GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

BRAZIL

2018 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Brazil 2018 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

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

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

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

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

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

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

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

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

Consideration of the Financial Action Task Force Evaluations and Ratings

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

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

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

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

More information

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

Abbrevations and acronyms

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010.
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
AEOI	Automatic Exchange of Information
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BACEN	Central Bank of Brazil – *Banco Central do Brazil*
BRL	Brazilian Real
CDD	Customer Due Diligence
CFC	Federal Accounting Council – *Conselho Federal de Contabilidade*
CMN	National Monetary Council – *Conselho Monetário Nacional*
CNPC	National Regulatory Board for Complementary Pension Plans – *Conselho Nacional de Previdência Complementar*
CNPJ	National Register of Legal Persons – *Cadastro Nacional da Pessoa Jurídica*

CNSP	National Council on Private Insurance – *Conselho Nacional de Seguros Privados*
CPF	Natural Persons Register – *Cadastro de Pessoa Física*
COAF	Financial Activities Control Center – *Conselho de Controle de Atividades Financeiras*
Cocad	Co-ordinator-General of Register Management – *Coordenador Geral de Gestão de Cadastros*
Codac	Co-ordinator-General for Collection – *Coordenação-Geral de Arrecadação e Cobrança*
Copes	Co-ordinator-General of Programming and Studies – *Coordenador-Geral de Programação e Estudos*
CRS	Common Reporting Standard
CVM	Securities and Exchange Commission – *Comissão de Valores Mobiliários*
DTC	Double Tax Convention
DNFBP	Designated Non-Financial Business or Profession
EIRELI	Individual Company of Limited Liability (*Empresa Individual de Responsabilidade Limitada*)
EOI	Exchange of Information
EOIR	Exchange Of Information on Request
FATF	Financial Action Task Force
Febraban	Brazilian Banking Federation – Federação Brasileira de Bancos
FIU	Financial Intelligence Unit
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
MER	Mutual Evaluation Report
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010.
NI	Normative Instruction
OAB	Advocates' Order of Brazil – *Ordem dos Advogados Brasileiros*

Previc	National Superintendence for Pension Funds – *Superintendência Nacional de Previdência Complementar*
PRG	Peer Review Group of the Global Forum
RFB	Secretariat of the Federal Revenue of Brazil – *Secretaria da Receita Federal do Brasil*
SUSEP	Superintendence of Private Insurance – *Superintendência de Seguros Privados*
TIEA	Tax Information Exchange Agreement
USD	United States Dollar

Executive summary

1. This report analyses the implementation of the EOIR standard by Brazil in respect of EOI requests processed during the period of 1 October 2014-30 September 2017 (the review period) against the 2016 Terms of Reference. This report concludes that Brazil continues to be rated Largely Compliant overall (the same rating reached in the Global Forum's 2013 evaluation of Brazil against the 2010 Terms of Reference).

2. The following table shows the comparison of results from the first and second round reviews of Brazil's implementation of the EOIR standard:

Comparison of ratings for First Round Report and Second Round Report

Element		First Round EOIR Report (2013)	Second Round EOIR Report (2018)
A.1	Availability of ownership and identity information	C	LC
A.2	Availability of accounting information	C	C
A.3	Availability of banking information	C	LC
B.1	Access to information	C	C
B.2	Rights and Safeguards	PC	LC
C.1	EOIR Mechanisms	LC	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and safeguards	C	C
C.5	Quality and timeliness of responses	PC	PC
	OVERALL RATING	**LC**	**LC**

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

Progress made since previous review

3. The major issues identified in the Phase 2 report issued in November 2013 (the 2013 report) related to: the absence of explicit exceptions to the prior notification of the subject of an EOI request when accessing detailed

banking information (element B.2); some of Brazil's EOI agreements did not provide for EOI to the standard and Brazil experienced considerable delays in ratifying some of its EOI agreements (element C.1); and the timeliness of Brazil's responses to incoming requests due to its EOI processes and resources, as well as the inconsistent provision of status updates where complete responses could not be provided within 90 days (element C.5). All other elements were considered Compliant with the standard. The 2013 report noted some uncertainties as to whether the scope of the attorney-client privilege could unduly limit access to information in the possession of attorneys (elements B.1 and C.4), but these were not found to impact Brazil's rating against the respective elements.

4. Since the last review, while Brazil has addressed some of the recommendations in these areas, some gaps remain. Regarding element C.1, Brazil ratified the multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) in June 2016, ensuring a wide network of EOI relationships that meet the standard and that covers the gaps identified in the 2013 report. It also concluded the ratification of a number of DTCs. In respect of element B.2, Brazil has provided assurances it would be able to seek judicial authorisation to waive prior notification in the case of accessing detailed banking information for EOI purposes in very urgent cases (as it has done in domestic cases), though it has not provided for explicit exceptions in the law and this remains untested in practice. Regarding element C.5, Brazil improved the processes for responding to EOI requests through better monitoring of requests by the EOI Unit and, for part of the review period, giving the lead compliance team of the tax administration a greater role in obtaining requested information. This generally improved the timeliness of responses for the time when such arrangements were in place (which did not cover the whole review period).

5. Some of these changes are sufficient to remove or modify the nature of the recommendations. This is the case of elements C.1 and B.2. In the case of element C.5, however, the improvements in timeliness did not extend to some local compliance units (who are often called upon to obtain information for EOI purposes) during a substantial part of the review period, and Brazil has continued not to routinely provide status updates. The progress made by Brazil is therefore insufficient to improve the rating.

6. The 2016 Terms of Reference contain additional requirements in respect of the availability of beneficial ownership information (elements A.1 and A.3) and Brazil has taken important steps in the review period towards satisfying these requirements. It has enacted a legal regime for the provision of beneficial ownership information by all relevant legal entities and arrangements to the Secretariat of the Federal Revenue of Brazil *(Secretaria da Receita Federal do Brasil – RFB).* This regime is in the process of being

operationally implemented, however, and therefore its effectiveness could not be tested. Brazil has further developed its Anti-Money Laundering/ Countering the Financing of Terrorism (AML/CFT) Customer Due Diligence (CDD) rules and their supervision and enforcement, which has helped ensure the availability of beneficial ownership information on customers of AML covered entities. Some concerns have been identified, however, in relation to the scope of this information and the practical enforcement of certain CDD rules. These issues have resulted in elements A.1 and A.3 being downgraded to Largely Compliant.

Key recommendations

7. The four key issues raised by this report relate to: the availability of beneficial ownership information (elements A.1 and A.3); whether ambiguity about professional secrecy, and about judicial discretion to waive prior notification requirements to access detailed information from financial institutions in very urgent cases, could impede effective access to information for EOI purposes (elements B.1, B.2 and C.4); and timely responses to EOI requests (element C.5).

8. As noted above, Brazil has taken recent steps to largely satisfy the beneficial ownership requirements in future through a beneficial ownership register (element A.1). However, the regime presents a possible gap relating to sanctions, and is not yet supervised to ensure its effectiveness. Recommendations are made to close that gap, enforce the regime through a supervision programme and monitor effectiveness. The issues around the AML/CFT framework, one of the main sources of beneficial ownership information in the current review period, may have caused information not to be available in all cases, including in respect of bank accounts (elements A.1 and A.3). Brazil is encouraged to remedy those aspects of the framework.

9. The scope of attorney-client privilege in Brazil was noted in the 2013 report as potentially broader than the standard allowed (elements B.1 and C.4). Brazil provides assurances it would interpret the scope consistently with the standard but since no issues or EOI requests for information held by attorneys arose during the review period, the matter could not be tested and this report recommends Brazil continues to monitor the application of attorney-client privilege in practice.

10. The uncertainty around Brazil's ability to seek a judicial waiver of its prior notification procedure in relation to information held by financial institutions, in the event that an exchange partner requested this in a very urgent or sensitive case (element B.2), has not caused problems in the review period. Brazil's assurances that it would be able to obtain such waiver, as it does for domestic cases, are noted. Nevertheless, recommendations are made

for Brazil to either more explicitly clarify the possibility of judicial waiver, or introduce explicit exceptions in its legal framework. Brazil should also closely monitor that the procedure does not frustrate the provision of such information without prior notification of the taxpayer under investigation, where justified.

11. A public sector-wide hiring freeze leading to staffing limitations combined with prolonged industrial action at the level of local compliance units have affected the tax administration's ability to prioritise EOI requests vis-a-vis domestic cases (both at the level of the lead compliance, risk assessment and case selection area and at the level of some local compliance units). This has significantly impacted the timeliness of responses and impeded effective EOI, in some cases. Moreover, Brazil did not take steps to address the 2013 recommendation on systematically providing status updates. This report therefore makes recommendations that Brazil ensures incoming EOI requests are always duly prioritised, regardless of who handles them, to ensure timely responses and that it systematically provides status updates in cases where complete responses are not provided within 90 days.

EOI Practice

12. During the review period, Brazil received 210 requests from 21 treaty partners and sent 113 requests to 12 partners. A full response was provided under 90 days in 47% of cases, under 180 days in 62% of cases, and under one year in 67% of cases. 12% of cases took more than one year to send a complete response. 10% of requests are still pending as of July 2018, approximately half of which from 2016 and for more than one year. 11% of requests were validly declined.

Overall rating

13. Brazil has achieved a rating of Compliant for six elements (A.2, B.1, C.1, C.2, C.3, C.4), Largely Compliant for three elements (A.1, A.3, B.2) and Partially Compliant for element C.5. Brazil's overall rating is Largely Compliant based on a global consideration of Brazil's compliance with the individual elements.

14. This report was approved at the PRG meeting on 10-13 September 2018 and was adopted by the Global Forum on 12 October 2018. A follow up report on the steps undertaken by Brazil to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	There is no clearly applicable sanction for domestic entities that do not comply with their obligations to provide beneficial ownership information to the CNPJ register.	Brazil should ensure there are clearly applicable and appropriate penalties or sanctions for domestic entities that fail to provide beneficial ownership information to the register.
EOIR rating: Largely Compliant	Legal entites and arrangements that have their CNPJ tax registration suspended or cancelled by the RFB do not automatically lose their trade or civil registration and legal personality. There could be circumstances in which certain entities remain in existence and their obligations to maintain or file up to date legal and beneficial ownership information remain unsupervised.	Brazil should ensure that legal and beneficial ownership is available in respect of all legal entities and arrangements, and monitor the situation of entities with a suspended or cancelled tax registration to ensure that they comply with all relevant obligations to maintain and file up to date ownership information.
	Brazil is in the initial stages of developing a supervision and enforcement programme in relation to its beneficial ownership register.	Brazil should fully develop a supervision and enforcement programme in relation to its beneficial ownership register as soon as possible, and monitor its effectiveness in practice to ensure the availability of beneficial ownership information in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
EOIR rating: Compliant		
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement	The AML/CFT legal framework does not explicitly provide for a beneficial owner identification method in respect of legal persons and arrangements fully in line with the standard. This may have led to beneficial ownership information in respect of bank accounts not being available in line with the standard in all cases, although this remained untested in the review period.	Brazil should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all account holders.
EOIR rating: Largely Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place	There are some uncertainties as to whether the attorney-client privilege may unduly limit access to information acquired by attorneys.	Brazil should continue to monitor the application of the scope of the attorney-client privilege in practice to ensure consistency with the standard and that it does not unduly limit EOI.
EOIR rating: Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place but needs improvement	Although Brazil provides assurances that it may obtain judicial waiver of the prior notification procedure in respect of accessing information held by financial institutions in very urgent or sensitive cases, there is no explicit exception to such procedure and the obtainment of such waiver for EOI purposes has not been tested in practice.	Brazil should either explicitly clarify the possibility of judicial waiver of the prior notification procedure, or introduce explicit exceptions in its legal framework. Brazil should also closely monitor that the procedure does not frustrate the provision of information held by financial institutions without prior notification of the taxpayer under investigation, where justified.
EOIR rating: Largely Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
EOIR rating: Compliant		
The jurisdiction's network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
EOIR rating: Compliant		
The jurisdiction's mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
EOIR rating: Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place	There are some uncertainties as to whether the attorney-client privilege may unduly limit access to information acquired by attorneys.	Brazil should continue to monitor the application of the scope of the attorney-client privilege in practice to ensure consistency with the standard and that it does not unduly limit EOI.
EOIR rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework determination:	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
EOIR rating: Partially Compliant	Although Brazil has made significant progress in response times over the three-year period, in many instances the competent authority has been unable to answer incoming requests in a timely manner due to delays at the level of the RFB's compliance areas caused by workplace relations and staffing issues. Many requests were responded to or remain outstanding after more than one year.	Brazil should ensure that it can respond to all types of information requests in a timely manner, with due priority given to EOI requests by all areas of the RFB responsible for obtaining and providing the information.
	Brazil did not always provide an update or status report to its EOI partners within 90 days in the event that it was unable to provide a substantive response within that time.	Brazil should monitor the effectiveness of its new internal procedure and ensure it provides status updates to EOI partners within 90 days in those cases where it is not possible to provide a complete response within that timeframe.

Overview of Brazil

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

Legal system

16. Brazil is a Democratic Republic governed by the 1988 Federal Constitution. The Constitution is the primary source of law and defines the principles, fundamental rights, organisational structure, hierarchy of laws and separation of the government's powers into Legislative, Executive and Judiciary powers, exercised at the federal, state and municipal levels. The Brazilian legal system is based on civil law. Executive power is exercised by the President of the Republic and their government of Ministers.

17. At the federal level, legislative power is exercised by the Brazilian Parliament (*Congresso Nacional*), formed by the House of Representatives (*Câmara dos Deputados*) and the Federal Senate (*Senado Federal*), which comprise, respectively, congressmen and senators elected by the people. The Brazilian law-making process is bicameral, requiring the will of both lower and upper houses of the National Congress. The hierarchy of the laws is, in decreasing order of rank: (i) constitutional amendments; (ii) complementary laws; (iii) international treaties and ordinary laws; (iv) delegated laws; (v) provisional measures; (vi) decrees; and (vii) resolutions.

18. A law of a higher rank prevails over a law of a lower rank when they concern the same subject matter, but a law which is later in time will revoke an older law of equal hierarchy. In particular, international treaties and conventions on tax matters will always prevail over domestic tax law, provided that they do not violate the Federal Constitution or complementary laws (Article 98 of the National Tax Code).

19. The Supreme Federal Court is the highest Judiciary power. It oversees the Federal Constitution and is the final court of appeal in constitutional matters. The Superior Court of Justice is the guardian of the uniform

interpretation of the federal laws, being the final court of appeal in infra-constitutional matters. Other judicial bodies are the Federal Regional Courts, Labor Courts, Electoral Courts, Military Courts and the Local Courts for the States, the Federal District and the Territories.

Tax system

20. The Federal Constitution and the National Tax Code (Law 5.172/1966) govern the Brazilian tax system, establishing five types of taxes: (i) taxes *stricto sensu* (on income, consumption, etc.); (ii) fees; (iii) improvement contributions; (iv) other contributions (social and other types); and (v) compulsory loans. The Union, States, Federal District and Municipalities have administrative autonomy to impose taxes, subject to the limits of their taxing powers and tax jurisdictions.

21. At the federal level, the Minister of Finance is the main administrative authority. The RFB is the agency of the Ministry of Finance which is responsible for the administration of the federal taxes and customs control.[1] There are two categories of income tax: (i) individual income tax (*Imposto sobre o Rendimento das Pessoas Físicas – IRPF*); and (ii) legal person income tax (*Imposto sobre o Rendimento das Pessoas Jurídicas – IRPJ*). The IRPF applies at progressive rates between 7.5% and 27.5%. The IRPJ applies to legal entities at a 15% flat rate with a 10% surtax over taxable profits exceeding the amount of BRL 240 000 (approximately USD 64 300) per year or monthly fraction thereof, along with the Social Contribution on Net Profit (*Contribuição Social sobre Lucro Líquido – CSLL*) at a 9% rate.

22. An individual who is physically present in Brazil is deemed to be a resident for tax purposes if they move to Brazil under a permanent visa, or are hired by a Brazilian company, or remain in the country for more than 183 days during a 12 month period from the original date of entry. A legal person is deemed to be resident in Brazil for tax purposes if it is incorporated under Brazilian law or if it is a foreign-incorporated entity and opts to transfer its

1. The federal taxes are: (i) import tax over foreign goods (*Imposto sobre a Importação de produtos estrangeiros – II*); (ii) export tax over national or nationalised products (*Imposto sobre a Exportação para o exterior de produtos nacionais ou nacionalizados – IE*); (iii) rural territorial property tax (*Imposto sobre a Propriedade Territorial Rural – ITR*); (iv) industrialised products tax (*Imposto sobre Produtos Industrializados – IPI*); (v) income tax (*Imposto sobre a Renda e proventos de qualquer natureza – IR*); and (vi) credit, exchange and insurance operations tax (*Imposto sobre Operações de Crédito, Câmbio, Seguro e Relativas a Títulos e Valores Mobiliários – IOF*). There are other taxes under the responsibility of the States, the Federal District and the Municipalities.

corporate headquarters to Brazil, with the necessary government authorisations. Resident individuals or legal persons are liable to income tax on their worldwide income and capital gains and must file an annual income tax return.

23. All legal entities or arrangements carrying on a business in Brazil are required to register with the RFB, which generates a unique tax identification number (TIN) known as the National Register of Legal Persons (*Cadastro Nacional da Pessoa Jurídica – CNPJ*). This is also the designation of the RFB's tax register and database of all possible legal persons and arrangements, which is available to all relevant supervisory, law enforcement and financial intelligence authorities. As at the end of 2017 there were approximately 20 million active registrations with the CNPJ, including public sector entities, business entities, sole proprietorships, non-profit entities, international organisations and certain other institutions. The TIN for individuals is derived from (and shares its designation with) the Register of Natural Persons (*Cadastro de Pessoas Físicas – CPF*). As at the end of 2017 there were approximately 192.4 million individual taxpayers registered with the CPF.

24. Brazilian law does not specifically include the concept of non-resident entity or permanent establishment, but all entities that do not fall within the concept of resident are characterised as non-residents. Non-residents who own property (real estate, bank accounts, shares, vehicles, etc.) in Brazil must register with Brazilian public authorities including the Central Bank of Brazil (*Banco Central do Brasil – BACEN*), the Securities and Exchange Commission (*Comissão de Valores Mobiliários – CVM*) and as taxpayers with the RFB. Likewise, foreign entities operating in Brazil through a branch, subsidiary or office or doing business in Brazil through a commissionaire or representative must be registered with the RFB. The branch, office or agent may be equated to a resident legal entity for tax purposes and taxed on the income attributable to the branch, office or agent.

Financial services sector

25. The Brazilian financial sector is known as the National Financial System (*Sistema Financeiro Nacional – SFN*) and comprises public and private financial institutions. The SFN has a regulatory and operational structure, consisting of several supervisory bodies, as follows:

- National Monetary Council (*Conselho Monetário Nacional – CMN*)
- National Council on Private Insurance (*Conselho Nacional de Seguros Privados – CNSP*)
- National Regulatory Board for Complementary Pension Plans (*Conselho Nacional de Previdência Complementar – CNPC*)
- BACEN

- CVM
- Superintendence of Private Insurance (*Superintendência de Seguros Privados – SUSEP*)
- National Superintendence for Pension Funds (*Superintendência Nacional de Previdência Complementar – Previc*).

26. Financial institutions are broadly defined as entities the main or secondary activity of which includes the collection, intermediation or investment of financial resources belonging to themselves or third parties, and the custody of assets belonging to third parties. Banks are financial institutions that may receive deposits in cash and issue currency while non-bank financial institutions operate with non-monetary assets (shares, bank deposit certificates, bonds, etc.). These entities are supervised by BACEN. Other intermediate or auxiliary institutions are the stock exchanges, brokers, distributors, leasing companies, exchange brokers, commodities and future brokers, self-employed investment agents and representatives of foreign financial institutions. These entities are generally supervised by the CVM. The Appeals Council for the SFN (*Conselho de Recursos do Sistema Financeiro Nacional – CRSFN*) is an appeal instance with powers to judge *ex officio* and voluntary appeals against decisions of the BACEN and the CVM. The weight of the production of the financial intermediation sector in percentage of GDP is 7.1%, according to 2015 data. SFN banks and other financial institutions are detailed in the following table:

Institutions in the SFN

Type	2015	2016	2017
Multiple bank[a]	132	133	132
Commercial bank	21	21	21
Savings bank	1	1	1
Development bank	4	4	4
Investment bank	13	14	13
Exchange bank	3	3	3
Leasing company	27	25	24
CFI company	53	53	56
Real estate credit and savings and loan companies	8	4	3
TVM brokerage company	87	79	75
Exchange broker	63	63	61
TVM distributor	102	101	95
Funding agency	16	16	16
Mortgage company	8	9	17
Payment institution	0	1	6

Type	2015	2016	2017
Credit co-operative	1 113	1 078	1 023
Credit for small entrepreneurs	40	38	38
Consortium	172	166	156
Total	1 863	1 809	1 734

Note: a. A multiple bank consists of at least two of the following portfolios, one of which must be commercial or investment, under BACEN Resolution 2.099/1994: commercial; investment and/or development (the latter exclusively for public banks); real estate credit; credit, financing and investment; and leasing.

AML Framework

27. Brazil's core AML/CFT regime is contained in Law No. 9.613 of 3 March 1998 (Law 9.613/1998), updated by Law No. 12.683 of 9 July 2012 (Law 12.683/2012), *inter alia*, to cover a range of natural and legal persons undertaking permanent or occasional non-financial activities. Law 9.613/1998 deals with money laundering crimes and their respective penal procedure and establishes the general obligations for AML covered entities to undertake cutomer due diligence (CDD), keep customer information, and report suspicious transactions. It also provides the sanctions applicable where entities fail to comply with these obligations and establishes Brazil's FIU, the Financial Activities Control Center *(Conselho de Controle de Atividades Financeiras – COAF).*

28. Law 9.613/1998 (Article 9) has a comprehensive scope, covering: a broad range of financial institutions and intermediaries in line with the Financial Action Task Force (FATF) Recommendations; real estate agents; dealers in jewellery, precious stones and metals, art, antiquities, and luxury or high value goods; commercial and civil registrars; natural or legal persons who provide advisory, consultancy, accountancy, counselling, or assistance services, even occasionally, in respect of specified operations (which Brazil considers to cover legal professionals);[2] and any natural or legal persons that operate in Brazil as agents, directors, attorneys, commissionaires, or otherwise represent a foreign entity undertaking an in-scope activity.

2. Under Art. 9(XIV), specified operations include the sale and purchase of immovable property, commercial or industrial establishments, or corporate equity interests; management of funds, securities or other assets; opening or management of bank, savings, investment or securities accounts; creation, exploration or management of any companies, partnerships, foundations, fiduciary funds or analogous structures; and financial, corporate or real estate operations. Lawyers are understood to be covered by this category and the specified operations appear to be in line with the activities listed in paragraph (d) of FATF Recommendation 22.

29. Article 10 requires covered entities to have policies, procedures and internal controls that enable the identification and keeping of updated records on clients, including the "representatives and proprietors" of entities. The more detailed CDD rules requiring the identification of beneficial owners, among other preventative measures, are set out in binding instructions issued by each supervisory authority (albeit only the rules issued by BACEN contain a definition of "beneficial owner", as discussed in paragraph 91). Article 11 requires entities to file suspicious transaction reports. Article 12 imposes strict sanctions for failure to comply with the CDD and reporting rules, including warnings, fines up to BRL 20 million (approximately USD 5.36 million), prevention from acting as a director of a covered entity for up to 10 years, and cancellation or suspension of an entity's authorisation to function, operate or carry on relevant activities. Article 10(2) requires entities to keep identity information on clients for five years following the closure of an account or conclusion of a transaction.

30. The regulation, registration and supervision of AML covered entities is the responsibility of the respective commercial, prudential or professional regulators, which act as the competent authorities for AML/CFT. These include BACEN, CVM, SUSEP, Previc, and the Federal Accounting Council *(Conselho Federal de Contabilidade – CFC)*. COAF has the residual responsibility to supervise covered entities that do not fall under the supervision of a specific regulator.[3] It notes that it has wide access to information databases of other public authorities including the RFB and other registries to fulfil its FIU functions.

31. Brazil's compliance with the AML/CFT standard is assessed by the FATF[4] and the Financial Action Task Force of Latin America (GAFILAT). The FATF and GAFILAT (formerly, the Financial Action Task Force of South America (GAFISUD)) last published a Mutual Evaluation Report (MER) for Brazil in June 2010.[5] Relevantly, the MER found Brazil Partially Compliant on Recommendations 10 (*Customer Due Diligence*), 24 (*Transparency and beneficial ownership of legal persons*),[6] 26 (*Regulation and supervision of*

3. These include dealers in luxury or high value goods, factoring and securitisation entities.
4. The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its reviews are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.
5. The 2010 MER is available at www.fatf-afi.org.
6. Brazil was not assessed against Recommendation 25 (*Transparency and beneficial ownership of legal arrangements*), then Recommendation 34, as it was not applicable to Brazil.

financial institutions), 27 (*Powers of supervisors*), then Recommendations 5, 33, 23 and 29 respectively; and Non-Compliant on Recommendations 22 (*DNFBPs: Customer due diligence*) and 28 (*Regulation and supervision of DNFBPs*), then Recommendations 12 and 24 respectively. Several issues were identified in relation to the scope of covered entities, sector-by-sector gaps in CDD requirements (mainly outside the banking sector), and supervision powers and effectiveness. Since 2010, Brazil has progressively taken steps to close the gaps identified by the MER through instructions and provisions issued by the several authorities to their regulated sectors and by bolstering their supervision and compliance programmes. Brazil's latest public follow-up report issued by GAFILAT in July 2015 noted the progress made by Brazil in fulfilling Recommendation 10 and other key recommendations, as well as outstanding deficiencies related to the criminalisation of terrorist financing, and the implementation of certain targeted financial sanctions pursuant to United Nations Security Council Resolutions (the latter remains a membership issue to be considered by the FATF in February 2019). Other relevant reports do not identify other issues of relevance remaining to be addressed.

Part A: Availability of information

32. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

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

33. The 2013 report found that comprehensive obligations consistently imposed on domestic and foreign companies, partnerships, foundations and trusts ensured that legal ownership and identity information was available either in the hands of public authorities, entities themselves, or custodians. Customer due diligence undertaken by AML covered entities further ensured the availability of information in the hands of these entities. The report found that compliance in respect of all entities' obligations to maintain the information was strictly monitored by the Brazilian authorities, with appropriate sanctions regularly enforced in practice. Thus, Brazil was rated Compliant on element A.1.

34. Not discussed in the 2013 report, but now an integral part of the 2016 Terms of Reference, is the availability of beneficial ownership information. Brazil has established a comprehensive beneficial ownership register, managed by the RFB, which is to be the primary source of such information in the future. However, the obligations for entities to keep and provide information have recently commenced and a programme of supervision and enforcement is still under development. The main sources of beneficial ownership in the current review period were therefore the information databases maintained by the RFB, and entities covered by the AML/CFT framework. This section analyses the legal framework and practice in Brazil regarding beneficial ownership.

35. The availability of legal ownership information and of beneficial ownership information in Brazil are analysed separately in this section. This

approach is taken because: the sources and analysis of legal ownership availability and enforcement have not significantly changed since the 2013 report; the sources of enforcement of beneficial ownership availability are largely distinct from those of legal ownership; and the beneficial ownership registration and AML/CFT regimes treat all relevant legal entities and arrangements under the standard in an equivalent manner. The approach is therefore considered more effective for analysis purposes.

36. During the review period, Brazil received 210 requests, 66 of which related to ownership and identity information. Peers were generally satisfied with the information received. Input from peers identifies at least 11 instances in which Brazil was requested and was able to provide beneficial ownership information to their satisfaction. While many requests have been considerably delayed or remain pending due to staffing and prioritisation issues at the level of some of the RFB's compliance units, as discussed in section C.5, Brazil reports that it has never been unable to respond to a request for ownership and identity information due to the fact that information was not available in accordance with the law. Certain gaps in the AML/CFT framework and its practical enforcement, however, could have impeded beneficial ownership information being available in all cases, although this remains untested.

37. The above issues result in a downgrade of Brazil's rating to Largely Compliant. The updated table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
Deficiencies identified in the implementation of the legal and regulatory framework	Underlying Factor	Recommendations
	There is no clearly applicable sanction for domestic entities that do not comply with their obligations to provide beneficial ownership information to the CNPJ register.	Brazil should ensure there are clearly applicable and appropriate penalties or sanctions for domestic entities that fail to provide beneficial ownership information to the register.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	Legal entites and arrangements that have their CNPJ tax registration suspended or cancelled by the RFB do not automatically lose their trade or civil registration and legal personality. There could be circumstances in which entities remain in existence and their obligations to maintain or file up to date legal and beneficial ownership information remain unsupervised.	Brazil should ensure that legal and beneficial ownership is available in respect of all legal entities and arrangements, and monitor the situation of entities with a suspended or cancelled tax registration to ensure that they comply with all relevant obligations to maintain and file up to date ownership information.
	Brazil is in the initial stages of developing a supervision and enforcement programme in relation to its beneficial ownership register.	Brazil should fully develop a supervision and enforcement programme in relation to its beneficial ownership register as soon as possible, and monitor its effectiveness in practice to ensure the availability of beneficial ownership information in all cases.
Rating: Largely Compliant		

Legal ownership

38. The identification and verification of legal owners in Brazil is guaranteed through the combination of: (i) the integrated civil, commercial and tax registration of entities, centrally processed by the RFB, and its supervision activities; (ii) obligations that entities themselves maintain information; and (iii) ownership information held by government agencies as part of specific registration or reporting processes. Legal ownership information is also available from AML covered entities. The various methods for ensuring the availability of legal ownership information are discussed individually by type of entity in this section.

39. As discussed in the 2013 report (paragraphs 55 to 110), Brazil's legal framework ensures that up to date legal ownership information on all legal

entities and arrangements is available. Brazil's enforcement efforts to ensure the availability of information are analysed below in the section *Sanctions and enforcement to ensure the availability of legal ownership information*. In the current review period, Brazil received 61 requests for legal ownership information and was able to provide the information to the satisfaction of peers (apart from some instances in which the information remains pending due to operational staffing and prioritisation issues at the level of some local compliance units, as discussed in section C.5).

Developments since the 2013 report

40. Since the 2013 report, entity formation and registration has become largely centralised and integrated through a system that sees information of common interest to tax, commercial and civil registration and licensing bodies automatically shared between them.[7] These include: trade registrars (commercial juntas) in each state (for business entities); privately-owned civil registrars (notaries) supervised by the National Justice Council (for non-profit and some business entities);[8] the RFB and state tax authorities; state and municipal bodies for state licensing purposes; and licensing bodies (such as BACEN, CVM and SUSEP) for regulatory and supervision purposes.

41. The system, known as "Simple Network" (*Rede Simples*), is a group of interoperable IT systems whereby citizens can form legal entities online and simultaneously obtain the necessary commercial, civil, tax and regulatory registrations. Moreover, the RFB has fully taken on the role of monitoring entities' compliance with the requirements to keep information up to date through annual tax filing obligations.

42. Entity formation is now initiated through the RFB's "National Collector" portal, where the information necessary for registration, including legal ownership information, is provided to the RFB. It undertakes consistency checks before issuing a "Basic Entry Document" (*Documento Básico de Entrada – DBE*), which generates a registration request with the relevant commercial or civil registration body. Entities' representatives must attend at the registration body in person and present documentation that supports the information provided to the RFB. Following such verification, the entity is registered, gaining simultaneously its legal personality and commercial or civil registration (as applicable), the ability to initiate operations and its CNPJ number. Where licensing or specific registration with a certain economic regulator is required, it is obtained at the relevant body as the last step.

7. This integration has been occurring under Law 11.598/2007, which aimed to simplify Brazil's business environment and help combat fraud and other crimes.
8. Not all civil registrars (private notaries) are currently integrated into the Simple Network. Brazil expects to complete their integration by mid-2019.

43. The 2013 report discussed the special registration, authorisation and licensing requirements that apply in regulated sectors, and further ensure the availability of legal ownership information (paragraphs 37 and 69 to 78). The Simple Network system has increased the integration between the RFB, trade registrars and regulatory bodies to strengthen the availability of ownership information in such cases. For example, an entity's ownership details registered with CVM for purposes of running a financial investment business, or a foreign entity's mandatory registration with CVM for purposes of investing in Brazilian financial markets,[9] are automatically shared with the RFB, which simultaneously issues the CNPJ number. A foreign entity's registration with BACEN to own Brazilian assets or make foreign direct investments is also automatically shared.

A.1.1. Companies

44. Under Brazilian law, companies and partnerships are both considered legal persons. Companies (*sociedades de capital*) are formed as limited liability companies (*sociedade limitada – LTDA*), joint stock companies (*sociedade anônima – SA*), partnerships limited by shares (*sociedade em comandita por ações – SCA*), or individual companies of limited liability (*empresa individual de responsabilidade limitada – EIRELI*). The following table provides statistics on the number of companies registered with the CNPJ.

Company statistics

Type of company	Governing law	Statistics as at December 2015	Statistics as at December 2016	Statistics as at December 2017	Statistics as at June 2018
Limited liability companies	Civil Code	5 514 818	5 006 028	4 974 730	4 957 272
Joint stock companies	Civil Code	156 578	42 454	43 651	44 310
Partnership limited by shares	Civil Code	128	79	80	81
EIRELI	Civil Code	368 092	467 526	612 695	693 235

45. Law 12.441/2011 introduced the EIRELI into Article 980-A of the Civil Code, a single shareholder company type offering the benefit of limited liability to sole entrepreneurs. An EIRELI's capital must not be inferior to one hundred times the largest minimum salary amount in force in Brazil,[10] and a natural person can hold an interest in only one EIRELI at a time. There can be no transfers of ownership and a new company must always be constituted for such purpose. The rules applicable to LTDAs ensuring information availability equally apply to EIRELIs.

9. Pursuant to CVM Normative Instruction 560/2015.
10. In 2018, BRL 954 per month (approximately USD 235).

46. The legal requirements with respect to providing, keeping and updating information in respect of LTDAs, SAs and SCAs were analysed in the 2013 report (paragraphs 55 to 97), with no recommendations made. These requirements have not changed. The Civil Code requires all "business entities", being those that carry on a business or are holding companies, to be registered with the trade registrar and to maintain updated information identifying their owners. Tax law requires all entities, including tax immune,[11] exempt or inactive entities, to file up to date ownership information with the RFB on a yearly basis and this obligation is practically enforced through the RFB's compliance activities, discussed below in the section *Sanctions and enforcement to ensure the availability of legal ownership information*. Entities must annually file ownership information (i.e. shareholder information in the case of companies) along with all required tax and accounting information through Brazil's electronic tax filing system discussed in more detail under element A.2. The general mechanism to do this is the Tax and Accounting Bookkeeping file (*Escrituração Contábil Fiscal – ECF*) which must be submitted by July each year into the Electronic Public Bookkeeping System known as SPED (*Sistema Público de Escrituração Digital*), a comprehensive taxpayer information database maintained by the RFB.[12]

47. The trade registrars and RFB keep information indefinitely, even on liquidated entities. Companies are required to maintain ownership information for at least five years pursuant to the statute of limitations, and also for five years under tax law. Moreover, company directors, administrators or appointed liquidators are required to keep ownership information for the statute of limitations period following dissolution.

48. The comprehensive registration and filing requirements guaranteeing the availability of legal ownership information on foreign companies with a sufficient nexus with Brazil have not changed since the 2013 report

11. Under the Federal Constitution, the federal, state or municipal governments may not tax the property or income of, or the services provided by, foundations, churches, political parties, labour unions and non-profitable educational or charitable institutions, provided that the income is derived from activities directly related to the institutional objectives of these bodies. In order to be an "excluded" entity the following conditions must be fulfilled (Article 14 of the National Tax Code): (i) the profits or dividends are not distributed to directors or board members, (ii) all of the appropriate tax and commercial records are maintained and (iii) all of the resources of the entity must be applied in fulfilling their purposes within Brazil.

12. The ECF was introduced by RFB Normative Instruction 1.422/2013 for tax periods starting on 1 January 2014 and entities must follow filing manuals published annually by the RFB. It substituted the previous Declaration of Economic and Fiscal Information of Legal Persons (*Declaração de Informações Econômico-Fiscais da Pessoa Jurídica – DIPJ*).

(paragraphs 90 to 97). Moreover, as discussed below in the section *Beneficial Ownership*, foreign entities are a particular focus in Brazil's new beneficial ownership filing regime. Article 7 of Normative Instruction (NI) No. 1.634 of 6 May 2016 (NI 1.634/2016) requires foreign entities to legally appoint a Brazilian-domiciled attorney or representative with powers to administer an entity's rights and assets and represent it before the RFB in compliance with tax filing and other obligations. Brazilian representatives of foreign entities are also required to perform CDD on such entities under the AML/CFT law.[13] Brazil notes it has been able to provide requested information on foreign companies to the satisfaction of peers.

49. The following table provides statistics on the number of foreign entities registered with the CNPJ (which could include companies, partnerships and trusts).

Foreign company and partnership statistics

	Statistics as at December 2015	Statistics as at December 2016	Statistics as at December 2017	Statistics as at June 2018
Foreign entity registered in Brazil	83 042	85 813	87 971	88 923

Nominees

50. As discussed in the 2013 report, the concept of nominee does not exist in Brazilian law and therefore shares in companies are in principle held by their beneficial owner. In certain situations, acting as a frontman constitutes a criminal offence. The RFB actively seeks to detect any instances of fraudulent interposition of persons within company share registers for tax compliance purposes. It provides internal guidance and training for auditors to strengthen their analysis of RFB databases and audited legal persons to identify any such cases. Brazil notes it did not encounter any instance of false identity information or a person purporting to hold shares for another person during the review period.

A.1.2. Bearer shares

51. The 2013 report discussed bearer shares in paragraphs 106 to 110. The issuance and economic enjoyment of bearer shares has been prohibited since 1990,[14] but the report noted that some residual bearer shares remained. The risk was considered minimal since no rights can be exercised and no use

13. Article 9(IX) of Law 9.613/1998.
14. Article 2 of Law 8.021/1990.

can be made of such remaining shares. Brazil was recommended to ensure that mechanisms were in place to identify the owners of bearer shares in all instances, and to monitor the situation with respect to residual bearer shares in practice.

52. Brazil reaffirms its position that residual bearer shares relate in the main part to three large public companies, understood to be in the telecommunications sector and which several decades ago adopted the practice of issuing bearer shares to customers as a collateral benefit of providing services to them. Brazil has recently surveyed its top three financial institutions that provide corporate bookkeeping services to conclude that the value of residual bearer shares is at around 0.06% of the capital of the surveyed companies, representing approximately BRL 1.5 billion (approximately USD 402 million) as at 30 September 2017, a decrease since the 2013 report (BRL 2 billion). This suggests some bearer shares may have been duly converted to nominative shares since the first round review. It is also possible that some such shares have been lost by their holders. CVM has continued to publish materials and guidance to investors and the public on bearer shares and the legal requirement for holders to be identified before shares can be cashed-in, negotiated or traded on the securities exchange, or used to exercise voting rights or draw dividend payments. This includes the CVM Consultative Committee on Education's "Securities Market Book", an in-person and online help facility for investors, and social media guidance planned to be launched in 2018. Holders are encouraged to come forward and identify themselves to the company if they become aware that they may be holding bearer shares.

53. The risk posed by residual bearer shares appears to remain minimal and Brazil has taken steps to monitor the situation whilst educating the public as to the necessary conversion into nominative shares before they can be utilised. No information regarding companies that previously issued bearer shares has been requested by Brazil's partners in the review period. Brazil should continue to closely monitor the situation with respect to residual bearer shares and take measures as appropriate to avoid practical difficulties in an EOI context.

A.1.3. Partnerships

54. The 2013 report provided a detailed explanation of partnerships in paragraphs 111 to 121. In Brazil, partnerships are considered legal persons. As with companies, comprehensive obligations under commercial, civil and tax laws ensure the availability of information on partners in the hands of public authorities; and the RFB has a central role in registering, collecting annual information and supervising partnerships. The following table provides statistics on the number of partnerships registered with the CNPJ.

Partnership statistics

Type of partnership	Governing law	Statistics as at December 2015	Statistics as at December 2016	Statistics as at December 2017	Statistics as at June 2018
Unincorporated joint venture	Civil Code	6 307	5 098	9 130	10 516
Civil law partnership	Civil Code	458 737	435 553	430 102	426 428
General partnership	Civil Code	3 725	3 217	3 141	3 094
Limited partnership	Civil Code	126	103	99	98
Co-operative partnership	Civil Code	39 849	25 240	25 661	25 787

55. It is noted that non-business civil law partnerships are registered with the civil registry offices while co-operatives, which are also non-profit civil law partnerships, must be registered with trade registrars. General and limited partnerships, on the other hand, carry on business activities and are registered with trade registrars. All of the foregoing are required to register with the RFB to obtain a CNPJ number, submit updated ownership information on a yearly basis as discussed for companies, and are subject to its compliance programmes. Changes to the respective partnership agreements involving partner information must be unanimously approved by the partners and filed with the respective registrar within 30 days.[15] Unincorporated joint ventures are considered a form of partnership and are required to register only for tax purposes, as they may have income, deductions or credits. They are required to separately file the ECF annually in addition to those filed by partners. Foreign partnerships are subject to the same requirements as foreign companies in terms of registering with BACEN and CVM to make investments in Brazil, obtaining governmental authorisation to carry on a business in Brazil, and registering with the RFB to obtain a CNPJ number and filing annual information (a universal requirement for entities with a presence in Brazil).

56. As with companies, the RFB and the trade and civil registrars keep information on legal persons indefinitely following liquidation. Liquidation, by which a legal person ceases to exist under the Civil Code, is an act subject to registration.[16] Partnerships are required to maintain partner information for at least five years pursuant to the statute of limitations, and also for five years under tax law.

57. As discussed above, Brazil was generally able to provide legal ownership and identity information to the satisfaction of requesting peers during the review period. It is understood that information in respect of partnerships was provided, although Brazil is unable to quantify such instances.

15. Articles 998 and 999 of the Civil Code.
16. Articles 51 and 1109 of the Civil Code.

A.1.4. Trusts

58. The 2013 report discussed trusts at length (paragraphs 122 to 142), concluding that the conjunction of securities market regulations, rules on foreign investor registration (at BACEN and CVM), AML/CFT, withholding tax reporting and general tax obligations ensure that information regarding the settlors, trustees, beneficiaries and protectors of trusts is available to the Brazilian authorities.

59. While the concept of trust does not exist under Brazilian law, it does not prevent a Brazilian resident from acting as trustee or administrator of a foreign trust or a foreign trust from investing or acquiring assets in Brazil. However, Brazil notes it remains the case that it has not encountered instances of Brazilian trustees being appointed for foreign trusts, and no EOI requests were received involving a foreign trust. Moreover, Brazil is not aware of service providers offering trustee services to the foreign market.

60. Nevertheless, Brazil recognises the tax, money-laundering and other risks posed by foreign trusts and has made them a focus of its new beneficial ownership register, as discussed below in the section *Beneficial Ownership*. Trusts are required to provide beneficial ownership information to the RFB upon registering to invest or operate in Brazil, and to keep it up to date.

A.1.5. Foundations

61. As explained in the 2013 report (paragraphs 143 to 146), private foundations may only be incorporated by a public deed or a will and only for religious, moral, cultural or assistance purposes.[17] They may not be established for family purposes or for the benefit of individuals. Any changes to the articles of incorporation, which must contain identity information concerning the founders, members of the foundation's administration (the Brazilian equivalent of a council) and persons with the authority to represent the foundation, must be filed for approval with the Public Attorney's Office and registered with the civil registrars by the foundation's authorised representatives, who would identify themselves in doing so.[18] Public foundations must be established with public funds through a specific law.[19]

62. Like other Brazilian legal persons, private foundations must register with the RFB to obtain a CNPJ number and submit, via tax filing, identity information on the founders, administrators, and persons with the authority to represent the foundation on a yearly basis. They are in scope of the RFB's

17. Articles 62 to 69 of the Civil Code.
18. Articles 62 to 69 of the Civil Code and Article 121 of Law 6.015/1973.
19. Article 37(XIX) of the Federal Constitution and Article 5(IV) of Decree-Law 200/1967).

compliance programmes and subject to supervision with respect to tax, social security and labour legislation. Foundations are subject to supervision with respect to their compliance with the Civil Code by the Public Attorney's Office, the Federal Audit Court and the Federal Internal Affairs Office when involving public resources, and by the State Public Prosecutor. Brazil did not receive EOI requests on foundations in the review period. The following table provides statistics on the number of foundations registered with the CNPJ.

Foundation statistics

	Governing law	Statistics as at December 2015	Statistics as at December 2016	Statistics as at December 2017	Statistics as at June 2018
Private foundations	Civil Code	12 486	9 823	9 718	9 683
Public foundations	Federal Constitution	163	63	93	112

Summary of requirements with respect to legal ownership

63. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of all relevant legal entities and arrangements.

Legislation regulating availability of ownership information on legal entities and arrangements

Type	Commercial, civil or public law	Tax law	AML/ CFT law
Limited liability companies	All	All	All
Joint stock companies	All	All	All
Partnerships limited by shares	All	All	All
EIRELI	All	All	All
Foreign companies and partnerships	All	All	All
Unincorporated joint venture	None	All	All
Civil law partnership	All	All	All
General partnership	All	All	All
Limited partnership	All	All	All
Co-operative partnership	All	All	All
Trusts (foreign)	All	All	Unclear
Private foundations	All	All	All
Public foundations	All	All	All

Sanctions, supervision and enforcement to ensure the availability of legal ownership information

64. As discussed in the 2013 report, a range of legal and administrative sanctions are available to enforce compliance with information-keeping and filing requirements (paragraphs 149 to 165). Under the Civil Code, legal representatives, equity holders and administrators of legal entities are held responsible for losses and damages for non-compliance with trade registration requirements. A legal entity's dissolution before the trade or civil registry does not prevent the application, following dissolution, of taxes or fines resulting from any irregularity practised by the entity, its shareholders, partners or directors during the entity's existence, and such persons remain jointly liable.[20] For joint stock companies, serious fines and licensing consequences are imposed on custodians that fail to keep proper information on shareholders.[21] BACEN and CVM can apply sanctions, ranging from warnings and fines to the suspension of operations and imprisonment, in relation to entities that do not comply with licensing and authorisation requirements, including foreign entities.[22]

65. Domestic or foreign entities that operate in Brazil without a CNPJ number are summoned to register within 10 days or registered *ex officio*. Entities without a CNPJ cannot open or operate bank accounts,[23] engage in business dealings and issue invoices that are valid for tax purposes, or own assets subject to registration of ownership transfers. Failure to provide annual income tax returns is subject to fines in all cases, and non-filing is a permanent focus of the RFB's audit programme.

66. The RFB's Sub-secretariat for Compliance (*Subsecretaria de Fiscalização – Sufis*) inspects books and records of registered entities in the course of its risk-based audit programme, and verifies whether the actual legal owners are consistent with those most recently recorded on the CNPJ file. It also routinely cross-checks data from individual and entity tax returns to detect discrepancies and enforce accurate information filing as necessary. Where irregularities or outdated information are detected, the RFB requires correction or performs it *ex officio* and corresponding changes are made at the trade and civil registrars. Sufis and the CNPJ registrar use various risk criteria to identify and enforce non-compliance and a key criterion is non-compliance with tax filing obligations, verified via automatic

20. Article 9(4) and (5) of Complementary Law 123/2006.
21. Such as prohibitions to undertake licensed activities for up to 20 years and fines up to BRL 50 million (approximately USD 12.3 millio) under Article 11 of Law 6.385/1976.
22. Laws 9.613/2009, 13.506/2017, 7.492/86 and 6.385/1976.
23. BACEN Circular Letter 3.804/2016 and Article 3(IV) of Law 5.614/1970.

routines. Where an entity fails to submit a required return for two consecutive years, for example, an automated routine changes the registration status and requires the entity to regularise its filing situation. There are triggers for other more detailed and non-automated checks. The RFB has a comprehensive compliance programme in place, including desktop reviews and audits, onsite inspections and interviewing of taxpayers. Legal entities either receive onsite visits from the RFB or are requested to attend at its offices.

67. Over the review period, 35 753 legal entity taxpayers and 977 188 individual taxpayers were subject to tax compliance procedures by the RFB.[24] The following table provides statistics for compliance procedures in relation to legal entities or arrangements and natural persons, and liabilities (tax and fines) raised from such procedures:

RFB tax compliance procedures in the review period

Type of procedure	2015	Liabilities raised	2016	Liabilities raised	2017	Liabilities raised
Legal entity audit	5 383	BRL 121.87 bn (USD 29.88 bn)	5 011	BRL 111.05 bn (USD 27.22 bn)	6 631	BRL 189.56 bn (USD 46.47 bn)
Legal entity tax return review	3 583	BRL 2.85 bn (USD 698 m)	3 721	BRL 2.96 bn (USD 725 m)	10 889	BRL 3.67 bn (USD 901 m)
Legal entity fine applied	141	BRL 171 m (USD 42 m)	127	BRL 96 m (USD 23 m)	269	BRL 222 m (USD 54.5m)
Legal entity total	9 107	BRL 124.89 bn (USD 30.62 bn)	8 857	BRL 114.10 bn (USD 27.97 bn)	17 789	193.49 bn (USD 47.43 bn)
Natural persons	268 457	BRL 4.84 bn (USD 1.19 bn)	336 327	BRL 8.06 bn (USD 1.97 bn)	372 404	BRL 11.53 bn (USD 2.83 bn)

68. The RFB can apply a range of pecuniary fines for non-compliance with tax filing obligations, the most relevant of which are those associated with Brazil's comprehensive ECF tax filing system. The fines apply to inaccuracies or omissions, non-filing of records or breaching filing deadlines.[25] Brazil reports it has seen filing non-compliance rates for the ECF of 7.87%

24. RFB, 2018 and 2017 Annual Audit Plans with prior year results.

25. For instance 0.25% per calendar month of an entity's net income before tax (up to a total of 10%) or 3%, of a value that is omitted, inaccurate or incorrect for entites under the actual profit regime, under Articles 6 and 6-A of RFB NI 1.422/2013 and Article 8-A of Decree-Law 1.598/1977; 0.5% of an entity's gross revenue for non-filing of accounting records, 5% of the value of a transaction (limited to 1% of the gross revenue of the legal entity in the accounting period) for those who omit or provide incorrectly the information regarding the records and their files, and 0.02% of an entity's gross income per day for not complying

in 2014, 6.58% in 2015 and 4.07% in 2016 in relation to approximately 1.27 million legal entities that are required to file the ECF (other legal entities in Brazil are subject to filing more simplified tax and accounting returns). Furthermore, the RFB applied 10 504 fines worth BRL 114.1 million (approximately USD 27.5 million) in 2015, 25 749 worth BRL 77.8 million (approximately USD 18.8 million) in 2016, and 23 103 worth BRL 28.7 million (approximately USD 6.9 million) in 2017, related to non-compliance with tax filing obligations. It appears therefore that tax filing compliance rates are generally high and that the RFB undertakes an active enforcement of penalties where taxpayers are non-compliant.

Inactive entities

69. The RFB has several legal bases under NI 1.634/2016 to identify entities that are inactive or otherwise non-compliant with tax filing and other obligations. It annually conducts risk assessments of various databases to identify inactive or non-compliant entities and applies appropriate measures if non-compliance is found. The risk assessments and compliance checks are carried out by the RFB's Co-ordinator-General for Collections (*Coordenação-Geral de Arrecadação e Cobrança – Codac*) and the Co-ordinator-General of Programming and Studies (*Coordenador-Geral de Programação e Estudos – Copes*, the risk and case selection area) at a national level and by local compliance units of the RFB dispersed throughout Brazil. The RFB draws on information about entities' interactions with the tax administration, staffing levels, financial movements, and electronic invoicing, and undertakes audits to verify compliance with filing and general tax obligations and apply appropriate sanctions.

70. Entities that are found to fit certain legal categories have their CNPJ cancelled, including those: that have not filed information returns in the past five years ("persistent omission"); that do not possess assets or operational capacity commensurate with their stated business purposes; whose business address cannot be verified; that are foreign entities whose Brazilian representative is not found at their registered address; or that are suspected of undertaking operations that are fictitious or aimed at concealing the identity of real beneficiaries ("factual inexistence").[26]

71. In recent years the RFB has intensified its efforts to enforce filing obligations and remove inactive or non-compliant entities from the active register. In comparison with approximately 6.8 million new CNPJ registrations in the review period (including approximately 5.19 million sole

with deadlines for filing records, for entities not using the actual profit regime, under Article 12 of Law 8.218/1991 and NI 1.422/2013.

26. Article 29 of NI 1.634/2016.

proprietorships and 919 297 companies, partnerships and private foundations), the RFB cancelled 940 468 registrations due to persistent omission, and 7 359 due to factual inexistence in the same review period. This demonstrates that Brazil has an active programme to enforce tax filing obligations, including the updating of ownership information, and deal with inactive entities.

72. Prior to cancellation, the RFB can declare a registration suspended or inapt, with consequences similar to the absence of a valid CNPJ that would result from cancellation. Suspension may occur, for instance, where irregularities or non-filing warranting cancellation are suspected. Inaptitude is declared when information returns are not filed for two consecutive years, the entity is non-responsive to correspondence or cannot be located at its address.[27] In the review period, the RFB suspended 804 391 registrations and declared 56 476 inapt. An entity can be re-established or have its suspension or inaptitude lifted upon request or *ex officio* only if it complies with all filing and other substantive requirements. The RFB notes that it keeps the information it holds on all legal entities and arrangements indefinitely following their suspension or cancellation.

73. Not holding a valid CNPJ is a serious matter. Brazil notes that it is required for all business dealings in the country, as most businesses are integrated with the RFB's electronic tax invoicing platform and a business counterpart would be unable to claim tax deductions for goods or services rendered by an entity with an inactive or cancelled CNPJ number issuing an invoice for such goods or services. It is not possible for an entity to engage in foreign trade operations (both in goods and services) without a valid CNPJ. As mentioned in the 2013 report (paragraph 44), Brazil has in place an integrated system to accurately record the export and import of all services into and out of Brazil ("Siscoserv"). A system is also in place for all exports and imports of physical goods ("Siscomex"). Siscoserv makes it mandatory for individuals and entities to provide information on all foreign transactions involving trade of services and other intangibles.[28] Under this process, any legal person or entity has to provide details of the party with whom they are transacting, the means by which the transaction took place (i.e. sale, lease or any conduct producing a flow in equity) and all rights created as a result, and the system cannot be used with an invalid CNPJ. An entity would also be prevented from using Siscomex and importing and exporting goods in and out of Brazil without a valid CNPJ. It is also not possible to open or operate a bank account without a valid CNPJ, as mentioned at paragraph 65. Brazil explained that when an entity's CNPJ is cancelled or suspended, this is automatically communicated to depository institutions, who must comply

27. Articles 39 and 43 of NI 1.634/2016.
28. Law 12.546/2011, Decree 7.708/2012 and Joint Ordinance 1.908/2012.

with legal prohibitions on operating the entity's account.[29] The foregoing circumstances make it virtually impossible for an entity with a suspended or cancelled CNPJ to engage in domestic or cross-border business dealings.

74. Brazil notes that its strike-off programme has been part of efforts to reconcile tax and trade registrations made before entity formation and registration became fully integrated from 2011 under the Simple Network. Under trade registration law,[30] an entity is considered inactive if it does not file any information with trade registrars in a period of ten years. Such cases are communicated to the RFB, which proceeds to verify inactivity under the tax law. Similarly the RFB communicates cancellations of registrations to the trade and civil registrars in the case of persistent omission and factual inexistence so that these can make corresponding changes to their own registers. Where entities are de-registered of their own initiative, the integration between civil, trade and tax registries now leads to the entity's civil or trade registration being cancelled and the entity dissolved in practice. In the case of *ex officio* suspensions or cancellation by the RFB, however, entities' changes in status for tax purposes do not automatically change their Brazilian registration status for trade or civil purposes under the current legal framework. A discussion is ongoing between the registries and the RFB with a view to harmonising the legal characterisation of entities under both laws.

75. In practice, these circumstances mean that while a domestic entity with a suspended or cancelled tax registration is largely impeded from operating in domestic and cross-border transactions, it can retain legal personality. While there are no current statistics available on entities in such circumstances, Brazil's 2010 FATF/GAFISUD MER includes statistics from Brazil's trade registries placing the total number of registered legal persons at around 5.84 million, a figure not dissimilar to current total registrations with the CNPJ registry. There could, nevertheless, be cases in which an entity continues to hold assets or conduct transactions entirely abroad without the need to engage with the Brazilian financial system, other Brazilian entities or with Brazilian authorities, and does not maintain or file up to date ownership and accounting information subject to supervision. An entity in such circumstances would remain subject to Brazilian taxation on a worldwide basis, including the application of foreign permanent establishment and controlled foreign company rules that tax undistributed profits. The RFB's supervision and enforcement programme would have a particular interest in ensuring suspended or cancelled entities are complying with their worldwide tax obligations and cannot benefit from non-compliance. Brazil notes that it has not come across entities in these circumstances in pratice in the course of enforcement activities and the issue did not arise in Brazil's EOI

29. BACEN Circular Letter 3.804/2016 and Article 9 of NI 1.634/2016.
30. Article 60 of Law 8.934/1994.

practice. Considering all these circumstances, the materiality of a potential gap therefore appears to be low. Nevertheless, Brazil should ensure that legal and beneficial ownership is available in respect of all legal entities and arrangements, and closely monitor the situation of entities with a suspended or cancelled tax registration to ensure that they comply with all relevant obligations to maintain and file up to date ownership information.

Beneficial ownership

Beneficial ownership register analysis

76. The RFB's NI 1.634/2016 reformed the rules governing the National Register of Legal Persons – CNPJ – and established it as a beneficial ownership register. Article 8 introduced a general requirement that business and other specified entities, including foreign entities with operations or assets in Brazil, provide beneficial ownership information to the RFB as part of the tax registration and filing requirements. Registered information must also include an entity's chain of legal ownership. There are exceptions for regulated and widely held entities.[31]

77. NI 1.634/2016 is a specific output of Brazil's cross-government Strategy Against Corruption and Money Laundering ("ENCCLA"), driven by the need to have beneficial ownership information available to ensure tax compliance, meet international transparency standards, and combat corruption, fraud and money laundering.

78. The general requirement of Article 8 applies to all business entities, which refers to any entity domiciled (that is, incorporated) in Brazil, or any entity or arrangement not incorporated in Brazil, that carries on an entrepreneurial activity in Brazil (Article 966 of the Civil Code). It also applies to: foreign-domiciled entities and arrangements that own assets,[32] including financial investments and equity interests in Brazilian entities, or carry out

31. The following types of entities, in broad terms, are exempted from the requirement to provide beneficial ownership information to the RFB (Article 8(3)): regulated public companies subject to shareholder reporting requirements and not established in a tax-favoured jurisdiction or subject to a privileged tax regime; certain governmental entities; regulated pension funds; and certain regulated or widely held investment funds. These entities must provide information on their representatives, controllers, administrators and directors, if any, and other relevant documents (but not beneficial ownership information) upon request.

32. Namely, immovable property, vehicles, maritime vessels, aircraft, bank accounts, investments in the financial or capital markets, and equity interests in legal persons constituted outside the capital markets.

certain operations, in Brazil;[33] investment funds formed under CVM rules; foreign banking institutions that carry out foreign exchange transactions with Brazilian banks; and joint ventures. Most entities or arrangements relevant for EOI purposes are therefore in scope, including domestic and foreign companies, partnerships and trusts. In specific situations, foreign entities are required to keep updated information themselves, or through their Brazilian-domiciled legal representative[34] or custodian, and provide it to the RFB upon request.[35] Non-profit foundations, both domestic and foreign, that do not act as fiduciary administrators and are not formed in low tax jurisdictions or subject to a tax-favoured regime are not required to maintain and provide beneficial ownership information provided that they are regulated and supervised by a relevant governmental authority. Accordingly, Brazil must rely on the AML/CFT framework as the source of information in respect of such non-profit entities in the hands of AML-covered entities.

79. "Beneficial owner" is defined as a natural person who ultimately, directly or indirectly, possesses, controls, or significantly influences the entity, or the natural person on whose behalf a transaction is conduced. "Significant influence" is presumed when a natural person possesses more than 25% of an entity's capital, directly or indirectly; or directly or indirectly holds, or exercises, dominance in corporate decision-making, and the power to elect the majority of an entity's administrators, even if not controlling it. The definition appears to be consistent with the 2016 Terms of Reference. Regarding the procedure to identify the beneficial owner(s) of a legal person, Brazil's legal framework does not appear to explicitly provide for the identification of the senior managing official of a legal person where a beneficial owner cannot otherwise be identified, although the managers, directors or administrators of any entity must always be reported. The definition applies equally to partnerships, which are treated as legal persons under Brazilian law.

80. Article 51 requires all entities registering on or after 1 July 2017 to provide beneficial ownership information within 90 days of registration and Brazil indicates that these entities have been providing the information in accordance with the law. 83 213 entities relevant to the review were registered in the three months following the commencement of the regime. The

33. Namely, external leasing, vessel chartering, equipment rental and simple leasing, or goods importation without foreign exchange coverage, destined to the payment of capital of Brazilian companies.

34. It is a requirement for all foreign entities registering in the CNPJ to appoint a Brazilian-domiciled legal representative with powers to administer the entity's rights and assets in Brazil and represent it before the RFB (Article 7(2) of NI 1.634/2016).

35. Namely, where the entity is excepted from the general requirement to file beneficial ownership information and as detailed at paragraph 84 below.

information for each beneficial owner is the name, date of birth, nationality, country of residence, and CPF where available. Information must be entered into National Collector through a new Final Beneficiaries Form, and an appointment is made for RFB officers to verify the supporting documentation. Brazil explains that where a foreign entity considers that it does not have beneficial owners as defined, it must inform the RFB of this so that the RFB can more easily select such entities for verification. Ultimately, the non-filing of beneficial owners will result in corrective action being taken, including the CNPJ registration being suspended.

81. Foreign entities must present supporting documentation by means of a "digital service dossier". This is an online tool that gathers documents authenticated via digital certificate of the entity or its representatives. Domestic entities' supporting documents must include shareholder tables with ownership percentages, and items such as corporate resolutions and meeting minutes in order to substantiate such entities' identification and reporting of beneficial owners with indirect ownership or control interests. If a reported beneficial owner's indirect ownership interest is apparent from the RFB's automatic cross-matching of entity ownership information already contained in its databases, the RFB may dispense with the requirement for the entity to provide supporting documents to substantiate its reported benefical owners who have indirect ownership interests. In other cases, supporting documents must be provided.

82. For entities registered before 1 July 2017, Article 52 requires foreign and domestic entities to provide beneficial ownership information if they make any change to their CNPJ file, and in any case no later than 31 December 2018. In the case of domestic entities, the obligation to provide information commenced from 23 October 2017, the date on which the RFB issued a further complementary instrument to NI 1.634/2016 – Declaratory Act 9/2017 of the Co-ordinator-General of Register Management (*Coordenador-Geral de Gestão de Cadastros – Cocad*) – as foreseen by the commencement rule of paragraph 2 of Article 52.

83. All entities must update their CNPJ file, including beneficial ownership information, by the last day of the month following the occurrence of any change (Article 24).

84. During the onsite visit, Brazil explained that the design, drafting and implementation of NI 1.634/2016 had a greater initial focus on *foreign* entities' provision of beneficial ownership information, as these were assessed by Brazilian regulators as posing greater risks in the areas of tax compliance, money-laundering, fraud and corruption. This explains the more detailed manner in which NI 1.634/2016 deals with foreign entities. Articles 19 to 21 contain the specific rules for foreign entities:

- Certain foreign entities[36] that are required to simultaneously register with CVM (for purposes of investing in Brazil's financial or capital market) only need to provide information on beneficial owners, administrators and other documents upon request, provided they do not possess significant influence over a domestic entity. Funds or collective investment entities must always provide information on the beneficial owners and administrators to the RFB within 90 days of registration (and other documents on upon request).
- Trusts, other fiduciary arrangements, companies that issue bearer shares and any other entity formed abroad must always provide, through their Brazilian-domiciled, legally appointed attorney or legal representative,[37] information on the administrators, beneficial owners, and other documents within 90 days of registration. The RFB advised that a trust would be required to provide its trustee(s), settlor(s), protector(s) and beneficiaries when annually filing the list of equity holders and administrators (*Quadro de Sócios e Administradores – QSA*), pursuant to Annex V and Article 19(IV) and Code 321-2 of Annex VI of NI 1.634/2016. The absence of a reference to trusts in the general definition of "beneficial owner" would not derogate from this obligation.
- Foreign entities that simultaneously register with BACEN for purposes of holding equity interests in Brazilian entities or undertaking certain operations in Brazil must always provide information on the beneficial owners, and other information,[38] within 90 days of registration.
- All other foreign entities must provide information on the beneficial owners within 90 days of registration.

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36. These are: (a) commercial banks, investment banks, savings and loan associations, global custody entities and similar institutions, regulated and supervised by a competent government authority; (b) insurance companies regulated and supervised by a competent governmental authority; (c) corporations or entities whose purpose is to distribute the issuance of securities, or act as intermediaries in the trading of securities, acting on their own account, registered and regulated by an entity recognised by CVM; and (d) any entity that has as its object the application of resources in the financial and capital markets, in which exclusively natural and legal persons resident and domiciled abroad participate, provided that it is registered and regulated by an entity recognised by the CVM or the portfolio management is made of a discretionary professional administrator registered and regulated by an entity recognised by the CVM.
37. Article 7(1) of NI 1.634/2016.
38. Documents such as the act of incorporation, the identification document and power of attorney of the entity's foreign and Brazilian-domiciled legal representatives, and the list of shareholders.

Sanctions, supervision and enforcement

85. Under Article 9 of NI 1.634/2016, foreign entities that do not provide information and keep it updated will have their CNPJ suspended and are prevented from transacting with banking institutions, including operating bank accounts, making financial investments and obtaining loans. The RFB immediately communicates CNPJ suspensions to BACEN, CVM, trade registrars, and banks. Banks are required to have customers' CNPJ to operate accounts, and to freeze these if a suspension is communicated. During the onsite visit, the Brazilian Banking Federation (*Federação Brasileira de Bancos – Febraban*) confirmed that banks do always freeze accounts when a CNPJ suspension is communicated by the RFB. Brazil notes that entities are largely impeded from operating in Brazil without a valid CNPJ, as discussed at paragraph 73, and a local bank account is a practical necessity. There is currently no explicit and clearly applicable sanction for domestic entities that fail to provide updated beneficial ownership information. It is unclear whether they would be penalised, for instance, under the general provisions for non-compliance with tax filing obligations, or under NI 1.634/2016 itself. Brazil should ensure that appropriate sanctions are available to be applied to non-compliant domestic entities.

86. The RFB is developing a supervision and enforcement programme to ensure compliance with its beneficial ownership information system. It explained that it will initially undertake risk assessments and identify non-filers to carry out targeted compliance actions, including CNPJ cancellations or suspensions. The RFB anticipates that where the beneficial ownership information of an entity is not complete, it would also pursue the entities in the ownership chain that may not have provided the necessary information and paralyse their respective registration.

87. Brazil should fully develop and implement this programme to ensure beneficial ownership information is available in practice in all cases. Moreover, Brazil should ensure that there are appropriate explicit or clearly applicable penalties or sanctions for all domestic entities.

AML/CFT framework analysis

88. As the beneficial ownership register commenced on 1 July 2017, during most of the review period information would need to be sourced from AML covered entities or the RFB's information databases. Beneficial ownership information was in fact always sourced from such databases, with Brazil providing information in at least 11 instances of EOI requests (according to input received from three peers, as discussed in paragraph 36) and it was not necessary to seek it from an AML covered entity. Peers were satisfied with the responses.

89. As explained in the overview, the AML/CFT regime comprises Law 9.613/1998 and detailed binding instruments issued by various supervisory authorities that set out the CDD rules on the identification and keeping of records of the beneficial owners of customers.[39] The instruments generally provide that the information must include the name, nationality, date of birth, national identification document and tax identification number of the beneficial owner. They also provide that covered entities must keep the information up to date. Client records must be refreshed at least yearly in the case of entities regulated by BACEN, every two years in the case of entities regulated by CVM,[40] or at the time of conducting a client transaction in the case of certain non-financial service providers.[41] All relevant financial institution and non-financial sectors are covered and subject to supervision, with the exception of lawyers.

90. While Brazil considers lawyers in scope of Law 9.613/1998 (under Art. 9(XIV)), the Advocates' Order of Brazil *(Ordem dos Advogados Brasileiros – OAB)* has not issued an AML instrument and it is understood that lawyers' CDD and suspicious transaction reporting obligations are currently under consideration by the OAB. Consequently, lawyers would fall under the ambit of COAF as the residual regulator, but it is understood that while COAF has issued an AML/CFT instrument residually applicable to entity categories not otherwise specifically supervised or covered, lawyers do not currently apply the AML/CFT law and COAF does not supervise and enforce their compliance in practice. Brazilian law requires the incorporation documents of a legal person to be verified by a lawyer before the entity is admitted to registration,[42] but there does not appear to be a legal requirement for an entity to use the services of lawyers in their operation. Foreign entities or arrangements undertaking financial or direct investments, doing business, or acquiring assets in Brazil engage a lawyer to the extent that they are required to appoint a Brazilian legal representative or attorney, and chose to appoint a lawyer to that end. In such case, a lawyer as a representative would be covered by AML CDD obligations requiring the identification of beneficial owners. Furthermore, foreign entities and arrangements are required to

39. See for example Article 2(I)(a) of BACEN Circular 3.461/2009, CVM NI 301/1999, Annex I, Article 12 of SUSEP Circular 445/2012, and Article 3 of CFC Resolution 1.530/2017.

40. Article 2(5) of BACEN Circular 3.461/2009 and Article 3(2) of CVM NI 301/1999.

41. E.g. Article 8 of COAF Resolution 21/2012 in the case of factoring companies, Article 5 of COAF Resolutions 23 and 24/2012 in the case of jewellery, precious stones and metals, antiquities, etc. and high value goods dealers, and Article 5 of COAF Resolution 24/2012 in the case of providers of advisory, consultancy, accountancy, counselling, or assistance services.

42. Article 1(2) of the Lawyers' Statute, Law 8.906/1994.

seek governmental authorisations and BACEN, CVM and RFB registrations before undertaking any relevant operation in Brazil, and are subject to the new beneficial ownership register filing. This new system covers all legal entities or arrangements that would otherwise use the services of a Brazilian lawyer. The AML/CFT gap in respect of lawyers did not impede EOI during the review period, as information specifically held by lawyers was not requested and beneficial ownership information was obtained from other sources in all cases. The materiality of the gap in the review period therefore does not appear significant. Nevertheless, Brazil should monitor whether the situation of lawyers under the AML/CFT law affects the exchange of beneficial ownership information held by lawyers in the future, and enforce its law accordingly.

91. Until NI 1.634/2016 was issued on 6 May 2016, it appears that there was no wide-ranging legal definition of "beneficial owner" in Brazil – only with respect to institutions under the supervision of BACEN. Article 2(2) of BACEN Circular Letter 3.461/2009 issued on 23 July 2009, which establishes the AML/CFT regime for financial institutions supervised by BACEN (banks, leasing, loan and mortgage companies, credit co-operatives, and non-bank financial institutions that operate with non-monetary assets) requires them to collect and maintain information on entity customers that includes the "natural persons authorised to represent it [the entity] as well as the chain of company ownership until the natural person characterised as the final beneficiary is reached." Article 5 of BACEN Circular Letter 3.430/2010, issued on 11 February 2010, clarifies that for the purposes of compliance with Article 2(2) of Circular Letter 3.461/2009, "information should be gathered that permits knowing the structure of ownership and control, identifying the chain of corporate control up until the natural person(s) who has(have), in the final instance, control over the legal entity client. Once the structure of ownership and control is known, customer information must be collected and kept up to date regarding those persons who hold power to induce, influence, use or benefit from the legal entity client for the practice of money laundering or terrorist financing." Article 2(5) of Circular Letter 3.461/2009 and Article 6 of Circular Letter 3.430/2010 provide that covered entities should undertake verification tests in relation to the adequacy of beneficial ownership information maintained at least yearly. Verification tests should be determined according to the profile of an entiy's operations and utilising a risk-based approach that permits the continuous improvement of such verification tests and of customer information maintained.

92. The Brazilian Banking Federation, Febraban, issues formal guidelines that consolidate best practices, national and international, on AML/CFT to which its members subscribe under a self-regulation system, SARB

Norm 11/2013.[43] It requires information to be collected, maintained and continuously updated regarding the beneficial owners of customers and that records of all services and financial transactions be kept. Article 26 defines a beneficial owner as "a natural person that possesses or controls a client and/or a person in whose name a transaction is conducted, as well as a natural person that exercises effective control over a legal person." Article 27 directs institutions to "identify 100% of natural persons participating, directly or indirectly, in the ownership chain, with the collection of full name, CPF number, and participation percentage, and from these data evaluate risks and the need to obtain further data." This provision appears to go beyond the international standard in requiring the identification of all natural persons in the ownership chain.

93. BACEN rules combined with Febraban's industry self-regulation guidelines therefore seem to require banking institutions to identify the natural persons who have an ultimate controlling ownership interest in a legal person, or exercise control over a legal person through other means. The rules cover a large part of the population of AML covered entities. Brazil noted that most entities, domestic and foreign, use a Brazilian bank account to operate or participate in Brazil's economic environment, including making investments in the financial or capital markets. While this circumstance would tend to ensure that beneficial ownership information was available to a large extent in the hands of Brazilian banks, it could not be verified and there appears to be no general requirement for all legal entities or arrangements to maintain a Brazilian bank account.

94. BACEN's definition and identification method of beneficial owners, while requiring the identification and verification of natural persons with an ultimate controlling ownership interest in, or control over the entity through certain other means, does not clearly incorporate "cascading measures" for the identification of beneficial owners of legal persons. Although there is a requirement to identify natural persons authorised to represent an entity, it is unclear whether the senior managing official would always need to be identified in cases where a beneficial owner cannot be via the preceding identification steps required under the rules. In addition, the standard's requirements with respect to the identification and verification of the beneficial owners of trusts and other types of legal arrangements do not seem to form part of explicit regulation or guidance for entities regulated by BACEN or otherwise.

43. System of Banking Auto-Regulation (*Sistema de Autorregulação Bancária – SARB*) Norm 11/2013. Banks sign declarations that they will abide by the Norm as part of their membership obligations. Brazil notes banks take a strict approach to compliance with it in view of the reputational damage that may be sustained if BACEN finds non-compliance.

95. BACEN and other AML/CFT supervisors note that AML covered entities have in practice followed the FATF Recommendations, including their definition and method of identification of beneficial owners (including of trusts) since the enactment of Brazil's overall regime. Brazil considers the new domestic definition under RFB NI 1.634/2016 and BACEN's Circular Letters to be equivalent in scope to the definition of beneficial owner required by the standard. Brazilian regulators note that they have not identified an instance of AML covered entities applying a definition inconsistent with the standard as a result of their compliance activities. Currently, the definition in NI 1.634/2016 is not explicitly linked to the AML/CFT regime and therefore cannot be said to have been legally relevant during the review period for purposes of Brazil's various AML/CFT regimes (apart from BACEN rules), in which a clear definition is not provided.

96. In general terms, the AML/CFT framework envisages that CDD procedures, including the identification of beneficial owners, must be performed by the financial or non-financial entity with the relationship with, or providing services to, the customer. The framework does not seem to provide for a generally applicable introduced business rule. Article 4(6) of BACEN Circular Letter 3.461/2009 permits, in the case of politically exposed person (PEP) CDD in respect of foreign customers that are also customers of a foreign institution supervised by a governmental entity akin to BACEN, that the PEP CDD undertaken by the foreign institution be relied upon provided that BACEN's access to information on the relevant customer file and the procedures undertaken is ensured. Article 3-A(1) of CVM NI 301/1999 permits entities supervised by CVM to rely, in the case of foreign customers, on CDD procedures performed by a foreign institution that is supervised by a governmental entity akin to CVM, provided that CVM's access to information on the relevant customer file and the procedures undertaken is ensured. Finally, Article 8(8) of SUSEP Circular Letter 445/2012 seems to permit entities supervised by SUSEP to enter into agreements or contracts with other financial institutions or entities that possess customer information and documentation databases to assist in the fulfilment of their obligations under the instrument. However, supervised entities remain responsible for their compliance with the instrument and must ensure that customer files, including beneficial ownership information, are timely presented to SUSEP upon request.

97. While the above issues in relation to the AML/CFT framework did not impede the exchange of satisfactory beneficial ownership information in the review period, they raise some uncertainty as to whether information was available in respect of all relevant legal entities and arrangements in line with the standard in all cases.

Summary of requirements with respect to beneficial ownership

98. The following table shows a summary of the legal requirements to maintain beneficial ownership information in respect of all relevant legal entities and arrangements:

Legislation regulating coverage of beneficial ownership of legal entities and arrangements

Type	Commercial, civil or public law	Tax law	AML/CFT law
Limited liability companies	None	All	Most
Joint stock companies	None	All	Most
Partnerships limited by shares	None	All	Most
EIRELI	None	All	All
Foreign companies and partnerships	None	All	Most
Unincorporated joint venture	None	All	Most
Civil law partnership	None	All	Most
General partnership	None	All	Most
Limited partnership	None	All	Most
Co-operative partnership	None	All	Most
Trusts (foreign)	None	All	Unclear
Private foundations	None	None	Most
Public foundations	None	None	Most

AML/CFT supervision and enforcement

99. The various regulators have AML/CFT supervision programmes in place that include verifying compliance with and enforcing the obligations to identify and keep updated records of beneficial owners. BACEN uses a risk based method to continuously monitor high risk financial institutions, and an offsite inspection framework for lower risk entities. A total of 389 compliance actions were undertaken between 2014 and 2017: 269 remote inspections of policies and procedures, the remainder consisting of continuous monitoring through dedicated staff and onsite inspections to check the application in practice. BACEN has issued more than 313 "inspection letters" since it initiated supervision in 2012, requiring varying degrees of corrective action. It has a large array of sanctions at its disposal which it can tailor to the nature of the breach. These include fines, limiting banks' operations, cancelling licences, disqualifying directors or managers from roles within financial institutions for up to 10 years, and applying special supervision measures. 30 pecuniary fines have been approved since 2015, totalling BRL 123 million (approximately USD 33.1 million).

100. CVM follows a system of risk-based supervision pursuant to National Monetary Resolution 3.427/2006 covering public companies, investment funds, market intermediaries (e.g. brokers) in the exchange and OTC markets, independent auditors and public offerings. Pursuant to CVM NI 461/2007, CVM monitors the securities market both directly, and indirectly through a self-regulation organisation (SRO), the Brazilian stock exchange's market supervision department. The SRO assists the CVM in supervising compliance with rules and standards, including AML/CFT rules. CVM approves the department's supervision plan and there is monthly reporting to CVM of misconduct identified and evidence collected, audits concluded and their findings, and the results of administrative proceedings. During the onsite visit Brazil noted that the supervision activities check supervised entities' AML/CFT policies and customer files, to check conformity with applicable rules. The SRO makes suspicious transaction reports to COAF. When the results of the audits identify any wrongdoing, the SRO must initiate an administrative enforcement procedure. The CVM supervises such procedures from the beginning to the decision-making phase and evaluates SRO decisions taking into consideration similar cases decided by the CVM itself. The SRO can issue guidance, reprimands or disciplinary measures (such as letters of recommendation, letters of censure or administrative proceedings, e.g. fines). The enforcement of AML/CFT obligations has always been included in supervision activities but starting in 2017-18 it is being treated as a specific thematic action. Between 2014 and 2017, the SRO undertook the following enforcement procedures relating to AML/CFT rules in relation to a population of approximately 70 supervised entities: in 2014, 31 procedures, all of which resulted in a warning; in 2015, 12 procedures resulting in the issuance of fines; in 2016, 23 procedures resulting in one fine; and in 2017, 14 procedures not yet tabled for decision. In the same period the CVM itself: in 2014, conducted two inspections both of which concluded with a warning letter; and in 2017, three inspections, which have not yet been finalised.

101. COAF undertook 741 compliance procedures in 2017, resulting in the opening of 143 punitive processes and the application of BRL 1.1 million (approximately USD 296 000) in fines, mainly in the factoring, jewellery and luxury goods sectors.

102. The AML instruments require covered entities to initiate a business relationship, or continue an existing one, only if CDD measures are observed.[44] They also state that entities must pay special attention to clients and operations in respect of which it is "not possible to identify the beneficial owner," which would require a consideration of whether it is appropriate to initiate or continue the customer relationship, as well as enhanced monitoring

44. Notably, BACEN Circular 3.461/2009, Article 5, and CVM Instruction 301/1999, Article 3-A(2).

and suspicious transaction reports. AML/CFT supervisors noted they have tolerated some situations in which an entity continued a business relationship despite not being able to identify a beneficial owner. It was envisaged that further intelligence could be obtained for investigative purposes, via suspicious transaction reports. While such approach may be suitable for investigative purposes, it is unclear whether it may have resulted in beneficial ownership information not being available for EOI purposes in all cases in line with the standard, though this remained untested.

Conclusion

103. Brazil's beneficial ownership register, on which it would principally rely going forward for the availability of beneficial ownership information, is comprehensive in scope but has only recently been introduced. A supervision and enforcement programme is in its early stages of development. Brazil should establish clear and appropriate sanctions for domestic entities that fail to file beneficial ownership information, fully develop its supervision and enforcement programme as soon as possible, and monitor its effectiveness on an ongoing basis to ensure that beneficial ownership information is available in line with the standard in all cases.

104. The AML/CFT regime seems largely consistent with international standards, and regulators exercise a level of supervision and enforcement that appears adequate in ensuring that entities comply with their obligations to maintain beneficial ownership information on clients. However, gaps in the legal and enforcement frameworks cast doubt on whether beneficial ownership information was available in all cases, albeit that they do not appear to have impeded effective EOI in the review period.

A.2. Accounting records

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

105. The 2013 report discussed the comprehensive obligations imposed under civil and tax law which ensure reliable accounting records are maintained for all relevant legal entities and arrangements. Brazil reports some changes since the last review relating to thresholds for the authentication and filing of accounting records with the RFB. These do not materially alter the availability of accounting records and Brazil remains Compliant.

106. Brazil reports that during the current review period it received 22 requests for accounting information. From the perspective of peers' counting methods this amounted to over 70 cases in which Brazil was requested

and able to provide accounting information to their satisfaction, sourced from the RFB's taxpayer databases. The exceptions related to four cases in which the information has had to be sought by local audit units and therefore considerable delays were, and continue, to be experienced due to the staffing and prioritisation issues at the level of local compliance units as discussed in section C.5.

107. The updated table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

A.2.1. General requirements

108. As discussed in the 2013 report, the Standard is met by a combination of civil and tax law requirements. The Civil Code requires all business entities (covering all companies and partnerships conducting business activities, and holding companies) to maintain comprehensive accounting records. This requirement is equally applicable to foreign entities with a branch, subsidiary or office in Brazil.[45] Co-operatives and foundations are required to follow the general accounting requirements applicable to business entities and meet other specific obligations.[46] Entities that carry on intellectual, scientific, literary or artistic activities (that is, non-business activities) are required to maintain reliable accounting records under tax law.

109. Regardless of the applicable accounting regime, under tax law all private legal entities must maintain ownership and accounting information

45. Articles 1179, 1184, 1186 and 1195 of the Civil Code.
46. CFC Resolutions 920/2001 (item 10.8.1.3) and 837/99 (item 10.4.1.2).

on the assets, transactions and activities of the entity, or which concern acts or operations that modify or may modify their financial or asset position for at least five years from the date taxes become due or payable.[47] The requirements cover foreign trusts with investments or assets in Brazil or a Brazilian resident trustee, as discussed in the 2013 report (paragraphs 176 and 177). More generally, permanent establishments of foreign entities or arrangements in Brazil are taxed as, and subject to the same rules applicable to, ordinary resident taxpayers. Non-residents without a permanent establishment are subject to final withholding taxes. A Brazilian establishment or appointed representative of a foreign entity must keep accounting records as required for domestic entities.

110. Entities have different accounting obligations depending on whether they are subject to the actual profit regime, the assumed profit regime, or the "Simple National" simplified regime for small and micro companies directly held by individuals (and forbidden to SAs, foreign or foreign-owned entities, and non-business entities). These regimes are discussed in detail in the 2013 report (paragraphs 171 to 180).

111. Brazil's Electronic Public Bookkeeping System or SPED consists of an electronic database maintained by the RFB containing a large amount of commercial and tax accounting information from, and records on tax assessments and transactions performed by, taxpayers. Filing accounting information into the SPED database through the ECF or other does not exempt taxpayers from the general record keeping obligations.[48] Legal entities and arrangements taxed under the actual profit regime, the assumed profit regime, the arbitrated profit regime and those that are tax immune and exempt must file accounting information into the SPED in accordance withn RFB Normative Instruction 1.422/2013. Taxpayers are increasingly required to submit such electronic files, which means that the RFB has large amounts of information at its disposal. Brazil notes that compliance is generally high among taxpayers required to file information with SPED.

112. Since the 2013 review, Brazil made some adjustments to its Digital Accounting Bookkeeping (*Escrituração Contábil Digital – ECD*) system, dispensing authentication of records for entities not subject to registration at trade registrars, and expanding the range of entities that file electronic records on a non-mandatory basis. It also dispensed authentication by trade registrars where records are submitted through SPED for certain entities.

47. Article 4 of Decree-Law 486/1969, Articles 173, 174, 195 and 197 of the National Tax Code, Articles 26 and 27 of Complementary Law 123/2006, Article 14 of Law 8.218/1991, Article 62 of Law 8.383/1991, Article 45 of Law 8.981/1995, Articles 253, 264 and 527 of RIR/1999, and Article 27 of NI 983/2009.

48. Article 2(2) of Decree 6.022/2007.

These changes were consolidated in RFB NI 1.774 of 22 December 2017 which currently governs the ECD. The Instruction expanded the obligation to file cash book statements for entities under the presumed profit regime and revoked the filing exemption for tax immune and exempt entities.

113. Entities and their accountants are jointly liable for losses and damages caused by non-compliance with the record keeping requirements.[49] Accountants could have their professional licences suspended for fixed periods or indefinitely depending on the seriousness of the violation.[50] Including false accounting information in records may be qualified as a crime of fraud, punishable with imprisonment between one and five years and a fine.[51] Under tax law, taxpayers who fail to keep reliable accounting records that correctly explain their transactions may be punished with a fine of up to 150% of the taxes due in view of this inability to explain their transactions. In addition, taxpayers who fail to keep reliable accounting records for commercial and tax purposes may have their profits arbitrated by the RFB, and be subject to a tax rate 20% higher than the normal rate (although the RFB ordinarily first seeks to ascertain the tax liability using all inspection tools available before applying such penalty). Tax exempt or immune persons who fail to comply with their record keeping obligations are punished with suspension or termination of their special tax regime, have their profits arbitrated and are subject to the same penalties. In addition to the penalties for the lack of record keeping, taxpayers who are required to submit electronic files are subject to fines ranging from BRL 5 000 to 1 500 (approximately USD 1346 to 404) per calendar month of infraction, or up to 3% of the value of commercial transactions or financial operations, if they fail to comply with this obligation pursuant to changes introduced by Law 12.873/2013.

A.2.2. Underlying documentation

114. In addition to explaining all transactions, enabling the financial position of an entity to be determined, and allowing for financial statements to be prepared, accounting records should include underlying documentation and should reflect details of all sums of money received and expended, all sales, purchases and other transactions, and the entity's assets and liabilities. As explained in the 2013 report, CFC Resolution 1.330/2011 of the Federal Accounting Council clarifies that the general accounting record-keeping requirements cover underlying documents, including all documents, books, papers, records, invoices, contracts and other internal or external documents that form part of the accounting records (item 26).

49. Articles 1177 and 1178 of the Civil Code.
50. Article 27 of Law 12.249/2001.
51. Articles 171, 298, 299 and 304 of the Penal Code.

115. Accounting records and underlying documents must be kept as long as legal actions that may be pertinent have not prescribed by statute of limitations: 10 years as a general rule under civil law, and five years from the date in which taxes become due and payable under tax law.[52] All legal entities and arrangements filing accounting information via SPED must hold the accounting records in Brazil. As noted above, SPED is also a repository that stores such information. Records on dissolved entities are kept by the RFB and entities themselves for at least five years pursuant to the statute of limitations and also for five years under tax law.

Availability of accounting information in practice

116. The availability of accounting records in practice was analysed in paragraphs 181 to 186 of the 2013 report and Brazil's compliance approach was found to be effective in ensuring it. The RFB continues to supervise all legal entities and arrangements' compliance with accounting record-keeping and filing obligations, and all are subject to the same monitoring and inspection procedures. Brazil notes compliance activities are undertaken by regional offices which routinely audit entities as part of their duties and verify and utilise accounting information in the course of audits, with the enforcement of its appropriate and timely filing and maintenance. Foreign entities, including trusts, are subject to enforcement procedures and Brazil notes it has not encountered cases where their obligations have been breached.

117. The tax compliance procedures and fines applied in respect of legal entities, discussed at paragraphs 66 to 68 above, cover both ownership and accounting information keeping obligations and Brazil notes that compliance with accounting record keeping obligations is generally high. Where non-compliance was found, Brazil has applied fines, as mentioned in the same paragraphs. Additionally, Brazil reports that over the 2014 to 2017 period there were 493 compliance procedures – 103 in 2014, 113 in 2015, 144 in 2016, and 133 in 2017 – in which an arbitration of profits by the RFB was involved, meaning cases where an entity's tax liability may have needed to be arbitrated due to a failure to properly file or maintain accounting records (with an increased tax rate applied to the taxable income arbitrated). In these cases liabilities worth BRL 1.357 billion (approximately USD 365.25 million), inclusive of the penalty tax rate, were raised. This further demonstrates Brazil's active enforcement of accounting record keeping and filing obligations.

118. As discussed at paragraphs 73 to 75, legal entities and arrangements that have their CNPJ tax registration suspended or cancelled by the RFB do

52. Articles 205, 206, 1179 and 1194 of the Civil Code, and Article 174 of the National Tax Code.

not automatically lose their trade or civil registration and legal personality. There could be circumstances in which, despite the serious restrictions discussed in relation to Brazilian and cross-border dealings, entities remain in existence with operations entirely abroad and their meeting of information-keeping and filing obligations, including of accounting information, remain unsupervised. Although this potential gap appears to be of low materiality, Brazil should ensure that accounting information is available in respect of all legal entities and arrangements and monitor the situation of entities with a suspended or cancelled tax registration to ensure that they comply with all relevant accounting record-keeping and filing obligations.

A.3 Banking Information

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

119. The 2013 report did not raise any concerns with respect to the availability of banking information in Brazil. Element A.3 was determined to be "in place" and rated Compliant. Banks and other financial institutions in Brazil are required to keep records of ownership and of all financial transactions of customers and provide information to the RFB on request and automatically.

120. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership information) in respect of account holders be available. In this regard the AML/CFT legal framework and BACEN's supervision programme tend to ensure that information is available in practice. As discussed in section A.1, however, possible gaps in the AML/CFT legal framework and its practical enforcement raise some concerns that beneficial ownership information in respect of bank accounts may not have been available in the hands of banks in all cases. There were no cases in which Brazil was specifically asked to obtain such information (e.g. on an entity customer of a bank) and therefore the concern remains untested. This issue would likely be ameliorated into the future due to the fact that all relevant entities and arrangements are required to file beneficial ownership information with the RFB's register as part of their obligations to maintain a valid CNPJ (TIN) and that a valid CNPJ is necessary to open and operate a bank account in Brazil (and the RFB automatically communicates non-compliant CNPJs to financial institutions, as discussed above). Nevertheless, the concern remains in relation to the review period during most of which the beneficial ownership register was not effective.

121. The availability of general banking information is confirmed in Brazil's EOI practice during the review period, apart from certain delays, for

operational reasons, which leave some bank information still outstanding: Brazil reports that 17 requests for banking information were received and it was able to provide it directly from its databases, apart from a few cases in which local compliance units are delayed in actioning the requests (for operational reasons discussed in section C.5). From the perspective of eight peers' counting methods this amounted to around 35 cases in which Brazil was able to provide banking information to their satisfaction.

122. The updated table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework	The AML/CFT legal framework does not explicitly provide for a beneficial owner identification method in respect of legal persons and arrangements fully in line with the standard. This may lead to beneficial ownership information in respect of bank accounts not being available in line with the standard in all cases, although this remained untested in the review period.	Brazil should take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all account holders.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Largely Compliant		

A.3.1. Record-keeping requirements

123. AML/CFT, tax and licensing rules require banks and other financial institutions to: conduct CDD procedures, including identifying legal and beneficial owners, when opening or making alterations to accounts; confirm the currency of client information continuously and at least yearly; keep records of all financial transactions performed by account holders; and provide this

information to the RFB upon request.[53] They are also required to identify customers when carrying out occasional transactions or wire transfers of a value equal to or exceeding BRL 1 000 (approximately USD 245). CDD information must be verified on the basis of reliable source documents and it is mandatory to have valid CNPJ or CPF numbers issued by the RFB to open and operate a bank account.

124. For natural persons, including beneficial owners, the information must include the name, nationality, date and place of birth, profession, identification document, CPF number and the person's attorney or representative, if applicable. For legal persons, the name, activity, form, information on the administrators or representatives, CNPJ number, and details of registered incorporation documents. The 2013 report (paragraphs 188 to 191) and section A.1 discuss the keeping of banking information in Brazil in more detail.

125. CDD and transaction records must be maintained for five to 10 years from the termination of business relations or the conclusion of a transaction depending on the type of information concerned, and foreign exchange agents must keep transaction records for five years.[54] Brazil's "e-Financial" reporting regime (*e-Financeira*) requires banks to file identity, global debits and credits, and monthly account balance information with the RFB through a web application, on a bi-annual basis, when the total monthly amounts are superior to BRL 2 000 (approximately USD 538) in the case of individuals or BRL 6 000 (approximately USD 1 615) in the case of entities.

126. With respect to beneficial ownership information on bank accounts, while Law 9.613/2009 and BACEN's circular letters establish comprehensive obligations for banks to identify, verify and continuously update records on the beneficial owners of accounts and transactions and operations, some uncertainty as to whether the "cascading approach" in the FATF Recommendations is followed and regarding the identification of beneficial owners of trusts, as discussed at paragraphs 94 to 97, of this report raise some doubt as to whether information was available fully in line with the standard in respect of all Brazilian bank accounts during the review period.

Enforcement provisions to ensure the availability of banking information

127. In 2017 there were 173 banks, including commercial, savings, development, investment and exchange banks, and 1078 credit co-operatives, and in 2016 there were 161 million bank customers (including entities and

53. Articles 1 to 7 of Complementary Law 105/2001, BACEN Circular Letter 3.461/2009, Article 197 of the National Tax Code, Article 2(2) of Decree 4.489 and Febraban SARB Norm 11/2013.

54. Article 11 of BACEN Circular Letter 3.461/2009 and Circular Letter 3.401/2008.

individuals) in Brazil. The following table provides statistics on the numbers of banking institutions in the main categories during the review period:

Statistics on Brazilian banks

Types of banks	2015	2016	2017
Multiple banks	130	132	133
Commercial banks, including Brazilian branches of foreign banks	22	21	21
Savings banks	1	1	1
Development banks	4	4	4
Investment banks	14	13	14
Credit co-operatives	1 163	1 113	1 078

128. BACEN undertakes ongoing surveillance and comprehensive monitoring of banking institutions through its Conduct Supervision Department (*Decon*), of 78 staff, established in 2012, to ensure they are complying with licensing requirements and AML/CFT rules.[55] Decon comprises two departments dedicated to prudential supervision in banking and non-banking segments and one department for conduct supervision, each of them provided with the same level of institutional support. Conduct issues are defined as AML/CFT issues and relationships with clients in relation to transparency, disclosure and suitability requirements, products and services fees, credit and wage portability. The conduct department has three divisions of 48 staff in total dealing exclusively with AML/CFT supervision. At least one supervisor is in charge of continuously assessing the corporate governance, risk management and compliance of each major Brazilian bank in terms of AML/CFT risks. 23 banks have dedicated supervisors. This approach provides BACEN with a continuously updated view of each bank's risk profile and allows it to require that deficiencies are addressed in a timely manner.

129. BACEN regularly undertakes onsite and offsite inspections, issues warning letters, and applies pecuniary fines. The supervision and enforcement programme is detailed above at paragraph 99 and is therefore not repeated in this section. These actions should ensure that banking information is available in practice. As discussed in paragraph 102, there is some doubt, however, as to whether the practical enforcement of BACEN's rules in relation to the discontinuation of a customer relationship where a beneficial owner cannot be identified may have resulted in beneficial ownership information not being available in line with the standard in all cases.

130. During the onsite visit BACEN and Febraban explained that Brazil has a strong engagement and outreach approach in regard to AML/CFT

55. Pursuant to Laws 4.595/1964 and 9.613/1998 and Circular Letter 3.461/2009.

implementation by banks. It was noted that banks are highly risk averse when it comes to matters of compliance with AML/CFT rules and self-regulatory guidance and there is a good level of compliance. Febraban has an AML commission that organises an annual congress on AML/CTF issues and runs regular courses and training programmes.

Part B: Access to information

131. Effective exchange of information requires that a jurisdiction's competent authority has adequate powers to access and obtain a variety of information that may be relevant to a tax inquiry. Jurisdictions should also have in place effective enforcement mechanisms to compel production of information. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from all relevant persons within their territorial jurisdiction and whether rights and safeguards in place are compatible with effective EOI.

B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

132. The 2013 report found the RFB has large amounts of information at its disposal and broad access powers to obtain information for EOI purposes, including measures to compel the production of such information. These powers are usable regardless from whom the information is sought and how the holder came into possession or control of it.

133. A risk of successful court challenges to the RFB's access to detailed information from financial institutions was dispelled by a Supreme Federal Court decision of 2016. This sufficiently addresses the in-text monitoring recommendation in the 2013 report. Uncertainty remains about the scope of attorney-client privilege being potentially broader than permitted by the standard. In light of Brazil's assurances, it is not considered essential that it clarifies the matter in the law, and a monitoring recommendation is made.

134. The updated table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework	There are some uncertainties as to whether the attorney-client privilege may unduly limit access to information acquired by attorneys.	Brazil should continue to monitor the application of the scope of the attorney-client privilege in practice to ensure consistency with the standard and that it does not unduly limit EOI.
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

Ownership, identity, bank and accounting information (B.1.1 and B.1.2)

135. The 2013 report analysed in detail the procedures applied in the case of obtaining information generally, and more specific rules for obtaining bank and other information. Generally, the same rules continue to apply: Articles 194, 195, 197 and 199 of the National Tax Code confer the RFB with general access powers under which it can issue notices to produce information or summon any person to show books and documents, or to provide any information or clarification required in the exercise of its duties, within a stipulated period of time.[56] Ownership and identity, accounting and banking information are covered, and both for domestic and EOI purposes.[57] In the case of search and seizure of documents in private residences of individuals, the RFB must first obtain a court order.[58]

136. The RFB has large amounts of information at its disposal, including ownership and accounting information submitted through annual tax filing

56. See also Article 7 of Law 2.354/1954, Article 123 of Law 5.844/1943, Article 2 of Decree-Law 1.718/1979 and Articles 927 and 928 of RIR/1999.
57. Article 199 of the National Tax Code.
58. Article 5(XI) of the Federal Constitution.

and banking information received through the e-Financial reporting. This allowed it to source information for EOI purposes from its own databases in all but three of the 210 EOI requests received during the review period. The EOI Unit sourced the information directly in around 20% of cases, the remainder being sourced by Copes or local compliance units as these cases required a more complex inquiry. Information only needed to be sourced from information holders outside the RFB in three cases.

Accessing information generally

137. As discussed in section C.5, the International Relations Advisory (*Assessoria de Relações Internacionais – Asain*) co-ordinates EOI activities through its EOI Unit, which either directly obtains information from RFB databases and furnishes it to the requesting partner[59] or, where a certain degree of analysis or inquiry into taxpayer files or engaging a third party are required, asks Copes and/or local compliance units to do so. Where information is sought from another government agency, the taxpayer or a third party, a formal notice (*ofício*) is issued usually stipulating 20 days as the response time. The RFB can also summon persons to provide information or documents. There is no special process to access beneficial ownership information.

Accessing bank information

138. Article 6 of Complementary Law 105/2001, as further regulated by presidential Decree 3.724/2001,[60] allows the RFB direct access to detailed information from financial institutions for domestic and EOI purposes. To do so, an administrative procedure called the "Tax Procedure Warrant" (*Termo de Distribuição do Procedimento Fiscal – TDPF*) must be initiated, accompanied by a formal request addressed to the relevant financial institution called the "Financial Movement Request" (*Requisição de Movimentação Financeira – RMF*). As the provision of a valid CPF or CNPJ number is mandatory for the opening and operation of a bank account, and global account transactions are automatically reported under e-Financial, the RFB has the ability to match requested person data to identify relevant accounts in respect of which to issue RMFs for more detailed information, such as bank statements.

59. Where the information is directly retrievable, which includes contact details and addresses, tax returns, whether or not a person is a resident in Brazil, and what local unit they are registered for tax purposes.

60. Article 3(XII), inserted by Decree 8.303/2014, which more explicitly provided that EOI pursuant to international obligations is a situation in which the RFB's access to or examination of information held by financial institutions is considered "indispensable".

139. Following legal challenges (discussed in paragraphs 224 to 226 of the 2013 report) to the constitutionality of Complementary Law 105/2001, which revoked Article 38 of Law 4.595/1964 providing for bank secrecy (with limited exceptions), in February 2016 the Supreme Federal Court put beyond doubt the RFB's ability to obtain detailed information from financial institutions without the need for a court order.[61] The court noted that the RFB's access to such detailed information, e.g. bank transaction statements (a level of detail not reported automatically through e-Financial), is not a breach of confidentiality but rather a transfer of confidentiality obligations from the sphere of the financial institution to that of the tax authority. Thus the protection of personal data against unauthorised access remains guaranteed in the hands of the RFB in the eyes of Brazil's constitutional arrangements.

140. A financial institution that refuses to furnish information is subject to fines and imprisonment of responsible persons up to four years, in addition to possible tax penalties.[62] The RFB sent 5 115 RMFs to financial institutions during the review period to access information for domestic purposes. Brazil reports that 25 compliance procedures were carried out for non-compliance with RMFs in the period from 2013 to 2017.[63] These procedures resulted in the application of fines to financial institutions worth BRL 32 million (approximately USD 8.63 million), which demonstrates that the RFB actively enforces its information-gathering powers with respect to financial institutions. Brazil did not need to use an RMF for EOI purposes as it could readily access the more generic (i.e. monthly global amounts) bank information from its databases and e-Financial reporting system, to the satisfaction of peers. One peer noted in its input that in one case it had requested, and was expecting to receive, the more detailed banking information that could only be sourced directly from the financial institution. However, it is understood that the peer did not raise the issue at the time of the exchange.

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

141. The concept of "domestic tax interest" describes a situation where a competent authority can only provide information to another competent authority if it has an interest in the requested information for its own tax purposes. This is against the standard. As explained in the 2013 report (paragraph 229), a binding opinion of Brazil's Attorney-General's Office confirms that a foreign administrative or tax proceeding is equivalent to one of the RFB for purposes of accessing requested information, having regard to Brazil's international treaty obligations.

61. Extraordinary Appeal No. 601.314.
62. Article 5 of Decree 3.724/2001 and Article 10 of Complementary Law 105/2001.
63. As permitted by RFB Decree 1.687/2014.

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

142. As discussed in the 2013 report (paragraphs 217 to 222), the RFB can exercise several types of compulsory powers in the case of a person's non-compliance with the obligation to provide information to it, including fines, the sealing of premises and files for inspection within or without the information holder's premises, making use of police force to enter dwellings or premises in the case of obstruction or resistance, and criminal sanctions for the crimes of disobedience or disrespect, punishable with fines and imprisonment.[64] The RFB may also open a special supervision procedure (*Regime Especial de Fiscalização – REF*) in cases of obstruction or resistance to inspection or supervision, or other illicit behaviour, which can entail aggravated pecuniary penalties and the application of particularly restrictive measures such as uninterrupted supervision at the premises of the taxpayer and special control of commercial and tax documents, and financial transactions.[65]

143. Brazil confirms that other government agencies, taxpayers or third parties have never refused to provide information in response to an EOI request and thus the RFB has not had to use its search and seizure powers nor apply sanctions. The RFB has, however, made increasing use of its powers and sanctions for domestic purposes. 526 fines were imposed for failure to comply with a request during an audit in 2015, 497 in 2016, and 534 in 2017. Sealing of premises, making use of police force and applying criminal sanctions are used less frequently and only for exceptional cases: 13 in 2016 (and none in 2015 and 2017).

B.1.5. Secrecy provisions

144. Jurisdictions should not decline to provide requested information on the basis of bank or, with certain exceptions, professional secrecy.

Bank secrecy

145. Bank secrecy with only limited exceptions where authorised by court order was removed in 2001. As explained in paragraph 139, some remaining uncertainty, noted in the 2013 report (paragraphs 225 and 226), around the possibility of taxpayers successfully challenging the RFB's access to detailed

64. Fines ranging from BRL 538 to 2638 (approximately USD 145 to 711) pursuant to Articles 916, 919, 920, 928 and 968 of RIR/1999; imprisonment up to two years and fines for the crimes of disobedience and disrespect under Articles 330 and 331 of the Penal Code.

65. Article 33 of Law 9.430/1996, with added penalties up to 150% of a tax liability.

information from financial institutions was also dispelled via a Supreme Federal Court decision in 2016.

Professional secrecy: attorney-client privilege

146. Article 197 of the National Tax Code provides an exception from the general obligation for any person to provide information to the RFB for professionals with regard to facts they are legally obliged to keep confidential due to their profession. The 2013 report noted at footnote 15 of paragraph 240 that this exception does not extend to accountants and non-attorney legal representatives. In relation to the attorney-client privilege, the Brazilian Attorneys' Statute protects "the inviolability of the office or working place, working documents and communications in writing, electronic format or by phone, only to the extent that the attorney acts in his or her capacity as an attorney."[66]

147. As discussed in the 2013 report (paragraphs 240 to 246), this provision appeared to be broader than the standard by covering working documents and premises rather than being limited to confidential communications engaged in for purposes of obtaining legal advice or representation in judicial or administrative proceedings. However, Brazil had confirmed it interpreted the attorney-client secrecy exception restrictively. Claims of privilege rarely arose and there had been no cases of a successful claim against the RFB.

148. During the onsite visit for the current review period, OAB noted that it saw attorney-client privilege as being geared towards protecting clients' rights without unduly obstructing (tax) law enforcement authorities' investigative procedures. Moreover, it noted the underlying intent of protecting information held by an attorney in their capacity as such and not as a non-legal representative. Brazil confirmed it does not envisage amending its legal framework in this regard. The review period saw no instances of attorney-client privilege being invoked to prevent the RFB's access to information for domestic or EOI purposes. In view of the assurances provided and as the issue continues not to cause any problem in practice, it is not considered necessary to recommend that Brazil clarifies the scope of the privilege provisions. Nevertheless, Brazil should monitor its application to ensure consistency with the standard and that it does not unduly limit EOI.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information

66. Article 7(II) of Law 8.906/2004.

149. Rights and safeguards should not unduly prevent or delay EOI. Rules on prior notification of the subject of an EOI request should have exceptions for 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.

150. The 2013 report found that while there is no general prior notification requirement in Brazil, with respect to information concerning operations and services provided by financial institutions the RFB always needed to first ask the concerned person to provide the information before accessing it from the financial institution. As this procedure could have the effect of a prior notification with no exceptions for urgent or sensitive cases in line with the standard, Brazil was made a recommendation to permit such exceptions, leading to a rating of Partially Compliant.

151. Statutory rules regarding notification requirements, rights and safeguards have not significantly changed since the last review. However, with respect to information held by financial institutions, Brazil has further clarified the possibility of judicial waiver of prior notification in very urgent or sensitive cases. It is now considered that a monitoring recommendation and a rating of Largely Compliant are more appropriate.

152. The updated table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework	Although Brazil provides assurances that it may obtain judicial waiver of the prior notification procedure in respect of accessing information held by financial institutions in very urgent or sensitive cases, there is no explicit exception to such procedure and the obtainment of such waiver for EOI purposes has not been tested in practice.	Brazil should either explicitly clarify the possibility of judicial waiver of the prior notification procedure, or introduce explicit exceptions in its legal framework. Brazil should also closely monitor that the procedure does not frustrate the provision of information held by financial institutions without prior notification of the taxpayer under investigation, where justified.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Largely Compliant		

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

Prior notification rules and exceptions

153. The 2013 report discussed Brazil's prior notification rules (paragraphs 247 to 260). As a general rule, when requested information is not in the hands of the RFB, it may ask the concerned taxpayer to provide it or directly request it from the holder of the information without having to notify or obtain the consent of the person under investigation. By way of exception, the RFB must first ask the taxpayer to provide information concerning financial operations or services provided to them by a financial institution under Article 4(2) of presidential Decree 3.724/2001. In practice this would only be the case in respect of detailed information (e.g. bank statements) which is not already in the possession of the RFB as a result of Brazil's e-Financial reporting system. Where the concerned person does not provide the information within 20 days, the RFB may initiate the TDPF/RMF procedures discussed in section B.1 to obtain it directly from the financial institution.

154. Paragraphs 252 to 255 of the 2013 report discussed the avenues of appeal against the provision of bank information available to a taxpayer in cases where detailed financial information is sought from them, or their financial institution (triggering the prior notification procedure). Appeal rights apply equally to domestic matters and international matters involving an EOI request. The report concluded that in the case of EOI requests, taxpayers would not be informed of the existence of a request and therefore appeals would concern the question of whether the information should be provided to the RFB under domestic rules. This remains the case: the existence and terms of the EOI request or the fact that the information sought would be provided to a treaty partner would not be disclosed in the appeal proceedings or to the public. An appeal concerning the provision of detailed financial information by the taxpayer or their financial institution would not prevent or halt the RFB providing information to the requesting partner that

was already in its possession. The 2013 report also concluded that clear timelines were established for all stages of the appeal procedures. Therefore, and absent any empirical evidence to the contrary, such appeal rights were found to be consistent with effective EOI.

155. It remains the case that there are no explicit exceptions to the prior notification procedure when accessing detailed account information held by a financial institution in situations where a requesting competent authority asks the RFB not to notify a subject of investigation due to the very urgent nature of the case, or that notification could undermine the success of the investigation. The standard requires jurisdictions to provide for exceptions in such cases. The 2013 report recognised the possibility of judicially-sought exceptions, but rated Brazil Partially Compliant as judicial waiver had not been tested in any EOI case during the review period.

156. Brazil now clarifies that the possibility of the RFB obtaining a judicial waiver of the notification procedure in very urgent or sensitive EOI cases has good prospects of materialising, should such cases arise in the future. A waiver could be obtained by an RFB auditor in charge of processing an EOI request by seeking a court order for the RFB to obtain detailed account information from the financial institution (rather than exercising the RFB's powers to obtain such information directly) pursuant to Article 1(4) of Complementary Law 105/2001. As part of the order the court could decree that the taxpayer or account holder is not required to be notified, thus suspending the operation of Decree 3.724/2001, which imposes the prior notification. This is the case for both civil and criminal tax matters. The order would be sought and issued under judicial secrecy and the taxpayer could not be notified about its existence, including by the financial institution. This position is supported in the law, e.g. Article 773 of the Civil Procedure Code, Law 13.105/2015, which reinforces a judge's power, *ex officio* or upon request, to determine any necessary measures for the fulfilment of an order for a bank to supply information confidentially. Brazil further explains that Decree 3.724/2001 is an executive-level presidential instrument which, while binding the RFB, would not bind a court considering a waiver application. In considering whether to waive the notification due to the urgency or sensitivity of the case, a court would have due regard to the interests of the requesting State's investigation, in a manner consistent with the spirit of Brazil's international EOI instruments and their higher legal hierarchy in Brazil's constitutional order vis-a-vis executive-level presidential decrees. Brazil notes that a court order would be likely to be granted swiftly having regard to factors such as the urgency of the case, the taxpayer's profile and the risk of concealment or destruction of information.

157. In the review period there were no cases of a judicial waiver being sought pursuant to an EOI request requesting a notification not to be issued.

However, Brazil advises that such a waiver was successfully obtained in domestic investigations. Brazil was able to fulfil requests for bank information resorting to the comprehensive financial information available to it via the e-Financial reporting system. The uncertainty around the possible outcomes of seeking judicial waiver therefore did not cause problems in practice and domestic cases support the likelihood that such waiver would be obtained for EOI purposes.

Post notification

158. The requirement to have an exception to time-specific, post-exchange notification was newly introduced to the 2016 Terms of Reference and so was not dealt with in the 2013 Report. Brazilian law does not require any such notification.

Conclusion

159. Brazil has given renewed assurances regarding the possibility of judicial waiver of the prior notification procedure in the case of detailed information held by financial institutions and has used such waiver in domestic cases. The procedure has not caused problems in the review period and the appropriate rating for Brazil in this regard is determined as Largely Compliant. Brazil should either explicitly clarify the possibility of judicial waiver of the prior notification procedure, or introduce explicit exceptions in its legal framework. Brazil should also closely monitor that the procedure does not frustrate the provision of information held by financial institutions without prior notification of the taxpayer under investigation, where justified.

Part C: Exchanging information

160. Sections C.1 to C.5 evaluate the effectiveness of Brazil's EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all of its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether they respect the rights and safeguards of taxpayers and whether Brazil could provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

161. The 2013 report found that Brazil's EOI mechanisms were not completely in line with the standard, resulting in a determination of the legal framework as "in place, but needs improvement" and a rating for element C.1 as Largely Compliant. Two recommendations regarding the legal framework were given, in which Brazil was encouraged to bring 12 EOI agreements into line with the standard and to ensure a more expeditious ratification of its agreements, including nine agreements then not in force.

162. On 1 June 2016, Brazil ratified the multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) and it entered into force on 1 October 2016. The MAC is in force with 107 partners which, with the addition of five bilateral EOI mechanisms in force, brings Brazil's total EOI relationships to 112, ensuring that all relevant partners are covered by exchange provisions in line with the standard. While Brazil has been unable to consistently expedite the ratification of its signed bilateral treaties due to the inherent length of its congressional process, the ratification of the MAC ensures that this does not materially affect EOI coverage.

163. The updated table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.1.1. Foreseeably relevant standard

164. EOI mechanisms should allow for EOI on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This concept, as articulated in Article 26 of the OECD Model Tax Convention, is to be interpreted broadly but does not extend so far as to allow for "fishing expeditions." As discussed in the 2013 report, while Brazil's DTCs generally provide for EOI that is "necessary" for carrying out the provisions of the Convention or of the domestic laws of the Contracting States, Brazil interprets such formulation as equivalent with "foreseeably relevant", in line with the commentary on Article 26 and the standard. The amending protocol to the DTC with India brought into force in 2017 includes the words "foreseeably relevant." Brazil notes it would now seek to include those words in any new or renegotiated DTC. Moreover, Brazil can now exchange with 107 jurisdictions using the MAC, which uses such words, as the legal basis. Brazil continues to interpret and apply all of its EOI instruments consistent with the foreseeably relevant standard.

165. Brazil confirms it did not refuse to answer any EOI requests on the basis of lack of foreseeable relevance in the current review period and there were no cases where it requested clarification on belief that the request was overly broad or vague. This is consistent with the feedback received from peers.

166. Through the MAC (Article 4(1)), Brazil now has EOI provisions in line with the standard in place with the nine jurisdictions[67] whose DTCs with

67. Czech Republic, Hungary, Italy, Japan, Korea, Luxembourg, the Netherlands, the Philippines, and Slovak Republic.

Brazil did not allow for EOI for the enforcement of the domestic tax law of the requesting jurisdiction at the time of the 2013 report. The MAC is now in force with all but the Philippines, a situation that will be remedied once the Philippines deposits its instrument of ratification. Brazil notes that in view of its participation in the MAC, it is not its policy to update DTCs solely to bring non-conformant EOI provisions in line with the standard, but it has done and continues to do so where DTCs are updated according to its general DTC renegotiation priorities.

167. Brazil did not receive any group requests in the review period but made two such requests (for which it obtained responses). Brazil notes it would treat group requests in the same manner as individual requests, both in terms of process and application of the foreseeably relevant standard. It confirmed that its access powers would enable information to be obtained for EOI purposes in respect of taxpayers not specifically identified and has used such powers in this way for domestic purposes.

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

168. The 2013 report (paragraphs 280 to 293) found that none of Brazil's EOI agreements restricted the jurisdictional scope of the EOI provisions to certain persons, for example those considered resident in one of the contracting parties, despite some DTCs not explicitly negating such restriction. The additional EOI mechanisms Brazil has put in place since the report similarly do not have such restrictions. Peers have not raised any issues in this regard during the current review period.

C.1.3. Obligation to exchange all types of information

169. Article 26 of the OECD Model Tax Convention and the OECD Model TIEA both require the exchange of all types of information, including bank information, information held by a fiduciary or nominee, or information concerning ownership interests. The 2013 report (paragraphs 284 to 289) noted that although 29 of Brazil's DTCs did not specifically include language (mirroring paragraph 4 of Article 26 of the Model Tax Convention) that a contracting state may not decline to supply information based on the type of person holding the requested information, its absence did not restrict the types of information that could be exchanged and Brazil is able to access and exchange information held by banks and fiduciaries under its domestic law. This remains the case, as discussed specifically in section B.

170. The 2013 report also identified Austria and Luxembourg as having bank secrecy provisions in their domestic laws that would restrict access to banking information for EOI purposes absent a specific provision requiring access in their DTCs with Brazil. As a result, the report's recommendation

with respect to bringing Brazil's EOI agreements in line with the standard covered these DTCs. The lacking provisions are now in place with Austria and Luxembourg through the MAC (Article 21(4)) and Brazil notes it has made contact with these two jurisdictions in respect of upgrading the older EOI provisions and updating other DTCs as opportunities arise.

171. No issues have been raised by peers over the present review period that call into question Brazil's ability to exchange all types of information pursuant to a request under its domestic law or EOI mechanisms, notwithstanding some delays in the provision of bank information due to operational reasons discussed in section C.5 of this report.

C.1.4. Absence of domestic tax interest

172. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction. The 2013 report noted (paragraphs 290 to 294) that most of Brazil's DTCs lacked a provision, mirroring paragraph 4 of Article 26 of the OECD Model Tax Convention, requiring the use of domestic information gathering measures even solely for EOI purposes. The report noted, however, that its absence did not create any restrictions provided there was no domestic tax interest impediment in the case of either contracting party. As discussed in section B.1, Brazilian law has no such impediment. No issues arose in practice during the current review period. Brazil reports it would seek to include language similar to Article 26(4) of the Model Tax Convention in any new or renegotiated DTC.

C.1.5. Absence of dual criminality principles

173. All of Brazil's EOI instruments require the exchange of information regardless of whether the conduct under investigation, if committed in Brazil, would constitute a crime. No issues in respect of dual criminality were identified in the 2013 report and no such issues arose over the current review period. Brazil has satisfied requests in respect of criminal tax matters under the laws of peers, which did not raise any issues in practice.

C.1.6. Exchange information relating to both civil and criminal tax matters

174. All of Brazil's EOI instruments provide for exchange of information in both civil and criminal matters. Brazil has satisfied requests in the review period in respect of both criminal and civil tax matters, as noted above. Peers have not raised any issues in practice.

C.1.7. Provide information in specific form requested

175. All of Brazil's EOI instruments enable information to be provided in the specific form requested. One peer noted that during the review period Brazil provided banking information in the form of aggregate transactional information drawn from its e-Financial reporting database rather than in the form of detailed bank statements obtainable from the taxpayer or their bank, as mentioned at paragraph 140. This was not brought to Brazil's attention as a follow up to the information provided, however, and if it had been Brazil would have been able to obtain and provide the information in the form desired. In general, Brazil provides information in the form requested by partners.

C.1.8. Signed agreements should be in force

176. The 2013 report noted (paragraphs 306 to 312) that there can be a long time gap between the signature of an EOI instrument and its ratification by Brazil and entry into force. This is due to the ratification process under the Federal Constitution, as implemented administratively, involving several organs of government and approval by both houses of Congress and their respective committees. Delays can be compounded by the rotation of government and congressional members and staff. The report recommended Brazil brought the then outstanding instruments into force expeditiously.

177. Since the last review, Brazil brought into force the DTCs with Russia (2017), Trinidad and Tobago (2014), Turkey (2013), and Venezuela (2014). While a number of DTCs and DTC Protocols[68] and TIEAs[69] are awaiting ratification by Congress, all respective jurisdictions have signed the MAC and have its EOI provisions in force vis-a-vis Brazil. Only Jamaica is yet to deposit its instrument of ratification and Brazil should endeavour to ratify its Jamaican TIEA to help ensure an effective EOI relationship with Jamaica exists.

178. Significant ratification delays of up to five years, approximately, generally persist. Brazilian authorities are cognisant of this. Nevertheless, the current wide and effective coverage of Brazil's EOI mechanisms (outlined in section C.2) is sufficient to consider the legal framework element in place. No peers raised concerns with Brazil's ratification delays in the current review. Notwithstanding, Brazil should look at ways to expedite the ratification process to ensure all bilateral EOI instruments that may eventuate in future are given effect within shorter timeframes and address potential concerns of peers.

68. Argentina, Denmark, Norway, Portugal, Singapore and Switzerland.
69. Bermuda, Cayman Islands, Guernsey, Jamaica, Jersey, San Marino, Switzerland, United Kingdom and Uruguay.

179. The following table summarises the outcomes of the analysis under element C.1 in respect of Brazil's bilateral EOI mechanisms (i.e. regardless of whether Brazil can exchange information with the particular treaty partner also under a multilateral instrument):

EOI bilateral mechanisms

A	Total number of DTCs/TIEAs (A= B + C)	46
B	Number of DTCs/TIEAs signed but not in force (B = D + E)	11
C	Number of DTCs/TIEAs signed and in force (C = F + G)	35
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard	11
E	Number of DTCs/TIEAs signed (but not in force) and not to the Standard	0
F	Number of DTCs/TIEAs in force and to the Standard	28
G	Number of DTCs/TIEAs in force and not to the Standard	7

C.1.9. Be given effect through domestic law

180. Brazil has in place the legal and regulatory framework to give effect to its EOI mechanisms. In broad terms, the National Tax Code (Article 199) and associated legislation allow the RFB to access and exchange information with foreign competent authorities as provided in Brazil's EOI mechanisms. However, the 2013 report noted at paragraph 317 the delays that can occur in ratifying an agreement after it is signed and as such delays can potentially persist, Brazil should look at ways to give effect to agreements through domestic law within shorter a timeframe.

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

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

181. The 2013 Report found Brazil Compliant in respect of element C.2, with an EOI network covering all relevant partners. With the MAC entering into force in respect of Brazil on 1 October 2016, Brazil has significantly expanded its network: EOI mechanisms are in force with 112 jurisdictions. This comprises 107 jurisdictions which have also ratified the MAC (including Germany, a major trading partner, with which a DTC expired in 2005)[70] and five jurisdictions with which Brazil has a DTC or TIEA in line with the standard in force but which have either not signed or ratified the MAC.[71]

70. The jurisdictions in respect of which the MAC will come into force in the near future are the Bahamas (1 August 2018) and Bahrain (1 September 2018). The MAC is the sole legal basis for EOI between Brazil and these jurisdictions.

71. Ecuador (DTC), the Philippines (DTC), Trinidad and Tobago (DTC), United States (TIEA), and Venezuela (DTC).

182. Brazil has 33 DTCs in place and three DTC protocols are awaiting ratification in Congress, as noted above. Brazil continues to renegotiate DTC agreements as part of its general negotiation policy and to implement BEPS standards. Brazil has ten TIEAs signed, one of which is in force (United States). While a number of TIEAs[72] are awaiting ratification by Congress due their relative low priority in the congressional work agenda and Brazil's lengthy ratification process, all respective jurisdictions have signed the MAC. Only Jamaica is yet to deposit its instrument of ratification and Brazil should endeavour to ratify its Jamaican TIEA to help ensure its EOI relationship with Jamaica comes into effect.

183. Since the last review, Brazil brought the MAC into force and has had discussions and updated DTCs with several partners. Moreover, it has not refused an EOI relationship with any potential partner. Brazil should in any case continue to develop its EOI network.

184. The updated table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.3. Confidentiality

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

185. The 2013 report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in Brazil regarding confidentiality were in accordance with the

72. Bermuda, Cayman Islands, Guernsey, Jamaica, Jersey, San Marino, Switzerland, United Kingdom and Uruguay.

standard. Since the report, Brazil has continued to ensure that its EOI confidentiality practices meet the high requirements of the standard.

186. The updated table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

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

187. The 2013 report (paragraphs 322 to 332) stated that all of Brazil's EOI instruments have confidentiality provisions based on OECD model provisions. While EOI provisions varied in wording, they were found to generally contain all essential aspects. Similarly, Brazil's domestic laws[73] were found to contain broad provisions for the protection of confidentiality of taxpayer information in general, with limited disclosure exceptions. To the extent an EOI instrument's confidentiality requirements are stricter in relation to the disclosure exceptions permitted by domestic law, the instrument would override such exceptions as confirmed by the Supreme Federal Court.[74]

188. The 2016 Terms of Reference clarify that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. Such an exception is in accordance with the last sentence of Article 26(2) of the OECD Model Tax Convention. No EOI instruments (other than the MAC) include provisions in line with that sentence and in practice Brazil has not requested or been

73. Most relevantly Articles 198 and 199 of the National Tax Code.
74. Decision RE 229.096-RS of 16 August 2007, paragraph 330 of the 2013 report.

requested to share information with other governmental authorities and/or use the information exchanged for non-tax purposes.

189. There are adequate sanctions in place for improper disclosure of information. Civil servants can be warned, suspended, or discharged from employment, suspended from exercising political rights, have pension rights cancelled, be prohibited from future civil duties, fined up to one hundred times their salary, and suffer imprisonment up to six years. The applicability of penalties extends beyond the termination of employment and to third parties and service providers.[75]

190. The 2013 report also concluded (paragraphs 333 to 345) that the RFB had in place policies and procedures to ensure the confidentiality of the information exchanged. These arrangements have not changed since the last review. All employees undergo admission tests, comprehensive background and criminal checks and sign up to confidentiality obligations set out in their terms of employment. Training on confidentiality is provided upon induction into the RFB and systematically. Employees must know the laws regarding unauthorised disclosure and are subject to awareness programmes via screensavers, pop-up and personal messages.

191. Physical access to buildings, including where the EOI Unit is located, is strictly controlled and public access is forbidden except for limited areas where RFB staff accompaniment is required at all times. EOI requests are handled via the "e-process" case allocation system which is monitored to ensure only authorised persons are allowed to handle a particular case. Email exchanges at the RFB are secured by encryption. Digitalised copies of EOI requests pass only through these secure systems. Access to information systems is provisioned on a strict "need to know" basis with strong identification, authentication and logging. Physical EOI documentation received by courier or mail is kept in secure cabinets in the Competent Authority's office and locked at all times. Physical information that needs to be sent to local audit units and to external parties is transported securely, with two sealed envelopes and appropriate confidentiality markings, via internal mail and external registered mail. Information is sent to treaty partners via registered mail with a tracking function. There are appropriate procedures to dispose of information according to business needs.

C.3.2. Confidentiality of other information

192. Confidentiality rules should apply to all types of information exchanged, including information provided by a requesting jurisdiction in a request, information transmitted in response to a request, and any background

75. Laws 8.112/1990, 8.429/1992, 12.846/2013 and Decree-Law 2.848/1940.

documents to such request. Brazil confirms that in practice it considers all types of information relating to an EOI request confidential (including communications between Brazil and the requesting jurisdiction).

Confidentiality in practice

193. The 2013 report did not raise any issue with regard to confidentiality in practice and this has not changed in the current review period. Brazil reports it has not registered any breaches of confidentiality of tax information in the current review period.

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

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

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 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.

195. The 2013 report concluded that Brazil's legal framework and practices concerning the rights and safeguards of taxpayers and third parties was in line with the standard and element C.4 was determined to be "in place" and Compliant. However, due to uncertainties around the scope of Brazil's attorney-client privilege provision being potentially too broad, Brazil was recommended to clarify such scope. Section B.1 above discusses this issue and recommends that the 2013 report's recommendation be replaced with a monitoring recommendation. This same recommendation is reflected in this section.

196. The updated table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework	There are some uncertainties as to whether the attorney-client privilege may unduly limit access to information acquired by attorneys.	Brazil should continue to monitor the application of the scope of the attorney-client privilege in practice to ensure consistency with the standard and that it does not unduly limit EOI.
Determination: The element is in place		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.4.1. Exceptions to requirement to provide information

197. As stated in the 2013 report, all of Brazil's EOI instruments contain provisions which ensure that the contracting States are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, trade process or information the disclosure of which would be contrary to public policy. While the DTCs generally do not contain a specific reference to trade or business secrets, Brazil had confirmed that their references to commercial secrets were interpreted as encompassing the two. These rights and safeguards contained in treaties are also reflected in Brazilian domestic law.

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

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

198. In order for exchange of information to be effective, a jurisdiction should request and provide information under its network of EOI mechanisms in an effective manner. In particular:

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

199. The 2013 report concluded that Brazil's response times were generally greater than 90 days and status updates were not routinely provided. It also found an insufficient level of resources within the EOI Unit and difficulties in obtaining information from local units in a timely manner had caused considerable delays. Brazil was recommended to improve its resources and

processes to ensure timely responses, and implement a new procedure to routinely provide status updates within 90 days.

200. Brazil significantly improved response times in the review period through closer monitoring of EOI processes and channelling more complex requests through Copes, the area responsible for risk assessment, case selection and audit which has more information directly accessible to it and is better positioned than the EOI Unit to expedite local compliance units' responses. Peers indicate that Brazil's responses are comprehensive and of good quality.

201. However, a public sector hiring freeze combined with prolonged industrial action at the local unit level has negatively impacted the priority afforded to EOI requests. This has impeded effective EOI with some partners, with 10% of requests in the review period remaining outstanding. Moreover, Brazil continues not to consistently provide status updates. Thus, the previous recommendations have not been sufficiently addressed and Brazil is recommended to address these concerns. The updated table of recommendations and rating is as follows:

Legal and Regulatory Framework		
This element involves issues of practice. Accordingly, no determination has been made.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	Although Brazil has made significant progress in response times over the three-year period, in many instances the competent authority has been unable to answer incoming requests in a timely manner due to delays at the level of the RFB's compliance areas caused by workplace relations and staffing issues. Many requests were responded to or remain outstanding after more than one year.	Brazil should ensure that it can respond to all types of information requests in a timely manner, with due priority given to EOI requests by all areas of the RFB responsible for obtaining and providing the information.
	Brazil did not always provide an update or status report to its EOI partners within 90 days in the event that it was unable to provide a substantive response within that time.	Brazil should monitor the effectiveness of its a new internal procedure and ensure it to provides status updates to EOI partners within 90 days in those cases where it is not possible to provide a complete response within that timeframe.
Rating: Partially Compliant		

C.5.1. Timeliness of responses to requests for information

202. Over the review period (1 October 2014-30 September 2017), Brazil received a total of 210 requests for information. The following table relates to these requests and gives an overview of the response times needed by Brazil to provide a final response, together with a summary of other relevant factors impacting the effectiveness of Brazil's EOI practice during the review period.

Statistics on response times in the review period (1 October 2014-30 September 2017)

		1 Oct 2014-30 Sep 2015		1 Oct 2015-30 Sep 2016		1 Oct 2016-30 Sep 2017		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	58	100	78	100	74	100	210	100
Full response: = 90 days		42	72	34	44	22	30	98	47
= 180 days (cumulative)		50	86	48	62	32	43	130	62
= 1 year (cumulative) [A]		53	91	49	63	38	51	140	67
> 1 year	[B]	3	5	18	23	5	8	26	12
Declined for valid reasons	[C]	2	4	1	1	19	25	22	11
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		-- [a]		--		--		--	
Requests withdrawn by requesting jurisdiction	[D]	0	0	1	1	0	0	1	0
Failure to obtain and provide information requested		0	0	0	0	0	0	0	0
Requests still pending at date of review	[E]	0	0	9	12	12	16	21	10

Notes: a. The RFB did not keep track of this information during the peer review period.

Brazil counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, Brazil counts that as 1 request. If Brazil receives a further request for information that relates to a pervious request, with the original request still active, Brazil will append the additional request to the original and continue to count it as the same request.

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

203. Closer monitoring and follow-up, and revised internal procedures, have improved response times in the current review period: 69% of requests were answered within 180 days (excluding those validly declined from the total) in contrast with 46% in the 2013 report (which saw no requests validly declined). 52% of requests (again excluding those validly declined from the total) were answered within 90 days in contrast with 20% in the 2013 report. In relation to the 19 requests validly declined from the third year of the review period, Brazil explains that 18 requests from one peer were validly

declined because the applicable legal exchange instrument, the MAC, was not in effect in relation to the tax periods covered by the requests. One request from another peer was validly declined because the request was made for non-tax purposes.

204. Under the RFB's organisational rules, more complex requests covering a variety of types of information and/or requiring a deeper level of inquiry into taxpayer files must be handled by Copes and/or local units, and not the EOI Unit. As discussed in the 2013 report, Brazil's internal procedures were revised in January 2013 to channel all such requests through Copes which, having access to a greater amount of taxpayer data than the EOI Unit, and an oversight role over local compliance units, was able to directly respond to a greater number of requests (and always within 180 days) or, exercising its influence over local units, expedite their retrieval of information from relevant information holders.

205. The revised procedure did improve timeliness until it was reversed in 2016, due to staffing issues arising from the 2014 public sector hiring freeze. With requests once again sent directly from the EOI Unit to local units, the delays previously experienced were compounded by prolonged industrial action due to career negotiation issues at the local unit level (from 2016) which has seen productivity decrease and EOI receive less priority relative to domestic cases. These units greatly restricted their work activities, affecting all work processes including EOI. Despite the International Relations Advisory – Asain's – consistent efforts to raise awareness of Brazil's EOI obligations among local units, these issues have caused 9 requests from 2016, and 12 requests from 2017 to remain pending and others considerably delayed, in some cases longer than a year. Brazil notes, and the analysis of the legal framework in sections A and B of this report suggest, that the information would otherwise, in all likelihood, be obtainable.

206. While the revised procedure has been reinstated as of February 2018, the lack of a clear end in sight to the RFB's staffing issues under the hiring freeze and local units' low prioritisation of inbound EOI requests cast doubt upon Brazil's ability to satisfy pending requests in a reasonable timeframe, and to timely obtain more complex sets of information in response to future requests. Brazil should ensure it can respond to all types of information requests in a timely manner, with due priority given to EOI requests by all areas of the RFB responsible for obtaining and providing the information.

207. The RFB has recently secured budget for a new EOI management tool, being implemented from April 2018, which incorporates tracking features, automatic alerts regarding due dates, and easily extractable qualitative and quantitative data in line with the contents of the EOIR peer questionnaire. This would be expected to improve local unit response times, although its effectiveness could not be assessed in this report.

Status updates and communication with partners

208. Brazil only provided status updates upon request following expiry of the general 90 day response period. It provided some status updates via partial responses. Out of the 22 partial responses in the review period, 17 were provided within 180 days although it is unclear whether all of these included updates as to the status of the outstanding information. In any case, a number of peers have indicated, and Brazil confirmed, that it did not routinely provide status updates in cases where it could not provide a complete response within 90 days.

209. The 2013 report recommended that Brazil put in place reasonable deadlines by which information or updates should be provided, and measures to monitor and communicate the status of requests to EOI partners while alerting relevant officials to approaching deadlines. While a new tracking system with automatic alerts has been deployed as of April 2018 and Brazil is committed to use it to more systematically provide status updates, the concern remains that Brazil took insufficient steps to address the 2013 recommendations during the review period either through system improvements or in practice. Brazil should ensure that the new tracking system operates effectively so as to routinely provide status updates in relation to those cases where it is not possible to provide a complete response within 90 days.

C.5.2. Organisational processes and resources

Organisation of the Competent Authority

210. The Co-ordinator-General of Asain is the authorised representative of the Competent Authority (the Minister of Finance, Secretary of the RFB or their authorised representative) and is identified on the Global Forum's database website. The delegated EOI Unit function is currently performed by two staff members within the Exchange of Tax and Customs Information Division within Asain, after a second member joined the Unit in August 2018 (having left at the end of 2016). These staff members are the only members of the EOI Unit, responsible for processing EOI requests. The Unit sits within an EOI Division of seven persons who undertake other EOI and international tax policy work, including negotiating international tax co-operation agreements and DTCs, and managing the exchange of tax rulings and customs information. The Head of the EOI Division reports in turn to the Co-ordinator-General.

211. The EOI Unit directly accessed requested information from the RFB's databases in 20% of the 210 requests. While Brazil indicated that securing an appropriate level of staffing for EOI, and other international co-operation and policy work, has been a challenge in light of the public sector hiring freeze, the single person has been considered sufficient to ably

deal with the load of EOI cases and provide information in all cases the EOI Unit had jurisdiction to handle (delays were experienced only when requests reached the local unit level). However, in view of the EOI Unit's low staffing, Brazil should monitor the volume of requests in future, including as a result of AEOI, and reinforce staffing as necessary to ensure the continued timeliness of its responses.

Competent authority's handling of requests

212. The RFB has a Manual on Exchange of Information it has been revising to publish as an e-manual on its intranet, and makes routine use of EOI request checklists to verify that signatories of requests are a treaty partner's competent authority, that the information requested falls within the scope of the relevant EOI agreement and complies with all relevant requirements. After the Competent Authority receives an EOI request (electronically or by physical mail), an electronic file is created, the request is scanned, archived, digitally certified and transferred to the appropriate areas (Copes and local units, as necessary). All requests are digitalised and transferred between responsible officers via "e-process", a case storage and allocation system.

213. Where a third party notice needs to be issued (which occurred only three times in the review period, in all cases to governmental authorities), only the information necessary for the information holder to satisfy the request is disclosed. If the third party is a taxpayer or private entity, a local unit is tasked with issuing a notification which stipulates between five and 20 days for the person to respond. Once the information is obtained by the local unit, it is checked and sent back to the EOI Unit via e-process. The EOI Unit then further checks the information received and accordingly prepares a letter of response for the treaty partner.

214. Access to the e-process and other relevant systems is monitored and controlled so only appropriately authorised officers working on the request have access to it. As the EOI Unit's systems did not track timelines and other information in the review period, the EOI Unit monitored requests manually through a spreadsheet containing fields such as case reference, date of receipt, allocated officers and response deadlines.

215. Reports on the status of EOI cases were manually prepared and, as discussed above, a new system with the ability to increase the automation of reporting and case performance monitoring has been deployed from April 2018.

Outgoing requests

216. The 2016 Terms of Reference also addresses the quality of requests made by the assessed jurisdiction. Jurisdictions should have in place organisational processes and resources to ensure the quality of outgoing EOI

requests. Brazil sent 113 requests to 12 partners over the review period. EOI requests are sent by Asain. The same single EOI Unit staff handled both incoming and outgoing EOI requests in the review period. The EOI Unit analyses requests sent by local, regional or central offices via e-process and in a prescribed request form and following an internal guidance document available on the RFB's intranet. The EOI Unit utilises a checklist to confirm if the request is covered by an international agreement and is in conformance with the EOIR standard, including to ensure it does not constitute a fishing expedition and that all domestic avenues have first been exhausted. Staff sending EOI requests are trained on their confidentiality obligations as part of general induction training and upon taking up duties in a specific area of the RFB.

217. Brazil did not provide statistics on the number of requests for clarification received from EOI partners. Peer input suggests it generally did not receive requests for clarification. No peers indicated any issues with the quality of requests initiated by Brazil.

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

218. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified in Brazil that could unreasonably, disproportionately or unduly restrict effective EOI.

Conclusion

219. Brazil faced continued difficulties during the review period in responding to EOI requests where the information was required to be obtained by local audit units, despite the EOI Unit's efforts to maintain awareness of Brazil's international obligations within the RFB. Brazil also continued not to routinely provide status updates where complete information could not be provided within 90 days. Based on a horizontal analysis of Brazil's EOI practices, this element is determined to remain rated as Partially Compliant.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these "in text" recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1 (paragraph 53):** Brazil should continue to closely monitor the situation with respect to residual bearer shares and take measures as appropriate to avoid practical difficulties in an EOI context.
- **Element A.1 (paragraph 90):** Brazil should closely monitor whether theis situation of lawyers under the AML/CFT law affects the exchange of beneficial ownership information held by lawyers in the future, and enforce its law accordingly.
- **Element A.2 (paragraph 118):** Although this potential gap appears to be of low materiality, Brazil should ensure that accounting information is available in respect of all legal entities and arrangements and monitor the situation of entities with a suspended or cancelled tax registration to ensure that they comply with all relevant accounting record keeping and filing obligations.
- **Elements C.1 (paragraph 179):** Brazil should look at ways to expedite the ratification process to ensure all bilateral EOI instruments that may eventuate in future are given effect within shorter timeframes and address potential concerns of peers.
- **Element C.1 (paragraph 181):** Brazil should look at ways to give effect to agreements through domestic law within a shorter timeframe.

- **Element C.2 (paragraph 183):** Brazil should endeavour to ratify its Jamaican TIEA to help ensure its EOI relationship with Jamaica comes into effect.
- **Element C.2 (paragraph 184):** Brazil should in any case continue to develop its EOI network.
- **Element C.5 (paragraph 212):** In view of the EOI Unit's low staffing Brazil should monitor the volume of requests in future, including as a result of AEOI, and reinforce staffing as necessary to ensure the continued timeliness of its responses.

Annex 2: List of Brazil's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Argentina	DTC	17 May 1980	7 December 1982
		Protocol	21 July 2017	Not in force
2	Austria	DTC	24 May 1975	1 July 1976
3	Belgium	DTC	23 July 1972	12 July 1973
		Protocol	20 November 2002	23 October 2007
4	Bermuda	TIEA	29 October 2012	Not in force
5	Canada	DTC	4 June 1984	23 December 1985
6	Cayman Islands	TIEA	19 March 2013	Not in force
7	Chile	DTC	3 April 2001	24 July 2003
8	China (People's Republic of)	DTC	5 August 1991	6 January 1993
9	Czech Republic	DTC	26 August 1986	14 November 1990
10	Denmark	DTC	27 August 1984	5 December 1974
		Protocol	23 March 2011	Not in force
11	Ecuador	DTC	26 May 1983	28 December 1987
12	Finland	DTC	2 April 1996	26 December 1997
13	France	DTC	10 September 1971	10 May 1972
14	Guernsey	TIEA	6 February 2013	Not in force
15	Hungary	DTC	20 June 1986	5 December 1986
16	India	DTC	26 April 1988	11 March 1992
		Protocol	15 October 2013	6 August 2017
17	Israel	DTC	12 December 2002	21 September 2005
18	Italy	DTC	3 October 1978	24 April 1981
19	Jamaica	TIEA	13 February 2014	Not in force

	EOI partner	Type of agreement	Signature	Entry into force
20	Japan	DTC	24 January 1967	31 December 1967
		Protocol	23 March 1976	29 December 1977
21	Jersey	TIEA	28 January 2013	Not in force
22	Korea	DTC	7 March 1989	21 November 1991
		Protocol	24 April 2015	10 January 2018
23	Luxembourg	DTC	8 November 1978	23 July 1980
24	Mexico	DTC	25 September 2003	30 November 2006
25	Netherlands	DTC	8 March 1990	20 November 1991
26	Norway	DTC	21 August 1980	26 November 1981
		Protocol	12 July 1994	27 December 1996
			20 February 2014	Not in force
27	Peru	DTC	17 February 2006	14 August 2009
28	Philippines	DTC	29 September 1983	7 October 1991
29	Portugal	DTC	16 May 2000	5 October 2001
		Protocol	9 December 2010	Not in force
30	Russia	DTC	22 November 2004	16 June 2017
31	San Marino	TIEA	31 March 2016	Not in force
32	Singapore	DTC	7 May 2018	Not in force
33	Slovak Republic	DTC	26 August 1986	14 November 1990
34	South Africa	DTC	8 November 2003	24 July 2006
		Protocol	31 July 2015	10 February 2018
35	Spain	DTC	14 November 1974	3 December 1975
36	Sweden	DTC	25 April 1975	29 December 1975
37	Switzerland	DTC	3 May 2018	Not in force
38	Switzerland	TIEA	23 November 2015	Not in force
39	Trinidad and Tobago	DTC	23 July 2008	23 September 2011
40	Turkey	DTC	16 December 2010	9 October 2012
41	Ukraine	DTC	16 January 2002	25 April 2006
42	United Kingdom	TIEA	28 September 2012	Not in force
43	United States	TIEA	20 March 2007	19 March 2013
44	United States	FATCA IGA	23 September 2014	26 June 2015
45	Venezuela	DTC	14 February 2005	19 August 2010

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

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[76] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

Brazil signed the Multilateral Convention on 3 November 2011 and deposited the instrument of ratification on 1 June 2016. The Convention entered into force on 1 October 2016 in Brazil. Brazil can exchange information with all other Parties to the Multilateral Convention.

Currently, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[77]

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

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

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

Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force: Armenia, Bahamas (entry into force on 1 August 2018), Bahrain (entry into force on 1 September 2018), Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Former Yugoslav Republic of Macedonia, Gabon, Grenada (signature on 18 May and instruments deposited on 31 May; entry into force on 1 September 2018), Hong Kong (China) (extension by China, entry into force on 1 September 2018), Jamaica, Kenya, Kuwait, Liberia, Macau (China) (extension by China, entry into force on 1 September 2018), Morocco, Paraguay (signature on 29 May 2018), Peru (entry into force on 1 September 2018), Philippines, Qatar, United Arab Emirates (entry into force on 1 September 2018), the United States (the original 1988 Convention is in force since 1 April 1995 and the amending Protocol was signed on 27 April 2010), and Vanuatu.

Annex 3: Methodology for the Review

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

This evaluation is based on the 2016 Terms of Reference, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 23 July 2018, Brazil's EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2014 to 30 September 2017, Brazil's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Brazil's authorities during the on-site visit that took place from 3-6 April 2018 in Brasília.

List of laws, regulations and other materials received

BACEN Circular Letter No. 3.401/2008 altering the international exchange and capital market regulation

BACEN Circular Letter No. 3.430 clarifying issues related to prevention and control activities related to AML/CFT crimes

BACEN Circular Letter No. 3.461/1999 consolidating the rules on procedures to be adopted for the prevention and fight against activities related to AML/CFT crimes

BACEN Circular Letter No. 3.804/2016 establishing procedures and conditions for the opening, maintenance and closure of depository accounts

CFC Resolutions Nos. 920/2001 and 837/99

CFC Resolution No. 1330/2011

Civil Code

Complementary Law No. 123/2006 creating the National Statute of Small and Micro Enterprises

Complementary Law No. 105/2001 on the confidentiality of transactions performed by financial institutions and other matters

CVM Normative Instruction No. 301/1999 governing the identification, registration, operations, communications and limits of responsibility in relation to AML/CFT crimes

CVM Normative Instruction No. 560/2015 concerning registration, operations and information disclosure on non-resident investors

Declaratory Act No. 9/2017 of 23 October issued by Cocad

Decree No. 3000/1999 regulating taxation, supervision, collection and administration of the tax on income and other revenues

Decree No. 3.724/2001 concerning transactions and services of financial institutions

Decree No. 4.489/2002 regulating Art. 5 of Complementary Law No. 105/2001 regarding the provision of information to the RFB by financial institutions and the entities treated as such, concerning the financial transactions carried out by their customers

Decree-Law No. 200/1967 concerning the organisation of the Federal Administration

Decree-Law No. 486/1969 concerning rules on bookkeeping and other measures

Decree-Law No. 5.844/1943 governing the collection and supervision of income tax

Decree No. 6.022/2007 instituting the Electronic Public Bookkeeping System (SPED)

Federal Constitution

Law No. 2.354/1954 altering the income tax law

Law No. 4.595/1964 governing the Monetary Policy, Banking and Credit Institutions, creating the National Monetary Council and establishing other provisions

Law No. 8.218/1991 concerning rules on the Federal Taxes and Contributions, the use of *Cruzados Novos*, and other measures

Law No. 8.906/1994 concerning the Lawyers' Statute

Law No. 8.934/1994 concerning the Public Registration of Mercantile Companies and similar activities and other measures

Law No. 8.981/1995 altering the federal tax legislation and providing other measures

Law No. 9.613/1998 concerning the crimes of money laundering or concealment of assets, rights, and valuables, the measures designed to prevent the misuse of the financial system for illicit actions, creating the Council for Financial Activities Control (COAF), and addressing other matters

Law No. 12.249/2001

National Tax Code

Penal Code

RFB Normative Instruction No. 1.422/2013 governing the Tax and Accounting Bookkeeping file (ECF)

RFB Normative Instruction No. 1.634/2016 concerning the National Register of Legal Persons

RFB Normative Instruction No. 983/2009 setting out rules on the Income Declaration on the Income Withheld at Source

System of Banking Auto-Regulation Norm No. 11/2013

Authorities interviewed during on-site visit

Advocates' Order of Brazil

Brazilian Banking Federation

Central Bank of Brazil

Financial Activities Control Center

Secretariat of the Federal Revenue of Brazil

Securities and Exchange Commission

Current and previous reviews

this report is the third review of Brazil conducted by the Global Forum. Brazil previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2010 and a supplementary review (Phase 1) in 2011 and the implementation of that framework in practice (Phase 2) in 2013. The

2013 Report containing the conclusions of the first review was first published in November 2013 (reflecting the legal and regulatory framework in place as of May 2013).

The Phase 1 and Phase 2 reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 Terms of Reference) and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under Review	Legal Framework as of (date)	Date of adoption by Global Forum
Round 1 Phase 1	Ms Agata Sardo, Tax Officer at the Assessment Directorate, International Division, Exchange of Information Office at the Revenue Agency, Italy; Mr Kamlesh Varshney, Director of the Department of Revenue, Ministry of Finance, India; Mr Rahul Navin, Director of the Foreign Tax and Tax Research Division, Ministry of Finance, India; and Ms Renata Fontana from the Global Forum Secretariat.	Evaluation of the legal and regulatory framework only	January 2012	March 2012
Round 1 Phase 2	Ms Agata Sardo and Ms Valeria Sperandeo, Tax Officers at the Assessment Directorate, International Division, Exchange of Information Office at the Revenue Agency, Italy; Mr Rahul Navin, Director of the Foreign Tax and Tax Research Division, Ministry of Finance, India; and Ms Renata Fontana and Ms Mary O'Leary from the Global Forum Secretariat	1 January 2009 to 31 December 2011	May 2013	November 2013
Round 2	Ms Graça Pires, Senior Advisor at the International Affairs Department, Tax and Customs Authority, Portugal; Ms Nancy Tremblay, Manager of Exchange of Information Services, International and Large Business Directorate, Canada Revenue Agency, Canada; and Mr Lloyd Garrochinho from the Global Forum Secretariat	1 October 2014 to 30 September 2017	July 2018	12 October 2018

Annex 4. Brazil's response to the review report[78]

Brazil supports and promotes transparency and the exchange of information for tax purposes. The Brazilian Government continues to take decisive action to strengthen and enhance the enforcement and scope of existing domestic tax laws, counter multinational tax avoidance, and promote greater tax transparency. Since the last Peer Review, in 2013, the multilateral Convention on Mutual Administrative Assistance in Tax Matters entered into force in Brazil, the Country implemented FATCA and has taken all the necessary steps to start CRS and Country by Country exchanges during 2018, as committed.

Brazil supports the role of the Global Forum and its Peer Review processes in assisting and assessing jurisdictions. We appreciate the diligent work undertaken by the assessment team in evaluating Brazil against the 2016 Terms of Reference and the revised EOIR Standard.

Brazil fully endorses its second round Peer Review ratings and is of the view that the evaluation reflects the countries' efforts to comply with the international standards of transparency and exchange of information, including the legal structure that allows for the identification of beneficial owners. Nevertheless, Brazil will continue to enhance its processes and practices with due regard to the implementation of the recommendations made. We are certain that such efforts will continue to be reflected in Brazil's Follow-up Reports and future evaluations.

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

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request BRAZIL 2018 (Second Round)

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

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

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

This report contains the 2018 Peer Review Report on the Exchange of Information on Request of Brazil.

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