registration with the tax authorities is done automatically (Tax Code, Art. 66)), must submit an application in accordance with Annex I-02 of the Decree, the founding documents, and information on the management. Annex I-02 of Decree 996 requires a foreign enterprise or its permanent establishment to identify the founding members of the establishment and their addresses (section III). No information on the owners of the foreign company has to be provided to the tax authorities at the time of registration of a foreign branch.

104. Ownership information of foreign companies would be available to the tax authorities in certain cases. In their tax return ("The Return of the Profit Tax", found in Decree 996 of the Minister of Finance), companies, including foreign companies being tax resident in Georgia, must report, among other things, the amount of dividends distributed to shareholders. In case of distribution of dividends, the company must also attach to the tax return Annex I-06 ("Declaration Regarding the Taxes Withheld at the Source of Payment") which requires disclosure of the names of the shareholders to whom dividends were distributed (Decree 996, Art. 37). Ownership information of foreign companies that are tax resident in Georgia would be then available with the tax administration when distributions are made.

105. To sum up, foreign companies which are resident in Georgia for tax purposes need to register with the commercial as well as the tax authorities, yet no information on the owners of the companies have to be reported. The tax return that foreign companies that are tax resident in Georgia need to submit to the tax authorities requires the disclosure of ownership information only when distributions of dividends are made to shareholders. As such, it is recommended that Georgia introduces obligations that would ensure the availability of ownership information on foreign companies with sufficient nexus in Georgia in all cases (and not just when the company has distributed dividends).

Foreign companies in practice

106. According to the data provided by the Revenue Service, as of 8 December 2015, there were 1 403 foreign entities registered in Georgia. Among them: 77 permanent establishments, 51 foreign companies (required to register in Georgia regardless of having a permanent establishment), two foreign organisations, 1 162 representative offices (branches), 111 branches of non-entrepreneurial legal persons.

107. Out of 32 EOI inquiries received by Georgia regarding ownership information during the review period, there were no inquiries in respect to ownership information of foreign companies.

Nominees

108. Georgian legislation regulates situations where securities issued by JSCs can be held by nominees. Pursuant to the Law on Securities Market, a nominal holder of security can only be a legal entity that is an intermediary on the securities market, a bank or the central depositary[12] (Art. 2(43)). The nominal holder of securities "is granted the right by a registered owner[13] (or

12. Pursuant to Article 2(50) of the Law on Securities Market, the central depository is "a legal entity licensed by the National Bank of Georgia who is authorised to carry out securities central clearing and settlement at request of a registered owner or a nominal holder, and provide service of a specialised depositary as well as deliver other services anticipated by regulations set out by the national Bank of Georgia.".

13. Pursuant to Article 2(5-1) of the Law on Securities Market, a registered owner is a person who is not a nominal owner of a security or a representative of a registered owner and meets any of the following requirements: a) Person is a registered owner of a security except being a nominal owner; b) Person gives a written consent to a nominal owner to act for the benefit of its interests; c) Person receives a monetary profit as an owner of a security; d) Person has a voting right in regard with a security; e) Person has the other legitimate right to become a registered owner of a security.

other nominal holder) on the basis of a written agreement to register these securities in the register on the name of this nominal holder and participate in other transactions associated with these securities for the benefit of the registered owner or the nominal holder" (*ib.*). Security would include any security issued by a JSC, regardless of whether the entity is traded on the stock market (Law on Securities Market, Art. 2(32)). With regard to JSCs that are traded on the stock market, Order N.5 of the Head of the Financial Supervision Agency of Georgia on Approval of the Rules of Management of Securities Registry requires that the register of shareholders must identify any nominee where relevant (Art. 4 and 5).

109. The entities that can act as nominal holder of securities – intermediaries on the securities market and banks – are obligated entities under the anti-money laundering legislation. Accordingly, they must identify the costumer and the beneficial owner (as defined by law), its representative and proxy, as well as any third person when a transaction is suspicious, it exceeds GEL 3 000 (approximately EUR 1 133), as well as when doubts arise regarding the veracity or adequacy of previously obtained client identification data (AML Law, Art. 6).

110. In addition, the identity of the owner of the securities, or of other person in an ownership chain, would be disclosed in the written contract that must be concluded between the nominee and the owner, or other nominal holder, of securities. The Civil Code establishes that for a written contract to exist, it is sufficient the signatures of the parties involved (Civil Code, Art. 69(3)). As such, at the barest, when concluding the written contract, the identity of the nominee and of the owner, or other nominal holder, of securities must be included. The nominee would then know the identity of the owner or of the other nominal holder of the securities.

111. To sum up, with regard to JSCs that are traded on the stock market, the register of shareholders must identify any nominee. With regard to all JSCs, the identity of the owner of securities of any, or of other person in an ownership chain, would be disclosed in the written contract that must be concluded between the nominee and the owner, or other nominal holder, of securities. Nominees are also AML obligated institutions and would maintain information on the person for whom they hold shares pursuant to AML law.

Nominees in practice

112. In accordance with Georgian Law on Securities Market the service of nominal holding can be provided by commercial banks, brokerage companies and the central depositary. Commercial banks and brokerage companies are subject to comprehensive AML/CFT obligations and supervision by the National Bank of Georgia, as noted in paragraph 91 above. The central

depositary is not subject to AML/CFT obligations; however Georgia reports that all transactions/agreements, as well as their participants and ownership structure of securities entered into the central depositary are already duly identified by brokerage companies and securities registrars.

113. During the review period, Georgia received no requests from its treaty partners that involved nominee shareholding.

Conclusion

114. The NAPR, as well as the tax authorities, have full ownership information of LLCs and co-operatives, as well as initial owners of JSCs, pursuant to registration and reporting requirements. Full ownership information of JSCs is available in the register that they are required to keep or to be kept by an independent registrar. Foreign companies with sufficient nexus to Georgia, while being required to register with the commercial and the tax authorities, are not required to maintain nor provide to these authorities information on the owners. Ownership information of foreign companies that are tax resident in Georgia would be disclosed to the tax authorities when distributions of dividends are made to shareholders. Georgia should ensure that ownership information of foreign companies with sufficient nexus (e.g. being resident for tax purposes) is available in all cases (and not just when the company has distributed dividends). Securities issued by JSCs can be held by nominees, and the combination of the Civil Code, and commercial and AML legislation ensures that ownership information is available.

115. In practice, as the incorporation of companies and changes thereof are only effective after registration with the NAPR in relation to LLCs and co-operatives, ownership information regarding LLC and co-operatives is available at the hands of the NAPR and the tax authorities (as they have access to the NAPR database). Information on founders of JSCs is also available with the NAPR and the tax administration. However, there is no requirement for JSCs to file ownership information and the NAPR is not responsible for monitoring whether a share registry is effectively maintained and updated by these companies. A number of JSCs are required to have a Securities Register maintaining their share register. The Securities Registers is obligated persons under AML, but they have not been subject to monitoring during the review period. JSCs and other companies are required to file a return with the tax authorities when they distribute profits and inform the name of their shareholders receiving such distributions. This information may also be checked in the course of a tax audit. However, it is possible that some JSCs do not distribute dividends or only make distributions to certain shareholders. In those cases, Georgia would not have sufficient oversight that a share register is being maintained and updated. It is recommended

that Georgia ensure that the obligation imposed on JSCs to maintain updated ownership information is sufficiently monitored in practice.

116. During the period under review, Georgia had no problems to secure company ownership information for EOI purposes Georgia received 38 EOI requests which contained 32 inquiries for ownership information from 1 July 2011 to 30 June 2014. EOI partners have requested the following type of identity and ownership information: registration information of the taxpayer, charters and by-laws of the entities, identity information of physical persons, residential status, current and former directors, shareholders and founders of the entities and information concerning the amount of participation of a certain shareholder in a Georgian legal entity. Information regarding JSCs has been requested in two cases and Georgia has requested the relevant entities to provide their share registers in both cases. Thus Georgia was able to provide the requested ownership information. During the review period, there was no case where Georgia was not able to exchange the identity or ownership information required, due the fact that information was not available, as verified by the peer inputs received.

Bearer shares *(ToR A.1.2)*

117. Georgian legislation prescribes that shares must be nominal. With respect to JSCs in particular, the LOE defines the shares issued by a JSC as "dematerialised nominative securities" that confirm the liability of a joint stock company to a shareholder and the rights of a shareholder in the joint stock company (LOE, Art. 51(1)). The Law on Securities Market defines a dematerialised security as a "security that does not exist in the form of paper, but is current in the form of a record in the securities register or the records of nominal holders on the name of a registered owner or a nominal holder" (Art. 2(33)). The name of all shareholders (or nominee holders) of a JSC must be entered in the register of shareholders that JSCs must keep pursuant to Art. 51 of the LOE (see also A.1.1 above).

118. Between 1994 and 1999, JSCs were allowed to issue bearer shares and there is no specific provision in the law regulating the conversion of bearer shares issued prior to 1999 into nominative shares.

119. The Georgian authorities have indicated that, even though there is no specific requirement to convert past bearer shares, the current law provides that no bearer share can exist in Georgia. An amendment to the LOE on 9 June 1999 prohibited the issuance of shares in bearer form establishing that JSCs can issue ordinary and preferential shares "only in nominative form" (Law No. 2073). In March 2008, an amendment to the LOE expressly established that shares issued by JSCs must be "dematerialised nominative securities" (Law No. 5913). With regard to JSCs traded on the stock market, the Law on

Securities Market explicitly required that securities issued in a materialised form had to be dematerialised (Law on Securities Market, Art. 10). According to the Georgian authorities, as shares must be "dematerialised nominative securities", any bearer share would have no legal value in Georgia and any bearer share holder would not enjoy the rights of a shareholder.

120. The Georgian authorities have indicated that at the time of its Phase 1 review there were still 894 JSCs which existed between 1995 and 1999 and which might have issued bearer shares. As at August 2015, the number remained the same. The Georgian authorities have also indicated that, according to the information available with the National Bank of Georgia, there is no JSC traded on the stock market with bearer shares, and that in any case, JSCs have always been obliged to register ownership information with the Securities Registrars.

121. Even though the understanding of the Georgian authorities is that bearer shares have no legal value in Georgia because they are not "dematerialised nominative securities", the fact that the law does not regulate the conversion of bearer shares into dematerialised nominative securities means that some bearer shares issued prior to 1999 may have not been converted yet and still be in existence.

122. LLCs cannot issue bearer shares as the name and address of all the current owners must be recorded in the commercial register (see section A.1.1 above).

123. Georgia officials reported that as a consequence of legal requirement in Georgia where all shares must be dematerialised nominative securities, bearer shares have no legal value, and no cases have been identified by the authorities. Publicly traded JSCs that had issued bearer shares were given six months for implementing the dematerialisation procedure as set out by Article 10 of the Georgian Law on Securities Market. Moreover, under amendments of the Georgian Law on Securities in 2003 the dematerialisation requirement for companies, (i) which had less than 100 shareholders and (ii) which had securities which were not placed on the stock exchange, was postponed until 1 March 2004 and, hence no cases of bearer shares have been identified where companies had failed to dematerialise shares within the time provided by the law.

124. As of December 31, 2014, out of 1 216 JSCs registered in Georgia, there were 258 joint stock companies traded on the stock market in Georgia, strictly monitored by the National Bank of Georgia and 818 JSCs are obliged to register their share registry with the Securities Registrars.

125. Georgia received requests for information from a treaty partner regarding shareholders of two JSCs. In both cases the information was available. Georgia's competent authority has not encountered any companies with bearer shares.

***Partnerships** (ToR A.1.3)*

126. Three types of partnerships can be created in Georgia: general partnerships, limited partnerships, and civil law partnerships. As of December 2013, there were 2 742 general partnerships, 185 limited partnerships, and 2 275 civil law partnerships.

General partnerships and limited partnerships

127. General partnerships and limited partnerships are formed under the LOE. A general partnership is a legal entity where at least two persons (general partners) carry out an entrepreneurial activity jointly under a single name and are liable for the obligations of the entity as joint debtors to their creditors directly with all of their personal assets (LOE, Art. 20(1)). A limited partnership is a legal entity where several persons carry out an entrepreneurial activity under a single brand name and liability of one or several partners to the creditors is limited to the agreed pledge amount (limited partners), whereas the liability of other partners (at least two) is joint and unlimited to their property (general partners) (LOE, Art. 34(1)). In order for general partnerships and limited partnerships to be created, the partners must sign a written agreement and must apply to the NAPR for registration in the Register of Entrepreneurial and Non-Entrepreneurial (Non-Profit) Legal Entities. A general partnership and a limited partnership are considered as formed once the application for registration with the NAPR has been accepted (LOE, Art. 4(3)).

128. Information on the initial owners of general partnerships and limited partnerships is maintained by the NAPR. At the time of application for registration with the NAPR, the name and address of all partners must be indicated (LOE, Art. 5(1)(d)), identifying – in case of a limited partnership – the limited partners and their contribution (LOE, Art. 5(1)(e)).

129. Ownership information of limited partnerships must be updated to the NAPR. Article 5-1(5-1) of the LOE establishes that “the share ownership right and related liabilities of partners of […] limited partnership shall be regarded as originated, amended, or terminated following their registration” in the Register. As such, the rights of the owners of a limited partnership will not be recognised until their names are entered in the NAPR. Therefore, in case of an ownership change, a limited partnership will have to report to the NAPR any share transfer in order for the ownership change to take legal effect.

130. Ownership information on the partners of general partnerships can be updated to the NAPR on the basis of article 5-1(1) of the LOE – which authorises an interested person to update this information to the NAPR – although this is not a legal requirement. Information on the partners of a

general partnership is nonetheless available at the level of the partnership in the partnership agreement.

131. Updated ownership information of general partnerships is available in the written agreement of the general partnership. The LOE establishes that partners shall sign an agreement that regulates issues related to their business activities and/or relations among partners, and at the time of incorporation, the partners shall agree on distribution of shares and amount of contributions in the partnership capital (LOE, Art. 3(4-1) and 3(5)). The incorporating partnerships agreement will then contain information on the partnerships and the share of their contributions. If an amendment made to the agreement is related to the partners' right to vote, share in profit/loss or his/her rights in the process of liquidation, the above amendment shall be adopted unanimously if not otherwise defined in the agreement (LOE, Art. 3(5-1)). If an amendment made to the agreement eliminates a partner's registered right or imposes a liability that has a direct impact on his/her registered right, it shall be prohibited to make such amendment without partners' agreement (LOE, Art. 3(5-2)). Because the incorporating partnership agreement includes information on the share of contributions of the partners, any change to such contributions would be reflected in the agreement of the partnership.

Civil law partnerships

132. Civil law partnerships are created under the Civil Code. A civil law partnership is formed under a contract of joint activity by two or more persons (individuals as well as legal entities) who undertake to act jointly for the accomplishment of common economic or other objects by the means stipulated in the contract, without forming a legal person (Civil Code, Art. 930). The partners make the contributions stipulated in the contract, which are common ownership of the partners, unless otherwise stipulated in the contract. If the amount of the contributions is not specified in the contract, then all partners are bound to make contributions of equal value (Civil Code, Art. 932). Civil law partnerships do not have to register with the NAPR.

133. The contract to create a civil law partnership can be written or oral. If the contract of a civil law partnership is concluded in writing, it must indicate, among others: the names and addresses of the partners, the rights and duties of the partners, and information on the type and object of the joint activity (Civil Code, Art. 931(2)). Where there is no written agreement, as well as in cases where a partner transfers his or her property in the partnership, there is no specific provision requiring civil law partnerships to keep information on the partners. Nonetheless, the Civil Code indicates that, unless otherwise stipulated in the contract, the partners shall jointly manage and represent the partnership (Civil Code, Art. 934). Moreover, the consent of each participant is required for the conclusion of any transaction. A share, in

the form of the property or the right, may not be transferred to a third person without the consent of the rest of the participants (Civil Code, Art. 933(1)). It is therefore implied that the partners should know the other partners in the partnership, also in case of any ownership change. Regardless, information on the identity of the partners of civil law partnerships will be maintained for tax purposes in any case where the partnership carries on economic activity in Georgia (see below).

Tax law

134. Any partnership (including civil law partnerships) carrying out economic activity in Georgia must register for tax purposes (Tax Code, Art. 66). Foreign partnerships carrying out economic activity in Georgia will be treated in the same way as companies or other entities formed under foreign laws, without regard to the legal status in the jurisdiction of incorporation (Tax Code, Art. 21). Economic activity is defined by Article 9 of the Tax Code as any activity that is undertaken with the intent of generating profit, income, or compensation, regardless of the outcomes of such activity. Activities that are not considered to be economic activity include charity, hired work, and placement of funds by an individual at banks and other credit institutions on deposits (Tax Code, Art. 9(2)). General partnerships and limited partnerships are automatically registered with the tax authority following their registration with the NAPR (LOE, Art. 4(3) and Tax Code, Art. 66(2)). Due to exchange of information between the NAPR and the tax authorities regarding registration of legal entities, the tax authorities have updated information on the partners of the limited partnerships, and information on the initial founders of general partnerships. With regard to civil law partnerships, pursuant to Decree No. 996 of the Minister of Finance, an application and a notarised copy of the contract on joint activity documents must be submitted to the Revenue Service for registration of a partnership (Decree No. 996, Art. 1(c)). Annex N I-02 of Decree No. 996 must be attached to the application for registration, disclosing among others the names and addresses of the founders of the partnership, as well as the activities carried out (Decree No. 996, Art. 3(2) and Annex N I-02).

135. Civil law partnerships are fiscally transparent. Accordingly, the profits of civil law partnerships are taxed in the hands of the partners on the basis the share held, and must be included in the gross income of any partner (Tax Code, Art. 96(2) and 143(1)). A partnership must determine the taxable profit or loss for each specific year, and irrespective of whether the partnership distributes the taxable profit of a tax year, the partners who are taxpayers must include this in their gross income (Tax Code, Art. 143(2) and 143(3)). The identity of the partners who are taxpayers in Georgia will be then available to the tax administration as the partner must indicate the source of the profits (i.e. the name of the partnership) in the yearly income tax declaration. The identity of the partners is

also disclosed to the tax authorities because partnerships are obliged to submit a tax return that must contain information about the amount of taxable profit (losses) and distribution thereof among its members (Tax Code, Art. 143(10) and tax return for civil law partnerships, Addendum N II-10).

136. Regarding partners in a civil partnership carrying out business in Georgia who are not taxpayers registered at a tax body, the partnership must withhold tax at source in accordance with Article 154 of the Tax Code (Tax Code, Art. 143(4)). Pursuant to Article 154(3) of the Tax Code, the person withholding tax at the source is obligated to submit to the tax authorities by the 15th day of the month after which the tax was withheld: a certificate indicating the registration number, name and surname, residential address, total amount of income for the reporting year, and the total amount of withheld tax of a person receiving the income. Non-resident individuals and non-resident enterprises who receive income from a source in Georgia and are taxed at the source of payment do not have to submit to the tax authorities an income/profit tax declaration (Tax Code, Art. 153(1)(c)). The identity of partners of civil law partnerships carrying out business in Georgia who are not taxpayers in Georgia is available to the tax authorities when the partnership withholds tax at source. In case the partnership carrying out business in Georgia does not distribute profit to its members, that civil law partnership will have to submit a tax return that must contain information about the amount of taxable profit (losses) and distribution thereof among its members (Tax Code, Art. 143(10)) (see paragraph above).

137. With regard to general partnerships and limited partnerships, the Tax Code considers them as entities which must submit profit tax return. The profit tax return submitted by legal entities (Art. 40 and 41, and Addendum a-k) does not require disclosure of ownership information. Nonetheless, "Addendum j – Balance" requires the legal entity to submit information on the capital detailing the undistributed profit, the personal capital, and the statutory capital (the contributions from the legal entity). It can be inferred that the requirement to keep and provide this information to the tax administration imposes an obligation on the legal entity to keep information on the owners. In any case, updated ownership information of general partnerships is available in the partnership agreement; updated ownership information of limited partnerships must be submitted to the NAPR.

Partnerships in practice

138. Similar to companies, as described under section A.1.1, general partnerships and limited partnerships are considered formed once the application for registration with the NAPR has been accepted. All changes in partners of limited partnerships are only effective once registered with the NAPR and must be performed through a notary, who will verify the identity of the partners prior finalising the deed. It is noted that, although in practice the NAPR

does not conduct any active monitoring activities; requirements under the LOE effectively ensure that updated ownership information is available at the hands of the NAPR. In practice, at the time of registration with the NAPR, the partnership is automatically registered with the Revenue Service and all information filed becomes available to the Revenue Service.

139. Any partnership (including civil law partnerships) carrying out economic activity in Georgia must register for tax purposes. The Revenue Service as part of its regular risk assessment process matches information from the tax returns and the Registry and conducts tax audits on partnerships and in these processes may verify the identity of the partners of the partnership if it is determined to be relevant for tax purposes.

140. In relation to general partnerships, the Georgian authorities advised that although they are not legally required to provide updated information on the identity of its partners to the NAPR under the LOE, Instruction 241 of the Minister of Justice would effectively require general partnerships to provide updated partner information to the NAPR. Georgia's authorities understanding is based on Article 14 of Instruction 241 which provides that registration data should be deemed amended from the moment they are registered at NAPR. Registration data is defined in Article 5 (1) of the LOE as including information on the identity of partners. Partner identity information is also provided to the tax authorities when the profits of the partnership are distributed. Although general partnerships may be subject to tax audits and the identity of their partners may be checked in that process, Georgia does not appear to have sufficient oversight that partnership agreements of general partnerships are being maintained and updated in situations other than when profits are distributed. Moreover, it is unclear to the assessment team how Instruction 241 would effectively require updated information to be provided and it remains that general partnerships are not required to inform the change of partners to the NAPR under the LOE even if they decide to update the partnership agreement. Therefore, there remains a gap in the oversight. It is recommended that Georgia have a system of oversight to monitor that general partnerships maintain updated information on their partners.

Conclusion

141. Updated information on the partners of limited partnerships is available with the NAPR pursuant to registration of an entity and to the requirement to update of any ownership change. The NAPR also possesses information on the partners who founded a general partnership. Updated ownership information on general partnerships will be available in the partnership agreement. The tax authorities have ownership information of civil law partnerships. Any type of partnership carrying out business in Georgia must be registered for tax purposes. Partners of civil law partnerships

carrying out business in Georgia who are taxpayers in Georgia must include the profits from the partnership, disclosing the name of the partnership, in their yearly income tax return. Civil law partnerships have to submit a tax return containing information about the amount of taxable profit (losses) and distribution thereof among its members, even when the partnership does not distribute profits/losses to its partners. Due to exchange of information between the NAPR and the tax authorities regarding registration of legal entities, the tax authorities have updated information on the partners of the limited partnerships, and information on the initial founders of general partnerships.

142. The requirements under the LOE and tax laws effectively ensure that updated ownership information is available at the hands of the NAPR/tax authorities in most cases. The system put in place by Georgia allows the NAPR (and the tax administration) to have full oversight and up to date ownership information in relation to limited partnerships. Georgia does not appear to have sufficient oversight that partnership agreements of general partnerships are being maintained and updated. It is recommended that Georgia have a system of oversight to monitor that general partnerships maintain updated information on their partners.

143. In the three-year period under review, EOI partners have not required identity and ownership information about Georgian partnerships.

Trusts *(ToR A.1.4)*

144. Georgia is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition and Georgian legislation does not recognise the concept of trust. Nonetheless, nothing in the law prohibits a Georgian resident to act as a trustee of a foreign trust. A trust-like arrangement named entrustment of property can be formed under the Civil Code.

Entrustment of property

145. Even though trusts cannot be formed under Georgian legislation, the Civil Code recognises the concept of entrustment of property, whereby, on the basis of contract, a settlor designates a person (trustee) to hold and manage property in the interest of the settlor (Civil Code, Art. 724). Under this contract, the trustee is bound to manage the property held in his or her own name, at the expense and risk of the settlor. The trustee enjoys the owner's entitlements in relation to third parties. The rules governing a contract of mandate shall apply to the contract of property trust (Civil Code, Art. 729). The property subject of an entrustment can be anything, including intangible property. The trustee can conclude any transaction, but he/she is not entitled to sell the property unless it is specified in the contract. The settlor pays no

remuneration to the trustee with respect to the management of the property held in trust unless otherwise stipulated by agreement of the parties (Civil Code, Art. 726(1)). The law does not pose any restriction as to which persons can be party to an entrustment of property contract. Where the trustee is a service provider, AML obligations will also apply (see below).

146. The contract must be made in writing (Civil Code, Art. 727), and should at least indicate the parties (who are obliged to sign the written contract, Civil Code, Art. 69(3)), and how the settlor wishes the property to be managed (Civil Code, Art. 709). The fruits of the property belong to the settlor (Civil Code, Art. 726(3)). The contract would show the identity of the parties (the settlor and the trustee). There is no "beneficiary" *per se*, rather the benefits of the property managed by the trustee belong to the settlor, who would be the beneficiary of the entrusted property. The trustee is obliged to report any necessary information to the settlor and, on demand of the latter, to keep him informed regarding the course of performance of the mandated task, and after performance to submit a report to him (Civil Code, Art. 713(1)).

147. Public authorities may have information on the settlor and trustees of an entrusted property where tax liabilities arise. There is no obligation to file the contract with the public authorities. Nonetheless, tax liabilities may arise in respect of the settlor, as the person receiving the benefits of the entrusted property (Civil Code, Art. 726(3)). Whoever receives the benefits from the entrusted property will be then obliged to include these in his/her tax return.

Entrustment of property in practice

148. Settlors of entrusted property are required include income from entrusted property on their tax returns. There is no special tax form for entrustment of property. Moreover, trustees that are financial institutions or professionals such as lawyers and accountants are subject to AML oversight as described under section A.1.1.

149. During the review period Georgia has not received requests in relation to entrustment of property.

Foreign trusts

150. The tax treatment of a foreign trust will be the same as a foreign enterprise carrying out an economic activity in Georgia (Tax Code, Art. 21(1)) regardless of the location of the trustee. As such the foreign trust will be subject to profit tax if it is carrying on business in Georgia through a permanent establishment and/or it is receiving income from sources located in Georgia. This means that the trustee (which may be in Georgia or not) must ensure that the trust complies with Georgian tax legislation, which however does not include the

keeping or furnishing of identity information in respect of the trust. The placement of funds by an individual at banks or other credit institutions on deposits is not considered to be economic activities (Tax Code, Art. 9(2)). Therefore, a number of foreign trusts administered in Georgia or with a Georgian trustee would not be covered by the definition of economic activities provided for in the Tax Code.

151. The Georgian authorities further advised that if a foreign trust has a Georgian trustee and this trustee makes distributions to non-resident beneficiaries/settlors of Georgian sourced income, the trustee must submit a withholding tax return (Tax Code, Art. 134), which includes information on the amount paid, the type of income and the identification of the beneficiary receiving the distribution. In addition, Georgia clarified that the Georgian sourced income of the trust would be subject to income tax in Georgia in the hands of the trustee, and therefore there would be an incentive for the trustee to keep documentation proving the payment made to the beneficiary/settlor abroad in order to distinguish this income from the trustee's own income. Individual residents acting as trustees in Georgia are required to report their worldwide income but are taxed on a territorial basis whereas corporate taxpayers are taxed on their worldwide income. There is no specific reporting requirement in the tax return regarding the identity of the settlor or the beneficiaries or the fact that assets are held or income earned on a fiduciary capacity.

152. Georgian anti-money laundering legislation does not deal specifically with the identification of persons in trusts arrangements. Nonetheless, the AML Law requires a number of professional persons who could act as trustees in an entrustment of property contract, or as trustees of trusts formed under the laws of foreign jurisdictions, to conduct customer identification: commercial banks, broker companies and securities' registrars, notaries and persons conducting accountancy and or auditor activity (AML Law, Art. 3). Since 27 November 2013, advocates have been added to the list of persons required to perform customer due diligence (Law 1638/2013). The persons mentioned above, including advocates, would need to conduct customer identification when a transaction (including the establishment of a business relationship)[14] is suspicious, it exceeds GEL 3 000 (approximately EUR 1 133), as well as when doubts arise regarding the veracity or adequacy of previously obtained client identification data (AML Law, Art. 6). Identification of a client is defined as obtaining information on the person,

14. Georgian equivalent of the word "transaction" used in the AML Law has the meaning as it is defined under Article 50 of the Civil Code: "[a] transaction is a unilateral, bilateral or multilateral declaration of intent aimed at creating, changing or terminating legal relations". Accordingly, transaction refers not only to financial operations but also to any agreement concluded by the parties on the basis of the Civil Code.

which, when necessary, allows tracing such person and distinguishing from other person (AML Law, Art. 2(k)). When ascertaining a beneficial owner, the monitoring entity will have to identify the natural person(s) representing an ultimate owner(s) or controlling person(s) of a person and/or a person on whose behalf the transaction (operation) is being conducted (AML Law, Art. 2(q)). The beneficial owner of a business legal entity (as well as of an organisational formation (arrangement) not representing a legal entity, provided for in the Georgian legislation) is defined as the direct or indirect ultimate owner, holder and/or controlling natural person(s) of 25% or more of such entity's share or voting stock, or natural person(s) otherwise exercising control over the governance of the business legal entity.

153. In sum, service providers that are under AML obligations and who act as trustees of foreign trusts would have information on the settlors and the beneficiaries of trusts only in certain circumstances. Persons not covered by the AML Law have not an obligation to identify the settlors, nor the beneficiaries of foreign trusts.

Foreign trusts in practice

154. Although there are no specific obligations for a trustee of a foreign trust to ensure the availability of ownership of foreign trusts in Georgia, officials from the Georgia's Revenue Service advised that they have powers to ask a Georgian resident managing a foreign trust all necessary information regarding his/her possible tax liability connected with the management of the trust. The Georgian authorities advised that the Revenue Service has never encountered cases where a resident person was found to be acting as trustee of a foreign trust in the course of domestic audits.

155. In regard to monitoring of AML obligations, the supervisory authorities undertake regular monitoring activities to ensure that the AML Law obligations are properly carried out by the financial AML obligated persons who may provide services to the trust, such as commercial banks. Based on the selective inspection method performed by the Central Bank of Georgia through the period 2011 to 2014 no violations on identifying ownership information of resident legal entity were discovered. Moreover, in practice the National Bank of Georgia has not encountered any person acting as a trustee of a foreign trust in Georgia. Under the recently introduced monitoring process by the Bank of Georgia all banking and non-banking financial institutions must fill a matrix including information regarding transactions related with trust clients. Moreover, service providers such as advocates and accountants who could potentially act as trustees have not been subject to oversight during the review period. It is recommended that Georgia ensure that there is adequate oversight of professionals that may act of trustee of foreign trusts in Georgia.

156. During the review period, the competent authority has received no requests regarding trusts or similar arrangement having a trustee in Georgia.

Conclusion

157. While Georgian legislation does not recognise trusts, nothing prevents a trust created under the law of a foreign jurisdiction from being managed by a resident of Georgia. Any type of property can be entrusted by a settlor to a trustee under a contract of civil law. The Civil Code requires the identification of the settlor and the trustee in the written contract between the parties. The tax legislation requires the settlor of an entrusted property to submit a tax return where tax liabilities arise. In relation to foreign trusts carrying on business in Georgia (regardless of having a Georgian resident trustee), the tax legislation establishes tax liabilities for trust itself and it does not require the identity of the settlor and of the beneficiaries to be kept or disclosed. In relation to foreign trusts having a trustee resident in Georgia, Georgian sourced income would be taxed at the hands of the trustee who would also be required to identify beneficiaries when making distributions. Under certain circumstances provided for by the AML Law, entities subject to anti-money laundering obligation are required to identify the settlors and beneficiaries of foreign trusts. It is recommended that Georgia takes all reasonable measures to identify all the settlors and beneficiaries of foreign trusts managed in Georgia.

158. While Georgia's Revenue Service does not have any experience dealing with foreign trusts, it is noted that the AML supervisory authorities undertake regular monitoring activities to ensure that obligations under the Georgian AML Law are properly carried out by the financial AML obligated persons who may provide services to a trust or act as a trustee. Service providers such as advocates and accountants who could potentially act as trustees have not been subject to oversight during the review period. Since 2015 Georgia reports that these professionals have been subject to monitoring by their supervisory bodies. It is recommended that Georgia ensure that there is adequate oversight of professionals that may act as trustee of foreign trusts in Georgia.

Foundations *(ToR A.1.5)*

159. Georgian legislation does not provide for the concept of foundation, nonetheless, it allows the formation of non-commercial legal entities under the Civil Code. Pursuant to the Civil Code, the aim of a non-commercial legal entity is non-profitable activities and commercial activities are authorised only to support the realisation of the goals of the entity (Civil Code, Art. 25(5)). The profits earned as a result of commercial activities are taxable

at the profit tax rate; they must be spent on the realisation of the goals of the entity, and cannot be distributed to the founders, members, donors, as well as the managers. These entities cannot be used for wealth management or other private purposes. According to Article 32 of the Tax Code, the status of charity organisation is assigned by the Revenue Service to the organisation after at least one-year after the entity has commenced conducting non-profitable activities. Those entities are also required to be registered with the NAPR.

160. As non-commercial legal entities are only established for charitable purposes in Georgia, it may be concluded that the relevance of these entities to the work of the Global Forum is low. During the period under review, Georgia has not received requests for ownership information in relation to non-commercial legal entities.

Enforcement provisions to ensure availability of information (ToR A.1.6)

161. Georgia should have in place effective enforcement provisions to ensure the availability of ownership and identity information. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions effectively to enforce the obligations to retain identity and ownership information.

162. Ownership information of LLCs, co-operatives, and limited partnerships is provided to the authorities at the time of registration and subsequently when any change thereto occurs. The entrepreneurial entity is considered as incorporated after registration with the NAPR (LOE, Art. 4(3)). If the application for registration (or for updating registered data) does not include any required information the NAPR would ascertain a deficiency and would give the entity 30 days to eliminate the deficiency (NAPR Instructions, Art. 15(2)). After the end of the 30-day period, the NAPR will reject the application. As regards members in an LLC and limited partnership, any share transfer takes legal effect from the moment it is registered with the NAPR.

163. In practice, at a time of registration, a first check of the information submitted is usually performed by the authorised registration office. The registration officers will verify the completeness of the information submitted and that the corresponding registration fee has been paid. Registration is done on-line at the NAPR. The NAPR will then review the application received and check that all required documents have been submitted. The NAPR can reject the application for registration in cases of missing necessary documentation, duplicated registration or lack of proof of payment fee when the deficiencies are not corrected within 30 days. The NAPR officials informed that rejection of registration is rare, and during the review period the NAPR did not reject the registration of any legal entity.

164. The system put in place by Georgia allows the NAPR (and the tax administration) to have full oversight and up to date ownership information in relation to all limited liability companies, co-operatives and partnerships. As registration of shareholder and members of LLCs and co-operatives and partners of a limited partnerships with the NAPR is compulsory; shareholders, members and partners are only recognised as such, once the transfer is registered with the NAPR. Interested parties also act as a check on the performance of the NAPR and in a few cases have taken action in Georgian courts to ensure that the NAPR has correctly executed its obligations under the law.

165. JSCs must keep a register of shareholders either by themselves, or through an independent registrar (LOE, Art. 51). The shares registry of a joint stock company shall be maintained in accordance with the relevant rules defined by the National Bank of Georgia. The directors of a JSC are generally responsible for keeping (or causing to keep) the register, as the management is vested in the directors (LOE, Art. 56(1)). Responsibilities can be defined by agreement between the company and the directors (LOE, Art. 56(2)). If a director does not perform his or her liabilities, he or she must compensate the damage caused to the company. The directors shall be jointly liable, with all their assets, directly and fully (LOE, Art. 56(4)). With regard to JSCs that are traded on the stock market, the register of shareholders must be kept by an independent registrar authorised by the National Bank of Georgia. The Rules on Pecuniary Penalties for Securities Market Participants issued by the National Bank of Georgia establish that any violation to the rules on keeping the register of shareholders will be subject to a penalty of GEL 2 000 (approximately EUR 755) per each violation. During the review period, Georgia's authorities confirmed that no penalties were imposed under this Article of the Law on Securities. Moreover, there was no monitoring of the obligation to keep a share registry, except in cases that may have tax implications (as further described in this section). There was no monitoring of the Securities Registrars concerning their obligations as service providers subject to AML. The National Bank of Georgia advised that the monitoring of the Securities Registrars are due to commence in the first quarter of 2016 and will involve the development of an off-site supervision matrix, assessment of risks based on the information provided by the Securities Registrar and on-site inspections.

166. In a situation where a share is held by a nominee, the identity of the owner or other nominal holder of the share is disclosed in the contract between the nominee and the owner or other nominal holder of the share (see section A.1.1 above). Persons that can act as nominee holders are entities subject to the supervision of the National Bank of Georgia. The National Bank of Georgia can apply sanctions when, among others, a regulated securities market participant violates the requirements specified under the securities legislation of Georgia (Law on Securities Market, Art. 55-1(1)). This means that

if a person is providing nominee services without following the requirements of the securities legislation of Georgia, this person commits a violation that can be sanctioned by the National Bank of Georgia. The gravity of the penalty is not prescribed by law, but the sanction imposed must comply with the seriousness of the violation and the possible risks (Law on Securities Market, Art. 55-1(3)). During the review period, Georgia's authorities confirmed that no penalties were imposed under this Article of the Law on Securities.

167. The tax authorities maintain ownership information of limited partnerships, civil law partnerships. With regard to civil law partnerships, this information is provided at the time of registration of the partnership with the tax authorities, and, yearly, in the income tax return that partners who are residents of Georgia have to submit disclosing the profits from the partnerships, as well as the name of the partnership from which the profits are derived. The identity of the partners who are not Georgian residents is provided to the tax authorities by the 15th day of the month after which the tax was withheld by the partnership on their behalf. Pursuant to Article 269 of the Tax Code, a person's illegal action (action or omission) for which responsibility is envisaged under this Code shall be considered a tax offence. A tax sanction shall be applied in the form of a warning, penalty, monetary fine, the restriction of right to cross Georgia's customs border, seizure without compensation of the goods and or transport vehicles involved in offence, in the cases stipulated in this Code (Tax Code, Art. 270). A tax sanction is a measure of responsibility for a committed tax offence. Article 273 of the Tax Code provides that any violation concerning the rules on registration as a taxpayer is sanctioned with a fine in the amount of GEL 500 (approximately EUR 188).

168. Ownership information of general partnerships is available in the written agreement that all partners must sign before incorporation. A general partnership is then formally created after registration with the NAPR which requires the submission of information on the initial partners. The application will be refused if this information is missing. After registration, a general partnership is not obliged to submit to the NAPR any ownership change, however, the partnership agreement will have to be amended to reflect any information on ownership that differs from the initial ownership. Any partner that is not on the written agreement will not be recognised as a partner in the general partnership.

169. Persons who are Georgian residents and act as trustees of foreign trusts may exist, however, the identity of the settlor and the beneficiaries would only be available under certain circumstances foreseen under the AML Law. Persons who may act as professional trustees and who are covered by the anti-money laundering legislation include commercial banks, broker companies and securities' registrars, advocates, notaries, and persons conducting accountancy and or auditor activity. Any sanction for violations

of the anti-money laundering legislation on the basis of the regulations is decided by different entities: the National Bank of Georgia for commercial banks, broker companies and securities' registrars; the Ministry of Justice for notaries; by the advocates' and accountants' associations for advocates, accountants and auditors. For example, the National Bank of Georgia is authorised to issue warnings, to impose fines, to dismiss management and to cancel banking licenses when violations of AML/CFT legislation are identified (LCB, Art. 30). In the case of notaries, the Ministry of Justice can apply sanctions such as the issuance of warning, reprimand, suspension and dismissal based on the Regulation on Imposing Disciplinary Sanctions against Notaries. With regard to advocates, the Law on Attorney allows the Ethics Commission of the Bar Association to issue a warning, as well as to suspend or revoke a professional licence. Regarding entrustment of property contract, identity information is available in the contract required to be signed by the parties and with the tax administration where tax liabilities arise.

170. Enforcement provisions are generally in place for all entities and arrangements that are required to keep ownership information. Enforcement provisions to ensure availability of information in practice

171. In practice, the Revenue Service is the government agency responsible for the implementation of the tax legislation, collecting domestic taxes, auditing taxpayers' compliance with their tax obligations and promoting voluntary compliance. It has developed risk assessment programme conducted by the Risk Management Division. The division develops an annual plan determined through (a) random selections executed by computer software; and (b) risk analysis performed by analysts. Based on these programmes the officials identify irregularities in tax returns and create risk profiles and after, the case is sent to the Audit Department.

172. Audit of companies is usually done on the basis of a risk assessment, which depends on the type of business carried out, the size of the taxpayers, among other factors. Audits could be desk audits or on-site audits. Audits are planned quarterly; approximately 2000 audits per year are assigned to the ten Audit Divisions throughout the country; each division is comprised of 25 to 30 auditors. Audit should be conducted within a period of three months. The numbers of audits conducted during the period 2011-14 are as follows:

Year	Number of audits performed
2011	1 680
2012	2 522
2013	2 801
2014	3 127

173. The Risk Management Division receives feedback from the auditors, which is use for measuring the effectiveness of the risk management programme. Each year, around 97% of these audits finds some irregularities in respect to compliance with the provisions in the tax law (though not necessarily with the availability of ownership and identity information).

174. With regard to number of cases and amount of penalties applied for failure to file or erroneous filing of withholding tax returns were 33 017 taxpayers from 2011 to 2014.

Year	Number of cases penalties applied for the late submission of income tax declaration or understatement of tax in a tax return/calculation	Breakdown				
		LLCs	JSCs	Co-operatives	General partnerships	Others*
2011	5 374	2 032	139	11	23	3 169
2012	13 075	3 451	267	20	57	9 280
2013	6 680	2 925	128	5	12	3 610
2014	7 888	2 899	107	5	14	4 863
Total	33 017	11 307	641	41	106	20 922

* Mainly individual entrepreneurs and other individual taxpayers.

175. From January 2011 to December 2014, the total number of AML specific on-site inspections conducted by the National Bank of Georgia was 780, covering banking and non-banking financial institutions (including 22 for commercial banks). Service providers such as advocates and accountants were not subject to monitoring by their supervisory bodies during the review period. Georgia is recommended to ensure that there is adequate oversight of professionals that may act as trustee of foreign trusts in Georgia.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Foreign companies with sufficient nexus to Georgia (e.g. being resident for tax purposes) and foreign partnerships that are carrying on business in Georgia are not required to maintain nor provide to the authorities ownership information in all cases.	Georgia should ensure the availability of ownership information of foreign companies with sufficient nexus to Georgia and foreign partnerships carrying on business in Georgia in all cases.

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Georgian law does not ensure that information is available identifying the settlors and beneficiaries of a foreign trust with a Georgian trustee or trust administrator in all cases.	Georgia should ensure that information identifying the settlors and beneficiaries of foreign trusts, which are administered in Georgia or in respect of which a trustee is resident in Georgia, is available.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Georgia had limited oversight of the compliance by (i) joint stock companies and Securities Registrars with their obligation to maintain accurate and updated information share registers and (ii) general partnerships with their obligation to maintain an updated partnership agreement during the review period.	Georgia should ensure that the obligation imposed on joint stock companies and general partnerships to maintain updated ownership information is sufficiently monitored in practice.

A.2. Accounting records

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

176. The Terms of Reference set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. They provide that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: (i) correctly explain all transactions; (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

177. The legal provisions requiring relevant entities and arrangements to keep accounting records are found in the tax legislation as well as in specific accounting legislation.

***General requirements** (ToR A.2.1)**; Underlying documentation** (ToR A.2.2)**; 5-year retention standard** (ToR A.2.3)*

Tax law

178. Under the Tax Code, any taxpayer is required to submit to a tax authority tax returns, calculations, and accounting documents, according to the rule determined by the legislation of Georgia (Tax Code, Art. 43(1) I). Accounting documentation is defined as "primary documents (including, primary taxation documents), accounting registers, and other documents, on the basis of which taxable objects, objects connected to taxation are determined and tax liabilities are established" (Tax Code, Art. 2(22)). Income tax and profit tax in Georgia are paid by residents of Georgia on the basis of the "taxable object", which is defined as the difference between gross income received during a calendar year and the amounts of the deductions envisaged under this Code for such period (Tax Code, Art. 80 and 97).

179. Under the Tax Code, any taxpayer is required to record incomes and expenditures accurately and timely on the basis of documented information (Tax Code, Art. 136(1)). Taxpayers are also required to completely record all transactions related to their activity, in order to guarantee control over their commencement, implementation, and completion (Tax Code, Art. 136(3)). The meaning of the word "transaction" used in the Tax Code has the meaning as it is defined under Article 50 of the Civil Code: "[a] transaction is a unilateral, bilateral or multilateral declaration of intent aimed at creating, changing or terminating legal relations". Accordingly, transaction refers not only to financial operations but also to any agreement concluded by the parties on the basis of the Civil Code. Moreover, taxpayers must enter in inventory holdings processed or semi-processed goods owned thereof, regardless of location thereof, namely, raw materials and/or materials (other than costs subject to capitalisation) which have been acquired for subsequent sale or the production of goods/ rendering of services (Tax Code, Art. 145(1)). When accounting for the inventory holdings, a taxpayer shall be obligated to include in the bookkeeping the cost of produced or purchased goods at the value of the costs incurred on the production (other than depreciation expenses) or acquisition of such goods (Tax Code, Art. 145(1)). When determining profit and loss, the value of assets shall include the costs (expenditures) of acquisition, production, construction, assembly, and installation, as well as other costs (expenditures) that increase value thereof, with the exception of the costs (expenditures) which a taxpayer is entitled to deduct directly, and in case of receiving such assets gratuitously, market value of such assets (Tax Code, Art. 148).

180. Under Article 43(1)(f) of the Tax Code, taxpayers must keep accounting records for six years.

181. There are penalties envisaged under the Tax Code that would ensure the keeping of accounting information. A person's illegal action (action or omission) for which responsibility is envisaged under the Tax Code shall be considered a tax offence (Tax Code, Art. 269(1)). If a person breaches the deadline established under the tax legislation of Georgia for the submission of tax declaration/calculation to a tax body, the person shall be subject to fine in the amount of 5 percent of the amount charged for payment on the basis of such return/calculation for each month of delay (Tax Code, Art. 274). If a taxpayer understates a tax amount in a tax return/calculation, the taxpayer shall be subject to a fine in the amount of 50 percent of the under-declared tax amount (Tax Code, Art. 275(2)). Understatement of tax amount by more than GEL 50 000 (approximately EUR 18 890) by a person in a tax return, shall be considered the avoidance of a large amount of tax and be subject to the responsibility in accordance with the Criminal Law of Georgia (Tax Code, Art. 275(3)). The failure to submit accounting documents upon request of the tax authority is subject to a fine of GEL 400 (approximately EUR 151), and, if the action is repeated, the taxpayer will be subject to fine in the amount of GEL 1 000 (approximately EUR 377) for each subsequent repeated action (Tax Code, Art. 279). The failure of a person to fulfil the obligation stipulated under this Code, for which there is a responsibility envisaged under the same Code, but the amount of the fine has not been determined, a person shall be subject to the fine in the amount of GEL 100 (approximately EUR 37) (Tax Code, Art. 291).

182. A taxpayer is defined as a person who has the liability to pay a tax set forth under the Tax Code (Tax Code Art. 20(1)). A tax liability shall be a person's obligation to pay a tax prescribed under this Code, as well those introduced by a representative body of local self-government (Art. 53(1)). The obligations to keep accounting records and underlying documentation generally apply to all taxpayers, including civil law partnerships (which must register for tax purposes, see section A.1.4 above). This would include those persons who benefit from certain tax exemptions under the Tax Code (see Introduction above). For example, International Financial Companies, Special Trade Companies, and Free Industrial Zone enterprises must abide by the accounting rules set forth by the Tax Code and described above.

Specific accounting legislation

183. Georgia has adopted the International Financial Reporting Standards (previously the International Accounting Standards) as promulgated by the International Accounting Standards Committee. In 1999 Georgia passed the Law on Financial Accounting and Reporting recognising International Accounting Standards (Art. 3) and establishing that a legal entity of private law (except a small enterprise and a non-commercial legal entity) is obligated to carry out financial accounting and reporting in accordance with

International Accounting Standards and the Provisional Accounting Standards (Art. 10). Provisional Accounting Standards are "provisional accounting regulations approved by the Accounting Standards Commission operating at the Parliament of Georgia; these regulations are designated for those accounting entities whose financial accounting and reporting stand beyond governance of Georgian Legislation and International Accounting Standards (Law on Financial Accounting and Reporting, Art. 2I). The Georgian authorities have indicated that these entities are small enterprises and non-commercial legal entities. There are no penalties in the Law on Financial Accounting and Reporting for violations of the accounting obligations.

184. In 2012, a new Law on Accounting and Auditing Financial Statements (LAAFS) was passed with the purpose of defining the legal framework for accounting, preparation and submission of financial statements and the rules and conditions for auditing financial statements (Art. 1(2)). Pursuant to this law, accounting shall meet the accounting standards (Art. 3(1)). The IFRS and IFRS for small and medium enterprises (SMEs) shall be translated into Georgian and published by the Accountants Association, and the Georgian version will be the mandatory version (Art. 2(10) and 2(12)). The LAAFS is generally in effect from 2012, but the accounting standards that it sets forth (IFRS and IFRS for SME) entered into force from 1 January 2015. Prior to that date, accounting standards were set by the Law on Financial Accounting and Reporting from 1999.

185. Pursuant to the LAAFS, entities subject to supervision of the National Bank of Georgia who are obliged to have audit done on an annual basis as well as those enterprises that meet the criteria set by the Government of Georgia must perform accounting in accordance with the IFRS. Small and medium enterprises, defined as those enterprises not meeting the criteria set for micro enterprise under the Tax Code, must perform accounting according to the IFRS for SME. Micro-enterprises, defined as those enterprises having the status of micro business, small business, or fixed taxpayer under the Tax Code, are not obliged to perform accounting under the Law on Accounting and Auditing Financial Statements. Legal entities of the private law, other than entrepreneurial legal entities, shall perform accounting in accordance with local (national) financial reporting standards for non-entrepreneur (non-profit) legal entities if not provided otherwise in the legislation (Art. 4). Pursuant to Article 4(12) of the LAAFS, entities are obliged to keep accounting records for six years following the respective reporting date, except for cases specified by the Georgian legislation.

186. International Financial Reporting Standards require all relevant entities to keep accounting records to the standard. The Georgian authorities have confirmed that any arrangements established for generating profit, pursuing business activity must:

- accurately explain the company transactions (cash flow statement);

- at any time allow to determine financial position of the company with a reasonable accuracy (Income Statement);
- be able to prepare financial statements at any time (memorial orders, electronic form of accounting records, documents of strict registration);
- keep basic documents such as consignments, agreements.

187. Auditing is compulsory once a year for entities subject to supervision of the National Bank of Georgia and other entities that meet the criteria set by the Government of Georgia, and in other cases specified by the Georgian legislation (LAAFS, Art. 7). The Georgian authorities have indicated that so far no criteria have been set by the government, nor are there any cases specified by Georgian legislation.

188. The LAAFS establishes that violation of the present law requirements shall entail liability defined under article 13, unless other liability is defined for such action (action or inactivity) in accordance with the respective legislation (LAAFS, Art. 13(1)). The liabilities envisaged by article 13 of the LAAFS refer only to violations of the requirement on certain entities to be audited once a year: penalties in the amount of GEL 10 000 (approximately EUR 3 778) can be imposed if such entities fail to do so (LAAFS, Art. 13(2)). These entities – defined by article 7(b and c) of the LAAFS – do not generally cover tax exempt entities. There are no other specific penalties under the LAAFS for failure to maintain accounting records in accordance with the law. Penalty provisions for failure to keep accounting information to the standard are nonetheless provided for in the tax legislation (see above).

Accounting records in practice

189. All companies and partnerships (with exception of small and micro business enterprises (SMBEs) with a turnover below certain amount and which have obtained a SMBE certificate as described in detail below) have to file tax returns and maintain accounting records and underlying documentation.

190. Tax returns contain some accounting information, including details on the taxpayer’s income and therefore this information will be available in the hands of the Revenue Service. The Taxpayer Service Division verifies the completeness of the tax returns; if financial and accounting information is not enclosed or is incomplete (where required), the taxpayer is called upon to remedy this failure. Georgia officials added that in practice it does not happen that the taxpayers would not enclose the obligatory tax return annexes.

191. Companies with a turnover above GEL 5 000 000 (EUR 1 889 000) are obliged to submit detailed information on their income in the tax returns

to the Revenue Service annually and approximately 2 000 commercial entities are subject to this obligation. Companies with a turnover below GEL 5 000 000 (EUR 1 889 000) are obliged to submit tax returns with information on their income, but the applicable form is less detailed than the one for companies with a turnover above GEL 5 000 000.

192. In relation to SMBEs, companies wishing to obtain such status need to apply for a certificate at the Revenue Service. The Taxpayer Service Division within the Revenue Service is in charge to issue the SMBEs certificate and monitoring the compliance of SMBEs with their tax obligations. There are two different types of SMBEs certificates: (i) a micro business certificate, for business with a turnover below GEL 30 000 (EUR 11 363) and with an inventory below GEL 45 000 (EUR 17 045), which can only be assigned to physical persons (as at April 2015 there were 35 870 registered micro business); and (ii) a small business certificate, for business with a turnover below GEL 100 000 (EUR 37 780) and with an inventory below GEL 150 000 (EUR 56 818) (as at April 2015, there were 38 736 small business registered in Georgia). Small businesses can opt for a simplified tax method consisting of a fixed tax rate of five percent over the total turnover or they could choose to comply with the ordinary income tax regime. In case a small business maintains all accounting records and can prove that its expenses exceed 60% of its turnover, it is entitled to pay a tax of 3% over the total turnover. When choosing the simplified tax method the micro business does not need to keep accounting records nor underlying documentation. Small business enterprises are obliged to keep every document issued by/for them and to use cash register machines. If a small business opts for paying its taxes according to the ordinary tax regime, it must maintain the accounting records and all the underlying documentation.

193. Persons classified as SMBEs have to notify the Taxpayer Service Division when their turnover has exceeded the threshold, and pay their taxes according to the ordinary tax regime. The tax authorities may conduct tax control measures on SMBEs and determine their income by indirect methods (Art 95, Tax Code). There have been 49 cases in 2014 and 51 cases in 2015 (as at 15 December 2015) where the Taxpayer Service Division identified that taxpayers with SMBEs certificates failed to notify when their turnover exceeded the threshold. Those cases were identified by crosschecking the VAT registration or withholding tax returns. Taxpayers have been sanctioned by a pecuniary penalty in the amount of GEL 500 (EUR 188) and the certificates were cancelled.

194. The Risk Management Division of the Revenue Service, as a part of its risk management programme, verifies the consistency of the information contained in the tax return and its annexes. Further, the Revenue Service could request information regarding, for instance, contracts, invoices and

other underlying documentation from the taxpayers and third parties. As an enforcement measure, the taxpayers can be fined and their files can be seized.

195. Although some accounting information is available within the database of the Revenue Service (e.g. income, expenses, assets, equity and liabilities that are filed with the tax returns), at the commencement of a tax audit, auditors request accounting information from the taxpayer. Most of the tax audits are comprehensive, covering different types of taxes. Audits are conducted by 10 audit divisions throughout the country; each division comprised of 25 to 30 auditors. Audits are normally conducted within a period of three months. The statistics concerning the number of audits conducted by the Revenue Service during the years under review, the amount of tax penalties collected as a result of the audits are included below:

Year	Number of audits performed	Outcomes of Audits Performed – Amount of imposed penalties
2011	1 680	GEL 218 979 122 (EUR 82 946 637)
2012	2 522	GEL 93 099 914 (EUR 35 265 118)
2013	2 801	GEL 86 359 914 (EUR 32 712 088)
2014	3 127	GEL 195 076 078 (EUR 73 892 453)

196. In practice, the Georgian authorities reported that the great majority of taxpayers keep accounting records (almost 90% of small and medium companies and more than 99% of large companies). Notwithstanding the above, tax audits have identified unreported income and penalties have been applied over the under-declared tax amounts. Tax audits in the period 2011-14 resulted in more than GEL 593 515 028 (EUR 224 816 298) in penalties applied.

197. In practice, when an entity fails to keep accounting records in Georgia, the penalty is provided under Article 279 of the Tax Code (in the amount of GEL 400 (EUR 151) for a first infraction and GEL 1 000 (EUR 377) for each repeated infraction) has been applied during the period under review. The table below shows the application of the above-referenced penalty in years 2011 to 2014.

Year	Failure to submit information to a tax agent (Art. 279) Number of cases sanctioned
2011	197
2012	221
2013	400
2014	415

198. In such cases, in additional to request the taxpayer to provide records, the Revenue Service investigates the case and mostly through a tax audit and uses indirect method to determine the tax due, where the case requires (for example by estimating the income derived from the amount of consumption of raw materials and/or the comparison with similar businesses.

199. Banking and non-banking financial institutions (excluding currency exchange bureaus), must prepare audited financial statements and submit these annually to the National Bank of Georgia. The financial statements must be submitted in a printed standardised one-page form. In the case of banks, the National Bank of Georgia requires that the financial statements are prepared by accounting firms authorised by the Federation of Accountant and Auditor Professionals and the filing of complete financial statements is also required. Officials from the National Bank have informed that the rate of compliance is very high and that during the review period only four sanctions in form of written warning were imposed for not submitting or submitting late the financial statements.

200. Accountants and accounting firms authorised by the Federation of Accountant and Auditor Professionals are the sole persons who can audit financial statements in Georgia. 90% of accounting firms and accountants in Georgia are affiliated to the Georgian Federation of Accountant and Auditor Professionals. The Federation conducts periodical reviews of the accounting and audit services provided by members and whether they comply with the international standards. The Audit Regulating Committee of the Federation, created in 2013, is in charge of field reviews which are conducted using a questionnaire. The Committee is a permanent body with seven members, three of them responsible for conducting the quality reviews. From December 2014 to June 2015 five reviews were conducted. Although disciplinary sanctions such as cancellation of the memberships could be imposed in case of infringements, no sanctions have been applied to date.

Conclusion

201. Accounting records are established under the tax legislation and specific accounting legislation. Accounting obligations under the Tax Code require the maintenance of full accounting records and documentation, for at least six years, and appropriate penalties are in place. Specific accounting legislation requires all entities to keep accounting records for six years according to the International Financial Reporting Standards, which are binding in Georgia. International Financial Reporting Standards require all relevant entities to keep accounting records that correctly explain all transactions, enable the financial position of the entity to be determined, allow financial statements to be prepared, and would include the maintenance of underlying documentation.

202. Georgia has reported that largely it has not found any problems in practice with taxpayers maintaining accounting records. During the review period, Georgia received 25 inquiries to provide different types of accounting information and underlying documentation about Georgian LLCs, joint stock companies, partnerships and individuals. This included agreements, invoices, accounting records, information about accounts receivable and payable, assets and liabilities. There has been no case where the Revenue Service was not able to provide the accounting information required. Inputs received from Georgia's peers noted that Georgia has been able to provide the requested accounting records.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

A.3. Banking information

Banking information should be available for all account-holders.

203. Access to banking information is of interest to the tax administration when the bank has useful and reliable information about its customers' identity and the nature and amount of their financial transactions.

204. Commercial banking is regulated by the Law on Activities of Commercial Banking (LCB), as well as other laws. Carrying on the business of commercial banking is a regulated activity in Georgia, for which a banking license has to be granted by the National Bank of Georgia (which is also the supervisory authority) (LCB, Art. 2). Commercial banks can only carry out the activities established in Article 20 of the LCB, which include receiving interest-bearing and interest-free deposits, extending consumer loans, mortgage loans and other credits, brokerage services on financial market, trust operations on behalf of clients, attraction and placement of funds. Banks in Georgia must be established under the form of JSCs. As of June 2015, there were 21 banks operating in Georgia.

205. Article 71(1)(a) of the Tax Code provides that banks cannot open a bank account of an entrepreneur (individual or organisation) without documents that prove the registration of the taxpayer with the tax administration. Banks must notify the tax authority within three business days in case these taxpayers attempt to open a bank account (Art. 71(1)(c)). When opening a

bank account for the first time for a foreign enterprise or closing of the last account for such enterprise banks must notify the Revenue Service about the abovementioned within three business days and cannot perform payment transactions from the account of the foreign enterprise until the receipt of this information by the Revenue Service (Art. 71(1)(b)). The tax administration can conclude agreements with commercial banks for the electronic exchange of information. If the bank fails to require the submission of a taxpayer's identification code before opening a bank account, the bank will be subject to a fine in the amount of 10 percent of all the payment transactions effected from the accounts of a taxpayer, but by not less than GEL 500 (approximately EUR 188) (Tax Code, Art. 283(3)). A bank which fails to submit information to the tax authority within the established timeframe about the initial opening of banking accounts to a taxpayer or closing the last account of such taxpayer is subject to fine in the amount of GEL 300 (approximately EUR 113) for each account (Tax Code, Art. 283(4)).

206. Pursuant to Article 43(2) of the Tax Code, a Georgian enterprise, Georgian organisation and an individual entrepreneur are obligated to submit to the tax authority information about the opening of bank accounts (other than deposit or savings accounts) outside Georgia within five business days from the opening of such accounts. A person failing to submit this information will be subject to a fine of GEL 400 (approximately EUR 151), and to GEL 1 000 (approximately EUR 377) for any repeated such failure (Tax Code, Art. 279(1-2)).

Record-keeping requirements *(ToR A.3.1)*

207. Banks must know the identity of the client. The LCB establishes that commercial banks shall perform account opening procedure according to the AML Law (Art. 21-1). Pursuant to Article 6(9) of the AML Law, financial institutions are prohibited from opening or maintaining anonymous accounts or accounts in fictitious names. The bank must identify the customer when the amount of a transaction[15] exceeds GEL 3 000 (approximately EUR 1 133), doubts arise regarding the veracity or adequacy of previously obtained client identification data, and this transaction is suspicious (AML Law, Art. 6(1)). The identification and verification of each client as well as its beneficial owner and obtaining of other information as it is defined by this Article,

15. Georgian equivalent of the word "transaction" used in the AML Law has the meaning as it is defined under Article 50 of the Civil Code: "[a] transaction is a unilateral, bilateral or multilateral declaration of intent aimed at creating, changing or terminating legal relations". Accordingly, transaction refers not only to financial operations but also to any agreement concluded by the parties, including opening a bank account.

shall take place before carrying out of a transaction or opening of an account (AML Law, Art. 6(14)). In any case, in the course of business relations with their customers and verification of transactions implemented by them, commercial banks are required to know the identity and activities of customers as well as the risk level of such activity with respect to illicit income legalisation and terrorism financing (LCB, Art. 21-1(1)).

208. All transactions must be recorded by banks. Pursuant to Article 23 of the LCB, commercial banks shall retain on file all pertinent documentation supporting each of their transactions for periods prescribed by the National Bank, namely: applications and all contractual documents pertaining to the transaction (including credit, guarantee and collateral agreements); the financial records of banks partners (including borrowers and guarantors), and any other documentary evidence, on which the bank relied in approving the transaction; the signed written record of the bank's decision approving the transaction; other documents as the National Bank may specify by regulation. Banks are required to keep any information regarding customers and their operations in electronic format for 15 years. Under the AML Law, banks and financial institutions must record and retain information on transactions that exceeds GEL 3 000 (approximately EUR 1 133), when doubts arise regarding the veracity or adequacy of previously obtained client identification data, and the transaction is suspicious, in particular: content of the transaction (operation); date and place of conclusion of a transaction, identification documentation of the client, of the person for whom the transaction is carried out, and of third parties if any (AML Law, Art. 6(6)).

209. The supervisory authority of commercial banks is the National Bank of Georgia (AML Law, Art. 4). The National Bank of Georgia is authorised to impose sanctions and enforcement measures with respect to banks if it discovers any violations of the requirements on banks imposed by the LCB, the AML Law and any other regulation, instruction, rule, decree, order or written guidelines of the National Bank (LCB, Art. 30(2)). The President of the National Bank has issued Order No. 242/01 of 2009 "On Defining and Imposing of Monetary Penalties on Commercial Banks". Order No. 242/01 establishes that, in the event of violations of the AML requirements related to identification of persons and of information recording, banks are subject to a fine of GEL 1 000 (approximately EUR 377) for each violation (Order No. 242/01, Art. 2(8)(c) and Art. 2(8)(d)). The National Bank is entitled to use additional sanctions if the bank has not repaired to the violation, or if it considers that the risk of the violation is particularly serious (Order No. 242/01 Art. 2(9) and Art. 2(10)). The National Bank must inform the Financial Monitoring Service in case of violations of the AML Law (AML Law, Art. 11).

Availability of banking information in practice

210. The legal obligations to maintain banking information, both pursuant to the licensing requirements established under the LCB regulations, as well as the AML obligations imposed under the AML Law, ensure that banking information is available in practice. The National Bank is responsible for monitoring the banking industry. The National Bank's Inspection and Supervision Department has a comprehensive monitoring programme of the banking sector and conducts both on-site and off-site inspections annually on banks. In regard to off-site inspections, the Off-site Inspection Unit prepares the risk assessment programme and assigns the audits to the On-site Inspection Units. Starting from 1 July 2015, all commercial banks were required to fill in a risk matrix containing a variety of information regarding their operations (e.g. type of clients and type and amount of transactions). This information must be submitted twice a year and will be the basis for preparing the risk programme.

211. The aim of the AML on-site inspection is generally to verify the operation and effectiveness of the AML system. The 15 inspectors in the On-site inspection Unit especially check the compliance of the examined entity's system with the AML related legislation, such as the entity's ability to identify and analyze suspicious transactions. Currently, all banks in Georgia are inspected at least once every three years. Where certain risk is identified, the National Bank's Inspection and Supervision Department is able to perform on-site inspections more frequently. Officials from the National Bank of Georgia informed that Georgia is in a process of restructuring the Inspection and Supervision Department and is hiring additional staff in order increase the number of inspections. Its target is to conduct from one to two on-site inspections per year per bank in the case of banks representing higher risks and one inspection every two years for medium and low risk banks. The risk assessment is determined in accordance with the risk matrix developed by the National Bank and filled in by banks twice a year.

212. From 1 January 2011 to 31 December 2014, the total number of AML specific on-site inspections conducted on banks was 25 (six in 2011, three in 2012, ten in 2013 and six in 2014). In the years under review the total amount of AML specific fines imposed by the National Bank of Georgia on banks was EUR 658 666. In addition to the monetary fines the Inspection and Supervision Department applies other type of sanctions, such as written warnings and instructions. Nineteen written warnings to banks were issued during the review period and one manager was removed from his/her functions. The AML monetary sanctions imposed by the National Bank of Georgia by year are as follows:

	2011	2012	2013	2014
Number of banks operating in Georgia	21	21	21	21
Number of banks inspected	6	3	10	6
Number of monetary sanctions imposed	6	3	9	6
Amount of sanctions in EUR	144 193	152 535	284 696	77 242

213. The most common form of non-compliance identified by the National Bank of Georgia deals with failure to submit or delays in the submission of information to the Financial Monitoring Service, non-keeping of copies of the documents and breaching the know-your-customer obligations.

214. When a Georgian taxpayer with an economic (entrepreneurial) activity opens an account, banks have to provide the account number to the Revenue Service within three business days. In practice, this obligation is monitored by the Revenue Service Division. Auditors from the Audit Division, when auditing a taxpayer require taxpayers to disclose their banks accounts and this is compared with the information submitted by the banks.

215. In practice, the Revenue Service of Georgia has received 38 EOI requests which contained 28 inquiries for banking information during the review period. Information requested concerned the bank account number, information about means of payment (bank transfers), and information concerning bank transactions of particular taxpayers. There have been no cases where the Revenue Service was not able to obtain and provide the banking information required and no peer has reported that Georgia was unable to provide the requested information during the review period.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

B. Access to information

Overview

216. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Georgia's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

217. The authority competent to collect information and reply to an exchange of information (EOI) request is the Department for Administration of the Revenue Service, within the Ministry of Finance.

218. Some information is held by the authorities, and it is readily accessible to the competent authority. When the information is sought from persons, the Tax Code empowers the competent authority to obtain information directly from taxpayers and/or to perform audit in respect of any person. These access powers are enforced through penalties provided in the Tax Code. In practice, Georgia's competent authority has been able to gather information from taxpayers to respond to exchange of information requests. Moreover, Georgia's Revenue Service maintains a comprehensive database to which the competent authority has direct access. In a number of instances, the competent authority could gather the information requested by its treaty partners in such database.

219. Since December 2014, the powers to obtain information for EOI purposes are explicitly provided for in the Tax Code. Even though previously there was no explicit provision on the use of access powers for EOI, a number of provisions related to the incorporation of international agreements into Georgian law ensured that the access powers for domestic purposes could be

extended for EOI purposes. In practice, Georgia was able to gather information for EOI even when a domestic tax interest was absent.

220. Secrecy provisions in the law do not generally hinder the exchange of information in respect of information held by the authorities and accountants. With regard to banking secrecy, however, prior to December 2014, the lack of an explicit exception in the banking law for disclosure to the tax authorities left some uncertainty in the application of the laws that affected effective exchange of information. In practice, in the one instance the Georgian competent authority attempted to gather banking information directly from a bank in Georgia, the bank refused to provide the information on the basis that it was protected by secrecy. Georgia has since then amended its legislation to explicitly provide for powers to the competent authority to access banking information via a court procedure in order to reply to EOI requests. Those powers have been successfully exercised in practice in order to reply to the request mentioned above. Georgia is recommended to monitor the implementation of the new procedure to access banking information to ensure that this procedure allows it to effective exchange information in practice.

221. The scope of professional secrecy attaching to advocates and accountants is broader than that established in the international standard of exchange of information.

222. The rights and safeguards that apply to persons in Georgia are compatible with effective exchange of information. The Georgian legislation does not require the tax agency to notify the person who is the subject of an EOI request. The Tax Code protects the legal rights and interests of taxpayers, which include the right to challenge any decision made by the tax authority. When a tax audit is started, the tax authorities are required to inform the taxpayer who is the subject of an audit, unless a "special field audit" is activated. In practice, the rights and safeguards that apply in Georgia have not restricted or delayed an answer to an EOI request.

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).

223. The authority competent to exchange of information (EOI) on request is the Department for Administration of the Revenue Service (Decree No. 20565 11/04/2014). Within the Department of Administration of the Revenue Service, the Tax Risk Management Division (TRMD) is in charge of collecting and sending information in response to requests from Georgia's treaty partners.

Ownership and identity information (ToR B.1.1) *and Accounting records* (ToR B.1.2)

224. Some information is held by the authorities – including ownership information on limited-liability companies, foreign companies, co-operatives, limited partnerships, and civil law partnerships, as well as some accounting information provided with the tax return (see sections A.1 and A.2 above) – and it is readily accessible to the competent authority. When the information is sought from persons, the Tax Code empowers the competent authority to obtain information directly from taxpayers and/or to perform audit in respect of any person.

225. Updated ownership information of LLCs, co-operatives and limited partnerships is held by the NAPR in the Register of Entrepreneurial and Non-Entrepreneurial (Non-Profit) Legal Entities. This information is transmitted to the tax authorities (see section A.1.1 above). In addition, the tax authorities can obtain information, documents, and other necessary information from state and local self-government bodies, including the NAPR, pursuant to article 49(1)(k) of the Tax Code. The tax authorities hold ownership information on all types of partnerships as well as the accounting documents that must be submitted by taxpayers pursuant to the tax legislation. The tax authorities have also information on the bank accounts opened and closed in Georgia by entrepreneurs and enterprises as well as of foreign enterprises.

226. The competent authority can obtain information from taxpayers in Georgia, through the powers granted established in the Tax Code. Article 49 of the Tax Code provides that tax authorities, within the scope of their competence, and according to the rule established under the legislation of Georgia, are entitled to:

- audit financial documents, accounting book, account, budget, funds, securities and other valuables, calculations, returns/declarations, other documents of calculation, and payment of taxes;
- obtain from a taxpayer and/or representative thereof documents related to the calculation and payment of taxes, as well as written and verbal explanations with regard to the issues emerged during tax audit;
- examine production, warehouse, trade and other receptacles of enterprises, organisations and entrepreneur individuals;
- call a taxpayer to come to a tax authority (instead of him/her his/her legal or authorised representative can appear, who has accounting documents and/or information related to the taxation of a taxpayer).

227. In addition to the powers granted in article 49 of the Tax Code, until December 2014, article 70 (1) established that an authorised official of the tax authority was entitled to: "require a taxpayer to submit in hard copy or electronically accounting documents and/or information related to taxation. In such case, the listing of accounting documents and/or information related to taxation to be submitted and reasonable timeframe of submission thereof shall be indicated in a notice."

228. Georgia amended Article 70 (1) of the Tax Code to establish an explicit right to request information for EOI purposes on 12 December 2014, which allows a tax authority to request persons: "to provide accounting documents and/or taxation-related information (including information requested by another state's competent (authorised) body on the basis of an international agreement to which Georgia is a part)". Specific powers to collect banking information for EOI purposes were provided in Article 70 (3) of the Tax Code, as further analysed in the section on *Banking Information* below.

229. Article 255(1) of the Tax Code provides that the tax authorities can conduct tax control procedures with respect to any person, unless prescribed otherwise by the tax legislation of Georgia. A tax control is activated with an order issued by an authorised person of a tax agency or with a judicial warrant in the cases envisaged explicitly under the Tax Code (Art. 255(5)). Tax control can take the form of "tax audit". A tax audit cannot be repeated on the same period of the already audited matter of a person's activity without a judicial warrant, with the exception of those matters according to which a person submits an adjusted tax return for an already audited period. Until 2013, the time of limitation for a taxpayer's audit was six years unless provided otherwise in the Tax Code (Art. 4(5)). The time limitation has been gradually reduced - i.e. to five years in 2014 and four years in 2015 – and will be three years from 2016 onwards. However, the shortening of the audit period does not affect the record keeping period in relation to accounting records and underlying documentation. Furthermore, Georgia is able to impose fines to taxpayers pursuant to article 279 of the Tax Code in the case when they fail to submit information in response to Georgian authorities' requests even though the requests are for the period out of the scope of the audit if they are within the record retention period (six years). The Georgian authorities have indicated that they would activate a tax control procedures in order to obtain information for EOI purposes only in the case where information holders fail to respond a notice from the Revenue Service; otherwise they usually rely on articles 49 and 70 of the Tax Code (see above). Therefore, Georgian authorities advised that the shortening of the time limitation for a taxpayer's audit should not have an impact on the collecting information for EOI purpose as in practice other legal provisions are used for accessing information for EOI, in particular article 70 of the Tax Code.

230. There are two types of tax audit: desk and field. A desk tax audit is performed without visiting the place of business of an entity, on the basis of the information at the tax agency related to the taxation of a person, as well as the explanations and accounting documents received from a taxpayer (Tax Code, Art. 263). When carrying out a desk tax audit, the tax agency is entitled under the rule prescribed by the Tax Code to require the submission of accounting documents and/or information related to taxation.

231. A field audit can be performed on the basis of a decision of an authorised person of a tax agency, and a written or electronic notice must be sent to the taxpayer at least ten days prior to the commencement of the audit (Tax Code, Art. 264). In the course of a field tax audit, the taxpayer is required to create for the auditors the same working conditions like those the taxpayer usually has at its premises. An authorised person of a tax agency is authorised to require copies of the accounting documents related to a tax liability and/or a copy of the information related to taxation verified according to a relevant rule, and in case a taxpayer fails to fulfil the mentioned requirement, a person authorised by the tax agency can seize the original of the mentioned document.

Ability to gather information from all persons

232. The Georgian tax administration can collect information from taxpayers under articles 49 and 70 of the Tax Code. A taxpayer is defined as a person who has the liability to pay a tax set forth under the Tax Code (Tax Code Art. 20(1)). A tax agent is a person who must fulfil a taxpayer's tax liability in case prescribed under this Code and according to the established rule (Tax Code, Art. 20(2)). A tax liability shall be a person's obligation to pay a tax prescribed under this Code, as well as that prescribed under this Code and introduced by a representative body of local self-government (Art. 53(1)). A person becomes liable for tax obligations from the instance of the emergence of the circumstances prescribed under the tax legislation of Georgia that envisage the payment of a tax. The taxes listed in the Tax Code are: income tax, profit tax, value added tax, excise tax, import tax, property tax, as well as other local taxes introduced by a local self-government (Art. 6).

233. Virtually all persons residing or conducting commercial activities in Georgia will fall within the definition of Georgian taxpayer. Furthermore, tax audits could be activated for EOI purposes in respect of any person under articles 255 and 262-268 of the Tax Code regardless of whether they are taxpayers.

Banking information

234. Bank secrecy is provided in Georgia in article 17 of the Law on Activities of Commercial Banking (LCB). Until 31 December 2014, Georgia relied on its general access powers under article 70 of the Tax Code and the status of international tax treaties in Georgia to access banking information for EOI purposes.

235. In the Phase 1 report of Georgia, a recommendation was given concerning the lack of an explicit exception in the banking law for disclosure of information to the tax authorities, which was considered to leave some uncertainty in the application of the laws that may affect effective exchange of information. Georgia was recommended to ensure that the absence of an explicit exception to the confidentiality rules in the LCB did not inhibit effective exchange of information.

236. On 12 December 2014, Georgia amended its Tax Code to explicitly provide its tax authority with powers to access banking information for EOI purposes. Article 70(3) introduced a court procedure for the tax authority to obtain banking information from financial institutions for EOI purposes and the Administrative Procedures Code of Georgia (APC) has also been amended concurrently to provide details of the court procedure applicable in this case. Moreover, the banking law has been amended to explicitly provide for an exception to bank secrecy when a request by the tax authority on the basis of a court order issues pursuant to the special court procedure established under the APC.

237. Pursuant to Article 21[49] of the APC, as amended by the Law of Georgia on amendment to the Administrative Procedures Code of Georgia (No. 4716-RC) of 24 December 2015, in order to obtain a court order for the collection of banking information from a bank, the Revenue Service must submit a solicitation to the regional court. The solicitation must contain:

i. the identity information of the person, in respect of whom information is requested by the tax authority;

ii. the name of the commercial bank, which shall provide information;

iii. description of the information, which is requested by the tax authority;

iv. forms and time limits for receipt of information set out by is the tax authority; and

v. a statement from the Revenue Service indicating that the EOI request received complies with the requirements of the relevant international treaty entered into with Georgia (APC, Art. 2149).

238. The court must then issue an order on the basis of the solicitation within 14 days from the date of solicitation (APC, Art. 2150). If the court agrees with the solicitation, the order will contain the following information: (a) the date and the place of drafting the order; (b) the surname of the judge issuing the order; (c) the Georgian tax authority, applying for solicitation; (d) the commercial bank, providing confidential information of person to tax authority; and (e) form and time limits for provision of information. No reference to the EOI request or requesting competent authority is contained in the court order. The Revenue Service has indicated that the financial institutions are generally required to provide information within ten working days after the solicitation is sent to them.

239. The judge order shall be made in three copies. One copy shall be sent to an applying tax authority, another copy shall be sent to commercial bank and the other copy shall be retained in the court. There are no appeal rights provided to the commercial bank or the account holder under the court procedure (APC, Art. 21^{50}).

240. The judge shall grant the solicitation if all the information required by Article 21^{49} is contained in the solicitation (APC, Art. 21^{50}(3)). If the solicitation is not granted, the court decision will indicate the reasons for not granting such a solicitation. The order will include a "decree on non-satisfaction of the solicitation". The tax authority may make a complaint for dismissal of the order within 48 hours from the receipt of the order. In those cases, the judge immediately sends the order and attached materials to court of appeals. The court of appeals must examine the appeal within 10 days from the date of submission. The order of the court of appeals is final (APC, Art. 21^{50}).

241. It is noted that Article 21^{49} of the APC, as provided in the 12 December 2014 APC amendment required that the Georgian tax authority always specified the *name and identity* of the account holder concerned in its solicitation to the court and no exceptions were provided. While there was no requirement that all EOI requests sent to Georgia by its treaty partners can only be processed if they contained the name of the person concerned, Georgia did not have powers in all cases to obtain this information pursuant to its domestic laws. Accordingly, it was not clear that the Georgian competent authority would have been able to submit a solicitation to the regional court and obtain the banking information in all cases. In some cases, Georgia could obtain the name based on the identity information provided by the requesting jurisdictions. Moreover, the Georgian authorities do receive information from commercial banks on an automatic basis concerning the opening of bank accounts by entrepreneurs (Article 71 of the Tax Code) and the authorities could, therefore, use this database to identify the name of the account holder concerned if he or she is an entrepreneur.

242. Under the international standard, an EOI request must contain "the identity of the person under examination or investigation" – however, this does not necessarily need to be the name or the address of that person.

243. In 24 December 2015, Article 21[49] of the APC was amended to provide that the Georgian tax authority needs to provide information on the *identity* of the account holder concerned in its solicitation to the court (instead of "the name and identity"). This amendment is in force and in effect since 28 December 2015.

244. Concerning the requirement to specify the name of the commercial bank in the court solicitation, the Georgian authorities advised that such a requirement does not imply that the name of the bank must always be provided by the requesting jurisdiction. In practice, the Georgian authorities consider that, in some instances, the bank can be identified by reviewing the bank account number. Moreover, the tax authority also has the possibility (in relation to entrepreneurs) to search this information in the tax database. Finally, the Georgian authorities advised that they could make multiple solicitations to the court naming different banks in order to identify which is the relevant bank. In summary, the Georgian authorities advised that the name of the bank is only required to be provided by the requesting authority, to the extent known.

Obtaining the information in practice

245. The division of the Georgian tax administration responsible for collecting and sending information in response to EOI requests is the TRMD. It has direct access to the database maintained by the tax administration and can use it to reply to EOI requests. Moreover, to access information not available at the database, the TRMD relies on others units of the Revenue Service (such as the audit unit) or other governmental agencies (such as the NAPR), as the case requires.

246. During the review period (from July 2011 to June 2014), Georgia received 38 EOI requests. The TRMD directly collected the information in about half of the cases and in relation to the remaining half of the requests, information was mainly gathered through the audit unit.

Information available with government authorities

247. The primary source of information for purposes of replying to an EOI request is the database maintained by the Georgian tax administration. The database contains a wide range of information including identity and ownership information on limited liability companies, co-operatives, limited partnerships, civil law partnerships supplied directly and automatically by

the NAPR. It also contains tax returns and other taxpayer information such as bank account numbers. The TRMD has direct access to the database and can obtain the relevant information in order to reply to EOI requests. The information obtained through the databases allows identifying the person who is the subject of the request and in some cases it is sufficient to successfully respond to EOI requests.

Collecting information (other than banking information) from taxpayers and third parties

248. When information (other than banking information) is not available with the Georgian government authorities, the TRMD will proceed to collect it from taxpayers or third parties, as the case requires. In those instances, the TRMD will rely on the audit units of the Revenue Service to collect information. They can adopt different procedures, as further described below.

249. The first procedure is to directly request the information from taxpayers or third party information holder by sending a letter using article 49 and 70 of the Tax Code mentioned earlier in this section as the basis for the request. The letter is signed by the competent authority does not specify the reasons why information is being sought, but simply lists the information requested, and provides a timeframe for the taxpayer/information holder to reply. In practice, the timeframe given is around five to 10 working days. The Revenue Service has indicated that no person has ever challenged the ability of the Revenue Service to obtain information for EOI purposes via article 70 other than one case with regard to banking information described in section B.1.5.

250. In case the information is not obtained by means of the letter as described above, the tax authority can use a second tool, which is the launch of a desk audit. The desk audit also involves the issuance of a letter by the Audit Department to the taxpayer/information holder to notify he or she of the commencement of the desk audit and to request the information - which must be provided within five working days. This letter also does not refer to the EOI request.

251. The third tool available to the tax authority is to conduct a field audit by issuing a notice at least ten days prior to its commencement. As mentioned above, desk and field audits cannot, without a judicial warrant, be repeated on the same period if the matter has already been audited. Notwithstanding the above, the Georgian authorities advised that they are able to request information for EOI purposes in relation to a period that has already been audited for domestic purposes if i) the previous audit did not cover the issue to which the request relates or; b) if the tax authorities demonstrate that there is new

information in the request which had not been known to them at the time of the previous audit.

252. Although there is another information gathering mechanism called special field tax audit which is carried on without notice, the Revenue Service indicated that there was no need for it to use this mechanism to collect information for EOI purposes as the information requested was obtained using the other information gathering mechanism mentioned above.

Banking information

253. During the review period, Georgia received 28 inquiries for banking information (in the 38 EOI requests received).

254. In terms of procedure, the TRMD first verified whether the relevant information was available at the tax database since the Revenue Service stores information on bank accounts of entrepreneur taxpayers which is provided by banks on a regular basis (please see section A.3 of this report).

255. If the information is not available at the tax database, the TRMD usually requests the audit unit to obtain it directly from taxpayers by issuing a notice on the basis of Article 70 of the Tax Code. There is no legal requirement in Georgia to request the information from the taxpayer prior to asking it from the bank, and the decision to do so was a matter of policy of the Georgian authorities.

256. If the tax authorities are not able to reach the person concerned, the Revenue Service will request the relevant financial institution to provide the requested information pursuant to article 70 of the Tax Code. During the review period, that has been the case in relation to only one request.

257. In that case, the Revenue Service attempted to collect banking information directly from a bank as the account holder concerned was a non-resident individual and the Georgian authorities could not reach him/her. When requested by the Georgian authorities, the bank refused to provide information on the basis that such information was protected by banking secrecy under 17 of the LCB and there would be no explicit exception allowing it to disclosure the information to the tax administration under the LCB. The Revenue Service decided to bring the case before the court, while simultaneously amending the Tax Code (and the APC and the LCB) to clarify its powers to access banking information directly from banks. Based on the new access powers, the Revenue Service could obtain the requested information and provide it to the requesting jurisdiction.

258. As of January 2015, the Georgian competent authority reported that its practices to access bank information from banks have changed as a result of the amendment on Tax Code along with APC on 12 December 2014. The current practice is that the Revenue Service submits a solicitation to the

regional court to obtain a court order for the collection of banking information from a bank.

259. Notwithstanding the above, it remains that the competent authority's practice is to first request banking information from taxpayers then from the banks, if the competent authority has not able to obtain it from the taxpayer. During the period under review, the Georgian competent authority accessed banking information in all but one case from taxpayers. Peer input has not highlighted concerns in this regard. Georgia advised that is in a position to access bank information directly from banks (without requesting the taxpayer first), if its EOI partner so requires.

The conclusions on the use of the powers to access information in practice

260. The EOI experience shows that Georgia's access powers have generally been sufficient to obtain and exchange the requested information. During the review period, Georgia received 38 requests for exchange of information. Georgia was able to provide answers to all requests excluding one case that they asked clarification of the request and the requesting jurisdiction did not reply to it. Peers that provided input to this review have not identified any issue regarding the ability of Georgia to collect information. Georgia's access powers to collect banking information for EOI purposes directly from the banks have been challenged in one case. Georgia has amended its legislation (see section on Banking Information above) and was able to access the banking information requested and provided the information to the requesting jurisdiction.

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

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

262. As described in section B.1.1 and B.1.2 above, the tax authorities have the powers to gather information on the basis of articles 49, 70, and 255 of the Tax Code. These provisions generally grant the tax authorities the ability to collect information for domestic tax purposes. Prior to 12 December 2014, the powers to obtain information for EOI purposes were not explicitly provided for in the Tax Code. Since then, Georgia amended article 70 of the Tax Code to explicitly state that a tax authority may request persons (including financial institutions) to provide information requested by another jurisdiction's competent authority based on an international agreement to which Georgia is a part (Tax Code, Art. 70.1.(a)). A number of provisions related to

the incorporation of international agreements into Georgian law also ensure that access powers for domestic purposes can be extended for EOI purposes.

263. The Constitution, the Law on Normative Acts, and the Tax Code include specific provisions on the integration of Georgia's international treaties into legislation, including tax legislation. Article 6 of the Constitution establishes that international treaties of Georgia take precedence over domestic normative acts unless they contradict the Constitution and the Constitutional Agreement (see Introduction above). The Law on Normative Acts specifically states that international treaties form part of the normative acts of Georgia (Art. 7(1)). The Tax Code states that if an international agreement ratified by the Parliament of Georgia and entered into legal force sets forth taxation related norms that are different from those prescribed under the tax legislation of Georgia, the norms stipulated under the international agreement shall be applicable (Art. 2(7)). The Tax Code also establishes that the tax legislation of Georgia comprises international agreements (Art. 2(1)).

264. Prior to 12 December 2014, article 70(1) of the Tax Code established that an authorised official of the tax authority is entitled to: "require a taxpayer to submit in hard copy or electronically accounting documents and/or *information related to taxation* [emphasis added]. The term "taxation" is not defined in the Tax Code, nevertheless, "tax legislation" is clearly defined in the law as including international agreements. "Information related to taxation" could then be read as to include information sought by a partner jurisdiction pursuant to an EOI request. During the period under review, the Georgian tax authorities successfully collected information for EOI purposes using the powers established in article 70 of the Tax Code (with exception to one case related to the collection of banking information described in the section above). This has been confirmed by peer input.

265. In order to explicitly confirm that Georgia's access powers can be used for EOI purposes, Article 70(1) was amended in December 2014. Moreover, Article 70(3) has been introduced to provide specific powers that allow Georgian authorities access banking information from commercial banks in Georgia by means of a court procedure for EOI purposes (as described earlier in this report). Those powers were successfully tested in practice to collect banking information in relation to one EOI request received in the review period where domestic tax interest was absent.

266. Article 49 states that the tax authorities, within the scope of their competence, and according to the rule established under the legislation of Georgia, are entitled to "obtain from a taxpayer and/or representative thereof documents related to the calculation and payment of *taxes*" [emphasis added]. The term "tax" is defined in the Tax Code as a "mandatory, unconditional financial contribution into the budget paid by a taxpayer, based on a necessary, non-equivalent and gratuitous nature of payment" and the types of tax

foreseen by the Tax Code are "national and local taxes" (Art. 6). The Georgian authorities have indicated that they would interpret the term taxes in article 49 as including foreign taxes as well because it is in their sphere of competences to implement international agreements. It should also be noted that 84 out of 102 of Georgia's EOI relationships contain provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest (see section C.1.4 below).

267. The Georgian tax authorities can also gather information when conducting audits under articles 255 and 262-268 of the Tax Code. Tax audits form part of "tax control" procedures which can be activated with an order issued by an authorised person of a tax agency or with a judicial warrant in the cases envisaged explicitly under the Tax Code (Tax Code, Art. 255(5)). Tax control is applicable to any person, and it is aimed at carrying out tax control of a person's activity (Tax Code, Art. 255(1 and 2)), and there is no specific reference to the purpose of tax audits being limited to compliance with the Code or Georgian taxes. Nevertheless, Article 267 requires, at the end of the audit, to draw up a tax audit act indicating, among others, "all those facts, evidences and justifications which had substantial importance when determining the tax liability of a taxpayer" and "the provision of the Tax Code of Georgia and/or of the sub-statutory act of tax legislation which the auditors were guided by when determining the taxpayer's tax liability." Article 268 of the Tax Code requires the tax agency to make a decision with regard to charging or not charging of taxes and/or sanctions. Similar to Article 70 of the Tax Code, the auditor has the right to require any information "related to taxation" Tax Code, Article 264). As noted above, this term could include information requested under a treaty, given the broad definition of "tax legislation". The Georgian tax administration could then activate tax audits and collect information for EOI purpose.

268. To sum up, international agreements are integrated into domestic law, whereby treaties take precedence over domestic law and form part of Georgian tax legislation. In addition, "tax legislation" includes tax treaties. Therefore, the domestic powers to access information – notably articles 70 and 255 – can be extended for EOI purposes in relation to all of Georgia's EOI treaties. In addition, 84 out of 102 101 EOI relationships contain provisions obliging Georgia to use information-gathering measures to exchange requested information without regard to a domestic tax interest. The Georgian authorities have also indicated that they have used the powers provided for under article 70 of the Tax Code to collect information for EOI purposes. Amendments introduced to the Tax Code in December 2014 have further clarified the power of the Georgian authorities to gather information for EOI purposes.

269. No issue has been raised by peers in relation to the ability of the tax authorities to obtain information absent a domestic tax interest.

Compulsory powers *(ToR B.1.4)*

270. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

271. Posing resistance to an authorised person of a tax agency ignoring his/her legitimate demand, which has resulted in the delay of the implementation of a measure envisaged under the tax legislation of Georgia, is subject to a fine of GEL 800 (approximately EUR 302). If this action is repeated, the fine will be GEL 2 000 (approximately EUR 755) for each subsequent repeated action (Tax Code, Art. 277).

272. Article 279(1) of the Tax Code specifically provides that failure to submit accounting documents and/or tax related information requested by the tax administration in conformity with Tax Code entails a penalty of GEL 400 (approximately EUR 151). If this action is committed repeatedly, a taxpayer will be subject to a fine of GEL 1 000 (approximately EUR 377) for each subsequent repeated action (Tax Code, Art. 279(2)).

273. When information holders do not comply with a request by the tax administration for provision of information sent with basis on Article 70 of the Tax Code, the fines provided in Article 279 described above may be imposed.

274. During the review period, the Georgia authorities have reported having been able to collect information for EOI purposes with the co-operation of the taxpayer/information holders involved and therefore without the need of using enforcement provisions in the great majority of cases. In one instance during the review period, however, the taxpayer did not respond to the request from the Revenue Service in time and the taxpayer was fined. The taxpayer has subsequently submitted the information requested and Georgia was able to reply to its EOI partner within 180 days from the date of receipt of the request. In another case involving a request for banking information (earlier described in the report), the Georgian tax authorities have brought the case against the bank to court. However, since the law on access to bank information had been amended in the interim, the Georgian authorities were able to collect the information in accordance to the new law through the simplified court procedure (provided under Article 21^{49} of the APC) and without needing to pursue a comprehensive court hearing.

275. The Georgian authorities reported having applied the penalties provided in Article 279 to 616 taxpayers during the review period. Those cases are mostly domestic cases (and included the one EOI-related case).

276. In relation to tax audit, in case a taxpayer fails to fulfil the requirement to provide accounting documents and copies of information related to taxation, an authorised person of the tax agency can remove the original of the mentioned document that will be returned to a taxpayer immediately upon the completion of the field tax audit (Tax Code, Art. 264(8)).

277. Article 265 of the Tax Code provides that a special field tax audit can be performed under the court permission, if:

- facts of significant violations of tax liabilities by a taxpayer have been discovered during the last tax audit;
- there is reliable information that casts doubt on the origin of financial and tangible assets of a person;
- there is reliable information about the increase of property or other taxable object that has not been proven through documents;
- tax declarations and other documents submitted to the tax agency do not prove the reality of the taxable objects and calculated taxes;
- tax declaration or the documents necessary for the calculation of tax and/or payment thereof have not been submitted;
- the tax agency possesses the information that an entity plans to avoid the fulfilment of tax liabilities by departing from Georgia, transferring the assets to another person, destruction, hiding, adjustment of the documents proving tax violation or by performing other activities.

278. Within 48 hours from the commencement of an emergency field tax audit, the tax agency is obligated to apply to court and obtain permission thereof about conducting an emergency field tax audit (Art. 265(2)). During a special field tax audit, representatives of the tax agency are authorised to seal those tax documents and inventory holdings of a taxpayer that are necessary for the performance of the field tax audit. The Georgian authorities have indicated that they usually collect information via the powers provided in articles 49 and 70 of the Tax Code. Tax audit, including special field tax audit, is theoretically possible for EOI, although thus far, Georgia has not had to conduct any audit to collect information for EOI purposes.

279. In practice, the Revenue Service indicated that this special field tax audit has not been used for EOI purposes during the peer review period.

Secrecy provisions *(ToR B.1.5)*

280. Jurisdictions should not decline on the basis of secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

Banking secrecy

281. Georgian banking law provides that “[n]o person shall be permitted to reveal a bank’s confidential information about any person, to disclose or

disseminate such information or use it for personal gain" (LCB, Art. 17(1)). Until 12 December 2014, confidential information could be disclosed only to the National Bank within the appropriate areas of its responsibilities. In this regard, Article 17 (2) of the LCB provided that Information on any transaction including an attempt to conclude the transaction, account, and balances "may be disclosed to the parties of the respective transactions, respective account holders and their representatives, as well as, in cases provided for in Georgian legislation to the Financial Monitoring Service of Georgia and those entities that are authorised to enforce the acts subject to enforcement under the Law of Georgia on Enforcement Proceedings." (LCB, Art. 17(2)). This provision was amended in 12 December 2014 to make it explicit that banking information can be accessed by the tax authorities based on a court decision as provided in Georgia Administrative Procedures Code (APC). The APC, as analysed above, was also amended to provide for a specific court procedure applicable to the access of banking information for EOI purposes.

282. Prior to 12 December 2014, the LCB did not provide for a specific exception for disclosure to the tax authorities for tax purposes. Nevertheless,, the access powers under Georgia's tax law can be used for the purposes of giving effect to an international agreement, recalling that international treaties or agreements take precedence over domestic legislative acts unless they contradict the Constitution. Therefore, the understanding of Georgia authorities was that the access powers that were used to give effect to an international agreement should take precedence over article 17 of the LCB. According to the Georgian authorities, the provision in article 70 of the Tax Code, which obliges a taxpayer to provide a "hard copy or electronic version of accounting records and/or other information related to taxation," would also oblige a taxpayer to disclose banking information to the tax authorities. The position with respect to international agreements that explicitly provide for the exchange of banking information (i.e. those which contain a provision similar to article 26(5) of the OECD Model Tax Convention) was somewhat stronger in this regard, and it should be noted that this is the position with respect to 82 out of Georgia's 90 EOI partners. The Ministry of Justice had confirmed that provisions in international treaties override contradicting provisions in domestic law other than the Constitution, and had indicated that it is up to the Ministry of Finance to apply the legislation related to its competences. In the opinion of the Ministry of Finance, the banking secrecy established in the LCB would be overridden by article 70 of the Tax Code when this article is applied to fulfil international obligations (e.g. obtaining information to reply to a EOI request), and as such the competent authority would have the powers to obtain information from banks for EOI purposes. However, the lack of an explicit exception in the banking law for disclosure to the tax authorities left some uncertainty in the application of the laws that may affect effective exchange of information. As a result, it

was recommended in Georgia's Phase 1 report that Georgia ensure that the absence of an explicit exception to the confidentiality rules in the LCB does not inhibit effective exchange of information.

283. Following its Phase 1 review, Georgia amended the Tax Code, the banking law and the APC, to make the Georgian's competent authority powers to access to bank information directly from banks explicit:

- Article 17 (2) of LCB provides that banking information can be provided to a taxation body based on a judicial decision under the APC.
- Chapter IIV[12] of the APC provides for an (expeditious) court procedure based on an solicitation of the tax authority for access of bank information from commercial banks for EOI purpose;
- Article 70 (3) of the tax code provides powers to the tax authority to request a commercial bank to provide banking information via a court procedure as prescribed in the APC in order to reply to an EOI request.

In practice

284. As analysed earlier in this report, Georgia has requested a commercial bank to provide bank information for EOI purposes in one instance during the period under review based on its general access powers under article 70 (prior to the amendment taken place in December 2014). However, the bank refused to provide the information requested on the basis of the lack of an explicit provision that would allow the disclosure of confidential information to the tax authority in the banking law. The Revenue Service brought the case before the court. In the meantime the Tax Code, the LCB and the APC have been amended to clarify the power of tax authority to access banking information directly from banks. Based on the new provisions, the Revenue Service has obtained a court order for the collection of information and the bank has provided the relevant information. The access to information has taken place after the period under review although it refers to a request received during the period under review. As the procedure to access banking information has only been recently introduced and has not been sufficiently tested in practice, it is recommended that Georgia monitors its implementation to ensure that this procedure allows it to effective exchange banking information in practice.

285. While the tax authority must keep the secrecy of information which became known to it in the course of fulfilment of its work duties, the Tax Code explicitly allows the tax authority to provide information to the tax authorities of other countries in accordance with the international treaties of Georgia (Tax Code, Art. 39(2)(d)).

Professional secrecy

286. The Law on the Advocates establishes a broad legal professional privilege attaching to advocates. Article 7 of this law states that an advocate has an obligation to "keep a professional secret regardless of the elapsed amount of time;" and "[n]ot to disclose the information, which became known to him/her during the exercise of legal practice, without a client's consent". The violation of a professional secret by an advocate may result in the sanctions foreseen under the law. The definition of "legal practice" includes: "giving of a legal advice by an advocate to a person (client) who has applied to him/her for assistance; representation of a client in the courts, arbitration, detention and investigation bodies in respect of a constitutional dispute or a criminal, civil or administrative law case; preparation of legal documentation in respect of third persons and submission of any documentation on behalf of a client; provision of legal assistance, which is not in connection with the representation of third persons" (Law on the Advocates, Art. 2).

287. The scope of professional secrecy attaching to advocates is broader than that established in the international standard of exchange of information. The standard establishes that the Contracting Parties to an EOI agreement are not required to exchange confidential communications between a client and an attorney, solicitor or other admitted legal representative, produced for the purposes of seeking or providing legal advice, or produced for the purposes of use in existing or contemplated legal proceedings. The scope of professional secret established in the Law on the Advocates is not limited to "confidential communications" between a client and an advocate, but it extends to any information which became known to the advocate during the exercise of legal practice. International agreements for EOI may establish a more narrow scope of legal professional secret, which would then be applicable for EOI purpose given that international agreements prevail over conflicting domestic legislation (Constitution, Art. 6 and Tax Code, Art. 2(7)). Nevertheless, Georgia's EOI agreements do not contain a definition of legal professional privilege and the domestic legislation in Georgia would then apply. It is recommended that Georgia ensures that the scope of professional secret attaching to advocate is consistent with the standard.

288. Professional accountants (i.e. those accountants registered in the relevant accountants association) have a duty of confidentiality in respect of information acquired as a result of professional and business relationships. Nevertheless, they may disclose such information to third parties with proper and specific authority and where there is a legal or professional right or duty to disclose (Code of Ethics for Professional Accountants, 100(4)(d)). However, this provision is interpreted by the Federation of Accountants and Auditors as requiring accountants to obtain prior authorisation from their clients before providing any information to the tax administration. Without prior consent from

their clients, the Federation of Accountants and Auditors support that information cannot be disclosed based on an accountant's duty of confidentiality.

289. During the review period, there was no case in which tax authority sought information which was subject to professional secrecy for EOI purposes.

290. Notwithstanding the above, in relation to domestic tax matters, the Revenue Service has only been able to collect information protected by professional secrecy when the relevant professionals have been authorised by their clients to disclosure the information. During the on-site visit the assessment team had the opportunity to meet with members of the Advocates Association and the Federation of Accountants and Auditors. The members of the Advocates Association indicated that their understanding is that the scope of professional secret is not limited to "confidential communications" but it covers all information concerning the client and their interpretation of the Law on the Advocates is that it does not allow advocates to disclose the confidential information to the tax authority without a client's consent. It is noted that Georgia amended its AML Law in 2013 to establish reporting obligations to advocates and that further amendments to Law on the Advocates are under consideration at the parliament. However, the scope of the amendments is not explicitly intended to permit lawyers to share confidential information with tax authorities. The members of the Federation of Accountants and Auditors, as noted above, also indicated that all information related to their services is considered a professional secret and they are not required to provide such information to the tax authority as there is no law establishing such obligation. Georgia is recommended to ensure that the scope of professional secrecy is consistent with the standard.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The scope of legal professional secrecy found in the domestic legislation is broader than the international standard as it is not limited to "confidential communications" between a client and an advocate, but it extends to any information which became known to the advocate during the exercise of legal practice. The scope of professional privilege applicable to accountants is also broader than the international standard.	Georgia should ensure that the scope of professional secrecy is consistent with the standard.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
The court procedure to access banking information has been introduced after the review period and has not been sufficiently tested in practice, In the one case where it has been used, the Georgian authorities have successfully accessed the information and responded to the EOI request within 11 months.	Georgia should monitor the implementation of the new procedure to access banking information to ensure that this procedure allows it to effective exchange information in practice.

B.2. Notification requirements and 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.

Not unduly prevent or delay exchange of information (ToR B.2.1)

291. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction). The rights and safeguards are mainly established under the tax legislation and the Constitution.

292. The Tax Code provides that tax authorities, within the scope of their competence, shall be obligated to safeguard the rights of taxpayers as well as state interests (Tax Code, Art. 51(1)). When the tax authority in response to an EOI request needs to access information that is not already in its possession, it can access information held by taxpayers pursuant to article 70 of the Tax Code and tax control procedures (see section B.1 above). The Georgian legislation does not require the tax agency to notify the person who is the subject of an EOI request.

293. Pursuant to Article 51(1)(p) of the Tax Code, the tax administration according to the rule stipulated in and within the timeframes prescribed under the Tax Code and other acts of tax legislation of Georgia, is obliged to provide a taxpayer or his/her representative with tax audit acts, as well as other decisions and notifications of tax authorities. When a tax audit is

started, the tax authorities are then required to inform the taxpayer who is the subject of an audit. With regard to “field audit”, the Tax Code prescribes that the taxpayer must be informed at least ten days prior to the commencement of the audit. (Tax Code, Art. 264).

294. The Tax Code protects the legal rights and interests of taxpayers, which include the right to challenge any decision made by the tax authority (Tax Code, Art. 41(1)(b)). As the subject of the request is not informed that information about him/her has been requested by a treaty partner, he/she is not in a position to challenge the exchange of information. In any case, a taxpayer has 30 days to appeal the decision of the tax authority from the moment the decision is communicated to him/her; the appeal does not have a suspensive effect on the decision made (Tax Code, Art. 299(4 and 11)). Taxpayers also have the right to attend field tax audit (Tax Code, Art. 41(1)(c)), ask for grounds of a field tax audit prior to its commencement (Tax Code, Art. 41(1)(f)), and to request and obtain the reimbursement for damages inflicted as a result of the illegal decisions or actions by the tax authority employees according to the rule determined by the law (Tax Code, Art. 41(1)(i)). The protection of taxpayer’s rights and legal interests is guaranteed under administrative and court rule (Tax Code, Art. 41(2)). These safeguards mean that the person in Georgia who is the holder of the information would have to be notified of the commencement of a tax audit. The person need not be informed prior to the commencement of a tax audit only in cases where the tax administration activates a “special field tax audit” (see section B.1.4 above). The Georgian authorities have indicated that when the Revenue Service asks taxpayer to provide information on the basis of articles 49 and 70 it does not indicate the concrete purpose of gathering information; similarly, the notification needed in case of tax audit does not indicate what the reason behind the tax audit is.

295. The Constitution provides that every citizen of Georgia shall have the right to become acquainted, in accordance with a procedure prescribed by law, with the information about him/her stored in state institutions as well as official documents existing there unless they contain state, professional or commercial secret (Art. 41(1)). Moreover, the information existing on official papers pertaining to individual’s health, his/her finances or other private matters, shall not be accessible to anyone without the consent of the individual in question except in the cases determined by law, when it is necessary for ensuring the state security or public safety, for the protection of health, rights and freedoms of others (Art. 41(2)). The Georgian authorities have indicated that the Tax Code, while protecting the secrecy of the information held, allows the Georgian competent authority to disclose information to competent authorities in accordance with the international agreement (Tax Code, Art. 39(2)(d)).

In practice

296. During the review period, Georgia generally obtained the information requested by its treaty partners from its own database or directly from taxpayers through the procedures established under articles 49 and 70 of the Tax Code.

297. In no instance has the taxpayer been notified of the existence of an EOI request or the fact that information was going to be transmitted to a foreign competent authority. In cases where the collection of information required that an audit was initiated, the tax authority issued a tax audit act prior the commencement of the tax audit; however, the audit act does not provide information concerning the foreign request or the fact that information is asked for purposes of EOI.

298. There are no special appeal rights applicable in the context of EOI. In practice, during the period of review no appeals have been made in connection to EOI requests.

299. Peers that provided input to this review have not raised concerning regarding rights and safeguards applicable in Georgia.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C. Exchanging information

Overview

300. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Georgia, the legal authority to exchange information is derived from double taxation conventions (DTCs) as well as the Multilateral Convention. This section of the report examines whether Georgia has a network of information exchange that would allow it to achieve effective exchange of information in practice.

301. Georgia's network of EOI mechanisms covers 102 jurisdictions. It comprises 54 bilateral DTCs and three TIEAs, of which 50 are in force, and the Multilateral Convention, which is in force in respect of Georgia since 1 June 2011. All of Georgia's EOI relationships contain sufficient provisions to enable Georgia to exchange all relevant information. Element C.1 is therefore rated "Compliant".

302. Georgia's network of exchange agreements covers all its main trading partners. Comments were sought from Global Forum members in the course of the preparation of this report and in no cases has Georgia refused to enter into an EOI agreement. In practice, no issues were found in this regard and element C.2 is rated "Compliant".

303. All of Georgia's EOI agreements contain confidentiality provisions that meet the international standard and its domestic legislation also contains appropriate confidentiality provisions and enforcement measures. Where domestic law provisions on general confidentiality rules are less restrictive than those provided under the EOI agreements concluded by Georgia, the provisions of the international agreements will prevail ensuring that the standard is met. The confidentiality provisions in Georgia's exchange of information agreements do not draw a distinction between information received in response to requests and information forming part of the requests themselves. In practice, during the review period, strict confidentiality measures were taken by officials from the Georgian competent authority and peer input does not indicate any issues in this regard. As a result, element C.3 is rated as "Compliant".

304. Georgia's EOI agreements protect rights and safeguards in accordance with the standard, by ensuring that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. However, the EOI agreements do not define professional privilege and the scope of professional secrecy as defined in domestic legislation is wider than the international standard. In practice, no issues regarding the application of professional privilege or rights and safeguards in Georgia have been raised by peers during the review period. Element C.4 is rated "Largely Compliant".

305. There appear to be no legal restrictions on the ability of Georgia to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. During the review period (from 1 July 2011 to 30 June 2014), Georgia received 38 requests related to direct taxes from 14 jurisdictions. Georgia was able to provide a final response within 90 days to 76% of the requests, and within 180 days to 97% of the requests. In relation to one request, which involved the access of banking information pursuant to a new law (enacted after the review period), Georgia was able to provide a complete response within 11 months. Peers acknowledged the responsiveness and efficiency of the Georgian competent authority. It is noted that the procedures to handle inbound EOI requests have only been formalised after the peer review period. Georgia is recommended to monitor the implementation of the recently established procedures to ensure that it continues to provide complete and quality responses to its exchange of information partners in a timely manner. Element C.5 is rated as "Compliant".

C.1. Exchange of information mechanisms

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

306. The right to conclude international agreements on behalf of Georgia is vested in the President (Constitution, Art. 73(1)(a)). Double Taxation Conventions (DTCs) and Tax Information Exchange Agreements (TIEAs) are negotiated by the Ministry of Finance as authorised by the Prime Minister. The competent authority for the exchange of information is the Minister of Finance or an authorised representative. Competent authority is delegated to the Department for Administration within the Revenue Service of Georgia.

307. Georgia's network of EOI relationships comprises 54 bilateral DTCs and three TIEAs, of which 50 are in force. All but two of Georgia's DTCs allows Georgia to exchange information to the international standard. The DTC with Switzerland does not meet the standard due to the restriction of the EOI provision to information that is "necessary for carrying out the

provisions of the Convention" only. It also does not allow for the exchange of banking information. The DTC with Luxembourg does not meet the standard as Luxembourg is not in a position to exchange banking and financial information under this EOI agreement, due to restrictions in Luxembourg's domestic law. Nevertheless, Georgia and Luxembourg are both parties to the Multilateral Convention and can exchange information to the standard pursuant to the convention. Switzerland is also a signatory to the Multilateral Convention and Georgia and Switzerland will be able to exchange information to the standard as soon as it enters into force in Switzerland. The TIEAs with Belarus and Latvia require the parties to provide name or surname of the person under examination or investigation when making the requests. This requirement does not meet the standard. Therefore it is recommended that Georgia renegotiate these agreements in order to bring it to the standard.

308. Georgia's EOI network also comprises the Multilateral Convention, which was signed by Georgia on 3 November 2010. The Multilateral Convention has entered into force in Georgia on 1 June 2011. The Multilateral Convention provides for administrative co-operation between parties in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion in accordance with the standard.

Foreseeably relevant standard *(ToR C.1.1)*

309. The international standard for exchange of information envisages information exchange upon request to the widest possible extent, but does not allow "fishing expeditions," i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the Model Tax Convention and Article 1 of the OECD Model TIEA.

> The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

310. Georgia's DTCs are patterned on the Model Tax Convention and its commentary as regards the scope of information that can be exchanged. 20 DTCs use the term "foreseeably relevant". The majority of Georgia's DTCs use the term "as is necessary" and one (with France) uses the term "relevant" in lieu of "as is foreseeably relevant". The Commentary to Article 26(1) of

the Model Tax Convention refers to the standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary". Georgia interprets the formulations "as is necessary" or "relevant" as equivalent to "as foreseeably relevant".

311. The DTC with Switzerland limits the EOI to information that is "necessary for carrying out the provisions of the Convention" only. Accordingly, this DTC does not meet the standard. Nonetheless, Georgia and Switzerland are both signatories to the Multilateral Convention, which meets the international standard. The TIEAs with Belarus and Latvia require the parties to provide name or surname when making the requests, which does not meet the standard. Therefore it is recommended that Georgia renegotiate these agreements in order to bring it to the standard.

312. During the review period, Georgia did not decline to respond to any request for information on the basis that the requested information was not foreseeably relevant.

313. If information needed to process the request is missing, the Georgian authorities will first attempt to obtain the missing information using their own sources (e.g. tax database, Georgian public registries). Only if the missing information cannot be collected using those sources, the Georgian authority will ask the foreign competent authority for clarification and completion of the request.

314. In relation to one request received in the review period, Georgia requested clarification to the requesting jurisdiction as the request did not identify the taxpayer. The request related to information on the prices of certain goods (types of fish) for transfer pricing purposes. Georgia received no reply from the clarification request made to its treaty partner and considered that the case was closed after 90 days from the request for clarification. Georgia advised that it would reconsider the case if the reply eventually comes in.

315. In summary, Georgia appears to interpret the criteria of foreseeable relevance to the widest possible extent and no concerns in this respect have been raised by its peers.

In respect of all persons *(ToR C.1.2)*

316. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the

information requested. For this reason, the international standard envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

317. Article 26(1) of the Model Tax Convention indicates that "[t]he exchange of information is not restricted by Article 1", which defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States. All of Georgia's DTCs but six are not limited by article 1 (Azerbaijan, Bulgaria, Kuwait, Luxembourg, Switzerland, and Uzbekistan).

318. The DTCs with Azerbaijan, Bulgaria, Kuwait, Luxembourg and Uzbekistan do not specifically include a provision which extends the scope of the exchange of information Article to persons other than residents of one of the Contracting States. However, these DTCs provide for the exchange of information as is necessary for carrying out the provisions of the domestic laws of the Contracting States, or similar language. To the extent that the domestic laws are applicable to non-residents as well as to residents, Georgia is of the view that information can be exchanged in respect of all persons. In respect of the DTC with Switzerland, it is not possible to exchange information in respect of all persons, since the relevant DTC only provides for exchange of information for the purposes of carrying out the Convention. Nonetheless, Georgia and Switzerland are both signatories to the Multilateral Convention, which meets the international standard.

319. In practice, no issues have arisen in this respect during the review period and this has been confirmed by peers.

Obligation to exchange all types of information *(ToR C.1.3)*

320. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The Model Tax Convention and the Model TIEA, 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.

321. The DTCs with 22 jurisdictions include provisions akin to Article 26(5) of the Model Tax Convention, which provides that a contracting party may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Georgia has indicated that it is its policy to include provisions akin

to Article 26(5) of the Model Tax Convention in negotiations of new EOI agreements.

322. The rest of Georgia's DTCs do not contain wording akin to Article 26(5) of the Model Tax Convention. Most of these were signed prior to the 2005 revision of the Model Tax Convention in which Article 26(5) was introduced. In any event, it is noted that the absence of this paragraph does not automatically create restrictions on exchange of bank information in Georgia. The commentary on Article 26(5) indicates that whilst paragraph 5 represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

323. Article 21(4) of the Multilateral Convention contains a provision akin to Article 26(5) of the Model Tax Convention. Taking into consideration all EOI relationships, treaties with 95 jurisdictions explicitly provides that a contracting party may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Six EOI relationships (Armenia, Egypt, Iran, Kuwait, Turkmenistan and Uzbekistan) do not contain an explicit provision on the exchange of banking information.

324. Georgia has never declined request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. This has been confirmed by peers. As reported in Part B.1 above, in one case a bank refused to provide information to the tax administration on the basis it was protected by banking secrecy and there was no provision in the banking law for the lift of banking secrecy by tax authorities. The case was ultimately resolved after the amendment of the banking law and the creation of a court procedure to access banking information.

325. Georgia advised that in practice it does not require reciprocity to exchange banking information and would be able to do regardless of whether its EOI partners are able to exchange similar information.

Absence of domestic tax interest *(ToR C.1.4)*

326. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

327. Georgia's EOI relationships with 96 jurisdictions contain provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. Such EOI relationships comprise the DTCs with 22 jurisdictions containing provisions akin to Article 26(4) of the Model Tax Convention, and all the parties to the Multilateral Convention for which Article 21(3) of the Convention applies.

328. For the remaining five of Georgia's EOI relationships (Armenia, Iran, Kuwait, Turkmenistan, Uzbekistan), there are no such provisions. However, the absence of this provision does not automatically create restrictions on the exchange of information. The Commentary to Article 26(4) of the Model Tax Convention indicates that paragraph 4 was introduced to express an explicit obligation to exchange information also in situations where the requested information is not needed by the requested State for domestic tax purposes. There are no domestic tax restrictions on Georgia's powers to access information for EOI purposes (see section B.1.3 above). The exchange of information in the absence of domestic interest in respect of the five EOI relationships that do not contain provisions akin to Article 26(4) of the Model Tax Convention will depend on the domestic limitations (if any) in the laws of these partners.

329. In practice, Georgia is able to use all its domestic information gathering measures for EOI purposes regardless of a domestic tax interest (See sections B.1.1, B.1.2, B.1.3 above). Peers have indicated no issue in this respect. Georgia further advised that in practice it does not require reciprocity to exchange information.

Absence of dual criminality principles (ToR C.1.5)

330. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

331. There are no dual criminality requirements in any of Georgia's DTCs and its TIEAs and in practice no issue linked to dual criminality has arisen.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

332. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to

information requested for tax administration purposes (also referred to as “civil tax matters”).

333. All of Georgia’s DTCs and TIEAs provide for exchange of information in both civil and criminal tax matters.

334. Georgia reports that the procedures involved in the collection of information are the same regardless of whether the request involved civil or criminal investigation.

Provide information in specific form requested *(ToR C.1.7)*

335. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

336. There are no restrictions in the exchange of information provisions in Georgia’s EOI instruments or laws that would prevent Georgia from providing information in a specific form, as long as this is consistent with its own administrative practices.

337. Peer input indicates that Georgia provided the requested information in adequate form and no issues in this respect have been reported.

In force *(ToR C.1.8)*

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

339. Exchange of information agreements can be signed by the President of Georgia, the Prime Minister of Georgia and the Minister of Foreign Affairs. Other persons may be authorised to sign an international agreement. Signed treaties are presented to the relevant Ministries for approval, and then are sent to the parliament for ratification (Constitution, Art. 65(1)).

340. The ratification process usually does not take longer than three months from signature, and it mostly depends on the Parliament’s schedule. Of Georgia’s 54 DTCs and three TIEAs, 50 are in force. Georgia has ratified one agreement with Russian Federation that is not yet in force (;the DTCs with Slovenia and

Portugal have entered into force in September 2013 and in April 2015 respectively). The average time for ratification is approximately 175 days since the date of signature, and the average time span has dropped to approximately 65 days since 2009.

341. With regard to TIEAs, ratification by parliament is not required for a TIEA to enter into force in Georgia. The Prime Minister has enacted a decree providing for the delegation of powers to the General Director of the Revenue Service. After a TIEA is signed it immediately enters into force in the case of Georgia.

Be given effect through domestic law (ToR C.1.9)

342. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

343. Once in force, international agreements form part of the Georgian legislation as a law (Tax Code, Art. 2(1)). International treaties take precedence over domestic legislation, unless they contradict the Constitution (Constitution, Art. 6(2); Law on Normative Acts, Art. 7(1); Tax Code, Art. 2(7)). International treaties form part of Georgian tax legislation (Tax Code, Art. 2(1)).

344. As highlighted in section B.1.3 above, prior to 12 December 2014, the powers to obtain information for EOI purposes were not explicitly provided for in the Tax Code. However, there were a number of provisions related to the incorporation of international agreements into Georgian law which ensure that the access powers for domestic purposes can be extended for EOI purposes. In addition, 95 out of 102 EOI relationships contain provisions obliging Georgia to use information-gathering measures to exchange requested information without regard to a domestic tax interest (see section C.1.4 above). Since 12 December 2014, Georgia's powers to access information for EOI purposes are explicit in the Tax Code (see section B.13).

345. With regard to banking secrecy, as explained in section B.1.4 above, prior to 12 December 2014, the lack of an explicit exception in the banking law for disclosure to the tax authorities left a conflict of the laws that could have prevented effective exchange of information. As a result, it was recommended that Georgia clarify its laws to ensure that its EOI agreements are given full effect. Since 12 December 2014, Georgia's powers to access bank information are explicit in the law.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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

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

346. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order properly to administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

347. Georgia's network of EOI relationships comprises 54 bilateral DTCs and three TIEAs, of which 50 are in force. Georgia also signed the Multilateral Convention and the 2010 Protocol to the Convention on 3 November 2010. The Multilateral Convention, as amended, entered into force in Georgia on 1 June 2011. These bilateral and multilateral agreements create EOI relationships with 102 jurisdictions which include:

- all of its major trading partners (Turkey, Azerbaijan, Ukraine, China, and Germany);
- 91 Global Forum member jurisdictions; and
- all OECD Member economies.

348. Georgia has initialled five DTCs (with Korea, Lebanon, Oman, Saudi Arabia and Morocco) and renewed Protocol on DTC with Poland. Georgia is also negotiating with Moldova and Jordan.

349. One peer advised that Georgia had not responded to several proposals for signing a bilateral DTC for more than two years, after the DTC was initialled in May 2012. Since then, however, Georgia and the peer have resolved the issue and the DTC was signed in May 2015. No other jurisdiction

had advised that Georgia had refused or delayed to enter into negotiations or to conclude an EOI agreement.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Georgia should continue to develop its exchange of information network with all relevant partners.

Phase 2 rating
Compliant

C.3. Confidentiality

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

Information received: disclosure, use, and safeguards (ToR C.3.1)

350. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

International agreements

351. All exchange of information articles in Georgia's EOI agreements have confidentiality provisions modelled on Article 26(2) of the Model Tax Convention, which must be respected by Georgia as a party to these agreements. The confidentiality provisions contained in the international agreements of Georgia are directly applicable in Georgia pursuant to article 6 of the Law on International Treaties of Georgia which provides that "officially published regulations of international treaties of Georgia establishing

the rights and obligations of specific character and without need of adoption of definitive interstate normative act, are acting in Georgia directly."

Georgian domestic law

352. The Tax Code establishes that the tax authority, its employee, an invited specialist and/or expert shall be obligated to observe secrecy of information about a taxpayer that he/she learned in the course of the performance of official duties (Tax Code, Art. 39(2)). This information can only be disclosed to a number of persons identified in article 39(2) of the Tax Code, including to tax authorities of other countries in accordance with the international treaties of Georgia (Tax Code, Art. 39(2)(d)). In any case, international treaties override domestic legislation and the confidentiality provisions included therein are applicable in case they differ from domestic legislation (Constitution, Art. 6 and Tax Code, Art. 2(7)).

353. A tax agency employee is obligated to observe the secrecy of information obtained in the course of performance of official duty, not to use it for personal goals or provide to another person, which is considered to be the disclosure of a tax secret. The losing of the documents containing tax secret or the disclosure of such information shall be subject to responsibility in accordance with the legislation of Georgia (Tax Code, Art. 39(3)). The information existing at a tax authority, containing tax secret, shall have a special regime of storage and handling. Only the authorised persons determined by the Minister of Finance of Georgia may have access to the information that contains tax secret in accordance with the rule established by the Minister of Finance (Tax Code, Art. 39(4)). Minister of Finance's Decree No. 996 details the sanctions that apply in case of non-compliance with the duty of confidentiality, which include disciplinary action, dismissal and criminal charges.

354. The competent authority has a comprehensive policy to protect the confidentiality of the information received from a foreign EOI partner. The TRMD maintains an electronic database called E-government where information on EOI requests is maintained. Access to this database is strictly limited to the authorised officers, and the status of an EOI request is accessible only to the assigned case officer, the head of division and the head of department. The physical request including any annex is stored in a safe within the premises of the Revenue Service. The TRMD is located in Tbilisi, in the building of the Revenue Service, which is only accessible to authorised officials. The activities of the TRMD concerning EOI (i.e. receiving and replying to EOI requests, gathering information from internal database, taxpayers or other information holders) do not give rise to any circumstance where the person who is the subject of an EOI request, or any other person, would have the right to obtain additional information, nor to inspect the files maintained by the TRMD.

355. Although a taxpayer has a general right to inspect his/her file in Georgia, the Georgian authorities advise that the information required to be disclosed is limited to what a taxpayer already knows, such as information on tax returns, the result of tax audits which have already been notified by the tax authorities to the taxpayer. In addition, international agreements ratified by Georgia apply directly and prevail over domestic legislation in case of conflict and as such, the confidentiality provisions found in the EOI agreements will override any statutory provisions to the contrary. As such when a taxpayer asks to inspect the file, the information provided by a foreign tax authority, including EOI requests, would not be made available.

Notices to the holder of the information

356. In order to obtain the requested information, the information holder receives a notice from the Revenue Service, which is called a "desk audit". The letter indicates the legal basis on which the notice is served and due date for reply which is within five working days. No information concerning the EOI request or the requesting jurisdiction is included in the notice.

357. In relation to the access of banking information, since 12 December 2014, a specific court procedure has been established. The solicitation made by the Georgian competent authority to the court must contain a statement (from the Georgian competent authority) indicating that the request for the information complies with the relevant international agreements (Administrative Procedures Code, Article 21[49]). The court does not receive a copy of the request. Moreover, the court order to be served to the bank does not make a reference any specific terms of the EOI request.

Tax control and tax proceedings

358. Other than the above mentioned desk audit, there are two other procedures that could be used to collect information requested for EOI. Those are: i) the on-site audit and ii) the special on-site audit. The notification for an on-site audit must include the designation of the authority, the date of issuance of the notification, the indication of the control scope (i.e. the tax period under audit, the type of tax to be audited). When carrying out those audits to collect information for EOI purposes, there is no indication that the audit is carried out on the basis of a foreign request. Moreover, the Georgian authorities have indicated that audit files do not contain a copy of the EOI request, and that a taxpayer would not be able to access the EOI request when appealing the decision following a tax control/audit.

All other information exchanged (ToR C.3.2)

359. The confidentiality provisions in Georgia's exchange of information agreements do not draw a distinction between information received in response to requests and information forming part of the requests themselves.

360. No issues regarding the confidentiality of information have been raised by Georgia's exchange of information partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C.4. Rights and safeguards of taxpayers and third parties

> The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

361. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise.

362. The limits on information which must be exchanged under Georgia's DTCs mirror those provided for in the international standard. That is, information which would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged.

363. It is noted that "professional secret" is not defined in the DTCs. The relevant domestic legislation would be then applicable. As noted in section B.1.5 above, the scope of professional secrecy attaching to advocates is broader than what is established in the international standard of exchange of information as it is not limited to "confidential communications" between a client and an advocate, but it extends to any information which became known to the advocate during the exercise of legal practice. Given that international agreements prevail over conflicting domestic legislation (Constitution, Art. 6 and Tax Code, Art. 2(7)), any international agreement that establish a more narrow scope of legal professional secret would then be applicable for EOI purposes. Nevertheless, none of the EOI agreements of

Georgia include such a definition. It is recommended that Georgia ensures the legal professional privilege do not hinder exchange of information under its treaties.

364. As also noted under section B.1.5 of this report, professional accountants (i.e. those accountants registered in the relevant accountants association) have a duty of confidentiality in respect of information acquired as a result of professional and business relationships. Nevertheless, they may disclose such information to third parties with proper and specific authority and where there is a legal or professional right or duty to disclose (Code of Ethics for Professional Accountants, 100(4)(d)). It is noted, however, that the Federation of Accountants and Auditors interprets that there is no legal obligation for accountants to disclose information to the tax authorities. In relation to domestic tax matters, the Revenue Service has only been able to collect information protected by professional secrecy (from lawyers or accountants) when the relevant professionals have been authorised by their clients to disclosure the information. Georgia is recommended to ensure that the scope of professional secrecy is consistent with the standard.

365. During the review period, there was no case in which tax authority sought information which was subject to professional secrecy for EOI purposes. Moreover, peers that provided input to this review raised no issues regarding the application of professional privilege or rights and safeguards in Georgia during the review period.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The EOI agreements of Georgia do not define the term “professional secret” and the scope of legal professional secrecy found in the domestic legislation would be applicable. This is broader than the international standard as it is not limited to “confidential communications” between a client and an advocate, but it extends to any information which became known to the advocate during the exercise of legal practice. The scope of professional privilege applicable to accountants is also broader than the international standard.	Georgia should ensure that the scope of professional secrecy is consistent with the standard.

Phase 2 rating
Largely Compliant

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

366. In order for exchange of information to be effective, it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

367. There are no specific legal or regulatory requirements in place which would prevent Georgia from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

368. Georgia received 38 requests related to direct taxes during the review period (from 1 July 2011 to 30 June 2014) from 14 jurisdictions. Georgia's response times are indicated in the table below:

		2011 Jul.-Dec		2012		2013		2014 Jan.-Jun.		Total	
		num.	%	num.	%	num.	%	num.	%	num.	%
Total number of requests received*		1	100	7	100	23	100	7	100	38	100
Full response**:	≤90 days	1	100	4	57	18	78	6	86	29	76
	≤180 days (cumulative)	1	100	7	100	23	100	6	86	37	97
	≤1 year (cumulative)	1	100	7	100	23	100	7	100	38	100
	>1 year	0	0	0	0	0	0	0	0	0	0
Declined for valid reasons		0	0	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested		0	0	0	0	0	0	0	0	0	0
Requests still pending at date of review		0	0	0	0	0	0	0	0	0	0

* Georgia counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

** The time periods in this table are counted from the date of receipt of the request to the date on which the final response was issued. It does not take into account partial responses provided in the meantime or any delays resulting from the need to seek clarifications of requests from a requesting jurisdiction.

369. The number of EOI requests increased steadily from 2011 to 2013. The Georgian authority indicated that ownership information was the type of information requested more often during the review period (in 32 occasions), followed by banking information (in 28 occasions) and accounting information (in 25 occasions).

370. Overall, Georgia was able to provide a final response within 90 days to 76% of the requests, and within 180 days to 97% of them. In relation to one request, which involved the access of banking information pursuant to a new law (enacted after the review period), Georgia was able to reply to the request within 11 months. Although the number of requests has grown over the years, the competent authority managed to continue to reply to them in a timely manner. This has been confirmed by peer input.

371. As noted in section C.1.1, Georgia has requested clarification in relation to only one request received during the period under review. The request did not identify the taxpayer and contained an inquiry on information on the prices of certain goods (types of fish) for transfer pricing purposes. Georgia received no reply from its treaty partner and considers that the case was closed. This case is reflected in the table above as response within 90 days.

372. The Georgian competent authority advised that if information to process and respond to an EOI requests is missing, it would first try to obtain the missing information using its own sources (e.g. tax database, Georgian public registries). Only if the missing information cannot be collected using those sources, will the Georgian competent authority asks the foreign competent authority for clarification.

373. Where a final response is not given within 90 days, in addition to sending partial information that is already available, the competent authority has sent status update to the EOI partner, indicating that the final information would be sent as soon as it is obtained.

Organisational process and resources *(ToR C.5.2)*

374. Administration of the exchange of information under Georgia's treaty network is the responsibility of Georgia's competent authority, i.e. the Minister of Finance or his/her authorised representative.

375. The delegated competent authority is the Department for Administration of the Revenue Service (Decree No. 20565 from 11 April 2014). Moreover, pursuant to the decree, the Task Risk Management Division (TRMD) within the Revenue Service is the office in charge for administering all requests received or sent by Georgia.

Organisation of EOI

376. The TRMD is responsible for liaising with foreign authorities and the administration of the information gathering process. This includes the following functions: receiving all EOI requests, translation, checking whether these requests are complete and meet the foreseeable relevance standard, identifying the information holder, ensuring that the response to the EOI request is complete, liaising with the audit division and replying to the request. The TRMD is also responsible for collecting banking information from financial institutions based on the court procedure.

377. Contact details of Georgia's competent authority are communicated during treaty negotiations, international meetings held by the Global Forum and are available on the Global Forum's Competent Authority database.

378. Where necessary, Georgia competent authority can communicate with its EOI partners via telephone or e-mails and has done so in practice.

Handling of EOI requests

379. Georgia did not have a written manual or formalised procedures detailing how to handle EOI requests during the review period. In January 2015 Georgia enacted Decree 761 providing for the procedures on exchange of information with the foreign competent authorities (Georgia's EOI Manual). The EOI Manual codified the customary procedures adopted by Georgia prior to the its publication.

380. Pursuant to Georgia's EOI Manual, as soon as an EOI request is received, the Head or the Deputy Head of the Tax Administration Department (the authorised as the Competent Authorities for the exchanging information) will designate an officer from the Department to handle the request. The officer will create a new file in the exchange of information folder within the database, indicating the date of the receipt of the request, the foreign competent authority, the requested information and other relevant details. After opening a new file, the request is assigned a number which can be tracked. In addition, the actions taken to obtain the requested information must also be reflected in the database file. If the request is not written in Georgian, English or Russian languages, the officer in charge will send a letter to the foreign competent authority within seven working days requesting it to provide the request in one of the above-mentioned languages.

381. The officer in charge assesses the legal and factual grounds of the request such as the existence of an EOI instrument in force with the requesting jurisdiction, the scope of the instruments and the periods covered, the confirmation that the request was sent by the competent authority. The officer

will also verify the compliance of the request with the foreseeable relevance standard and Georgian legislation.

382. Officers have direct access to the Revenue Service's database, containing comprehensive information on taxpayers, including tax returns and bank account numbers for entrepreneurs. If information is required from a person who is not in the database, a request is made to the structural unit of the Revenue Service. The structural unit of the Revenue Service will provide the requested information within the timeframe specified by the competent authority (usually it is from 5 to 10 days). The internal requests are sent via secured internal software which allows the TRMD to monitor the status of the requests.

383. The handling of EOI requests is well structured and organised. However, as the manual detailing the procedures to be followed when handling EOI requests was only put in place in January 2015 (therefore, after the review period), it is recommended that Georgia should monitor its implementation in practice.

Resources and training

384. The TRMD comprises four people dedicated to handle inbound and outbound EOI requests. They have different levels of experience in the tax administration ranging from three to 10 years. Their experience include the EOI and as well as work in the audit field. Staff has participating in EOI-related trainings and seminars held by World Bank IFC and the Global Forum.

385. Georgia indicates that if the number of requests increases, it is prepared to increase the number of staff allocated to EOI.

386. The technical resources available to the TRMD include (i) an IT system to monitor EOI requests (E-government database) which is only accessible to officers handling EOI requests to manages deadlines; (ii) a software allowing communication among different units within the Revenue Service; (iii) a database storing comprehensive information on Georgian taxpayers (individuals and corporate taxpayers) and a secure e-mail system.

Absence of restrictive conditions on exchange of information *(ToR C.5.3)*

387. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. There are no laws or regulatory practices in Georgia that impose restrictive conditions on exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating
Compliant

Summary of determinations and factors underlying recommendations

Overall Rating
LARGELY COMPLIANT

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Foreign companies with sufficient nexus to Georgia (e.g. being resident for tax purposes) and foreign partnerships that are carrying on business in Georgia are not required to maintain nor provide to the authorities ownership information in all cases.	Georgia should ensure the availability of ownership information of foreign companies with sufficient nexus to Georgia and foreign partnerships that are carrying on business in Georgia in all cases.
	Georgian law does not ensure that information is available identifying the settlors and beneficiaries of a foreign trust with a Georgian trustee or trust administrator in all cases.	Georgia should ensure that information identifying the settlors and beneficiaries of foreign trusts, which are administered in Georgia or in respect of which a trustee is resident in Georgia, is available.

Determination	Factors underlying recommendations	Recommendations
Phase 2 Rating: Largely compliant	Georgia had limited oversight of the compliance by (i) joint stock companies and Securities Registrars with their obligation to maintain accurate and updated information share registers and (ii) general partnerships with their obligation to maintain an updated partnership agreement during the review period.	Georgia should ensure that the obligation imposed on joint stock companies and general partnerships to maintain updated ownership information is sufficiently monitored in practice.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is in place.		
Phase 2 Rating: Compliant		
Banking information should be available for all account-holders. *(ToR A.3)*		
The element is in place.		
Phase 2 Rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1.)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The scope of legal professional secrecy found in the domestic legislation is broader than the international standard as it is not limited to "confidential communications" between a client and an advocate, but it extends to any information which became known to the advocate during the exercise of legal practice. The scope of professional privilege applicable to accountants is also broader than the international standard.	Georgia should ensure that the scope of professional secrecy is consistent with the standard.

Determination	Factors underlying recommendations	Recommendations
Phase 2 Rating: Largely Compliant	The court procedure to access banking information has been introduced after the review period and has not been sufficiently tested in practice, In the one case where it has been used, the Georgian authorities have successfully accessed the information and responded to the EOI request within 11 months.	Georgia should monitor the implementation of the new procedure to access banking information to ensure that this procedure allows it to effective exchange information in practice.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
The element is in place.		
Phase 2 Rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
The element is in place.		
Phase 2 Rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place.		Georgia should continue to develop its exchange of information network with all relevant partners.
Phase 2 Rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		
Phase 2 Rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The EOI agreements of Georgia do not define the term “professional secret” and the scope of legal professional secrecy found in the domestic legislation would be applicable. This is broader than the international standard as it is not limited to “confidential communications” between a client and an advocate, but it extends to any information which became known to the advocate during the exercise of legal practice. The scope of professional privilege applicable to accountants is also broader than the international standard.	Georgia should ensure that the scope of professional secrecy is consistent with the standard.
Phase 2 Rating: Largely Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Phase 2 Rating: Compliant		

Annex 1: Jurisdiction's response to the review report[16]

Georgia would like to thank the Secretariat of the Global forum for Transparency and Exchange of Information for Tax Purposes and the assessment team for their tremendous work, kind cooperation and guidance during the Phase 2 Peer review process. Georgia also would like to express its appreciation to the Peer Review Group and member countries for their valuable input.

Georgia successfully addressed B1 and C1 recommendations of Phase 1 and made significant changes to its legislation in terms of explicitly defining competent authority powers to access banking information.

Georgia remains fully committed to the international agreed standard for the exchange of information and will support the work of Global Forum on implementing the standard internationally.

16. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Annex 2: List of exchange of information mechanisms

List of EOI agreements signed by Georgia as at 4 January 2016, including 54 bilateral Double Tax Conventions (DTCs), three TIEAs and the Convention on Mutual Administrative Assistance in Tax Matters, as amended by its Protocol (Multilateral Convention), two treaties with Russia. Georgia is a Party to the Multilateral Convention, which entered into force on 1 June 2011. In the case of the Multilateral Convention the date when the agreement entered into force indicates the date when the Multilateral Convention becomes effective in relation to the other jurisdiction. The chart of signatures and ratification of the Multilateral Convention is available at www.oecd.org/ctp/eoi/mutual.

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	Multilateral Convention	1-3-2013	12-1-2013
2	Andorra	Multilateral Convention	5-11-2013	Not yet in force in Andorra
3	Anguilla [c]	Multilateral Convention	Extended 13-11-2013	1-3-2014
4	Argentina	Multilateral Convention	3-11-2011	1-1-2013
5	Armenia	DTC	18-11-1997	3-7-2000
6	Aruba [d]	Multilateral Convention	Extended on 29-5-2013	1-9-2013
7	Australia	Multilateral Convention	3-11-2011	1-12-2012
8	Austria	DTC	11-04-2005	1-3-2006
		Multilateral Convention	29-5-2013	1-12-2014
9	Azerbaijan	DTC	18-02-1997	6-6-1998
		Multilateral Convention	23-5-2014	1-9-2015
10	Bahrain	DTC	18-07-2011	1-8-2012
11	Barbados	Multilateral Convention	28-10-2015	Not yet in force in Barbados
12	Belgium	DTC	14-12-2000	4-5-2004
		Multilateral Convention	4-4-2011	1-4-2015

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
13	Belize	Multilateral Convention	29-5-2013	1-9-2013
14	Belarus	TIEA	16-5-2014	Not yet in force
		DTC	23-4-2015	24-11-2015
15	Bermuda [c]	Multilateral Convention	Extended 13-11-2013	1-3-2014
16	Brazil	Multilateral Convention	3-11-2011	Not yet in force in Brazil
17	British Virgin Islands [c]	Multilateral Convention	Extended 13-11-2013	1-3-2014
18	Bulgaria	DTC	26-11-1998	1-7-1999
		Multilateral Convention	26-10-2015	Not yet in force in Bulgaria
19	Cameroon	Multilateral Convention	25-6-2014	1-10-2015
20	Canada	Multilateral Convention	3-11-2011	1-3-2014
21	Cayman Islands [c]	Multilateral Convention	Extended 25-11-2013	1-1-2014
22	Chile	Multilateral Convention	24-10-2013	Not yet in force in Chile
23	China, People's Republic of	DTC	13-07-2004	11-10-2005
		Multilateral Convention	24-10-2013	Not yet in force in China [a]
24	Colombia	Multilateral Convention	23-5-2012	1-7-2014
25	Costa Rica	Multilateral Convention	1-3-2012	1-8-2013
26	Croatia	DTC	18-01-2013	6-12-2013
		Multilateral Convention	11-10-2013	1-6-2014
27	Curaçao [d]	Multilateral Convention	Extended 29-5-2013	1-9-2013
28	Cyprus [b]	DTC	13-5-2015	Not yet in force
		Multilateral Convention	10-7-2014	1-4-2015
29	Czech Republic	DTC	23-05-2006	4-5-2007
		Multilateral Convention	26-10-2012	1-2-2014
30	Denmark	DTC	10-10-2007	23-12-2008
		Multilateral Convention	27-5-2010	1-6-2011
31	Egypt	DTC	25-05-2010	20-12-2012
32	El Salvador	Multilateral Convention	1-6-2015	Not yet in force in El Salvador
33	Estonia	DTC	25-12-2006	27-12-2007
		Multilateral Convention	29-5-2013	1-11-2014
34	Faroe Islands [e]	Multilateral Convention	Extended 28-1-2011	1-6-2011

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
35	Finland	DTC	11-10-2007	23-7-2008
		Multilateral Convention	27-5-2010	1-6-2011
36	France	DTC	07-03-2007	01-6-2010
		Multilateral Convention	27-5-2010	1-4-2012
37	Gabon	Multilateral Convention	3-7-2014	Not yet in force in Gabon
38	Germany	DTC	01-06-2006	21-12-2007
		Multilateral Convention	3-11-2010	01-12-2015
39	Ghana	Multilateral Convention	10-7-2012	1-9-2013
40	Gibraltar [c]	Multilateral Convention	Extended 13-11-2013	1-3-2014
41	Greece	DTC	10-05-1999	10-10-2002
		Multilateral Convention	21-2-2012	1-9-2013
42	Greenland [e]	Multilateral Convention	Extended 28-1-2011	1-6-2011
43	Guatemala	Multilateral Convention	5-12-12	Not yet in force in Guatemala
44	Guernsey [c]	Multilateral Convention	Extended 17-4-2014	1-8-2014
45	Hungary	DTC	16-02-2012	13-5-2012
		Multilateral Convention	12-11-2013	1-3-2015
46	Iceland	DTC	13-5-2015	Not yet in force
		Multilateral Convention	27-5-2010	1-2-2012
47	India	DTC	24-08-2011	8-12-2011
		Multilateral Convention	26-1-2012	1-6-2012
48	Indonesia	Multilateral Convention	3-11-2011	1-5-2015
49	Ireland	DTC	15-11-2008	6-5-2010
		Multilateral Convention	30-6-2011	1-9-2013
50	Iran	DTC	03-11-1996	14-2-2001
51	Isle of Man [c]	Multilateral Convention	Extended 21-11-2013	1-3-2014
52	Israel	DTC	17-05-2010	22-11-2011
		Multilateral Convention	24-11-2015	Not yet in force in Israel
53	Italy	DTC	31-10-2000	19-2-2004
		Multilateral Convention	27-5-2010	1-5-2012
54	Japan	DTC	18-01-1986	27-11-1986
		Multilateral Convention	3-11-2011	1-10-2013
55	Jersey [c]	Multilateral Convention	Extended 17-2-2014	1-6-2014

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
56	Kazakhstan	DTC	11-11-1997	5-7-2000
		Multilateral Convention	23-12-2013	1-8-2015
57	Korea	Multilateral Convention	27-5-2010	1-7-2012
58	Kuwait	DTC	13-10-2011	17-4-2013
59	Latvia	DTC	13-10-2004	4-4-2005
		TIEA	29-9-2015	Not yet in force
		Multilateral Convention	29-5-2013	1-11-2014
60	Liechtenstein	Multilateral Convention	21-11-2013	Not yet in force in Liechtenstein
		DTC	13-5-2015	Not yet in force
61	Lithuania	DTC	11-09-2003	20-7-2004
		Multilateral Convention	7-3-2013	1-6-2014
62	Luxembourg	DTC	15-10-2007	14-12-2009
		Multilateral Convention	29-5-2013	1-11-2014
63	Malta	DTC	23-10-2009	19-12-2009
		Multilateral Convention	26-10-2012	1-9-2013
64	Mauritius	Multilateral Convention	23-6-2015	1-12-2015
65	Mexico	Multilateral Convention	27-5-2010	1-9-2012
66	Moldova	Multilateral Convention	27-1-2011	1-3-2012
67	Monaco	Multilateral Convention	13-10-2014	Not yet in force in Monaco
68	Montserrat [c]	Multilateral Convention	Extended 25-6-2013	1-10-2013
69	Morocco	Multilateral Convention	21-5-2013	Not yet in force in Morocco
70	Netherlands	DTC	21-03-2002	21-2-2003
		Multilateral Convention	27-5-2010	1-9-2013
71	New Zealand	Multilateral Convention	26-10-2012	1-3-2014
72	Nigeria	Multilateral Convention	29-5-2013	1-9-2015
73	Niue	Multilateral Convention	27-11-2015	Not yet in force in Niue
74	Norway	DTC	10-11-2011	23-7-2012
		Multilateral Convention	27-5-2010	1-6-2011
75	Philippines	Multilateral Convention	26-9-2014	Not yet in force in the Philippines
76	Poland	DTC	05-11-1999	31-8-2006
		Multilateral Convention	9-7-2010	1-10-2011

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
77	Portugal	DTC	21-12-2012	1-3-2015
		Multilateral Convention	27-5-2010	1-3-2015
78	Qatar	DTC	12-12-2010	11-3-2011
79	Romania	DTC	11-12-1997	15-5-1999
		Multilateral Convention	15-10-2012	1-11-2014
80	Russia	Treaty on co-operation and mutual assistance in issues regarding the compliance with the tax law	1-7-1997	1-7-1994
		Treaty on co-operation and Exchange of Information in the field of combating infringements of tax legislation	9-12-1997	9-12-1997
		DTC	04-08-1999	Not yet inforce
		Multilateral Convention	3-11-2011	1-7-2015
81	San Marino	DTC	28-09-2012	12-4-2013
		Multilateral Convention	21-11-2013	1-12-2015
82	Saudi Arabia	Multilateral Convention	29-5-2013	Not yet in force in Saudi Arabia
83	Serbia	DTC	20-04-2012	9-1-2013
84	Seychelles	TIEA	29-10-2015	Not yet in force
		Multilateral Convention	24-2-2015	1-10-2015
85	Singapore	DTC	24-11-2009	28-6-2010
		Multilateral Convention	29-5-2013	Not yet in force in Singapore
86	Sint Maarten [d]	Multilateral Convention	Extended 29-5-2013	1-9-2013
87	Slovak Republic	DTC	27-10-2011	29-7-2012
		Multilateral Convention	29-5-2013	1-3-2014
88	Slovenia	DTC	07-12-2012	25-09-2013
		Multilateral Convention	27-5-2010	1-6-2011
89	South Africa	Multilateral Convention	3-11-2011	1-3-2014
90	Spain	DTC	08-06-2010	1-7-2011
		Multilateral Convention	11-3-2011	1-1-2013
91	Sweden	DTC	6-11-2013	26-7-2014
		Multilateral Convention	27-10-2010	1-9-2011

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
92	Switzerland	DTC	15-06-2010	7-7-2011
		Multilateral Convention	15-10-2013	Not yet in force in Switzerland
93	Tunisia	Multilateral Convention	16-7-2012	1-2-2014
94	Turkey	DTC	21-11-2007	15-2-2010
		Multilateral Convention	3-11-2011	Not yet in force in Turkey
95	Turkmenistan	DTC	05-12-1997	26-1-2000
96	Turks and Caicos Islands [c]	Multilateral Convention	Extended 20-8-2013	1-12-2013
97	Uganda	Multilateral Convention	4-11-2015	Not yet in force in Uganda
98	Ukraine	DTC	14-02-1997	1-4-1999
		Multilateral Convention	27-5-2010	1-9-2013
99	United Arab Emirates	DTC	20-12-2010	28-4-2011
100	United Kingdom	DTC	13-07-2004	11-10-2005
		Multilateral Convention	27-5-2010	1-10-2011
101	United States	Multilateral Convention	27-5-2010	Not yet in force in United States
102	Uzbekistan	DTC	28-05-1996	20-10-1997

Notes: a. China deposited its instrument of ratification on 16 October 2015, and the Multilateral Convention will enter into force in China on 1 February 2016.

b. Footnote 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 United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Footnote 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.

c. Extension by the United Kingdom (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat and Turks and Caicos Islands).

d. Extension by the Netherlands (Aruba, Curaçao and Sint Maarten).

e. Extension by Denmark (Faroe Islands and Greenland).

Annex 3: List of all laws, regulations and other Relevant material

Civil and commercial legislation

Civil Code, 1997

Law on Accounting and Auditing Financial Statements, 2012

Law on Activities of Commercial Banking 1996

Law on Entrepreneurs, 1994

Law on Financial Accounting and Reporting, 1999

Law on Free Industrial Zone, 2007

Law on Securities Market, 1998

Order No. 5 of the Head of the Financial Supervision Agency of Georgia on Approval of the Rules of Management of Securities Registry, 2008

Order No. 241 of the Ministry of Justice approving the "Instructions on Registration of Entrepreneurs and Non-Entrepreneurial (Non-Profit) Legal Entities"

Order No. 242/01 of the President of the National Bank "On Defining and Imposing of Monetary Penalties on Commercial Banks", 2009

Rules on Pecuniary Penalties for Securities Market Participants issued by the National Bank of Georgia

Tax legislation

Tax Code, 2010

Decree by the Minister of Finance No. 996 of December 31 on Tax Administration

Miscellaneous

Administrative Procedures Code of Georgia, 2004

Civil Procedures Code, 1997

Code of Ethics for Professional Accountants, 2007

Constitution of Georgia, 1995

Law on Normative Acts, 2009

Law on Facilitating Prevention of Illicit Income Legalisation (AML Law), 2003

Law on the Advocates, 2001

Annex 4: Authorities interviewed during the on-site visit

Ministry of Finance

Revenue Service

Ministry of Justice

National Agency of Public Registry

National Bank

Chamber of Notaries

Federation of Accountants and Auditors

Council of the Advocates Association

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

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

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(23 2016 05 1 P) ISBN 978-92-64-25076-5 – 2016

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: GEORGIA

This report contains a “Phase 2: Implementation of the Standards in Practice” review, as well as revised version of the “Phase 1: Legal and Regulatory Framework review” already released for this country.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the *UN Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. “Fishing expeditions” are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction’s legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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 review reports, please visit ***www.oecd.org/tax/transparency*** and ***www.eoi-tax.org.***

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264250772-en.***

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.
Visit ***www.oecd-ilibrary.org*** for more information.

OECDpublishing
www.oecd.org/publishing

ISBN 978-92-64-25076-5
23 2016 05 1 P

9 789264 250765