

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

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

**GUATEMALA**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Guatemala 2012**

PHASE 1

March 2012  
(reflecting the legal and regulatory framework  
as at December 2011)



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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 100 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, 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 jurisdictions' 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 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 Guatemala. 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 with its exchange of information partners. While Guatemala has a developed legal and regulatory framework, the report identifies a number of areas where Guatemala could improve its legal infrastructure to more effectively implement the international standard. The report includes recommendations to address these shortcomings.

2. The Republic of Guatemala is a country in Central America bordered by Mexico to the north and west, the Pacific Ocean to the southwest, Belize to the northeast, the Caribbean sea to the east, and Honduras and El Salvador to the southeast. It is a constitutional republic with a democratically elected president who is both Chief of State and head of the government. Guatemala committed to implement the international standard of transparency and exchange of information in 2009 and is a member of the Global Forum.

3. In respect of the availability of ownership and identity information, there are not sufficient obligations in place to ensure the availability of this information. Companies are formed by the creation of a deed which must be notarised and registered in the Commercial Register. In addition, shareholder information is maintained in a shareholder’s register. A new law prohibiting the issuance of bearer shares entered into force in 2011, and any existing bearer shares are supposed to be converted into nominal shares within 2 years. However, a procedure exists whereby the shares could be converted after the two year period and therefore it is not clear that all shares will be converted by 2013. Information on the partners in a Guatemalan partnership is available as the partnership must register with the Commercial Register and the partnership must maintain updated information on their owners. However, there is no requirement for foreign partnerships to maintain ownership information even when the foreign partnership carries on business in

Guatemala or has income, deductions or credits for tax purposes. Common law trusts cannot be formed under Guatemalan law, and Guatemala has not signed the Hague Convention on Trusts. Obligations to maintain information imposed on the trustee of a foreign trust under anti-money laundering law, commercial law and tax law do not ensure that ownership and identity information is available to the standard in all cases. In addition, Guatemalan law provides for a trust-like instrument called “fideicomiso” under which a *fiduciario* can manage assets for a beneficiary (*fideicomisario*). The *fiduciario* can only be a bank or financial institution authorized by the Monetary Board and must maintain identity information concerning the settlors, trustees and beneficiaries. Guatemalan law provides for the contract of *mandato*, under which a person may acquire shares on behalf of another, similar to a nominee shareholding. In these cases, information on the beneficial owner will be available either because the mandate is effected by means of a notarised deed or because it is registered in the commercial register.

4. Regarding accounting records, the commercial and tax laws governing relevant entities established in Guatemala ensure the requirements are in line with the international standard. As to bank information, AML/CFT regime generally imposes appropriate obligations to ensure that all records pertaining to account holders, as well as related financial and transaction information, are available.

5. In respect of access to information, the Tax Administration (SAT) has power to obtain relevant information from taxpayers and from third parties. However, these powers are subject to significant restrictions imposed by laws of professional and bank secrecy as well as constitutional limitations. A court procedure may be possible however it is not clear under what circumstances a court would authorise such access. In addition, there is some ambiguity in Guatemala’s laws regarding the existence of a domestic tax interest. In terms of rights and safeguards, information that can be obtained directly by the SAT is not subject to any notification requirements. To the extent information would be available under a court procedure this would involve notification of the taxpayer without exception.

6. Guatemala has signed the Convention for Mutual Assistance and Technical Cooperation among Central American Tax and Custom Administrations, which provides for exchange of information on request in all tax matters. This convention is in effect between Guatemala, Costa Rica and Honduras. The terms of the Convention conform to the international standard, however due to restrictions in Guatemala’s domestic law, it does not provide for effective exchange of information. Guatemala is in the process of negotiating tax information exchange agreements with 15 jurisdictions. As Guatemala does not have any agreements that currently provide for effective exchange of information with any partners, its network of agreements is not in place.

7. Since elements which are crucial to achieving effective exchange of information are not yet in place in Guatemala, it is recommended that it does not move to a Phase 2 Review until it has acted on the Recommendations contained in the Summary of Factors and Recommendations to improve its legal and regulatory framework. Guatemala's position will be reviewed when it provides a detailed written report to the Peer Review Group within 12 months of the adoption of this report. It should also provide an intermediary report within 6 months of the adoption of this report.



## Introduction

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

8. The assessment of the legal and regulatory framework of Guatemala was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at December 2011, Guatemala's responses to the Phase 1 questionnaire and supplementary questions, information supplied by partner jurisdictions and other relevant.

9. The *Terms of Reference* breaks 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 Guatemala'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: (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.

10. The assessment was conducted by a team which consisted of three assessors and a representative of the Global Forum Secretariat: Ms. Maria Graça Pires, Tax Officer of the International Relations Department, Ministry of Finance of Portugal; Mr. Avvari Rao, Director of Foreign Tax & Tax Research, Department of Revenue, Ministry of Finance of India; Mr. Sukesh Jain, Director of Foreign Tax & Tax Research, Department of Revenue, Ministry of Finance of India; Ms. Maria Francisca Villaman from the Global Forum Secretariat.

## Overview of Guatemala

11. The Republic of Guatemala is in Central America bordered by Mexico to the north and west, the Pacific Ocean to the southwest, Belize to the northeast, the Caribbean sea to the east, and Honduras and El Salvador to the southeast. It is a constitutional republic with a democratically elected president who is both Chief of State and head of the government. It follows the classical model of the separation of powers, with the following independent branches of government: the Executive, the Legislative and the Judiciary.

12. The Executive is composed of a President, who is directly elected by universal suffrage for a four-year term (he/she may not be re-elected) and a Vice President, elected for a non-extendable period of four years. The President appoints his ministers, vice ministers, and secretaries. As part of the Executive, Guatemala City and 333 other municipalities are governed by similarly elected mayors or councils. Guatemala has also 22 administrative subdivisions (Departments) administered by governors appointed by the President. The Legislative branch is composed of the unicameral Congress of the Republic made up of 158 deputies elected for a period of four years (re-election allowed); Members of Congress are elected through a modified proportional representation system; 127 members are chosen from lists in 23 electoral districts, and 31 members are chosen from a national list.

13. The judiciary is composed of the Supreme Court of Justice and the other tribunals established by law. No other authority is able to intervene in the administration of justice.

14. Guatemala covers an area of 108 890 km<sup>2</sup> and has an estimated population of 14.71 million as of 2011.<sup>1</sup> Although Spanish is the official language, more than 20 indigenous languages are also spoken. The quetzal is its national currency (7.73 quetzal = 1US dollar as of 18 July 2011).<sup>2</sup> The capital city of Guatemala is Guatemala City.

15. Guatemala had a GDP per capita of USD 3 154 in 2011.<sup>3</sup> Most manufacturing is light assembly and food processing, geared to the domestic, US, and Central American markets. The United States is the country's largest trading partner but Mexico, China, El Salvador, and Honduras are also important trade partners.

16. Guatemala ratified the Central American Free Trade Agreement (CAFTA) with Costa Rica, El Salvador, Honduras, Nicaragua and the United

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1. Instituto Nacional de Estadística: [www.ine.gob.gt/np/poblacion/index.htm](http://www.ine.gob.gt/np/poblacion/index.htm).
  2. Banco De Guatemala: [www.banguat.gob.gt/cambio/en-default.asp](http://www.banguat.gob.gt/cambio/en-default.asp).
  3. IMF World Economic Outlook Database, April 2011: [www.imf.org/external/pubs/ft/weo/2011/01/weodata/index.aspx](http://www.imf.org/external/pubs/ft/weo/2011/01/weodata/index.aspx).

States in March 2005. Subsequently the Dominican Republic joined the negotiations, and the agreement was renamed DR-CAFTA. This agreement represents the largest trade group within the region. DR-CAFTA countries are the second-largest Latin American export market for US producers, behind only Mexico.<sup>4</sup>

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

17. Guatemala’s legal system is based on civil law tradition. The general structure of the legal system is determined in article 175 of the Constitution, which states: “*No law can contradict the provisions of the Constitution. Laws that violate or distort the constitutional mandates are null and void Ipso Jure.*” In addition, article 9 of the Judicial Branch Law, Decree 2-89 establishes: “*Courts of justice shall always observe the principle of regulatory hierarchy and supremacy of the Political Constitution of the Republic over any other law, or international treaty, except the treaties or conventions on Human Rights ratified by Guatemala, that have prevalence over internal law. The provisions that contradict a law of superior rank are not valid*”.

18. Regarding the hierarchy of the legal system with respect to tax matters, article 2 of the Tax Code, Decree 6-91 establishes the following sources of tax law in rank order:

- The Constitution of the Republic of Guatemala;
- Constitutional laws (Covering certain matters in compliance with a constitutional mandate and which require higher quorums for their modification);
- Ordinary laws,<sup>5</sup> treaties and international conventions ratified by Congress; and,
- Regulations issued by the Executive Branch through government agreements.

19. International conventions must be approved by the Congress. In case of a conflict with ordinary laws, the Judicial Branch Law establishes that laws are repealed by subsequent legislation. This can be done: partially, by express declaration of a new law; wholly, due to incompatibility of provisions in a new law; absolutely, because the new law will regulate in full the matter considered in the previous law; or wholly or partly, by a declaration of unconstitutionality rendered by the Guatemalan Constitutional Court (art. 8, Judicial Branch Law).

4. [www.banguat.gob.gt/inc/ver.asp?id=/estaeco/ceie/CG\\_imp\\_exp2011.htm&e=67450](http://www.banguat.gob.gt/inc/ver.asp?id=/estaeco/ceie/CG_imp_exp2011.htm&e=67450).

5. The concept of law includes Decree-Laws issued from 23 March 1982, during the inactivity of Congress, according an express recognition of the Constitution, article 16.

20. Tax treaties and exchange of information agreements, as domestic laws, enter into force across the national territory eight days after their publication in the Official Gazette.
21. Taxes are levied by the Central Government through the Tax Administration Superintendence (SAT), and each municipality levies fees. Exchange of information agreements signed by Guatemala only cover taxes levied at the national level.
22. Guatemala has a territorial tax system. It provides for direct and indirect taxes. Direct tax is in form of general income tax which is levied on both residents and non-residents. Income subject to tax is defined as any amount obtained from sources within Guatemala. Guatemalan Income Tax Law defines Guatemalan source income as that obtained through any capital, assets, services and rights of any nature invested or utilized in the country, or originated by activities developed in Guatemala (Income Tax Law, art. 4).
23. Companies and individuals may choose between the following regimes:
- (a) General tax regime, which provides for a flat tax rate of 5% on their gross income, regardless of profit margin or income levels. Under this regime capital gains are taxed at a 10% rate.
  - (b) Optional tax regime, which provides for a standard corporate income tax, with a rate of 31% on net taxable income. Net taxable income under the optional regime is defined as gross income minus necessary costs and expenses to generate such income or to preserve the revenue source. Under this regime capital gains are subject to a 31% tax rate.
24. Withholding taxes apply for payments made to non residents on a rate that varies (5%-31%) depending on the type of payment.
25. Dependent workers are taxed on a progressive rate scale that goes from 15% to 31% depending on the level of net income (the total of all income on labor) minus a standard list of deductions.
26. A tax on net assets called “ISO” is also levied on a quarterly basis on companies that carry out commercial and agricultural activities and that derive a gross profit margin of more than 4% of their income. The tax rate is 1%, and it applies on the greater amount between 25% of the value of net assets and 25% of the gross income. Taxpayers whose net assets are four times greater than their gross income pay the tax on their gross income.
27. Dividend payments and certain documents or contracts are subject to a 3% Stamp Tax.



28. Value Added Tax (VAT) is levied on domestic taxable supplies of goods and services and on imports of goods. Exports of goods and certain specific items are exempted. Some specified transactions are exempt without credit for previously paid VAT. VAT applies to all stages of the production or distribution process. Taxable persons are in general any person or entity carrying out taxable transactions in Guatemala. VAT is levied at a single rate of 12% (VAT Law, art. 10) and the declaration is filed monthly.

29. A Real Estate Tax (IUSI) has been decentralized to most municipalities. The tax is levied on owners or holders of immovable property on a progressive basis at the rates from 0.2% to 0.9%.

### ***Commercial Laws***

30. Very generally, commercial activity in Guatemala is regulated by the Commercial Code, the Notary Code and the Securities Exchange and Merchandise Law. The Commercial Code provides the regulatory framework that governs activities for mercantile or business persons. Mercantile entities are mostly organized in two categories, “sociedades de capital”, focused on capital, which are the most popular in Guatemala, and “sociedades no accionadas”, focused on membership.

31. A “sociedad” is a legal entity separate from its owners (individuals or other legal persons), who have made a capital contribution with the aim of participating in profits or, possibly, assuming business losses. Common law trusts are not recognised in Guatemala, although Guatemalan law provides for a trust like a vehicle called a *fideicomisos*.

32. Foreign companies may operate in Guatemala either through a branch or an agency.

### ***Free Trade Zones***

33. Free trade zones (FTZ) are areas subject to a special customs and taxes regime in which individuals or legal entities are engaged in either the production or marketing of goods for export or re-export and the provision of services related to international trade. FTZ are created by a resolution issued by the Ministry of Economy. FTZ are organized by the “Administrative Entities”, which must be legal entities properly registered and authorized by the Ministry of Economy. In order to obtain authorization they must have a tax registration accompanied by their notarised incorporation deed.

34. Businesses operating in the FTZ are individuals or legal entities (FTZ users), authorised by the Ministry of Economy to develop economic activities in the FTZ. These can be classified according to their field of activity, for

example as industrial enterprises or international services providers, but are generally dedicated to export of goods and services.

35. Individuals or legal entities developing activities in FTZ are subject to the general provisions of the Commercial Code and the Free Trade Zone Law and its Regulation (Decree 65-89). Consequently, the rules regarding the availability of ownership and identity and accounting information in the FTZ do not differ from the rules that apply to entities operating in Guatemala generally.

36. Administrative entities and users are exempt from custom duties, income taxes, real property taxes, stamp taxes, VAT related to the activities developed within the FTZ. Dividends distributed by them to resident shareholders are also exempt (Decree 65-89, arts. 21 and ff.).

37. Guatemala has 17 FTZ operating and 9 others have been authorized but have not yet started operations. Of these entities, they are mainly manufacturing companies and companies selling or distributing products to other countries. None of these companies are engaged in banking or financial services.

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

38. The Guatemalan regulated financial system is comprised of 112 entities, which represented approximately USD 26 billion of total net assets as of 30 June, 2011, distributed as follows:

Type of entity	Number of entities	Net assets (in millions USD)
Banks	18	21 000.5
Financial societies (Financial companies)	15	773.8
Foreign banks with branches in Guatemala that operate within a Guatemalan Financial Group	7	2 798.9
Bonded warehouses	15	25.9
Insurance companies	28	781
Instituto de Fomento de Hipotecas Aseguradas (Institute for the Promotion of Insured Mortgages)	1	84
Exchange houses	2	5.1
Brokerage houses	12	21.3
Credit card companies	7	464.0
Other financial entities that are part of financial groups	7	35.6

39. The regulatory agencies involved in the oversight of the financial service sectors are:

- Monetary Board (Executive branch of the Central Bank)
- The Superintendency of Banks (SIB)
- Special Verification Intendency (SVI, part of the SIB)

40. The Constitution of Guatemala establishes that the Superintendency of Banks is the body that provides vigilance and inspection to banks, credit institutions, financial companies, bonding companies, insurance companies, and other financial institutions (Constitution, art. 133).

### ***Other Relevant factors for exchange of information***

41. The Access to Public Information Law (Decree No 57 of 2008) provides a guarantee of access to public information kept by institutions such as the Identification National Register, the Central Bank, the Superintendency of Banks and the Tax Administration. The information accessible does not include the information restricted by the law (See section B1).

## **Recent developments**

42. On 30 June, 2011, the Asset Forfeiture Law, Decree No. 55-2010 of Congress, entered into force. It eliminates bearer shares so that only nominative shares remain. In addition, it establishes a two-year conversion term during which companies that have issued bearer shares must change them to nominative shares.

43. On 2 December 2011 members of the Central American Common Market (CACM), namely; Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, approved an Explanatory Note to the Convention for Mutual Assistance and Technical Cooperation among Central American Tax and Custom Administrations in order to clarify the obligations to exchange information in tax and custom matters. This note was approved by the Council of Ministers of Economic Integration (COMIECO) and the Council of Ministers of Treasury and Finance (COSEFIN).

44. Guatemala indicates that it is drafting two laws to ensure that bank secrecy does not prevent effective exchange of information for tax purposes.



## Compliance with the Standards

### A. Availability of information

#### Overview

45. 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 the information is not kept or it is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Guatemala's legal and regulatory framework on the availability of information.

46. The main laws that govern entities in Guatemala are the Commercial Code, the Securities Exchange and Merchandise Law, the Notary's Code, the Tax Code and the Income Tax Law. All companies and partnerships are deemed to be mercantile (business) entities. All mercantile entities must register with the Commercial Registry and also keep a series of books and records, including minutes of shareholder meetings, books of account and a shareholder register. Nominees as such do not exist, although a similar institution called *mandatario* exists. In cases where a person has purchased securities on behalf of another as a *mandatario* the identity of the parties would be recorded in a notarised deed.

47. Foreign companies that have their headquarters in Guatemala or whose main focus of business is in Guatemala must have their deed of incorporation

notarised and registered with the Registrar of Commerce in the same manner as a domestic company, but according to formalities of the place of incorporation. They are not subject to a requirement to maintain a shareholder's register under the Commerce Code, but they do have the obligation to keep accounting records to the same extent as domestic companies as well as being obliged to name a permanent mandatary in Guatemala. Therefore, ownership information of foreign companies is not always available in the country.

48. Bearer shares have been eliminated recently and there is a two year period for conversion of current bearer shares to nominative shares. However, the law does not ensure that all bearer shares will be converted by the 2013 deadline.

49. The rules regarding the availability of information on foreign partnerships that carry on business in Guatemala are not clear. Guatemalan authorities suggested that where partners of a foreign partnership carry on business in Guatemala then they would in effect constitute a society and would be subject to the rules applicable to domestic partnerships. However, the law in this regard is not explicit and Guatemala should clarify the requirements for foreign partnerships in these cases.

50. Common law trusts are not recognised under Guatemalan law though there is no prohibition for Guatemalan resident to act as a trustee of a foreign trust. Guatemalan tax, accounting, and anti-money laundering legislation would generally be applicable to commercial persons providing services to a trust and however it does not ensure that information on the settlors, protectors and beneficiaries of foreign trusts is available in all cases. In addition, Guatemalan law provides for the creation of "fideicomiso", which has certain features in common with trusts.

51. Information on fideicomiso is always available in Guatemala, since only banks and some financial institutions can act as fiduciarios, and they are under AML and CFT obligations, which includes customer's identification, all transaction's information and also beneficiary owner information.

52. Foundations in Guatemala can only be established for non-profit, charitable activities.

53. Accounting requirements are found in both the Commerce Code and the Tax Code and apply to all traders (including commercial companies) and taxpayers: individuals, sociedades, foreign partnerships and trusts. These requirements are adequate to ensure that relevant accounting records are kept for all relevant entities.

54. Banking information is available for all account holders under Guatemalan law.

## 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 A.1.1)*

#### *Types of Companies*

55. Guatemalan law recognises a number of different entities and arrangements that are relevant to the Terms of Reference. These entities are considered commercial companies and include (Commercial Code, art. 10):

- Sociedades colectivas (SCs)
- Sociedades en comandita simple (SCSs)
- Sociedades de responsabilidad limitada (SRLs)
- Sociedades anónimas (SAs)
- Sociedades en comandita por acciones (SCPAs)

56. Each of these are based on a contract where two or more persons agree to pool goods or services to develop an economic activity and share the profits (Civil Code, art. 1728). The main difference between Civil and Commercial companies is that they are regulated by different codes and that the individual person that participates in commercial companies is considered a trader. Civil companies are regulated by the Civil Code and Commercial companies by the Commercial Code. Companies listed above are purely commercial; therefore, they cannot be considered civil companies. Each of the various entities or arrangements may have the characteristics of both a company and a partnership. For the purposes of this report, SAs and SCPAs are treated as “companies”, since their organisation is based on capital. The organisation of the SCs, SCPAs and SRLs is based on the membership and therefore are dealt with as partnerships under section A.1.3. In the case of both a civil or commercial society the legal capacity of each is distinct from the legal capacity of their members (Civil Code, art. 16 and Commercial Code, art. 14).

#### *Sociedades anónimas (SAs)*

57. The capital of an SA is divided into shares (Commercial Code, Ch VIII, art. 86 and ff). Liability of shareholders is limited to their contributions. SAs are managed and legally represented by a single manager or a board of directors, which may appoint the general or specific manager.

### *Sociedades en comandita por acciones (SCPAs)*

58. The capital of an SCPA is divided into shares (Commercial Code, Ch VII, art. 195 ff). Active partners (*socios comanditados o gestores*) have a subsidiary, joint and unlimited liability, whilst passive partners (*socios comanditarios*) are only liable to the extent of their contributions. Active partners can be the managers and their legal representatives (Commercial Code, art. 198). SCPAs are regulated by SAs provisions, except provisions about company name, administration, and passive partner's liability and voting rights.

### *Information held by Governmental Authorities*

59. SAs and SCPAs must be formed by a deed authorized by a notary (Commercial Code, art. 16). The Notary's Code specifies the details contained in the deed (Commercial Code, art. 46 and 47), which must include its purpose, the name, founders' identity information (name and address), domicile, duration of activities, capital, contributions and shares. In particular, the deed must include information concerning the capital and the share that each of the owners contributes as well as the terms governing the relationship between the owners. The deed is then registered in the "*protocolo*" or notary's register (Notary's Code, art. 18 and ff). Any modification of the deed, is required to be done with the same formalities as the creation of the original deed.

60. SAs and SCPAs must also register the deed, and its amendments, with the Registrar of Commerce within one month from the date of its incorporation (Commercial Code, art. 17 and 334). The duration of the company starts from the date of the registration (Commercial Code, art. 17 and 24).

### *Information held by Companies*

61. SAs and SCPAs can only issue nominative shares (Commercial Code, art. 108). These must be registered in a shareholders' register kept by the company, and the following information must be maintained (Commercial Code, art. 125):

- Shareholder's name, shares' class, series, number
- Payments associated with the shares
- Changes in ownership
- Conversions to bearer<sup>6</sup>
- Cancellations

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6. Bearer shares can no longer be issued by companies in Guatemala, however there is a 2 year transition period in which bearer shares may continue to be in existence (see below, "Bearer Shares").



62. A person can only be considered the owner of a nominal share if the person is registered as such (Commercial Code, art. 119). Only registered shareholders can attend shareholders' meetings. In order for a transfer of nominal shares to be effective, the transfer must be registered in the shareholders' register (Commercial Code, art. 128).

63. Information referring to books and records – including registries of shareholders must be kept by the company during its entire duration and until the liquidation of all its businesses and commercial offices (Commercial Code, art. 376). If this obligation is not complied with acts and document which should have been registered will have no effect against third parties until the proper registration (Commercial Code, art. 339). The company's documents must be kept for at least 5 years (Commercial Code, art. 382).

### *Foreign Companies*

64. Foreign companies that have their headquarters in Guatemala or whose main focus of business is in Guatemala must have their deed of incorporation notarised and registered with the Registrar of Commerce in the same manner as a domestic company, but according to the formalities of the place of incorporation.

65. In addition, in order to have its headquarters or branch or operate through an agent in Guatemala a foreign company must (Commercial Code, art. 215):

- Prove that it is duly incorporated according to the laws of the country in which it was incorporated.
- Submit a certified copy of its incorporation document and bylaws, if any, as well as any modification.
- Prove that a decision has been made by its competent authority for this purpose.
- Designate an agent with representation with full powers to carry out all acts and legal businesses and legally represent the company, in trial or elsewhere, with all the special powers provided by the Judicial Branch Law. If the agent fails to have these powers, it shall be deemed that such powers have been conferred upon him according to the law.

66. The necessary documents to prove these facts shall be submitted to the Registrar of Commerce in order to obtain the governmental authorization. A foreign company must also publish balance sheets in respect of its operations within the country (Commercial Code, article 216). However there is no provision requiring the company to maintain information on the company's shareholders.

67. Foreign companies which are operating in Guatemala are also required to register with the Tax Administration (SAT) before starting or resuming a taxable activity (Tax Code, art. 120). Again, there is no requirement in this registration process for the foreign company to maintain information on its shareholders.

68. Consequently, the ownership information that is available would depend on the requirements of the company law of the place of incorporation. Guatemalan tax authorities would, however, be able to require the production of ownership information in relation to the administration and enforcement of the company's tax obligations (see section B.1).

### *Nominees (Mandatarios)*

69. The concept of nominee that exists in some jurisdictions, in particular common law jurisdictions, does not exist in Guatemalan law. The Civil Code and the Commercial Code do regulate the mandate as a contract whereby a person assigns to another the management of one or more acts or business. The Commercial Code regulates a particular kind of mandate regarding the acquisition or sales of securities. This kind of a mandate must be formalised in a deed (unless the amount involved has a value of less than GTQ 1000 (approx USD 127)). The deed must be notarised and kept in the notary's register or protocolo. It is also registered in the Electronic Mandate Registry of the General Archive of Protocols of the Judicial Branch. The notarised deed must include the name, domicile, activity, age, civil status, and nationality of the parties (Notary's Code, art. 29).

70. In addition, if the mandate is granted by a trader the mandate should be registered in the Commercial Register. The penalty for failure to register is a fine of GTQ 25 000 (USD 3191.03) (see section A.1.6 below). A mandatary is considered the responsible party for the purposes of reporting to and communicating with SAT in respect of the tax obligations derived from acts performed by the mandatary on behalf of the principal (Tax Code, art. 26). The principal on whose behalf the mandatary holds the shares would be considered the taxpayer. As the responsible party, the mandatary would be required to maintain all relevant information concerning the mandate in order to provide the SAT with information regarding the principal's tax obligation, including the contract related to the mandate (Tax Code, art. 112A).

71. In any case where the mandatary is a financial intermediary (*i.e.* a stock broker) then the mandatary would be subject to customer due diligence obligations under Guatemala's anti-money laundering law (AML, arts. 18, 21 and 22).

***Bearer shares (ToR A.1.2)***

72. Until recently bearer shares could be issued by both SAs and SCPAs. According to the Guatemalan authorities, the use of bearer shares is a common practice and a large proportion of shares are bearer shares. However, the issuance of bearer shares has been prohibited with effect from 29 June 2011 (Decree 55/2010 reforming Commercial Code, art. 108, 195, 204). From this date, companies having any bearer shares outstanding have 2 years within which to convert the shares to nominative. Following this 2 year period, shareholder rights can only be exercised by the owners of nominative shares (Decree 55 – 2010, art. 73). However, after the two year conversion period, it is possible for a holder of bearer shares to apply to a court to regain its rights by converting to nominative shares following the procedure outlined in Article 129 of the Commerce Code that is currently used to prove ownership of bearer shares in case the shares are lost or destroyed. This could be a gap in the requirement to convert bearer shares to nominative shares. It is therefore recommended that Guatemala ensure that bearer shares are converted to nominative shares in all cases.

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

73. Certain entities under Guatemalan law are known as “*Sociedades No Accionadas*”, which are characterised according to the relationship between their partners, are considered for the purposes of this report under the concept of “partnerships”. These types of commercial societies are classified in article 10 of the Commercial Code as:

- “*Sociedades Colectivas*” (SC) (Book I, Section I, Ch III, article 59): members have joint, several and subsidiary liability without limit. Partners can be represented in the shareholders’ meeting by a proxy.
- “*Sociedades en Comandita Simple*” (SCS) (Book I, Section I, Ch IV, article 68): shares are divided between the active partner(s), who has unlimited liability; and passive partner(s), who is liable only to the extent of their contribution. Some of the regulations regarding SCs (shareholder meetings) and some of the regulation regarding SRLs (capital contribution and control of management) are applicable.
- “*Sociedades de Responsabilidad Limitada*” (SRL) (Book I, Section I, Ch V, article 78) capital is divided into shares. The liability of members is limited to their contribution. The liability of the partnership can be increased by the bylaws. The number of members shall not exceed 20. Regulations regarding SCs (shareholder meetings) are applicable.

74. Each of these entities must be formed by a deed authorized by a notary (Civil Code, art. 1729 and Commercial Code, art 16). The laws applicable to notaries specify the details that must be contained in the deed (Notary's Code, art. 46), which must include its purpose, the name, founders' identity information (name and address), domicile, duration of activities, capital, contributions and shares. In particular, the deed must include information concerning the capital and the share that each of the owners contributes. The deed, including ownership information as well as the terms governing the relationship between the owners, is then registered in the "*protocolo*" or notary's register (Notary's Code, art. 8 and ff). Any modification of the deed, including a change of ownership, is required to be done with the same formalities as the original deed and so must also be notarised.

75. Commercial law similarly requires that the formation of these entities and any transfer of ownership is formalised in a deed (Commercial Code, article 16). This deed and its modifications must be registered not only in the Notary's register but also in the Registrar of Commerce within one month (Article 17, 334 Commercial Code).

76. SCs, SCSs, and SRLs registration at the Registrar of Commerce must contain details mentioned in article 46 of the Notary's Code (described above) and also the domicile of the entity's headquarter and branches, identification of the notary who authorized the deed (and details of it), management organization, and the internal control system (Commercial Code, art. 337). If this obligation is not complied with acts and documents which should have been registered will have no effect against third parties until the proper registration.

77. SCs, SCSs, and SRLs are taxed at the entity level in Guatemala and are taxpayers subject to registration and record keeping obligations under the Tax Code, and the obligation to maintain information that must be provided to SAT (Tax Code, art. 21).

78. Foreign partnerships that are carrying on business in Guatemala or which have income from a Guatemalan source, credits or deductions for Guatemalan tax purposes are also required to register with the Tax Administration (SAT) before starting or restarting taxable activity (Tax Code, art. 120). However, there is no requirement in this registration process for the foreign partnership to maintain information on its owners. Guatemalan authorities suggested that where partnerships and foreign partnerships carry on business in Guatemala then they would in effect constitute a "society" and would be subject to the rules applicable to domestic partnerships described above. However, the law in this regard is not explicit and Guatemala should clarify the requirements for foreign partnerships to ensure that ownership and identity information is available on all foreign partnerships that carry on business in Guatemala or have income, credits or deductions for Guatemalan tax purposes.

*Trusts (ToR A.1.4)*

79. The concept of “trust” as it is under the common law does not exist under Guatemalan Law and Guatemala has not signed the Hague Convention on the Law of Trusts. There is, however, no provision preventing a Guatemalan resident from acting as a trustee of a foreign trust. In certain cases, the trustee would be subject to obligations to maintain information about the trust. Where the trustee is a person that is subject to the AML/CFT regime, then customer due diligence rules will apply. The persons that are subject to the AML/CFT regime are (AML Law, art. 18):

- Entities subject to vigilance and inspection by the Superintendency of Banks.
- Individual or juristic persons dedicated to brokerage or intermediation of securities trading.
- Credit cards issuers and operators.
- Off-shore entities that operate in Guatemala, which define themselves as entities dedicated to financial intermediation constituted or registered under the laws of other country and that perform their activities mainly out of the jurisdiction of said country.
- Individual or juristic persons who perform any of the following activities:
  - Systematic or substantial operations of payment of checks.
  - Systematic or substantial operations of issuance, purchase or sale of traveler’s checks or money orders.
  - Systematic or substantial fund transfers and /or capital flows.
  - Agency.
  - Financial leasing.
  - Purchase and sale of foreign currencies.
  - Any other activity that by nature of its operations may be used for money or other assets laundering, as established in the regulation.

80. Trust service providers are not specifically covered by this definition, however, a person acting for a foreign trust may be otherwise subject to the AML/CFT regime, for example because they are subject to the vigilance of the Superintendency of Banks, or because, as trust service providers they perform systematic or substantial fund transfers or are otherwise caught by the last category of person. It is however possible that a professional trustee could operate in Guatemala and be excluded from the AML/CFT obligations.

81. If a person subject to the AML/CFT regime acts as the trustee for a foreign trust then that person will be required to conduct customer due diligence and to maintain information on the identity of their customer and must verify the identity, name of the client and the beneficial owner, age, occupation or corporate purpose, marital status, address, nationality and legal capacity. In the case of foreign clients, they must require a certified proof of the client's incomes and legal immigration status in the country, and when they are not residents of the country, the identity of the person who will legally represent them in Guatemala (AML Law, art. 21, and Regulation, art. 12).

82. With regard to beneficial ownership, the rules specifically require the maintenance of information about “third parties in whose benefit an account is opened or if a transaction is performed when there is doubt that such third parties may be acting for their own benefit or, at the same time, they may be doing it in benefit of other third party, specially in the case of juristic persons that do not perform commercial, financial or industrial transactions in the country or in the country where they have its central office or domicile” (AML Law, art. 22).

83. While it is not the case that all persons acting as a trustee for a foreign trust are subject to AML/CFT regime, if somebody habitually acts as a trustee or performs services of administering financial assets on behalf of another person for profit then that person would be considered a “trader” for the purposes of the commercial law (Commercial Code, art. 2). As a “trader”, the trustee must register with the Commercial Registry, providing his/her identification, and a description of the activity carried on. A “trader” must keep records relating to the business administered including any contracts or agreements relating to the trusteeship.

84. A Guatemalan resident acting as a trustee would also be the responsible party for purposes of reporting to and communicating with SAT in respect of any tax obligation arising from the trust in Guatemala (Tax Code, art. 26), and would be subject to the obligation to keep underlying documentation regarding the trust's activity. Generally, this information would include the identification of the settlor and beneficiary in order to justify the trustee's tax obligations. However, the trustee's tax obligation would only apply in respect of Guatemalan source income. If the foreign trust only generates foreign-source income, there would be no requirement for the trustee in Guatemala to report this income to the SAT. Therefore, there may be a gap in the availability of information on the settlors and beneficiaries of a foreign trust that has only foreign source income. It is recommended that Guatemala address this deficiency. Guatemalan authorities indicate that the issue of trusts has not arisen as a matter of practice and there is no indication that they are a material concern. Whether this is an issue in practice should be the subject of further analysis in the Phase 2 Review of Guatemala.

### *Fideicomisos*

85. Guatemalan law provides for a commercial contract that is similar in some respects to an anglo-saxon trust called “Fideicomisos” (Commercial Code, Chapter V). The fideicomiso is an act by which the settlor (fideicomitente) transmits certain rights and assets to the trustee (fiduciario) for a particular purpose. The beneficiary is called “fideicomisario” (Commercial Code, art.766). The act creating the fideicomiso must be written in a notarized deed and must identify the fideicomitente, fiduciario and the fideicomisario. If the fideicomisario is not known at the time of the creation of the fideicomiso, then the deed must contain rules sufficient for the fideicomisario to be identified. The fiduciario can only be a bank or a credit institution authorized by the Monetary Board, which would in either case be a person subject to anti-money laundering rules.

86. The “fideicomiso” is a similar institution to the anglo-saxon trust, but it differs significantly in that the fideicomisario (the beneficiary) does not have a direct ownership interest in the property of the fideicomiso, but rather a right against the fideicomitente, who is required to transfer the property of the fideicomiso to the fideicomisario in accordance with the terms of the fideicomiso. For tax purposes, a fideicomiso is a taxable arrangement (Income Tax Law, art. 13), however it is the fiduciario who is responsible for ensuring the fideicomiso meets its obligations under the tax laws, such as registration with the Tax Administration (SAT), filing of tax returns and payment of any taxes due (Tax Code, art. 22). Where the SAT requires it, fiduciarios must provide “all elements and background information” which would be necessary for a tax determination, this would include information on the fideicomisario and the fideicomitente and the nature of the assets in the trust that have generated the income. Fiduciarios are subject to record-keeping requirements for the determination of fideicomiso’s income. Thus, all records that are necessary for determining the fideicomiso’s income that is taxable must be kept.

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

87. In Guatemala, foundations may be formed but only as non-profit entities. Foundations are regulated mostly by the Civil Code and the Non-Governmental Organisations Law. Therefore and to that extent, they are of limited pertinence to the exchange of information for tax purposes; however, a brief overview of their legal structure and ownership and identity information requirements is given here.

88. Foundations must be formed by a public deed or will (Civil Code, art. 20). The deed or will should include the foundation’s asset, its purpose and administration. Government authorities should monitor the proper implementation of the foundation’s purposes. Foreign foundations are under the



same requisites of authorisation and operation as domestic foundations (Civil Code, art. 22). They also must be registered, keep accounting records and are under SAT tax control.

### *Other relevant legal entities and arrangements*

89. There are no other relevant entities or arrangements in Guatemala.

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

90. SAs, SCPAs, SC, SCS, SRL, and foreign companies operating business in Guatemala are considered traders, as well as taxpayers (if they obtain income within Guatemala) in consequence they must meet commercial law and tax law obligations. Nominees and trustees performing commercial activities will also be subject to both regulations also. In addition, penalties under the Tax Code are applicable.

91. The commercial law provides penalties for cases of non compliance with specific obligations and additionally provides a general penalty applicable for all cases which has no special penalty. The general penalty is a fine of up to GTQ 1 000 (USD130). The general penalty would apply for failure to comply with record keeping obligations as well as for failure to file and provide updated information to the Commercial Register\ . If a company fails to register, the lack of registration also renders all acts and documents that should have been registered ineffective against third parties (Commercial Code, art. 339).

92. SAs and SCPAs must be formed by a deed authorized by a notary, who records ownership and identity information in a register. Pursuant to the Notarial Code, the fine for not recording something in the register within the stipulated period is GTQ 2 for each breach (Art. 100). The notary public may receive a warning, may be censured by the Court or may have a fine imposed of maximum GTQ 25, as long as the breach of his/her duty does not constitute a crime, in the case s/he commits any other breaches of his duty regulated by the law (Art. 101). Whenever the notary public repeats the unlawful act, he may be sanctioned with a fine of up to GTQ 100, or a suspension ranging from a month or up to a year.

93. When shareholders of SAs and SPAs are not registered the effect is that the purported shareholder will not be considered as such and consequently would not be entitled to exercise any shareholders' rights (e.g. attend shareholders meetings, vote shares, receive dividends). In addition, a transfer of shares is not effective unless registered. The SAs and SCPAs could also be responsible for the damages caused (Commercial Code, arts. 119 and 126).



94. For not keeping accounting books (inventory, journal, ledger, and financial statements) and other books required by laws, a fine up to GTQ 1 000 (USD 130) applies (Commercial Code, art. 370).

95. The tax law includes penalties for non compliance with tax obligations such as registration, notification of amendments to the information provided at registration, keeping accounting books and other records. In case of not maintaining the records required by the SAT the taxpayer will be subject to fine of GTQ 5 000 (USD 650) (Tax Code, art. 94 No. 4).

96. Failure to comply with the obligations of the AML laws, including customer due diligence requirements, is punishable by a fine of USD 10 000 to USD 50 000 or its equivalence in national currency, according to the seriousness of the occurrence, in addition to having to comply with the legal requirement.

<b>Phase 1 Determination</b>	
<b>The element is not in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
The process for conversion of bearer shares to nominative shares in the Commerce Code does not ensure that all bearer shares must be converted to nominative shares by 2013.	Guatemala should ensure that bearer shares are converted to nominative shares in all cases.
There is no provision requiring foreign companies with sufficient nexus with Guatemala to maintain ownership information.	Guatemala should ensure the availability of ownership information of all foreign companies with sufficient nexus to Guatemala.
Ownership and identity information on foreign partnerships may not be available in Guatemala, even when the foreign partnership carries on business in Guatemala or has income, deductions or credits for tax purposes in Guatemala.	Guatemala should ensure that information that identifies the partners in a foreign partnership that carries on business in Guatemala or has income, deductions or credits for tax purposes in Guatemala is available to its competent authority.
Ownership and identity information on the settlor and beneficiaries of a foreign trust may not be available in Guatemala.	Guatemala should take measures to ensure that information is available that identifies the settlor and beneficiaries of foreign trusts.

## A.2. Accounting records

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

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

#### *Commercial Code*

97. Book II (Professional Obligations of Traders), Chapter III, sets out the requirements on every “trader” in respect of accounting records. A “trader” is defined by article 2 of the Commercial Code as:

“Who performs in his/her own and for profit, any of the following activities: industry of production and processing of goods and services or brokerage, banking, insurance and bonding, as well as the auxiliary activities related to them.”

98. Regardless of their activities, SAs, SCPAs, SCs, SCSs, and SRLs are considered traders. Fiduciarios must in all cases be financial institutions, and so will be considered traders. Trustees of trusts formed under foreign law that perform their duties professionally and are resident in Guatemala will also be considered traders.

99. Traders must keep an organized accounting system using generally accepted accounting double entry principles (Commercial Code, art. 368). Guatemala has indicated that International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) are applicable. They must keep the following accounting books: Journal, Inventory book, General Ledger and the Financial Statements. They must keep other books depending on specific requirements of their activity.<sup>7</sup> Traders must keep their accounting documents in a truthful and clear way, in chronological order, without spaces, interpolations, erasures or deletions. Books should show no signs of alteration, replacement or pages removed or otherwise (Commercial Code, art. 373).

100. All traders are required to have their accounting records prepared by an accountant. Public accountants, auditors and expert accountants in Guatemala are subject to CFT regime; in consequence they must keep records available for the Superintendency of Banks (CFT Law, art. 18). The trader must establish both at the beginning of their operations and at least once a year, the company’s financial situation, through the balance sheet and also the losses and earning statement, which must be signed by the trader and the accountant (Commercial Code, art. 374).

<sup>7</sup>Traders whose total assets do not exceed GTQ 25 000 (USD 3191.03) are not obliged to keep the four accounting books mentioned, unless stated otherwise.

101. The Financial Statement book should include:
1. The opening balance sheet and the ordinary and extraordinary balance in case the trader has to carry it out;
  2. Statements of earnings and losses corresponding to the general balance sheet.;
  3. Any other statement which the trader considers necessary in order to reveal their financial situation.
102. All traders, including foreign companies and partnerships authorized to operate in Guatemala, must publish their balance sheet in the Official Journal (Diario Oficial) at the close of operations each financial year (Commercial Code, art. 380).
103. The accounting books must be authorized by the Registrar of Commerce, which entails that each page of the book is stamped by the Registrar (Commercial Code, art. 372). These books must be kept in the address declared for tax purposes unless the Registrar of Commerce authorizes another place within the country. All traders and their heirs or successors, shall retain the books and records, throughout the duration of the company or business to the total liquidation of all its businesses (Commercial Code, art. 376).
104. Traders must keep in an orderly and an organized manner “the business documents” for at least 5 years unless a law states something different (Commercial Code, article 381, 382). Guatemalan authorities indicate that business documents include the accounting books and the underlying documentation.
105. Sanctions for failure to keep the required accounting records are:
1. The accounting records will be considered of no value in any legal proceeding to benefit the person whose records are being examined;
  2. A fine from GTQ 100 (USD 12.76) to GTQ 1 000 (USD 127.60) (Commercial Code, art. 370).
106. These requirements are sufficient to correctly explain all transactions, the financial position of the trader, and to allow financial statements to be prepared. The requirements apply to all relevant entities and arrangements. However, in the case of a trustee of a foreign law trust, it is not clear whether the requirement to keep accounting records requires that the trustee maintain accounts detailing his own business operations or accounting records for the trust. If the trustee is a financial institution and therefore subject to the AML laws, the trustee would have to keep a record of all transactions (see Section A.3 below), however in the case of a trustee of a foreign law trust who is not subject to AML, it is not clear that accounting information would always be available. It is recommended that Guatemala clarify its laws to ensure that such records are maintained.

### *Tax Code*

107. Article 112 of the Tax Code states as a taxpayer's obligation to keep the books and registers related to activities associated with their taxes. Article 112 A as well states taxpayers must keep records related to tax obligations, including accounting books, at least during the statute of limitations (4 years, and 8 years if the taxpayer has no tax registration).

108. Article 112 A also states the obligation to recreate their accounting records, in case of loss or damage, within three months from the date on which the event occurred. In case of failure to keep accounting books stated in the Commercial Code and tax laws or not keeping them properly (not up to date, different form, or place) a penalty applies of QTZ 1.000 (USD 127) (formalities and place of keeping) and QTZ 5.000 (USD 635) (not carrying them or not up to date) (Tax Code, art. 94(4) and (5)).

### *Income Tax law*

109. Article 46 requires taxpayers to keep the books registers, financial statements, and numerated accounting vouchers required by the Commercial Code.

110. Income tax law provides for two types of accounting systems:

- (a) based on the books that must be kept: “complete or full” accounting system or “simplified” accounting system.
- (b) based on the moment to register income and expenses: “accrual” accounting system and “cash” accounting system (articles 46, 47)

111. Traders whose assets are lower than QTZ 25 000 (USD 3 153.81) or small, traders, whose sales are lower than QTZ 60 000 (USD 7 569.14) per year, are not required to maintain full accounting records (Commercial Code, art. 368 and VAT Law, arts. 47 and 49). They should maintain at least a Cash Journal and an Inventory book in which they must write down their assets and liabilities existing at the beginning and end of each tax period.

112. Taxpayers required to maintain full accounting must keep a general balance sheet, profits and losses and production costs at the close of each tax period in addition to supply the necessary information required by the Tax Administration.

### *Financial intermediaries*

113. Banks and other entities authorized by the Monetary Board to carry out “financial intermediation” are under the vigilance and inspection of the Superintendency of Banks. Consequently, they are regulated by the Banks

and Financial Groups Law which provides the obligation of following the accounting regime provided by the Decree 19-2002, Title VII, Chapter I, art. 59 and ff. They must keep an organized accounting system using generally accepted accounting principles of double entry system (Commercial Code, art. 368; approved by the Monetary Board resolution JM-150-2006).

***Underlying Documentation and document retention (ToR A.2.2 and A.2.3)***

114. The requirement to maintain underlying documents is found in the Commercial Code and the Tax Code. The Commerce Code specifies that every accounting transaction must be duly verified with supporting documents (Commercial Code, article 381). All traders and their heirs or successors, shall retain the books and records, throughout the duration of the company or business to the total liquidation of all its businesses (Commercial Code, article 376). However, the nature and extent of the underlying documents required is a question of interpretation by the Guatemalan authorities. Guatemala interprets the term “business documents” to include contracts, vouchers, debit and credit notes, expenses receipts and invoices. The requirement to keep records for a minimum of 5 years is found in the Commercial Code wherein traders must keep “the business documents” in an orderly and organized manner for at least 5 years (Commercial Code, article 382).

115. According to article 98 of the Tax Code the taxpayer must provide the SAT with the elements that constitute the base for the correct determination of tax obligations. Taxpayers must keep the documents described at least during the statute of limitations (Tax Code, art. 112 A). Under the AML regime, where financial transactions exceed certain thresholds (USD 10 000) financial intermediaries must keep all records necessary to reconstruct those financial transactions for at least 5 years after the transaction is concluded or the closure of the account (AML Law, arts. 23 and 24).

116. The Tax Code requires a document retention period of 4 years (ordinary) or 8 years (extraordinary), depending on the statute of limitations applicable. However the Income Tax Law requires taxpayers to keep records so long as they may be relevant to determining their tax obligations, which may be indefinite in some cases.

117. Where a transaction is carried out by a financial intermediary, all underlying documentation must be kept updated and for at least 5 years after the business transaction is over or the banking account is closed (AML Law, art. 23). The SAT will determine taxes on their own where records are insufficient, based on the elements provided by the taxpayer or third parties or other elements (Tax Code, arts. 108 and 109).

### Determination and factors underlying recommendations

Phase1 Determination
The element is in place

#### A.3. Banking information

Banking information should be available for all account-holders.

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

118. Financial institutions include banks, financial companies, credit institutions, bonding companies, insurance companies, general deposit warehouses, exchange houses, financial groups and entities controlling financial groups, and all other persons carrying out “financial intermediation” activities. Financial institutions are regulated in Guatemala by the Commercial Code, Securities Exchange and Merchandise Law, and the Anti-Money Laundering and Counter Terrorism Financing regime (AML/CFT). The Bank of Guatemala (Central Bank) is the authority responsible for monetary policy and price control (Central Bank Organic Law, art. 3), and the Superintendency of Banks (SIB) provides vigilance and inspection to banks, credit institutions, financial companies, bonding companies, insurance companies and other financial institutions. (Constitution of the Republic of Guatemala, art. 133 and Financial Supervision Law, art. 2). Other financial activities such as, credit card issuing, leasing, factoring, and money transfer are also subject to AML/CFT regulation and supervision, but not to prudential supervision by the SIB unless they form part of a financial group, which are supervised as a whole entity (Banks and Financial Groups law, arts. 27, 28 and 36).

119. AML and CFT regime states that Customer Due Diligence (CDD) measures must be applied for financial institutions not only for regular business relationships, but also for occasional customers, regardless of the amounts involved. Banks must verify in a trustworthy manner and maintain information on the identity, business name or denomination of the person, age, occupation or social purpose, civil status, domicile, nationality, representation, legal capacity and personality of their customers (AML Law, art. 21, and CFT Law, art. 15). The information is verified by the presentation of a national identification document. In Guatemala anonymous banking accounts and accounts using fictitious or inaccurate names are prohibited (AML Law, article 20). In addition, numbered accounts are prohibited (Monetary Board Resolution JM-68-2003).

120. Article 12 of the AML Regulations<sup>8</sup> stipulates that transactions should not be undertaken with persons who do not provide information or documentation in a timely manner. It also states an obligation for financial institutions to send transactional information to the Special Verification Intendency (SVI), part of the Superintendency of Banks, and update it once a year. This information includes funds sender identity, beneficiary identity, transaction's amount, and account number or other identification information.

121. Financial institutions must collect information related to transfers of any amount if they are systematic, substantial, cablegram or electronic fund transfers (CFT Law, art. 17/CFT Regulation (Reglamento), art. 9). Guatemalan authorities indicate that this requirement is interpreted as requiring financial institutions to maintain information concerning all transactions related to any account in all cases. Financial institutions must also report on a monthly basis all transactions exceeding USD 2 000. Financial institutions must also maintain a daily registry of all cash transactions performed in national or foreign currency exceeding (USD 10 000.00). This information must enable the reconstruction of transactions (AML Law, art. 23).

122. In case of non compliance there is a penalty of a fine from USD 10 000.00 to USD 50 000.00 or its equivalent, depending on the seriousness of the offence, besides having to meet the original obligation, as well as any criminal or civil liability incurred (CFT Law, art. 19). The person must also rectify the action or inaction giving rise to the liability.

### *Updating and Record Keeping*

123. Institutions must keep the information collected in the CDD process continually up to date. Article 23 of the AML Law states that the records must be updated during the life of the commercial relationship, and retained for at least five years after the end of the transaction or the closure of the account. In addition, persons subject to AML law must review and update information about their clients at least once a year and maintain a record of the revision and/or update (AML Regulation, art 20).

124. Banks, finance companies and foreign banks with branches in Guatemala that operate within a Guatemalan Financial Group perform enhanced due diligence for higher risk categories of customers, business relationships and transactions trust and corporations). The measures must be stricter for this type of customers or transactions, and leaves the financial institutions at liberty to decide the type of enhanced CDD measures that

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<sup>8</sup>Acuerdo Gubernativo 118-2002

should be applied to these cases. The SVI undertakes risk based supervision to verify the appropriate measures are in place.

**Determination and factors underlying recommendations**

<b>Phase1 Determination</b>
<b>The element is in place</b>



## B. Access to information

### Overview

125. 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 Guatemalan 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.

126. Very generally, Guatemala’s constitution protects from disclosure the correspondence, books and records of all persons. This is not an absolute protection, as disclosure is still possible if supported by a court order. In addition, the constitution contains a specific exception to the protection for tax matters, so long as the disclosure is in accordance with the law.

127. The Guatemalan tax authorities (SAT) have a general power to obtain information from taxpayers and third parties, including ownership, identity, accounting and bank information. However, this power is limited by banking and professional secrecy provisions, confidentiality rules and constitutional protections. As there are specific secrecy rules relating to information held by banks and professionals (for example, information held by lawyers or notaries), disclosure of such information would not be “in accordance with the law” and so the exception to the Constitutional protection does not apply. Element B.1 is therefore not in place.

128. Access to information may in some circumstances still be possible, as the constitutional guarantee does allow access with a court order. This may be the case for information that is not otherwise protected by confidentiality or secrecy, but is constitutionally protected by virtue of the simple fact that it is the “correspondence, book or record” of a person. However, it is not clear under what circumstances a court would issue an order for disclosure.

129. The SAT’s power to obtain information also suffers from some ambiguity regarding its application where the SAT does not have a domestic tax interest in the information and this aspect of Guatemala’s law should be clarified.

130. In respect of rights and safeguards, it appears that a court order would be necessary to obtain information in cases where the information is protected by banking and professional secrecy or confidentiality, and in these cases the taxpayer would have to be notified in all cases. Guatemala should provide an exception to notification to ensure that effective exchange of information is not impeded or prevented.

### **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).

#### ***Bank, Ownership and identity information (ToR B.1.1)***

131. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction’s authorities or is within the possession or control of persons within the jurisdiction’s territorial jurisdiction, ownership information on all such persons in an ownership chain.<sup>9</sup> Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.<sup>10</sup>

132. The SAT is empowered to require from any individual or legal entity information relating to the elements which form the basis of their tax obligation (Tax Code, art.98). This power also extends to persons who are responsible parties with respect to the tax obligations of others. The power under this article is not limited to any particular type of information. The only criterion is that it must be information that forms the basis of a tax obligation.

133. In order to verify the information provided in a tax return or otherwise (such as in the case of periodic reporting of certain payments), the SAT may request any additional information. In particular, the SAT may require

9. See OECD Model TIEA Article 5(4).

10. See JAHGA Report paragraphs 6 and 22.

third parties to provide information relating to acts, contracts or commercial relations from which taxes arise. The scope of “commercial relations” is not explicitly described in the Tax Code, but appears to be quite broad and should cover relevant interactions between the third party and the taxpayer.

134. These powers to obtain information are limited by the professional secrecy or the guarantee of confidentiality protected by the Constitution, Tax Code or special laws (as discussed below).

### ***Accounting records (ToR B.1.2)***

135. SAT has full access to taxpayer’s accounting information where it is relevant for tax purposes, as well as ownership information. There is no special provision regarding access to accounting information. SAT has the power to require accounting information from third parties as well (Tax Code, art. 30 A).

136. In addition, some accounting information is publicly available. Foreign companies must publish balance sheets of their operations in Guatemala (Commercial Code, art 216).

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

137. Guatemala’s authorities assert that their powers to obtain information apply equally for the purposes of obtaining information in response to a request for information under an international agreement as they do for domestic tax purposes and regardless of whether the information is needed for Guatemala’s domestic purposes. However, the construction of relevant provisions of the Tax Code are not clear on this point. Specifically, the powers to obtain information described in section B.1.1 are limited to information that forms the basis of a *tax obligation*, in the case of information obtained from taxpayers, and information relating to acts, contracts or commercial relations that *give rise to taxes*, in the case of information obtained from third parties (Tax Code, art. 98 and 30A). The concept of “tax obligation” is defined (Tax Code, art. 14) as:

*The personal legal relationship between the tax administration and other public entities who collect tax and the persons obliged to pay the tax.*

138. The concept of “taxes” is defined (Tax Code, art. 9) as:

*Taxes are the payments, generally in the form of money that the State demands in the exercise of its taxing power, with the purpose of obtaining resources for the accomplishment of its goals.*

139. The terms “tax obligation” and “taxes” could be read to refer not only to domestic tax obligations and domestic taxes but also to foreign tax obligations and foreign taxes. For example, the definition of “tax obligation” refers to the “tax administration” without specifying the SAT in particular. Similarly, the use of the term “State” as opposed to “Guatemala” in the definition of taxes is also non-specific. The Guatemalan authorities interpret these terms to apply to any taxes or tax obligation, whether relevant to tax in Guatemala or not.

140. Moreover, Guatemalan tax law specifically provides the SAT with the power to provide and receive (though not to obtain) financial or tax information from foreign competent authorities with whom Guatemala has signed an exchange of information agreement, for purposes related to the administration and enforcement of taxes (Tax Code, art. 98 N 3). Guatemala’s authorities indicate that this provision was introduced for the purpose of allowing Guatemala to fulfil its obligations under tax information exchange agreements.

141. While Guatemala’s interpretation of its own access powers is certainly reasonable on the face of the law, this is not necessarily the only interpretation that can be drawn from these terms, and they could be taken to refer only to Guatemalan tax obligations and Guatemalan taxes. Therefore, Guatemala should clarify its laws to ensure that its limitations on access to information do not prevent effective exchange of information in tax matters. In addition, as with other powers granted the SAT this is also circumscribed by professional secrecy or the guarantee of confidentiality protected by the Constitution, Tax Code or special laws (as discussed below).

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

142. Jurisdictions should have in place effective enforcement provisions to compel the production of information. In Guatemala, penalties exist for failure to provide information requested by the SAT and also it has powers to compel information.

143. When SAT requires information, whether from a taxpayer or a third party, and if the information is not provided within the three days following the notification of the SAT (requesting the information) this is considered an infringement of resistance to auditing (Tax Code, art. 93). In such cases, the SAT can apply a fine equivalent to 1% of the gross income obtained by the taxpayer in the last tax period. In certain cases the fine can be doubled.

144. In addition, the SAT can also obtain a judicial order to oblige the requested person to provide the information and in case of non compliance the person can incur criminal liability (resistance to the auditing action of the Tax Administration (Criminal Code, art. 358 D).

*Secrecy provisions (ToR B.1.5)*

145. Jurisdictions should not decline on the basis of its secrecy provisions to respond to a request of information made pursuant to an exchange of information mechanism. Guatemala’s access powers are found in the Tax Code, which requires that taxpayers and liable parties provide the tax administration with all of the information required “provided that” the confidentiality provisions in the Constitution, professional secrecy and the Tax Code are “maintained”.

146. The confidentiality protection in the Constitution is found in Article 24. The first paragraph provides that the correspondence of any person, his documents and books are inviolable and can only be inspected or seized pursuant to a judicial order and that it is a punishable offense to disclose the amount of taxes paid, earnings, losses, expenses or any other data referring to audited accounts of individuals or juridical persons (art. 24). However, the Constitution further provides that the books, documents and records relating to the payment of taxes can be reviewed by the competent authorities “in accordance with the law”. Therefore, it is clear that the confidentiality provision in the Constitution itself does not restrict access to tax information.

147. The Tax Code specifically limits access powers by the constitutional privacy rights as well as the rights under Guatemala’s professional secrecy and bank secrecy rules. In respect of the application of constitutional privacy rights, there is a circularity in the law by virtue of which it is conceivable that a person may invoke the rights contained in the first paragraph of article 24 and insist that the tax authorities obtain a court order even for access to information that is not protected by professional secrecy or the guarantee of confidentiality protected by the Constitution, Tax Code or special laws. Guatemala advises that the Constitutional Court has ruled that the Constitutional privacy protection applies only for private documents and that the Competent Authority can access commercial documents without a court order. However, the precise scope of this interpretation has not been established. Guatemala should clarify whether they have direct access to information that is not otherwise protected by secrecy provisions (as discussed below) or whether a court order is necessary. Guatemala’s authorities indicate that in practice they have access to information with a court order. This issue should be followed up in Phase 2 review.

148. The limitations imposed by Guatemala’s professional secrecy rules are more problematic. Under Guatemalan criminal law, violations of professional secrecy are punishable by imprisonment and a fine (Criminal Code, art. 223). The Code provides that:

*Revealing Professional Secrets*

*Whosoever, without just cause, reveals or uses for his own benefit or the benefit of a third party, a secret which he has obtained by virtue of his status, office, employment, profession or activity, without causing or the possibility of causing any damage, is subject to a penalty of from 6 months to 2 years imprisonment or a penalty of GTQ 100 to GTQ 1000.*

149. The concept and scope of this professional secrecy is very broad, and at the very least would appear to cover lawyers, notaries, accountants and other professionals. In addition to the criminal sanction, the Ethics Code that applies to notaries and lawyers contains a provision that requires lawyers to maintain “professional secrecy”, which includes all the secrets related to the scope of the services rendered (Ethics Code, art. 5). This rule also applies to notaries (Ethics Code, art. 37). In particular, with respect to notaries, information maintained in the “protocolo” is expressly protected (Ethics Code, art. 40(b)). As described above, certain information on the ownership and identity of relevant entities and arrangements is only maintained in the Notary’s registers (protocolos).

150. Where information is protected by professional secrecy (including bank secrecy) then this protection will prevail over any other access power granted to Guatemalan tax authorities by virtue of the fact that the access powers are explicitly subject to professional secrecy. It is not clear whether the secrecy can otherwise be overcome through a judicial procedure, and if so, under what conditions. Guatemalan authorities suggest that the secrecy can be lifted within the scope of a criminal investigation related with offences covered by AML/CFT regime, though not for tax offences.

151. There are also provisions relating specifically to the secrecy of bank information. Banks (including foreign bank branches operating in Guatemala), and their employees and representatives may not provide information in any form to any person, individual or entity, public or private, which would reveal the confidential nature of the identity of depositors of banks, financial institutions and financial groups, as well as information provided by account holders to these entities (Decree 19-2002, Banks and Financial Groups Law, art. 63). A financial group exists where two or more legal entities (one of them a bank) undertake financial activities and there exists a control relation between them (Banks and Financial Groups Law, art. 27). Although the extension of the secrecy to “financial groups” may broaden the scope considerably, the prohibition is only on banks, the Monetary Board, the Central Bank, the SIB and their employees. However, Guatemala’s authorities indicate this rule applies also to financial institutions and members of financial groups.

152. The Banks and Financial Groups Law provides an exception for the disclosure of information which banks, financial companies and foreign entities authorized by the Monetary Board to operate in Guatemala must provide to the Monetary Board, Central Bank and the Superintendency of Banks through the Special Verification Intendency. These persons in turn may only disclose this information on the order of a competent judge (Banks and Financial Groups Law, art. 63). As discussed above under Availability of Bank Information, the SVI receives information on the identity of account holders as well as reports on any transfer of funds in excess of USD 2000 or its equivalent.

153. It is not clear under what circumstances a judge would issue an order for the disclosure of this information held by supervisory authorities, or whether such a procedure is available at all for exchange of information in tax matters. Guatemala indicates there is no special provision establishing requisites and procedure for lifting the secrecy, but indicated that it is restricted to investigations related to tax and customs crimes. The SAT must request information to the Public Prosecutor who files a request with the competent judge.

#### Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place	
Factors underlying recommendations	Recommendations
The power of Guatemalan tax authorities to obtain information for exchange purposes is limited by professional and banking secrecy, <u>which cannot be lifted for exchange of information purposes.</u>	Guatemala should ensure that its limitations on access to information do not prevent effective exchange of information in tax matters.
Article 98 A of the Tax Code authorizes the SAT to obtain information that forms the basis of a <i>tax obligation</i> , and it is not clear that this power applies for exchange purposes in the absence of a domestic tax interest.	Guatemala should ensure that it has the power to obtain information for exchange purposes regardless of a domestic tax interest.

## 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)*

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

155. Guatemala has advised that in order to obtain information it is not necessary to issue a notification to the person concerned in all cases, since the information can be obtained even from a third party. It appears that access to information may be subject to a court proceeding in a number of cases: if the taxpayer is able to invoke the right to a court order under article 24 of the Constitution; if it is possible to obtain information on the order of a competent judge from the Monetary Board, Central Bank, Superintendency of Banks and banks; or if access is possible in criminal cases. However, in case of access to information protected by professional secrecy, a judicial order is always needed, and in those cases the notification of the taxpayer would be required. Guatemalan authorities have indicated that an exception to the notification requirement is possible, but have not identified the legal basis for this. Consequently, it is not clear if such an exception applies or in what circumstances. This could prevent or unduly delay the exchange of information, and it is therefore recommended that Guatemala amend its laws in this regard to comply with the international standard.

### 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>
Where a judicial order is needed to obtain information, the taxpayer must in all cases be notified.	Guatemala should introduce exceptions to this notification procedure where notification would unduly prevent or delay effective exchange of information.



## C. Exchanging information

### Overview

156. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Guatemala the legal authority to exchange information is derived from Tax Information Exchange Agreements (TIEAs) once they become part of Guatemalan’s domestic law as well as original domestic law. This section of the report examines whether Guatemala has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

157. On 25 April 2006, Guatemala signed the Convention for Mutual Assistance and Technical Cooperation among Central American Tax and Custom Administrations (herein after referred to as “Convention”) between the members of the Central American Common Market (CACM), namely; Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. El Salvador and Honduras are close regional trade partners. The Convention provides for exchange of information in all tax matters. To date, this convention has been ratified and brought into force by Costa Rica, Honduras and Guatemala.

158. Members of CACM on 2 December 2011 signed an Explanatory Note to the Convention in order to clarify the Convention’s obligations. This note was approved by the Council of Ministers of Economic Integration (COMIECO) and the Council of Ministers of Treasury and Finance (COSEFIN). However Nicaragua and El Salvador has not formalized yet the ratification of the Convention itself.

159. The Convention contains confidentiality provisions to ensure that the information exchanged can be disclosed only to persons authorised.

160. The Convention does not contain possibilities of declining a request for information. However, it is subject to constitutional limitations. Guatemala has constitutional restrictions on the disclosure of confidential documentation and information protected by professional secrecy.

161. With respect to the timeliness of responses to EOI, there are no legal restrictions on the ability of Guatemalan competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

162. While the Convention does meet the international standard by its terms, Guatemalan domestic law contains restrictions on access to information such that Guatemala is not able to comply fully with the terms of this agreement.

163. Guatemala is negotiating TIEAs with 15 jurisdictions, 7 of which are at an advanced stage, and expects to have them signed by the first semester of 2012.

### C.1. Exchange-of-information mechanisms

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

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

164. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it 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 1 of the OECD Model TIEA set out below:

*“The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.”*

165. Article 4 of the Convention lays down the main rule about its scope: “*This Convention shall be applied to the information and documentation related to taxes in effect [...]*”.

166. Although the language differs from article 1 of the OECD Model TIEA, it does not automatically mean the Convention does not comply with the standards. The term “related” seems to have a wider meaning than “foreseeably relevant”, but it requires a certain level of connection.

167. The Commentary to article 26 of the OECD Model Tax Convention (para. 5) states that Contracting States may agree to an alternative formulation of this “foreseeable relevance” standard that is consistent with the scope of the article, for instance by replacing “foreseeably relevant” with “necessary” or “relevant”. In view of this recognition, the Convention appears to meet the standard by using the word “related”.

168. Article 4 of the Convention does not restrict the type of taxes covered by the agreement. It refers to “taxes in effect and all the legislation that modifies them or establishes new taxes after the signature of this Convention.” The Explanatory Note indicates the Convention covers all taxes currently levied in each country, including direct, indirect, customs duties and excise taxes.

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

169. For exchange of information to be effective it is necessary that a jurisdiction’s obligations 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 for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

170. The Convention does not restrict the scope of information exchange to just some persons, such as those that are considered residents of one of the states. The Convention specifically provides that it shall be applied in the territory of the states that are party to the agreement. The concept of territory would be interpreted according to each contracting party’s domestic law.

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

171. 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. Both the OECD Model Tax Convention and the OECD Model TIEA which are primary 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.

172. The Convention does not include a provision identical to article 26(5) of the OECD Model Tax Convention or article 5(4) (a) of the OECD Model TIEA. The Convention states that the information that may be exchanged on request includes information and documentation related to:

- general or identification information of natural or legal persons in their capacity as taxpayers, legal representatives, as well as shareholders, partners or participants in other social or collective entities without legal personality; or as clients, creditors or suppliers of other taxpayers;
- commercial, financial, industrial, intellectual property transactions or operations or those pertaining to any other economic activity;
- any other [information] aimed at guaranteeing the correct levying and collection of taxes (Convention, article 8).

173. However, article 10 of the Convention contains a limitation for providing the requested information when it is not allowed under constitutional provisions. As discussed in section B.1.5 (above), Guatemala's Constitution contains a provision which protects a broad scope of information. It authorizes the collection of information by the Tax Administration "in accordance with the law", while Guatemalan law recognizes limitations for professional and bank secrecy, and the inviolability of correspondence, books and documents. Further, Article 24 of the Constitution authorises access to tax information for competent authorities, but specifies that the disclosure of the amount of taxes paid, earnings, losses, cost, and any other taxpayers accounting data is "punishable". This may affect the Guatemalan authorities' ability to disclose information by to foreign competent authorities pursuant to an EOI agreement. The Guatemalan authorities indicate that they interpret the concept of "competent authority" broadly and therefore it includes authorities from jurisdictions which have signed exchange of information agreements with Guatemala and that have been approved by Guatemala's Congress and therefore its competent authorities would be able to exchange this type of information. Additionally, Article 98A of the Tax Code specifically provides that a duty of the Tax Administration is to provide to and receive from competent tax authorities of other countries with which Guatemala has EOI agreements tax and financial information. Whether the Constitution acts to restrict exchange of information in practice should be the subject of further review in the Phase 2 Peer Review of Guatemala.

174. The Convention allows the exchange of all types of information and the Explanatory Note explicitly states that information held by banks or financial institutions cannot be considered a professional or commercial secret merely because it is held by such institution. However, in addition to the restrictions in Guatemala's domestic laws based on professional secrecy, its laws also contain restrictions on access to bank information. Therefore, Guatemala cannot exchange all types of information to the international standard.

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

175. 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 be able to use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. The term “information gathering measures” means laws and administrative or judicial procedures that enable a contracting state to obtain and provide the requested information. Guatemala’s tax law is not clear about the presence of a domestic tax interest as a limitation for exchange of information. The Convention provides for the exchange of information that is related to the taxes of the requesting state, and therefore there is no domestic tax interest requirement in the Convention itself. The Explanatory Note states that it will make no difference whether the requested assistance or cooperation is useful or not for the functions of the requested Administration (Paragraph 8, article 2). However, an international agreement cannot on its own give rise to access powers, its domestic laws must give effect to these agreements. It is therefore not clear that Guatemala can exchange information under this convention that it does not need for its own tax purposes.

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

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

177. There are no dual criminality provisions in the Convention.

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

178. 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”). The Convention provides for the exchange of information in both civil and criminal tax matters.

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

179. The Convention does not use the wording of article 5(3) of OECD Model TIEA. Its article 12 provides the minimum requirements of a request for information. Such request should be in writing, but may also be sent electronically. The request should contain (a) the name of the person authorised to submit the request; (b) the objective, motive or basis for the request; and (c) a description of the information requested. It permits the verbal requests, but these should be confirmed in writing, prior to the reception of the requested information and documentation.

180. The Convention does not contain a provision regarding a specific form for the information provided, and therefore there is also nothing that would limit it so long as this is consistent with a jurisdiction's own administrative practices. Further guidance on how to apply article 12(b) and (c) can be found in the Explanatory Note. This states that the tax case shall be described (the basis for the request) and that the requesting state has to be specific in describing the kind of information sought. This also means that the form, in which the information will be provided, can be described by the requesting state.

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

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

182. In Guatemala, in order for an exchange of information agreement to be ratified, it must first be filed before the Legislative Assembly. Once approved, it must be ratified by the President and the text is then published. According to article 180 of the Constitution, a law comes into force 8 days after its publication in the Official Gazette. This also applies to treaties.

183. Guatemala has completed all the steps necessary to bring the Convention into force. Among the other countries which have signed the Convention (excluding Guatemala), only two have ratified and brought it into force (Costa Rica and Honduras).

***In effect (ToR C.1.9)***

184. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

185. Guatemalan domestic law prevents access to bank information, private documentation in certain cases, and information protected by professional secrecy. In consequence the Convention cannot be considered to provide for effective exchange of information.

**Determination and factors underlying recommendations**

Phase 1 Determination	
The element is not in place	
Factors underlying recommendations	Recommendations
Guatemala has domestic law limitations, including confidentiality of documents, bank and professional secrecy and a possible domestic tax interest requirement which prevents Guatemala from giving full effect to its EOI mechanisms.	Guatemala should ensure the access to all relevant information for tax purposes in accordance with the standard.

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

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

186. 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.

187. The policy of Guatemala with respect to expanding its EOI network has been to focus on jurisdictions which are either members of OECD or of the Global Forum with which Guatemala has a commercial relations.

188. Through the Convention, Guatemala has signed EOI agreements with its most relevant partners, namely El Salvador, Costa Rica, Nicaragua and Honduras, while it has only been ratified by Costa Rica, Guatemala and Honduras.

189. Comments were sought from the jurisdictions participating in the Global Forum, and in the course of preparation of this report, no jurisdiction advised that Guatemala had refused to negotiate an agreement. Guatemala has indicated there is no policy in place to back up the signing of a DTC since they would not get much benefit from DTCs because of their territorial tax system. The policy will not change unless the tax system changes. Some of the jurisdictions which have close economic ties with Guatemala, such as Spain, are proposing to negotiate a DTC rather than TIEA.

190. At the moment, Guatemala is negotiating TIEAs with 15 jurisdictions. 7 of those negotiations for TIEAs are with the Nordic jurisdictions,<sup>11</sup> and have made a good progress. The text of the TIEA with Australia is already agreed in English. Guatemala is working on the Spanish version. They are expected to be signed by the first semester of 2012. Although, negotiations with the other 7 jurisdictions are also under way, they have been delayed or have not shown notable progress.

#### Determination and factors underlying recommendations

Phase 1 Determination	
<b>The element is not in place.</b>	
Factors underlying recommendations	Recommendations
Guatemala does not have any EOI arrangements in force to the standard.	Guatemala should ensure that it gives full effect to the terms of its EOI arrangements in order to allow for full EOI to the standard with its relevant partners.
	Guatemala should continue to develop its EOI network with all relevant partners.

11. Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway, Sweden.



### 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)  
and all other information exchanged (ToR C.3.2)***

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

192. The confidentiality of the information exchanged is guaranteed by article 9 of the Convention. Article 2 leaves the confidentiality level of the information and documentation obtained through the Convention to the contracting parties' domestic law. Article 9 states that all the information provided by a requested administration to an applicant administration is confidential. Article 9 also limits the use of information to the functions performed by the tax administration of the party receiving the information. The functions mentioned in article 2 include "management, audit and collection" but article 16 adds that information obtained may also be used as evidence in administrative and judicial proceedings. The Convention does not provide for the possibility to use the information for other purposes than its general purpose or provide the information to any other entity, authority or jurisdiction. The Explanatory Note expressly states that it is not allowed to provide the information received even to another party to the Convention; that party should make its own request.

193. According to Guatemalan domestic law all information held by Guatemalan competent authority is confidential. Confidentiality is established in article 24 of the Guatemalan Constitution (correspondence, tax information) and other regulations are derived from there. Article 98 A No. 3 of the Tax Code also restricts the exchange of information with the confidentiality of the domestic information as it was mentioned above. Article 44 of SAT law provides a prohibition for SAT employees to reveal or facilitate any information or documents of which have had access and whose confidentiality is protected by the law.

### Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

#### 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.

194. 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 legitimate secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

195. However, communications between a client and an attorney or other admitted legal representative are, generally, 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 attorney-client 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 as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, information resulting from and relating to any such activity cannot be declined to be exchanged because of the attorney-client privilege rule.

#### *Exceptions to requirement to provide information (Tor C.4.1)*

196. Although possibilities of declining a request based on reciprocity and constitutional limitation are respectively stated in article 2 and 10 of the Convention, the effect of rights and safeguards are not specifically provided for in the Convention. Guatemalan domestic law includes some restrictions to the exchange of information, such as information protected by professional or bank secrecy. Article 98 A No. 3 of Tax Code provides that information can be exchanged as long as there are no violations to the article 24 of the Constitution and article 44 of the SAT law. According to article 44 of the SAT law, SAT employees should not disclose or facilitate tax information or documentation protected by secrecy provisions, as well as the information related to the amount of taxes paid, earnings, costs, expenses and any other accounting information of the taxpayers.

197. The Convention expressly provides that when the parties exchange information, they must take into account the requirements for the protection of information obtained which is of a personal nature (article 19).

198. Article 8 of the Explanatory Note explicitly states that the provisions of the convention do not impose an obligation to provide information that could disclose confidential communications between a client and a lawyer or other accredited legal representative, when such communications are held with the purpose to obtain or provide legal advice or are held to be used during an ongoing or foreseen legal proceeding.

199. The Explanatory Note limitations are equivalent to the restrictions mentioned in article 26 of the OECD Model Tax Convention and the OECD Model TIEA. It includes restrictions for information which is subject to legal privilege which would disclose any commercial, business, industrial or professional secrets; or would be contrary to the public order. It states that information held by banks cannot be considered a professional or commercial secret solely for this reason. The requested Party can also refuse a request that may discriminate against a citizen of the requested Party in comparison to a citizen of the applicant Party under the same circumstances. However, as noted above, under section B1.5, the access to information in Guatemala is restricted by professional and bank secrecy rules under Guatemala's domestic law. Guatemala should address the recommendations made in that section to ensure that these rules do not prohibit effective exchange of information.

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

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

### **C.5. Timeliness of responses to requests for information**

The jurisdiction should provide information under its network of agreements in a timely manner.
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#### ***Responses within 90 days (ToR C.5.1)***

200. 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 cooperation as cases in this area must be of sufficient importance to warrant making a request.

201. Article 15 of the Convention provides for a deadline to respond to a request for information as short as 15 working days from the receipt of the request. This is considerably shorter than the deadlines set in 5(6) of the OECD Model TIEA, where a party is given 60 days to confirm receipt of the request and notify the applicant party of any deficiencies in it and an initial 90 days from the receipt of the request to provide the information. The Convention is, therefore, easily in accordance with the standard in this point.

202. Because of the short deadline, it is important to have a mechanism in place in case information cannot be provided within the deadline. Under article 15 it is possible to extend the deadline, but not special extension term is indicated. To this end, the requested state has to inform the requesting state about the reasons for not providing the information on time. The Explanatory Note mentions as reasons, the complexity of the actions to obtain the information, the volume of data required or other administrative circumstances.

203. In case no response is received within the time period, the applicant administration will inform the authorities of the requested administration so that the requested information be provided, or the reasons for the non-compliance be indicated.

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

204. It is important that a jurisdiction have appropriate organisational processes and resources in place to ensure a timely response. A review of the practical application of these processes and the resources available will be conducted in the context of Guatemala's Phase 2 review.

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

205. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no aspects of the Convention that appear to impose restrictive conditions on exchange of information except for constitutional limitation. Guatemala's domestic laws have some restrictive provisions such as confidentiality provisions, professional secrecy, banking secrecy and in certain scope bearer shares. Whether these actually restrict exchange of information in practice is an issue more appropriately considered in a Phase 2 review of Guatemala.

## **Determination and factors underlying recommendations**

### **Phase 1 Determination**

**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.**

## 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 not in place.</b>	The process for conversion of bearer shares to nominative shares in the Commerce Code does not ensure that all bearer shares must be converted to nominative shares by 2013.	Guatemala should ensure that bearer shares are converted to nominative shares in all cases.
	There is no provision requiring foreign companies with sufficient nexus with Guatemala to provide ownership information.	Guatemala should ensure the availability of ownership information of all foreign companies with sufficient nexus to Guatemala.
	Ownership and identity information on foreign partnerships may not be available in Guatemala, even when the foreign partnership carries on business in Guatemala or has income, deductions or credits for tax purposes in Guatemala.	Guatemala should ensure that information that identifies the partners in a foreign partnership that carries on business in Guatemala or has income, deductions or credits for tax purposes in Guatemala is available to its competent authority.
	Ownership and identity information on the settlor and beneficiaries of a foreign trust may not be available in Guatemala.	Guatemala should take measures to ensure that information is available that identifies the settlor and beneficiaries of foreign trusts.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>The element is place.</b>		
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>The element is place.</b>		
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> )		
<b>The element is not in place.</b>	The power of Guatemalan tax authorities to obtain information for exchange purposes is limited by professional and banking secrecy which cannot be lifted for exchange of information purposes.	Guatemala should ensure that its limitations on access to information do not prevent effective exchange of information in tax matters.
	Article 98 A of the Tax Code authorizes the SAT to obtain information that forms the basis of a <i>tax obligation</i> , and it is not clear that this power applies for exchange purposes in the absence of a domestic tax interest.	Guatemala should ensure that it has the power to obtain information for exchange purposes regardless of a domestic tax interest.
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> )		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Where a judicial order is needed to obtain information, the taxpayer must in all cases be notified.	Guatemala should introduce exceptions to this notification procedure where notification would unduly prevent or delay effective exchange of information.

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>The element is not in place.</b>	Guatemala has domestic law limitations including confidentiality of documents, bank and professional secrecy and a possible domestic tax interest requirement which prevents Guatemala from giving full effect to its EOI mechanisms	Guatemala should ensure the access to all relevant information for tax purposes in accordance with the standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The element is not in place.</b>	Guatemala does not have any EOI mechanisms in force to the standard.	Guatemala should ensure that it gives full effect to the terms of its EOI arrangements in order to allow for full EOI to the standard with its relevant partners.
		Guatemala should continue to develop its EOI 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.</b>		
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\*

The Republic of Guatemala (ROG) acknowledges and appreciates the efforts made by the assessment team and the Peer Review Group to evaluate objectively the adequacy of its legal and regulatory framework to exchange information for tax purposes in accordance with the internationally agreed standard.

ROG is deeply concerned with the commitment made in 2009 to take the necessary steps in order to implement the international standard on transparency and exchange of information for tax purposes. Since that year the concerned public institutions (Ministry of Public Finance, and the Superintendencies of Banks and Tax Administration) have been working together in order to achieve consensus among the relevant actors on the importance to advance in making the necessary changes to establish the legal framework that will allow for effective exchange of information for tax purposes.

ROG accepts the recommendations made in the report and only wants to make clear that Guatemalan laws do not recognize Trusts established under the rules of Common Law Jurisdictions. Therefore a foreign trust may operate in Guatemala under the figure of a “Fideicomiso” and in doing so must inevitably comply with the requirement that allows only banks or credit institutions authorized by the Monetary Board to act as “fiduciario” or trustee. Such institutions are subject to AML/CFTL requirements which ensure that ownership and identity information will always be available in Guatemala. However ROG understands that although very unlikely, whereby no effects or obligations arise in Guatemala from a Foreign Trust it is possible for a Guatemalan resident to act as trustee without notifying that situation to the authorities and therefore avoiding obligations to keep ownership and identity information. We will examine this possibility and if needed a legal reform will be proposed to address this issue.

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

It is important to comment that in order to comply with the internationally agreed standard on transparency and exchange of information for tax purposes a first step was taken at the end of 2010 when the issuance of bearer shares was prohibited by law, providing for a two year transition period to convert any existing bearer shares into nominative shares. As discussed in the Peer Review meeting held in Brazil, Guatemala will review the conversion process to ensure that there are no more bearer shares after 2013.

In the same sense a bill of legislation to lift bank secrecy for tax purposes has been presented to Congress and is well advanced in its discussion. The new governmental administration has prioritized the approval of this law and is also promoting negotiations of Tax Information Exchange Agreements not only to fulfill the commitment made by Guatemala but to show its determination to counterfeit tax evasion and tax fraud through the active participation of the country in an international tax cooperation environment.

Very recently, in February 2012, an important tax reform was approved which includes transfer pricing rules. The Guatemalan authorities understand that in order to successfully implement such rules an effective exchange of information will be critical. Therefore it is expected that by the end of 2012 the ROG will have made important progress to comply with the internationally agreed standard on transparency and exchange of information for tax purposes and will be ready to advance in the Peer Review process.

## Annex 2: List of all Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date entered into force
1	Costa Rica (Mutual Assistance Convention)	TIEA	25 Apr 2006	11 Feb 2011
2	El Salvador (Mutual Assistance Convention)	TIEA	25 Apr 2006	
3	Honduras (Mutual Assistance Convention)	TIEA	25 Apr 2006	20 Aug 2008
4	Nicaragua (Mutual Assistance Convention)	TIEA	25 Apr 2006	

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

### **Fiscal Legislation and Regulations**

- Tax Code (Decree 6-1991)
- Income Tax Law (Decree 26-1992)
- Tax Administration Superintendence Organic Law (Decree 1/1998)
- General Bonded Warehouses Law (Decree 1746)
- Fiscal Warehouses Regulation (Acuerdo Gubernativo 447-2001)
- Free Trade Zones Law (Decree 65-1989)
- Free Trade Zones Regulation (Acuerdo Gubernativo 242-1990)

### **Primary Government Authorities**

- Guatemalan Constitution

### **Commercial Laws**

- Commercial Code (Decree 2-1970)
- Cooperatives General Law (Decree 82/1978)
- Securities Exchange and Merchandise Law (Decree 34/1996)
- Forfeiture Law (Forbiddance of Bearer Shares, Decree 55/2010)

### **The Financial Sector**

- Financial Supervision Law (Decree 18/2002)
- Banks and Financial Groups law (Decree 19/2002))

Private Financial Companies Law (Decree Law 208)  
IVE TF-21, Monthly Reporting Instructions to Transfer Funds  
Bank of Guatemala's Regulation 108-2010 (Foreign Currency Cash Operations)  
Law Against Money Laundering (AML) (Decree 67/2001)  
AML Regulation (Acuerdo Gubernativo 118-2002)  
Counter Financing Terrorism Law (CFT) (Decree 55/2005)  
CFT Regulation (Acuerdo Gubernativo 86-2006)

### **Other Legislation**

Notaries Code (Decree 314)  
Criminal Code (Decree 17-1973)  
Civil Code (Decree 106)  
Professional Code of Ethics (1994)  
Compulsory Professional Registration Law (Decree 72/2001)



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

## PEER REVIEWS, PHASE 1: GUATEMALA

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.

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