

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information  
on Request

# SAUDI ARABIA

2019 (Second Round)





# **Global Forum on Transparency and Exchange of Information for Tax Purposes: Saudi Arabia 2019 (Second Round)**

PEER REVIEW REPORT ON THE EXCHANGE  
OF INFORMATION ON REQUEST

November 2019  
(reflecting the legal and regulatory framework  
as at August 2019)



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## Reader's guide

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

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

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

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

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

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

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

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

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

## **Consideration of the Financial Action Task Force Evaluations and Ratings**

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



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

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

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

## **More information**

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



## Abbreviations and acronyms

<b>2016 Assessment Criteria Note</b>	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015
<b>2016 Methodology</b>	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015
<b>2016 Terms of Reference (ToR)</b>	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015
<b>AML</b>	Anti-Money Laundering
<b>AML/CFT</b>	Anti-Money Laundering/Countering the Financing of Terrorism
<b>AMLL</b>	Anti-Money Laundering Law
<b>AMLR</b>	Implementing Regulations to Anti-Money Laundering Law
<b>Art./Arts.</b>	Article/Articles
<b>CBL</b>	Commercial Books Law
<b>CDD</b>	Customer Due Diligence
<b>CL</b>	Company Law
<b>CMA</b>	Capital Market Authority
<b>CPAR</b>	Certified Public Accountants Regulations
<b>CRS</b>	Common Reporting Standard
<b>DNFBP</b>	Designated Non-Financial Businesses and Professions (as defined in Article 1(8) of the Anti-Money Laundering Law and Article 1/3 of Implementing Regulations to Anti-Money Laundering Law)

<b>DTC</b>	Double Tax Convention
<b>EOI</b>	Exchange of information
<b>EOIR</b>	Exchange of information on Request
<b>EREOI</b>	Enforcement Rules to Implement EOI Provisions Pursuant to International Treaties
<b>EUR</b>	Euro
<b>FATCA</b>	Foreign Account Tax Compliance Act
<b>FATF</b>	Financial Action Task Force
<b>GACD</b>	General Administration of Companies Department
<b>GAW</b>	General Authority for Waqfs
<b>GAZT</b>	General Authority of Zakat and Tax
<b>GDP</b>	Gross Domestic Product
<b>Global Forum</b>	Global Forum on Transparency and Exchange of Information for Tax Purposes
<b>ITL</b>	Income Tax Law
<b>JSC</b>	Joint Stock Company
<b>LLC</b>	Limited Liability Company
<b>LP</b>	Limited Partnership
<b>MCI</b>	Ministry of Commerce and Industry
<b>MENAFATF</b>	Middle East and North Africa Financial Action Task Force
<b>MLSD</b>	Ministry of Labour and Social Development
<b>MOJ</b>	Ministry of Justice
<b>Multilateral Convention</b>	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OECD Model</b>	OECD Model Tax Convention on Income and on Capital
<b>SAFIU</b>	Saudi Arabian Financial Intelligence Unit
<b>SAGIA</b>	Saudi Arabian General Investment Authority

<b>SAMA</b>	Saudi Arabian Monetary Agency
<b>SAR</b>	Saudi Arabian riyal
<b>SOCPA</b>	Saudi Organisation for Certified Public Accountants
<b>TIEA</b>	Tax Information Exchange Agreement
<b>TIN</b>	Taxpayer Identification Number
<b>ULC</b>	Unlimited Liability Company
<b>USD</b>	United States dollar
<b>VAT</b>	Value Added Tax
<b>ZR</b>	Zakat Regulations



## Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request (the EOIR Standard) in Saudi Arabia on the second round of reviews conducted by the Global Forum. It assesses both the legal and regulatory framework in force as at 2 August 2019 and the practical implementation of this framework against the 2016 Terms of Reference, including in respect of EOI requests received and sent during the review period from 1 January 2015 to 31 December 2017. This report concludes that Saudi Arabia continues to be rated overall **Largely Compliant** with the international standard. In 2016, the Global Forum similarly evaluated Saudi Arabia against the 2010 Terms of Reference and reached an overall rating of Largely Compliant.

### Comparison of ratings for First Round Report and Second Round Report

Element	First Round Report (2016)	Second Round Report (2019)
A.1 Availability of ownership and identity information	C	LC
A.2 Availability of accounting information	LC	LC
A.3 Availability of banking information	C	C
B.1 Access to information	LC	C
B.2 Rights and safeguards	C	C
C.1 EOIR mechanisms	C	C
C.2 Network of EOIR mechanisms	LC	C
C.3 Confidentiality	C	C
C.4 Rights and safeguards	C	C
C.5 Quality and timeliness of responses	PC	PC
<b>OVERALL RATING</b>	<b>LC</b>	<b>LC</b>

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

## Progress made since previous review

2. Saudi Arabia has addressed several recommendations made in the previous review report of the Global Forum and the legal and regulatory framework of Saudi Arabia is now in place. The major issues identified in the 2016 EOIR Report related to: the availability of reliable accounting information for all relevant legal persons and arrangements (element A.2); access to information, including banking information, regardless of domestic tax interest coupled with appropriate powers for compelling the provision of information for EOI purposes (element B.1); ensuring an appropriate network of EOI agreements with all the interested parties (element C.2); and the timeliness of responses to EOI requests (element C.5). All other elements were considered Compliant with the standard.

3. Saudi Arabia has addressed several of these recommendations by: introducing new compelling measures and fully operationalising a mandatory electronic system for the submission of annual accounting records called Qawaem; extending the access powers of the competent authority to enable obtaining the requested information pursuant to EOI agreements regardless of whether Saudi Arabia has a domestic tax interest in the information requested, as well as introducing a monetary penalty for failures to make the information available; and signing and coming into force of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) that complements and extends the EOI network of Saudi Arabia. These changes are sufficient to address a number of the concerns raised in the 2016 EOIR Report.

4. In respect of the EOI practice, the Saudi Arabian Competent Authority has restructured its organisation to improve operational efficiencies, but the analysis in this report of the overall efficiency of the EOI practice shows that further improvement is needed.

## Key recommendation(s)

5. The three key issues raised by this report all relate to the practical implementation of the domestic legal and regulatory framework and practice of exchange of information: the availability of beneficial ownership information (element A.1); availability of up-to-date accounting information (element A.2); and timely responses to EOI requests (element C.5).

6. This report highlights the issue of the relatively large number of inactive entities in the Commercial Register, as this may affect the availability of beneficial ownership and accounting records for these entities. Therefore, recommendations are made on the elements A.1 and A.2, respectively. Moreover, during the review period Saudi Arabia relied primarily on



its AML regime to ensure availability of beneficial ownership information, however, not all entities have a continuous relationship with an AML obliged person. The new commercial obligations to maintain beneficial ownership information are not entirely in line with the standard. As a result there may be a small number of entities not captured by the beneficial ownership requirements. In addition, Saudi Arabia's supervisory practices have to still catch up with the newly introduced legal requirements regarding the availability of beneficial ownership. A robust supervisory and enforcement mechanism is necessary to ensure that the required beneficial ownership information is maintained and reported in all cases. Recommendations are made on element A.1 in respect of these issues.

7. In respect of the EOI practice, peers reported that they experienced substantial delays in receiving full responses as well as communication issues with the Competent Authority. The communication issues have contributed to the delays. Only 39% of the 18 requests (from nine partners) received a final response within 180 days, and 44% of the requests received an answer after more than one year. Delays occurred in respect of all types of requests, including requests where the information could be collected relatively easily. Apart from communication issues with peers, there have been internal communication issues following organisational changes in the Competent Authority (see section C.5.2), also contributing to the delays. Recommendations have been made on element C.5 to improve the communication with EOI partners and to ensure that appropriate organisational processes are in place enabling EOI requests to be responded to in a timely manner.

## Overall rating

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

9. This report was approved at the Peer Review Group of the Global Forum meeting on 2 October 2019 and was adopted by the Global Forum on [date]. A follow-up report on the steps undertaken by Saudi Arabia to address the recommendations in this report should be provided to the Peer Review Group no later than 30 June 2020 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
<p><b>ToR A.1:</b> 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</p>		
<p><b>The legal and regulatory framework is in place, but certain aspects of the legal implementation of the element need improvement.</b></p>	<p>While the vast majority of entities would have an account with a Saudi bank which is required to keep comprehensive beneficial ownership information on its clients, there may be entities which do not. Most entities (LLCs, non-listed JSCs and limited partnerships) must also collect and report beneficial ownership information to the authorities, however the scope of information that must be collected and reported does not match the definition of beneficial owner as used in the Terms of Reference.</p>	<p>Saudi Arabia should ensure that comprehensive beneficial ownership information in line with the standard is available in respect of all entities.</p>
<p><b>EOIR Rating: Largely Compliant</b></p>	<p>The large number of inactive companies that maintain legal personality and do not comply with their filing obligations raises concerns that beneficial ownership information might not be available in all cases.</p>	<p>Saudi Arabia should review its system whereby a significant number of inactive companies remain with legal personality on the Commercial Register.</p>
	<p>On 15 November 2017 an obligation was introduced pursuant to a Ministerial Resolution requiring companies to maintain information about beneficial ownership and reporting of that information to the Commercial Register. The Ministry of Commerce and Industry did not update its supervisory and enforcement mechanisms to ensure that the relevant information is collected and reported in all cases.</p>	<p>Saudi Arabia should ensure that adequate supervisory mechanisms are in place to investigate, pursue and sanction cases of non-compliance with the new obligation for companies and partnerships to keep beneficial ownership information and provide it to the authorities.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
<b>ToR A.2:</b> Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements		
<b>The legal and regulatory framework is in place.</b>	LLCs, ULCs and LPs with a capital of SAR 100 000 (EUR 24 000) or less without foreign partners are not expressly required to keep underlying documentation or to keep documentation for at least 5 years.	Saudi Arabia should ensure that all LLCs, ULCs and LPs are required to keep underlying documentation and to keep accounting records for a period of at least 5 years.
<b>EOIR Rating: Largely Compliant</b>	The large number of inactive companies that maintain legal personality and do not comply with their filing obligations raises concerns that accounting records information might not be available in all cases.	Saudi Arabia should review its system whereby a significant number of non-complying inactive companies remain with legal personality on the Commercial Registry.
<b>ToR A.3:</b> Banking information and beneficial ownership information should be available for all account-holders		
<b>The legal and regulatory framework is in place.</b>		
<b>EOIR Rating: Compliant</b>		
<b>ToR B.1:</b> Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information)		
<b>The legal and regulatory framework is in place.</b>		
<b>EOIR Rating: Compliant</b>		
<b>ToR B.2:</b> 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		
<b>The legal and regulatory framework is in place.</b>		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
<b>EOIR Rating: Compliant</b>		
<b>ToR C.1:</b> Exchange of information mechanisms should provide for effective exchange of information		
<b>The legal and regulatory framework is in place.</b>		
<b>EOIR Rating: Compliant</b>		
<b>ToR C.2:</b> The jurisdictions' network of information exchange mechanisms should cover all relevant partners		
<b>The legal and regulatory framework is in place.</b>		
<b>EOIR Rating: Compliant</b>		
<b>ToR C.3:</b> The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received		
<b>The legal and regulatory framework is in place.</b>		
<b>EOIR Rating: Compliant</b>		
<b>ToR C.4:</b> The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties		
<b>The legal and regulatory framework is in place.</b>		
<b>EOIR Rating: Compliant</b>		
<b>ToR C.5:</b> The jurisdiction should request and provide information under its network of agreements in an effective manner		
<b>Legal and regulatory framework:</b>	<b>This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.</b>	

Determinations and Ratings	Factors underlying Recommendations	Recommendations
<b>EOIR Rating: Partially Compliant</b>	<p>Over the review period, Saudi Arabia did not effectively communicate a change in its Competent Authority contact details to all its EOI partners. Several requests were only received after follow-up, resulting in significant delays. Moreover, Saudi Arabia has not provided any status updates during the review period nor clearly communicated the status of the requests in terms of whether further information can be expected to follow and whether or not the requests are considered to be closed due to, for example, insufficient identifying information.</p>	<p>Saudi Arabia should effectively communicate with its peers, both by ensuring that it can be easily contacted and by clearly communicating the status of requests received, including by providing status updates to its EOI partners within 90 days where relevant.</p>
	<p>During the review period, several changes in the organisation of Saudi Arabia's Competent Authority resulted in internal communication issues and EOI requests not being processed in a timely manner.</p>	<p>Saudi Arabia should ensure that it has appropriate organisational processes in place to process and answer EOI requests in a timely manner.</p>



## Overview of Saudi Arabia

10. This overview provides some basic information about the Kingdom of Saudi Arabia (Saudi Arabia) 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 Saudi Arabia’s legal, commercial, tax and financial regulatory systems.

### Legal system

11. Saudi Arabia is an Arab and Islamic sovereign state, with Islam as its religion and the Holy Qur’an and the Sunnah as its Constitution. Governance is based on the premise of justice, shura (consultation) and equality in accordance with the Islamic Sharia. The official language is Arabic.

12. Saudi Arabia is a monarchy. The King is the Head of State and exercises executive power. The King is also the Prime Minister and the Crown Prince is the Deputy Prime Minister. The members of the Council of Ministers are appointed by the King. The Consultative Council (Majlis al-Shura), consisting of 150 members appointed by the King, advises on legislation and may also propose new or amending legislation. Primary legislation is promulgated by resolution, ratified by the King (Royal Decree).

13. International agreements, like domestic legislation, are implemented in domestic law by Royal Decree. Saudi Arabia recognises a hierarchy of laws that is based on the principles of the Sharia. One of these principles is that laws that are directed to the good of humanity in general shall have precedence over laws applying to specific persons or a specific group of persons. In this hierarchy, as explained by Saudi Arabia, international agreements generally take precedence over domestic laws as they are considered for the larger good of humanity as opposed to domestic laws that cater to a smaller group.

14. The main part of Saudi Arabia’s court system is formed by the Sharia courts, which have general jurisdiction over most civil and criminal cases. Cases are generally brought to the Courts of First Instance (Summary and General Courts) and their decisions may be appealed to the Courts of

Cassation and the Supreme Judicial Council. Supplementing the Sharia courts is the Board of Grievances, which mainly hears cases that involve the government. The third part of the Saudi court system consists of various committees within government ministries that address specific disputes, including tax disputes (dealt with by the Tax Committees). Finally, the King acts as the final court of appeal and has the power to pardon.

## Commercial system

15. Saudi Arabia is the largest economy in the Middle East (excluding Turkey) and a G20 member with a GDP of approximately USD 686 billion/EUR 610 (2017).<sup>1</sup> The economy of the Kingdom is dominated by petroleum related activities; Saudi Arabia has 15.6% of the world's proven oil reserves and ranks as the largest exporter of petroleum. The petroleum sector accounts for roughly 63% of budget revenues, 43% of GDP and 77% of export earnings. Only about 39% of GDP is generated by the private sector (which is partly publicly owned). Saudi Arabia's main trading partners are People's Republic of China (hereafter China), Germany, India, Japan, Korea, the United Arab Emirates and the United States.<sup>2</sup> In 2016 the Saudi Government launched Saudi Vision 2030 to reduce the country's dependency on oil, expand its private sector and diversify its economic resources. More details can be accessed here: <https://vision2030.gov.sa/en>.

16. Corporate law in Saudi Arabia went through a significant overhaul and modernisation with the passing of the new Company Law (CL) in 2015, which came into force on 2 May 2016 and replaced the previous law dating back to 1965. Pursuant to Art. 3 of the CL there are now five possible commercial forms: (i) Unlimited Liability Company (ULC), (ii) Limited Partnership (LP), (iii) Partnership, (iv) Joint Stock Company (JSC), and (v) Limited Liability Company (LLC). This is a reduction of the number of possible forms compared to the previous law. Companies existing prior to the effective date of the CL were required to modify their status in accordance with the Law within one year from the effective date of the CL (CL, Art. 224). Also, the new law effectively prohibits the issuance of bearer shares by any entity.

17. Commercial activity and adherence to the provisions of the CL is supervised and regulated by the Ministry of Commerce and Industry (MCI) with respect to all of the types of entities set out above, except listed JSCs that are supervised and regulated by the Capital Market Authority (CMA). All commercial entities (including partnerships) operating in the

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1. See <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (accessed 31.03.2019).  
2. See [https://www.stats.gov.sa/sites/default/files/dot\\_en\\_35.pdf](https://www.stats.gov.sa/sites/default/files/dot_en_35.pdf) (accessed 14.05.2019).



Kingdom must register in the Commercial Register administered by MCI. As on 7 November 2018, the Commercial Register included: 53 460 LLCs, 1 318 JSCs, 1 837 ULCs and 684 LPs.

18. Foreign companies wishing to carry out business in Saudi Arabia must obtain a licence from the Saudi Arabian General Investment Authority (SAGIA) and thereafter register with the Commercial Register. SAGIA is a governmental agency responsible for regulating and overseeing the types of activities and businesses engaged by foreign companies. In accordance with the Foreign Investment Law (FIL), a licence from SAGIA is also required in cases where a foreign person intends to buy shares in a Saudi company. According to data provided by SAGIA, on 19 March 2019, there were: 1 011 active branches of foreign companies, 3 500 active Saudi companies wholly owned by foreigners and 2 398 active local companies partly owned by foreigners.

## Tax system

19. The Saudi tax system is traditionally built on income tax levied on non-Saudi citizens, based on the Income Tax Act (ITA), and zakat (religious tax) levied on Saudi citizens<sup>3</sup> who engage in profit seeking activities, based on the Zakat Regulations (ZR). More recently, Saudi Arabia introduced VAT and excise taxes.<sup>4</sup>

20. The General Authority of Zakat and Tax (GAZT) is a governmental agency reporting to the Ministry of Finance responsible for assessing and collecting tax and zakat. All taxpayers (income tax and VAT) as well as zakat payers are required to register with GAZT. Upon registration, GAZT allocates a tax information number (TIN) to the requesting person and issues a certificate that needs to be reviewed and renewed on an annual basis (subject to payment of tax/zakat and submission of the relevant documentation).

21. The following provides a short overview on the taxes and zakat charged in Saudi Arabia.

3. A Saudi citizen is defined as a person holding Saudi nationality or who is treated as such; nationals from one of the member states of the Co-operation Council for the Arab States of the Gulf (GCC) are also regarded as Saudi citizens for income tax and zakat purposes.
4. VAT was introduced on 1 January 2018 at a standard rate of 5%. In addition, excise taxes have been introduced on goods having an adverse impact on public health (such as soft drinks, energy drinks and tobacco and its derivatives) or environment and on luxury goods.<sup>†</sup>

### *Income tax*

22. Persons subject to income tax are:

- companies resident in Saudi Arabia to the extent of the participation of non-Saudi citizens
- individuals who are non-Saudi citizens but resident in Saudi Arabia and conducting business there
- non-residents conducting business in Saudi Arabia through a permanent establishment or having other taxable income from sources within Saudi Arabia
- any person engaged in natural gas investment and/or oil and hydrocarbons production in Saudi Arabia.

23. A company is considered resident in Saudi Arabia if it is either formed in accordance with the Companies Law or if its central management is located in Saudi Arabia. The tax base for resident companies includes their worldwide income. The tax rate is 20% on regular income, 30% on income from natural gas investment activities and up to 85% on income from oil and hydrocarbon production.

24. Resident individuals are subject to income tax only if they are non-Saudi citizens conducting business in Saudi Arabia or where they are engaged in natural gas investment and/or oil and hydrocarbons production in Saudi Arabia. The tax rates are the same as for companies.

25. Partnerships are considered tax transparent and tax is levied on the partners directly according to the rules for either individuals or companies, depending on the legal status of the partner. A non-resident partner in a Saudi Arabian partnership is considered to have a permanent establishment in Saudi Arabia. Partnerships are required to file returns of income, even though the incidence of tax (or zakat) is upon the partners.

26. Non-residents are subject to income tax on any income from sources in Saudi Arabia. With the exception of income attributable to a permanent establishment in Saudi Arabia, income from non-residents is subject to a withholding tax, including dividends (except those paid by companies in the oil and gas sector), loan charges (interest), royalties, management fees, rents and payments for technical and consulting services. The withholding tax rates vary from 5% to 20%. Payments for other services are also subject to a withholding tax of 15% and this includes any work performed for compensation except for the purchase and sale of goods.

## *Zakat*

27. Zakat can be characterised as a direct tax on property and income which is levied in accordance with Sharia on all Saudi citizens pursuing commercial activities and Saudi companies and partnerships to the extent of the participation of Saudi citizens (with the exception of any persons engaged in natural gas investment and/or oil and hydrocarbons production which are subject to income tax). Private waqfs, dedicated to the benefits of certain persons, may also be subject to zakat. Zakat is levied on the payer's capital resources and its proceeds, receipts, profits and gains. Zakat is levied at a rate of 2.5%.

28. In respect of companies, the capital contributed by Saudi citizens at the beginning of the year and the net profits of the company attributable to the participation of Saudi citizens are subject to zakat. Where a company has both Saudi and non-Saudi citizens as shareholders, its profits are subject to zakat and income tax proportionate to the participation of the two groups of shareholders. The same principle applies to partnerships.

## **Financial services sector**

29. Saudi Arabia has a relatively small financial sector. The assets in the (commercial) banking sector amounted to SAR 2 363 398 million (EUR 558 608 million) as at December 2018. Insurance companies are not allowed to conduct commercial for-profit insurance business.

30. Saudi Arabia has the world's third largest outflows of remittances, after the United States and the United Arab Emirates. In 2017, these amounted to approximately USD 36.1 billion/EUR 32 billion (as updated in December 2018)<sup>5</sup> and represented 5-6% of the GDP, reflecting the large community of non-Saudi nationals living and working in Saudi Arabia. Therefore, money exchangers and remitters are considered part of the banking sector, but are separately licensed and supervised.

31. The main regulator and supervisor of the financial sector is the Saudi Arabian Monetary Agency (SAMA), which is also Saudi Arabia's Central Bank. SAMA supervises commercial banks, insurance companies, money exchangers and finance companies (financial leasing, real estate and consumer financing, productive asset financing, small and medium size enterprise (SME) financing, credit card financing). All banks must be licensed by SAMA and are subject to the Banking Control Law (BLC). The

5. See [www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data](http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data) (accessed 31.03.2019).

banking sector comprises 12 domestic banks and 12 branches of foreign banks (2 additional branches are not yet operating).

32. CMA is responsible for regulating and overseeing the securities sector, including the Saudi Stock Exchange (*Tadawul*), the Securities Depository Centre Company (*Edaa*) and the financial institutions licensed by CMA to conduct securities business and related activities (the Authorised Persons). As of May 2019, 192 companies were listed on the *Tadawul*, and the total number of shares traded reached approximately 3.5 billion, and the total equity market capitalisation reached approximately SAR 2 billion (around EUR 470 million).

## AML framework

33. In late 2017, Saudi Arabia passed comprehensive revisions to its AML legal framework. A new Anti-Money Laundering Law (AMLL) was adopted on 24 October 2017. The AMLL is supplemented by more detailed implementing regulations (AMLR). These changes were introduced to align the domestic AML regime with the FATF 2012 Recommendations. The 2018 MENAFATF Report concluded that the new legal framework is Compliant on Recommendations 10 and 11 and Largely Compliant on Recommendations 24 and 25.<sup>6</sup>

34. Designated Non-Financial Businesses and Professions (DNFBPs) such as lawyers and accountants are subject to obligations under AML legislation. In this regard they must carry out customer due diligence (CDD) and report any suspicious transactions to the Saudi Arabian Financial Intelligence Unit (SAFIU), which is an autonomous authority under the Ministry of Interior.

## Recent developments

35. The Multilateral Convention entered into force in Saudi Arabia on 1 April 2016. Based on this instrument, Saudi Arabia undertakes automatic exchanges of financial account information pursuant to the Common Reporting Standard (CRS) with the first exchanges having taken place in September 2018.

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6. See the 2018 MENAFATF Report of Saudi Arabia, pp. 186-87, 208 and 211. Available at: [www.fatf-gafi.org/media/fatf/documents/reports/mer/MER-Saudi-Arabia-2018.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER-Saudi-Arabia-2018.pdf).

## Part A: Availability of 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.

36. The 2016 EOIR Report concluded that legal ownership information in respect of companies in Saudi Arabia is generally available in line with the standard. A recommendation was nonetheless made with respect to the availability of information on foreign trusts. As explained below, this issue has been resolved.

37. However, the current review covers, in addition to the availability of legal ownership information, the availability of beneficial ownership information. Three recommendations are made in this respect. The first for Saudi Arabia to ensure that comprehensive beneficial ownership information is available in respect of all entities, since there may be a small number of entities not covered through the AML framework. The second to ensure that the new obligation for entities to collect and report beneficial ownership information is adequately supervised. Finally, it is recommended that Saudi Arabia reviews its system whereby a significant number of inactive companies remain with legal personality on the Commercial Register to ensure beneficial ownership information is available in all cases.

38. The table of determinations and ratings is as follows:

<b>Legal and Regulatory Framework</b>		
<b>Deficiencies identified</b>	<b>Underlying Factor</b>	<b>Recommendations</b>
	While the vast majority of entities would have an account with a Saudi bank which is required to keep comprehensive beneficial ownership information on its clients, there may be entities which do not. Most entities (LLCs, non-listed JSCs and limited partnerships) must also collect and report beneficial ownership information to the authorities under the Ministerial Resolution of 15 November 2017, however the scope of information that must be collected and reported does not match the definition of beneficial owner as used in the Terms of Reference.	Saudi Arabia should ensure that comprehensive beneficial ownership information in line with the standard is available in respect of all entities.
<b>Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement</b>		
<b>Practical Implementation of the standard</b>		
<b>Deficiencies identified</b>	<b>Underlying Factor</b>	<b>Recommendations</b>
	The large number of inactive companies that maintain legal personality and do not comply with their filing obligations raises concerns that beneficial ownership information might not be available in all cases.	Saudi Arabia should review its system whereby a significant number of inactive companies remain with legal personality on the Commercial Register.
	On 15 November 2017 an obligation was introduced pursuant to a Ministerial Resolution requiring companies to maintain information about beneficial ownership and reporting of that information to the Commercial Register. The Ministry of Commerce and Industry did not update its supervisory and enforcement mechanisms to ensure that the relevant information is collected and reported in all cases.	Saudi Arabia should ensure that adequate supervisory mechanisms are in place to investigate, pursue and sanction cases of non-compliance with the new obligation for companies and partnerships to keep beneficial ownership information and provide it to the authorities.
<b>Rating: Largely Compliant</b>		

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

39. A company is defined as “a contract under which two or more persons undertake to participate in an enterprise for profit, by contributing a share in the form of money, work, or both, and share profit or loss resulting therefrom” (CL, Art. 2). Therefore, this definition comprises not only the concept of a “company”, but also that of a “partnership” (CL, Arts. 3(1)(b) and (c)). As explained in paragraphs 16 and 17 above, the CL regulates JSCs, LLCs, ULCs as well as LPs (as in Limited Partnerships) and Partnerships (also referred to as Unlimited (Silent) Partnerships or Unlimited Partnerships). All of these entities, except for Unlimited Partnerships, acquire legal personality upon registration in the Commercial Register maintained by MCI (CL, Art. 14) and must establish a head office in Saudi Arabia (CL, Art. 4).

40. This section discusses JSCs and LLCs. ULCs (which share characteristics similar to partnerships), LPs and Unlimited Partnerships are addressed separately in section A.1.3 below.

41. The following provides a brief overview on the key features of the JSCs and LLCs:

- **JSCs:** By default, these companies should have at least two shareholders owning negotiable shares of equal value and whose liability is limited to the invested capital (CL, Art. 52). Subject to more restrictive requirements (companies wholly owned by the State and companies whose capital is not less than SAR 5 million (approximately EUR 1.2 million)), these entities may also have only one shareholder (CL, Art. 55; cf. CL, Art. 54). The shares in JSCs are transferrable whether by amendments to the shareholders’ register (unlisted JSCs) or pursuant to trading rules set out in the capital market law (listed JSCs) (CL, Art. 109).
- **LLCs:** These companies may have at least one and no more than fifty shareholders (CL, Arts. 151 and 154). The liability of the company is separate from the financial liability of each shareholder (CL, Art. 151(1)). LLCs are solely liable for their debts and liabilities.

42. At the outset of the ownership discussion of Saudi companies, it should be stressed that foreign ownership or control of Saudi legal persons is subject to tight regulations and oversight. Foreigners may hold shares of a domestic legal person only after receiving approval from SAGIA based on a stringent application and screening process. The Anti-Concealment Law (ACL) introduces an offence of committing an act of concealment on any person enabling a non-Saudi to engage or invest in any activity that person is unlicensed for under the FIL (ACL, Art. 1). Persons found in violation of this provision are subject to imprisonment for a period not exceeding two years and a fine not exceeding SRA 1 million (approximately EUR 240 000) (ACL, Art. 4).

43. Due to the limitations on foreign ownership and control, the Saudi authorities consider that local legal entities are not generally used when setting up transnational, multi-layered corporate structures. Saudi Arabia further reports that given the limited use of corporate directors and shareholders in local legal entities, it may be concluded that corporate vehicles are not widely used in themselves as a tool to obscure ownership or control rights.

### *Legal ownership information*

44. The legal ownership information on companies in Saudi Arabia is available under company law (shareholder registers, Commercial Register) as well as tax law (registration of taxpayers and zakat payers with GAZT).

### *Company law*

45. Companies are required to maintain certain information in their premises in Saudi Arabia. In particular, the ownership information must be kept in a register of partners/shareholders.

46. LLCs are required to maintain a special register of names of partners, number of shares owned by each and actions taken thereon (CL, Art. 162). The articles of association must include the name and address of the partners, the amount of capital in cash or in-kind, address of the head office, and names of the supervisory board (CL, Art. 156). The articles of association and any amendments must be communicated to the Commercial Register (CL, Art. 158). The company must also notify MCI of any ownership change (CL, Art. 162). Change in ownership takes legal effect after registration in the Commercial Register that is subject to approval by MCI. The register of partners must be kept in Saudi Arabia and shared with MCI (Ministerial Resolution No. 10708 of 15 November 2017 (Ministerial Resolution), Arts. 1 and 5).

47. Unlisted JSCs are required to maintain a register of shareholders, indicating the shareholders' names, places of residence, numbers of shares and paid amounts. Transfers of ownership are valid from the date of entry into the register (CL, Art. 109). Entities must report to the Commercial Register the type, value and number of shares upon incorporation and following any amendment thereto (CL, Art. 65(2); CRL, Art. 4). The register of shareholders must be kept at the company's address in Saudi Arabia (Ministerial Resolution, Art. 7). In respect of listed JSCs, a fully automated system is kept by CMA that updates the register on daily basis. Updates are electronically registered in the Depository and Settlement System in the Securities Depository Centre at the Saudi Stock Exchange.

48. Furthermore, companies are required to register in the Commercial Register within MCI (Law of Commercial Register (LCR), Arts. 3 and 6).



Registration must be performed by the manager of the legal entity within 30 days of the date on which the articles of association are recorded by a notary. In practice, the articles of association of each legal entity are reviewed by MCI before being referred to a notary. The notary will only authenticate the articles of association after it has certified that these documents have been reviewed by MCI. In turn, MCI will not register a legal entity in the Commercial Register unless it has the articles of association authenticated by a notary.

49. The manager of the company must apply for registration of any amendment to the information already registered within 30 days of the occurrence of the amendment (LCR, Art. 4). This includes any changes to the articles of association that must be in writing and certified (CL, Art. 12).

### Tax and zakat law

50. The tax authorities in Saudi Arabia need full ownership information on commercial entities in order to properly administer the income tax and zakat regimes. The status of the shareholders (Saudi or non-Saudi) is relevant to determine whether the entity's income is subject to income tax or zakat, or both. For this purpose, GAZT maintains a database with information on legal entities, including the names of entities, names of shareholders, percentage of shares, addresses, nationalities, and other information relevant to the determination and calculation of zakat and tax. The shareholders' information is verified by cross-checking MCI data in case of entities being the shareholders and by cross-checking Ministry of Interior data (ABSHAR System) in case of individuals being the shareholders. The process of verification is facilitated by the links between the electronic databases of GAZT, MCI and the Ministry of Interior. Likewise, GAZT can access information on individuals through the ABSHAR system maintained by the Ministry of Interior.

51. Companies that have one or more foreign shareholders must register before the end of the first fiscal year (Income Tax Law (ITL), Art. 57(a)). The registration form requires providing details on all the shareholders, including their names, addresses, the date on which the shares were acquired and the respective ownership percentage. Upon registration, GAZT allocates a TIN to the requesting entity and issues a registration certificate that is valid for one year. Therefore, the registration with GAZT needs to be renewed on an annual basis, resulting in the re-issuance of the certificate. As part of this process, the tax authorities stated that they send out a form to all taxpayers at the start of every year requesting them to submit any changes to the registered details. In addition, an income tax return must be filed on an annual basis (ITL, Art. 60), which requires the company to indicate whether changes have occurred in its ownership and if so, to provide the updated ownership information.

52. Companies that only have Saudi citizens as shareholders are not subject to income tax. However, these entities are subject to zakat (ZR, Art. 2) and, if not already registered, must register with GAZT before the end of the first fiscal year (ZR, Art. 16). This requires them to file an annual declaration to the tax authorities (ZR, Art. 17). The tax authorities confirmed that the same details as for companies subject to income tax are registered, and this information is updated annually following the same procedure as for such companies, including the annual submission of a zakat declaration.

53. Inactive companies do not trigger any tax or zakat liability because they do not conduct business activities (see paragraphs 70 and 71). Therefore, they are not issued an annual GAZT certificate, as discussed in the enforcement and supervision subsection below.

54. It should be stressed that there are no cases where the availability of relevant ownership and identity information would solely depend on a registration of a company with GAZT. The information would be already available via the Commercial Register and shareholder registers. The number of registrations under the two registers is very closely aligned (there is about 57 000 companies registered with MCI and approximately 60 000 registered with GAZT), which is a significant improvement when compared to the situation at the time of writing of the 2016 EOIR Report where only about 62% of companies registered with MCI were also featured in GAZT's register. According to Saudi Arabia, this is primarily due to the electronic links established between the respective databases allowing for cross-check of the information as well as the introduction of the VAT and its respective filing status registrations.

### *Beneficial ownership information*

55. Similarly to the analysis conducted in respect of legal ownership above, the following paragraphs analyse the availability of beneficial information on JSCs and LLCs in Saudi Arabia. This information is available under company law and AML law.

#### AML law

56. The AML obliged entities, i.e. financial institutions and DNFBPs such as law and accounting professionals,<sup>7</sup> are required to identify customers and verify the customer's identity using reliable, independent source documents,

7. For the definition of DNFBPs see Article 1(8) of the AMLL and Art. 1/3 of the AMLR. In this context, see also the 2018 MENAFATF Report of Saudi Arabia, p. 198, available at: [www.fatf-gafi.org/media/fatf/documents/reports/mer/MER-Saudi-Arabia-2018.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER-Saudi-Arabia-2018.pdf).

data or information (AMLL, Art. 7; AMLR, Art. 7/2/a). This obligation entails identification of the beneficial owners and taking of reasonable measures to verify their identity (AMLR, Art. 7/2/c) as well as understanding the ownership structure of the customer (AMLR, Art. 7/2/e).

57. For a customer that is a legal person, Art. 7/2/c AMLR requires identification of the natural person who ultimately owns or controls 25% or more of the legal entity's shares. Where no such controlling ownership interest exists or where there is doubt whether the controlling shareholder is the beneficial owner, the identity of the natural person exercising control of the legal person through other means must be determined. If this does not result in identification of the beneficial owner, the natural person who holds the position of senior managing official in the entity must be identified and will be treated as beneficial owner. This definition conforms to the standard.

58. Financial institutions and DNFBPs are also required to carry out ongoing due diligence on all business relationships in accordance with the risk profile of the customer (AMLR, Art. 7/6). This includes verifying that any changes are consistent with the customer's data, activities and risk profile (and if no action may need to be taken). All documents, data and information collected under the due diligence process must be kept up to date by undertaking reviews of existing records, in particular for higher risk customers, but no specific timeframe is prescribed in this respect.

59. All service providers are allowed to accept a business relationship with a customer without verifying its identity where the customer is introduced by another service provider (domestic or foreign) that is subject to supervision and requirements in line with those applicable in Saudi Arabia. In these cases, the Saudi Arabian service provider must still upon establishing the business relationship obtain all relevant information in respect of the customer and its beneficial owner(s), as well as take measures to ensure that copies of relevant documentation will be made available by the introducing service provider without delay. The Saudi service provider remains ultimately responsible for ensuring that adequate due diligence procedures are followed and that the documentary evidence that is being relied upon, is satisfactory for these purposes (AMLR, Arts. 7/10 and 7/11). This framework in respect to "introduced business" is in accordance with the standard.

60. Where a service provider is unable to comply with the due diligence obligations, it may not establish the business relationship or carry out the transaction. In relation to existing business relationships, it shall terminate this relationship (AMLR, Art. 7/8).

61. Article 12 of the AMLL stipulates that financial institutions and DNFBPs must keep all records and documents for a period of no less than 10 years from the date of concluding the transaction or closure of account.

62. Therefore, beneficial ownership information would be available with financial institutions and/or DNFBPs if and when a legal person establishes a relationship with such an entity. For JSCs listed on the stock exchange market, all investors must have an account with an Authorised Person, who is an AML obliged entity and subject to the requirements in relation to the investor. Other companies do not have an obligation to have a continuous relationship with an obliged entity, but JSCs (not listed) are obliged to have a bank account in Saudi Arabia at the time of incorporation to prove that their capital/share equity has been paid (CL, Arts. 59, 64 and 65). The capital of LLCs must also be deposited with a licensed bank in order for the incorporation to be finalised (CL, Art. 157). In addition to the requirements on depositing the initial capital, the Saudi authorities indicated that salary payments should be paid through Saudi banks (Labour Law, Art. 90(2)), so all entities with employees would be expected to have an account with a Saudi bank. Similarly, beneficial ownership could be also available with DNFBPs, such as lawyers or accountants.

### Company law

63. To strengthen the beneficial ownership framework, a Ministerial Resolution was issued on 15 November 2017, which requires LLCs and JSCs not listed on the stock-market to maintain a register of beneficial ownership and supply it to the Commercial Register. The register should record identifying data regarding all natural persons to whom the ownership of the company belongs indirectly, as well as data for all natural persons who engage in the management of legal persons having shares in the legal entity, whether the ownership of the legal person is direct or indirect (Ministerial Resolution, Arts. 3 and 8).

64. There are two categories of beneficial owners that must be identified under the Resolution. Firstly, all natural persons with indirect ownership of the company. There is no threshold but there is also no notion that the ownership must be of a controlling nature. This means that all indirect owners must be identified, irrespective of whether they have any control. While this goes beyond what is required, it may be difficult to implement in practice.

65. Second, all natural persons involved in the management of legal persons in the ownership chain must be identified. While some of these persons may be beneficial owners, many may not be. The basic concept of “control” has been translated into a criterion which may apply in certain circumstances, but it also misses the fact that control may be exercised through means other than ownership or involvement in the management. In any case, there is no guidance on when a person is considered to be involved in the management of a legal person, so it is unclear how this would be applied in practice.

66. While the Resolution may provide the authorities with a baseline of information, this is in many cases likely to include information on persons who are not beneficial owners and it may miss one or more persons who are beneficial owners in some cases. Therefore, Saudi Arabia is recommended that its definition of beneficial ownership set out in the Ministerial Resolution corresponds to what is required under the Terms of Reference.

67. The owners of the company are responsible for providing the information to the company as well as any pertinent updates within 10 days (Ministerial Resolution, Arts. 4 and 9). The company should then send the information to the Commercial Register within 15 days following incorporation and within 15 days following any amendment thereto (Ministerial Resolution, Arts. 5 and 10).

68. Given that the explicit requirement to maintain beneficial ownership under the commercial laws in Saudi Arabia is only in place as of 15 November 2017, Saudi Arabia is recommended to monitor its effective implementation in practice (in this context, see paragraph 85).

#### *Companies that ceased to exist*

69. Ownership information for companies that ceased to exist remains available on the Commercial Register, which, as reported by the Saudi authorities, is required to be kept indefinitely. Furthermore, the company's documentation (which should include both legal and beneficial ownership information) must be provided to the liquidator as part of the dissolution process (CL, Art. 209(2)). A claim against the liquidator can be made within five years from the date of announcement of the end of the liquidation process (CL, Art. 210), which implies that the liquidator should maintain the relevant documentation for a period of at least five years after liquidation.

#### *Inactive companies*

70. Saudi Arabia reports that out of about 60 000 companies that are registered in the Commercial Register approximately 23 800 are inactive companies, i.e. about 40% of all the registrations in the Commercial Register. These companies retain their corporate personality by virtue of remaining on the Commercial Register, and changes in legal ownership take legal effect only after registering in the Commercial Register, subject to approval by MCI. Therefore, inactive companies cannot change legal ownership unless they update the entries in the Commercial Register. However, up-to-date beneficial ownership information may not be available for these companies.

71. The law does not make a distinction between active and inactive companies and MCI deems companies that do not file required documentation

(such as annual financial statements, see section A.2 below) to be inactive. MCI does not remove a company from the Commercial Register just for being inactive, but it is empowered to suspend services to companies that fail to comply with statutory requirements, such as a failure to renew registration with the Commercial Register, to pay the required fees or to submit financial statements. In this regard, Saudi Arabia reports that the governmental agencies, such as MCI, SAGIA, SAMA, GAZT or the Ministry of Labour and Social Development (MLSD), suspend the provision of their services to inactive companies. Saudi Arabia notes that inactive companies are effectively prevented from conducting business in Saudi Arabia. For instance, the services that are suspended include denial of visas for labourers, and freezing withdrawals from bank accounts and other services provided by government. Especially, freezing of the entity's bank account is likely to hinder, if not block, an entity's ability to conduct business. As reported by Saudi authorities, all salary payments need to be made to employees' local bank accounts (see paragraph 62). Saudi Arabia further submits that it believes that these companies pose a low risk because in many cases they simply ceased their business activities without following the steps required for deregistration.

72. Conversely, because inactive companies retain legal personality, there is concern that they may conduct business (including beneficial ownership changes) outside the view of the Saudi authorities. For instance, there could be cases in which an entity continues to hold assets or conduct transactions entirely abroad without the need to engage with the Saudi financial system, a Saudi notary, other Saudi entities or with Saudi authorities, and does not maintain or file up-to-date ownership information subject to supervision. The availability of adequate, accurate and up-to-date beneficial ownership information for these entities is therefore not assured.

73. The large number of companies for which MCI may not have an updated line of sight into beneficial ownership information raises concerns. Saudi Arabia is recommended to review its system whereby a significant number of inactive companies remain with legal personality on the Commercial Register.

### *Foreign companies*

74. Foreign corporations can carry out business activities in Saudi Arabia as a branch, office, agency or representative office (CL, Art. 194). These must be licensed by SAGIA and registered in the Commercial Register (CL, Arts. 195-198).

75. Foreign companies do not have to maintain ownership and other basic information in Saudi Arabia under the CL. However, as for local companies, foreign companies have 30 days from the date of commencing

operations in Saudi Arabia to register with the Commercial Register (LCR, Art. 6). The relevant documentation on the ownership and control structure is obtained by SAGIA in the process of granting a licence and shared with MCI for the purposes of registration. This documentation includes a copy of the licence as well as a certified copy of the articles of association (CL, Art. 196). Saudi Arabia reports that the information about foreign investors is obtained through the applicant itself and foreign Saudi embassies (which attest the proof of registration). Content of the obtained documentation depends on the laws of the jurisdiction of incorporation of the foreign company and therefore may not include legal ownership.

76. Foreign companies are resident in Saudi Arabia for tax and zakat purposes where their central management is located in the Kingdom (ITL, Art. 3(b)(2) and ZR, Art. 3(2)(b)), and must register with GAZT. Currently, there are two foreign companies with their place of central management in Saudi Arabia. As explained above, GAZT keeps information on all shareholders in order to determine the extent to which the company is subject to income tax or zakat. This ensures that legal ownership information is available on foreign companies with sufficient nexus to Saudi Arabia.

### *Enforcement and oversight measures*

#### MCI, CMA and SAGIA in relation to commercial activities

77. MCI is the competent authority to supervise the implementation of the CL (CL, Arts. 1 and 220), except for JSCs that are listed on the stock market for which the supervising authority is with CMA (CL, Arts. 1 and 219).

78. Within MCI, the General Administration of Companies Department (GACD) is responsible for verifying the information provided to the Commercial Register on an ongoing basis. Among others, the GACD verifies the identity of the owners and managers via the security verification system and passport control of the Ministry of Interior, and the capital deposited by the company and the percentage of each shareholder/partner in the company. MCI is responsible for assigning penalties for non-compliance.

79. Any violation to provide or update information to the Commercial Register can be punished with a fine up to SAR 50 000 (approximately EUR 12 000) (LCR, Art. 15). In determining the penalty, consideration is made to the seriousness of the violation, its recurrence, the entity's capital and the damage caused to others.

80. Moreover, Articles 211 through 213 of the CL provide for sanctions for violations of the provisions of the CL (this includes the possibility of imprisonment and penalties). In case of recidivism within three years, the penalties for the offences and violations are doubled (CL, Art. 214).



Offences under Articles 211 and 212 of the CL are investigated by the Public Prosecutor as they may entail imprisonment up to five years. Fines for violations provided under Article 213 of the CL can be imposed directly by MCI or CMA (CL, Art. 216).

81. Any person who intentionally includes false information in the company's articles of association or other documents is subject to imprisonment for maximum one year and a fine of a maximum of SAR 1 million (approximately EUR 235 000) (CL, Art. 212(f)). Any person who fails to publish the company's articles of association or fails to enter it in the Commercial Register in accordance with the law, or to register any amendments is subject to a penalty of SAR 500 000 (approximately EUR 118 000) (CL, Art. 213(n)).

82. Likewise, a penalty of SAR 500 000 (approximately EUR 118 000) would be equally applicable for any non-compliance with regards to the beneficial ownership information requirements set out under the Ministerial Resolution. As stipulated under Article 213(r) of the CL, "any company or company official who, without reasonable justification, fails to comply with regulations and resolutions related to the company's business and activity, as well as with directives, circulars or rules issued by the Competent Authority [i.e. MCI]" shall be subject to the said fine.

83. In the context of foreign companies, in addition to the oversight activities exercised by MCI, SAGIA additionally carries out field inspections to ensure compliance by foreign investors with the licence conditions and other relevant legal provisions. No statistics are available on the number of such inspections, but Saudi Arabia reports that during the period under review there were no cases of non-compliance that resulted in sanctions being applied by SAGIA.

84. Therefore, the provisions in the CL and the CRL together ensure that there are sanctions on legal and natural persons who do not maintain the necessary ownership information on companies operating in Saudi Arabia. In this regard, Saudi Arabia reports that during the review period there were no cases of non-compliance with the beneficial ownership or other requirements set out under the commercial laws of Saudi Arabia. In this period there were, however, a total of 10 cases that were submitted for consideration of the internal Enforcement Committee within MCI.

85. The Saudi authorities have not yet commenced monitoring and enforcing compliance with the obligation to maintain beneficial ownership information set out in the Ministerial Resolution of 15 November 2017. Therefore, Saudi Arabia is recommended to introduce adequate supervision and enforcement mechanisms to ensure effective implementation of the Ministerial Resolution in practice. This includes making sure that the oversight activities of the authorities investigate whether beneficial ownership



registers are maintained by the companies operating in Saudi Arabia, whether it is reliable and whether the relevant information is duly reported to MCI. Any identified cases of non-compliance should be sanctioned as per the applicable laws described above.

### GAZT in relation to tax and zakat supervision

86. GAZT is the relevant governmental body responsible for the supervision on collection of tax and zakat. GAZT's oversight powers pertain to the review of the registration process, the annual tax returns and the relevant financial statements. Every year it audits a percentage of filed returns, and the audited item(s) is (are) traced back to the taxpayer's books and records. In cases where GAZT has reason to doubt the validity and soundness of the books and records presented, it may not accept such books and records and, in certain cases, make a presumptive assessment based on the taxpayer's relevant facts and circumstances. Saudi Arabia reports that in total 2 150 taxpayers and 6 448 zakat payers were audited by GAZT in the course of field audits during the last three years.

87. Failure to register with GAZT is subject to a fine of maximum SAR 10 000 (approximately EUR 2 400) (ITL, Art. 57(c)). Non-compliance with the timely filing of the complete annual income tax return can result in a penalty of maximum SAR 20 000 (EUR 4 750) or between 5% and 25% of unpaid tax (ITL, Art. 76). During the review period, 786 persons have been fined for failure to register, while 3 591 persons received a penalty for late filing.

88. Another substantial consequence of not complying with the obligations under the ITL and Zakat Regulations could be the non-issuance of the annual GAZT certificate, which certifies that a person has complied with its duties to pay tax (and/or zakat), and is required for a person to bid for contracts and obtain licences to do business. Saudi Arabia reports that issuance of certificates was denied for 778 companies (other than inactive companies) in 2015, 2 995 in 2016 and 1 371 in 2017. Moreover, government agencies do not provide services nor make payments to a party unless that party presents a clearance certificate from GAZT. According to the Saudi authorities, it would be very difficult if not impossible to (commercially) operate in Saudi Arabia without a valid GAZT certificate (see paragraph 71).

89. The authority of GAZT to review compliance by zakat payers, including through field examinations, is set out in the ZR (ZR, Art. 19). The law does not prescribe for any administrative or criminal penalties for failure to register as a zakat payer or for failure to file the annual zakat declaration, but this will result in the denial to issue a GAZT (here zakat) certificate with all its collateral consequences explained in the preceding paragraph.

## AML supervision in general

90. The supervisory powers in relation to AML obligations are assigned, depending on the type of obliged entity, to SAMA (financial institutions), CMA (securities businesses), MCI (accountants), Ministry of Justice (MOJ) (lawyers and notaries) and MLSA (non-profit organisations) (AMLR, Art. 1/4). In accordance with Article 24 of AMLL, supervisors are vested with powers to supervise/monitor and ensure compliance by financial institutions and DNFBPs with AML requirements. Based on Article 24(a) of the AMLL, they are empowered to collect information and other data as well as apply appropriate supervisory measures, including on-site inspections and off-site measures

91. Article 25 of the AMLL provides that supervisory authorities have powers to impose a range of sanctions: (i) issue a written warning; (ii) issue an order to comply with a specific instruction; (iii) issue an order to provide regular reports on the measures taken to address the identified violation; (iv) impose a monetary fine of up to SAR 5 million (approximately EUR 1.2 million) per violation; (v) ban individuals from employment within the sectors for which the supervisory authority has competences for a period to be determined by the supervisory authority; (vi) restrict the powers of directors, board members, executive or supervisory management members, and controlling owners, including appointing one or more temporary controllers; (vii) dismiss or replace the directors, members of the Board of Directors or of executive or supervisory management; (viii) suspend, restrict or prohibit the continuation of the activity, business or profession or of certain business activities or products; and (ix) suspend, restrict or revoke the licence.

## SAMA and CMA in relation to AML supervision

92. SAMA is responsible for regulating and supervising entities undertaking banking and financial activities and CMA is responsible for regulating capital market activities carried out by Authorised Persons (i.e. persons that are licensed by CMA to conduct securities business in Saudi Arabia).

93. SAMA and CMA use risk matrix tools to determine the frequency and intensity of supervision. SAMA uses the tool for analysing the inherent and net risks of each entity, its impact on the financial sector, and measuring the extent to which the financial institution has taken the necessary measures to mitigate these risks. SAMA assesses each institution for its AML risks as Very High, High, Upper Medium, Lower Medium and Low. This assessment is determined based on residual risk derived from the risk matrix after internal controls are weighted against the inherent risks as well as the extent to which the financial institution affects the Saudi financial market. The assessment of residual risk of a financial institution will result in: (i) planning

inspection visits according to the highest risk, (ii) determining inspection ranges and focus, and (iii) determining the inspection mechanism.

94. The frequency and intensity of supervision carried out by SAMA and CMA depend on a risk-based analysis with respect to money laundering. The inspection programme includes all financial institutions with high and very high risk, and includes a number of medium and low risk financial institutions. In addition to the AML risks based on the risk matrix method, examinations are also prioritised based on other factors such as the interval from the last inspection, changes in the business plans, liquidity levels, or incidents.

95. SAMA and CMA hold risk profiles of every financial institution under their supervision, based on the risk matrix tools described above. For this purpose, SAMA follows the detailed procedures set out in its internal manual entitled Rules Governing Anti-Money Laundering and Combatting Terrorist Financing (SAMA AML/CFT Manual) which explains the procedures to be followed for off-site collection of data/returns, etc. The document explains that a risk-based approach is followed by SAMA which also verifies that financial institutions have adopted a risk-based approach as far as AML risks are concerned. Similarly, CMA mirrors the detailed inspection (supervision) procedures followed by it for supervising Authorised Persons with respect to AML risks. These are also set out in an internal document (excel sheet).

96. With respect to compliance with AML legislation, the inspections cover the adequacy of CDD measures taken, most importantly by assessing the financial institution's internal framework for conducting CDD and by taking samples of client files.

97. As there are only 24 banks (12 local banks and 12 branches of foreign banks) currently licensed to operate in Saudi Arabia, the annual inspections conducted by SAMA cover all of them regardless of their risk profile. Other financial institutions, money exchangers and insurance companies are also subject to review by SAMA as per the risk matrix determinations. Of the 205 financial institutions supervised by SAMA, almost 50% received an on-site inspection in the past three years; (most of the institutions not inspected are insurance brokers, and all institutions classified as Upper Medium Risk or higher have been inspected at least once). Some deficiencies were found in compliance with AML obligations, mostly in relation to inconsistent or incomplete application of CDD measures. Accordingly, monetary penalties of a total of SAR 6 823 580 (approximately EUR 1.6 million) have been imposed in the years 2016-18.

98. Likewise, CMA conducts AML regulatory inspections (as well as polices the listed JSCs against the provisions of the CL). In the review period,

there were 13 Authorised Persons reviewed in 2015, 15 in 2016 and 15 in 2017. This resulted in penalty resolutions by the CMA Board imposed in 9, 13 and 15 cases respectively. The CMA noted that most of the penalties related to minor non-compliance in the policies and procedures.

### MCI (and SOCPA) in relation to AML supervision of accountants (DNFBPs)

99. Pursuant to Article 19(6) of Certified Public Accountants Regulations (CPAR), SOCPA, operating under the supervision of the MCI, is entrusted with the responsibility of setting up an appropriate quality review programme to ensure that certified public accountants apply accounting and auditing standards as well as comply with the AML obligations. Certified public accountants are the accountants that meet the enrolment criteria and that are registered with MCI (CPAR, Arts. 1-3).

100. All auditors are subject to independent monitoring and review through desk audits and on-site inspections by SOCPA. For this purpose MCI jointly with SOCPA has established the Quality Control Committee to ensure that certified public accountants comply with CPAR and its by-laws, accounting and auditing standards and other professional standards such as those related to AML. In order to increase awareness about the AML risks and ensure compliance with the AML provisions set out in the law, SOCPA has published detailed AML guidelines.

101. Saudi Arabia reports that the types of inspections and their frequency are based on the Board of Directors Resolution of 1998 as amended in 2017. All firms are subject to annual desk-based review as well as field inspections that may be planned or random based on a number of factors, including following receipt of a complaint. Large audit offices that are licensed to audit stock companies are subject to a field audit once every three years. The other offices are subject to such an audit every five years, except if they are classified as higher risk offices, in which case the field audit will take place within three years.

102. The possible sanctions for non-compliance with the provision of the CPAR include reprimand, warning, suspension from practising the profession for a period not exceeding six months or removal from the register of certified public accountants (CPAR, Art. 28). Violations of the AML law would entail sanctions specified under the AML framework.

103. The total number of audit firms operating in Saudi Arabia throughout the review period oscillated around 150 to increase to slightly above 160 by 2017. In 2015 there were a total of 138 audit firms that were subject to field inspections and 138 firms that were also subject to annual desk based inspections. This resulted in 48 enforcement measures. In 2016 there were

136 desk-based and field inspections, which resulted in 14 enforcement measures. In 2017 the numbers of field and desk-based inspections increased to 157 and 155 respectively and resulted in 42 enforcement measures. In the period 2014-18, 26 enforcement measures related to non-compliance with AML obligations.

#### MOJ in relation to AML supervision of persons providing legal services (DNFBPs)

104. Based on Article 3 of the Code of Law Practice (CLP), a person who practices law has to have his name in the list of practising lawyers with MOJ, prepared at the time of registration. MOJ monitors certified lawyers and conducts desk-based as well as field inspections in accordance with a schedule agreed annually. The extent of the annual review depends on the size of the given law practice, i.e. big, medium or small/individual practice. Possible sanctions include warning, reprimand, suspension or withdrawal of licence to practice (CLP, Art. 29).

105. Saudi Arabia allows for private notaries in addition to the notary public, which are employees of MOJ. Private notaries are supervised and licensed by MOJ (Notary Regulations (NR), Arts. 3-5 and 17). In addition to any compensation claims for infringements, MOJ may issue a warning or cancel the licence of the private notary (NR, Art. 20). Notably, the authentication and certification process relevant for the registration in the Commercial Register can be conducted by private or public notaries.

106. The MOJ supervisory activities extend to AML compliance pursuant to the AML regime. The MOJ is drafting a manual on AML processes to be followed by persons providing legal services which also shows the risks to which legal practitioners are exposed to. For AML breaches, the sanctions specified in the AML provisions are applicable. The major cases of non-compliance identified are mainly related to cases of persons impersonating lawyers.

#### *Conclusion and practice*

107. The following table<sup>8</sup> shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies:

8. The table shows each type of company and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every company of this type is required to maintain ownership information in line with the standard and that there are sanctions and appropriate retention periods. “Some” in this context means that a company will be required to maintain a portion of this information under applicable law.

Type	Company law	Tax and zakat law	AML law
JSCs	Legal – all	Legal – all	Legal – all
	Beneficial – some	Beneficial – none	Beneficial – all
LLCs	Legal – all	Legal – all	Legal – all
	Beneficial – some	Beneficial – none	Beneficial – all
Foreign companies	Legal – some	Legal – all	Legal – all
	Beneficial – some	Beneficial – none	Beneficial – all

108. The availability of legal ownership information in Saudi Arabia is primarily ensured by the requirement to keep an up-to-date shareholder register and to have the legal ownership registered in the Commercial Register. Furthermore, tax and zakat law as well as AML law provide for complementary sources where legal ownership information could be accessed.

109. For the availability of beneficial ownership information, during most of the review period, Saudi Arabia relied on the information collected by the AML obliged persons pursuant to the domestic AML regime. Except for the listed JSCs, there is no obligation for companies to engage an AML obliged service provider. However, upon incorporation companies must deposit their capital with a licensed bank, and the Saudi authorities indicated that this would normally be a Saudi bank (this is mandatory for JSCs, see Art. 59 of the CL) as this is then used afterwards to conduct business. This would apply in particular to entities with employees, as under the Labour Law salary payments should be made through Saudi banks. In these cases, beneficial ownership information would be available with the bank. Supervision of banks in respect of their compliance with AML obligations is robust, and other service providers that are required to maintain beneficial ownership information are also supervised in this respect.

110. There may, however, be situations where a company (other than a listed JSC) does not have a continuous relationship with an AML obliged service provider. This possible gap has partly been addressed through the Ministerial Resolution of 15 November 2017, which requires LLCs and not listed JSCs to maintain certain beneficial ownership information and report it to the MCI. However, the scope of information that must be collected and reported does not match the definition of beneficial owner as used in the Terms of Reference. In addition, supervision of compliance with this obligation by the authorities has not yet started. Saudi Arabia is recommended to ensure that a requirement to have comprehensive beneficial ownership information available is in place in respect of all companies, and that supervisory and enforcement mechanisms are in place to ensure the effective implementation in practice of the obligation on companies to collect and report beneficial ownership information (see paragraph 85).

111. Foreign companies must provide ownership and control structure information to SAGIA when applying for a business licence and subsequent registration in the Commercial Register. The content of the information supplied will depend on the information requirements required to be collected in the jurisdiction of incorporation. Tax resident foreign companies are required to comply with the GAZT registration process that necessitates provision of the legal ownership information. Also, the relevant information could be accessed via the AML obliged persons in cases where a foreign company opens a bank account in Saudi Arabia or engages with local law and accounting professionals.

112. During the review period, Saudi Arabia received eight requests concerned with legal and beneficial ownership information. Apart from the issues described in section C.5 below, no peer raised specific issues regarding the availability of this type of information.

### *A.1.2. Bearer shares*

113. Bearer shares are not permitted under the new company law passed in Saudi Arabia in 2015. As explained in section A.1.1, identity details of all shareholders must be included in the articles of association and/or shareholder registers. All existing commercial entities had to be converted into the new types of authorised legal forms and align with the requirements of the CL. The 2016 Report concluded that no bearer shares existed in practice as the relevant entities had to provide details of all shareholders to MCI upon incorporation as well as were obligated to identify all owners in the annual income tax returns and/or zakat declarations.

### *A.1.3. Partnerships*

114. Partnerships are governed by the same law as companies, i.e. the CL, and the definition of the term “company” set out in Article 2 of the CL also applies to partnerships (see section A.1.1). The CL recognises two types of partnerships: (i) LPs defined in Article 38; and (ii) Unlimited Partnerships, defined in Article 43. In addition, this section also covers ULCs, also governed by the CL, as these share similar characteristics to partnerships. LPs and ULCs acquire legal personality upon registration in the Commercial Register, while Unlimited Partnerships do not, as they are not registered in the Commercial Register (CL, Art. 43).

115. The following provides an overview of the main characteristics of LPs, ULCs and Unlimited Partnerships:

- **LPs:** These entities comprise two types of partners, at least one general partner that is jointly liable for LP’s debts and liabilities and at least



one limited partner whose liability is limited to its share in the partnership's capital (CL, Art. 38).

- **ULCs:** These entities are set up by two or more natural persons who are jointly and personally liable in all their assets for the entities' debts and liabilities (CL, Art. 17).
- **Unlimited Partnerships:** Unlimited Partnerships, also referred to as Unlimited (Silent) Partnerships, have no independent legal status and can therefore not own assets in their own right. They are mere contractual arrangements that, unless disclosed, are not enforceable against third parties. When the existence of an Unlimited Partnership is disclosed or becomes evident, the third party would only have recourse against the partner with whom that third party dealt (CL, Art. 48). They do not have an independent legal status and cannot own assets. For these reasons, these are not considered relevant for the purposes of the EOIR Review under the applicable ToR.

116. The discussions regarding availability of ownership information below concentrates on LPs and ULCs.

### *Information on partners and beneficial owners*

117. ULCs are required to keep information on their owners, i.e. partners who are natural persons. The articles of association of ULCs must include the name and address of all partners, the names of any director as well as the company's capital and the equity of each partner (CL, Art. 23). Any change to ownership must be approved by all other partners (CL, Art. 19). ULCs must inform the Commercial Register of any change to the articles of association or the ownership (CL, Art. 19 and 22).

118. LPs are subject to the same requirements as ULCs in respect of the information that must be kept on the partners, and informing the Commercial Register of any change (CL, s. 38(3)). In addition, the Ministerial Resolution of 15 November 2017 requires LPs to keep full identity information on all partners and to provide this information to the authorities (Ministerial Resolution, Arts. 1 and 5).

119. The Resolution also requires LPs to collect and report beneficial ownership information. However, the issues identified under section A.1.1 with respect to the Resolution (does not include comprehensive information and supervision and enforcement have not commenced) apply in respect of LPs as well.

120. The Ministerial Resolution does not prescribe any specific beneficial ownership requirements on ULCs. However, the ownership information that must be maintained by ULCs pursuant to the CL is an important consideration



given that partners in ULCs can only be natural persons (CL, Art. 17). These persons are personally liable for the debts and liabilities of the ULC, and the equity may not take the form of negotiable instruments. Any agreement stipulating unrestricted assignment of shares shall be deemed null and void (CL, Art. 19(2)). These restrictions limit the circumstances under which beneficial owners would be persons other than the partners. In this regard, additional comfort may be gained from the fact that the registration with the Commercial Register entails authentication of the articles of associations and any subsequent amendments thereto by MCI and notaries (public notaries are civil servants with MOJ and private notaries are closely supervised by the MOJ). This introduces a verification measure to control ownership information. Finally, for ULCs that have engaged an AML obliged service provider, most notably a Saudi bank, beneficial ownership information is required to be available with that service provider. Given these considerations and the fact that there are only 1 837 ULCs currently registered (see paragraph 17), the impact of any possible gap is negligible in practice.

121. All partnerships formed under Saudi Arabian law are registered with the tax authorities, even if they are only zakat payers as it may be the case for partnerships that only have Saudi citizens as partners (see the analysis under paragraph 52 that is equally applicable to partnerships). Partnerships are treated as transparent entities but need to file a tax return with all the financial details of the partnership for the taxable year (ITL, Art. 36(a)). In addition, the partners must file a tax return stating their income subject to tax from the partnership (ITL Regulations, Art. 17(2)).

122. The obligation to register with the tax authorities extends to partnerships with one or more foreign partners as well as foreign partnerships carrying on business in Saudi Arabia through a permanent establishment (ITL, Art. 57(a)), which should file tax returns on an annual basis (ITL, Art. 60). The details provided to the authorities upon registration are the same as for companies. As noted in paragraph 51, the registration form requires providing details on all the shareholders (= partners), including their names, addresses, the date on which the shares were acquired and the respective ownership percentage. Similarly as in the case of companies, the information registered in the GAZT database does not cover beneficial ownership information. However, any changes to the partnership structure, or the registered details, need to be updated annually pursuant to the annual re-registration procedure (see also paragraph 51).

123. The supervision and oversight activities conducted by MCI, MOJ (as regards notaries), SAMA (with respect to the AML obliged entities) and GAZT are set out in section A.1.1 above. The enforcement and supervisory issue relating to the newly introduced beneficial ownership requirements noted in paragraph 85 and the accompanying recommendation above are equally applicable.

### *Conclusion and practice*

124. The following table shows a summary of the legal requirements to maintain information on partners and beneficial owners in respect of LPs and ULCs:

Type	Company law	Tax and zakat law	AML law
LPs	Partners – all	Partners – all	Partners – all
	Beneficial – some	Beneficial – none	Beneficial – all
ULCs	Partners – all	Partners – all	Partners – all
	Beneficial – all	Beneficial – none	Beneficial – all

125. Ownership information regarding LPs and ULCs is available through the partner registers that they are required to hold and report to the Commercial Register. In the case of LPs, the partner register and the Commercial Register should also include information regarding the beneficial owners, with the same deficiencies and need for supervision as identified under section A.1.1. ULCs can only have natural persons as shareholders. In addition, beneficial ownership on LPs and ULCs would be available through financial institutions and DNFBPs upon establishment of a business relationship.

#### *A.1.4. Trusts and waqfs*

126. The concept of common law trusts is not recognised under Saudi Arabia’s legislation. However, a similar concept of waqf originating from Islamic Law is recognised. Waqfs are similar to common law trusts, but limited to specific purposes, and created through a judge who supervises the particular waqf.

#### *Foreign trusts*

127. Even though the concept of trust does not exist in Saudi Arabia, there is nothing in Saudi Arabia’s laws that would prevent a person from acting as a trustee or trust administrator of a trust formed under foreign law. In this regard, the 2016 EOIR Report recommended that Saudi Arabia provide clear guidance on what information would need to be obtained where foreign trusts are administered from Saudi Arabia and ensure that such information is available in all cases. In particular, that Report noted that the applicable law at the time did not prescribe an obligation for the identification of beneficiaries.

128. According to the AML framework in Saudi Arabia, for a customer that is a legal arrangement, the financial institution or DNFBP must obtain

and verify the name, legal form and proof of existence, the powers that regulate and bind the legal arrangement, as well as identify and take reasonable measures to verify the identity of the endower (settlor), beholder (trustee), the beneficiaries or classes of beneficiaries, and any other natural person exercising ultimate effective control over the legal arrangement (AMLR, Art. 7/2). Information reporting on protectors is not expressly addressed in the law but the concept may be captured by the notion of control.

129. The mere choice of terms used in the AML legislation, i.e. “endower” and “beholder” instead of settlor and trustee, indicates that the concept of a trust is foreign to Saudi Arabia. As discussed below, these terms are related to a domestic concept of a waqf, which is similar to a trust. As such, this should not be an issue in practice as long as the financial institution or DNFBP is aware that the client is a legal arrangement similar to a waqf, i.e. a foreign trust, and thus these identification requirements are equally applicable.

130. It is unclear whether there is any specific obligation on the trustee to disclose its status of the legal arrangement to a financial institution/DNFBP.<sup>9</sup> In this regard, the Saudi authorities report that a trustee who does not disclose the existence of such legal arrangement would be subject to sanctions based on behaviour that would constitute misconduct (Islamic Law).

131. Furthermore, the professional trustees and trust administrators may not themselves be under an obligation to determine the identity of the client in their capacity as DNFBPs. This is because the professional trustee and trust administration services are not as such recognised activities in Saudi Arabia. Correspondingly, these are only indirectly and partially included within the AML framework to the extent that they provide legal and accounting services. The DNFBP definition in the domestic AML regime does not refer to trust and company service providers, but includes “attorneys or any person providing legal or accounting type services in the exercise of professional activities, when they prepare, execute, or conduct a transaction for customers in relation to any of the following activities:… establishment, operation, or management of legal persons or legal arrangements and the organization of related subscriptions; or ... sale or purchase of commercial companies” (AMLR, Art. 1/3).<sup>10</sup>

132. Overall, Saudi Arabia addressed the issue described in the 2016 EOIR Report relating to the obligations to identify all the relevant persons in a trust by specifically adding beneficiaries in the AML legislative framework in 2017. Although there are no specialised trust service providers

9. On this issue see also the 2018 MENAFATF Report of Saudi Arabia, p. 210, available at: [www.fatf-gafi.org/media/fatf/documents/reports/mer/MER-Saudi-Arabia-2018.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER-Saudi-Arabia-2018.pdf).

10. See the 2018 MENAFATF Report of Saudi Arabia, pp. 198 and 209.

in Saudi Arabia, other service providers could provide trustee services (in which case they are covered by AML obligations) and non-professional trustees could also exist. Nevertheless, the Saudi authorities indicate that they never came across foreign trusts being managed from Saudi Arabia, and thus this issue seems to be of limited relevance in practice. Nevertheless, it is recommended that Saudi Arabia continues to monitor whether identity information in respect of foreign trusts managed from Saudi Arabia is available (see Annex 1).

### *Waqfs*

133. Saudi legislation allows for the formation of waqfs, which are trust-like legal arrangements allowing the separation of control and ownership of an asset. Waqfs also present some characteristics of legal persons in that they can own shares and hold bank accounts in their own names. They are regulated and supervised by the General Authority for Waqfs (GAW), earlier the Ministry of Islamic Affairs, pursuant to the Law of the General Authority for Waqfs (LGAW) applicable as of 2016.

134. In essence, waqfs are contracts formed under Sharia and the Law of Procedures before the Sharia Law (LPSL) pursuing general acts of benevolence. Waqfs can take the form of public and private waqfs. Saudi Arabia indicated that the purpose of the public waqf is the development of the community and contribution to the various development areas (health, education, unemployment and others). Private waqfs are usually family arrangements.

135. A waqf is in principle established forever. This means that the assets in a waqf are often real estate or other assets with a certain level of perpetuity. The assets generally become inalienable and the proceeds are spent for the benefit of the beneficiaries or, if no specific beneficiaries exist, for a philanthropic purpose. The perpetuity of waqf means that the asset's proceeds fall either to the benefit of a string of beneficiaries or a (general) philanthropic purpose. However, the recipients can only be Saudi nationals and waqfs are restricted to the geographical area (often the town or province) where the waqf was established (i.e. the endowed assets must be in Saudi Arabia). Where the (string of) beneficiaries are no longer alive, the revenues of the assets of the waqf will be allocated to a philanthropic purpose as close as possible to the initial purpose. The Saudi authorities further report that while any person, including foreigners, can establish waqfs, the property and the beholder (trustee) must be located in Saudi Arabia.

136. Waqfs can take the form of public and private waqfs. According to the data set out in the 2018 MENAFATF Report of Saudi Arabia, there were 3 093 public waqfs and 6 000 private waqfs. The Saudi authorities indicate that GAW, which is a newly created authority to manage waqfs, is in the

process of collecting the information on all the existing waqfs and connecting its systems through a new electronic link to the MOJ records containing all the relevant details. Therefore, the number of public waqfs currently stands at 7 950 and the data regarding private waqfs is still being updated.

137. Public waqfs are assigned to specific charity aspects, and are managed directly by GAW. Private waqfs identify family members as the beneficiaries of the endowed property and the beholder (trustee) is appointed by the endower (settlor) with approval by the competent judge. Private waqfs, like public waqfs, must adhere to the general principle of benevolence. This does not prevent private waqfs, however, from being set up for profitable private purposes such as wealth management for high net-worth individuals. Waqfs are usually used for real estate, but can be established for all sorts of assets, including to acquire ownership of legal entities in their own name.

### Identity information

138. The identity information with respect to all the relevant parties in a waqf is held with MOJ as well as GAW. In addition, information may be held with the AML obliged persons such as banks as well as GAZT.

139. The names of endower (settlor), beholder (trustee) and, where available, the beneficiaries are recorded by the courts, which are instrumental in the process of creation of a waqf. The endower, or a representative, must be present before the court when establishing the deed. Before approving a waqf, the judge verifies that the endower effectively owns the property, and that the terms of the waqf respect Sharia law and other obligations included in the LPSL. Changes to the instrument pertaining to the waqf must also be approved by a judge. Once approved, the waqf deeds are scanned and stored on a secured platform available to MOJ and other authorities. These documents are maintained indefinitely.

140. Thereafter, waqfs are required to register with GAW based on Article 5(1) of the LGAW. Earlier, the registration was taking place with the Ministry of Islamic Affairs.

141. When waqfs open a bank account in their names, the bank must receive the documents certified by the court. This would entail verifying the information required to be obtained pursuant to Article 7/2 of the AMLR, i.e. information on the identity of the endower, beholder, the beneficiaries or classes of beneficiaries, and any other natural person exercising ultimate effective control over the legal arrangement. Parallel AML obligations are applicable to DNFBPs dealing with waqfs.

142. The tax authorities may also hold information on waqfs as these may be registered with GAZT as zakat payers. Waqfs are only subject to zakat

where they are engaged in any type of commercial activity and where persons who are Saudi citizens are beneficiaries of the waqf (ZR, Art. 2(2)). As the annual zakat declarations require identity information to be submitted, information on the beneficiaries should be available with the tax authorities in these cases.

### Oversight and enforcement

143. Public and private waqfs are supervised by GAW (LGAW, Arts. 3-5) and public waqfs are directly administered by GAW (previously by the Ministry of Islamic Affairs). According to Article 5(5) of the LGAW, the supervisory activities entail the following:

- a. reviewing waqfs' annual accounting reports
- a. providing beholders with technical support and information
- b. providing financial and administrative consultation without violating the endower's conditions
- c. assigning a representative to attend general assembly meetings, or meetings of the boards of directors of waqfs that do not have general assemblies, when reviewing the annual financial report of the waqf
- d. requesting the change of the external auditor
- e. filing a motion, if necessary, to dismiss the beholder who fails to achieve the objectives of the waqfs or fails to meet endowment conditions.

144. The competent judge is also responsible for supervising waqfs. Even though it is not clear to what extent the judge would monitor its use (other than by petition), the role of the judge in establishment of a waqf and the required approval of any changes to the waqf deed provide for certain supervisory authority. Saudi Arabia indicates that the judge has a general authority over the beholder in cases of both public and private waqfs and may adjudicate to remove a beholder and hold him accountable for circumvention or charge for misconduct possibly resulting in imprisonment.

145. In the review period there were some cases of violations of the deed by the beholder, in which case the endower complained with the competent judge who can remove the beholder or order a correction. Saudi Arabia has taken enforcement measures related to waqfs in respect of 39 cases in 2015, 50 cases in 2016, and 69 cases in 2017.

146. The oversight and enforcement powers with respect to the AML obliged entities as well as those relating to zakat payers are addressed in more detail in section A.1.1.

### *Conclusion and practice*

147. Common law trusts are not recognised under the legal system in Saudi Arabia. Based on the applicable laws it might be expected that information on foreign trusts administered by trustees located in Saudi Arabia would be available. Saudi Arabia could, however, further supplement its AML regime with a dedicated guidance addressing this issue (see paragraph 132).

148. Saudi Arabia has a similar fiduciary concept as trusts that are referred to as waqfs. The specific characteristics of waqfs help ensure their exposure to the risk of misuse for purposes such as tax evasion is limited. These include the following characteristics: (i) waqfs can only be created for benevolent purposes that benefit Saudi citizens, (ii) the property endowed is usually inalienable and typically involves real estate that must be located in Saudi Arabia, (iii) the creation of a waqf is subject to a governmental approval process effected by the courts and the requirement of registration with GAW; and (iv) the activities of a waqf are supervised and monitored by GAW (and the competent judge). Furthermore, in any case, the identity information on waqfs is available with MOJ, GAW, the AML obliged entities such as banks and possibly also GAZT.

149. During the review period there were no EOI requests for information regarding either foreign trusts or waqfs.

#### ***A.1.5. Foundations***

150. Foundations may only be philanthropic organisations that pursue public charitable purposes, and therefore they are of limited pertinence to the exchange of information for tax purposes. They must be involved in the eight categories of causes for the proper distribution of zakat. In addition, they must be established for the benefit of local communities. Therefore, not only are they prevented from having programmes abroad, but they are also not permitted to carry on services outside a defined geographical territory within Saudi Arabia.

151. Foundations, along with the whole of the non-profit organisations (NPO) sector in Saudi Arabia, are subject to tight regulation, supervision and enhanced CDD mechanisms. In this regard, the Saudi authorities report that in 2018 there were 1150 NPOs operating in Saudi Arabia.

152. Foundations are regulated by the Law on Civil Associations and Foundations (NPO Law) and the accompanying implementing regulations. They are supervised and must be licensed by MLSD, which is tasked with ensuring that the performed activities are in line with foundations' purposes and objectives. To this end, foundations must register and provide information to MLSD on names of the founding members, boards of directors,



employees, administrative structure, policies, regulations, records and administrative documents, financial statements (quarterly and annual) and other documents related to their work (for example, minutes from the general assembly and board of directors meetings).

153. Moreover, foundations are required to establish bank accounts, as they are prohibited from accepting or dispersing cash. All accounts held by NPOs are considered high-risk and are tightly monitored in line with the enhanced CDD procedures. Any attempt to conduct an in-bound or out-bound cross-border transaction will be detected by the bank, blocked, and reported to SAFIU. Fundraising campaigns must be previously approved by MLSA.

## A.2. Accounting records

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

154. The 2016 EOIR Report concluded that the legal framework was in place but noted that partnerships with a capital of SAR 100 000 (approximately EUR 24 000) or less without foreign partners are not expressly required to keep underlying documentation relating to accounting records. As explained below, this issue seems to remain unresolved. In fact, following the changes to the commercial laws, the conclusion now also applies to LLCs, LPs and ULCs.

155. The 2016 EOIR Report also identified deficiencies in the oversight activities conducted by MCI to ensure that reliable accounting records are in practice available for all relevant entities. The analysis below acknowledges the improvements in the supervisory activities and operationalisation of the electronic Qawaem system, and therefore the recommendation made in the 2016 Report is removed. A new recommendation, however, is made on the relatively large number of inactive companies (about 40% of the companies registered in the Commercial Register) which may not comply with the obligation to maintain and file up-to-date accounting information.

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

<b>Legal and Regulatory Framework</b>		
<b>Deficiencies identified</b>	<b>Underlying Factor</b>	<b>Recommendations</b>
	LLCs, ULCs and LPs with a capital of SAR 100 000 (EUR 24 159) or less without foreign partners are not expressly required to keep underlying documentation or to keep documentation for at least 5 years.	Saudi Arabia should ensure that all LLCs, ULCs and LPs are required to keep underlying documentation and to keep accounting records for a period of at least 5 years.



<b>Determination: The element is in place</b>		
<b>Practical Implementation of the standard</b>		
<b>Deficiencies identified</b>	<b>Underlying Factor</b>	<b>Recommendations</b>
	The large number of inactive companies that maintain legal personality and do not comply with their filing obligations raises concerns that accounting records information might not be available in all cases.	Saudi Arabia should review its system whereby a significant number of inactive companies remain with legal personality on the Commercial Register.
<b>Rating: Largely Compliant</b>		

### ***A.2.1 and A.2.2 Obligations to maintain accounting records and underlying documentation***

157. The obligations to maintain accounting records for all relevant entities and arrangements in Saudi Arabia are set out in various legal regimes. These include accounting law, company law as well as tax and zakat laws. Adherence with the rules is monitored by the supervisors relevant for each of these laws. The various legal regimes as well as the related oversight and enforcement activities are discussed below.

#### *Accounting law*

158. Record keeping obligations regarding accounting information and the underlying documents are set out with respects to “merchants” under the Commercial Books Law (CBL). The term “merchant” is, however, not defined in the CBL. The Saudi authorities inform that the definition of this term stipulated in Article 1 of the Law of Commercial Court is applicable for purposes of the CBL. This provision defines a merchant as “a person engaged in commercial transactions and making such engagement his profession”, and thus this would encompass companies and partnerships regulated under the CL (see paragraph 39). The Saudi authorities further confirm that the commercial activities carried out by the merchant include activities outside the territory of Saudi Arabia.

159. Under the CBL, merchants are required to keep the commercial books mandated by the nature and importance of their trade in a way that shows the exact financial status and the rights and obligations pertaining to the respective trade. As explained in Article 1 of the CBL, the merchant must at least keep an original journal, an inventory book and a general ledger. Moreover, all financial transactions must be recorded, and a copy of the annual statement regarding the financial position of the merchant must be

kept (CBL, Arts. 3 and 4). Likewise, Article 6 of the CBL requires that the underlying documentation is also maintained:

The merchant shall keep an exact copy of all correspondence and documents relating to his trade, issued or received by him, and [this] shall be kept in a regular way that facilitates review of the accounting entries and ensures, where necessary, ascertainment of profits and losses.

160. The accounting records must be kept for a period of at least 10 years (CBL, Art. 8). A person who fails to comply with the record keeping requirements is liable to a fine between SAR 5 000 and SAR 20 000 (approximately EUR 1 200 and EUR 4 800) (CBL, Art. 12).

161. The CBL provides for a carve-out from the accounting record keeping obligations for merchants whose capital does not exceed SAR 100 000 (approximately EUR 24 000) (CBL, Art. 1). Under the new CL, it is only JSCs that are explicitly required to have a minimum capital of SAR 500 000 (approximately EUR 120 000) (CL, Art. 54). Therefore, the accounting records and the underlying documentation are not required to be maintained pursuant to the CBL framework for LLCs, LPs and ULCs to the extent that these are exempt pursuant to the capital threshold carve-out.

162. Under the accounting laws in Saudi Arabia, certified public accountants should also hold accounting information on their clients. According to Article 12 of the CPAR, all public accountants maintain “documents received from clients, audit working papers and copies of financial statements pertaining to [their] clients” for a minimum period of 10 years. Saudi Arabia further notes that the accounting records prepared by the commercial entities and/or their auditors are submitted annually to MCI which then holds this information indefinitely.

### *Company law*

163. The company law in Saudi Arabia generally requires that commercial entities prepare annual accounting records. The CL provisions do not, however, explicitly require that companies and partnership prepare underlying accounting documentation. The Saudi authorities indicate that the CL includes the keeping of underlying documentation, even though this is not expressly stated.

164. JSCs must at the end of each fiscal year make an inventory of the value of the company’s assets and liabilities, prepare a financial statement, a report on their operations and financial position as well as include a proposal on distribution of profits (CL, Arts. 126(2) and 127). Their accounts must be audited and the auditor must submit its report to the annual general

shareholders meeting (CL, Arts. 132-136). Copies of the above financial statements, the reports of the board, the auditor and the internal audit committee (CL, Arts. 101-104) must be deposited with MCI, and with CMA in the case of listed companies (CL, Art. 128).

165. LLCs must prepare, for each fiscal year, the company’s financial statements, a report on their activities and financial position as well as proposals on distribution of dividends within three months from the end of the fiscal year (CL, Art. 175(1)). Copies of the financial statements set out above along with the reports of the supervisory board, if any, and the auditor’s report must be submitted to MCI (CL, Art. 175(2)).

166. ULCs and LPs are obliged to prepare financial statements and specifically determine profits and losses and the share of each partner in such profits and losses at the end of each fiscal year, and have the financial statements audited (CL, Arts. 35(1) and 38(3)). They must also submit the financial statements to MCI (Ministerial Decision No. 353).

167. Notably, the CL does not speak about the obligation to “maintain” accounting records. Instead, the CL speaks about the annual “preparation” of accounting records. That may explain why there is no mention of the retention period or the underlying documentation in the CL (for the latter see paragraph 163). Companies and partnerships with capital of at least SAR 100 000 (approximately EUR 24 000) need to, however, retain accounting records, including underlying documentation, for a period of 10 years pursuant to the CBL regime (see paragraphs 158 to 162).

### *Tax and zakat law*

168. Article 58(a) of the ITL requires taxpayers to maintain the necessary commercial books and accounting records, including the underlying documentation. This entails an obligation to keep at a minimum the general journal, ledger, inventory book, including supporting documents and explanatory data and remarks as well as other accounting records as may be necessary to accurately determine tax liability and as required by the CBL. This information must be maintained by taxpayers for a period of no less than 10 years (ITL Regulations, Art. 56(1) ITL). The documentation on contracts concluded with the private sector must also be kept for a period of at least 10 years (ITL Regulations, Art. 63(9)(c)).

169. Tax and zakat laws also require that underlying accounting documentation is held by taxpayers and zakat payers. Taxpayers are expressly required to keep supporting documents and explanatory data and remarks (ITL Regulations, Art. 56(1)). Likewise, Article 18 of the ZR requires that zakat payers maintain all supporting documents, explanatory data and notes relating to their accounting records.

170. Importantly, the concept of taxpayer under the ITL is limited and does not include companies and partnerships without foreign shareholders or partners (ITL, Arts. 1 and 2). The obligation to keep accounting records under ITL therefore only applies to a limited number of entities. However, entities with Saudi shareholders and partners are subject to zakat instead of tax (ZR, Art. 2). Zakat payers are required to maintain commercial books and accounting records, including the underlying documentation (ZR, Art. 18). The records are expected to be kept for at least five years, since GAZT may correct errors resulting from misapplication of the relevant provisions within five years (ZR, Arts. 21 and 22). The ZR provides for an exemption for the above accounting record keeping obligations for certain zakat payers, which are assessed under the presumptive method (ZR, Arts. 10, 11 and 18). GAZT assesses any zakat payer using the presumptive method where the commercial books do not reflect their true position, and who are not required under relevant effective laws, regulations or rules to issue financial statements (ZR, Arts. 10 and 11). An obligation to keep certain accounting records also applies to all residents (whether or not taxpayers in Saudi Arabia) who make payments to a non-resident from a source in Saudi Arabia that are subject to withholding tax (ITL, Art. 68(a)). All payments for services provided are subject to withholding tax, as well as dividends, loan charges (interest) and royalties (ITL Regulations, Art. 63). The records to be held are the records relevant to prove compliance with the withholding tax provisions, and must at least include the name and address of the recipient, the type and amount of the payment and the amount withheld (ITL, Art. 68(b)(4); ITL Regulations, Art. 63(9)(c)).

171. Another source for the tax authorities to obtain certain accounting information lies in the obligation for all persons (not only taxpayers) and government bodies to provide information on contracts concluded with the private sector within three months of the date of conclusion of the contract (ITL, Art. 61(c)). The Saudi authorities indicate that the “private sector” includes all individuals, entities and arrangements that conduct business in Saudi Arabia. The information must include the names and addresses of the parties, the subject of the contract, its value and financial terms and the execution and completion dates. Article 58 of the ITL Regulations further clarifies that the obligation applies with respect to construction, service and delivery contracts with a value of at least SAR 100 000 (approximately EUR 24 000). The tax authorities also have the right to request a copy of the contract.

### *Companies that ceased to exist*

172. The accounting information reported by the companies and their auditors (i.e. financial statements) to the Commercial Register remains with

MCI indefinitely, i.e. even after the company ceased to exist. This ensures that some general accounting information will be available with the authorities after a company ceases to exist. Furthermore, as noted in paragraph 69, all of the company's documentation, including accounting information (general records as well as underlying documentation) must be provided to the liquidator upon dissolution. A claim against the liquidator can be made within five years from the date of announcement of the end of the liquidation process (CL, Art. 210), which implies that the liquidator should maintain the relevant documentation for a period of at least five years after liquidation. Nevertheless, since there is no explicit obligation on the liquidator to maintain all records for at least five years, it is recommended that Saudi Arabia monitors whether in practice liquidators keep accounting information for a period of at least five years after the liquidation of a company (see Annex 1).

### *Inactive companies*

173. As explained in section A.1 above, there is a substantial number of inactive companies registered in the Commercial Register that maintain their legal personality. For these companies, up-to-date accounting information may not be available. According to Saudi Arabia, the large majority of these companies are in fact completely inactive and there are no transactions to be recorded in the accounting records. However, such entities may continue to hold assets and the amount of inactive companies gives rise to concerns about the availability of accounting information (about 40% of the total number of companies registered with MCI). Therefore, Saudi Arabia is recommended to review its system whereby a significant number of inactive companies remain with legal personality in the Commercial Register.

### *Waqfs*

174. The Saudi authorities report that waqfs are required to keep accounting records. In the case of waqfs that are directly administered by GAW (public and possibly some private waqfs), these records would be generally produced and maintained by the authorities themselves (LGAW, Arts. 16 and 18).

175. Waqfs, public and private, exhibit particular characteristics that limit their ability to conduct commercial activities and are strictly regulated and supervised in Saudi Arabia (see section A.1.4 and especially paragraph 148). In this regard, the LGAW also specifically provides that GAW is responsible for reviewing waqfs' annual accounting reports (LGAW, Art. 5(5)(a)). Saudi Arabia further submits that public and private waqfs are required to keep underlying accounting documentation because absent such documentation the GAW would not be able to carry out its mandate of control and supervision

over waqfs. The legal basis for this requirement, therefore, is the LGAW. The Saudi authorities further indicate that the accounting records are kept with GAW indefinitely.

### *Oversight and enforcement*

176. Compliance with the accounting obligations is primarily supervised by MCI and SOCPA. The Saudi authorities explain that SOCPA oversees the certified public accountants performance, while MCI is the competent authority to monitor compliance with accounting record keeping requirements. As already discussed in section A.1.1, SOCPA oversees certified public accountants, both with respect to their AML obligations as well as the quality of the review. This is relevant in respect of all companies and partnerships, as they are all required to have their accounts and/or financial statements audited on an annual basis.

177. Accounting professionals are subject to independent monitoring and review through desk audits and on-site inspections by SOCPA. During the inspections, adherence to accounting and (international) auditing standards is assessed, as well as the competence of the individual auditors. During on-site inspections, specialised review groups review samples of audit files (performed by the office under review) to assure compliance with laws and professional standards, and with the approved quality control standards for accounting offices and their elements such as independence. Both procedural aspects and quality of the work and independence are reviewed. Disciplinary measures and other sanctions are addressed in more detail in section A.1.1.

178. Compliance with the requirement to maintain accounting records and underlying documentation by all legal entities is also monitored by MCI as well as CMA in respect of listed JSCs. For an overview of the supervisory powers and activities of MCI and CMA see section A.1.1.

179. In January 2015 MCI and SOPCA jointly introduced an online platform called Qawaem facilitating digital submission of the required financial statements. At the time of writing the 2016 EOIR Report, the Qawaem system was not fully operational and authorities had little experience and processes in place to ensure compliance with the requirement to submit audited financial statements to MCI. Therefore, the 2016 EOIR Report made a recommendation for MCI to introduce effective oversight procedures and ensure that reliable accounting records are kept for all entities.

180. In the meantime, the Qawaem system became mandatory for all companies and partnerships as well as auditors. Saudi Arabia indicates that timely submission of the financial statements through Qawaem is one of the conditions for the renewal of registration with the Commercial Register and that there are currently 59 members of staff at MCI tasked with ensuring

compliance with the requirement to submit financial information via Qawaem and other conditions arising from the CL. Any entity that fails to comply with this requirement is referred to the Enforcement Committee within MCI and risks being sanctioned. In 2018, 157 cases were referred to the Enforcement Committee, which resulted in 187 fines (some entities received multiple fines), including in relation to the non-compliance with the preparation and/or provision of accounting records. An additional safeguard is provided under Article 3 of the CBL Regulations that requires auditors to certify that data in the commercial books has been entered into the computer system in accordance with the relevant legal provisions, and that data shown in the entity's financial statements is in agreement with reports generated from the computer system.

181. In terms of tax laws supervised by GAZT, a failure to keep accurate accounting records may lead to a fine on the taxpayer of 25% of the unpaid tax (ITL, Art. 77(b)). Accountants responsible for preparation of false statements or statements that depart from the established accounting principles are subject to prosecution (ITL, Art. 78). For further details on GAZT's oversight activities and the applicable sanctions, see section A.1.1.

182. Accounting records of waqfs are supervised by GAW. The supervisory measures and activities are addressed in more detail in section A.1.4.

### *Conclusion and practice*

183. Companies and partnerships in Saudi Arabia are required to annually prepare financial records and have them audited, as well as to maintain for a period of 10 years the relevant accounting information inclusive of the underlying documentation. This is ensured through the CBL and the CL provisions operating in conjunction. The CL complements the parallel obligations arising from the CBL in that it does not prescribe for a carve-out for entities which do not hold a capital of at least SAR 100 000 (approximately EUR 24 000). However, given that the CL does not explicitly require maintenance of the underlying documentation, there is a gap to the extent that LLCs, ULCs and LPs do not hold the required amount of capital stipulated for under the CBL (JSCs are legally required to keep capital in excess of the required threshold – see paragraph 161).

184. The accounting record keeping obligations arising out of the tax and zakat laws address this gap to the extent that LLCs, ULCs and LPs have foreign partners, and thus are subject to tax law in Saudi Arabia. Therefore, Saudi Arabia is recommended to ensure that all LLCs, LPs and ULCs that do not have foreign partners maintain the underlying accounting information. However, this recommendation is of limited materiality given that it concerns businesses with a capital no larger than SAR 100 000 (approximately



EUR 24 000) and that do not have foreign partners. Moreover, these businesses are required to submit the annual financial statements to MCI pursuant to the CL, and thus the recommendation is only referring to the underlying accounting records.

185. There are oversight and enforcement measures in place in respect of the certified public accountants that audit the accounts of companies and partnerships. In addition, these entities must submit accounting information to the authorities via an electronic system called Qawaem. Waqfs are subject to the record keeping obligations with respect to their financials and the underlying documentation, which is overseen by GAW. However, these measures do not apply to inactive companies and, Saudi Arabia is recommended to address the availability of accounting information with respect to the significant number of inactive companies.

186. During the review period, Saudi Arabia received nine requests for accounting information. Apart from the issues described in section C.5 below, no peer raised specific issues regarding the availability of this type of information.

### A.3. Banking information

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

187. In terms of banking information, the 2016 EOIR Report concluded that banks' record keeping requirements and their implementation in practice were in line with the standard. This continues to be the case even with the new requirement that beneficial ownership information (in addition to legal ownership) in respect of account holders be available.

188. The table of recommendations, determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: The element is in place</b>
<b>Practical Implementation of the standard</b>
<b>Rating: Compliant</b>

#### *A.3.1. Availability of banking information*

189. No person is allowed to engage in banking business in Saudi Arabia unless it holds a valid licence for that purpose issued by the Ministry of Finance on a recommendation from SAMA (BCL, Arts. 2 and 3), the



regulatory and supervisory body for the banking industry. Currently, there are 12 local banks and 12 branches of foreign banks licensed to operate in Saudi Arabia.

190. Banks must produce all required books and records of accounts and other documents when an inspection is conducted by SAMA or auditors appointed by SAMA (BCL, Art. 18). This would include all records that a bank, in its capacity as a JSC (BCL, Art. 3), is required to keep under the CBL and the CL (see section A.2), but also the records that must be kept under the AML legislation.

191. Based on Article 1(7) of the AMLL read in conjunction with Article 1/2 of the AMLR, banks are regarded as financial institutions and must therefore carry out CDD and keep, for a period of at least 10 years after a transaction or the closing of an account, all records and documents to the extent sufficient to permit reconstruction of transactions (AMLL, Arts. 7 and 12).

192. Paragraph 4.11 of the SAMA AML/CFT Guidelines further states that the records that are kept should be sufficiently adequate to enable reconstruction of a transaction and offer a complete audit trail of all financial transactions, in particular cash transactions and fund transfers. The following records must be kept permanently:

- a. customer account opening agreements and related account documents
- b. certified/attested copies of customer identification documents
- c. all customer transaction records and instructions
- d. statements and details of customer accounts and balances.

193. The CDD obligations require identification and verification of the account holders identity based on reliable, independent source documents, data and information (AMLR, Arts. 7/2/a and b). Similarly, banks must identify the beneficial owners and take reasonable measures to verify their identity, using information and data obtained from a reliable source, such that the bank is satisfied that it knows who the beneficial owner is (AMLR, Art. 7/2/c). This also entails understanding the ownership and control structure of the customer (AMLR, Art. 7/2/e). See section A.1.1 for further details.

194. In order to ensure compliance with the AML obligations, SAMA's supervisory model employs a combination of on-site and off-site inspections. Off-site supervision consists of an analysis of the documents and reports that are submitted by banks on a periodical basis as well as the specific issues that were flagged during on-site visits. Saudi Arabia explains that all banks receive a full scope audit by SAMA each year (see paragraph 97). For further details on the supervisory activities of SAMA and the applicable sanction mechanism see section A.1.1 above.

195. In summary, the CDD obligations and record keeping obligations on all transactions require banking information (including beneficial ownership information) to be available in Saudi Arabia for all account holders. Compliance by banks in respect of these legal obligations is checked and supervised by SAMA. Through their inspections, it has been established that banks keep the required information on their clients and transactions.

196. During the three year review period, banking information was requested in seven instances. Although not all requested information was exchanged in all cases, this was unrelated to the availability of the information. Otherwise, apart from the issues described in section C.5 below, no specific issues were raised by peers.

## Part B: Access to information

197. Sections B.1 and B.2 evaluate whether the competent authority has the power to obtain and provide information that is the subject of a request under an EOI arrangement from all relevant persons within its territorial jurisdiction and whether any 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).

198. The competent authority in Saudi Arabia for tax information exchange under international treaties is the Minister of Finance or its authorised representative, as set forth under EOI agreements. The General Authority of Zakat and Tax (GAZT) has been delegated this task and acts as the competent authority.

199. The 2016 EOIR Report noted that, in relation to certain EOI agreements, there were restrictions in Saudi Arabia's domestic law that had prevented them from obtaining information absent a domestic tax interest and in respect of banking information. This issue has been addressed by the coming into force of the Multilateral Convention and an amendment to the ITL extending the domestic access powers of the authorities. In respect of EOI requests received in the review period of the current report, banking information was obtained by Saudi Arabia without restriction. In addition, Saudi Arabia obtained information it did not need for domestic tax purposes.

200. Saudi Arabia also passed a new law that extended the authorities' compelling powers to obtain the EOI relevant information, and thus addressing a related recommendation made on this issue in the 2016 EOIR Report.

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

<b>Legal and Regulatory Framework</b>
<b>Determination: The element is in place</b>
<b>Practical Implementation of the standard</b>
<b>Rating: Compliant</b>

### ***B.1.1. Ownership, identity and banking information***

202. The powers to obtain information for tax purposes are provided for in the ITL. Article 61(a) ITL provides that all persons and government bodies shall provide GAZT with any information related to tax or international treaties requested by GAZT. The Saudi Arabian authorities confirmed that this power is generally applied by sending a written request for information. There is no limitation in respect of types of information that may be requested. The use of the term “persons” ensures that information can be obtained from any person, and not only from taxpayers (the term “taxpayers” is used in most other provisions of the ITL). This includes all relevant entities and arrangements as well as other governmental authorities. Finally, information can be requested regardless of whether the person is legally required to keep that information in the first place.

203. GAZT has direct access to a wide range of ownership information collected through the tax and zakat registration processes as well as the information contained in zakat returns, income tax returns as well as zakat and tax clearance certificates. Similarly, GAZT administers VAT and excise duties and has direct access to information pertaining to these types of taxes.

204. Moreover, information collected by MCI, such as that available in the Commercial Register or through the Qawaem database, is readily available to GAZT. This is because GAZT and MCI are linked through a common electronic portal where information on entities and shareholders is jointly maintained and shared. GAZT would also contact the Ministry of Justice (MOJ) and the General Authority for Waqfs (GAW) with respect to information about waqfs as well as the Ministry of Interior about any information relating to individuals.

205. Information maintained by commercial entities, such as the shareholder register, may be accessed by GAZT pursuant to the wide-ranging access powers prescribed under Article 61(a) of the ITL. Similarly, this provision is the basis to access the requested information that is in the possession or control of a third party, for example beholder of a waqf or persons providing legal or accounting services to a foreign trust.

206. Likewise, Article 61(a) of the ITL gives the legal right to GAZT to access banking information directly from financial institutions (if the

international agreement allows for it, see sections B.1.5 and C.1.3). In practice, GAZT would typically make a request to SAMA under Article 61(a) ITL, which in turn would then seek the information from the banks under the BCL. This is also the procedure that was followed where banking information needed to be obtained during the review period. The background to this procedure is that SAMA, like GAZT, is a government authority falling under the responsibility of the Minister of Finance and any dealings with banks from the government side should go through SAMA. Regarding the question whether the name of the account holder is required to obtain bank information, Saudi Arabia clarifies that an IBAN number or any other unique identifying information is sufficient to obtain the information, but no such requests were received to date.

207. For four requests received from two peers, the Saudi authorities were not able to identify the relevant person concerned based on the names provided. One peer made a request regarding contact details and addresses of individuals pursuant to their non-Arabic names. Saudi Arabia explains that the relevant data in Saudi Arabia is held in Arabic and since a non-Arabic name can be written in different forms in Arabic, it is insufficient information alone to search an Arabic database for a specific name. Thus, in order to avoid any mistakes in obtaining the requested information, the Saudi authorities usually need to request additional information. Saudi Arabia followed up with the peer indicating that the names by themselves were not sufficient and requested additional identifying information, such as passport details. The peer was not able to provide the requested passport information and Saudi Arabia considered the cases closed.

208. Likewise, another peer provided a non-Arabic name of a company allegedly registered in Saudi Arabia and its shareholder. Saudi Arabia followed up with that peer requesting additional identifying data, which the peer was not able to supply. Therefore, after reviewing the information held in the Commercial Register (maintained in Arabic) as well as contacting the Ministry of Interior regarding the information about the individual, the request was considered closed due to lack of sufficient identifying data.

209. Saudi Arabia's approach to this transliteration issue is sensible, since non-publicly available information on persons with a similar name as identified in the EOI request can often not be provided without additional information from the requesting jurisdiction, as information should not be provided unless there is a sufficiently clear connection with the EOI request. This needs, however, to be clearly communicated with the partners (see section C.5.1).

### ***B.1.2. Accounting records***

210. The powers and information sources described in section B.1.1 can be equally utilised to obtain accounting information. In addition, from 2015,

financial accounts that have been audited by chartered public accountants are deposited by the auditors through the online Qawaem system, which is jointly maintained by MCI and SOCPA. This database is accessible for banks as well as various governmental authorities, including GAZT.

211. Saudi Arabia has not experienced any issues accessing accounting information, and no peers indicated any issue in this area during the review period.

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

212. The 2016 EOIR Report identified an issue with domestic access rights pursuant to (the at that time applicable version of) Article 61(a) of the ITL that limited access powers to information necessary for (domestic) taxation purposes. In response to the recommendation made in that Report, Saudi Arabia amended Article 61(a) of the ITL, which now explicitly provides that “all persons” shall provide GAZT with “any tax related information it requests whether for taxation purposes under this Law *or for the purposes of provisions of international treaties*.”

213. Saudi Arabia indicates that no difficulties have arisen in practice with obtaining or providing information requested by foreign competent authorities under an EOI agreement, and in the review period this included cases where Saudi Arabia did not need the information for its own tax purposes.

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

214. GAZT has the mandate to conduct audits on taxpayers at their premises without prior notice, including seizing books, records and other documents for 15 days, to ensure compliance with tax obligations under the ITL (ITL, Art. 61(b); ITL Regulations, Arts. 58(2) and 59). For this purposes, the information may be requested from “any person” (ITL, Art. 61(a)). However, Saudi citizens and Saudi companies and partnerships wholly owned by Saudi citizens, who are not taxpayers for purposes of the ITL, are not subject to the authorities’ power to conduct an audit and impose penalties under the ITL.

215. Accordingly, the 2016 EOIR Report recommendation that Saudi Arabia reviews its powers for compelling the provision of information for EOI purposes and ensure that such powers are widely applicable without being premised on a taxpayer status in Saudi Arabia remains relevant.

216. The recommendation in that EOIR 2016 Report also specifically noted that Saudi Arabia should consider introducing monetary sanctions as part of its revamp of the compelling powers to obtain information for EOI purposes.

217. Saudi Arabia introduced the Enforcement Rules to Implement EOI Provisions Pursuant to International Treaties (EREOI) on 22 August 2017 that prescribes for penalties for failure to provide information.

218. According to Articles 1 and 3 of the EREOI, monetary penalties shall apply to “financial institutions, persons or intermediaries” that fail to supply tax information to GAZT required to be reported under international treaties. In this regard, Article 6 of the EREOI stipulates that the provisions of the regulations shall apply to the FATCA agreement with the United States, DTCs as well as, subject to a resolution by the Council Ministers, to any other bilateral or multilateral treaty with respect to exchange of information for tax purposes. The Saudi authorities take the view that, as the Multilateral Convention was in force at the time of issuance of the EREOI, it also applies to this agreement, even though it was not explicitly mentioned in the Council of Ministers decision issuing the EREOI and the MAC is not a DTC. This is evidenced by the fact that for the application of the EREOI to exchanges using the CRS Multilateral Competent Authority Agreement, a separate Council of Ministers decision was issued. This would not have been possible if the EREOI had not already applied to the MAC.

219. The penalties included in the EREOI may be applied to any failure to supply information related to an EOI request received by Saudi Arabia. Article 3 of the EREOI provides for the following penalties to be applied in the set of circumstances described below:

- a. “A financial penalty of SAR 500 (approximately EUR 120) for each day of delay, after the prescribed period, to file the tax reporting in accordance with each convention, provided that under no circumstances the amount of such penalty exceeds SAR 15 000 (approximately EUR 3 570).
- b. A financial penalty of SAR 5 000 (approximately EUR 1 200) for each failure to file a tax information return as required and in the form specified for each convention.
- c. A financial penalty of SAR 5 000 (approximately EUR 1 200) on a person who makes a false statement or omission in respect of any information required to be included on an information return related to each convention, unless such information relates to a third person and it is proved that making a false statement or omission was not deliberate.
- d. A financial penalty of SAR 3 000 (approximately EUR 710) on a person for each failure to file an information return in the manner prescribed for each convention.

- e. A financial penalty of SAR 3 000 (approximately EUR 710) on a person who does not comply with the requirement of the competent official while the latter is carrying out his duties and exercising his authorities in regard to each convention.”

220. As seen from the EREOI excerpt above, the circumstances set out in Articles 3(a) to 3(d) of the EREOI seem to concern “an information return” that is specifically prescribed by a given EOI agreement. The information return requirement is a concept applicable in the contexts of the automatic exchange of information under the CRS and FATCA. These instruments directly impose obligations on financial institutions in the sending jurisdictions to annually report a set of pre-defined financial account information on foreign tax residents and citizens of the United States, respectively. Conversely, the DTCs and the Multilateral Convention do not prescribe or impose obligations directly on residents of the requested jurisdiction to domestically report the information pursuant to an agreed information return form. Instead, such access obligations are to be set out under the domestic laws that give effect to the exchange obligations in line with the EOIR Standard.

221. Penalties may be applied, however, pursuant to Article 3(e) of the EREOI which does not depend on failures with respect to the submission of “an information return” discussed in the preceding paragraph. The Saudi authorities report that in the review period there were no cases where the penalties set out in the EREOI had to be applied.

222. In addition, as an administrative measure GAZT would refuse to issue its annual zakat certificate. As already explained in paragraphs 87 and 89 above, a zakat certificate is required to bid for contracts and obtain and maintain licences to do business. This has not taken place in practice as no zakat payer refused to provide information to the Competent Authority in relation to an EOI request.

223. In conclusion, the recommendation issued in the 2016 EOIR Report is considered as addressed. Since the EREOI is recent and has not been used in an EOIR context, it is recommended that Saudi Arabia monitors the application of enforcement measures where required (see Annex 1).

### ***B.1.5. Secrecy provisions***

224. Saudi Arabia has provisions relating to banking and professional secrecy. Their possible impact on EOI is discussed below.

#### *Bank secrecy*

225. The principle of banking secrecy is recognised in Saudi Arabia in Article 19 of the BCL. Although Article 17 of the BCL in conjunction with



Article 3(1)(g) of Ministerial Decision No. 3/2149, dated 14/10/1406 H (1986) (Rules for Enforcing Provisions of the Banking Control Law) provides powers to SAMA to obtain any information from banks, this power seems limited to information necessary for ensuring the realisation of the purposes of the BCL. Similarly, the access powers set out under Article 24 of the AMLR are limited to anti-money laundering purposes.

226. Nevertheless, this limitation is lifted where an international agreement is effective which requires Saudi Arabia to provide banking information to other jurisdictions, following the general hierarchy of laws as explained in paragraph 13 above. This means that where requests are made under the Multilateral Convention or a DTC that includes a provision corresponding to Article 26(5) of the OECD Model Tax Convention (OECD Model), SAMA is able to use its information gathering powers to obtain information from banks and provide it to GAZT in response to an EOI request pursuant to such international agreement.

227. The coming into force of the Multilateral Convention resulted in lifting the restrictions in accessing banking information in relation to 13 jurisdictions. As at August 2019, there are seven jurisdictions left that are not signatories to the Multilateral Convention and where the DTC does not contain a provision corresponding to Article 26(5) of the OECD Model. In respect of these DTCs, Saudi Arabia is not able to use its access powers to access information held by banks (see section C.1.3).

228. The 2016 EOIR Report recommended that, given Saudi Arabia's generally limited experience in obtaining information for EOI purposes and no experience, at the time, with exchanging banking information, Saudi Arabia should monitor its exchanges of banking information to ensure that these are in line with the standard. As explained in section A.3.1 above, Saudi Arabia received seven requests for banking information (none of them from a jurisdiction in respect of which Saudi Arabia is not able to use its access powers to access information held by banks). As explained under element C.5, there were some discrepancies in the understanding of the status of requests between Saudi Arabia and its main EOI peer. This included requests for banking information. While there are no direct indications that this is related to an issue with the access powers, it is still a fact that Saudi Arabia has limited experience with accessing information from banks and the comfort of smooth exchanges is missing (see also under C.5). Therefore, Saudi Arabia is recommended to continue its monitoring of handling of EOI requests concerned with banking information and ensure that it is able to access banking information, including banking statements that may be specifically requested by the EOI partners (see Annex 1).

*Professional secrecy*

229. The 2016 EOIR Report concluded that the scope of legal professional privilege in Saudi Arabia was in accordance with the international standard, and no changes have occurred in the relevant legal framework. As Saudi Arabia explains, there was no case during the period under review where the requested information was covered or might have been covered by the attorney-client privilege and no issues in this respect came up in practice.

**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.

230. The 2016 EOIR Report did not identify any issues with rights and safeguards that could impede EOI exchanges by Saudi Arabia. The same continues to be the case.

231. The table of recommendations, determination and rating remains as follows:

Legal and Regulatory Framework
<b>Determination: The element is in place</b>
Practical Implementation of the standard
<b>Rating: Compliant</b>

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

232. There is no requirement in Saudi Arabia’s domestic legislation that the taxpayer or zakat payer under investigation or examination must be notified of a request, either before or after the exchange of information takes place.

233. As mentioned in the 2016 EOIR Report, Article 43 of the Basic Law provides that “[t]he King’s Court and that of the Crown Prince shall be open to all citizens and to anyone who has a complaint or a plea against an injustice.” This means that in theory it is possible for any Saudi citizen to challenge the furnishing of information to foreign tax authorities. However, as there is no obligation to notify the person, the situations where that person would obtain knowledge of the fact that information will be exchanged to a foreign authority in a specific case, would be limited, unless information is asked to that person directly. These issues did not arise in practice.

234. Peer input did not identify any issues during the period under review.

## Part C: Exchanging information

235. Sections C.1 to C.5 evaluate the effectiveness of Saudi Arabia’s network of EOI mechanisms – whether these EOI mechanisms cover all 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 third parties, and whether Saudi Arabia 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.

236. The exchange network of Saudi Arabia comprises 53 DTC partners as well as the signatories to the Multilateral Convention that is applicable in Saudi Arabia as of April 2016. Saudi Arabia did not sign any TIEAs. The total number of EOI relationships is 141 (128 through the Multilateral Convention and 13 DTCs with jurisdictions that have not signed the Multilateral Convention). GAZT acts as the Competent Authority for exchange matters.

237. The 2016 EOIR Report did not identify any issues with respect to the element C.1, and in respect of the review period of the current report no issues have been identified either.

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

<b>Legal and Regulatory Framework</b>
<b>Determination: The element is in place</b>
<b>Practical Implementation of the standard</b>
<b>Rating: Compliant</b>

### *C.1.1. Foreseeably relevant standard*

239. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This concept, as articulated in Article 26 of the OECD Model, is to be interpreted broadly, including the possibility of group requests. It does not extend so far, however, as to allow for “fishing expeditions”.

#### *Clarifications and foreseeable relevance in practice*

240. In the 2016 EOIR Report, all of Saudi Arabia’s DTCs met the “foreseeably relevant” standard. Since then, Saudi Arabia ratified the Multilateral Convention and signed nine new DTCs. Six of these new DTCs were signed with jurisdictions that are also signatories to the Multilateral Convention. The three new DTCs with jurisdiction that did not sign the Multilateral Convention are those with Egypt, Jordan and Turkmenistan.

241. Out of the three treaty partners that are not party to the Multilateral Convention, the DTCs with Egypt and Turkmenistan provide for the exchange of information that is “necessary”.<sup>11</sup> In this regard, the Commentary on Article 26 of the OECD Model recognises that the standard of “foreseeable relevance” can be met when alternative terms are used in an agreement, such as “necessary” or “relevant”. Saudi Arabia confirmed that it would interpret these terms according to the standard of foreseeable relevance that is consistent with the scope of Article 26(1) of the OECD Model.

242. GAZT confirmed that it has never declined an EOI request on the basis of lack of foreseeable relevance, however in one case part of the information was initially not exchanged as Saudi Arabia concluded, after collecting and reviewing the information, that it would not be relevant. This was communicated to the peer; after further discussions with the peer, Saudi Arabia agreed to provide the information to the extent it relates to periods covered by the relevant international agreement. In practice, if a request was considered unclear or incomplete, Saudi Arabia would seek clarification or additional information from the requesting jurisdiction before declining to respond to it. This was the case with respect to at least four requests during this review period (see section B.1). Peers did not raise any concerns regarding Saudi Arabia’s interpretation of the standard of foreseeable relevance.

11. From the EOI network analysed in the 2016 EOIR Report, also the treaties with Bangladesh, Belarus, Syria, Uzbekistan and Viet Nam, i.e. DTC partners of Saudi Arabia that continue not to be signatories to the Multilateral Convention, also apply the alternative formulation of “necessary”.

### *Group requests*

243. There is no indication that any of Saudi Arabia’s EOI agreements contains language prohibiting group requests, and thus the process for responding to group requests is the same as for any other request for information. Saudi Arabia reports that it does not require any specific information to be provided by the requesting jurisdiction in the case of a group request. The competent authority interprets foreseeable relevance with respect to group requests in a similar manner as with regular requests. During the review period, Saudi Arabia received no group requests.

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

244. All DTCs concluded by Saudi Arabia specifically included a provision which extends the scope of the exchange of information provision to persons other than residents of one of the Contracting States, thereby allowing for exchange of information in respect of all persons.

245. In practice, no issues of restricting exchange of information based on the residence or nationality of the person to whom the information relates or of the holder of information has been indicated by either Saudi authorities or peers.

#### ***C.1.3. Obligation to exchange all types of information***

246. Article 26 of the OECD Model 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. Article 26(5) of the OECD Model and Article 5(4) of the OECD Model TIEA explicitly stipulate for the exchanges of all types of information. Also, the Multilateral Convention enables exchanges in accordance with this standard.

247. As such, jurisdictions may be able to exchange all types of information, including the items of information enlisted above, without a specific provision to that effect in the underlying tax treaty or TIEA. However, as identified in section B.1.5 above, the domestic law in Saudi Arabia does not provide for access to banking information where the international agreement does not contain a provision corresponding to Article 26(5) of the OECD Model (see paragraph 226).

248. The 2016 EOIR Report specifically determined that the treaties with Bangladesh, Belarus, Malaysia, Syria, Uzbekistan and Viet Nam should be updated. In the case of Malaysia, the issue has been resolved by virtue of Malaysia joining the Multilateral Convention. As regards the other five jurisdictions, Saudi Arabia reports that it contacted these partners with a view of

introducing an amending protocol to the existing DTCs that would address this issue. No response has been received to date from any of these partners.

249. From among the new treaties signed by Saudi Arabia since the 2016 EOIR Report, the treaties with Egypt and Jordan do not include a provision equivalent to Article 26(5) of the OECD Model. These jurisdictions are also not signatories to the Multilateral Convention. It is recommended that Saudi Arabia continues its efforts to update its relevant DTCs by inserting a provision equivalent to Article 26(5) of the OECD Model and ensures that any new agreements offering exchange of tax information are in line with the standard (see Annex 1).

250. In practice, no requests have been made under any of the bilateral treaties that do not contain a provision equivalent to Article 26(5) of the OECD Model Tax Convention.

#### ***C.1.4. Absence of domestic tax interest***

251. EOI partners must use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction. Such obligation is explicitly contained in Article 26(4) of the OECD Model and Article 5(2) of the OECD Model TIEA. Exchanges of information absent of the “domestic tax interest” are also possible under the Multilateral Convention.

252. The 2016 EOIR Report concluded that in the case of Saudi Arabia’s EOI partners that did not sign the Multilateral Convention and whose underlying bilateral treaties do not include a provision corresponding to Article 26(4) of the OECD Model, Saudi Arabia would be restricted in sourcing the information domestically absent of a domestic tax interest. As this would then also impact on the ability of Saudi Arabia to exchange information, the 2016 EOIR Report recommended that such DTCs be brought in line with Article 26(4) of the OECD Model. Since then, as explained in section B.1.3 above, this issue has been rectified at the level of Saudi Arabia’s domestic law with the passing of the relevant amendments to the ITL.

253. However, as far as exchanges from the EOI partners to Saudi Arabia are concerned, the issue may still persist. This applies to the DTCs with Bangladesh, Belarus, Jordan, Syria, Uzbekistan and Viet Nam, which do not contain a provision corresponding to Article 26(4) of the OECD Model. Saudi Arabia reports that it contacted these jurisdictions with a view of amending the DTCs accordingly. No response has been received to date from any of these partners.

254. Saudi Arabia is recommended to continue its efforts to amend the bilateral treaties with Bangladesh, Belarus, Jordan, Syria, Uzbekistan

and Viet Nam with a view to introducing a provision corresponding to Article 26(4) of the OECD Model as well as ensure that all new agreements offering exchange of information are in line with the standard (see Annex I).

255. In practice, no issues linked to domestic tax interest arose during the current review period and this is confirmed by peers.

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

256. All of Saudi Arabia's EOI agreements provide for exchange of information in both civil and criminal matters and there are no dual criminality provisions in any of them.

257. In practice, Saudi Arabia received only requests related to civil tax matters.

### ***C.1.7. Provide information in specific form requested***

258. No restrictions apply in any DTC concluded by Saudi Arabia for information to be provided in the specific form requested.

### ***C.1.8. Signed agreements should be in force***

259. In Saudi Arabia, international agreements are approved by the Council of Ministers, after which a Royal Decree ratifying the agreement is issued. The process is finalised by Saudi Arabia notifying its treaty partner of the completion of the domestic ratification procedure.

260. The Multilateral Convention is in force in Saudi Arabia as of 1 April 2016. Regarding the 53 DTCs signed by Saudi Arabia, three are not yet in force in August 2019. These are DTCs with Gabon (signed on 17 December 2015), Morocco (signed on 15 April 2015) and Switzerland (signed on 18 February 2018). Saudi Arabia indicates that it has completed ratification of these DTCs, informed its partners about this fact, and is awaiting ratification by its partners. In the interim, exchange of information with Morocco and Switzerland may take place under the Multilateral Convention (the Multilateral Convention is in force in Morocco as of 1 September 2019), and Gabon is also a signatory to the Multilateral Convention, but has not yet ratified it.

### Bilateral EOI Mechanisms

<b>Bilateral EOI relationships</b>	<b>53</b>
<b>In force</b>	<b>50</b>
In line with the standard	28
Not in line with the standard	22
<b>Signed but not in force</b>	<b>3</b>
In line with the standard	3
Not in line with the standard	0
Bilateral EOI mechanisms not in line with the standard and not complemented by the Multilateral Convention	7 <sup>a</sup>

*Note:* a. These are: Bangladesh, Belarus, Egypt, Jordan, Syria, Uzbekistan and Viet Nam.

#### *C.1.9. Be given effect through domestic law*

261. For information exchange to be effective, the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement. In Saudi Arabia, international agreements are implemented in its domestic law by Royal Decree (Basic Law, Art. 70).

262. Once a treaty is implemented in Saudi Arabia it takes priority over any conflicting domestic law (see paragraph 13 above). This is particularly relevant in the context of exchanges of banking information, where the domestic access powers in Saudi Arabia are insufficient unless rectified by the inclusion of a provision corresponding to Article 26(5) of the OECD Model or the Multilateral Agreement (see section B.1.5 and C.1.3). As a result, given this domestic impediment, seven of the EOI agreements have not been given full effect through domestic law in Saudi Arabia.

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

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

263. Saudi Arabia's EOI agreements network covers its main trading partners (including China, France, Germany, India, Japan and Korea) with the exception of the United States. The United States will be covered by Saudi Arabia's exchange framework once it ratifies the Protocol to the Multilateral Convention.

264. The 2016 EOIR Report noted delays in Saudi Arabia responding to requests from some prospective EOI partners to enter into information exchange agreements. All these jurisdictions are now signatories to the Multilateral Convention, together with Saudi Arabia. Comments were sought from Global Forum members in the preparation of this report and no



jurisdiction advised that Saudi Arabia refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Saudi Arabia should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

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

Legal and Regulatory Framework
<b>Determination: The element is in place</b>
Practical Implementation of the standard
<b>Rating: Compliant</b>

### C.3. Confidentiality

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

266. The 2016 EOIR Report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in Saudi Arabia regarding confidentiality were in accordance with the standard. The same remains to be the case.

267. The table of recommendations, determination and rating remains as follows:

Legal and Regulatory Framework
<b>Determination: The element is in place</b>
Practical Implementation of the standard
<b>Rating: Compliant</b>

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

268. All of the information exchange agreements concluded by Saudi Arabia contain a provision targeted at ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received (modelled on Article 26(2) of the OECD Model), which has to be respected by Saudi Arabia as a party to these agreements.

269. The entire staff at GAZT is obliged to maintain confidentiality of information pertaining to taxpayers and zakat payers to which they have access (ITA, Art. 59; ZR, Art. 24). In this regard, GAZT staff as well as third

party contractors, as the case may be, handling confidential information undergo training on confidentiality requirements.

270. The requests received by the EOI Unit at GAZT are registered in a database, which is accessible only by authorised officials. All EOI related information is kept separately and treated as confidential. Paper documents are safely stored in secure cabinets in the EOI Unit. Access to files is restricted to authorised officials only. Information obtained from a treaty partner, including the EOI request itself, is never disclosed to the taxpayer/zakat payer. Further, as Saudi Arabia explains, the information provided to the holder of information when asked by GAZT to provide the information requested by an EOI partner is limited to necessary information such as the reason for request, reference to the relevant DTC (or, possibly, the Multilateral Convention) and a description of the information requested.

271. Entry to the premises of GAZT is restricted and guarded. Information obtained in relation to requests that is kept in the respective taxpayer's file can be accessed only by the authorised assessing officer responsible for the respective taxpayer's assessment. It can be distinguished from information obtained from domestic sources and is clearly identifiable.

272. GAZT was audited and certified compliant with the international standard on information security in 2013 and more recently in 2017. Saudi Arabia explained that monitoring in respect of data confidentiality takes place at various levels. First, at the level of the tax authorities, supervision and verification of compliance with work requirements, including protecting data confidentiality, is part of the internal control and audit function that is undertaken by a specialised unit within the tax authorities. This unit reports directly to the Director General. In addition, the General Audit Bureau, an official independent entity that reports to the Council of Ministers, verifies that GAZT and all other official entities and agencies are complying with their requirements, including those pertaining to confidentiality arising from international treaties and domestic law.

273. Under the Penal Law on Dissemination and Disclosure of Classified Information and Documents, it is prohibited to disseminate or disclose classified information or documents which are obtained by a public employee by virtue of office. Public employees include persons that are assigned by a government entity to carry out a certain task, which would cover third party providers. Classified information means information the disclosure of which undermines the State's national security, interests, policies or rights. According to the Saudi authorities, disclosure of information received under an international agreement would as a default undermine the State's interests. It is specified in the law that the prohibition on dissemination and disclosure continues to apply after the end of service.

274. Under the Anti-Cyber Crime Law, unlawful access to computers and data as well as manipulating or leaking private data, are considered punishable crimes. This law applies to both government officials and third party contractors. It may be mentioned that more generally third party contractors must always sign a non-disclosure agreement requiring them to keep confidential any information coming to their knowledge as a result of the contract.

275. As discussed in section C.5.1 below, five requests were initially not received by the Competent Authority. Saudi Arabia explains that it is mainly due to the fact that the function of Competent Authority was shifted from the International Operations Department within DZIT to the EOI Unit within GAZT, and the requests were sent to the former competent authority. As explained under element C.5.1, this change was not effectively communicated to all of Saudi Arabia’s EOI partners leading to confusion among the peers. Nevertheless, the former Competent Authority was also subject to the obligation to keep the information received confidential and all but one of the requests were identified and either transmitted to the new Competent Authority (one request) or returned undelivered to the sending jurisdiction (three requests).

### ***C.3.2. Confidentiality of other information***

276. Confidentiality rules should apply to all types of exchanged information, including information provided by a requesting jurisdiction in a request, information transmitted in response to a request and any background documents to such request. Saudi Arabia confirms that in practice it considers all types of information relating to an EOI request confidential. This is further assured by the DTCs and the Multilateral Convention that require that the information received be treated as secret and confidential.

## **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.

277. The international standard allows requested parties to not 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.

278. The 2016 EOIR Report concluded that Saudi Arabia’s legal framework and practices concerning the rights and safeguards of taxpayers and third parties was in line with the standard (see also section B.1.5). This

continues to be the case. Saudi Arabia reports that, during the period under review, there have been no instances where professional privileges or any other exceptions have been claimed in order not to provide information to the tax authorities in cases related to exchange of information.

279. The table of recommendations, determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: The element is in place</b>
<b>Practical Implementation of the standard</b>
<b>Rating: Compliant</b>

### 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.

280. The 2016 EOIR Report concluded that Saudi Arabia's response times and provision of status updates as well as the overall handling of incoming requests were not fully compatible with effective exchange of information and Saudi Arabia was recommended to address these issues. The Saudi Competent Authority has undertaken an organisational restructuring to improve operational efficiencies and ultimately provided final responses to almost all EOI requests. Peers reported that they experienced substantial delays in receiving responses and also pointed out communication issues with the Saudi Competent Authority (please note that the table below reflects the view of the Saudi authorities and that for a few EOI requests the peer that sent most requests could only confirm that partial information was received). Further recommendations to address these issues have been made.

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

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

Practical Implementation of the standard		
Deficiencies identified	Underlying Factor	Recommendations
	Over the review period, Saudi Arabia did not effectively communicate a change in its Competent Authority contact details to all its EOI partners. Several requests were only received after follow-up, resulting in significant delays. Moreover, Saudi Arabia has not provided any status updates during the review period nor clearly communicated the status of the requests in terms of whether further information can be expected to follow and whether or not the requests are considered to be closed due to, for example, insufficient identifying information.	Saudi Arabia should effectively communicate with its peers, both by ensuring that it can be easily contacted and by clearly communicating the status of requests received, including by providing status updates to its EOI partners within 90 days where relevant.
	During the review period, several changes in the organisation of Saudi Arabia's Competent Authority resulted in internal communication issues and EOI requests not being processed in a timely manner.	Saudi Arabia should ensure that it has appropriate organisational processes in place to process and answer EOI requests in a timely manner.
<b>Rating: Partially Compliant</b>		

### *C.5.1. Timeliness of responses to requests for information*

282. Over the period under review (1 January 2015 to 31 December 2017), Saudi Arabia received 18 requests for information from nine partners. The following table relates to the requests received during the period under review and gives an overview of response times needed by Saudi Arabia to provide a final response to these requests, together with a summary of other relevant factors impacting the effectiveness of Saudi Arabia's exchange of information practice during the review period.

## Statistics on response time

		2015		2016		2017		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	3	100	5	100	10	100	18	100
Final response: ≤ 90 days		0	0	1	20	2	20	3	17
≤ 180 days (cumulative)		1	33	3	60	3	30	7	39
≤ 1 year (cumulative)	[A]	1	33	3	60	4	40	8	44
> 1 year	[B]	1	33	1	20	6	60	8	44
Declined for valid reasons		0	0	0	0	0	0	0	0
Outstanding cases after 90 days		3	100	4	80	8	80	15	83
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided >90 days)		0	0	0	0	0	0	0	0
Requests withdrawn by requesting jurisdiction	[C]	1	33	1	20	0	0	2	11
Failure to obtain and provide information requested	[D]	0	0	0	0	0	0	0	0
Requests still pending at date of review	[E]	0	0	0	0	0	0	0	0

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

b. The time periods in this table are counted from the date of receipt of the request to the date on which the final response was issued, with either complete or partial information having been provided (see paragraph 287).

283. The above table has been reconstructed following discussions with the Saudi Competent Authority and peers, as there were some important discrepancies between the input submitted by the peers and the data initially provided by the Saudi Competent Authority. These discrepancies relate to two main issues. Firstly, it seems that some requests arrived at the Saudi Competent Authority with a significant delay or did not arrive at all.

284. One reason for this is that the Saudi Competent Authority contact details have not been clearly identifiable and up to date throughout the review period. The 2016 Report already noted that “Saudi Arabia reports that the function of competent authority was shifted from the International Economic Relations directorate within the Ministry of Finance to the international operations department within DZIT two years ago [2013]. Although Saudi Arabia reports that it sent a letter and an e-mail to update the Competent Authority contact details to EOI partners in some cases, it appears that peers had difficulty to clearly identify this change in the contact information for Saudi Arabia’s competent authority.” This had an effect on at least one

request which was sent in 2015 and ultimately withdrawn by the peer as no response was ever received.

285. In June 2015, the contact details of the Saudi Competent Authority were added to the Global Forum Competent Authorities secure database. However, despite the recommendation in the 2016 EOIR Report to communicate regularly with treaty partners, especially considering the identified gap in communicating change in its Competent Authority details to all its treaty partners, an update to these details was only made in August 2018, while important changes had already taken place in early 2017. These changes related to the most recent reorganisation of the Competent Authority in Saudi Arabia, when the tax authority became a semi-autonomous authority and changed its name from DZIT to GAZT. This resulted in staff changes at the Competent Authority as well. The Competent Authority details in the Global Forum Competent Authorities database are currently up to date.

286. At least five requests were not originally received by the Competent Authority. One peer explicitly indicated that three of its requests sent in 2016 and 2017 were returned as mail undelivered (marked “Return to sender – Box cancelled”). The name and address used by the peer corresponded to the details provided by Saudi Arabia and reflected in the Global Forum Competent Authorities secure database. That peer noted that, while there was some contact with the Saudi Competent Authority by email during the review period, the communication difficulties resulted in substantial delays and one of the requests was withdrawn because of the delay. The communication issue was finally resolved in September 2018 by agreeing on protocols for exchanging confidential information by encrypted email. In another case, it seems that the request was sent by email to an existing contact in 2015 and was only actioned in August 2018, i.e. with undue delay.

287. A second discrepancy relates to the status of the requests. One peer reported that five of its requests were answered only “partially”. In this regard, the Saudi authorities explained that the requests are answered as the relevant information is domestically sourced and sent incrementally. Nevertheless, this is not effectively communicated by the Saudi Competent Authority and action to obtain and exchange the remaining information was only taken following receipt of the peer input. Discrepancies in the understanding of the status of requests still persist. While the above table reflects the view of the Saudi authorities that all EOI requests received during the review period have been fully answered, this could not be confirmed by the peer that sent most requests (who did confirm that partial information was received).

288. Similarly, as described under section B.1 of this report, there have been cases where Saudi Arabia asked for additional information in order to identify the person on whom information was requested. The background

of the clarification (databases are generally in Arabic, and transliterating names from English into Arabic can be done in different ways, so it cannot be certain that there is a match without other identifying information) was not clearly explained by the Saudi Competent Authority. It was also not effectively communicated that the result of not providing additional information would be that the request cannot be answered.

289. Effective communication with the requesting jurisdiction is a key part of the Competent Authority function, and the communication issues described above show that there has been a lack of clarity with a number of peers on the status of their requests. This is exacerbated by the fact that Saudi Arabia has not provided status updates in respect of any of the EOI requests received in the review period and not answered within 90 days. These conclusions are also confirmed by the peer input received. It is recommended that Saudi Arabia effectively communicates with its peers, both by ensuring that it can be easily contacted and by clearly communicating the status of requests received, including by providing status updates to its EOI partners within 90 days where relevant.

290. It is also clear that the communication issues have contributed to delays in responding to requests. The majority of the requests received a final response after 180 days, and 44% after more than one year. Delays occurred in respect of all types of requests, including requests where the information could be collected relatively easily. Apart from communication with peers, there have been some internal communication issues following organisational changes in the Saudi Arabia Competent Authority (see section C.5.2), also contributing to the delays. It may, however, be noted that Saudi Arabia ultimately provided final responses to almost all EOI requests (please note that the table above reflects the view of the Saudi authorities and that for a few EOI requests the peer that sent most requests could only confirm that partial information was received).

### ***C.5.2. Organisational processes and resources***

291. GAZT is the delegated competent authority of Saudi Arabia for exchange of information purposes and it is identified as such on the Global Forum's Competent Authorities secure database. This department also has the powers to obtain information in this respect as well as answer incoming requests and send outgoing requests.

#### *Organisation of the competent authority*

292. The EOI Unit within GAZT is responsible for communication with the foreign competent authorities and for the administration of gathering the requested information. This includes checking whether the information



collected includes all the requested information and is in the requested format, and, if the requested information cannot be provided, ensuring that it provides an explanation as to why it was not able to provide all the requested information. As mentioned above under section C.5.1, such explanation has not been provided in all cases in the context of asking for additional information.

293. The EOI Unit employs seven full time members of staff to directly work on international EOI requests (among other work) and three other members of staff. In addition, GAZT provides any other technical and administrative support that may be required. The staff handling international exchange matters undergo internal trainings and attend most of the training programmes offered by the OECD/Global Forum.

294. During the review period and thereafter, several changes occurred in respect of where the competent authority function was housed and which persons were designated as delegated Competent Authority. This led to communication gaps resulting in substantial delays in both receipt and processing of the requests (see also under section C.5.1). The changes may also have contributed to the issues described in section C.5.1, as the handover may not have been sufficiently comprehensive, resulting in requests not being treated in a timely manner and the communication with peers being unclear.

295. The Saudi authorities acknowledge that there were internal communication deficiencies which resulted in some requests taking too long to reach the relevant office and person. Saudi Arabia further notes that the contact information between the authorities is now fully updated and no more delays are expected to take place in the future. Nevertheless, it is recommended that Saudi Arabia ensures that it has appropriate organisational processes in place to process and answer EOI requests in a timely manner.

### *Incoming and outgoing requests*

296. Saudi Arabia's experience in exchange of information on request is limited, given the low volume of incoming requests and absence of outgoing requests.

### *Incoming requests*

297. Once an EOI request is received by the EOI Unit, it is registered in the internal database (excel file). A number of key features are entered into the database including the requesting jurisdiction, the subject of the request, the recipient of the request and the date that the request was received. All documents are scanned and saved, while the originals are kept separately in a hand file. The system then automatically produces a registration number. The

database enables the competent authority to track the handling of a request within GAZT and its branches until the completion, answering and closure of the request.

298. Subsequently, the request is assigned to a member of the EOI Unit to review its validity pursuant to the relevant international agreement and verify completeness of the request. If a request is determined invalid it is then reviewed by the manager. Should the request be then confirmed to be invalid, a response is prepared explaining the reason for invalidity which is sent to the requesting jurisdiction. This has not happened during the period under review, but it has happened that the authority requests clarification from the partner (see C.1.1 and C.5.1).

299. If the request is determined to be valid by both the assigned staff member and the manager, the official involved starts collecting the requested information. Where information needed to respond to a request is already in the hands of the tax authorities, the EOI official obtains it from GAZT's records and returns and the request is then answered. In cases where the requested information is in the hands of another governmental authority, the EOI official gets in touch with the concerned governmental authority. Based on administrative procedures, all governmental authorities within Saudi Arabia should answer intra-governmental requests for information within a period of 15 days.

300. The Saudi authorities further explain that GAZT currently communicates with a growing number of ministries via an electronic link. The electronic systems of GAZT, MCI and MLSD are connected and the data, for example regarding the Commercial Register, is easily accessible. Data from the Ministry of Interior, which holds information about individuals such as foreigners employed in Saudi Arabia, is available to GAZT through the electronic ABSHAR system.

301. Where the requested information is in the possession or control of the person that is the subject of the enquiry or a third party service provider, the EOI Unit contacts that person via formal requests which specify that the information should be provided within a period of 30 days. Where the requested information is in the hands of a bank, GAZT contacts SAMA, which then requests the information from the bank on behalf of GAZT and forwards it accordingly. For details, please refer to the discussions in section B.1.

302. Once the requested information is collected, the responsible official in the EOI Unit reviews the information received to ensure that it answers the EOI request in full. The official then drafts a response. Once the response is approved by the manager, it is sent to the requesting jurisdiction by regular mail or secured electronic mail depending on the request. The documents are annotated before dispatch to highlight their confidential nature.

303. Saudi Arabia reports that the above processes would enable it to respond to requests within 90 days from the day of receipt.

#### Outgoing requests

304. Saudi Arabia did not make any outgoing requests during the review period nor the earlier review period, as noted in the 2016 EOIR Report. Saudi Arabia informed that any future requests will be based on the OECD model template in order to ensure that they meet the foreseeable relevance standard.

#### Conclusion

305. As in the case of the 2016 EOIR Report, it is clear from the peer input that the above processes were not entirely functioning or sufficiently complied with in practice during the period under review. It is therefore recommended that Saudi Arabia ensures that it has appropriate organisational processes in place to process and answer EOI requests in a timely fashion, and in that regard, that there is proper communication between the authorities within Saudi Arabia and with the peers regarding the status of the requests. In this context, see recommendations made in paragraph 295 above.

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

306. There are no factors or issues identified in Saudi Arabia laws or practice that could unreasonably, disproportionately or unduly restrict effective EOI.



## Annex 1: List of in-text recommendations

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

- **Element A.1.4** (paragraph 132): It is recommended that Saudi Arabia continues to monitor whether identity information in respect of foreign trusts managed from Saudi Arabia is available.
- **Element A.2** (paragraph 172): It is recommended that Saudi Arabia monitors whether in practice liquidators keep accounting information for a period of at least five years after the liquidation of a company.
- **Element B.1.4** (paragraph 223): Since the EREOI is recent and has not been used in an EOIR context, it is recommended that Saudi Arabia monitors the application of enforcement measures where required.
- **Element B.1.5** (paragraph 228): Saudi Arabia is recommended to continue its monitoring of handling of EOI requests concerned with banking information and ensure that it is able to access banking information, including banking statements that may be specifically requested by the EOI partners.
- **Element C.1.3** (paragraph 249): Saudi Arabia is recommended to continue its efforts to update its relevant DTCs by inserting a provision equivalent to Article 26(5) of the OECD Model and ensures that any new agreements offering exchange of tax information are in line with the standard.
- **Element C.1.4** (paragraph 254): Saudi Arabia is recommended to continue its efforts to amend the bilateral treaties with Bangladesh, Belarus, Jordan, Syria, Uzbekistan and Viet Nam with a view to

introducing a provision corresponding to Article 26(4) of the OECD Model as well as ensure that all new agreements offering exchange of information are in line with the standard.

- **Element C.2** (paragraph 264): Saudi Arabia is recommended to continue to conclude EOI agreements with any new relevant partner who would so require.

## Annex 2: List of Saudi Arabia’s EOI mechanisms

### 1. Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Algeria	DTC	9-Dec-2013	1-Mar-2016
2	Austria	DTC	19-Mar-2006	1-Jun-2007
3	Azerbaijan	DTC	13-May-2014	1-May-2015
4	Bangladesh	DTC	4-Jan-2011	1-Oct-2011
5	Belarus	DTC	20-Jul-2009	1-Aug-2010
6	Bulgaria	DTC	29-Nov-2017	1-Jan-2019
7	China (People’s Republic of)	DTC	23-Jan-2006	1-Oct-2006
8	Cyprus <sup>a</sup>	DTC	3-Jan-2018	1-Mar-2019
9	Czech Republic	DTC	25-Apr-2012	1-May-2013
10	Egypt	DTC	8-Apr-2016	1-Jul-2017
11	Ethiopia	DTC	28-Feb-2013	1-Oct-2016
12	France	DTC (+ protocol)	18-Feb-2011	1-Jun-2012
13	Gabon	DTC	17-Dec-2015	Not in force
14	Georgia	DTC	14-Mar-2018	1-Apr-2019
15	Greece	DTC	19-Jun-2008	1-May-2010
16	Hong Kong (China)	DTC	24-Aug-2017	1-Sep-2018
17	Hungary	DTC	24-Mar-2014	1-May-2015
18	India	DTC	25-Jan-2006	1-Nov-2006
19	Ireland	DTC	19-Oct-2011	1-Dec-2012
20	Italy	DTC	13-Jan-2007	1-Dec-2009
21	Japan	DTC	15-Nov-2010	1-Sep-2011
22	Jordan	DTC	19-Oct-2016	1-Sep-2017
23	Kazakhstan	DTC	7-Jun-2011	1-Sep-2016
24	Korea	DTC	24-Mar-2007	1-Dec-2008
25	Kyrgyzstan	DTC	2-Dec-2014	1-Oct-2015

	EOI partner	Type of agreement	Signature	Entry into force
26	Luxembourg	DTC	7-May-2013	1-Sep-2014
27	Malaysia	DTC	31-Jan-2006	1-Jul-2007
28	Malta	DTC	4-Jan-2012	1-Dec-2012
29	Mexico	DTC	17-Jan-2016	1-Mar-2018
30	Morocco	DTC	15-Apr-2015	Not in force
31	Netherlands	DTC	13-Oct-2008	1-Dec-2010
32	North Macedonia	DTC	15-Dec-2014	1-May-2016
33	Pakistan	DTC	2-Feb-2006	1-Dec-2006
34	Poland	DTC	22-Feb-2011	1-Jun-2012
35	Portugal	DTC	8-Arp-2015	1-Sep-2016
36	Romania	DTC	26-Apr-2011	1-Jul-2012
37	Russia	DTC	11-Feb-2007	1-Feb-2010
38	Singapore	DTC	3-May-2010	1-Jul-2011
39	South Africa	DTC	13-Mar-2007	1-May-2008
40	Spain	DTC	19-Jun-2007	1-Oct-2008
41	Sweden	DTC	19-Oct-2015	31-Aug-2016
42	Switzerland	DTC	18-Feb-2018	Not in force
43	Syria	DTC	7-Oct-2009	1-Oct-2010
44	Tajikistan	DTC	13-May-2014	1-Jun-2015
45	Tunisia	DTC	08-Jul-2010	1-Apr-2013
46	Turkey	DTC	9-Nov-2007	1-Apr-2009
47	Turkmenistan	DTC	1-May-2016	1-Apr-2017
48	Ukraine	DTC	2-Sep-2011	1-Dec-2012
49	United Arab Emirates	DTC	23-May-2018	1-Apr-2019
50	United Kingdom	DTC	31-Oct-2007	1-Jan-2009
51	Uzbekistan	DTC	18-Nov-2008	1-Nov-2010
52	Venezuela	DTC	11-Nov-2015	1-Dec-2016
53	Viet Nam	DTC	10-Apr-2010	1-Feb-2011

*Notes:* a. 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.



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

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).<sup>12</sup> 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.

The Multilateral Convention was signed by Saudi Arabia on 29 May 2013 and entered into force on 1 April 2016.

As at 2 August 2019, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Antigua and Barbuda, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, 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, Czech Republic, Denmark, Dominica, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong, China (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau, China (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom),

12. 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.

Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, American 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 Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force: Armenia, Burkina Faso, Dominican Republic (in force as of 1 December 2019), Ecuador (in force as of 1 December 2019), Gabon, Kenya, Liberia, Mauritania, Morocco (in force as of 1 September 2019), North Macedonia, Paraguay, Philippines, Serbia (in force as of 1 December 2019) and United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

## **Annex 3: Methodology for the review**

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

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 2 August 2019, Saudi Arabia's EOIR practice in respect of EOI requests made and received during the three year period from 1 January 2015-31 December 2017, Saudi Arabia's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Saudi Arabia's authorities during the on-site visit that took place from 19-21 February 2019.

### **List of laws, regulations and other materials received**

#### ***Commercial laws***

- Anti-Concealment Law (ACL)
- Certified Public Accountants Regulations (CPAR)
- Commercial Book Law (CBL)
- Companies Law (CL)
- Foreign Investment Law (FIL)
- Law of Commercial Court
- Law of Commercial Register (LCR)
- MCI Resolution of 15 November 2017 (Ministerial Resolution)
- Regulatory Rules and Procedures issued pursuant to Companies Law relating to Joint Stock Companies
- Regulatory Rules and Procedures issued pursuant to the Companies Law relating to Listed Joint Stock Companies
- SOCPA By-Laws

### ***AML laws and guidance***

Anti-Money Laundering Law (AMLL)  
Anti-Money Laundering Regulations (AMLR)  
Banking Control Law (BCL)  
SAMA AML Manual  
SOCPA AML Guidance  
Cooperative Insurance Companies Control Law

### ***Tax and zakat laws***

Enforcement Rules to Implement EOI Provisions Pursuant to International Treaties (EREIOI)  
Income Tax Law (ITL)  
Zakat Regulations (ZR)

### ***Other laws***

Basic Law (BL)  
Civil Associations and Foundations Law (NPO Law)  
Civil Associations and Foundations Regulations (NPO Regulations)  
Code of Law Practice (CLP)  
Execution Law  
Law of Procedure before Sharia (LPSSL)  
Law of the General Authority for Waqfs (LGAW)  
Notary Regulations (NR)

### **Authorities interviewed during on-site visit**

Capital Market Authority (CMA)  
General Authority for Waqfs (GAW)  
General Authority for Zakat and Tax (GAZT)  
Ministry of Commerce and Industry (MCI)  
Ministry of Justice (MOJ)  
Ministry of Labour and Social Development (MLSD)  
Saudi Arabian General Investment Authority (SAGIA)  
Saudi Arabian Monetary Authority (SAMA)  
Saudi Organisation for Certified Public Accountants (SOCPA)

## Current and previous review(s)

This report is the third review of Saudi Arabia conducted by the Global Forum. Saudi Arabia previously underwent a review of its legal and regulatory framework (Phase 1) in 2014 and the implementation of that framework in practice (Phase 2) in 2016. The 2016 Report containing the conclusions of the first review was first published in March 2016 (reflecting the legal and regulatory framework in place as of December 2015).

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

### Summary of reviews

Review	Assessment team	Period under Review	Legal framework as of	Date of adoption by Global Forum
Round 1 <u>Phase 1</u>	Ms Harizan Hussin of Malaysia; Mr Brian Harrington of the United States; and Mr Mikkel Thunnissen of the Global Forum Secretariat	n.a.	December 2012	April 2014
Round 1 <u>Phase 2</u>	Mr Brian Harrington of the United States; Mr Bhaskar Goswami of India; Mr Mikkel Thunnissen and Mr Boudewijn van Looij of the Global Forum Secretariat	1 January 2012 to 31 December 2014	December 2015	March 2016
Round 2	Mr Raynald Vial of France; Mr Wayne Brown of Bermuda; Mr Mikkel Thunnissen and Mr Adrian Wardzynski of the Global Forum Secretariat	1 January 2015 to 31 December 2017	2 August 2019	8 November 2019

## **Annex 4: Saudi Arabia’s response to the review report<sup>13</sup>**

Saudi Arabia has not provided a response to the review report.

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

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

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

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

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

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

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

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

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

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

Consult this publication on line at <https://doi.org/10.1787/186f45ba-en>.

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