

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 1**  
**Legal and Regulatory Framework**

**LATVIA**



# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Latvia 2014**

PHASE 1:  
LEGAL AND REGULATORY FRAMEWORK

April 2014  
(reflecting the legal and regulatory framework  
as at January 2014)

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## 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 120 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](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).



## Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Latvia. 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 timely 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. Latvia is a middle size state located in the Baltic region of Northern Europe with an area of 62 249 sq km and a population of about 2.2 million. Latvia has a small, export oriented open economy with GDP of about EUR 21 billion in 2012. Sixty-nine percent of the GDP is produced in the service sector, followed by industry with 25% and agriculture 6%. One third of the GDP represents exports. Latvia joined the EU in May 2004 and the euro zone in January 2014. Latvia is a member of many international organisations such as the Council of Europe, the World Trade Organization, Moneyval and others.

3. All relevant entities are subject to comprehensive requirements under Latvian commercial, tax, anti-money laundering and accounting legislation to maintain and have available relevant ownership, accounting and bank information. Such information is available also for EOI purposes. All relevant entities are required to register with Latvian government authorities (except for trusts which are not recognised by Latvian law) and domestic entities must provide information on their founders upon registration. Limited liability companies, partnerships and foundations are also required to report to the Registry any changes in shareholders/members. Joint stock companies and cooperatives are not required to report changes in their ownership structure to the Registry, however, they are required to keep and maintain an up-to-date register of shareholders. Accounting, tax and AML obligations do not ensure that ownership information on foreign companies is available in Latvia in all instances. Joint stock companies can issue bearer shares which must be in dematerialised form and registered with the Latvian Central Depository.



The legal regulation of bearer shares is analogous to the regulation of listed securities and ensures that information on the owners of bearer share is available in Latvia.

4. Latvian accounting law requires all domestic legal entities as well as foreign enterprises performing economic activities in Latvia to keep adequate accounting records including underlying documentation in Latvia for a minimum of five years. The requirements under the Accounting Law are supplemented by obligations imposed by the tax law and under AML regulations. Availability of banking information is ensured by Latvian AML and accounting obligations. Banks are expressly prohibited from establishing business relationships with or carrying out transactions for anonymous customers.

5. The Latvian competent authority has broad access powers to obtain and provide the requested information which can be used for EOI purposes without requirement of a domestic tax interest. However, access to bank information under several DTCs might be limited by the type of information which can be obtained from banks and additional conditions for obtaining it. Access powers are supported by effective enforcement provisions to compel the production of information. The scope of information protected by attorney client privilege is however broad and might limit effective exchange of information. Latvia's domestic legislation does not require notification of the taxpayer prior to exchange of information. The taxpayer has no right to appeal the provision of information to the requesting competent authority.

6. Latvia has a considerable EOI network covering 91 jurisdictions through 57 DTCs, two TIEAs, the Multilateral Convention and EU instruments. Almost all of Latvia's agreements are in force and most of them to the standard. Through these mechanisms Latvia is involved (in addition to EOI upon request) in spontaneous and automatic exchange of information, multilateral controls and recovery assistance. However, due to limitations in Latvia's domestic law, access to bank information is restricted in respect of 27 jurisdictions. It is therefore recommended that Latvia brings these 27 EOI relations in line with the standard.

7. All Latvia's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by these agreements. Although the Latvian tax law permits disclosure of information beyond extent permitted by the international standard, provisions of Latvia's EOI agreements override domestic laws. Taxpayer may request information from his/her tax files on the basis of generally applicable provisions of the Law on Information Disclosure and Law on Taxes and Fees which contain appropriate exceptions in respect of information provided by the requesting competent authority.

8. Overall, Latvia has a legal and regulatory framework in place that ensures the availability, access and exchange of all relevant information for tax purposes in accordance with the international standard. Latvia's response to the recommendations in this report, as well as the application of the legal framework and practices in exchange of information will be considered in detail in the Phase 2 Peer Review which is scheduled to commence in the second half of 2014.



## Introduction

### Information and methodology used for the peer review of Latvia

9. The assessment of the legal and regulatory framework of the Republic of Latvia (hereafter Latvia) 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. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 29 January 2014, Latvia's responses to the Phase 1 questionnaire and supplementary questions, other materials supplied by Latvia, and information supplied by partner jurisdictions.

10. 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 Latvia'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.

11. The assessment was conducted by a team which consisted of two expert assessors: Ms. Ivonete Bezerra de Sousa, Secretariat of Federal Revenue Service-RFB, Brazil and Mr. Wayne Lonnie Brown, Assistant Financial Secretary, Ministry of Finance, Bermuda; and a representative of the Global Forum Secretariat: Mr. Radovan Zidek.

## Overview of Latvia

12. Latvia is a middle size state located in the Baltic region of Northern Europe with an area of 62 249 sq km and a population of about 2.2 million (July 2013 est.), of which roughly one third lives in the capital city of Riga. Ethnically, the population is 59% Latvian and 29% Russian. Latvia borders on the north with Estonia, on the south with Lithuania, on the east with Russia and on the southeast with Belarus. The official language is Latvian, however Russian is also widely spoken. The official currency is the euro.

13. Latvia is a small, export oriented open economy. Latvia's GDP is about EUR 21 billion (latest figures 2012). Sixty-nine percent of the GDP is produced in the service sector, followed by industry with 25% and agriculture 6%. One third of the GDP represents exports. Latvia is a low-lying country with large forests that supply timber for construction and paper industries. Latvia also produces consumer goods, textiles and machine tools. Due to its geographical location, transit services are highly-developed together with manufacturing of machinery and electronics industries. Latvia's economy experienced GDP growth of more than 10% per year during 2006-07, but entered a severe recession in 2008 as a result of an unsustainable current account deficit and large debt exposure amid the softening world economy. Triggered by the collapse of the second largest bank, GDP plunged 18% in 2009. The economy has not returned to pre-crisis levels despite strong growth, especially in the export sector in 2011-12. The IMF, EU, and other international donors provided substantial financial assistance to Latvia as part of an agreement to defend the currency's peg to the euro. The majority of companies, banks, and real estate have been privatised. The state holds significant shares in strategic large enterprises.

14. The main trading partners of Latvia are EU member states. 70% of all exports goes to the EU. In terms of exports the main partners in 2012 were Russia (18.3%) followed by Lithuania (15%), Estonia (12%), Germany 7.2%, Poland 5.6% and Sweden (4.8%). Main importing partners are Lithuania (18.9%), Germany (11.5%), Russia (9.3%) and Poland (8.1%).

15. Latvia joined the EU in May 2004 and the euro zone in January 2014. Latvia is a member of many international organisations including Council of Europe, the World Trade Organization, Moneyval, UNESCO, World Health Organisation and others. In May 2013 OECD opened membership talks with Latvia. Latvia is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes since January 2012.

## *General information on the legal system and the taxation system*

### *Governance and the legal system*

16. Latvia is a parliamentary democratic republic with a multi-party system. The head of state is the President, elected by the Parliament for a four-year term. Most executive power lies with the Prime Minister, who is the head of the Cabinet of Ministers and is appointed by the President on the basis of the general election results. The remainder of the Cabinet is appointed by the Prime Minister. The appointed Cabinet needs to be approved by the Parliament. The Parliament (Saeima) is unicameral and consists of 100 members elected by popular vote based on proportional representation. The Saeima is elected for a term of four years.

17. The country consists of 110 municipalities and nine cities which are self-governing units which can issue by-laws, regulations and decisions with sub-law regulatory power.

18. The legal system of the Latvia is based on civil law and relies on a single national law. The hierarchy of law consists of the Constitution (Satversme), laws, regulations of the Cabinet of Ministers and binding regulations of local governments. International agreements (including agreements for exchange of information for tax purposes) which settle matters regulated by law require ratification by the Saeima. Where a ratified international treaty conflicts with domestic law the ratified treaty prevails over domestic law. A list of relevant legislation and regulations is set out in Annex 3.

19. The Latvian court system consists of district courts, regional courts and the Supreme Court. The district (municipal) court is the court of first instance for civil, criminal and administrative cases. There are 35 district courts. The regional courts are the courts of appeal in cases already heard in district courts and serve as courts of first instance for cases falling specifically under their jurisdiction, such as tax matters. There are six regional courts in Latvia.<sup>1</sup> In addition, the Constitutional Court reviews cases concerning the conformity of laws with the Constitution, as well as other cases where breach of the Constitution might have arisen.

### *The tax system*

20. Latvia has a fully-fledged tax system comprising direct and indirect taxes, fees and duties. The tax system is governed by the Law on Taxes and Fees, specific taxing Acts and Cabinet Regulations issued pursuant to these

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1. These courts are Riga Regional Court, Kurzeme Regional Court, Latgale Regional Court, Vidzeme Regional Court, Zemgale Regional Court and the Regional Administrative Court.

Acts. The Law on Taxes and Fees specifies the Latvian tax system, determines the types of taxes and regulates the tax procedure including rights of taxpayers and the appeal procedures for decisions made regarding taxes and fees.

21. The tax system consists of:

- state taxes, which are determined by the Latvian Parliament;
- state fees, which are levied in accordance with the Law on Taxes and Fees, other laws and Cabinet regulations;
- local government fees, which are levied in accordance with the Law on Taxes and Fees and with binding regulations issued by local governments; and
- taxes determined in the legal acts directly applicable of the European Union.

22. State taxes in Latvia include personal and corporate income taxes, real estate tax, value added tax, excise duty, customs duty, lottery and gambling tax, mandatory payments of state social insurance, micro-enterprise tax, tax on cars and motorcycles, electricity tax and vehicle operating tax. The rate of personal income tax depends on the nature of the income and varies from 10% to 24%. The corporate income tax rate is 15%. The standard VAT rate is 21%, with reduced rates of 12% and 0%.

23. Latvia taxes its residents (companies and individuals) on their worldwide income. All companies established under Latvian law and registered in Latvia are considered as resident in Latvia. An individual is a Latvian tax resident if that person has its permanent address or “a usual residence” (183 days rule) in Latvia. A permanent establishment of a foreign company is treated as Latvian resident and is liable to tax from Latvian source income and worldwide income attributable to the permanent establishment (s. 14 Law on Taxes and Fees). Non-resident companies carrying on activity in Latvia (not through a permanent establishment) and non-resident individuals working in Latvia are subject to tax only on their Latvian source income.

### *Exchange of information for tax purposes*

24. Exchange of information for tax purposes (EOI) is specifically regulated by the Law on Taxes and Fees and Cabinet Regulation No. 1245. The Law on Taxes and Fees provides general tax procedures which apply also in respect of EOI. The Law on Taxes and Fees further authorises the Cabinet to issue a regulation laying down specific rules and conditions under which the Latvian competent authority can access and exchange information with another jurisdiction for tax purposes. These rules apply to EOI based on international agreements and EU legislation (s.1 Cabinet Regulation

No. 1245). Taxes are administered by the State Revenue Service (SRS) which is also designated as the Latvian competent authority for EOI purposes (s. 5).

25. Latvia provides international co-operation in tax matters based on international bilateral and multilateral instruments and EU law. The relevant EU legislation includes the EU Council Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation, the EU Savings Directive 2003/48/EC (EU-SD), Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, Council Regulation (EU) No. 904/2010 on administrative cooperation and combating fraud in the field of value added tax and Council Regulation (EC) 2073/2004 on administrative co-operation in the field of excise duties. These co-operation mechanisms involve spontaneous exchange of information; automatic exchange of information, multilateral controls and recovery assistance.

### *Overview of the financial sector and relevant professions*

26. The financial sector comprises the following types of entities which require authorisation from the Latvian Financial and Capital Markets Commission<sup>2</sup>: banks (29), credit unions (35), insurance companies (20), investment firms (52) and pension funds (8 state funded pension schemes and 7 private funds). While banks take the form of public limited liability companies, Credit Unions are organised as cooperatives that carry out activities for their members (including the State and its organisational units). The total value of assets in the Latvian banking sector is EUR 28.3 billion as at 30 September 2013. The banking sector represents 90.7% of total assets in the financial sector supervised by the Capital Markets Commission. Out of all Latvian banks, 3 are state-controlled banks with more than 75% capital. The investment sector plays a relatively small role. However, non-resident deposits play a significant role in the Latvian financial sector. The AML supervisory authority in respect of the financial sector is the Capital Markets Commission and Bank of Latvia in respect of money and currency changing companies.

27. The Latvian financial market is part of the EU single market and is open to credit and other financial institutions that offer cross-border financial services in line with the principle of the free movement of financial services.

28. There are three Self-Regulatory Organisations governing the relevant professions: Latvian Council of Sworn Advocates, Latvian Council of Sworn Notaries and Latvian Association of Certified Auditors (LACA). In December 2013, there were 1 265 persons registered as advocates, 112 persons registered as notaries and 196 certified auditors.

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2. Numbers in parenthesis indicates the number of each type of registered entity as at December 2013.



29. Anti-money laundering/combating financing of terrorism (AML/CFT) in Latvia is primarily regulated by the Prevention of Money Laundering and Terrorism Financing Law. This Law implemented the EU Third Money Laundering Directive and other related EU Regulations and Directives<sup>3</sup> into Latvian domestic law. Regulation of AML issues is under the overall control of the Ministry of Finance. The Financial Intelligence Unit (FIU) is established as a central national agency within the Prosecutor's Office. The Prosecutor's Office is an independent state authority which can initiate investigations or prosecutions and is responsible for supervision of criminal investigations carried out by the Police or other law enforcement agencies. According to the Prevention of Money Laundering and Terrorism Financing Law, the FIU is empowered to receive and analyse suspicious and unusual transactions reports received from financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), and disseminate this information when there is reasonable suspicion that a person has committed a crime.

## Recent developments

30. The EU Directive on Administrative Cooperation in the Field of Taxation<sup>4</sup> came into effect on 1 January 2013. The new Directive provides for obligatory automatic exchange of available information in respect of income from employment, director's fees, life insurance products, pensions, ownership of and income from immovable property. Rules concerning automatic exchange of information will become effective on 1 January 2015. The new directive also extends the scope of administrative cooperation to all taxes of any kind levied by, or on behalf of a Member State that are not already covered by another EU instrument (*i.e.* VAT and customs duties). All types

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3. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing; Commission Directive 2006/70/EC of 1 August 2006, laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of "politically exposed person" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis; Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of November 15, 2006 on information on the payer accompanying transfers of funds.
  4. Council Directive No.2011/16/EU, on Administrative Cooperation in the Field of Taxation and repealing Directive 77/799/EEC.

of legal arrangements for holding or managing assets or income derived therefrom are covered by the directive. The new Directive was implemented by amendments to the Law on Taxes and Fees and by Cabinet Regulation No. 1245 adopted on 5 November 2013. The new Regulation No. 1245 replaces Cabinet Regulation No. 884 and contains procedures and conditions for exchange of information for tax purposes. The new rules took effect from 1 January 2013.

31. On 10 April 2013 amendments to the Credit Institutions Law transposing provisions of Council Directive 2011/16/EU came into force. These amendments to the Credit Institutions Law provide wider access to banking information for Latvian tax authorities and remove previous impediments (see section B.1).

32. On 29 May 2013 Latvia signed the Convention on Mutual Administrative Assistance in Tax Matters. The Convention is not yet in force in Latvia.



## Compliance with the Standards

### A. Availability of Information

#### Overview

33. 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<sup>5</sup> may not be able to obtain and provide it when requested. This section of the report describes and assesses Latvia's legal and regulatory framework for availability of information.

34. The Latvian legal and regulatory framework ensures that ownership information regarding all relevant entities is available in Latvia in line with the international standard with the exception of foreign companies. All companies are required to register with the Enterprise Registry and domestic companies must provide information on their founders upon registration. Limited liability companies are also required to report to the Registry any changes in shareholders. Joint stock companies and cooperatives are not required to report changes in their ownership structure to the Registry,

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5. 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.

however, they are required to keep and maintain an up to date register of shareholders. In addition, companies are required to report to the Enterprise Registry beneficial owners in certain circumstances. Foreign companies are not required to have available ownership information in Latvia in all instances. Ownership information must be available in certain circumstances under the accounting or tax law and if an AML obliged person is engaged by the company; however, availability of such information will depend largely on the obligations of the jurisdiction in which the company is incorporated. It is therefore recommended that Latvia ensure that ownership information on foreign companies, in particular those having their head office or headquarters in Latvia, is available in all cases.

35. Nominee ownership is restricted to obliged persons under AML rules, which require identification of a person on whose behalf a nominee is acting.

36. Joint stock companies can issue bearer shares. Bearer shares can be issued only in dematerialised form and must be registered in the Latvian Central Depository. Transfers are valid only upon being entered in the shareholder register of the joint stock company and recorded in the respective financial instrument account of the transferee. The legal regulation of bearer shares is analogous to the regulation of listed securities and ensures that information on the owners of bearer shares is available in Latvia.

37. Ownership information on partnerships must be reported to the Enterprise Registry upon their registration and kept updated. Further, the tax return of each partner must include information on all other partners in a partnership. This obligation is triggered also in case of a foreign partnership with a taxable presence in Latvia.

38. Latvian law does not recognise the concept of a trust. However, Latvian tax and AML legislation ensure that information is available regarding the settlor and beneficiaries of a foreign trust operated by a Latvian trustee. The tax law requires all Latvian trustees of foreign trusts to keep information identifying the settlor and beneficiaries of the trust in order to substantiate their tax position with regards to the trust's assets and income generated from them. Further, any person providing trustee services by way of business is expressly covered by the PMLA and is subject to AML obligations which include identification of the settlor and beneficiaries of an express trust. Information on the settlor and beneficiaries of a trust might not be kept by all non-professional trustees. The materiality of this issue should be further considered in the Phase 2 Reer Review.

39. With regard to foundations, information on founders, members of the executive board (or any other person with the authority to represent the foundation) and beneficiaries is available in Latvia. Information on

founders and members of the executive board must be provided to the Registry of Associations and Foundations upon registration and kept updated. Information on beneficiaries must be included in annual accounts of the foundation filed with the tax administration and it is normally stated in articles of association which need to be filed with the Registry. In addition, members of the executive board are subject to AML rules requiring them to identify their clients.

40. Latvian law provides for sanctions in respect of key obligations to maintain ownership information. However, some of the sanctions are rather low and might not be dissuasive enough to ensure availability of information in practice. As this is a practical issue the effectiveness of the enforcement provisions in place in Latvia will be considered as part of the Phase 2 Peer Review.

41. All relevant Latvian entities as well as foreign entities performing economic activities in Latvia are required under the Accounting Law to keep accounting records in line with the international standard. The requirements under the Accounting Law are supplemented by obligations imposed by the tax law and under AML regulations. Accounting information might not be kept by non-professional trustees in all instances. The materiality of this issue will be further considered during the Phase 2 review. Availability of underlying documentation is ensured by accounting and tax requirements. Accounting records and underlying documentation must be kept in Latvia for at least five years.

42. In respect of banks and other financial institutions, Latvian AML and accounting legislation imposes appropriate obligations to ensure that all records pertaining to customers' accounts as well as related financial and transactional information are available. Banks are expressly prohibited from establishing business relationships with or carrying out transactions for anonymous customers. The effectiveness of AML sanctions and measures to enforce availability of banking information (including records of accounts files and business correspondence) will be considered in the Phase 2 review of Latvia.

## 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<sup>6</sup> A.1.1)*

#### *Types of companies*

43. The following types of companies can be established under Latvian law:

- **limited liability company** – Limited liability company (LLC) (s. 134(3) Commercial Law) is the most common legal form for business entity in Latvia. LLCs are separate legal entities with equity capital made up of contributions paid by their owners. Shares of LLCs are not publicly tradable. LLC may be founded by one or several founders who can be natural or legal persons (s. 140). Founders are liable for the obligations of the company only up to the amount of their unpaid contribution to the company's capital. The minimum amount of equity capital of LLC is EUR 2 800 (s. 185). There were 159 727 LLCs in Latvia as at January 2014;
- **stock company** – A stock company is a company the shares of which are publicly tradable (s. 134(4)). The equity capital of a stock company is divided into shares/stock which may be registered stock or bearer stock (s. 228). Shareholders are not liable for the obligations of the company. The equity capital of a stock company may not be less than EUR 35 500 (s. 225). There are no restrictions regarding the number of shareholders. There were 110 stock companies in Latvia as at January 2014;
- **European Company** – European Companies are regulated by Council Regulation (EEC) 2157/2001 on Statute for a European Company which permits the creation and management of companies with a European dimension, free from the territorial application of national company law. The minimal capital is EUR 120 000 (Art. 4 of the Council Regulation). The rules that apply to European Companies are the same as applicable to stock companies in Latvia (Art. 10). There were 5 European Companies in Latvia as at January 2014;
- **cooperative society** – Cooperatives are formed by at least three legal or natural persons (s. 8(4) Cooperative Societies Law) to undertake business for the economic or social benefit of their members (s. 1(5)).

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

Members are not liable for the debts/obligations of the cooperative (s. 5). There were 3 652 cooperatives in Latvia as at January 2014.

44. LLCs, stock companies as well as cooperatives are founded and obtain legal personality at the moment they are registered with the Enterprise Registry (s. 135(2) Commercial Law; s. 4(2) Cooperative Societies Law). In order to set up a company or cooperative the founders must, among other requirements, prepare and sign the Memorandum of Association and Articles of Association, set up administrative institutions of the company, pay up the equity capital and submit an application to the respective office of the Enterprise Registry (ss.141 and 142 Commercial Law; s.10 Cooperative Societies Law).

### *Information kept by public authorities*

#### Enterprise Registry

45. The Enterprise Registry is an administration authority under the supervision of the Minister for Justice. Registration of the entities is carried out by state notaries of the Enterprise Registry. The Enterprise Registry carries out functions of a business register for all types of entities required to be registered by law, e.g. for companies, cooperatives, partnerships, foundations or individuals conducting business (merchants) (s. 1 Law on the Register of Enterprises of the Republic of Latvia (LRE). Enterprises (companies), branches and representations shall be registered according to their location in the relevant department of the Enterprise Registry (s. 2).

46. Founders of a company or cooperative must upon registration provide to the Enterprise Registry the memorandum of association and articles of association (s. 142 Commercial Law; s. 10 Cooperative Societies Law). The memorandum of association of a company must include (s. 143 Commercial Law):

- information regarding the founders:
  - for natural persons – given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority which issued the document) and residential address,
  - for legal persons – name, registration number, legal address, office and residential address of the representative who signs the memorandum of association in the name of the legal persons;
- the name of the company;



- the amount of the equity capital of the company, the number of shares and par value;
- the amount of the equity capital each founder has subscribed to and the amount of equity capital to be paid-up before registration, the procedures and time periods for payment;
- the number of shares due to each founder according to the part of the equity capital such founder has subscribed to;
- the given names, surnames, personal identity numbers and residential addresses of the members of the board of directors of the company.

47. The memorandum of association of a cooperative must include information similar to information contained in the memorandum of association of a company (i.e. identification of founders, size of equity capital, the distribution of co-operative shares among the founders and the time limits and types of their investment, changes in the type of co-operative shares and the procedures for the alienation of co-operative shares) (s. 12 Cooperative Societies Law). Nevertheless, there is no requirement to update this information when a change of ownership occurs. However, the cooperative has to maintain a register of members, see below.

48. In addition, articles of association of a company or cooperative must give the time period or goals of the activities of the company (if the company is founded for a specific period of time or to reach a specific goal) and the rights of members of the board of directors to represent the company (s. 144 Commercial Law, s. 13 Cooperative Societies Law).

49. The articles of association of stock companies must indicate (s. 144 Commercial Law):

- the categories of issued stock, the rights which arise from each category of stock and the number and the par value of each category of stock;
- whether the stock is registered stock or bearer stock; and
- if the articles of association provide that registered stock can be converted into bearer stock or *vice versa* the provisions for such conversions.

50. The Enterprise Registry issues upon registration an enterprise registration certificate including registration number of the entity and date of its registration. The original of the registration certificate shall be kept by the entity. Copies of the certificate are submitted to the relevant government authorities including tax administration (s. 2 LRE).

51. Companies are required to submit upon registration their register of shareholders to the Enterprise Registry (s. 149(9) (see below). The Registry then registers the shareholders in the Commercial Register which it maintains. LLCs are further required to report any change in the shareholder register to the Enterprise Registry. The board of directors must within three working days after entering the shareholder on the register submit a new version of the register to the Commercial Registry (s. 187(7) Commercial Law).

52. Companies are also obliged to submit information on their beneficial owners to the Enterprise Registry. A shareholder of a company who holds at least 25% of the capital company shares for the benefit of another person, has a duty to notify the company thereof within 14 days, indicating the person for whose benefit such shares are held (s. 17<sup>1</sup>(2) Commercial Law). A shareholder which is not a natural person having a participation in a company of at least 25%, and which has not been established in accordance with the laws of a European Union Member State, has a duty, within 14 days, to submit a notification to the company on the owners of such shareholder (s. 17<sup>1</sup>(3)). Further, a shareholder referred in both cases above must indicate to the company the natural person who owns or directly or indirectly controls at least 25 per cent of the company and the data allowing identification of such person (s. 17<sup>1</sup>(6)). The company shall submit all notifications referred above within 14 days from their receipt to the Enterprise Registry (s. 17<sup>1</sup>(8)). In case of failure to do so sanctions regarding a company or a shareholder in breach are available (s. 166<sup>3</sup> Administrative Violations Code and s. 195<sup>1</sup> Criminal Law).

53. Entries in the Commercial Register shall be stored in electronic form (s. 16 LRE). There is no provision that limits the time period for which the stored information should be kept. According to the information provided by the Enterprise Register the information shall therefore be kept for an unlimited period of time.

### Information provided to tax administration

54. All companies and cooperatives operating in Latvia must be registered with the tax administration (s. 15<sup>1</sup>(1) Law on Taxes and Fees (LTF)). Any company or cooperative registered with the Enterprise Registry is automatically registered for tax purposes as well. The Enterprise Registry issues upon registration to the entity a uniform eleven digit registration number and issues a registration certificate which is also a taxpayer's certificate (s. 15<sup>1</sup>(1) LTF)). All information submitted to the Enterprise Registry upon registration and subsequently is directly available to the tax administration. Foreign legal persons having a taxable presence in Latvia which are not required to register with the Enterprise Registry (such as foreign company with permanent establishment in Latvia) must register directly with the tax administration (s. 15<sup>1</sup>(5) LTF) (see below).

55. Taxpayers are required to submit an annual tax declaration to the SRS. The tax declaration must include annual accounts of the undertaking (s.22 Law on Enterprise Income Tax). Annual accounts of Latvian companies with net turnover exceeding EUR 800 000 must contain information on ownership structure of the entity and its group. A group is understood as an aggregate of companies which includes a parent company and its subsidiary companies. The required information includes names and legal addresses of the entities in the group, the participatory share of the company in other companies within the group and the amount of equity and of profit or loss of subsidiary companies of the group and associated companies (s.42 Annual Accounts Law).

56. Further, certain tax positions require that the company discloses its ownership structure to the tax administration (e.g. transfer pricing, utilisation of tax losses, and exemption of dividend payments). However, these tax reporting obligations do not ensure that information on shareholders is provided to the Latvian tax administration in all cases since they are linked to specific conditions (e.g. turnover threshold, transfer pricing obligations, utilisation of tax losses).

### *Information held by companies*

57. Companies are required to maintain a register of shareholders. A shareholder is a person who has been entered in the register of shareholders. Until the person is entered into the register of shareholders it cannot exercise its shareholder rights (s. 136(1) Commercial Law).

58. The register of shareholders should reflect all changes in shareholders. The register is made up of separate divisions. A division is a document containing aggregate entries of each change and reflects the complete current composition of shareholders. (s. 187(2)). Deletion and exclusion of entries is not permitted (s. 187(10)). The register of shareholders includes:

- sequence numbers and par value of shares;
- information regarding shareholders:
  - for a natural person – the given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issuance of a personal identification document, the state and authority which issued the document) and address where the person may be reached;
  - for a legal person – the name, registration number and legal address;
- the number of shares of each shareholder;

- the deadline for paying-up of shares provided for in the memorandum of association or the provisions for the increase of the equity capital, if shares have not been paid-up;
- the date when paying-up of shares to their full extent has been performed (s. 187(5));

59. A notification for making an entry in the register of shareholders shall be submitted to the company by the person regarding whom the entry is to be made (s. 187(1)). The board of directors has to make an entry in the register of shareholders or to raise justified objections against making an entry not later than on the following day after it has received a notification regarding changes in the information to be entered in the register of shareholders (s. 187(6)).

60. The board of directors of a co-operative society is under the obligation to maintain and keep updated a list of all cooperative members (s. 19 Cooperative Societies Law). Membership in a cooperative can be established during its foundation or after approval of a written membership application by the general meeting of members (s. 18). Minutes and decisions of the general meeting should be kept by the cooperative (s. 50(2)).

61. The register of shareholders shall be stored for 10 years after the company is struck-off from the Commercial Register (s. 187(4) Commercial Law). Upon liquidation of a cooperative, the liquidation commission should transfer the list of members and other relevant documents to the National Archives of Latvia for archivation (s. 53(10) Cooperative Societies Law).

### *Nominee identity information*

62. Providing nominee shareholding is restricted only to licensed professionals. In accordance with Article 125 of the Financial Instruments Market Law (FIML), only a brokerage company, credit institution or licensed intermediary which is a professional participant in the Latvian securities market has the right to own a nominee account and provide nominee shareholding services. The nominee account, as a special type of securities account, is operated by the Central Securities Depository. Such an account must be indicated as a nominee account and identification of the owner of the account must be included (s. 130(3) FIML).

63. The owner of a nominee account is required to maintain records on the securities held in the account and perform CDD measures as prescribed under the Law on the Prevention of Money Laundering and Terrorism Financing (AML Law). Owners of nominee accounts are obliged persons under the AML Law (s.3(1)) and are therefore required to identify their customers, i.e. the person on whose behalf they hold the shares, and perform CDD at the moment of establishing the business relationship in all cases (s. 11(1)). This includes,

using an AML-risk based approach, identifying the beneficial owner of the customer where the customer is a legal entity (s. 17(1)). The beneficial owner is in general defined as a natural person having real or legal direct or indirect control of an entity or holding, alone or together with other persons, voting rights or financial interest in that legal person of more than 25% (s. 1(5)). The nominee is further required to conduct ongoing monitoring, to ensure that the information held on the customer is up-to-date (s. 20) and to keep information for five years following the termination of the business relationship (s. 37(2)).

### *Foreign companies*

64. Foreign companies or other legal entities established under laws of another jurisdiction can conduct commercial activities in Latvia as branches or permanent establishments. Branches of foreign entities must be registered with the Enterprise Registry. An application for entering a branch in the register must include:

- name of the branch and of the foreign entity;
- legal address of the branch and of the foreign entity;
- register in which the foreign entity is registered and its registration number;
- person who is authorised to represent the foreign entity in respect of activities related to the branch;
- legal type of foreign entity;
- copy of the articles of association, memorandum of association or a document equivalent to such of the foreign entity (s. 25(2) Commercial Law).

65. A company registered under foreign law cannot become tax resident in Latvia and no criteria of place of effective management or management and control is used to establish tax residency therein. However, the location of a company's head office or headquarters in Latvia, by virtue of its degree of permanency, would give rise to a permanent establishment notwithstanding that the concept of head office or headquarters is not recognised in Latvian law (s. 14(7) LTF). In order to register as a permanent establishment the foreign person should submit an application to the SRS. The application must include the applicant's passport and should contain the name and address of the foreign entity, its current accounting data, identification of its founders and its registration certificate (Cabinet of Ministers Regulation No.150). Taxpayers have obligation to notify their local tax administration office regarding changes in their registration documents within ten days of making the changes (15(2) (4) LTF). The same tax and accounting rules apply in respect of the permanent establishment as for domestic companies. If the net turnover of the

foreign company's permanent establishment exceeds EUR 800 000 its annual accounts must contain information on ownership structure of the entity and its group. Ownership information must be reported also in certain tax positions (e.g. transfer pricing, utilisation of tax losses, and exemption of dividend payments). However, these tax reporting obligations do not ensure that information on shareholders is provided to the Latvian tax administration in all cases.

66. To the extent that a foreign company engages the services of AML obligated persons (such as banks with which the foreign company maintains an account), some ownership information would be collected with respect to the foreign company, by virtue of CDD conducted by that AML obligated person. However, since not all companies must engage with AML obligated persons in Latvia the CDD requirements cannot ensure that ownership information is available in all instances.

67. Companies formed outside of Latvia are generally not required to maintain or provide information identifying their owners if they are effectively managed or have their head office or headquarters therein. Obligation to maintain ownership information under the tax law is linked to specific conditions (e.g. turnover threshold, transfer pricing obligations, utilisation of tax losses) which do not ensure that such information will be available in all cases. Therefore, the availability of information that identifies the owners of foreign companies with sufficient nexus with Latvia will generally depend on the law of the jurisdiction in which the company is formed and it may not be available to Latvian competent authorities in all cases.

### *Information held by service providers and other persons*

68. The Law on Prevention of Money Laundering and Terrorism Financing (PMLA) which regulates AML rules in Latvia is a transposition of the 3rd EU Money Laundering Directive. PMLA requires obliged entities to perform CDD. The obliged entities under the PMLA are persons performing an economic or professional activity such as:

- credit and financial institutions;
- tax advisors, external accountants, auditors;
- notaries, lawyers, other independent providers of legal services when they, acting on behalf of their customer, assist their customer in transactions concerning the following:
  - buying and selling of immovable property or shares of the commercial company,
  - managing of the customer's money or financial instruments and other funds,

- opening or managing of all kinds of accounts in credit institutions or financial institutions,
- creation, management or operation of legal arrangements, as well as in relation to the organisation of contributions necessary for the creation, operation or management of a legal arrangement;
- providers of services related to the creation and operation of a legal arrangement;
- persons acting as real estate agents or intermediaries in immovable property transactions;
- other legal or natural persons trading in immovable property, means of transport, cultural monuments, precious metals, precious stones, the articles thereof, or trading in other goods, as well as acting as intermediaries in the abovementioned transactions or engaged in provision of other services, if payment which on the day of the transaction is equivalent to or exceeds EUR 15 000 is carried out in cash (s. 3(1) PMLA).

69. The obliged person is required to identify a customer prior to establishing a business relationship or prior to performing an individual transaction if the amount of the transaction is equivalent to or exceeds EUR 15 000 or the transaction is considered unusual or suspicious (s. 11 PMLA).

70. A natural person shall be identified by verifying his or her identity according to the personal identification document where the given name, surname, personal identity number (or equivalent including date of birth in case of non-residents) is provided (s. 12(1) PMLA). For the identification of a legal person documents attesting registration, address of the registered office and identity of persons who are entitled to represent of the customer should be requested (s. 13(1)).

71. An obliged person is further required to apply customer due diligence (CDD) which includes clarification of the ownership structure of the client (s. 17(1) PMLA). CDD is required to be performed:

- prior to establishing a business relationship;
- prior to opening of account, acceptance of money or other funds for storage or holding;
- if there are suspicions regarding money laundering or terrorism financing; or
- if there are doubts about the veracity of the previously obtained information on the identification of the customer or on customer due diligence (s. 16).

72. The obliged person is further required to determine a beneficial owner for customers subject to enhanced customer due diligence (i.e. with a non-face-to-face customer, when establishing a business relationship with a politically exposed person; and when establishing a cross-border relationship by credit institutions with respondents from third countries) and all customers where suspicions have been aroused that the transaction is executed on behalf of another person (s. 18 PMLA). The beneficial owner is defined as a natural person, having real or legal direct or indirect control over the management or operations; or holding in person or in contract with a business partner more than 25% of the voting rights; or acting in concert and holding more than 25% of the voting rights; or a natural person, who for other reasons is the real recipient of the revenue of such an entity (s. 1(5)).

73. The obliged person is required to ensure regular updating of the documents, data and information obtained in the process of the customer due diligence and this documentation must be stored for at least for five years following the end of the business relationship (s. 17(1), s. 37(2) PMLA).

### *Conclusion*

74. The Latvian legal and regulatory framework ensures that ownership information regarding domestic companies and cooperatives is available. LLCs are required to provide information on their founders upon registration with the Enterprise Registry and report any changes in shareholders subsequently. Stock companies and cooperatives are not required to report changes in their ownership structure to the Registry, however they are required to keep and maintain an up to date register of shareholders. In addition, companies are required to report to the Enterprise Registry beneficial owners in certain circumstances. Nominee ownership is restricted only to professionals covered by AML obligations and identification of the nominee and the fact that shares are held on behalf of another person must be entered in the register of shareholders.

75. Companies that are not formed under Latvian law are not required to provide ownership information to any registration authority in order to conduct activities in Latvia. Further, tax obligations do not ensure that ownership information is available in all circumstances. AML obligated person could be engaged by a foreign company and might therefore conduct CDD with respect to the company. However, these obligations do not ensure the availability of full ownership information with respect to all relevant foreign companies. Therefore, Latvia is recommended to ensure that ownership information on foreign companies with sufficient nexus with Latvia, in particular, having their head office or headquarters in Latvia, is available in all cases.



*Bearer shares (ToR A.1.2)*

76. Stock companies can issue bearer shares under the Latvian law (s.228(1) Commercial Law). Bearer shares can be issued only in dematerialised form (s.229(2)). The rights arising from bearer shares belong to the person whose shares have been registered in the financial instrument account kept by the Central Depository (s.228(3) Commercial Law). The Central Depository is supervised by the Financial and Capital Market Commission. The procedure for issuance, registration and transfer of bearer shares is the same as the procedure applicable for publicly traded shares listed on the Latvian exchange market (Art. 93 and 94 FIML).

77. The board of directors is obliged to ensure that issued bearer shares are registered in the Latvian Central Depository in accordance with the provisions of the Financial Instrument Market Law (s.263<sup>1</sup>(1) Commercial Law). Upon registration of new bearer shares the Central Depository informs its members of the ISIN code of the newly registered securities (Latvian Central Depository Regulation, No.2). Any transfer of bearer shares is recorded by the Central Depository in the shareholders register of the respective stock company within one day after receipt of an application signed by transferor and transferee (s.238(5)). The bearer share is then transferred from the financial instrument account of the transferor to the financial instrument account of the transferee (s.228). The Central Depository is required to verify the identity of the owner of the account and keep such information updated (s.130(3) FIML).

78. In addition, the shareholder's obligation under the section 17<sup>1</sup> of the Commercial Law to submit information on beneficial owners to the company equally relates to the holders of bearer shares (see above).

79. The company and Latvian authorities, including the tax administration, are entitled to request information on holders of bearer shares from the Central Depository (s.236<sup>2</sup> Commercial Law). In such cases the Central Depository can be required to prepare a complete list of owners of shares of a particular company or a particular type of company. The list must include, with regard to natural persons – name, surname, personal identification number, other personal identification data and state of residence; with regard to legal persons – name of company, registration (incorporation) number, date of registration, other identification data and state of residence (Latvian Central Depository Regulation, No.7).

80. All bearer shares were required to have been entered in the Central Depository or converted into registered shares by 31 December 2009. Activities of a company which had not done so would be terminated (s.314 Commercial Law). According to the data of the Latvian Central Depository, as of October 2013 32 companies had issued bearer shares, representing 3.5%

of all stock companies in Latvia. All these bearer shares are registered with the Central Depository and traded on the securities market as required by the law.

81. The legal regulation of issuance and transfer of bearer shares, which is analogous to the regulation of listed securities, means that information on the owners of bearer shares is required to be available to the Latvian competent authority in all instances.

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

82. Latvian law recognises three types of partnerships:

- ***general partnerships***: A general partnership has two or more partners undertaking business activities under a common business name based on a partnership agreement. All partners are entitled to act on behalf of the partnership and are jointly and severally liable for the debts/obligations of the partnership (s. 77(1) Commercial Code). There were 584 general partnerships in Latvia as at January 2014;
- ***limited partnerships***: A limited partnership has one or more partners with limited liability for the obligations of the partnership up to the amount of the unpaid parts of their contributions (limited partners) and one or more partners with full liability for the obligations of the partnership (general partners). Relations between limited and general partners are specified in the partnership agreement (s. 118(1). Limited partners do not have the right to participate in the management of the partnership (s. 121(1). There were 150 limited partnerships in Latvia as at January 2014; and
- ***European Economic Interest Groupings (EEIGs)***: The EEIG is a European form of partnership in which companies or partnerships from different European countries (the partners in the EEIG) can cooperate. It must be registered in the EU State in which it has its official address. EEIGs are regulated under Council Regulation (EEC) No.2137/85 of 25 July 1985 on the European Economic Interest Grouping. EEIGs are subject to the same requirements as general partnerships (Council Regulation (EEC) No.2137/85 of 25 July 1985 on the European Economic Interest Grouping). There were 4 EEIGs in Latvia as at January 2014.

*Information kept by public authorities*

## Enterprise Registry

83. A partnership obtains legal personality upon entry in the Enterprise Register (s. 89(1) Commercial Law).

84. The following information must be entered in the Register upon formation of a partnership:

- partnership's name;
- type of partnership;
- amount of contribution by each limited partner and the total amount of limited partner contributions;
- given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority which issued the document) of general and limited partners, for partners being legal persons – name, registration number and legal address;
- the right of members of the partnership to represent the partnership individually or jointly;
- partnership's legal address;
- if the partnership has been established for a specific time period or for achievement of a specific objective – the time period for which it was established or the objective;
- branch firm name, if it is different from the firm name of the partnership, and its legal address (s. 8(2) Commercial Law).

85. Changes in the information provided upon incorporation must be notified to the Enterprise Registry (s. 78(3, 4) Commercial Law). Applications for registration of the information provided to the Registry must be signed by all partners of the partnership (s. 78(4)). Changes become legally effective in respect of third parties upon being entered in the Register (s. 89(1)).

86. Foreign partnerships established under the laws of another jurisdiction can conduct commercial activities in Latvia as branches or permanent establishments. If a foreign partnership systematically carries out business in Latvia it is required to register a permanent establishment with the tax administration (s. 14(7) LTF) or, if the business is carried out through an independent undertaking, the partnership is required to register a branch with the Enterprise Registry (s. 22 Commercial Law). An application for entering a branch in the Enterprise Register must include the same types of information

as in the case of foreign companies, including the names of persons who are authorised to represent the foreign partnership and a copy of the articles of association (s. 25(2) Commercial Law).

87. The same obligation to disclose beneficial owners in the Enterprise Register as for companies applies in respect of partnerships including branches of foreign partnerships (s. 17<sup>1</sup> and s. 25(1) Commercial Law) (see section A.1.1).

### Information provided to tax administration

88. Partnerships are transparent for tax purposes. However, all partnerships are required to register for tax purposes and submit an annual tax declaration including identification of all partners in the partnership (s. 22(9) Law on Enterprise Income Tax). In addition, foreign partnerships systematically carrying out business in Latvia through an independent undertaking must be registered with the Enterprise Registry and information submitted to the Enterprise Registry upon registration and subsequently is directly available to the tax administration.

89. Each partner of a partnership (including limited partner) is liable to income tax according to the share of taxable income of the partnership due to him or her in Latvia and must be registered with the tax administration (s. 2(3) Law on Enterprise Income Tax). A partner of a partnership is obliged to include in his/her tax return an income declaration in respect of the partnership, the partnership's annual financial report and a certification by the partnership regarding the size of the partnership contribution share belonging to each member (s. 22(10) Law on Enterprise Income Tax). This obligation covers also partners in foreign partnerships that are carrying on business in Latvia and requires that information on all partners in the partnership is included in their tax returns. Further, annual financial statements of Latvian partnerships with net turnover exceeding EUR 800 000 must contain information on the partnership's ownership structure (s. 42 Annual Accounts Law).

### *Information held by the partners and service providers*

90. Partners in a partnership are not specifically required to maintain a record of all partners. However, identity information on all partners is available through the partnership agreement which should be available with the partnership or to the partners (s. 79 Commercial Law). Further, applications for registration of any changes in information provided to the Enterprise Registry must be signed by all partners of the partnership (s. 78(4)) and it is therefore necessary that information on all partners must be available to them.

91. To the extent that any partnership engages the services of an AML obligated person, such as a bank, or auditor, the beneficial owners of the partnership (i.e. partners that own or control more than a 25% stake in the partnership) would be identified through CDD (see A.1.1).

### *Conclusion*

92. The legal and regulatory framework in Latvia ensures that ownership information regarding partnerships is available. Partnerships incorporated in Latvia are required to submit information on all their partners to the Enterprise Registry and report any subsequent changes thereof. Further, the tax return of each partner must include information on all other partners in a partnership (including foreign partnership).

### *Trusts (ToR A.1.4)*

93. Latvian law does not recognise the concept of a trust and Latvia is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition<sup>7</sup>. However, there are no restrictions for a resident of Latvia to act as trustee, protector or administrator of a trust formed under foreign law.

### *Tax legislation*

94. Latvian tax law requires all residents (individuals and legal entities) to pay income tax on all their income, regardless of the location of the source of wealth of such income provided they are the beneficial owners of such assets and income (s.4(2) LTF). Thus, Latvian trustees who are the legal but not beneficial owners of trust assets have to be able to prove that they are not the beneficial owners in order prevent being taxed on the income of the trust (s. 15).

95. The Latvian authorities advise that in order to substantiate the trustee's tax position (i.e. whether he/she is or is not a beneficial owner of that income), the trustee would have to be able to provide the trust deed as well as other relevant information such as bank accounts, accounting records and underlying documentation. Thus, the identity of the settlor and the beneficiary (or class of beneficiaries) would be provided as the aforementioned documents would include this information.

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7. [www.hcch.net/index\\_en.php?act=conventions.text&cid=59](http://www.hcch.net/index_en.php?act=conventions.text&cid=59).

### *AML legislation*

96. Any person providing services by way of business in the framework of a trust or any similar contractual relationship under foreign law becomes a service provider in relation to the AML legislation and is subject to AML requirements (s. 1(10)(d) PMLA). An obliged person is required to conduct customer due diligence which in the case of legal arrangements includes clarification of the structure of the relevant arrangement, the way in which control is expressed over it and to gather information on the purpose and intended nature of the business relationship (s. 17). Trustees are therefore obliged to identify settlors and beneficiaries of the trust, verify their identity and in the case of legal persons investigate their ownership structure (ss. 11, 12, 17). Where a legal person acts on behalf of somebody else (including a foreign trust) and becomes a customer of an AML obliged person, the obliged person must verify the direct and indirect natural owners if their holding in the customer amounts to more than 25%, and if natural persons exercise a determining influence over the customer (ss. 1(5), 18). Further, trustees have to conduct ongoing monitoring of the business relationship including ensuring that the information is kept up-to-date (s. 17(1)).

97. A Latvian non-professional trustee is not covered by AML obligations under the PMLA. Although providing such services should generate taxable income and trigger an obligation to keep information substantiating the tax position of the person concerned, information on the settlor and beneficiaries of the trust might not be kept by such trustee in all instances. It is considered that this situation is likely to be rare and not likely to prevent effective EOI. A practical assessment of the matter will take place in the Phase 2 Peer Review of Latvia.

### *Conclusion*

98. Latvian tax and AML legislation ensure that information is available regarding the settlor and beneficiaries of a foreign trust operated by a Latvian trustee. The tax law requires all Latvian trustees of foreign trusts to keep information identifying settlor and beneficiaries of the trust in order to substantiate their tax position with regards to the trust's assets and income generated from them. Further, any person providing trustee services as a way of business is expressly covered by the PMLA and is subject to AML obligations which include identification of the settlor and beneficiaries of the express trust.

### *Foundations (ToR A.1.5)*

99. A foundation or association (a foundation) is an aggregate of property that has been set aside for the achievement of a goal specified by the founder, which shall not have a profit-making nature (s. 2(2) Associations and Foundations Law (AFL)). A foundation is a legal person liable to third parties only to the extent of all its own property (s. 4(1)). A foundation has the right to perform economic activity for the maintenance and utilisation of its own property and to achieve its goals (s. 7(1)). Its income can be used only for purposes specified in the articles of association. Profit obtained from foundation's economic activity cannot be divided among its founders (s. 7(2)).

100. A foundation obtains the status of a legal person at the moment when it is entered into the Register of Associations and Foundations (s. 3 AFL). Founders are obliged to submit to the Registry an application including the following information:

- the name and legal address of the foundation;
- the decision on founding including names of all founders and date when it was taken;
- the goals of foundation;
- the articles of association;
- given name, surname, personal identity number (if none – date of birth, the number and date of issuance of a personal identification document, the state and authority that has issued the document) of the members of the executive board, indicating whether they have the right to represent the foundation individually or collectively;
- the written consent of each member of the executive board to serve as a member of the executive board (ss.15, 24(2) and 92(3)).

101. The articles of association must specify the procedures by which property is transferable to it, the goal of the foundation, the procedures for the use of the resources of the foundation, the procedures for appointment and change in members of the executive board, its numerical composition and representation rights (s. 90(1) AFL). Although names of beneficiaries are not specifically required to be contained in the articles of association identification of beneficiaries (or group of beneficiaries) is normally included as part of the goals of the foundation. Any amendments to the articles of association come into effect in respect of third persons only after being notified to the Registry (s. 101(3)). Changes in the executive board shall be notified for entry into the Register by attaching an extract from the minutes of the executive board meeting with the decision on election or recall of its members (45(6)).

102. The executive board is obliged to prepare the foundation's annual accounts in accordance with the Law on Accounting. Accounting rules require that information on payments or donations to beneficiaries during the accounting year is included in the foundation's accounting records and underlying documentation (ss. 4(2) and 53<sup>1</sup>(1) Annual Accounts Law). If the foundation has received the status of a public benefit organisation its annual accounts should include information on persons who benefitted from the foundation's activities in the respective accounting year. If the foundation is not considered a public benefit organisation its annual accounts must include records of donations and gifts (s. 10 AFL). Annual accounts must be examined by a financial auditor and submitted by the executive board to the tax administration (s. 52 AFL). The SRS may request more detailed information about the activities of the foundation (including information on beneficiaries) upon notice (s. 10(2) LSRS).

103. Members of a foundation's executive board who are remunerated for it are subject to AML obligations (s. 3(1)(5) PMLA). As obliged persons they are required to identify their clients and perform CDD measures which include identification of the founder(s) and beneficiaries of the foundation (ss. 11, 12, 17). When a foundation conducts financial activity involving an obliged entity (financial institution or one of the designated categories of professionals) the obliged entity will also conduct such CDD and identify the founders plus beneficial owners of the foundation.

### *Conclusion*

104. Latvia's legal and regulatory framework ensures the availability of information on the foundation's founders, members of the executive board (or any other person with the authority to represent the foundation) and beneficiaries. Information on founders and members of the executive board must be provided to the Registry of Associations and Foundations upon registration and kept updated. Information on beneficiaries is normally stated in articles of association which need to be filed with the Registry and must be included in annual accounts of the foundation filed with the tax administration. In addition, members of the executive board who act in a professional capacity are subject to AML rules to identify their clients.

### ***Enforcement provisions to ensure availability of information*** *(ToR A.I.6)*

105. Latvia 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 to effectively enforce the obligations to retain identity and ownership information.

106. Individual members of statutory bodies of entities commencing commercial activities without registration or without licence (if required) are liable to a fine in an amount from EUR 280 up to EUR 700 and can be prohibited from holding certain offices in commercial entities (s.166<sup>2</sup> Administrative Violations Code).

107. In the case of failure to submit to the Enterprise Registry the information or documents specified by the Commercial Law within the time period specified a warning should be issued to the entity and a fine can be imposed in an amount from EUR 70 up to EUR 430. If the same violation is committed repeatedly within a year a fine shall be imposed in an amount from EUR 210 up to EUR 700 (s.166<sup>3</sup> Administrative Violations Code). Further, the operations of the entity can be terminated on the basis of a court decision if the company has not submitted to the Registry of Enterprises the information or documents required by law (s.314(1) Commercial Law).

108. According to the Criminal Law, if a company submits wrongful information to the Enterprise Registry, the officials of the company are liable to a fine of between EUR 960 and EUR 32 000 or can be sentenced to community service or imprisonment (s.272 Criminal Law) and the company is liable to a fine of between EUR 3 200 and EUR 32 millions (s.70<sup>6</sup>).

109. If a shareholder fails to report to the company its beneficial owners (s.17<sup>1</sup> Commercial Law) the shareholder is liable to a fine of between three and one hundred times the minimum monthly wage (currently between EUR 960 and EUR 32 000) or can be sentenced to community service or a prison term of up to three years (s.195<sup>1</sup> Criminal Law). A company failing to submit to the Enterprise Registry information on its beneficial owners in the prescribed period (s.17<sup>1</sup> Commercial Law) is subject to a warning and a fine of between EUR 70 and EUR 430 can be applied if the required information is not submitted. If the same violation is committed repeatedly within a year a fine is imposed of between EUR 210 and EUR 700 (s.166<sup>3</sup> Administrative Violations Code).

110. The board of directors has an obligation to maintain and keep updated the register of shareholders (s.187<sup>1</sup> Commercial Law). If the register of shareholders is not kept, members of the board can be recalled on the initiative of a shareholder or third party whose lawful rights have been infringed and who can claim damages caused by the company in court (ss.306(1, 2) and 314(2)).

111. An entity which fails to register for tax purposes within the time period given by law or provides false information upon registration is liable to a fine in an amount from EUR 210 up to EUR 350 (s.165<sup>2</sup> Administrative Violations Code).

112. In the case of not submitting a tax declaration or violating the deadline specified by law a fine shall be imposed on the taxpayer in an amount from to EUR 140 up to EUR 14 000 depending on the length of delay (s. 159<sup>8</sup> Administrative Violations Code).

113. In the case of failure to provide information, or the provision of false information, to the tax authority, a fine shall be imposed on officials or members of the statutory body of the respective entity in an amount up to EUR 700 and the person can be prohibited from holding certain offices in commercial entities (s. 159<sup>9</sup> Administrative Violations Code). A taxpayer concealing income or other taxable items is liable to a fine, which in respect of individuals is in an amount from EUR 140 up to EUR 350 and in respect of legal persons from EUR 710 up to EUR 2 100 (s. 159 Administrative Violations Code).

114. An obliged person in breach of requirements for customer identification or customer due diligence under PMLA is liable to a fine which, in respect of individuals, is from EUR 140 up to EUR 570 and in respect legal persons from EUR 210 up to EUR 700 (s. 165<sup>7</sup> Administrative Violations Code). Further sanction for breach of AML obligations is available under the Criminal Law. A person who knowingly provides false information to an obliged person under PMLA is liable to a fine of between EUR 900 and 32 000 (in the case of a repeated offence up to EUR 48 000) or can be sentenced to community service or a prison term of up to three years (s. 195<sup>1</sup> Criminal Law). If a legal person the fine can be from EUR 3 200 up to EUR 32 millions (s. 70<sup>6</sup>).

115. A legal person is liable to sanctions if a criminal offence (including reporting false information to state authorities) has been committed in the interests or for the benefit of the legal person or as a result of lack of supervision by a member of its statutory body (s. 70<sup>1</sup> Criminal Law). These sanctions are liquidation, restriction of rights, confiscation of property or a monetary levy (s. 70<sup>2</sup> Criminal Law).

### *Conclusion*

116. Latvian law provides for sanctions in respect of key obligations to maintain ownership information. However, penalties under the Administrative Violations Code are rather low and might not be dissuasive enough to ensure availability of information in practice. As this is a practical issue the effectiveness of the enforcement provisions in place in Latvia will be considered as part of the Phase 2 Peer Review.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Ownership information on foreign companies having sufficient nexus with Latvia (in particular, having their head office or headquarters in Latvia) is not consistently available.	Latvia should ensure that ownership information on foreign companies with sufficient nexus with Latvia (in particular, having their head office or headquarters in Latvia) is available in all cases.

## A.2. Accounting records

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

117. 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.

### *General requirements (ToR A.2.1)*

118. The general accounting obligations are stipulated by the Accounting Law. The Accounting Law applies to all relevant entities including companies, co-operative societies, partnerships, individuals conducting economic activity, associations, foundations and other legal or natural persons who perform economic activities in Latvia (s. 1 Accounting Law).

119. All entities covered by the Accounting Law have a duty to produce accounts, which must be truthful, comparable, timely, significant, understandable and complete. The accounting must clearly reflect all economic transactions of the undertaking, as well as each fact or event which causes changes in the state of the property of the undertaking. Accounting shall be conducted so that a third person qualified in the area of accounting may obtain a true and clear view of the financial position of the undertaking at

the date of the balance sheet, of the results of the economic activities of the undertaking, of its cash flow for a specific time period, as well as be able to determine the beginning of each economic transaction and trace its course (s.2 Accounting Law). An undertaking is required to be able to prepare financial statements at specified dates. A financial report consists of a balance sheet, a profit and loss account, a cash flow statement, a statement of changes in equity and an annex giving information on accounting method used (s.1 Annual Accounts Law).

120. Entries supported by source documents shall be made in accounting registers. Accounting registers shall be maintained using a double entry accounting system. Individuals whose income from economic transactions during the previous accounting year does not exceed EUR 300 000 and foundations whose income from economic transactions during both the current and previous accounting year does not exceed EUR 40 500 may organise their accounting by the simple entry system (s.9 Accounting Law). Detailed rules regarding the maintaining and organising of accounts are provided in the binding Cabinet Accounting Regulations.

121. The head of the undertaking (i.e. members of the board of directors, partners in a partnership, members of executive board of a foundation) is responsible for maintaining the accounting records and the preservation of all documents substantiating economic transactions of the accounting entity (s.2 Accounting Law). A head of an undertaking is liable for any losses caused to the undertaking by not doing so (s.16 Accounting Law). Any person has the right to claim compensation for losses caused by improper accounting by the undertaking (s.17). Heads of undertakings who have allowed violations of the Accounting Law are liable to a fine in an amount from EUR 140 up to EUR 350 and can be prohibited from holding certain offices in commercial entities (s.166<sup>6</sup> Administrative Violations Code).

122. Taxable income of taxpayers (tax residents and permanent establishments) is based on the amount of profit or loss, prior to the calculation of enterprise income tax, as set out in the profit or loss account in an annual financial report drawn up in accordance with the Annual Accounts Law (s.4(1) Law on Enterprise Income Tax). Taxpayers are then required to maintain accounting records of business revenues and expenditures to substantiate their tax liability (s.14(6) LTF). Such records must include records and documents required by accounting law. If the taxpayer fails to provide such records or provides false information to the tax authority a fine shall be imposed on officials or members of the statutory body of the respective entity in an amount up to EUR 700 and the person can be prohibited from holding certain offices in commercial entities (s.159(9) Administrative Violations Code).

123. An obliged person under the AML legislation (including a person acting, in a business capacity, as trustee of a foreign trust) is obliged to keep records of all data and documents on all transactions within a business relationship (including transactions between a trustee and a settlor or beneficiary). The scope of records to be kept is very broad and comprises all data and written documents about the transactions (s.37(2) PMLA). Further, clients have an obligation to provide to the obliged person upon its request information on their executed transactions, economic and personal activity, financial position, sources of money or other funds (s.28(1) PMLA). An obliged person which does not properly conduct monitoring of client transactions is liable to a fine which, in respect of individuals, is from EUR 140 up to EUR 570 and in respect legal persons from EUR 210 up to EUR 700 (s.165(7) Administrative Violations Code) and criminal sanctions can be applied.

124. The accounting obligations previously described apply also to trustees who act in a business capacity. Acting as a trustee represents economic activity as defined in paragraph 3 section 1 of the Commercial Law<sup>8</sup> and therefore a Latvian trustee of a foreign trust is required to keep full accounting records and underlying documents for all operations of the trust (not simply for his/her own income derived from the trust) in line with the accounting standards. It follows from basic accounting principles embodied within these standards that the trustee must keep segregated accounts in respect of assets managed on behalf of third parties and his/her own assets (ss.45(3) and 53<sup>1</sup>(1) Annual Accounts Law). Further, both professional and non-professional trustees who are not the beneficial owners of the trust assets have to keep the necessary records to disprove their tax liability for income from that asset. Professional trustees are also subject to the AML accounting requirements to keep documentation of transactions of the trust, although the AML requirements may not require the trustees to keep accounting records that fully reflect the financial position and assets/liabilities of the trust. In addition, the transactions of a trust having a non-business trustee can be subject to AML requirements if, for example, the trustee (i) opens an account or establishes a relationship related to the trust with a bank in Latvia or other fiduciaries subject to AML legislation; or (ii) purchases or sells any real property for the trust via a lawyer or other professional who would also be subject to the AML/CFT framework. A potential narrow gap remains for trusts which have a non-professional trustee who is not covered by accounting obligations and perform none of the aforementioned activities involving obliged persons under AML rules in Latvia. Latvia is recommended to monitor this potential gap to ensure that it does not limit effective exchange of information in tax matters. This will be considered further in the Phase 2 review of Latvia.

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8. Economic activities are any systematic, independent activities for remuneration (s.1(3) Commercial Law).

### *Conclusion*

125. All relevant Latvian entities as well as foreign entities involved in economic activities in Latvia are required under the Accounting law to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared. The requirements under the Accounting Law are supplemented by obligations imposed by the tax law and under AML regulations. Effectiveness of sanctions for breach of accounting obligations will be considered as part of the Phase 2 Peer Review.

### *Underlying documentation (ToR A.2.2)*

126. All relevant Latvian entities as well as foreign entities involved in economic activity in Latvia are required to keep underlying documentation, including contracts, invoices and other documents which must be reflected in the entity's accounting records. Accounting records are based on accounting entries. Each accounting entry must be supported by a source document (s. 7 Accounting Law). A source document is a document attesting the existence of the economic transaction of the accounting entity and must include at least the following information:

- the name of the document;
- identification of its author:
  - name;
  - the registration number or personal identity number (in case of individual);
  - the legal address;
  - signature;
- date of the document;
- registration number of the document;
- participants in the economic transaction specifying the name, registration number and legal address of each participant;
- description, basis and quantifiers (volumes, amounts) of the economic transaction; and
- other information necessary for the accounting entry (s. 7 Accounting Law).

127. As Latvia is an EU Member State and hence part of the intra-community VAT system, Latvian undertakings must further fulfill specific

requirements regarding documentary evidence of transactions performed. Among other things, they must keep all documents from which intra-community flows of goods and services can be traced, and, more generally, all invoices.

128. The tax law requires taxpayers to keep evidence providing information regarding income and expenses as well as assets and liabilities (s. 14(6) LTF). The Latvian authorities advise that this includes keeping underlying copies of original documents, including invoices and contracts. Further, as mentioned above, PMLA requires obliged persons to keep underlying documentation for transactions with their clients (s. 37(2) PMLA).

### *Conclusion*

129. Accounting and tax requirements under Latvian law require underlying documentation to be available sufficient to meet the international standard for effective exchange of information.

### ***5-year retention standard (ToR A.2.3)***

130. Accounting records and underlying documentation must be kept for at least five years. Annual accounts and transaction records must be kept for 10 years (s. 10 Accounting Law). All accounting records including underlying documentation must be systematically arranged and kept in the archives of the undertaking (s. 10). Accounting registers together with underlying documentation must be kept within Latvia (s. 6).

131. Taxpayers are required for the purpose of substantiating the accuracy of tax liabilities to retain documents supporting revenues and expenditures relating to financial and business activities and other documents supporting their tax position for at least five years (s. 15(4) LTF).

132. Persons obliged under AML rules to maintain transaction records are required to store them at least for five years following the end of business relationships (s. 37(2) PMLA).

### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>

### A.3. Banking information

Banking information should be available for all account-holders.

133. 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.

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

134. A credit institution and financial institution (a bank) is prohibited from opening and keeping anonymous accounts (s. 15 PMLA). Further, opening an account or making a deposit are subject to identification measures in accordance with specific AML provisions (s. 16(1) PMLA). Under these provisions banks are required to perform CDD measures which include verification of client identity through the personal identification document where the given name, surname, personal identity number (or equivalent including date of birth in case of non-residents) is provided or, in the case of a legal person, through documents attesting registration, address of the registered office and identity of persons who are entitled to represent the customer (ss. 12(1) and 13(1)). Further, CDD measures require ongoing monitoring of the business relationship including ensuring that the information held on the client is kept up-to-date (s. 17(1)). All data and documents gathered when identifying customers and performing CDD have to be kept for a minimum of five years (s. 37(2)). There are administrative and criminal sanctions available in case of breach of CDD requirements (see section A.1.6).

135. Banks are obliged to keep records of all data and documents on all transactions performed under a business relationship (s. 37(2) PMLA). The scope of records to be kept is very broad and comprises information on the nature and date of transactions, type and amount of currency involved, and the type and identifying number of any account involved in the transaction. The transaction records and underlying documentation must be kept for at least five years (s. 37(2)). A bank which does not properly conduct monitoring of client's transactions is liable to a fine from EUR 210 up to EUR 700 (s. 165<sup>7</sup> Administrative Violations Code) and criminal sanctions in respect of its officials can be applied.

136. All banks are considered accounting entities under the Accounting Law and as such are obliged to keep accounts in line with the accounting standards of other relevant entities (see section A.2). A bank's accounting should provide a true and clear view of its financial position, results of its economic activities, its cash flow and must allow reconstruction of all its economic transactions (s. 2 Accounting Law). Accounting entries must be supported by source documents attesting the existence of the economic



transaction. Such documents must include identification of its author and participants in the economic transaction specifying the name, registration number and legal address of each participant; description, basis and quantifiers (volumes, amounts) of the economic transaction; date of the transaction and other information necessary for the accounting entry (s.7 Accounting Law). Accounting records and underlying documentation must be kept for at least five years (s.10 Accounting Law). If a bank breaches one of these obligations any person has the right to claim compensation for losses caused by such breach (s.17). Heads of banks who have allowed violations of the Accounting Law are further liable to a fine in an amount from EUR 140 up to EUR 350 and can be prohibited to hold certain offices in commercial entities (s.166<sup>6</sup> Administrative Violations Code).

137. Banks are also required to maintain information on accounts operated by them based on their contractual obligations with clients. It is stipulated by the Credit Institutions Law that a bank is obliged to provide to its clients (or their legal representatives) requested information regarding the accounts of and the transactions carried out by them (s.62(1, 2)).

138. In addition, banks are required to maintain adequate records in order to fulfill tax requirements under the EU Savings Directive to report automatically the identity and residence, the account number and information concerning the interest payment to account holders that are not resident in Latvia but are residents in other EU member states (Chapter 9 LTF).

### *Conclusion*

139. The legal and regulatory framework in Latvia requires the availability of banking information to the standard. Identity information on all account-holders is made available through AML obligations and the availability of transaction records is primarily ensured by accounting and AML rules. The effectiveness of sanctions and measures to enforce availability of banking information (including records of account files and business correspondence) will be considered in the Phase 2 review of Latvia.

### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>

## B. Access to Information

### Overview

140. 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 Latvia'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.

141. The Latvian competent authority has broad access powers to obtain and provide the requested information. These powers include tax audits in premises of taxpayers and third parties, inspection of documents, requests for explanations and statements or power to summon a taxpayer. Types of information which can be provided by banks to the SRS seem broad enough to ensure effective exchange of information. Nevertheless, practical application of access powers in respect of banking information will be further considered during the Phase 2 Peer Review. Under treaties which do not contain the exact post-2005 model wording of foreseeable relevance, access to bank information is subject to restrictions which might limit effective exchange of information and are not in line with the standard. It is therefore recommended that Latvia ensures that its competent authority has access powers in respect of all bank information as requested by all its EOI partners. All information gathering powers that can be used for domestic purposes can be used for EOI purposes regardless of whether there is a domestic tax interest. Latvia has in place enforcement provisions to compel the production of information including criminal sanctions and search and seizure power. However, the scope of information protected by attorney client privilege is broad and might limit effective exchange of information.

142. Latvia's domestic legislation does not require notification of the taxpayer prior to exchanging information. The SRS is required to notify the taxpayer concurrently with providing the requested information to the requesting competent authority or if there is a reason to believe that such notification will hinder assessment or payment of taxes the notification can be delayed up to 90 days after transmitting the requested information. Although, the taxpayer has no right of notification prior to the exchange of information with the requesting competent authority, the absence of exceptions from notification within 90 days after providing the requested information will be considered during the Phase 2 review. There is no clear regulation on what information should be provided by the tax administration in the notice to a person holding the requested information. According to the Latvian authorities the existing rules should be interpreted in a way that only information necessary for obtaining the requested information should be contained in the notice. This issue should be monitored by Latvia and will be further considered during the Phase 2 review.

### **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).

143. The competent authority in Latvia for EOI purposes is the SRS (s.5 Regulation No. 1245). The SRS is responsible for tax administration in Latvia. SRS is supervised by the Ministry for Finance. In addition to administration of taxes the SRS is responsible also for administration of mandatory social security contributions, customs, fees and other mandatory payments specified by the State (s.1 The Law on the State Revenue Service (LSRS)). The SRS also includes the Finance Police responsible for prosecution of criminal tax offences (s.3).

144. The SRS is the competent authority to gather and provide the requested information for EOI purposes. The SRS has wide powers to do that including gathering information directly from the taxpayer, third persons and other government authorities (see below).

#### ***Bank, ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)***

145. The SRS's information gathering powers include the following:

- to visit plots of land and premises in the ownership or use of legal or natural persons, where economic activities are performed or which

are related to obtaining of revenues for other legal or natural person (s. 10(1) LSRS);

- to perform tax audit in the lands and premises of taxpayers and third parties (s. 10(1));
- to inspect the accounting and all other related documentation of legal persons and natural persons and to receive necessary explanations and statements in their respect (s. 10(2));
- to request presentation of originals of documents and receive copies of documents from merchants, institutions, organisations, local governments, financial institutions and credit institutions for the accounting and registration of a taxable object (income) or examination of taxes and fees, as well as to receive necessary statements and copies of documents from natural persons which relate to the tax liability and payments, property and income of legal or natural persons to be inspected, as well as to request and receive relevant explanations (s. 10(5));
- to summon a taxpayer (including a third party) to attend the SRS (s. 10(11)).

146. All these powers can be used also for EOI purposes. There are no specific information gathering powers intended solely for EOI. The Regulation No. 1245 lays down procedural rules for their use in the field of EOI (see section B.1.3). There are also no specific procedures or additional conditions for use of information gathering powers in respect of different types of information except for banking information.

147. The Credit Institutions Law provides for conditions upon which the SRS can obtain banking information protected under bank secrecy rules and defines the information which can be provided. The SRS can obtain from the bank the following information:

- existence of the bank account;
- bank account holder;
- the person authorised to deal with the bank account;
- the person who opened the bank account;
- the opening balance and closing balance of the bank account during the reporting period;
- the amount of interest and taxes paid for the money present in the relevant bank account for a specific period of time;
- bank account statement for a specific period of time;

- information or documents relating to a specific transaction in the account;
- information regarding other accounts of the account holder in the bank during a specific period of time, as well as information regarding the payment card attached to the relevant accounts (the type, number and user thereof);
- information regarding attachment of the payment card to the bank account (s. 63(11<sup>1</sup>) the Credit Institutions Law).

148. Types of information which can be provided by banks to the SRS seem broad enough to allow effective exchange of information. According to the Latvian authorities such information should include opening account contracts, signature cards, copies of cancelled cheques, deposit slips, loan documents or any documents evidencing particular transactions. The practical application of this provision will be further considered during the Phase 2 Peer Review of Latvia.

149. However, if the information is requested pursuant to the international agreement which does not contain the exact post-2005 model wording specifically providing for exchange of information that is “foreseeably relevant” for carrying out provisions of the convention or to the administration or enforcement of domestic tax laws of the requesting party (i) the information on the person who opened the bank account, (ii) the amount of interest and taxes paid for the money present in the relevant bank account and (iii) information or documents relating to a specific transaction in the account cannot be provided. The SRS must further submit to the bank specified information from the requesting jurisdiction in order to obtain the banking information. The information must confirm (i) that the taxpayer concerned has not submitted tax declaration in the requesting jurisdiction as provided for under the laws of the requesting jurisdiction; (ii) that during a tax audit of the relevant taxpayer, violations of the regulatory enactments regarding accounting records or taxes have been detected; and (iii) that the relevant taxpayer does not make tax payments in accordance with the requirements of laws on taxes (s. 63(11) the Credit Institutions Law).

150. The provision of banking information under treaties which do not contain language specifically referring to “foreseeable relevance” is subject to restrictions relating to conditions under which banking information can be provided and to the scope of the provided information which are not in line with the standard. Further, the requested jurisdiction should provide to the information holder only information which is necessary to obtain the requested information (see section B.2.1). Since some of treaty partners with which Latvia concluded these treaties are covered by the EU Council

Directive 2011/16/EU the wording of these DTCs is a concern in practice in respect of 27 jurisdictions out of Latvia's 91 EOI partners (see section C.1).

151. The Competent authorities should have the power to obtain all information held by banks which is foreseeably relevant for carrying out the provisions of the international treaty or to the administration or enforcement of the domestic tax laws of the requesting jurisdiction. It is up to the requesting jurisdiction to decide which information to request for the purpose of EOI as provided for under the respective treaty. Therefore it is recommended that Latvia ensures that its competent authority has access powers in respect of all bank information, as requested by its EOI partners.

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

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

153. The Law on Taxes and Fees authorises the Cabinet to lay down the procedure for exchange of information between Latvia and its treaty partners (s.7(4) LTF). Section 17 of Regulation No. 1245 states that if the competent authority of a European Union Member State, or the competent authority of a state with which Latvia has entered into an international agreement, requests information according to the relevant EOI instrument, the SRS shall take the necessary measures in order to obtain the information referred to in the request. International agreement is defined as one that has been ratified by the Parliament (s. 1 Regulation No. 1245). According to section 20 of the Regulation, the SRS shall obtain the requested information according to the procedures by which it would be obtained upon acting on its own behalf or upon the request of another institution of the Republic of Latvia in relation to a taxpayer of Latvia. Based on these provisions, a request made under an EOI agreement pertaining to a foreign tax matter is thus treated as a Latvian tax matter and is fulfilled using all the domestic tax information gathering powers available in Latvia regardless of whether Latvia needs the information for its own domestic tax purposes.

***Compulsory powers (ToR B.1.4)***

154. Jurisdictions should have in place effective enforcement provisions to compel the production of information. There are administrative and criminal sanctions available to the SRS in case of non-compliance with obligation to provide the requested information. In addition to summoning the taxpayer the SRS can exercise search and seizure powers.

155. In the case of failure to provide or provision of false information to the tax authority a fine shall be imposed on officials or members of the statutory body of the respective entity in an amount up to EUR 700 and the person can be prohibited to hold certain offices in commercial entities (s. 159<sup>o</sup> Administrative Violations Code). A taxpayer concealing income or other taxable items is liable to a fine which is in respect of individuals in an amount from EUR 140 up to EUR 350 and in respect of legal persons from EUR 710 up to EUR 2 100 (s. 159 Administrative Violations Code). A person who knowingly provides false information to a State institution (including the tax administration), or refuses to give an explanation or opinion should be subject to a fine of between EUR 960 and EUR 32 000, community service or imprisonment (s. 272 Criminal Law). Sanction applies also in respect of a legal person which is liable to a fine from EUR 3 200 up to EUR 32 millions (s. 70<sup>o</sup>).

156. The SRS can enter premises where economic activities are performed, or which are related to the obtaining of revenues, to perform tax audit measures therein and to seal the sale and production of premises, warehouses, archive premises, cash offices and cash-desks in order to ensure the preservation of documentation, money and valuable items which might be relevant for the tax assessment (s. 10 LSRS).

### ***Secrecy provisions (ToR B.1.5)***

157. 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.

#### ***Bank secrecy***

158. Latvian law provides for bank secrecy in respect of the identity, accounts, deposits and transactions of banks' clients (s. 61 Credit Institutions Law). The protected information can be provided to such persons themselves, to their lawful representatives, other persons upon consent of the client or state authorities based on authorisation by law (s. 62).

159. The Credit Institutions Law provides such authorisation to the SRS. Bank information regarding customers and their transactions can be submitted by a bank to the tax administration without the client's consent upon the written request of the SRS under the conditions laid down by the Law. Such information is restricted to items specified in the Law (see section B.1.1). There is no specific information required to be provided to the bank in order to obtain the requested information in addition to information necessary to gather it (such as account number, identification of the account owner or bank opening the account) if the information is requested for EOI purposes under the treaties which contain the OECD model foreseeable relevance wording.

160. Further, banks are required to automatically provide the tax administration with information on interest payments to natural persons from EU member States based on Chapter 9 of the Law on Taxes and Fees which implements the EU Savings Directive.

### *Attorney-Client Privilege*

161. Information obtained in connection with providing qualified legal services is protected under the Advocacy Law. Under Article 6 of the Advocacy Law state authorities (including the tax administration) must guarantee the independence of advocates. It is prohibited to request information or explanations from advocates, as well as to interrogate them as witnesses regarding the facts which have become known to them in providing legal assistance (s.6(2) Advocacy Law). It is also prohibited to monitor their correspondence or documents which advocates have received or prepared in providing legal assistance, to examine or confiscate them, as well as to execute a search in order to find and confiscate such correspondence and documents (s. 6(3)). However, an unlawful action of an advocate in the interests of a client or promotion of such unlawful action to a client should not be recognised as provision of such legal assistance and therefore information obtained by an advocate in such a case would not be protected (s. 6). A court decision is necessary to prove that the advocate's actions were unlawful. The Latvian authorities indicated that only a few such cases have been initiated and it is difficult to prove such behaviour in practice.

162. Advocates have an obligation to report unusual or suspicious transactions to the AML supervisory authority (s. 30(1) PMLA). However, there is an exemption from the reporting obligation in the case of advocates defending their customers in pre-trial criminal proceedings or judicial proceedings, or in the case of providing advice for avoiding judicial proceedings (s. 30(3)).

163. The attorney client privilege contained in the Latvian law is very broad and goes beyond the limits of the international standard. The international standard allows protection of confidential communication between a client and his/her admitted legal representative for the purpose of providing legal advice or for the purposes of existing or contemplated legal proceedings. This means that the protected information *(i)* should not be meant to be disclosed to any third persons, *(ii)* the information must have been obtained by the legal representative only when acting as a legal representative (and not in his/her other capacity such as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent the company in its business affairs) and *(iii)* the protected information does not include purely factual information such as on the identity of a director or beneficial owner of a company. The Latvian law is not in line with these limitations as it protects all information obtained by the legal representative in connection



with providing legal services without appropriate exceptions. It is therefore recommended that Latvia ensure that the scope of attorney-client privilege is consistent with the standard.

### *Conclusion*

164. The Latvian competent authority has broad access powers to obtain and provide requested information held by persons within its territorial jurisdiction. However, the Credit Institutions Law provides limitations on bank information which can be obtained from banks, which might limit effective exchange of information in certain circumstances. All information gathering powers which can be used for domestic purposes can be used for EOI purposes regardless whether there is a domestic tax interest. Latvia has in place enforcement provisions to compel the production of information, including criminal sanctions and search and seizure power. Attorney client privilege under Latvian law protects also communication produced for purposes other than seeking or providing legal advice or use in existing or contemplated legal proceedings.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
The provision of banking information under treaties which do not specifically provide for exchange of foreseeably relevant information is subject to restrictions which are not in line with the standard. Consequently, banking information cannot be exchanged in line with the standard with 27 out of Latvia's 91 EOI partners.	Latvia should ensure that its competent authority has access powers in respect of banking information requested by all its EOI partners.
Latvian law protects all information obtained by the legal representative in connection with providing legal services without appropriate restrictions.	Latvia should ensure that the scope of attorney-client privilege in its domestic law is consistent with the international standard.

## 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)*

165. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from notification of the taxpayer concerned prior to the exchange of information requested (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).

166. Latvia's domestic legislation does not require prior notification. The SRS is required to notify the taxpayer concurrently with providing the requested information to the requesting competent authority (s. 22(4) LTF). However, if there is a reason to believe that such notification will hinder assessment or payment of taxes in Latvia or in the requesting jurisdiction the notification can be delayed for up to 90 days after transmitting the requested information (s. 22(4) LTF, s. 20 Regulation No. 1245). Although the notification can be delayed the taxpayer needs to be notified in all cases. It will be considered during the Phase 2 review whether the absence of exceptions to the requirement of notification within 90 days after providing the requested information does not unduly prevent or delay effective exchange of information. The taxpayer has no right to appeal the provision of information to the requesting competent authority.

167. The Latvian regulatory framework does not provide clear rules detailing what information should be provided by the SRS to a person holding the information requested for EOI purposes. The requested information is gathered in the same way as in domestic cases, i.e. the SRS must instruct the holder of the information on the taxation period and items to be audited and inform him on which legal basis the information is requested (s. 18(10) LTF). However, it is not clear whether this includes only reference to the domestic law providing for the information gathering power (which is the same both for domestic and EOI cases) or reference to a specific treaty or some further information is required. It is also not clear what information received from the requesting jurisdiction will be provided to the holder while giving him/her the necessary information to obtain the requested information. The Latvian authorities have stated that in practice the holder of the information is informed only of the treaty under which the information is requested and only information necessary for obtaining the requested information is provided to the holder (i.e. the taxation period and items to be audited). This issue should be monitored by Latvia to ensure that no further information than indicated

is provided to the holder of the information. The issue will be further considered during the Phase 2 Peer Review of Latvia.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>

## C. Exchanging Information

### Overview

168. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Latvia, the legal authority to exchange information is derived from double taxation conventions (DTCs), TIEAs, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and EU instruments. This section of the report examines whether Latvia has a network of information exchange that would allow it to achieve effective exchange of information in practice.

169. Latvia has an extensive EOI network covering 91 jurisdictions through 57 DTCs, two TIEAs, the Multilateral Convention and EU mechanisms for exchange of information. The majority of Latvia's agreements meet the international standard. However, due to limitations in Latvia's domestic law, access to bank information is restricted under treaties which do not contain the exact post-2005 model wording of foreseeable relevance. Since some treaty partners with which Latvia concluded these treaties are covered by the EU Council Directive 2011/16/EU the wording of these DTCs is a concern in practice in respect of 27 other jurisdictions.<sup>9</sup> It is therefore recommended that Latvia brings all these EOI relationships into line with the standard. All Latvia's EOI agreements are in force except for a TIEA with Jersey signed in January 2013 and the Multilateral Convention signed in May 2013. The Multilateral Convention will significantly extend Latvia's EOI relationships in line with the standard and should therefore be ratified by Latvia expeditiously.

170. Latvia's EOI network covers all of its significant partners including its main trading partners, all OECD members and all G20 countries. Nevertheless, Latvia should continue its programme of updating its older

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9. These jurisdictions are Albania, Armenia, Azerbaijan, Belarus, Canada, FYROM, Georgia, Iceland, Israel, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Moldova, Morocco, Montenegro, Norway, Russia, Serbia, Singapore, Switzerland, Tajikistan, Turkmenistan, Turkey, Ukraine, United Arab Emirates and Uzbekistan.

agreements and entering into new agreements with all relevant partners. During the course of the assessment, no jurisdiction advised that Latvia had refused to enter into negotiations or conclude an EOI agreement. However, in three instances TIEA negotiations have not sufficiently progressed due to limited resources on the Latvian side. This practical issue will be further considered during the Phase 2 review.

171. All Latvia's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. The LTF permits disclosure of information which goes beyond the use of information permitted under the international standard. However, the provisions of Latvia's EOI agreements ratified by the Parliament override domestic laws, meaning that the confidentiality provisions present therein have full legal effect in Latvia. Taxpayer may request information from his/her tax files on the basis of generally applicable provisions of the Law on Information Disclosure and LTF. These provisions contain appropriate exceptions for disclosure of information provided by the requesting jurisdiction (including the EOI request itself).

172. As noted in Part B of this report, the scope of information subject to legal professional privilege in Latvia is broad as it protects all information obtained by the legal representative in connection with providing legal services without exceptions and might limit effective exchange of information.

173. The SRS is designated as the Latvian competent authority for EOI purposes. There are no legal restrictions on the ability of Latvia's competent authority to respond to requests within 90 days of receipt by providing the requested information or by providing an update on the status of the request.

## C.1. Exchange of information mechanisms

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

174. The international treaties providing for EOI require ratification by the Parliament of the Republic of Latvia (ss. 8 and 10 Law on International Agreements of the Republic of Latvia). Where a ratified international treaty conflicts with domestic law the treaty prevails over domestic law (s. 13).

175. Latvia has in total 91 EOI relationships. These relationships are based on bilateral treaties, i.e. DTCs and TIEAs, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and EU instruments such as the EU Directive on Administrative Cooperation (2011/16/EU). Latvia has signed 57 DTCs and two TIEAs. All of them are in force. Latvia signed the Multilateral Convention on 29 May 2013. The Convention is not yet in force in Latvia. Latvia has also signed Competent Authority Agreements with 11 partners to provide detailed rules for EOI under the respective EOI

agreements. The Latvian authorities have an ongoing programme of concluding new EOI agreements and revising agreements where necessary in order to bring them up to standard.

***Foreseeably relevant standard (ToR C.1.1)***

176. 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 OECD 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.

177. All but one Latvia’s DTCs provide for exchange of information that is “foreseeably relevant”, “necessary” or “relevant” to the administration and enforcement of the domestic laws of the contracting parties concerning taxes covered in the DTCs. This scope is set out in the EOI Article in the relevant DTCs and is consistent with the international standard.<sup>10</sup>

178. Latvia’s DTC with Switzerland signed in 2002 allows exchange of information only to the extent that it relates to the application of the treaty. That is, it does not provide for EOI to assist in the administration or enforcement of the domestic tax laws of the EOI partner, except to the extent that this relates to the application of the DTC. Therefore, this agreement does not meet the “foreseeably relevant” standard. However, as Switzerland is a signatory to the Multilateral Convention the wording of this DTC will not be a concern in practice upon ratification of the Multilateral Convention by both parties.

179. Under the TIEAs with Guernsey and Jersey the requested party is under no obligation “to provide information which is neither held by the authorities nor in the possession of nor obtainable by persons who are within its territorial

10. The OECD Model Tax Convention on Income and on Capital recognises in its commentary to Article 26 (Exchange of Information) that the terms “necessary” and “relevant” allow the same scope of exchange of information as does the term “foreseeably relevant”.

jurisdiction” (emphasis added). Thus, it uses the words “obtainable by” instead of the expression “in control of” used in Article 2 of the OECD Model TIEA. This deviation is not considered to be inconsistent with the standard.

180. The TIEA with Jersey includes a provision which varies from Article 5(5)(g) of the OECD Model TIEA. The provision allows the competent authority of the requesting party to make a request only when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty. Jersey has advised that it does not intend to interpret the words in a restrictive way and so far there has been no case indicated by Jersey’s treaty partners that the provision has been applied to refuse or deny the validity of an EOI request on this basis in respect of the requests made to date. Since the Latvian TIEA with Jersey is not yet in force it is recommended that Latvia monitors its implementation.

181. The Multilateral convention and the EU Administrative Cooperation Directive provide for exchange of information in line with the foreseeable relevance criteria.

182. Overall, Latvia’s EOI instruments meet the “foreseeably relevant” standard as described in the Commentary to Article 26 of the OECD Model Tax Convention and the Commentary to the OECD Model TIEA. However, the wording of treaties which do not specifically provide for exchange of “foreseeably relevant” information triggers a restriction on access to banking information (see section C.1.3).

183. Regulation no. 1245 requires the following information to be included in a request (s. 18):

- the identity of the person under inspection;
- the period for which the information is requested;
- the nature of the information requested and the form in which the competent authority would prefer to receive it;
- the tax to be paid for determination of which the information is sought;
- the reasons for believing that the information requested is foreseeably relevant to administration and enforcement of tax laws of the requesting party;
- the grounds for believing that the information requested is present or held in the requested party or is in the possession of or obtainable from a person within the jurisdiction of the requested party;
- to the extent known, identification of the person who is believed to be in possession of, or able to obtain, the requested information;

- a statement that the requesting party has pursued all means available thereto to obtain the information except those that would give rise to disproportionate difficulty to the requesting party.

184. The inclusion of such information in the request is sufficient to demonstrate foreseeable relevance. No supporting documentation is required. If the required information indicated above is not included in the request, or in supporting documentation, the competent authority cannot accept the request and must inform the requesting party of the reasons (s. 19 Regulation no. 1245).

185. The list of information required to be included in the request appears to be in line with the standard. Its rigorous interpretation (e.g. in respect of criteria for identification of the person under inspection or reasons required for believing that the information requested is foreseeably relevant) in connection with an obligation to refuse any request which does not contain the required information, however, might limit effective exchange of information. Although the Latvian authorities confirmed that the required information should be interpreted in line with the Art. 5 paragraph 5 of the Model TIEA the practical implementation of rules under s. 18 and s. 19 of the Regulation no. 1245 will be further considered in the context of the Phase 2 review of Latvia.

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

186. 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.

187. Four of Latvia's DTCs do not explicitly provide that the EOI provision is not restricted by Article 1 (Persons Covered).<sup>11</sup> Latvia has advised that it interprets the EOI provision to allow exchange of information with respect to all persons.

188. In respect of the TIEAs signed by Latvia, they contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA. The Multilateral Convention and the EU Administrative Cooperation Directive provide for exchange of information in respect of all persons.

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11. These are the DTCs with Canada, Germany, Singapore and Switzerland.



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

189. 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 OECD 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.

190. Out of Latvia's 57 DTCs:

- Four DTCs<sup>12</sup> contain language akin to the Article 26(5) of the OECD Model Tax Convention providing for the obligations of the contracting parties to exchange information held by financial institutions, nominees, agents and ownership and identity information;
- Latvia's other 53 DTCs do not contain language akin to Article 26(5) of the OECD Model Tax Convention.
- There is no DTC signed by Latvia which prohibits exchange of information held by banks, nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

191. For the 53 DTCs that do not contain language akin to Article 26(5) of the OECD Model Tax Convention, the absence of this language does not automatically create restrictions on exchange of bank information. The commentary to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, 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.

192. Both TIEAs and the Multilateral Convention concluded by Latvia contain a provision similar to Article 5(4) of the OECD Model TIEA, which ensures that the requested jurisdiction shall not decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

193. As detailed previously in section B.1 of this report, there are limitations in Latvia's domestic law with respect to access to banking information. These restrictions apply in respect of treaties which do not contain the exact

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12. The DTCs with China, India, Mexico and the United States.

post-2005 model wording of paragraph 1 Article 26 of the OECD Model Double Tax Convention providing for exchange of information that is “foreseeably relevant” (see section C.1.1). Restrictions are not linked to the inclusion of paragraph 5 (or paragraph 4) of the Model Convention. Under treaties which do not contain the prescribed wording the Latvian competent authority can obtain only information which is stipulated by section s. 63(11) of the Credit Institutions Law. Types of information which can be obtained from banks and additional conditions regarding information which needs to be provided in order to obtain the requested information from a bank are restrictive and might limit effective exchange of information. As a result 53 treaties which contain pre-2005 wording do not provide for exchange of information in line with the standard.<sup>13</sup> However, out of these 53 jurisdictions 26 are covered by EU Council Directive 2011/16/EU. Therefore the wording of DTCs is a concern in practice in respect of the remaining 27 jurisdictions.<sup>14</sup> Out of these, 15 jurisdictions are signatories to the Multilateral Convention, which was signed by Latvia but is not yet ratified. Thus Latvia does not have EOI relation providing for effective exchange of banking information in force with 27 out of 91 of Latvia’s EOI partners which might significantly impact Latvia’s ability to provide banking information. In view of this it is recommended that Latvia brings all its EOI relationships into line with the standard.

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

194. 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.

13. These treaties are DTCs with Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, FYROM, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Korea, Kyrgyzstan, Kuwait, Lithuania, Luxembourg, Malta, Moldova, Morocco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovak Republic, Slovenia, Spain, Sweden Singapore, Switzerland, Tajikistan, Turkmenistan, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan.
14. These jurisdictions are Albania, Armenia, Azerbaijan, Belarus, Canada, FYROM, Georgia, Iceland, Israel, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Moldova, Morocco, Montenegro, Norway, Russia, Serbia, Singapore, Switzerland, Tajikistan, Turkmenistan, Turkey, Ukraine, United Arab Emirates and Uzbekistan.

195. Out of Latvia’s 57 DTCs:

- Seven DTCs<sup>15</sup> contain provisions similar to Article 26(4) of the OECD Model Tax Convention, which oblige the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic interest in the requested information;
- 49 DTCs do not contain explicit provisions obliging the contracting parties to use information-gathering measures to obtain and exchange requested information without regard to a domestic tax interest; and
- the DTC with Switzerland only allows the exchange of “information which is at a party’s disposal under their respective taxation laws in the normal course of administration.” Agreements with this restrictive language may not allow the competent authorities to use their access powers to obtain any kind of information for EOI purposes.

196. There are no domestic tax interest restrictions on Latvia’s powers to access information for EOI purposes (see Section B above). As such, the exchange of information in the absence of domestic interest in respect of the 49 DTCs will be subject to reciprocity and will depend on the domestic limitations (if any) in the laws of some of these partners. Out of these 49 jurisdictions 27 jurisdictions are covered by the EU Council Directive 2011/16/EU. Therefore the wording of DTCs may be a concern in practice in respect of the remaining 22 jurisdictions.<sup>16</sup> Out of these 22 jurisdictions 11 are signatories of the Multilateral Convention which is not yet ratified in Latvia. It is recommended that Latvia work with the EOI partners where domestic interest restrictions exist to remove these restrictions and bring these EOI relations to the standard.

197. Both of the TIEAs concluded by Latvia contain a provision similar to Article 5(2) of the OECD Model TIEA, which allows information to be obtained and exchanged notwithstanding it is not required for Latvia’s domestic tax purpose.

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15. These DTCs are with Canada, China, India, Mexico, Russia, UAE and with the United States.

16. These jurisdictions are Albania, Armenia, Azerbaijan, Belarus, FYROM, Georgia, Iceland, Israel, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Moldova, Montenegro, Morocco, Serbia, Singapore, Tajikistan, Turkey, Turkmenistan, Ukraine and Uzbekistan.

***Absence of dual criminality principles (ToR C.1.5)***

198. 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.

199. There are no such limiting provisions in any of Latvia's EOI instruments which would indicate that there is dual criminality principle to be applied.

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

200. 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").

201. All of Latvia's EOI instruments provide for exchange of information in both civil and criminal tax matters.

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

202. 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.

203. Latvia's EOI instruments allow for the provision of information in specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent permitted under Latvia's domestic law and administrative practices. Only Latvia's DTC with the United States contains specific reference to the form of information, providing that if specifically requested by a treaty partner, the other partner shall provide information in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts and writings).

***In force (ToR C.1.8)***

204. 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.

205. EOI agreements must be ratified by the Latvian Parliament (ss. 8 and 10 Law on International Agreements of the Republic of Latvia). The draft agreement is signed upon approval of the Cabinet of Ministers. Upon signing the agreement together with supporting documentation and incorporating law is submitted to the Parliament for approval. The domestic ratification process is completed after the signed agreement is approved. The Ministry of Foreign Affairs subsequently informs the agreement party thereof.

206. All Latvia's EOI agreements are in force except for a TIEA with Jersey signed in January 2013 and the Multilateral Convention which was signed in May 2013. Ratification of the Multilateral Convention will significantly broaden Latvia's EOI relationships that are in line with the standard. Latvia should therefore ensure that the Convention is brought into force expeditiously.

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

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

208. As discussed in section B, Latvia has the legislative and regulatory framework in place to give effect to its agreements.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>

Phase 1 determination	
Factors underlying recommendations	Recommendations
As a result of domestic law limitations with respect to access to banking information Latvia does not have EOI relationships in force providing for effective exchange of information to the standard with 27 of its 91 EOI partners. Further, 22 of DTCs with these partners may also not meet the international standard due to domestic interest requirement in the domestic law of these EOI partners.	Latvia should ensure that all its EOI relationships provide for exchange of information to the standard.

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

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

209. 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 to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

210. Latvia has an extensive EOI network covering 91 jurisdictions through 57 DTCs, two TIEAs, the Multilateral Convention and EU mechanisms for exchange of information. Latvia's EOI network covers all of its significant partners including its main trading partners, all OECD members and all G20 countries. Latvia's main trading partners are EU member states and Russia.

211. Ultimately, the international standard requires jurisdictions to exchange information with their relevant partners, meaning those partners who are interested in entering into an exchange of information agreement. During the course of the assessment, no jurisdiction has advised that Latvia had refused to enter into negotiations or conclude an EOI agreement. However, in three instances TIEA negotiations have not sufficiently progressed due to limited resources on the Latvian side. Since no issue was reported by peers and it is rather a practical question this will be further considered during the Phase 2 review of Latvia.

212. Latvia has in place an on-going negotiations programme which includes plans for renegotiation of EOI agreements that do not provide for exchange of information in line with the standard. Latvia advises that it is currently negotiating or renegotiating EOI agreements with Norway, Pakistan, Singapore, Vietnam and Isle of Man. The negotiations have been completed with Cyprus<sup>17</sup>, Qatar and Hong Kong.

### Determination and factors underlying recommendations

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

### 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)*

213. 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

17. 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".
18. 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.

exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

### *International treaties*

214. All Latvia's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. While a few of the articles in the Latvian DTCs might vary slightly in wording, these provisions contain all of the essential aspects of Article 26(2) of the OECD Model Tax Convention. Both Latvia's TIEAs have confidentiality provisions modelled on Article 8 of the OECD Model TIEA. Confidentiality of the provided information in line with the standard is also provided for in Article 22 of the Multilateral Convention. As the provisions in Latvia's EOI agreements override any contradicting domestic legislation, Latvian authorities are required to keep confidential all information received as part of a request or as part of a response to a request regardless of any provisions in other laws.

215. The DTC with Switzerland does not provide for disclosure of information to authorities dealing with prosecution matters in respect of taxes covered by the DTC. The DTC with the Netherlands specifically allows for provision of the exchanged information to the arbitration board to carry out the mutual agreement procedure under the DTC.

### *Latvia's domestic law*

216. Under the Latvian tax law a civil servant of the tax administration is prohibited from disclosing any information on the taxpayer which the civil servant becomes aware of in the course of carrying out his/her statutory duties without obtaining the taxpayer's consent (s.22(1) LTF). Administrative and criminal sanctions apply if information is disclosed in breach of this law (ss.36-38 State Civil Service Disciplinary Law, ss.200 and 329 Criminal Law). There are a few exceptions which allow such information to be made public. These exceptions cover information on the taxpayer's tax arrears that have arisen as a result of the tax review (audit) or data compliance audit or late payment of taxes or information on a natural person who carries on business and is not registered by the Enterprise Registry (s. 22(1) LTF). Such information can be provided to the tax administration supervisory bodies such as Ministry of Finance for ensuring and controlling public revenues and monitoring programme of the state budget; to other tax administration offices for the performance of tax administration functions, including the competent authorities of other jurisdictions in accordance with the provisions of international agreements; to law enforcement agencies and courts for investigation and prosecution purposes; or to other public authorities for monitoring the performance of public administration functions and tasks laid down in special laws on the regulation of public services (s. 22(2) LTF).



217. The LTF permits disclosure of information obtained during the course of tax administration to parties which are not involved in the tax administration, prosecution in respect of taxes or the oversight of the above which goes beyond the use of information permitted under the international standard. However, as indicated above, the provisions of Latvia’s EOI agreements ratified by Saeima (the Parliament of the Republic of Latvia) override domestic laws, meaning that the confidentiality provisions present therein have full legal effect in Latvia. According to Article 13 of the Latvian Law on “International Agreements of the Republic of Latvia”, if provisions, different from the ones stipulated in the legislation of the Republic of Latvia, are provided in an international agreement, then the provisions of the international agreement are applied. This is further confirmed by the Cabinet Regulation No. 1245 which stipulates confidentiality rules which mirror paragraph 2 of Article 26 of the Model OECD DTC (s. 36 Cabinet Regulation No. 1245).

218. A taxpayer has a right to familiarise himself/herself with the reports on audit findings and documents on the audit file which relate to him, except for such information contained therein which is considered restricted pursuant to the law (s. 16(4) LTF). The Law on Information Disclosure defines restricted information as information which is intended and specified for internal use by an institution (s. 5(2)). Such specification can be given by the author of information or the head of an institution (s. 5(3)). According to the SRS internal regulation Nr.42 and the SRS order Nr.1636 the information received from foreign institutions or foreign persons (including EOI competent authorities) must be classified by the SRS as ‘restricted’ information as defined under the Law on Information Disclosure.

### *All other information exchanged (ToR C.3.2)*

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

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>

#### 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)*

220. 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.

221. All but two of Latvia's EOI agreements contain provision allowing the contracting parties not to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. The DTCs with Canada and the Netherlands do not contain such provision and therefore are not in line with the standard. However, the Netherlands is subject to EU Council Directive 2011/16/EU which contains such exceptions in line with the standard. Thus the DTC with the Netherlands is not a concern in practice. It is recommended that Latvia renegotiates the remaining DTC with Canada to allow for exchange of information in line with the standard.

222. Communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where legal professional privilege is more broadly defined it does not provide valid grounds on which to decline a request for EOI. To the extent, therefore, that an attorney acts in another capacity, such as as a nominee shareholder, a trustee, a settlor, a company director, EOI resulting from and relating to any such activity cannot be declined because of legal professional privilege.

223. Except for the two DTCs mentioned above all of Latvia's EOI agreements ensure that the contracting parties are not obliged to provide information which is subject to legal professional privilege. However, the term "professional secret" is not defined in the EOI agreements and therefore this term would derive its meaning from the Latvia's domestic laws.

224. As described in section B.1.5 of this report, the attorney client privilege contained in Latvian law is too broad and goes beyond the international standard as it protects also communication produced for purposes other than that of seeking or providing legal advice or of use in existing or contemplated legal proceedings. This might limit effective exchange of information since the Latvian competent authority can according to the respective EOI agreements decline to provide the requested information on the grounds that the information is subject to attorney client privilege as defined in Latvian law.

It is therefore recommended that Latvia restricts the scope of the protection under the term “professional secret” in its domestic laws so as to be in line with the standard for the purpose of EOI agreements.

#### 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
Latvia’s EOI agreements do not define the term “professional secret” and the scope of the term under its domestic laws is wider than permitted by the international standard.	It is recommended that Latvia limits the scope of “professional secret” in its domestic laws so as to be in line with the standard for exchange of information.

### 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)*

225. 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.

226. None of Latvia’s DTCs require the provision of request confirmations, status updates or the provision of the requested information within the timeframes foreshadowed in Article 5(6) of the OECD Model TIEA. The TIEA with Guernsey require that the competent authority of the requested jurisdiction confirms receipt of a request; notifies any deficiencies in the request within 60 days; and, if unable to obtain and provide the requested information within 90 days, inform the requesting jurisdiction and explain the reason for its inability, the nature of the obstacles or the reasons for refusing to provide information (art 5(7)). The TIEA with Jersey and the Multilateral Convention oblige treaty parties to provide the requested information as soon as possible.

227. There appear to be no legal restrictions on the Latvian competent authority's ability to respond to EOI requests in a timely manner. The Regulation No. 1245 on EOI procedures requires that the requested information should be provided in as short a time as possible and if the requested information is already at the disposal of the SRS the information should be provided within two months after receipt of the request (s. 21). If obstacles for the provision of information emerge the competent authority should inform within three months after receipt of the request the requesting competent authority of another EU member state of reasons for the delay and should indicate timeframe in which the response will be provided (s. 24). The Regulation however does not contain an obligation to provide status updates in respect of treaty partners who are not members of the EU. However there is nothing in the Latvian regulatory framework that prohibits the competent authority from providing such updates and Latvia's ability to respond to requests in a timely manner will be considered in the course of its Phase 2 review.

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

228. It is important that a jurisdiction has appropriate organisational processes and resources in place to ensure a timely response. A review of Latvia's organisational processes and resources will be conducted in the context of its Phase 2 review.

### ***Absence of unreasonable, disproportionate, or unduly restrictive conditions on exchange of information (ToR C.5.3)***

229. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no further conditions that appear to restrict effective exchange of information in Latvia. There are no legal or regulatory requirements in Latvia that impose unreasonable, disproportionate or unduly restrictive conditions. Whether any such conditions exist in practice will be examined in the context of the Phase 2 review

## **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>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.</b>



## Summary of Determinations and Factors Underlying Recommendations

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. <i>(ToR A.1.)</i>		
<b>The element is in place.</b>	Ownership information on foreign companies having sufficient nexus with Latvia (in particular, having their head office or headquarters in Latvia) is not consistently available.	Latvia should ensure that ownership information on foreign companies with sufficient nexus with Latvia (in particular, having their head office or headquarters in Latvia) is available in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i>		
<b>The element is in place.</b>		
Banking information should be available for all account-holders. <i>(ToR A.3.)</i>		
<b>The element is in place.</b>		

<p>Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). (<i>ToR B.1.</i>)</p>		
<p><b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b></p>	<p>The provision of banking information under treaties which do not specifically provide for exchange of foreseeably relevant information is subject to restrictions which are not in line with the standard. Consequently, banking information cannot be exchanged in line with the standard with 27 out of Latvia's 91 EOI partners.</p>	<p>Latvia should ensure that its competent authority has access powers in respect of banking information requested by all its EOI partners.</p>
	<p>Latvian law protects all information obtained by the legal representative in connection with providing legal services without appropriate restrictions.</p>	<p>Latvia should ensure that the scope of the attorney-client privilege as provided in domestic law is consistent with the international standard.</p>
<p>The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. (<i>ToR B.2.</i>)</p>		
<p><b>The element is in place.</b></p>		
<p>Exchange of information mechanisms should allow for effective exchange of information. (<i>ToR C.1.</i>)</p>		
<p><b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b></p>	<p>As a result of domestic law limitations with respect to access to banking information Latvia does not have EOI relations in force providing for effective exchange of information to the standard with 27 out of Latvia's 91 EOI partners. Further, 22 of DTCs with these partners may also not meet the international standard due to domestic interest requirement in the domestic law of these EOI partners.</p>	<p>Latvia should ensure that all its EOI relations provide for exchange of information to the standard.</p>

The jurisdictions' network of information exchange mechanisms should cover all relevant partners. ( <i>ToR C.2.</i> )		
<b>The element is in place.</b>		Latvia should continue to develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. ( <i>ToR C.3.</i> )		
<b>The element is in place.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. ( <i>ToR C.4.</i> )		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Latvia's EOI agreements do not define the term "professional secret" and the scope of the term under its domestic laws is wide and goes beyond the international standard.	It is recommended that Latvia limits the scope of "professional secret" in its domestic laws so as to be in line with the standard for exchange of information.
The jurisdiction should provide information under its network of agreements in a timely manner. ( <i>ToR C.5.</i> )		
<b>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.</b>		





## Annex 1: Jurisdiction's Response to the Review Report<sup>19</sup>

Latvia would like to express high appreciation and gratitude for the very professional and excellent work of members of the Assessment Team, the Global Forum Secretariat and the Peer Review Group during the Phase 1 Peer Review process of Latvia.

Latvia welcomes the Report as approved during the Peer Review Group meeting held from 17 to 21 March in Floriana, Malta.

Latvia is committed to the internationally agreed standards for transparency and exchange of information and finds this evaluation a very objective, supportive and reflecting the actual situation in the field of Latvia's legal and regulatory framework. The recommendations provided in the Report are complete and acceptable.

During the Peer Review process Latvia has studied a lot of issues and gained a valuable experience. We believe that our mutual contributions will lead to full compliance with the standards of transparency and exchange of information.

It also should be mentioned that on 29 May 2013 Latvia has signed the Joint Council of Europe/OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. At present the Convention is in the process of ratification and its finalisation is expected before the end of the year 2014.

In March 2014 Latvia has also confirmed its agreement to join the initiative of early implementation of the new common reporting standard (CRS) for the automatic exchange of information developed by the OECD.

In addition, Latvia continues to develop its exchange of information mechanisms on the bilateral basis according to the standard with all relevant partners.

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19. 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 Latvia's Exchange of Information Mechanisms**

### **European Union exchange of information mechanisms**

Latvia exchanges information with EU members under:

- the new EU Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation. This Directive came into force on 1 January 2013. It repeals Council Directive 77/799/EEC of 19 December 1977 and provides inter alia for exchange of banking information on request for taxable periods after 31 December 2010 (Article 18). All EU members were required to transpose it into national legislation by 1 January 2013. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Croatia, Cyprus,<sup>20</sup> the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.
- EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.
- Council Regulation (EU) No. 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast of the Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax);
- Council Regulation (EC) No. 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties.

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20. Please refer to footnotes 17 and 18.

## Multilateral and bilateral exchange of information agreements

- Latvia signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters as well as its 2010 Protocol on 29 May 2013. The Multilateral Convention has not yet entered into force in Latvia. The status of the Multilateral Convention as at December 2013 is set out in the table below.<sup>21</sup> The table also includes territories to which the Multilateral Convention applies based on territorial extension declared by a state party.
- Latvia has signed 57 DTCs and two TIEAs all of which are in force (see the table below).

### Table of Latvia's exchange of information relations

The table below summarises Latvia's EOI relations with individual jurisdictions established through international agreements or EU Council Directive 2011/16/EU. These relations allow for exchange of information upon request in the field of direct taxes. In case of the Multilateral Convention the date when the agreement entered into force indicates date when the Convention becomes effective in relation to each jurisdiction. In case of the EU Directive the date signed indicates date when the EU Directive was adopted and the date of entry into force of the EU Directive indicates the date when implementing provisions dealing with exchange of information upon request should become effective in EU member countries.

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	DTC	21-Feb-2008	10-Dec-2008
		Multilateral Convention	Signed	Not yet in force in Albania
2	Andorra	Multilateral Convention	Signed	Not yet in force in Andorra
3	Anguilla <sup>a</sup>	Multilateral Convention		01-Mar-2014
4	Argentina	Multilateral Convention	Signed	01-Jan-2013
5	Armenia	DTC	15-Mar-2000	26-Feb-2001
6	Aruba <sup>b</sup>	Multilateral Convention		01-Sep-2013
7	Australia	Multilateral Convention	Signed	01-Dec-2012

21. The chart of signatures and ratification of the Multilateral Convention is available at [www.oecd.org/ctp/eoi/mutual](http://www.oecd.org/ctp/eoi/mutual).

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
8	Austria	DTC	14-Dec-2005	16-May-2007
		Multilateral Convention	Signed	Not yet in force in Austria
		EU Council Directive 2011/16/EU (EU Directive)	15-Feb-2011	01-Jan-2013
9	Azerbaijan	DTC	3-Oct-2005	19-Apr-2006
		Non-amended Multilateral Convention	Signed	01-Jun-2011
10	Belarus	DTC	7-Sep-1995	31-Oct-1996
11	Belgium	DTC	21-Apr-1999	7-May-2003
		Multilateral Convention	Signed	01-Jun-2012 (Protocol not yet in force in Belgium)
		EU Directive	15-Feb-2011	01-Jan-2013
12	Belize	Multilateral Convention	Signed	01-Sept-2013
13	Bermuda <sup>a</sup>	Multilateral Convention		01-Mar-2014
14	Brazil	Multilateral Convention	Signed	Not yet in force in Brazil
15	British Virgin Islands <sup>a</sup>	Multilateral Convention		01-Mar-2014
16	Bulgaria	DTC	4-Dec-2003	18-Aug-2004
		EU Directive	15-Feb-2011	01-Jan-2013
17	Canada	DTC	26-Apr-1995	12-Dec-1995
		Multilateral Convention	Signed	01-Mar-2014
18	Cayman Islands <sup>a</sup>	Multilateral Convention		01-Jan-2014
19	Chile	Multilateral Convention	Signed	Not yet in force in Chile
20	China	DTC	7-Jun-1996	27-Jan-1997
		DTC Protocol	24-Aug-2011	19-May-2012
		Multilateral Convention	27-Aug-2013	
21	Colombia	Multilateral Convention	Signed	Not yet in force in Colombia
22	Costa Rica	Multilateral Convention	Signed	01-Aug-2013
23	Croatia	DTC	19-May-2000	27-Feb-2001
		EU Directive	15-Feb-2011	01-Jan-2013
		Multilateral Convention	Signed	Not yet in force in Croatia
24	Curacao <sup>b</sup>	Multilateral Convention		01-Sep-2013

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
25	Cyprus	EU Directive	15-Feb-2011	01-Jan-2013
26	Czech Republic	DTC	25-Oct-1994	22-May-1995
		Multilateral Convention	Signed	01-Feb-2014
		EU Directive	15-Feb-2011	01-Jan-2013
27	Denmark	DTC	10-Dec-1993	27-Dec-1993
		Multilateral Convention	Signed	01-Jun-2011
		EU Directive	15-Feb-2011	01-Jan-2013
28	Estonia	DTC	11-Feb-2002	21-Nov-2002
		Multilateral Convention	Signed	Not yet in force in Estonia
		EU Directive	15-Feb-2011	01-Jan-2013
29	Faroe Islands <sup>c</sup>	Multilateral Convention		01-Jun-2011
30	Finland	DTC	23-Mar-1993	30-Dec-1993
		Multilateral Convention	Signed	01-Jun-2012
		EU Directive	15-Feb-2011	01-Jan-2013
31	FYROM	DTC	8-Dec-2006	25-Apr-2007
32	France	DTC	14-Apr-1997	1-May-2001
		Multilateral Convention	Signed	01-Apr-2012
		EU Directive	15-Feb-2011	01-Jan-2013
33	Georgia	DTC	13-Oct-2004	24-Mar-2005
		DTC Protocol	29-May-2004	27-Nov-2012
		Multilateral Convention	Signed	01-Jun-2012
34	Germany	DTC	21-Feb-1997	26-Sep-1998
		Multilateral Convention	Signed	Not yet in force in Germany
		EU Directive	15-Feb-2011	01-Jan-2013
35	Ghana	Multilateral Convention	Signed	01-Sept-2013
36	Greece	DTC	27-Mar-2002	7-Mar-2005
		Multilateral Convention	Signed	01-Sept-2013
		EU Directive	15-Feb-2011	01-Jan-2013
37	Greenland <sup>c</sup>	Multilateral Convention		01-Jun-2011
38	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala
39	Guernsey	TIEA	5-Sep-2012	4 Oct-2013

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
40	Hungary	DTC	14-May-2004	22-Dec-2004
		EU Directive	15-Feb-2011	01-Jan-2013
		Multilateral Convention	Signed	Not yet in force in Hungary
41	Iceland	DTC	19-Oct-1994	1-Jan-1996
		Multilateral Convention	Signed	01-Jun-2012
42	India	Multilateral Convention	Signed	01-Jun-2012
		DTC	18-Sep-2013	29-Dec-2013
43	Indonesia	Multilateral Convention	Signed	Not yet in force in Indonesia
44	Ireland	DTC	13-Nov-1997	18-Dec-1998
		Multilateral Convention	Signed	01-Sep-2013
		EU Directive	15-Feb-2011	01-Jan-2013
45	Isle of Man <sup>a</sup>	Multilateral Convention		01-Mar-2003
46	Israel	DTC	20-Feb-2006	1-Jan-2007
47	Italy	DTC	21-May-1997	13-Jul-2006
		DTC Protocol	9-Dec-2004	16-Jun-2008
		Multilateral Convention	Signed	01-Jun-2012
		EU Directive	15-Feb-2011	01-Jan-2013
48	Japan	Multilateral Convention	Signed	01-Oct-2013
49	Jersey*	TIEA	28-Jan-2013	1-Mar-2014
50	Kazakhstan	DTC	6-Sep-2001	2-Dec-2002
		Multilateral Convention	Signed	Not yet in force in Kazakhstan
51	Korea, Republic of	DTC	15-Jun-2008	26-Dec-2009
		Multilateral Convention	Signed	01-Jul-2013
52	Kuwait	DTC	9-Nov-2009	25-Apr-2013
53	Kyrgyzstan	DTC	7-Dec-2006	4-Mar-2008
54	Liechtenstein	Multilateral Convention	Signed	Not yet in force in Liechtenstein
55	Lithuania	DTC	17-Dec-1993	30-Dec-1994
		Multilateral Convention	Signed	Not yet in force in Lithuania
		EU Directive	15-Feb-2011	01-Jan-2013

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
56	Luxembourg	DTC	14-Jun-2004	14-Apr-2006
		Multilateral Convention	Signed	Not yet in force in Luxembourg
		EU Directive	15-Feb-2011	01-Jan-2013
57	Malta	DTC	22-May-2000	24-Oct-2000
		Multilateral Convention	Signed	01-Sep-2013
		EU Directive	15-Feb-2011	01-Jan-2013
58	Mexico	DTC	20-Apr-2012	02-Mar-2013
		Multilateral Convention	Signed	01-Sep-2012
59	Moldova, Republic of	DTC	25-Feb-1998	24-Jun-1998
		Multilateral Convention	Signed	01-Mar-2012
60	Montenegro	DTC	22-Nov-2005	19-May-2006
61	Montserrat	Multilateral Convention <sup>a</sup>		01-Oct-2013
62	Morocco	DTC	24-Jul-2008	25-Sep-2012
		Multilateral Convention	Signed	Not yet in force in Morocco
63	Netherlands	DTC	14-Mar-1994	29-Jan-1995
		Multilateral Convention	Signed	01-Sep-2013
		EU Directive	15-Feb-2011	01-Jan-2013
64	New Zealand	Multilateral Convention	Signed	01-Mar-2014
65	Nigeria	Multilateral Convention	Signed	Not yet in force in Nigeria
66	Norway	DTC	19-Jul-1993	30-Dec-1993
		Multilateral Convention	Signed	01-Jun-2011
		EU Directive	15-Feb-2011	01-Jan-2013
67	Poland	DTC	17-Nov-1993	28-Jun-1994
		Multilateral Convention	Signed	01-Oct-2011
		EU Directive	15-Feb-2011	01-Jan-2013
68	Portugal	DTC	19-Jun-2001	07-Mar-2003
		Multilateral Convention	Signed	Not yet in force in Portugal
		EU Directive	15-Feb-2011	01-Jan-2013
69	Romania	DTC	25-Mar-2002	28-Nov-2002
		Multilateral Convention	Signed	Not yet in force in Romania
		EU Directive	15-Feb-2011	01-Jan-2013



No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
70	Russian Federation	DTC	20-Dec-2010	06-Nov-2012
		Multilateral Convention	Signed	Not yet in force in Russia
71	San Marino	Multilateral Convention	Signed	Not yet in force in San Marino
72	Saudi Arabia	Multilateral Convention	Signed	Not yet in force in Saudi Arabia
73	Serbia	DTC	22-Nov-2005	19-May-2006
74	Singapore	DTC	6-Oct-1999	18-Feb-2000
		Multilateral Convention	Signed	Not yet in force in Singapore
75	Sint Maarten <sup>b</sup>	Multilateral Convention		01-Sep-2013
76	Slovakia	DTC	11-Mar-1999	12-Jun-2000
		Multilateral Convention	Signed	01-Mar-2014
		EU Directive	15-Feb-2011	01-Jan-2013
77	Slovenia	DTC	17-Apr-2002	18-Nov-2002
		Multilateral Convention	Signed	01-Jun-2011
		EU Directive	15-Feb-2011	01-Jan-2013
78	South Africa	Multilateral Convention	Signed	01-Mar-2014
79	Spain	DTC	4-Sep-2003	14-Dec-2004
		Multilateral Convention	Signed	01-Jan-2013
		EU Directive	15-Feb-2011	01-Jan-2013
80	Sweden	DTC	5-Apr-1993	30-Dec-1993
		Multilateral Convention	Signed	01-Sep-2011
		EU Directive	15-Feb-2011	01-Jan-2013
81	Switzerland	DTC	31-Jan-2002	18-Dec-2002
		Multilateral Convention	Signed	Not yet in force in Switzerland
82	Tajikistan	DTC	9-Feb-2009	29-Oct-2009
83	Tunisia	Multilateral Convention	Signed	01-Feb-2014
84	Turkey	DTC	3-Jun-1999	23-Dec-2003
		Multilateral Convention	Signed	Not yet in force in Turkey
85	Turkmenistan	DTC	11-Sep-2012	4-Dec-2012
86	Tuks & Caicos <sup>a</sup>	Multilateral Convention		01-Dec-2013

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
87	Ukraine	DTC	21-Nov-1995	01-Jan-1997
		Multilateral Convention	Signed	Non amended convention in force since 01-Sep-13 (amended convention not yet in force in Ukraine)
88	United Arab Emirates	DTC	11-Mar-2012	11-Jun-2013
89	United Kingdom	DTC	8-May-1996	31-Dec-1996
		Multilateral Convention	Signed	01-Oct-2011
		EU Directive	15-Feb-2011	01-Jan-2013
90	United States	DTC	15-Jan-1998	30-Dec-1999
		Multilateral Convention	Signed	Non amended convention in force since 1 November 1996 (amended convention not yet in force in USA)
91	Uzbekistan	DTC	3-Jul-1998	23-Oct-1998

*Notes:* a. Extension by United Kingdom

b. Extension by the Netherlands

c. Extension by Denmark

\*Entered into force after 29 January 2014 and, therefore, not included in the analysis under element C.1.8 of this Report.

## **Annex 3: List of all Laws, Regulations and Other Relevant Material**

### **Commercial Laws**

Accounting Law  
Annual Accounts Law  
Associations and Foundations Law  
Cooperative Societies Law  
Financial Instruments Market Law  
The Commercial Law  
The Law on European Cooperative Societies  
The Law on Investment Companies  
The Law on the Enterprise Register of the Republic of Latvia

### **Taxation Laws**

The Law on Enterprise Income Tax  
The Law on Personal Income Tax  
The Law on Taxes and Fees  
The Law on the State Revenue Service  
The Law on Savings and Loan Associations

### **Banking Laws**

Credit Institutions Law

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## Anti-Money Laundering Laws

Prevention of Money Laundering and Terrorism Financing Law

### Other

Administrative Violations Code

Cabinet Regulation No. 1245 on Procedures for the Performing Exchange of Information in the Field of Taxation between the Competent Authorities of Latvia and Other European Union Member States and Competent Authorities of Foreign States with which International Agreements Ratified by the Saeima of the Republic of Latvia have been Entered into

Law on International Agreements of the Republic of Latvia

State Civil Servant Disciplinary Law

The Constitution of the Republic of Latvia

Copies of tax treaties

## **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.

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# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, PHASE 1: LATVIA

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 100 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](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).

Consult this publication on line at <http://dx.doi.org/10.1787/9789264210295-en>.

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