

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

BURKINA FASO

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

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2016
(reflecting the legal and regulatory framework
as at June 2016)

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

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

Please cite this publication as:

OECD (2016), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Burkina Faso 2016: Phase 2: Implementation of the Standard in Practice*, OECD Publishing, <http://dx.doi.org/10.1787/9789264266070-en>

ISBN 978-92-64-26608-7 (print)
ISBN 978-92-64-26607-0 (PDF)

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

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

© OECD 2016

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

Table of Contents

About the Global Forum	5
Executive summary	7
Introduction	11
Information and methodology used for the Peer Review of Burkina Faso	11
Overview of Burkina Faso	12
General information on the legal and tax system	13
Overview of the financial sector and the relevant professions	17
Recent developments	19
Compliance with the Standards	21
A. Availability of information	21
Overview	21
A.1. Ownership and identity information	23
A.2. Accounting records	62
A.3. Banking information	69
B. Access to information	77
Overview	77
B.1. Competent authority’s ability to obtain and provide information	78
B.2. Notification requirements and rights and safeguards	93
C. Exchanging information	95
Overview	95
C.1. Information exchange mechanisms	96
C.2. Exchange of information mechanisms with all relevant partners	103
C.3. Confidentiality	105
C.4. Rights and safeguards of taxpayers and third parties	109
C.5. Timeliness of response to requests for information	110

Summary of determinations and factors underlying recommendations	115
Annex 1: The jurisdiction’s response to the peer review	119
Annex 2: List of Burkina Faso’s information exchange mechanisms	120
Annex 3: List of all laws, regulations and other relevant material	121
Annex 4: List of persons interviewed during the on-site visit	124

About the Global Forum

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

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

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

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

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

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Executive summary

1. The present report summarises Burkina Faso’s legal and regulatory framework for transparency and exchange of information for tax purposes, as well as its implementation and effectiveness in practice. The international standard, which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information on Request, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain access to that information, and in turn, whether that information can be effectively and timely exchanged with its exchange of information partners.

2. Burkina Faso is a West African country with a surface area of 274 000 square kilometres and approximately 17 million inhabitants. The country’s economy is dominated by agriculture and mining. Burkina Faso has a tax system which taxes the income of individuals and enterprises. The country undertook to apply the international transparency standard by becoming a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2012.

3. Generally speaking, Burkina Faso’s legal and regulatory framework ensures the availability of information about the ownership of companies and other entities and the identity of shareholders. Companies and other legal persons are required to register with the public authorities, including the tax authorities. However, certain shortcomings were identified in the prevailing legislation. The Company law allows for the creation of bearer shares in public limited companies and simplified joint-stock companies and now requires all corporate securities to be dematerialised. However, there is not sufficient information on the practical arrangements to ensure the dematerialisation of all bearer shares, including those created before the new legislation came into effect. In practice, when the two year period allowed for companies to comply with the obligation to dematerialise shares expired (on 5 May 2016), no monitoring measures were taken to find out whether all the relevant entities in Burkina Faso had dematerialised all of their shares. The Burkina Faso authorities are recommended to take practical measures to ensure the effective dematerialisation of all shares issued by public limited companies and simplified joint-stock companies.

4. There are provisions in accounting and tax law which require the keeping and retention of accounting records and underlying documentation for a minimum ten-year period. Banking and anti-money laundering regulations in Burkina Faso guarantee the availability of banking information. In practice, the Burkina Faso authorities carry out regular monitoring to ensure that these obligations are respected by all the relevant persons and entities.

5. Under Burkina Faso tax law the tax authorities, which are the competent authority, have extensive powers to gather information, including banking information, which may be used for information exchange purposes without any restriction related to domestic tax interest. There is no right of notification in Burkina Faso. Tax disputes may neither prevent nor delay the response to an information request made under a treaty signed by Burkina Faso. In practice, the Burkina Faso competent authority exercised its information-gathering powers a number of times during the review period without any difficulty, in order to respond to the three EOI requests received from a partner.

6. Burkina Faso has an EOI network covering 10 jurisdictions through double tax conventions (DTCs). All agreements except for one DTC are in force. All Burkina Faso's EOI agreements are to the standard and have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. Burkina Faso has recently taken steps to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention).

7. During the review period, Burkina Faso did not have a department specifically dedicated to exchange of information. EOI requests were dealt with by the tax investigation department (*service des enquêtes fiscales*) within the tax audit directorate (*Direction du contrôle fiscal*). Burkina Faso's responses to the three EOI requests received during the review period were considered satisfactory by its EOI partner. In addition, as a result of the adoption of a new organisation chart for the Directorate General of Taxes (*Direction Générale des Impôts*) in 2015, a unit entirely dedicated to the exchange of information was created within the new tax investigations and research directorate (*Direction des Enquêtes et Recherches Fiscales*). This unit is already operational and has adequate resources to process EOI requests effectively, though this new organisation has not been tested in practice.

8. Burkina Faso has been rated on each of the 10 essential elements, and has also been given an overall rating. The rating for the essential elements are based on the analysis contained in this report, taking into account the determinations of Phase 1 and the recommendations formulated with regards to the legal framework in Burkina Faso and the effectiveness of the information exchange in practice. On this basis, Burkina Faso has been rated as follows:

Compliant for elements A.2, A.3, B.1, B.2, C.1, C.2, C.3 and C.4; and Largely compliant for elements C.5, and Partially compliant for element A.1. Given the ratings for each of the essential elements taken as a whole, the overall rating for Burkina Faso is “Largely compliant”.

9. A follow-up report on the measures taken by Burkina Faso in response to the recommendations made in this report must be submitted to the Peer Review Group in September 2017 and then in subsequent years in accordance with the procedure set out in the Methodology for the Second Round of Reviews.

Introduction

Information and methodology used for the Peer Review of Burkina Faso

10. The assessment of Burkina Faso's legal and regulatory framework as well as the implementation and effectiveness of this framework in practice was based on the international standards for transparency and exchange of information on request as described in the Global Forum's terms of reference and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the prevailing laws, regulations and exchange of information mechanisms in force at the end of June 2016, the responses provided by Burkina Faso to the Phase 1 and Phase 2 questionnaires and additional questions, other material provided by Burkina Faso, including during the onsite visit to Ouagadougou from 3 to 6 May 2016 and information supplied by partner jurisdictions.

11. This report incorporates the Phase 1 assessment, published in August 2015, on the legal framework in Burkina Faso and the evaluation of Phase 2, on the practical application and effectiveness of this framework during the three year evaluation period between 1 July 2012 and 30 June 2015.

12. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information and (C) exchanging information. This review assesses Burkina Faso's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element the review concludes whether (i) the element is in place, (ii) the element is in place but certain aspects of its legal implementation need improvement, or (iii) the element is not in place. These conclusions are accompanied by recommendations for how certain aspects of the system in Burkina Faso could be improved. Furthermore, in order to reflect the Phase 2 evaluation, recommendations are made on the practical implementation of each of these essential elements by Burkina Faso, which is assigned the following ratings: (i) compliant, (ii) largely compliant, (iii) partially compliant or (iv) non-compliant. As indicated in the Assessment Criteria note, at the end of the phase 2

evaluation of a jurisdiction, an “overall” rating is given in order to illustrate the overall situation of the jurisdiction. A summary of the results is included at the end of this report.

13. Each phase of the assessment was conducted by a team consisting of two expert assessors and a representative of the Global Forum Secretariat. For Phase 1: Rajeshsharma Ramlooll, deputy attorney-general at the Justice Ministry of Mauritius, Hakim Hamadi, chief inspector of public finances at the Tax Policy Directorate of the French Ministry of Finance and Public Accounts and Ervice Tchouata for the Global Forum Secretariat. For Phase 2, one member of the team had changed. Hakim Hamadi was replaced by Romain Perret, Inspector of Public Finances at the Tax Policy Directorate of the French Ministry of Finance and Public Accounts.

Overview of Burkina Faso

14. Called Upper Volta until 4 August 1984, Burkina Faso is in West Africa. It is a landlocked country, its neighbours being Mali and Niger to the north and north-east, and Côte d’Ivoire, Ghana, Togo and Benin to the south and south-east. It has an estimated population of 17.42 million¹.

15. Burkina Faso’s official language is French, though several national languages are spoken in the country. Ouagadougou is the capital and the city where institutions have their headquarters.

16. Burkina Faso’s economy is based mainly on agriculture, especially cotton, and mining, especially gold. The real economic growth was 9%² in 2012 and 6.9% in 2013. The currency is the African Financial Community franc, called the CFA franc (currency code: XOF). One euro is worth 655.957 CFA francs. Burkina Faso shares its currency with seven other West Africa countries which are members of the West African Economic and Monetary Union (WAEMU), namely Benin, Côte d’Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo.

17. In political terms, Burkina Faso has been independent from France since 5 August 1960. It is a unitary state. The constitution separates the three arms of government (executive, legislative, judicial). It has a presidential system with a President (President of Faso) elected by universal suffrage who heads the executive and is the Head of State, and a government headed

1. World Bank: <http://donnees.banquemondiale.org/pays/burkina-faso>.

2. ADB, OECD, UNDP and UNECA (2013), African Economic Outlook 2014, African Development Bank, Organisation for Economic Co-operation and Development, United Nations Development Programme and United Nations Economic Commission for Africa, OECD Publishing, Paris.

by a prime minister. Burkina Faso experienced a major political crisis in late 2014, with the resignation of the President of the Republic, dissolution of the national assembly and the start of a period of political transition that culminated in new presidential and legislative elections in 2015. After the new President took office in December 2015, a new Government was appointed in January 2016, bringing the situation back to normal.

18. In administrative terms, the country is subdivided into 13 regions headed by appointed governors, 45 provinces headed by appointed high commissioners and 351 municipalities headed by elected mayors. The local authorities are the region and the municipality.

General information on the legal and tax system

Legal system

19. Burkina Faso is a unitary state with a unitary legal system based on the civil law tradition. Laws are voted by the legislative authority exercised by the national assembly and implemented by the executive authority exercised by the President of the Republic and the government. Judicial authority is exercised by the courts, which ensure the enforcement of laws and respect for the rights and freedoms defined by the Constitution.

20. The Constitution draws a distinction between matters governed by statute and those governed by regulation. There are two categories of statute: ordinary laws and organic laws, which are provided for by the Constitution and concern the organisation of institutions. Ordinances (*ordonnances*) are instruments signed by the President of the Republic in certain cases provided for by the Constitution, after discussion in cabinet. Generally non-legislative, they enter into force on publication. Regulatory authority is exercised by means of decrees (simple decrees or cabinet decrees), which are signed by the President of the Republic and/or the prime minister and countersigned by the relevant member or members of the government, with or without an opinion from cabinet depending on the circumstances.

21. The judicial system comprises two orders of jurisdiction, judicial and administrative. At the higher level, the two orders of jurisdiction comprise the Court of Cassation, or supreme court (judicial order), the Council of State (administrative order) and the Court of Auditors, or national audit office, which oversees public finances. The lower level comprises the courts and tribunals instituted by law. The court system has two tiers, with courts of first instance and courts of appeal.

22. Peace treaties, trade treaties, treaties which engage State finances, those which amend provisions of a legislative nature and those that concern the status of persons may be ratified or approved only by statute. They take effect only

after they have been ratified or approved. The tax information exchange agreements (TIEA) do not require ratification by parliament. If the Constitutional Council declares that an international commitment contains a provision contrary to the Constitution, authorisation to ratify or approve it may be given only after the Constitution has been revised. On publication, treaties or agreements that have been duly ratified or approved take precedence over statutes, provided that each treaty or agreement is also applied by the other party.

23. Burkina Faso is a member of the Organisation for the Harmonisation of Business Law in Africa (OHADA)³. OHADA Member States have unified their business law through legal instruments called “uniform acts”. Uniform law applies to general business law, company law, accounting law, rules on security interests and guarantees, arbitration, enforcement, insolvency, contracts for the transport of goods by road and co-operatives. OHADA uniform acts apply directly and are mandatory in Party States, notwithstanding any prior or subsequent provision to the contrary in domestic law, without the need for transposition.

24. Burkina Faso is also a member of the West African Economic and Monetary Union (WAEMU), an economic, monetary and customs union, and of the Economic Community of West African States (ECOWAS)⁴. WAEMU’s and ECOWAS’ regulations and directives guide the economic, tax and customs policy of its Member States. Regulations are general in scope, binding in their entirety and directly applicable in all Member States. Directives are taken by the WAEMU Council of Ministers. Outcomes are binding but Member States may decide for themselves how to achieve them. Directives therefore need to be transposed. The harmonisation of rules for the assessment and collection of taxes and duties and rules to counter money laundering and the financing of terrorism are matters for directives, whereas the elimination of double taxation and administrative assistance in tax matters between Member States are matters for regulations.

-
3. OHADA originated in the wish of several African countries to create a single area governed by the same business law in order to promote economic development in Africa through legal and judicial security in trade matters. The Organisation was instituted by the Treaty on the Harmonisation of Business Law in Africa (OHADA Treaty), signed on 17 October 1993 at Port-Louis in Mauritius and revised on 17 October 2008 in Quebec (Canada). The 17 States Party to the treaty are Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Comoros, Côte d’Ivoire, Congo, the Democratic Republic of Congo (DRC), Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, and Togo. The Treaty is open to signature by any African state.
 4. The member States of ECOWAS are Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

25. The hierarchy of legal precedence in Burkina Faso is as follows:
- the Constitution;
 - duly ratified treaties and agreements;
 - community regulations, laws (including uniform acts) and ordinances;
 - decrees, orders and circulars.

Tax system

26. The tax system in Burkina Faso is based on the legality principle. Under Article 101 of the Constitution, the national assembly has competence in tax matters. The Constitution also states that citizens shall be taxed equally and that all must share the burden of public expenditure according to their ability to contribute. Tax rules apply to all taxpayers on the basis of legal provisions of general scope.

27. Burkina Faso's tax system is declarative, the corollary being that the tax authorities have a power of subsequent examination. The country's tax regulations have not yet been completely codified. There are many texts which institute a variety of taxes and duties. The main ones are:

- Act 26-63/AN of 24 July 1963 instituting the Registration Duty, Stamp Duty and Investment Income Tax Code;
- Act 6-65/AN of 26 May 1965 creating the Tax, Excise and Tobacco Monopoly Code;
- Act 08-2010/AN of 29 January 2010 creating a corporate tax;
- Act 004-2010/AN of 28 January 2010 instituting a book of tax procedures.

28. A draft Tax Code has been drawn up and submitted to the government. Adoption is pending, and in the meantime the Directorate General of Taxes has prepared a tax law handbook, made available to staff and users in 2014.

29. The Directorate General of Taxes, which is the central structure of the Ministry of the Economy and Finance, is responsible for assessing, collecting and auditing domestic taxes and duties. Headed by a Director-General, it is organised into support structures, central structures, external structures and deconcentrated structures (Order No. 2015-00387 MEF/SG/DGI setting out the responsibility, structure and functioning of the Directorate General of Taxes, DGI). The support structures include the technical tax inspection department (*inspection technique des impôts*, ITI), the human resources department (SRH), the finance and material department (*Service financier et du matériel*, SFM), the communication and public relations department

(*Service de la communication et des relations publiques, SCRP*), the archives and documentation department (*Service des archives et de la documentation, SAD*), the standardised invoice management department (*Service de gestion de la facture normalisée, SGFN*) and the Strategy and monitoring of reforms department (*Service de la stratégie et du suivi des réformes (SSSR)*). The centralised structures consist of departments directly reporting to the Office of the Director-General, notably the tax services directorate (*Direction des services fiscaux, DSF*), the tax audits directorate (*Direction du contrôle fiscal, DCF*), the requests and tax investigation directorate (*Direction des enquêtes et des recherches fiscales, DERF*), the tax policy and litigation department (*Direction de la législation et du contentieux, DLC*), the land acquisition and administration directorate (*Direction des affaires domaniales et foncières, DADF*), the land registry directorate (*Direction du cadastre, DC*) and the information systems directorate (*Direction de l'informatique, DI*). The external structures include the large taxpayers directorate (*Direction des grandes entreprises, DGE*), the medium-sized taxpayers directorate for Centre (*Direction des moyennes entreprises du Centre*), the medium-sized taxpayers directorate for the Hauts-Bassins (*Direction des moyennes entreprises des Hauts-Bassins*), the Ouagadougou one-stop shop for land transactions (*Direction du guichet unique du foncier*) and the Bobo Dioulasso one-stop shop for land transactions. Deconcentrated structures consist of the regional tax directorates (one per region), to which the tax offices report.

30. Municipalities are empowered to levy certain taxes within their district. This power has increased since the process of dividing the entire territory of Burkina Faso into municipalities was completed in 2007 with the establishment of 49 urban and 302 rural municipalities. As part of the process of giving local authorities greater financial independence, the central government has transferred the revenue from certain taxes and duties to local authority budgets. The taxes and duties concerned are the patents tax, the micro enterprises tax, the residence tax, the endowments tax, the arms tax and the tax on the use of public land. This tax revenue is shared between the regions and the municipalities according to a schedule defined by regulation.

31. Tax litigation may come before the administrative or judicial courts but disputes must first be referred to the tax authorities. Cases may be heard free of charge where taxpayers can prove their lack of resources. Rules for the assessment, collection and audit of taxes and duties are regularly amended by the annual Budget Acts which determine the government's resources and expenditure.

32. Burkina Faso's tax system establishes a separation between direct and indirect taxes. The main direct taxes are corporate tax (rate: 27.5%), tax on industrial, commercial and agricultural profits, tax on the profits of non-commercial professions (marginal rate: 27.5%), a single tax on wages and

salaries (marginal rate: 25%), tax on investment income (rate: 25%), the micro enterprises tax and the beverage industry tax. Indirect taxes include value added tax (rate: 18%) and a range of specific duties and taxes on beverages, tobacco, cigars and cigarettes, coffee and tea, colas, grazing land, licences for establishments serving beverages for on-site consumption, taxes on livestock rearing, games of chance, perfume and cosmetics and telecommunications enterprises. In 2015, the Directorate General of Taxes of Burkina Faso collected tax revenue of CFA franc 503 539 298 537 (EUR 767 640 712) of which income taxes accounted for 46.54% and VAT for 35.44%.

33. Subject to the provisions of international double taxation treaties, corporate tax is payable on all revenue, income and profits generated by companies operated in Burkina Faso. Burkina Faso thus applies the territoriality rule, but only for income from operations. Passive income such as interest and dividends received by a Burkina Faso enterprise are liable to corporate tax in Burkina Faso, whatever their source. The tax on industrial, commercial and agricultural profits and the tax on non-commercial profits are payable on profits made in Burkina Faso by natural persons who are resident of Burkina Faso. All revenue and profits relating to activities and operations of an industrial and commercial nature carried on in Burkina Faso, even on an occasional basis, are deemed to have been generated there. The same applies to the profits of non-commercial professions.

34. Burkina Faso has an information exchange network which covers 10 jurisdictions, based solely on treaties intended to eliminate double taxation. Burkina Faso joined the Global Forum in 2012 and is committed to applying international transparency standards.

35. The competent authority in Burkina Faso is the Finance Ministry, which has delegated its power to the Director-General of Taxes.

Overview of the financial sector and the relevant professions

36. The banking and financial sector is governed by the community regulations of the West African Economic and Monetary Union (WAEMU). National banking regulations draw extensively on the general framework set up at the level of the community. Banks and financial institutions in Burkina Faso are governed by Act 057-2008/AN of 20 November 2008 (Banking Act). Banks are authorised to perform all banking operations, including the receipt of funds from the public, credit operations and the provision to customers and management of means of payment. Financial institutions of a banking nature are authorised only to perform the banking operations for which they are licensed.

37. Banks must be incorporated as public limited companies with fixed capital or, by special authorisation of the finance minister issued on a favourable opinion from the Banking Commission, as co-operative or mutual societies with variable capital (they may take other legal forms in exceptional circumstances). They may not be one-person companies. Financial institutions of a banking nature may be incorporated as public limited companies with fixed capital, limited liability companies or co-operative or mutual societies with variable capital. They may not be one-person companies. Shares issued by credit institutions having their registered office in Burkina Faso must be in registered form (a specific feature in relation to banks).

38. Banks and financial institutions may not operate in Burkina Faso without having first been authorised and included in the list of banks and financial institutions. Applications for authorisation are addressed to the finance minister and filed with the Central Bank of Western African States for processing. Authorisation is given by order of the finance minister on a favourable opinion from the WAMU Banking Commission.

39. The Central Bank of Western African States supervises banks and financial institutions. Technical oversight of banks and financial institutions is ensured at national level by the General Directorate of the Treasury and Public Accounts through its Monetary and Financial Affairs Directorate.

40. The financial sector comprises 13 banks, 143 microfinance institutions, 171 money transfer companies, 79 bureaux de change, 2 leasing companies and 14 insurance and reinsurance companies. The largest banks are subsidiaries of foreign banks.

41. The total assets of commercial banks in Burkina Faso at 31 December 2015 amounted to XOF 3 757 billion CFA (EUR 5.7 billion), including XOF 2 397 billion (EUR 3.7 billion) of deposits. The total saving collected by microfinance institutions at the same date amounted to XOF 162 billion (EUR 247 million).

42. As a WAEMU Member State, Burkina Faso shares the same stock exchange – the Bourse Régionale des Valeurs Mobilières (BRVM) at Abidjan in Côte d’Ivoire – as the community’s seven other Member States. Two Burkina Faso companies were listed on the BRVM at 31 December 2014.

43. Non-financial professions and enterprises with a duty of care with regard to customers include officers of justice (35), attorneys (164), chartered accountants and auditors (115)⁵, notaries (17), tax advisers (27) and estate agents.

5. 28 accounting firms, 56 independent chartered accountants and 31 interns.

Recent developments

44. Burkina Faso has taken steps to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. In 2014, the jurisdiction officially asked to be invited to sign the Convention. The procedure was slowed down due to the political instability experienced by the country between the end of 2014 and early 2016. Burkina Faso has signed the convention on 25 August 2016. The signing of the convention considerably broadens Burkina Faso's network of exchange of information.

Compliance with the Standards

A. Availability of information

Overview

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

46. Burkina Faso has a comprehensive legal and regulatory framework with regard to the availability of information about the identity of the members of partnerships and the holders of registered shares in companies with share capital.

47. All companies are required to register in the Trade and Personal Property Credit Register (*registre du commerce et du crédit mobilier*, RCCM), kept by the registry of the court with local jurisdiction, within one month of their creation by filing a copy of their articles of association. Information about all persons with joint and indefinite liability for corporate debts (i.e. members of partnerships) and shareholders of limited liability companies is available and kept up to date in the RCCM. For public limited companies

and simplified joint-stock companies, information about the identity of shareholders is available from the RCCM solely when the company is incorporated. For these companies, there is no requirement to notify changes of shareholders to the RCCM. Information about the identity of the owners of registered shares in public limited companies and simplified joint-stock companies is available from the registers they are required to keep at their registered office.

48. In addition, all companies, regardless of their form, are required to provide a statement at the same time as they submit their annual tax return, containing the last name and first name(s) or company name and addresses of their shareholders or partners. In practice, this obligation allows the tax authorities to have access to information on the ownership of all companies registered in Burkina Faso, with the exception of holders of bearer shares.

49. Burkina Faso law permits the creation of bearer shares in public limited companies. By virtue of an amendment to company law in January 2014, all company shares, including bearer shares, must be dematerialised, meaning that it is now possible to obtain ownership information about bearer shares. However, the current legislation lacks clarity on the practical arrangements of dematerialisation including the fate of bearer shares that might not be dematerialised on expiry of the two-year transition period provided by the new law, which expired on 5 May 2016. In addition, since this date, no measures have been taken to monitor whether dematerialisation has effectively taken place in all relevant entities in Burkina Faso. The tax authorities conducted an investigation of some public limited companies in Burkina Faso during April 2016 and did not find any evidence of companies issuing bearer shares.

50. Concerning information about trusts, Burkina Faso law does not permit the creation of trusts and the country is not a signatory of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. However, there is nothing to prevent a trust from being administered from Burkina Faso, or to prevent assets located in Burkina Faso from being owned by a foreign trust. Members of the independent legal professions acting as trustees are required under tax law and the AML/CTF Act no. 016-2016 of 3 May 2016 to retain all information about their customers, including information about the settlors and beneficiaries of foreign trusts. However, that requirement does not apply to trustees who are not professionals, even though it would seem unlikely for the latter scenario to occur in Burkina Faso. In practice neither the independent legal professions nor the tax administration have ever encountered a foreign trust managed in Burkina Faso.

51. Information about the ownership of other relevant entities, such as economic interest groupings, co-operatives and foundations, is available in Burkina Faso.

52. All natural and legal persons liable to corporate tax, tax on industrial, commercial and agricultural profits and tax on non-commercial profits are required to keep accounts and retain accounting data and the related supporting documentation for at least ten years. Under tax law and AML/CTF legislation, associations, foundations and other entities not liable to taxes and duties are also required to keep accounts and retain the related documentation. In practice, the Burkina Faso tax authorities ensure that companies respect their accounting obligations by conducting regular general accounting inspections, which make it possible to sanction any shortcomings. The Directorate General of Taxes also chairs the national accounting council (*Conseil National de la Comptabilité*, CNC) created in 2010 and which brings together chartered accountants and other partners. Its mission is to strengthen the quality, reliability and access to accounting and financial information in companies, in part by monitoring the correct application and interpretation of accounting standards, thus ensuring that accounting information is available.

53. Banks and financial institutions are required to know their customers and to keep information about transactions carried out by them for the same length of time as any other accounting documentation. The Central Bank of West African States (*Banque Centrale des Etats de l'Afrique de l'Ouest*, BCEAO), via its banking commission, monitors respect of banking regulations and anti-money laundering regulations by all banks in Burkina Faso. It achieves this by conducting permanent desk-based inspections as well as onsite inspections every two years, thus ensuring banking information is available in Burkina Faso.

A.1. Ownership and identity information

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

Companies (ToR A.1.1)

Types of company

54. Burkina Faso is a signatory of the Treaty instituting the Organisation for Harmonisation of African Business Laws (OHADA). Business law in the Organisation's 17 Member States, including commercial law, company law, insolvency law and rules on security interests and enforcement, is governed by uniform acts. Most company law stems from the Uniform Act relating to General Commercial Law (Uniform Commercial Law Act) and the Uniform Act relating to Commercial Companies and Economic Interest Groupings (Uniform Companies Act).

55. Adopted on 17 April 1997 and amended on 15 December 2010, the Uniform Commercial Law Act defines, inter alia, procedures for company registration and the operation of the companies register (RCCM).

56. The Uniform Companies Act was adopted on 1 January 2000. It was amended on 30 January 2014 and the revised Act came into force on 5 May 2014. It lays down rules relating to the different forms of company, of which there are two main types: companies with share capital and partnerships. The different types of partnership are examined later on in this section. Companies with share capital comprise public limited companies (*sociétés anonymes*, SA), simplified joint-stock companies (*sociétés par actions simplifiées*, SAS) and limited liability companies (*sociétés à responsabilité limitée*, SARL).

- **Public limited companies** (*sociétés anonymes*, SA) are companies whose owners, called shareholders, are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares (Article 385 of the Uniform Companies Act). A public limited company may have only one shareholder. The minimum capital is XOF 10 million (EUR 15 244), divided into shares whose par value is set freely by the articles of association. Shares represent contributions in cash or kind but not labour and are freely transferable. Public limited companies may issue shares for public subscription. They are managed by a board of directors or a managing director. There were 1 227 public limited companies in Burkina Faso at 31 March 2016.
- **Limited liability companies** (*sociétés à responsabilité limitée*, SARL) are companies whose owners, called shareholders (*associés*), are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares (Article 309 of the Uniform Companies Act). They may be instituted by a natural or legal person or between two or more natural or legal persons. Unless otherwise specified by each member State the share capital must be at least XOF 1 million (EUR 1 524) (article 311 of the Uniform Companies Act). Decree no. 2014-462/PRES/PM/MJ/MEF/MICA of 26 May 2014 laying down national provisions applicable to the form of articles and share capital for Limited liability companies requires a minimum share capital of XOF 100 000 (EUR 152) for a SARL in Burkina Faso. The share capital is divided into equal shares, the par value of which may not be less than XOF 5 000 (EUR 7). A SARL is managed by one or more natural persons, who may or may not be shareholders, appointed by the shareholders. There were 12 480 limited liability companies in Burkina Faso at 31 March 2016.
- **Simplified joint-stock companies** (*sociétés par actions simplifiées*, SAS) are a new form of company created by Article 853-1 of the

amended Uniform Companies Act of 30 January 2014. They may be created by one or more members, who are liable for corporate debts only up to the amount of their contribution. Members' rights are represented by shares. With some slight exceptions, the rules governing SASs are the same as those governing SAs. There is no minimum share capital, which is set by the articles of association. An SAS may not issue shares for public subscription. There were 35 simplified joint-stock companies in Burkina Faso at 31 March 2016.

Information held by the public authorities

Registration formalities

57. Except where otherwise provided, commercial companies are created by two or more persons who agree by way of a contract (the articles of association) to allocate assets in cash or kind or labour to an activity with the aim of sharing the profits or benefiting from the saving that may arise therefrom. The shareholders undertake to contribute to losses under the conditions set forth at Article 10 of the Uniform Companies Act. The articles of association are drawn up in a notarial or private deed. Under Article 13 of the Uniform Companies Act, the articles of association must contain a certain number of items of information, including:

- the form of the company, its term and its name, followed by its acronym where applicable;
- the nature and area of its activity, which constitute its corporate purpose;
- its registered office;
- the identity of contributors in cash including, for each one, the amount of the contribution, and the number and value of the shares issued in return for each contribution;
- the identity of contributors in kind, the nature and valuation of the contribution made by each one and the number and value of the shares issued in return for each contribution;
- the identity of contributors in labour, the nature and duration of the services provided by each one and the number and value of the shares issued in return for each contribution;
- the identity of beneficiaries of particular benefits and the nature of such benefits;

- the amount of the share capital and the number and value of the shares issued, drawing a distinction where applicable between the different categories of share created;
- the company's operating arrangements.

58. The necessary formalities in order to create a company in Burkina Faso are as follows, with regard to the relevant agencies and organisations:

- the Commercial Registry of the senior court of first instance for registration in the RCCM: under Article 97 of the Uniform Companies Act, all newly created companies must be registered in the RCCM. Registration confers legal personality on the entity;
- the Directorate General of Taxes for the declaration of existence for tax purposes, entailing the issuance of a single financial identification number (*identifiant financier unique*, IFU) where applicable;
- the General Trade Directorate for issuance of a trader card for natural persons;
- the National Social Security Fund for affiliation to the social security system.

59. In order to facilitate these formalities, a one-stop shop for business start-ups was created in 2005 by decree no. 2005-332/PRES/PM/MCPEA/MFB/MJ/MTEJ on the creation, missions, organisation and operation of business formality centres. These centres, known by their French acronym CEFORE, aim to facilitate and simplify the formalities for starting a business by enabling their creators to make all the requisite declarations for creating, ceasing, taking over or extending a business in the same place and in a single document.

60. Business creation applications and the necessary documents are filed with the CEFORE, which promptly forwards them to each recipient organisation or agency, including the RCCM for registration purposes.

61. The Uniform Commercial Act governs the RCCM. The register is kept in both paper and computerised form by the commercial courts through the registry of the relevant court under the supervision of the president of the court or the judge delegated by the president for that purpose. The information contained in each RCCM is centralised in a national database. Under Article 36 of the Uniform Commercial Act, the information contained in each national database is centralised in a regional database kept by the OHADA Common Court of Justice and Arbitration.

62. Companies in Burkina Faso must register with the commercial court registry. The country has two commercial courts, one in Ouagadougou and the other in Bobo-Dioulasso. In other cities where there is no commercial

court, the register is kept at the senior court of first instance. There are 25 such courts in Burkina Faso, including those in Ouagadougou and Bobo-Dioulasso.

63. The RCCM contains an incoming register, stating in chronological order of filing the date and number of each declaration, application or filing of instruments or documents received by the registry. The register states, as appropriate, the name, first names, company name, trade name or other name of the registrant or applicant, together with the purpose of the declaration, application or filing. The register also contains lists of registered persons and business creators in alphabetical and numerical order and an individual file for each business creator or registered person. This individual file is created as applicable from the declaration of activity or application for registration and contains the documents included with the declaration or application. Where relevant, individual files also include subsequent filings and attachments.

64. Under Article 46 of the Uniform Commercial Law Act, companies must apply for registration within one month of their creation. The application is made on a special form and must include the following items of information, *inter alia*:

- the company name, the address of the registered office and, where applicable, that of the main establishment and all other establishments;
- the company's activity or activities and its term as set in the articles of association or instrument of incorporation;
- where applicable, the amount of the share capital together with the amount of contributions in cash and the valuation of contributions in kind;
- the name, first names and personal domicile of members who are indefinitely and personally liable for corporate debts, together with their date and place of birth and nationality where applicable;
- the name, first names, date and place of birth and domicile of managers, directors or members empowered to commit the legal person or grouping.

65. The information contained in the forms provided to the registry and in the RCCM's registers and lists is intended for public disclosure. A registration number is issued to the registrant when the application is filed; it is specific to each registered person.

66. The application must include supporting documents, in whatever form and on whatever medium. They include a certified copy of the articles of association or instrument of incorporation, a declaration of regularity and compliance or a notarised declaration of subscription and payment, a certified

list of the managers, directors or members with indefinite and personal liability or empowered to commit the company, and an honour declaration signed by the applicant stating that he or she is not a prohibited person under the Uniform Commercial Act.

67. Any change to the status of a registered company must be mentioned in the RCCM within 30 days. The change to the status should be understood as any changes in the legal status of a legal entity which requires a revision of the articles of association. It may be the case for a change in a company's form (e.g. from SARL to SA) or the change of shareholders in a SARL. Changes of shareholders in SAs and SAS do not lead to the revision of the articles of association. Hence, changes of shareholders are disclosed to the RCCM for SARLs but neither for SAs nor for SASs. Under Article 52 of the Uniform Commercial Act, any partial cessation of business activity must also be mentioned in the RCCM.

68. In light of the foregoing, the identity of contributors in cash, kind or labour must be stated in the articles of association, which are attached to the application for registration in the RCCM. Consequently, information on the identity of the founding shareholders of companies with share capital is available from the RCCM. Information about non-founding shareholders (i.e. those who join the company during its lifetime) is not always available from the RCCM, since the company is not required under the Uniform Commercial Act to register changes relating to the information initially provided on registration in the RCCM, except where there is a change to the status of the company. Unlike with SARLs, changes to shareholders of SAs do not entail amendment of the company's articles of association.

69. In conclusion, information about the identity of shareholders of SARLs is available and kept up to date in the RCCM, whereas information about the shareholders of SAs and SASs is not kept up to date in the RCCM. However, Burkina Faso law contains other rules which require such information to be kept by the company (see the section below on the share register).

In practice

70. Since 2006, all business creation formalities are completed using a single application file and take place under one roof, the Maison de l'Entreprise in Burkina Faso. The Maison de l'Entreprise is an association whose objective is to support the development of the private sector. It is organised into five directorates, including the business facilitation directorate (*Direction de facilitation des affaires*), which includes a central business facilitation department. This department includes the building permit facilitation centre (*Centre de Facilitation des Actes de Construire*, CEFAC) and the business formality centre (CEFORE) whose mission is to allow national

and foreign economic agents, whether natural or legal persons, to carry out all the formalities and declarations required to create, alter or wind up a business under one roof, with one single interlocutor and in the shortest possible time, in Ouagadougou and elsewhere in the country. The CEFORE assists entrepreneurs and businesses to perform all the formalities needed for the creation, ceasing, extension or takeover of companies, individual companies and secondary companies, using a single application form. There are 10 CEFORE in total across the entire country, including one in Ouagadougou and 9 in the various regional capitals.

71. In addition to the business creation advisers, each CEFORE includes representatives from partner administrations, namely:

- the clerk of the commercial court, in charge of registration in the RCCM ;
- the Directorate General of Taxes, in charge of registration for tax purposes and issuing the single financial identification number (*Identifiant Financier Unique*, IFU)
- The national social security fund (*Caisse Nationale de Sécurité Sociale*) in charge of issuing the « employer notification » (social security); and
- The Ministry of Trade (one-stop shops, trade and investment directorate), in charge of awarding the trading licence.

72. Each of these administrations has a role to play in the creation of new businesses, which since June 2015 is done via a computerised platform known as the « integrated system of one-stop shops » (*Système Intégré des Guichets Uniques*, SIGU). All business creation applications include the « MO » form which is the declaration of creation, a legalised photocopy of the identity documents of the director(s), a copy of the articles of association and the minutes of the constituent general meeting. The full application submitted to the CEFORE is scanned and saved in the SIGU system. The system requires completion of a number of fields, including the names, first names and addresses of shareholders and partners. Once all the information has been entered into the SIGU system, the application is visible on the screen of the clerk representing the company registry, awaiting issuance of an RCCM number. The clerk examines the scans of the documents provided by the person registering the business to check that they are complete and then approves the application. The RCCM number is automatically issued by the system. At the end of each day, the hard-copy files are transferred to the clerk of the company registry for archiving.

73. After the RCCM number has been issued, the representatives of the other administrations involved in the business-creation process take over,

working in parallel on their own area of responsibility. It is at this stage that the representative of the Directorate General of Taxes proceeds with the tax registration, the details of which are given below in the “tax requirements” section.

74. All the hard-copy files submitted to the CEFORE since 2010 have been archived and kept. Digital archiving has been in place since 2015, with the arrival of the SIGU system.

75. As well as retaining information in the CEFORE centre, the Ministry of Justice holds the national RCCM in Ouagadougou. This is a computerised file that includes information about businesses registered with the RCCMs of 25 company registries across the entire country, including the two commercial courts of Ouagadougou and Bobo-Dioulasso. The file is currently being placed online, and this should be completed by the end of June 2016. It will then be available for consultation over the internet.

76. Once the business has been created, any subsequent changes are reported to CEFORE and also to the other administrations involved in the business-creation process, including the RCCM and the DGI. These are generally changes affecting the denomination, activity or registered office, increases in capital, changes to directors or transfers of shares in partnerships. Unlike for other forms of company, the law does not require public limited companies or simplified joint-stock companies to report changes in shareholders to the CEFORE. But in practice, certain public limited companies voluntarily report this information. In conclusion, the business-creation procedure in Burkina Faso and the requirement to report subsequent changes allows the administrations represented at the CEFORE to have access to information on the identity of company owners. With regards to partnerships, up-to-date information on the identity of partners is held in the hard-copy files of the CEFORE, in the SIGU database and in the RCCM (at the local RCCM and in the national RCCM file). With regards to companies with share capital (public limited companies or simplified joint-stock companies), information on shareholder identity is available at CEFORE and the RCCM when the company is created. Subsequent changes in shareholders are not required to be reported to these organisations but the tax authorities are made aware of them when the annual tax return is filed, as described below.

Tax requirements

77. Under Article 3 of Act 08-2010/AN of 29 January 2010 creating a corporate tax (Corporate Tax Act), companies with share capital or similar companies (public limited companies, simplified joint-stock companies and limited liability companies) are liable to corporate tax by their form, whatever their corporate purpose.

78. Under Article 86 of the Corporate Tax Act, any company liable to corporate tax must submit a declaration of existence within 30 days of starting operations or opening its establishment.

79. The declaration of existence is made at the business formalities centre (CEFORE) as mentioned above, which forwards it to the Directorate General of Taxes for tax registration, which then issues the single financial identification number. The declaration of existence must include various documents relating to the new company, including a photocopy of the identity document or passport of the manager or managers and one of the shareholders.

80. Tax registration procedures are detailed in orders 2005-766/MFB/SG/DGI of 15 December 2005 creating the single financial identification number and 2009-070/MEF/SG/DGI/DIP on the procedure for deactivating and reactivating the single financial identification number. Article 1 of order 2005-766/MFB/SG/DGI states that a single financial identification number is created for all users of Burkina Faso's financial administration (including all taxpayers).

81. Apart from the declaration of existence on creation of a business, companies are required, by 30 April each year at the latest, to declare the amount of their taxable profit for the accounting period ended 31 December of the previous year. Under Articles 65 and 66, their annual tax return must include an annual statement of the remuneration of shareholders and of shares of corporate profits and other income, and, under Article 67, a copy of amendments to their articles of association where applicable. Under Article 89 of the Corporate Tax Act, the statement must contain the name, first names and domicile of shareholders, managers and coparticipants, and the share of profits for the period or period ended during the previous year corresponding to the rights of each shareholder.

82. Pursuant to Article 89-2 of the Corporate Tax Act, the managers of limited liability companies are required to provide the tax authorities, at the same time as they submit their annual tax return, with a statement including:

- the name, first names and domicile of shareholders;
- the number of shares belonging in bare ownership or usufruct to each shareholder;
- the amounts paid to each shareholder during the previous period in respect of either salary, emoluments, allowances and other remuneration, or interest, dividends or other revenue from their shares.

83. The same obligation to identify shareholders exists for public limited companies or simplified joint-stock companies. They are required to provide a statement at the same time as they submit their annual tax return, containing the last name and first name(s) or company name and addresses of their shareholders (Article 89-4 of the Corporate Tax Act).

In practice

84. Since the creation of the CEFORE, all business-creation procedures take place under one roof (the Maison de l'Entreprise). After the RCCM number has been issued by the clerk of the company registry, the representative of the Directorate General of Taxes proceeds with the tax registration of the new company, notably by issuing the single financial identification number (IFU). This is done by entering into the IFU computerised system the information contained in the SIGU system. Since April 2016, the interfacing of the two systems means this information can now be directly imported from the SIGU system into the IFU. Once the IFU number has been issued, two copies of the tax registration certificate are produced, one of which is given to the person registering the business. The other copy of the certificate is sent with the new taxpayer's hard-copy file to the tax department on which the company will depend, according to the company's registered address and its forecasted turnover. Information on the company ownership (shareholders or partners) is thus held in the IFU system as well as in the taxpayer's hard-copy file.

85. After they have been registered, Businesses liable for corporate tax (companies and partnerships) are required to file an annual tax return by submitting their financial statements in the form of a Statistic and Tax declaration (*Déclaration Statistique et Fiscale*), the model of which is provided by the Directorate General of Taxes. This declaration includes a section entitled « Identification and other information » (*Fiche d'identification et renseignements divers*) on page 9, which includes a table giving the last names, first names, and nationality of the principal shareholders or partners as well as the amount or the percentage of their shareholding. In addition, an annex is automatically included with the declaration, and in section I-D1 it contains a table showing the breakdown of shareholdings. This table has to be completed, and the information it contains includes the first and last names of shareholders or partners, their nationality, the number and the value of their shareholding and any transfers or repayments that occurred during the financial year.

86. Failure to file or late filing of financial statements is sanctioned by automatic taxation as well as penalties or fines. The automatic taxation is an estimated assessment procedure which applies to taxpayers who have not filed their returns within the legal time-limit provided for by the tax law. This procedure allows the tax authorities to determine the tax burden of the taxpayer on the basis of the information at their disposal. The tables below show the number of times automatic taxation was used as a sanction for failing to file a tax return, and the number of fines levied for late filing by the Large taxpayers directorate, to which report some 600 companies, the largest ones with an annual turnover of more than CFA 1 billion (EUR 1 524 490).

Cases of automatic taxation for failing to file a tax return

Financial year of the failure	Number of cases	Taxation	Penalties	Fines
2011	1	775 896 473	387 948 236	0
2012	3	773 501 099	407 262 918	0
2013	6	1 500 429 669	781 244 243	0
2014	1	36 052 606	22 494 419	0

Late filing of tax returns of large companies

Financial year of the failure	Number of cases	Penalties	Fines
2010	3	323 396	600 000
2011	25	12 633 766	4 800 000
2012	25	41 162 920	5 000 000
2013	5	161 414	1 000 000
2014	1		400 000

87. It is apparent from the foregoing that information on company ownership is available and regularly updated to the tax authorities, irrespective of the form of the company. Indeed, the identity of the shareholders or partners is available to the tax authorities as of the company's incorporation, via the issuing of the single financial identification number, the IFU. The information is regularly updated in the annual tax return, notably using the "Identification and other information» form and the I-D1 table on the breakdown of shareholdings. The Burkina Faso tax authorities effectively ensure that the declarative obligations are respected, and apply penalties for any breaches.

88. During the review period, Burkina Faso received three EOI requests from a partner. Of these requests, one was seeking to obtain the shareholder composition of a company incorporated in Burkina Faso. The information was provided in a satisfactory manner.

Share register

89. The transferable securities that public limited companies and simplified joint-stock companies may issue are shares, which form the equity, and bonds. Under Article 745 of the Uniform Companies Act, shares and bonds may be in bearer or registered form, whether they are issued in return for contributions in cash or in kind.

90. Under Article 746-1 and 2 as amended of the Uniform Companies Act, SAs and SASs are required to keep a register of registered securities. The register is kept and updated by each company or by a person authorised for the purpose. The register contains information about the transfer, conversion, pledge or escrow of securities, including:

- the transaction date;
- the name, first names and domicile of the previous and new owner of the securities, in the event of transfer;
- the name, first names and domicile of the owner of the securities, where bearer securities are converted into registered form.

91. In the event of transfer, the name of the previous owner of the securities may be replaced by a number through which the name can be found in the registers. All entries in the registers must be signed by the company's legal representative or his delegate.

92. Under Article 746-2 of the Uniform Companies Act as amended, companies (SAs and SASs) are required to keep their securities register up to date. The auditor's report presented to the annual shareholders' meeting must ascertain the existence of the registers and give an opinion on their compliance with record-keeping requirements. A statement from the company's managers certifying that the registers are kept in compliance with the requirements is attached to the auditor's report.

93. This new requirement instituted by OHADA means that up-to-date information about the ownership of public limited companies and simplified joint-stock companies is now available. In particular, the identity of owners of registered securities is now available in the company's registers.

94. In addition, the finance law for the 2016 financial year has added a requirement to maintain a share register into Article 63 of the Corporate Tax Act. Public limited companies or simplified joint-stock companies must also keep a register of all shares issues, in accordance with the provisions of Article 746-1 of the Uniform Companies Act.

95. Information about the identity of shareholders of limited liability companies (SARLs) is also available in the company, even if the shareholders change, since under Article 317 of the, transfers of shares *inter vivos* must be recorded in writing. They may be relied on against the company only after one of the following formalities has been accomplished:

- notification of the transfer to the company by extrajudicial instrument;
- acceptance of the transfer by the company in a notarial deed;
- filing of an original copy of the transfer deed at the registered office against a certificate of receipt issued by the manager.

96. Transfers of shares in limited liability companies may be relied on against third parties only after accomplishment of one of the formalities described above and amendment of the articles of association, duly made public in the RCCM.

In practice

97. The share register forms part of the accounting documentation that must be kept by all Public limited companies or simplified joint-stock companies registered in Burkina Faso. This is why the requirement to keep this register is mentioned in Article 63 of the Corporate Tax Act, after the general obligation to keep accounting records. As a result, the tax authorities monitor the implementation of this obligation under the same conditions and in the same way as all the other accounting obligations of companies for tax purposes. In particular, they use right to information, right of investigation and right of search powers as well as general accounting inspections regularly carried out on the basis of an annual tax inspection programme.

98. The obligation for public limited companies or simplified joint-stock companies to keep a share register is recent in Burkina Faso. It entered into force on 5 May 2014, for Article 746-1 of the Uniform Companies Act, and 1 January 2016 for Article 63 of the Corporate Tax Act. Consequently, monitoring is limited to the small number of companies that underwent a tax inspection in 2015 (in total 759 taxpayers had their accounts verified, including 39 companies managed by the Large taxpayers Directorate.) However, the tax administration has stated that they did not find any instances of failure to respect this obligation. In addition, updates on company ownership information are regularly provided to the tax authorities via the statement that must accompany the annual tax return, as described above.

Foreign companies

99. Burkina Faso has a territorial system for corporate taxation. Under Article 6 of the Corporate Tax Act, corporate tax is payable on the profits made by companies operated in Burkina Faso. Article 51 states that companies whose registered office is located outside Burkina Faso are liable to tax at the place of their principal establishment in Burkina Faso on the profits from operations they have carried out there. Consequently, a foreign company may be taxed in Burkina Faso only if it is operated there through a permanent establishment such as a branch. Under Article 50, companies whose registered office is situated in another country but which are effectively managed from Burkina Faso are deemed to have an establishment there for tax purposes. Such establishments are treated as branches.

100. Under Article 116 of the Uniform Companies Act, a branch is a commercial or industrial establishment or an establishment providing services which belongs to a company or to a natural person and has a certain degree of managerial independence. A branch does not have a legal personality distinct from that of the owner, whether a company or an individual. Rights and obligations arising from its activity or existence are included in the assets and liabilities of the corporate or individual owner. Under Article 118, a branch may be an establishment of a foreign company or individual. In all events, it must be registered in the RCCM in accordance with the rules governing the register (Article 119) within one month of its creation or establishment (Article 48 of the Uniform Commercial Act). Any change to the status of a foreign company whose branch is registered in Burkina Faso must be mentioned in the RCCM within 30 days, as any other company (see the above paragraphs on the registration process of companies at the RCCM).

101. The rules for registering branches of foreign enterprises in the RCCM are the same as for Burkina Faso enterprises. The registration application filed with the business formalities centre is accompanied by a form which includes the following information, *inter alia*:

- the name of the foreign company which owns the branch or establishment; its trade name; its acronym or brand name; the activity or activities carried on; the form of the company or legal entity; its nationality;
- the address of its registered office; where applicable, the name, first names and personal domicile of shareholders or members indefinitely and personally liable for corporate debts;
- the name, first names, date and place of birth of the natural person domiciled in Burkina Faso empowered to represent and manage the branch.

102. The registration of branches of foreign enterprises means that information about their ownership is available from the RCCM if they are limited liability companies (SARLs) or partnerships. If they are companies with share capital (equivalent to SAs and SASs), information about their ownership will not be available from the RCCM. However, this information will be available in the share register which the branch is required to keep in the same way as any company with share capital under Burkina Faso law (Article 746-1 of the Uniform Companies Act).

103. The term of branches of foreign companies in Burkina Faso is limited to two years. After that deadline, they must be contributed to a Burkina Faso company, either already in existence or to be created. In the event of non-compliance, the branch is struck off the RCCM.

104. From a tax standpoint, branches are subject to the same registration and annual declaration requirements as all companies liable to corporate tax. Consequently, the list of the Company’s shareholders or partners shall be attached to the annual return (Article 89 of Law No. 08-2010/AN of 29/01/2010). This enables the tax authorities to have updated information on the ownership of the company.

105. In practice, the registration procedure for foreign companies is the same as for companies from Burkina Faso with regard to CEFORÉ, issuing the RCCM number and the IFU. Similarly, the annual tax return of companies in Burkina Faso must include a statement identifying the company owners.

106. To conclude, the ownership information regarding foreign companies or foreign partnerships) is available in Burkina Faso at the commercial registry (RCCM), in the Burkinabe branch of the entity or with the tax authorities.

Information held by nominees

107. The notion of nominee does not exist in Burkina Faso law. However, there are cases where the owners of a company may be represented by agents for various acts. Under commercial law, anti-money laundering law and, to a certain extent, tax law, the identity of the principal – the beneficial owner – may be known.

Commercial law

108. Under Article 315 of the Uniform Companies Act, when a limited liability company is formed, the members must all sign the instrument of incorporation, either in person or through a specially authorised agent, failing which the company is void. For public limited companies, under Article 396 “the articles of association must be signed by all subscribers, either in person or by an agent specially authorised for the purpose, after the issuance of the depositary’s certificate”. The same applies to simplified joint-stock companies, insofar as Article 853-3 of the Uniform Companies Act provides that, with some exceptions, the rules relating to public limited companies also apply to simplified joint-stock companies.

109. The special power and special authorisation refer to the special power of attorney provided for at Article 1987 of Burkina Faso’s Civil Code, under which a power of attorney is special where it concerns “only one or certain of the principal’s affairs”. It is an instrument whereby the principal entrusts the agent with a specific assignment, limited in time: agency to sign an instrument of incorporation. It is in contrast with a general power of attorney, which concerns “all the principal’s affairs”. A general power of attorney

very often corresponds to the power of agency of certain professionals such as attorneys who, in legal proceedings, are empowered by their clients to do all that is necessary to defend their interests. A special power of attorney thus enables principals to empower the agent solely to represent them in the instrument of incorporation. Under these circumstances, the principal's identity must be stated in the power of attorney and in the articles of association signed by the agent on the principal's behalf. The agent cannot include their own name in the articles of association.

110. Registered securities issued by companies with share capital registered in Burkina Faso are held by the owners in their own name. The issuer thus knows their identity insofar as they are required to keep a register of shareholders at its registered office which must contain the name, first names and domicile of the old and new holders of securities in the event of transfer (Article 746-1 and 2 of the Uniform Companies Act, Article 63 of the Corporate Tax Act). As in the case of incorporation, in the event of transfer of share, the name of the new shareholder in the register cannot be the agent's name.

111. In practice, the authorities in charge of registering new businesses (CEFORE) including the Directorate General of Taxes have never encountered any instances of nominees during the business-creation process. In addition, use of agents is very rare. However, even in this scenario, the articles of association and other documents allowing the owners of a company to be identified (minutes of the constituent general assembly, statement of subscription and payment) are required to always include the first and last names of the principal, i.e. the owner of the company being created.

Anti-money laundering legislation

112. AML/CTF measures in Burkina Faso are based on both domestic and community legislation. At community level, the West African Economic and Monetary Union (WAEMU) originally adopted two guidelines, namely Directive no. 07/2002/CM/UEMOA on the fight against money laundering and the Uniform Act on the fight against money laundering in the Member States of WAEMU. These two instruments have now been replaced by Directive no.02/2015/CM/UEMOA on the fight against money laundering and the financing of terrorism in the member states of WAEMU.

113. Two domestic laws were adopted in 2006 and 2009, namely Act 026-2006/AN on the fight against money laundering (AML Act) and Act 061-2009/AN on the fight against the financing of terrorism (CTF Act). The two Acts contain most of the rules laid down in the community texts. Burkina Faso transposed the Directive adopted in 2015 by the WAEMU, into its domestic legislation with Act no. 016-2016 of 3 May 2016 on the fight against money laundering and the financing of terrorism in Burkina Faso.

114. Article 5 of Directive no.02/2015/CM/UEMOA and the 2016 domestic law on the fight against money laundering and the financing of terrorism in Burkina Faso identify the following as being governed by the obligations of this law: financial institutions, service providers working for companies and fiducies, and attorneys, notaries, officers of justice, chartered accountants and other members of independent legal professions who, within the context of their professional activity:

- Participate, in the name of their client or on their behalf, in any financial or real estate transactions, or act as a fiduciary :
- Assist their client in the preparation or execution of transactions including
 - The purchase or sale of immovable property or commercial companies;
 - The management of funds, shares or other assets belonging to the client;
 - Opening or closing saving accounts or portfolios;
 - Organising the funds needed for the creation, operation or management of companies;
 - The creation, operation or management of companies, fiducies or similar legal arrangements;
 - The constitution or management of endowment funds.

115. Before entering into any business relations, the above-mentioned persons must identify the client and, where necessary, the beneficial owner of the business relationship using suitable means and verify the identification through the use of any credible documentation. Similarly, they must also identify any occasional clients and, where necessary the beneficial owner of the business relationship, when they suspect that the operation could be a money laundering or financing of terrorism operation or (under the conditions set out in the regulations governing this matter) when the operations take a certain form or exceed a certain amount. These requirements mean that information on the ownership of companies is available where there is a power of attorney.

116. In practice, supervision of establishments bound by AML/CFT obligations is not the responsibility of a single authority. Financial institutions are supervised by the Central Bank (the BCEAO) which constantly monitors the banking sector through the Banking Commission, or by the regional commission of the Inter-African Conference on Insurance Markets (*Conférence Interafricaine des Marchés d'Assurance*, CIMA) which controls insurance companies. There is no public supervisory body for the legal

professions; they are supervised by their professional associations. With the exception of the Association of chartered accountants of Burkina Faso (*Ordre des experts-comptables et comptables agréés du Burkina Faso*, ONECCA), which operates a quality-control programme on its members, one aspect of which looks at respect for AML/CFT regulations, the other legal professions do not yet exercise effective supervision of their members. The Burkina Faso authorities are nevertheless recommended to take measures to ensure effective monitoring of AML/CFT obligations by all the legal professions.

117. However, the lack of supervision of the legal professions does not pose any particular problem in respect of the availability of ownership information regarding the power of attorney. The agent is in any case obliged to mention the identity of the person represented during the formation of a company, for example.

Tax legislation

118. Article 92 (1) of the Corporate Tax Act states that any person or company that pays interest, dividends, revenue or other income from transferable securities or whose profession incidentally includes transactions of that type may not make any payment in that regard or open any account without requiring proof of the claimant's identity and an indication of their real domicile. They must also provide the tax authorities with a statement of the amounts they have paid, in whatsoever form, on presentation or remittance of coupons or instruments representing coupons. The statement must include the name and first names, real domicile and net amount paid to each claimant.

119. Article 92 (2) states that persons who present coupons in order to obtain payment of interest or dividends are deemed to be the owner of the coupons unless proved otherwise. If coupons are presented on a third person's behalf, the persons presenting them may provide the paying institution with a list stating, in addition to their own name, first names and real domicile, those of the true owners and the amount of coupons belonging to each one. In other words, agents wishing to receive dividends on another person's behalf may indicate the identity of the beneficial owner, i.e. the shareholder they represent. However, this is not an obligation. The law uses the term "may", which means that an agent may decide not to reveal the identity of the beneficial owner of the dividends when they are paid out. In that case, the statement provided to the tax authorities by the person who pays the dividends will contain only the identity of the agent and not that of the real shareholder. However, the tax administration is of the view that, in practice agents would always disclose the identity of the beneficial owner to avoid the tax obligation. For holders of registered shares, the ownership information is available in the share register kept by the company, as described above.

120. In practice, the tax authorities state that companies always disclose the identity of dividend recipients, even if they are represented by an agent.

Bearer shares (ToR A.1.2)

121. Article 745 of the Uniform Companies Act states that transferable securities may be in bearer or registered form and issued in return for contributions in cash or kind. It also states that provisions of the Uniform Act or the company's articles of association may require them to be issued in registered form only. Only public limited companies (SAs) and simplified joint-stock companies (SASs) may issue bearer shares. Limited liability companies (SARLs) may only issue registered shares (articles 744 and 745). Following amendment of the Uniform Companies Act on 14 January 2014, information on the identity of the owners of bearer shares should be available, in all events from 2016, since companies are henceforth required to enter all securities in an account in the name of their true owner, which was not the case before 2014.

Before 2014

122. Articles 745 and 764 of the Uniform Companies Act did not stipulate any requirement that would enable the company or third parties to know the identity of owners of bearer shares in all cases. There were some provisions that may have provided ownership information on bearer shares, but not in all cases.

123. Under Articles 390 to 403 and 613 of the Uniform Companies Act it seems possible to have some information about persons who have subscribed to the share capital (including holders of bearer shares).

124. First, such information could be obtained from the subscription forms, all of which are drawn up in two original copies, one of which is intended for the company. Under Article 390 of the Uniform Companies Act, these forms include the name or company name and address of the subscriber, the number of shares subscribed and the contributions made.

125. Second, the identity of persons subscribing the share capital (including the holders of bearer shares) could be obtained from the notarised declaration of subscription and payment (*déclaration notariée de souscription et de versement* – DNSV) held by notaries on the creation of public limited companies or on the occasion of a capital increase, or from the auditor's report (for contributions in kind). A certificate from the depositary (the bank which receives the subscriptions) must be attached to the DNSV, which is kept by the notary. Subscribers may consult the document and obtain copies of it at the notary's office.

126. However, these provisions are thoroughly insufficient with regard to the availability of information about the identity of the owners of bearer shares because:

- firstly, subscription forms or the DNSV concern only shares subscribed on formation of the company or on changes to the share capital. Information about the identity of the holders of bearer shares is not available in the event of a change of shareholder (by transfer or negotiation);
- secondly, notaries are not required to keep the DNSV after the company has been incorporated, a process which is completed with its registration.

127. Articles 519 and 532 of the Uniform Companies Act relating to shareholders' meetings state that the attendance sheet which must be kept by the company must state the name, first names and domicile of each shareholder present or represented and the number of shares they hold. However, it is not possible from this requirement to know the identity of the owners of all bearer shares, since not all shareholders are required to attend or be represented at shareholders' meetings. Thus, a shareholder who holds a bearer share and who is not present or represented would not appear on the attendance sheet and would not be known to the company.

128. Article 541 states that the right to attend meetings may be conditional on the deposit of bearer shares at a place stated in the notice of meeting or on production of a certificate of deposit of bearer shares issued by the bank or financial institution with which they have been deposited. Again, shareholders are under no obligation to attend or be represented at shareholders' meetings. Furthermore, Article 541 uses the word "may", indicating that the registration of bearer shares in an account opened in the owner's name and kept by the company or a financial institution remains an option left to the company's discretion. It is not a requirement.

129. Lastly, Article 764 of the Uniform Companies Act stated that shares, whether in registered or bearer form, "may be represented by an entry in an account opened in the name of their owner and held either by the issuing company or by a financial intermediary authorised by the Minister of the Economy and Finance; in that case, transmission is effected by transfer from account to account". This was a means of knowing the identity of the owners of bearer shares, but it was merely an option opened to listed companies.

130. In conclusion, it was not possible under the Uniform Companies Act before it was revised in 2014 to know the identity of the owners of bearer shares in companies with share capital in all cases.

Since 2014

131. Under Article 744-1 as amended, “transferable securities, whatever their form, must be registered in an account in the name of their owner. They are transmitted by transfer from account to account. Transfer of title to transferable securities results from the registration of the transferable securities in the acquirer’s securities account”. Thus, bearer shares and registered shares should be dematerialised (paper shares should no longer exist) and their owners identifiable.

132. Under Article 919 of the Uniform Companies Act as amended, as a transitional measure companies have two years as of its entry into force to comply with the new rules, including those on the dematerialisation of securities. All bearer shares issued before 5 May 2014 (the effective date of the new Uniform Act) may remain in paper form until 5 May 2016 at the latest.

133. However, the new Uniform Act makes no provision for specific penalties against issuers or holders of bearer shares created before its entry into effect which are not entered in an account on expiry of the transitional period. According to the Burkina Faso authorities, bearer shares that have not been dematerialised on expiry of the transitional period will no longer be legally valid. The holders of such bearer shares would not be able to exercise their rights, especially the right to vote at shareholders’ meetings and the right to dividends. However, that penalty is not expressly stated in any legal text. Only the 1262 SAs and SASs out of 13 742 companies registered on 31 March 2016 in Burkina Faso can potentially issue bearer shares. According to Burkina Faso’s tax authorities, researches have shown that none of the SAs or SASs incorporated in Burkina Faso has issued bearer shares. For their tax obligations, all of these companies fall either in the Medium business taxpayers’ directorate or in the large business taxpayers’ directorate.

Tax legislation

134. Article 92 (1) of the Corporate Tax Act states that any person or company that pays interest, dividends, income or other revenue from transferable securities or whose profession incidentally includes transactions of that type may not make any payment in that regard or open any account without requiring proof of the claimant’s identity and an indication of their real domicile. They must also provide the tax authorities with a statement of the amounts they have paid, in whatsoever form, on presentation or remittance of coupons or instruments representing coupons. The statement must include the name and first names, real domicile and net amount paid to each claimant.

135. The statement of amounts paid in dividends provided to the tax authorities gives them information on the identity of the beneficiaries and hence of all the shareholders, except in cases where the claimant is an agent. However the tax administration is of the view that, in practice agents would

always disclose the identity of the beneficial owner to avoid the tax obligation. The authorities should thus have information on the identity of the holders of bearer shares, provided that dividends are paid.

136. In addition, the 2016 finance law introduced a new obligation in Article 63 of the Corporate Tax Act for SA and SAS to “keep a register of registered and bearer shares issued by it, in accordance with the provisions of Article 746-1 of the Uniform Companies Act”. According to the tax authorities, this new obligation should allow the company to have information on the ownership of bearer shares. However, this is debatable given that the company can only know the identity of the owner of bearer shares at the moment they are issued. The company would be unaware of any subsequent conversion of registered shares into bearer shares, until the owner notified the company. Similarly, in the event of a transfer of bearer shares, the company would be unaware of the identity of the new owner until they were notified. In addition, the aforementioned Article 63 makes reference to the provisions of Article 746-1 of the Uniform Companies Act. And yet, this article limits the obligation of keeping a share register to registered shares. Bearer shares are not covered by this obligation, which is not adapted to them. In fact, the new tax obligation of keeping a share register does not allow companies to have information on the ownership of bearer shares.

Bearer shares in practice

137. Pursuant to Article 919 of the Uniform Companies Act, the new provisions created during the revision of 14 January 2014 should be fully effective from 5 May 2016, as companies had a two-year transition period in which to comply with them. The dematerialisation of shares should therefore be effective from this date in all companies, which will make it possible to obtain information on the ownership of any bearer shares that may be issued by companies in Burkina Faso. However, the Uniform Companies Act does not give practical details of this dematerialisation. No other regulatory measure has been taken in Burkina Faso to ensure that this obligation is respected in practice. For example, it is not specified whether the account that has to be held in the name of the owner of the shares must be opened by the company issuing the shares or by a third party. Similarly, as explained above, there is no clarity on the consequences for shares that are not dematerialised (registered in an account) after 5 May 2016, particularly for bearer shares.

138. The Burkina Faso tax authority used its right of investigation powers to identify companies that had issued bearer shares. The conclusions of this investigation, which was completed in April 2016, have not shown any existing bearer shares. However, even if bearer shares are currently inexistent, they could still be issued in the future as the law still authorises them. In which case, only effective dematerialisation can guarantee the availability of information

on the ownership of bearer shares. Yet, on 5 May 2016, the date at which the two-year transition period allowed for companies to comply with the requirement to register all shares in an account in the name of their owner expired, no practical measures had been taken to ensure that all companies had complied.

139. In light of the foregoing, even if no Burkina Faso company had issued bearer shares before or during the review period, it is still possible to do so, in application of the provisions of Article 745 of the Uniform Companies Act. It is also possible for the owners of shares including bearer shares to convert the bearer shares to registered shares and vice versa (Article 746). In this case, information on the ownership of bearer shares in public limited companies and simplified joint-stock companies should be available in Burkina Faso from the tax authorities, in the event of any payment of dividends. This information should also be available in all cases from the company or a depository (for listed companies). However, the information will only be available from companies if the dematerialisation of shares as required by the new Uniform Companies Act is effective in all companies. Burkina Faso is recommended to take measures to ensure the effective dematerialisation of all shares, including those that existed before 5 May 2016.

Partnerships (ToR A.1.3)

140. Under the Uniform Companies Act there are four different types of partnership in the OHADA area, namely general partnerships, limited partnerships, joint-ventures and de facto partnerships. Alongside these corporate forms governed by OHADA law, non-trading companies are governed by Burkina Faso's Civil Code.

- **General partnerships** (*sociétés en nom collectif*, SNC) are partnerships of which all the owners, called partners, are traders and are indefinitely and jointly liable for corporate debts (Article 270 of the Uniform Companies Act). The share capital is divided into shares of equal par value. The partnership ends with the death of a partner. However, the articles of association may provide for the continuation of the partnership either between the surviving partners or between the surviving partners and the heirs or successors of the deceased partner with or without the approval of the surviving partners. There were two general partnerships in Burkina Faso at 31 March 2016.
- **Limited partnerships** (*sociétés en commandite simple*, SCS) have two classes of owners: managing partners, who are indefinitely and jointly liable for the partnership's debts, and limited partners, who are liable for the partnership's debts only up to the amount of their contribution (Article 293 of the Uniform Companies Act). The capital of a limited partnership is divided into shares. The partnership continues

despite the death of a limited partner but must end on the death of a managing partner. If it is stipulated that, despite the death of a managing partner, the partnership continues with their heirs, those who are non-emancipated minors become limited partners. There were three limited partnerships in Burkina Faso at 31 March 2016.

- **Joint ventures** (*sociétés en participation*, SP). In a joint venture, the partners agree that the company will not be registered in the RCCM and will not have legal personality. Joint ventures are not subject to a publication formality. Under Article 854 of the Uniform Companies Act, the existence of a joint venture may be proved by all means. Unless otherwise provided, relations between partners are governed by the provisions applicable to general partnerships. Joint ventures are dissolved by the same events as terminate a general partnership (death of a partner). Under Article 862 of the Uniform Companies Act, however, the partners may agree in the articles of association or in a subsequent instrument that the company will continue despite such events. Three joint ventures had been registered with the tax authorities at 31 March 2016.
- **Non-trading companies.** The rules governing the creation and operation of non-trading companies are contained in Burkina Faso's civil code, Article 1832 of which states that "a [non-trading] company is a contract whereby two or more persons agree to hold something in common with a view to sharing the benefit that may arise therefrom". The company must have a lawful purpose and be contracted in the parties' common interest. Each member must contribute money or other assets or labour. The company commences when the contract is entered into, unless otherwise provided. If there is no particular stipulation as to the term of the company, it is deemed to exist for the lifetime of the members. There were 37 non-trading companies in Burkina Faso at 31 December 2014.

Information held by the public authorities

Registration formalities

141. With the exception of joint ventures, partnerships are required to register in the RCCM in the same way as companies with share capital. Under Articles 46 and 52 of the Uniform Commercial Law Act, the following information is kept in the RCCM:

- the name, first names and personal domicile of members or partners who are indefinitely and personally liable for corporate debts, including their date and place of birth and nationality;

- the name, first names, date and place of birth and domicile of managers, executives, directors or partners with a general power to commit the legal person or grouping;
- shareholdings;
- the address of the registered office and, where applicable, the main establishment and each other establishment; and
- any amendments.

142. Changes of partners must be notified to the RCCM. Thus, information on the identity of partners of partnerships is kept and regularly updated in the RCCM. That information is also available from the partnership under the specific rules applicable to each type of partnership.

143. Shares in general partnerships may be transferred only with the unanimous consent of all the partners. Any provision to the contrary is deemed null and void. The transfer may not take place without unanimous consent, though under Article 274 of the Uniform Companies Act the articles of association may provide for a buyout procedure so that the transferor can withdraw. Transfers of shares must be ascertained in writing. They may be relied on against the partnership only after one of the following formalities has been accomplished:

- service of notice of the transfer to the partnership by an officer of justice;
- acceptance of the transfer by the partnership in a notarised deed;
- filing of an original copy of the transfer deed at the registered office in return for a certificate of receipt from the manager.

144. The transfer of shares may be relied on against third parties only after this formality has been accomplished and the transfer has been made public by filing a rider with the RCCM.

145. For limited partnerships, transfers of shares must be ascertained in writing. They may be relied on against the company and third parties under the same conditions as for transfers of shares in general partnerships ((i) service of notice of the transfer to the partnership by an officer of justice, (ii) acceptance of the transfer by the partnership in a notarised deed and (iii) filing of an original copy of the transfer deed at the registered office in return for a certificate of receipt from the manager). Under Article 296 of the Uniform Companies Act, shares may be transferred only with the consent of all the partners. However, the articles of association may stipulate:

- that limited partners' shares are freely transferable between partners;
- that limited partners' shares may be transferred to third parties outside the partnership with the consent of all the managing partners and a majority in number and capital of the limited partners;

- that a managing partner may transfer some of his shares to a limited partner or a third party outside the partnership with the consent of all the managing partners and a majority in number and capital of the limited partners.

146. Because joint ventures do not have to be registered, they do not appear in the RCCM. However, their managers are required to register in the RCCM. Likewise, information about the identity of the partners should be available at the company. Unless otherwise provided, under Article 856 of the Uniform Companies Act relations between the partners of joint ventures are governed by the rules applicable to general partnerships.

147. In conclusion, pursuant to the provisions of the Uniform Commercial Act and the Uniform Companies Act, information on the ownership of partnerships are maintained and updated in the RCCM as well as in the entity itself. In the case of limited partners of limited partnerships, information on their identity is only maintained by the company itself, since the law does not require the disclosure of this information with the RCCM.

Tax requirements

148. Under Article 3 of the Corporate Tax Act, partnerships, joint ventures and non-trading companies in Burkina Faso are liable to corporate tax. Registration formalities with the tax authorities and the tax obligations of partnerships, joint ventures and non-trading companies are the same as those described above for companies with share capital as far as corporate tax is concerned. They are required to:

- submit a declaration of existence within 30 days of starting operations or opening an establishment (Article 86 of the Corporate Tax Act);
- declare at the latest on 30 April of each year the amount of their taxable profits relating to the period ended 31 December of the previous year by means of a form compliant with the model laid down by the tax authorities;
- include with their annual tax return an annual statement of remunerations of partners and shares of corporate profits and other income (Articles 65 and 66) and, where applicable, a copy of instruments amending their articles of association (Article 67).

149. Pursuant to the provisions of Article 89, the managers of general or limited partnerships and non-trading companies are required to provide the tax authorities, at the same time as their annual tax return, with a statement including:

- the name, first names and domicile of the partners or members;

- the share of profits for the period or periods ended during the previous year corresponding to the rights of each member of the non-trading company and each partner of the general or limited partnership;
- for general partnerships that have opted for the tax on industrial and commercial profits, the amount of profits distributed to limited partners during the previous year.

150. The managers of joint ventures are required to provide the tax authorities, at the same time as the annual tax return, with a statement including:

- the name, first names, profession and domicile of managing partners and coparticipants;
- the share of profits for the previous period due to each managing partner and to each coparticipant personally operating an enterprise or exercising a profession in whose revenue his share of profits is included;
- the amount of profits distributed to other coparticipants during the previous year.

151. Information about the identity of the partners of partnerships (general or limited partnerships and joint ventures) is available to the tax authorities and is regularly updated.

152. In practice, the procedure for creating and registering businesses in Burkina Faso is the same whatever the form of the business (see above, companies with share capital). This procedure makes information on the identity of partners in partnerships available in practice, and it is updated in the RCCM, at the CEFORE via the SIGU system and also in the tax registration system for taxpayers, IFU, held by the tax authorities as well as in taxpayers' files.

153. During the review period, Burkina Faso did not receive any EOI requests regarding partnerships.

Trusts (ToR A.1.4)

154. There is no law on trusts in Burkina Faso and the country is not a signatory of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. There is also no law on the related notion of *fiducie*. However, the Burkina Faso authorities consider that if a *fiducie* existed in Burkina Faso, in the absence of any specific provisions it would be governed by the Civil Code, especially provisions relating to contracts (Articles 1101 et seq.). Likewise, there is no legal provision to prevent a trust established in another country from being administered in Burkina Faso or to prevent assets located in Burkina Faso from forming part of a foreign trust.

155. If a trust governed by the law of another country were administered in Burkina Faso, or if the trustee were resident in Burkina Faso, there is no specific requirement to register with the public authorities or to disclose prior information about the settlors, trustees or beneficiaries of the trust.

156. In contrast, if the trustee carries on a commercial activity or a legal profession (attorney, notary, tax adviser, chartered accountant, etc.) in Burkina Faso, they would be liable to tax on any profits arising from management of the trust, insofar as the income they draw from it would be considered theirs, unless they could prove to the tax administration that they were acting in the name and on behalf of a third party. In that case, they would be obliged to reveal the identity of the settlor or beneficiary of the trust, since under Article 51 of the Tax Code, natural persons liable to tax on profits are required to submit annual tax returns which must include “an annual statement of commission, brokerage fees, discounts, fees, copyright and other remuneration paid to third parties”. These rules enable the tax authorities to know the identity of the settlors or beneficiaries of a foreign trust whose assets are administered in Burkina Faso or the trustee of which is a resident of the country, especially when there is a payment to the settlor or to a beneficiary.

Anti-money laundering legislation

157. Article 5 of Act no. 016-2016 of 3 May 2016 on the fight against money laundering and the financing of terrorism in Burkina Faso (AML Act) states that members of independent legal professions, when they represent or assist clients outside any legal proceedings, especially “in connection with the constitution, management or direction of companies, *fiducies* or similar legal constructions and the performance of other financial transactions” must comply with the know-your-customer rules set forth at Articles 17 and 18 of the same Act. Trusts are legal constructions similar to *fiducies*. Before entering into a business relationship with a client or assisting the client with the preparation or completion of a transaction, the members of these professions identify the client, and where necessary, the beneficial owner of the business relationship using all suitable means, and verifying these elements of identification with the use of any credible written document (Article 18). For the duration of the business relationship, they will gather, update and analyse the elements of information that allow appropriate knowledge of their client (Article 19). In the eyes of the law, the beneficial owner is understood to mean “the natural person(s) who exercise(s) the final control over a legal person or a legal construction”. In the case of a trust, the identification of the beneficial owner would be made through the trust deed that discloses the settlor’s or beneficiary’s name.

158. The identity of a natural person (settlor, trustee or beneficiary) is verified by the presentation of a valid national identity card or any equivalent original official document, a copy of which must be taken. The business address and domicile is verified by the presentation of any document which constitutes proof. If the natural person has trader status, they must also provide documentation proving registration in the commercial register (RCCM). The identity of a legal person or branch is verified by the production of an original or certified true copy of any instrument or excerpt from the commercial register certifying its legal form, registered office and the powers of persons acting on its behalf. Verification of identity includes verifying the real address of managers, employees and agents acting on another person's behalf, who must produce documents certifying the delegation of power or power of attorney granted to them and the identity and address of the beneficial owner.

159. Documents relating to the identity of customers must be kept for 10 years as of the closure of accounts or the cessation of relations with regular or occasional customers. Documents relating to transactions performed must also be kept for 10 years from the end of the period during which they were carried out. Persons governed by these rules who fail to comply with know-your-customer and document retention requirements are liable to a fine of XOF 50 000 (EUR 76) to XOF 750 000 (EUR 1 143).

160. Regulation no. 0004/CIMA/PCMA/PCE/SG/08, applicable to insurance and reinsurance companies and brokers operating within the CIMA region, of which Burkina Faso is a member, includes measures that are identical to the AML/CFT legislation, guaranteeing the availability of information on the identity of members of a trust if they are involved in insurance operations, acting as a trustee. Failure to respect the obligations above can result in disciplinary sanctions and financial penalties as stated in Articles 534-2 and 545 of the Insurance Code.

In practice

161. The Burkina Faso tax authorities have stated that any person acting within the context of their professional activity as a trustee in Burkina Faso is required to register with the tax authorities. This is the declaration of existence to which is subject any person carrying on business in Burkina Faso. This procedure should give the tax authorities access to information on other persons involved in a trust administered in Burkina Faso. If the trustee resident in Burkina Faso does not reveal the identity of the settlor or the beneficiary, the tax administration will consider the income generated by the trust as being that of the trustee and will tax it accordingly. This information will be updated notably when each annual tax return is filed.

162. In the scenario of a trustee resident in Burkina Faso who is not a professional, they are also required to register with the RCCM and the tax administration, given that the activity, even if it only involves managing the assets of a trust created abroad, is likely to have a commercial nature and generate taxable income. The tax authorities thus have access to information on the identity of other persons involved in the trust, even if they reside abroad, as taxpayers are required by Burkina Faso to include with their annual tax return an “annual statement of commissions, brokerages, reductions, fees, author’s fees and other remuneration paid to third parties” (Article 51 of the Tax Code).

163. The Burkina Faso authorities stated that they have never encountered the case of foreign trusts operating in Burkina Faso or with a trustee resident in Burkina Faso.

164. Thus, under AML legislation, professionals acting as trustees or fiduciaries in Burkina Faso are required to identify their customers (settlor or beneficiaries) and to retain the relevant information. This requirement does not apply to non-professional individuals who are appointed trustees in Burkina Faso. According to the Burkina Faso authorities, however, the likelihood of appointing non-professional trustees or fiduciaries in Burkina Faso is expected to arise rarely in practice. Moreover, these persons would be required to register at the company registry (RCCM) and with the tax authorities as a result of the income earned from the trust they are managing. This which would allow the tax authorities to know the identity of other people involved in the trust.

165. During the review period, Burkina Faso did not receive any EOI requests regarding trusts.

Foundations (ToR A.1.5)

166. The Burkina Faso law does not have specific regulations on foundations. This type of organisation therefore has no legal existence in Burkina Faso. In practice, the term “foundation” is used by associations covered by Act No. 064-2015/CNT on freedom of association.

167. The Freedom of Association Act covers a number of types of association: ordinary associations, public interest associations, foreign associations, non-governmental organisations and trade unions. Whatever the type, an association is defined under Article 3 as “any not-for-profit group of national or foreign natural or legal persons intended to be permanent whose purpose is to achieve common objectives, in particular in the cultural, sporting, social, spiritual, religious, scientific, professional or socio-economic spheres”.

168. Thus, associations or foundations may be created in Burkina Faso solely with a view to the achievement of common objectives, i.e. for a general interest purpose with no profit motive. Private “foundations” cannot therefore exist, which limits their interest for the purposes of this review. Nonetheless, the rules governing them ensure that information about their members is available.

169. Under Article 3 of the Freedom of Association Act, all persons wishing to form an association with legal capacity must comply with the following formalities:

- establish a constitutive body (general assembly, congress, etc.);
- submit the draft articles of association to that body for adoption (including the purpose, objectives, term, registered office and rules of procedure of the future association);
- appoint the officers who will manage the association;
- draw up a minute of the meeting of the constitutive body, stating the membership of the managing body and the identity and full addresses of its members.

170. The association must be declared within 15 days of its constitution either to the Minister for Public Freedoms, for associations with a national or international vocation, or to the administrative authority with territorial competence where they are regional (the Governor) or provincial (the High Commission). The declaration must include a stamped application stating the name, the purpose, the registered office and the addresses of the managing members, the articles of association and the rules of procedure. The receipt for the association’s declaration of existence is issued by the competent administrative authority. The association’s managers are also required, within two months of the date of issuance of the receipt, to cause the receipt to be published in an official journal, stating the date of the declaration, the name and purpose of the association, the place of its registered office and the names and addresses of the members of its managing body (Articles 11 to 14 of the Freedom of Association Act).

171. Likewise, Article 49 of the Freedom of Association Act states that declared associations must keep an up-to-date register of activities, a register of financial accounts and a register of material accounts. The register of activities includes minutes of meetings, events and achievements. The register of financial accounts records all entries and disbursements of funds. The register of material accounts records the association’s movable and immovable assets. Members may have access to these registers.

172. Any amendment to the texts of the foundation must be declared to the competent administrative authority.

173. If the foundation’s articles of association are drawn up in a notarial deed, the notary must identify the founders and managers of the association and keep the related documents for 10 years as required by AML/CTF regulations (see the section on trusts above).

174. Non-profit organisations are included among the persons covered by the provisions of the AML Act no. 016-2016 of 3 May 2016. This law defined non-profit organisations as “any association, foundation or non-governmental organisation formed in accordance with the laws and regulations in force, whose main object is to raise and distribute funds for charitable, religious, cultural, educational, social or collegial purposes, or for other types of good works.” They are required to produce, when requested, information on the aim and the purpose of their activities as well as the identity of the person(s) who own, control or manage their activities, including directors, members of the executive board and administrators (Article 42).

175. From a tax standpoint, under Article 5 of the Corporate Tax Act associations and non-profit organisations such as foundations are exempt from corporate tax provided they strictly comply with their purpose. In other words, such organisations are liable to tax if they carry on their activities for profit. In all events, associations and foundations are bound by the same declaration of existence requirements as companies. Managers must make the declaration of existence to the tax authorities within 30 days following the start of the association’s activities. For that purpose, they must provide a copy of the articles of association and rules of procedure and a copy of the receipt of the foundation’s declaration of existence. The association or foundation will then be issued with a single financial identification number. If they carry on activities for profit, associations and foundations must also submit annual tax returns to the tax authorities, including an annual statement of remunerations of members and shares of profits and other income (Articles 65 and 66) and, where applicable, a copy of instruments amending their articles of association (Article 67).

In practice

176. In practice, the Ministry of Public Freedoms holds a centralised file of associations registered in Burkina Faso, which contains information on the identification of each association, its purpose and its directors. In addition, the tax administration registers each new association for tax purposes through the IFU system which holds information about their identity, similarly to the procedure for companies with share capital (see A.1.1, Companies) and partnerships (see A.1.3 Partnerships).

177. Burkina Faso did not receive any EOI requests about foundations during the review period.

178. In conclusion, in light of their characteristics, foundations governed by the legal rules for associations in Burkina Faso are not relevant with regard to the exchange of information for tax purposes. However, information about their ownership is available in Burkina Faso law and in practice, from both the administrative and tax authorities.

Other entities and arrangements

Economic interest groupings

179. Article 869 of the Uniform Companies Act defines an economic interest grouping as one whose sole purpose is to implement for a defined period all means likely to facilitate or develop the economic activity of its members or to improve or increase the results of that activity.

180. An economic interest grouping (EIG) may be constituted by two or more natural or legal persons, including persons carrying on a profession whose status is regulated by law or regulation or whose title is protected. It may be constituted without capital and is not intended per se to generate profits to be shared. Members' rights may not be represented by transferable securities.

181. An EIG is constituted by contract between its members. The contract must be written and is subject to the same publication formalities as for companies governed by the Uniform Companies Act. It must include:

- the EIG's name and address;
- the name or company name, legal form, address of the domicile or registered office and, where applicable, the RCCM registration number of each of its members.

182. The EIG must be registered in the RCCM under the same conditions as all companies, including a copy of the founding contract. The identity of the EIG's members is thus available from the RCCM since, whether natural or legal persons, they must prove that they have an economic activity and as such be registered in the RCCM. As the RCCM registration number of each party to the contract creating the EIG must be included, the identity of its members – and even that of the members, shareholders or partners of member companies that are partnerships or limited liability companies – can be known. If the EIG's members include one or more public limited companies or simplified joint-stock companies, it is still possible, in addition to the identity of the member company itself, to know that of their shareholders, since it is required to keep a share register at its registered office. However, this would not be the case for holder of bearer shares, except in the event of dematerialisation of all shares. All amendments to the founding contract must be drawn up and made

public under the same conditions as the contract itself. They may not be relied on against third parties until they have been made public.

183. From a tax standpoint, EIGs carry on economic activities and are automatically liable to corporate tax under Article 3 of the Corporate Tax Act. They are thus bound by the same tax obligations as all companies, including the requirement to submit a declaration of existence to the tax authorities and file annual tax returns including an annual statement of remuneration of members and shares of corporate profits and other income (Articles 65 and 66) and, where applicable, a copy of instruments amending their articles of association (Article 67).

184. Information on the identity of the owners of economic interest groupings is available in Burkina Faso, from the RCCM, the entity and the tax authorities.

Co-operative societies

185. Co-operative societies in Burkina Faso are governed by two texts, Act 014-99/AN regulating co-operative societies and groupings in Burkina Faso (1999 Co-operatives Act), adopted on 15 April 1999, and the OHADA Uniform Act on the law of co-operative societies (Uniform Co-operative Societies Act) adopted on 15 December 2010. Under Article 10 of the OHADA Treaty, uniform acts apply notwithstanding any prior or subsequent provision to the contrary in domestic law. The Burkina Faso authorities have confirmed that the 1999 Co-operatives Act applies only to those aspects which are not in contradiction with the provisions of the Uniform Act.

186. A co-operative society is an independent grouping of persons who come together voluntarily in order to satisfy their common economic, social and cultural aspirations and needs by means of an enterprise which is collectively owned and managed and in which power is exercised democratically according to co-operative principles (Article 4 of the Uniform Co-operative Societies Act and Article 8 of the 1999 Co-operatives Act). A co-operative society comprises members who, united by a common bond on the basis of which the society was created, actively participate in accordance with co-operative principles in the society's activities and receive shares representing their contributions. The common bond refers to the objective element or criterion which the co-operative's members have in common and on the basis of which they have come together. It may relate to a profession or an identity of purpose or activity or legal form.

187. Any natural or legal person may be a member of a co-operative society unless they are legally incompetent. The articles of association constitute the founding contract. Under Article 18 of the Uniform Co-operative Societies Act, they are drawn up in a private or notarial deed and must include, inter alia, the form of the co-operative society, the name, first names

and residential address of each founder member, the identity of contributors of cash, including the amount of the contribution made by each one and the number and value of shares issued in return for each contribution, and the identity of contributors in kind, the nature and valuation of the contribution made by each one and the number and value of shares issued in return for each contribution, and the rules governing contributed assets whose value exceeds that of the required contributions.

188. Co-operative societies must be registered in the Co-operative Societies Register kept at local level by the administrative authority. Under Article 12 of the 1999 Co-operatives Act, the local authority responsible for keeping the Co-operative Societies Register is the High Commissioner of the place where the co-operative society has its registered office. The information contained in each local register is centralised in a national database.

189. Co-operative societies must register within one month of their formation. The registration application must include, inter alia, the name, first names, nationality, date and place of birth and domicile of managers empowered to commit the co-operative society, and two copies of the articles of association. If the co-operative society's situation is subsequently amended in a way which requires a rectification or amendment of the information contained in the Co-operative Societies Register, an application for rectification or amendment must be submitted within 30 days of such amendment. Any amendment to the co-operative society's articles of association must be mentioned in the Co-operative Societies Register.

190. Under Article 9 of the Uniform Co-operative Societies Act, each co-operative society must keep a register of members at its registered office in which they are listed in chronological order. The register must include the following information for each member:

- the membership number;
- the name, first names and identity document details;
- the address;
- the occupation;
- the number of shares subscribed;
- the number of shares paid up.

191. Under Article 3 of the Corporate Tax Act, co-operative societies are liable to corporate tax by their form. They are thus subject to the same tax obligations as all companies, including the requirement to submit a declaration of existence to the tax authorities and file annual tax returns including an annual statement of remuneration of members and shares of corporate profits and other income (Articles 65 and 66) and, where applicable, a copy of instruments amending their articles of association (Article 67).

192. Information on the identity of the owners of co-operative societies is available in Burkina Faso from the co-operative societies themselves, the tax authorities and the Co-operative Societies Register.

In practice

193. In practice, the registration procedure for GIE and Co-operative societies ensures the availability of information about their ownership, under the same conditions as for other legal persons in Burkina Faso (see A.1.1, Companies) and partnerships (see A.1.3 Partnerships).

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

Penalties for failure to register

194. Provisions relating to identification of the owners of relevant entities cannot be effective if there are no penalties for non-compliance. Under OHADA law, failure to register a company in the RCCM entails the following consequences:

- the company is denied legal personality (Article 60 of the Uniform Commercial Law Act);
- the company's existence may not be asserted against third parties (Article 101 of the Uniform Companies Act).

195. Articles 68 and 69 of the Uniform Commercial Law Act state that “any person who is required to accomplish one of the formalities set forth in this Uniform Act and fails to do so, or who fraudulently accomplishes any such formality, is liable to the penalties provided for by national criminal law or, where applicable, by the special criminal law enacted by a State Party pursuant to this Uniform Act. Where applicable, the jurisdiction which convicts shall order rectification of the inaccurate information and transcriptions”.

196. OHADA Uniform Acts provide for criminal penalties and leave Member States free to set the penalties either in their Criminal Code or in a special criminal law. Burkina Faso's Criminal Code does not provide for any particular penalty for failure to register a company, nor is there any special criminal law providing for penalties under OHADA law. Consequently, the only penalty for failure to register a company is denial of legal capacity and the fact that the company's existence may not be asserted against third parties. The company may continue to exist as a joint venture or a de facto partnership, governed by the provisions of Articles 854 of the Uniform Commercial Law Act. However, such a company remains subject to the obligation to register with the tax administration that could apply the sanctions described below in case of failure.

197. The Uniform Companies Act contains an obligation for public limited companies and simplified stock companies to keep a share register, though there is no specific penalty for failure to do so. Under the Act, failure to keep a share register is not included in the types of conduct liable to criminal penalties listed at Article 886 et seq. However, as explained below, the tax legislation now provides sanction to the failure to keep this register. Although the dematerialisation of securities provided for by the new Uniform Companies Act means that it should be possible to know the identity of the owners of all securities in all circumstances, the share register remains an important source of information, especially while waiting for dematerialisation to become fully effective. Burkina Faso is recommended to set sufficiently dissuasive penalties to ensure compliance with the requirement for companies to keep a share register at their registered office.

198. In practice, the CEFORE or the RCCM are not mandated to monitor registration obligations of natural and legal persons carrying out a commercial activity in Burkina Faso and nor do they have the powers to impose penalties for breaches of these obligations. However, the commercial register can call upon the courts should false declarations be made in order to make a fraudulent registration. The authorities of the company registry have indicated that no infraction of this type occurred during the review period and no penalties were applied. In general, the monitoring and sanctioning powers of the tax authorities are more severe and sufficiently effective to guarantee the availability of information on the ownership of entities.

Tax legislation

199. Under Article 86 of the law instituting corporate tax, the penalty for failing to submit a declaration of existence for a new company to the tax authorities is a fiscal fine of XOF 100 000 (EUR 152).

200. Persons or companies that pay interest, dividends, income and other revenue from transferable securities without requiring claimants to provide proof of identity and a statement of their true domicile or that do not provide the tax authorities with a statement of amounts they have paid out, giving the name and first names, true domicile and net amount of sums received by each claimant, are liable to a fiscal fine of XOF 20 000 (EUR 30) per type of omission. The same penalty applies if the same persons provide inaccurate information to the tax authorities.

201. The penalty for failing to submit the annual tax return (and supporting documentation) within the given deadline is a fine of XOF 200 000 (EUR 304). The fine is doubled if the situation has not been rectified within 30 days following receipt of official notice to do so. In addition, the amounts payable by a person who fails to file a return or files late are increased by 10%. That penalty is increased to 25% in the event of a repeat offence during

the recovery period, which is three years for direct taxes. The increase may not be less than XOF 50 000 (EUR 76). Where the return is filed after official notice has been served by registered letter or in person, the penalty increase is 25%. In the event of a repeat offence during the recovery period and/or discretionary assessment period, the penalty increase is 50%. If the tax return or missing item is not filed within 30 days following service of notice, the amounts payable are doubled. The amount may not be less than XOF 100 000 (EUR 152) (Articles 73, 76 and 77 of the Corporate Tax Act).

202. In addition, the finance law for the 2016 financial year has added a requirement to maintain a share register into Article 63 of the Corporate Tax Act. Public limited companies or simplified joint-stock companies must also keep a register of all shares issued, in accordance with the provisions of Article 746-1 of the Uniform Companies Act. Pursuant to this amendment made in the tax law of Burkina Faso, the provisions of the Book of Tax Procedures now provide sanction to failure to keep the share register. Article 33 provides that “books, records, documents or materials of any kind on which the tax administration can exercise its right to information must be kept for a period of ten years from the date of the last transaction mentioned on the books or records in question or the date on which the documents have been established.” Article 48 of the Book of Tax Procedures also provides that “The failure to keep the documents referred to in Articles 33, 37 and 39 of this book is punishable by a fine of CFA francs two million (2 000 000) “(EUR 3 048). The share register is one of the records or documents that companies are required to keep by virtue of the law and on which the tax administration may exercise its right to information. Therefore, the penalty provided for in Article 48 of the Book of Tax Procedures will apply whenever the share register is not kept.

203. In practice, the Burkina Faso tax authority effectively monitors the respect of the various tax obligations described above. This is achieved in particular through on-site audits or desk-based inspections that allow any missing compulsory documentation from taxpayers’ files to be identified, such as annual tax declarations and accompanying documentation. These inspections are regularly followed by penalties when a breach is noted. Consequently, a number of fines and penalties were applied during the review period for failure to file a tax return or late filing of a tax return. As an illustration, between 2010 and 2014, 59 companies supervised by the Large Taxpayers Directorate paid fines and penalties for late filing of their tax return (see the tables in section A.1.1, Companies, on automatic taxation and late filing of tax returns).

Anti-money laundering legislation

204. Where a person governed by the AML and CTF Acts ignores an obligation imposed upon them by those Acts, for either lack of due care or shortcomings in the organisation of internal AML/CTF procedures, the supervisory,

oversight or disciplinary authority may automatically impose the administrative and disciplinary penalties instituted by the prevailing laws and regulations. For example, the disciplinary penalties that may be applied to attorneys are a warning, a reprimand, suspension for a period of fewer than three years and striking off the roll (Article 86 of Act 16-2000 regulating the legal profession).

Determination and factors underlying recommendations

Determination of phase 1	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The Uniform Act on commercial companies and economic interest groupings provides for the dematerialisation of securities and allows companies a two-year period to comply with this new obligation. However, the law does not provide enforcement measures to ensure that all the shares (including bearer shares) will be effectively dematerialised during the transition period.	The Burkina Faso authorities should take appropriate measures to ensure the dematerialisation of all shares on expiry of the two-year transition period allowed to companies for that purpose.

Phase 2 rating	
Partially compliant	
Factors underlying the recommendations	Recommendations
The two-year transition period set out by the Uniform Companies Act allowing all public limited companies and simplified joint-stock companies to proceed with the dematerialisation of shares expired on 5 May 2016. However, Burkina Faso has taken no practical measures to ensure that the dematerialisation of shares is being effectively carried out by relevant entities. Failure to dematerialise shares would make it impossible to know the identity of owners of any bearer shares that might exist in Burkina Faso.	The Burkina Faso authorities must take practical measures to ensure the effective dematerialisation of all shares issued by public limited companies and simplified joint-stock companies.

A.2. Accounting records

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

205. The terms of reference recommend that reliable accounting records should be kept for all relevant entities and arrangements. In order to be reliable, accounting records must (i) correctly record all transactions, (ii) be such that the financial situation of the entity or arrangement may be determined with reasonable precision at any time, and (iii) enable the preparation of financial statements. Accounting records must also be supported by underlying documentation, such as invoices, contracts, etc., and be retained for at least five years.

206. Companies are required to keep accounting records under OHADA accounting law as well as under company law, commercial law and tax law. These transparency requirements comply with international standards as regards formal requirements for account-keeping, the documents which must be kept and the length of time for which they must be retained.

General requirements (ToR A.2.1)

Commercial and accounting law

207. Under Article 13 of the Uniform Commercial Law Act, all traders, whether natural or legal persons, must keep a register in which their commercial transactions are recorded day by day. They must also keep a general ledger, with a trial balance, and an inventory register. These registers must be kept in compliance with the Uniform Act's provisions on the organisation and harmonisation of business accounts.

208. Article 1 of the Uniform Act organising and harmonising business accounting systems (Uniform Accounting Act) states that all businesses must establish an accounting system to provide information for both internal and external use, to which end it must:

- collect, classify and record in its accounts all transactions that entail value movements which are carried out with third parties or are recognised or executed as part of its internal administration;
- after suitable processing of such transactions, prepare and file the financial statements which it is required to draw up by law or pursuant to its articles of association, along with other information that meets the requirements of various users.

209. Under Article 2, the following are required to establish a general accounting system:

- enterprises governed by the provisions of commercial law (companies and partnerships);
- state-owned corporations, parastatal organisations and semi-public enterprises;
- co-operatives and more generally entities that produce marketable or non-marketable goods and services, if they are habitually engaged in a principal or ancillary economic activity irrespective of whether or not financial gain is derived from that activity (this category includes foundations, associations and trusts).

210. In compliance with the prudence convention, the accounting system must meet the requirements of accuracy, reliability and transparency inherent in the recording, auditing, presentation and disclosure of the information processed in it.

211. Under Article 14, the entity's accounting system must meet the reliability and security requirements necessary to ensure the integrity of data and records with a view to safeguarding the interest and obligations of stakeholders; to provide documentary evidence which has probative value; and to provide information for third parties and management. The accounting system must ensure timely and complete recording of basic information on a day-to-day basis, processing of the recorded data at the appropriate time and delivery of mandatory reports to users within specified legal time limits.

212. The accounting system must comply with the following reliability and security requirements:

- the accounts must be kept in the country's official language and currency unit (CAF franc);
- the double-entry bookkeeping method must be used, which means that entries are posted in at least two accounts, one being debited and the other credited. When a transaction is recorded, the total of the sums entered on the debit side must be equal to the total of the sums entered on the credit side;
- entries must be supported by dated receipts which are classified and filed in an order stipulated in the document describing the accounting system and procedures; they must bear references to corresponding supporting documents and are deemed to have probative value;
- transactions must be recorded chronologically.

213. Under Articles 7 and 8, financial statements must be prepared at least once a year for a period of 12 months. They consist of the balance sheet, income statement, statement of sources and applications of funds and notes to the accounts. The financial statements form an indivisible whole and faithfully and accurately represent the events, transactions and state of affairs throughout the accounting period and thus give a true and fair view of the undertaking's assets, financial position and results. There are three accounting systems according to the size of the enterprises measured by its sales (mandatory documents are simplified for smaller enterprises).

- The normal system applies to enterprises with sales in excess of XOF 100 million (EUR 152 449).
- A simplified system applies to enterprises with sales of under XOF 100 million (EUR 152 449).
- A minimal cash-basis system applies to very small enterprises with sales of under than XOF 30 million (EUR 45 734) for trading companies, XOF 20 million (EUR 30 4889) for craft enterprises and XOF 10 million (EUR 15 244) for enterprises providing services.

214. The compulsory account books and supporting documents are:

- the day book, in which transactions during the period are recorded in compliance with the double-entry method;
- the ledger, made up of all the undertaking's accounts, in which the different transactions of the period are entered or posted simultaneously from journals, account by account;
- the general trial balance which, at the end of the period, shows for each account the debit or credit balance at the start of the period, the aggregate of debit and credit movements since the start of the period and the debit or credit balance at the date in question;
- the annual accounts book, in which the balance sheet, income statement and summary of closing inventories for each accounting period are transcribed.

215. The Uniform Companies Act requires commercial companies to publish their annual accounts. They are thus required to file the financial statements with the RCCM of their registered office within a month following their approval by the relevant body. The financial statements consist of the balance sheet, the profit and loss account, the statement of source and expenditure of funds and an annexed statement of the just-ended financial year. At the request of any interested person, the competent court can require the director of any commercial company, to file the documents mentioned above or be penalised with a daily fine, when the amicable application to the company has gone unanswered for thirty days.

Tax law

216. Under the Corporate Tax Act Tax code, companies and partnerships are liable to corporate income tax and must therefore keep accounts in compliance with the provisions of the accounting regulations in force in WAEMU Member States. Companies and partnerships that do not fall within the scope of the West African Accounting System (SYSCOA) must keep accounts in accordance with the specific regulations applicable to their business sector or legal status. That is the case in particular for banks and financial institutions, which have their own chart of accounts.

217. With their annual tax return, companies must file standardised annual financial statements and attachments in accordance with the normal SYSCOA system or the specific accounting system applicable to them. Three copies must be filed, respectively with the tax authorities, the balance sheet centre and the National Institute of Statistics and Demography (Articles 63, 64 and 66 of the Corporate Tax Act).

218. Under Article 69 of the Corporate Tax Act, companies and partnerships established in Burkina Faso must keep their accounts there. This requirement therefore applies to foreign companies established in Burkina Faso. According to the Burkina Faso authorities, SYSCOA, to which the Tax Code refers, is identical to the OHADA accounting system which preceded it. Companies may therefore apply one or the other without contravening accounting rules.

Penalties

219. Article 111 of the Uniform Accounting Act provides for penalties for failure to keep proper accounting records. Company managers are liable to criminal penalties if they:

- fail, for each accounting period, to draw up annual financial statements and, where applicable, a management report and social audit;
- knowingly draw up and disclose financial statements which do not give a true and fair view of the assets and liabilities, financial situation and results for the period.

220. Under Article 68 of the Uniform Accounting Act, a company or a partnership may not rely on improperly kept accounts as evidence in court.

221. Under Article 890 of the Uniform Companies Act, managers who, on expiry of each accounting period, knowingly publish or present to shareholders or partners summary financial statements which do not give a true and fair view of the company's transactions, financial situation, assets and liabilities for the period are liable to criminal penalties.

222. Under Article 70 of the Corporate Tax Act, the penalty for failure to keep accounts in Burkina Faso is an annual fiscal fine of XOF 1 million (EUR 1 524). This amount is doubled for a repeat offence to XOF 2 million (EUR 3 048).

223. Under Article 49 of the Book of Tax Procedures, any member of Burkina Faso's national order of chartered and certified accountants who keeps or helps to keep accounting records on a professional basis and has contributed to the preparation or use of inaccurate documents or information is liable to a fiscal fine of XOF 500 000 (EUR 762) per type of offence. The fine is doubled to XOF 1 million (EUR 1 524) for a repeat offence. The same penalties apply, for each financial statement, to any other person who keeps or helps to keep accounting records on a professional basis.

224. Companies and individuals professionals acting as trustees of foreign trusts are subject, as trader, to the aforementioned accounting obligations.

In practice

225. Accounting obligations are monitored in Burkina Faso by the tax authorities who perform regular inspections. The inspections can be based on the annual tax return, which also includes financial statements, on general accounting inspections carried out on the taxpayer's premises or when right of investigation powers are used.

226. The verification of annual tax returns either takes place at the time of filing, or at a later date during a desk-based inspection performed in the tax administration's offices to determine whether all the documents that the taxpayer is required to file had indeed been filed, and to see whether there are any inconsistencies in the elements filed by the taxpayer. This is a type of tax investigation that is carried out permanently by the tax authorities and which does not require prior notification of the taxpayer or the presence of the authorities on the taxpayer's premises.

227. The right of examination allows the Directorate General of Taxes to look for breaches of invoicing regulations, the keeping of accounts and declarations to which direct and indirect taxpayers are subject.

228. The general accounting inspections are carried out according to an annual programme which only concerns a limited number of taxpayers, on the basis of a risk assessment which takes into account the time-bar for taxation. Also known as onsite inspections, they allow the tax authorities to verify the existence and the integrity of the accounts kept by any taxpayer, from which his or her taxable income is declared when filing the tax return. Burkina Faso has indicated that in 2015 there were 24 583 taxpayers registered, of which 759 had been subjected to on-site inspections.

Number of tax inspections carried out in 2012, 2013, 2014 and 2015 in Burkina Faso

Figures for the entire Directorate General of Taxes				
	2012	2013	2014	2015
General accounting inspection	-*	678	815	759

Figures for the Large Taxpayers Directorate				
	2012	2013	2014	2015
General accounting inspection	56	43	49	39
Desk-based inspections	133	111	115	96

* Consolidated statistics are non-existent for this period.

229. The various inspections carried out during the review period allowed the tax administration to identify and sanction cases of failure to keep accounting records. In addition to fines, automatic taxation is systematically applied with reversal of the burden of proof and substantial penalties.

Absence of accounting records and fines levied in 2012, 2013, 2014 and 2015 (Large Taxpayers Directorate)

	2012	2013	2014	2015
Number of files showing an absence of accounting records	5	4	2	1
Value of fines	9 000 000	8 500 000	6 000 000	2 000 000

230. According to the Directorate-General of Taxes, while the number of cases of failure to keep accounting records is low for large taxpayers (99.99% in 2015), it is more common to sanction small and medium sized companies for a failure to keep accounts and accounting records. The small size companies are those with sales of at least CFA 15 million (around EUR 22 867) and less than Franc CFA 50 million (around EUR 76 224). The medium size companies are those with sales of at least CFA 50 million (around EUR 76 224) and less than Franc CFA 1 billion (around EUR 1 524 390). In 2015, there were 19 290 small size companies, of which 82% complied with the accounting keeping requirements. In the same year, there were 3 819 medium size companies, of which 90% complied with the accounting keeping requirements. This was noticed during an investigation that was conducted by the tax authorities as the result of a campaign to strengthen the compliance rate of small and medium size companies with the accounting obligations. The tax authorities have stressed that in practice, the absence of at least one accounting records is considered as failure to keep accounting records and sanctioned

accordingly. Thus, almost all off small and medium size companies that were sanctioned in 2015 failed to keep only one accounting record, the inventory ledger.

Underlying documentation (ToR A.2.2)

231. Under Article 17-3 of the Uniform Accounting Act, entries in a company's accounting records must be supported by dated receipts which are classified and filed in an order stipulated in the document describing the accounting system and procedures; they must bear references to corresponding supporting documents and are deemed to have probative value. Supporting documents may be purchase or sale invoices, contracts and other documents. This provision covers partnerships, foundations and foreign trusts administrated by professional in Burkina Faso.

232. In practice, tax investigations also make it possible to monitor underlying documentation such as the supporting documents for accounting entries. The supporting documentation is part of the accounting documentation and failure to keep it is sanctioned in the same way as failure to keep accounting documents (see above). Two tax sanctions in particular compel companies to respect this obligation, namely the non-deductibility of costs that are not supported by invoices, and the loss of the right to deduct VAT in the absence of invoices.

Document retention (ToR A.2.3)

233. Under Article 24 of the Uniform Accounting Act, accounting records or documents that serve the same purpose must be kept for ten years.

234. Under Article 33 of the Corporate Tax Act, books, registers, documents or other items of any sort which the authorities may have a right to inspect must be kept for ten years from the date of the last transaction mentioned in such books or registers or the date at which such documents or other items were drawn up or established. This requirement also applies to documents kept on magnetic media. Books and documents from which statements of amounts paid in respect of interest, dividends, income or other revenue from transferable securities which are not subject to a longer retention requirement must be kept until the end of the fourth year following the year during which the corresponding payments were made.

235. Under AML/CTF regulations, financial institutions must keep documents and items relating to the identity of their regular or occasional customers for ten years as of closure of their accounts or cessation of business relations. They must also keep documents and items relating to transactions

they have performed for ten years as of the end of the period during which the transactions were carried out.

236. The Burkina Faso authorities state that the ten-year retention period must be complied with even if the accounting periods are out of time for tax purposes (three years) as set forth at Articles 51 to 55 of the Book of Tax Procedures, even if the company is liquidated or has suspended or ceased operations. This is a minimum requirement for the retention of accounting records and supporting documents. Companies are free to keep their accounting documentation for a longer period.

237. In light of the tax and accounting requirements laid down by the various laws in force in Burkina Faso, accounting information is available for a period of more than five years.

238. In practice, the tax authorities confirmed that monitoring the declarative obligations of taxpayers made it possible to ensure that they were respecting their obligations to keep accounting records and supporting documentation. The implementation of rights of examination and powers of investigation by the administration make it possible to ensure that taxpayers are respecting their obligation to retain accounting documents.

239. During the review period, Burkina Faso received two EOI requests for accounting information and provided this information to its partner.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place
Phase 2 rating
Compliant

A.3. Banking information

Banking information should be available for all account-holders.
--

240. Access to banking information is of interest to the tax authorities only if the bank has useful and reliable information on its customers' identity and the nature and amount of financial transactions

Record-keeping requirements (ToR A.3.1)

241. Banks in Burkina Faso are required to keep accounting records in the same way as any other commercial company. The only difference is that they have a specific chart of accounts because of the particular nature of their business (Article 5 of the Uniform Accounting Act). In the WAEMU area, banks apply the Banking Chart of Accounts of the WAMU (*Plan Comptable Bancaire de l'UMOA*, PCB) which is mandatory and uniform. All the accounting requirements examined in Section A.2 of this report apply to them.

242. Banking activity in Burkina Faso is governed by Act 058-2008/AN (Banking Act) and by all the laws that regulate the activity of credit institutions and decentralised financial systems in the WAEMU, such as the Banking Regulation Act. It applies to credit institutions operating in Burkina Faso, whatever their legal status, the place of their registered office or principal establishment in the West African Monetary Union (WAMU) or the nationality of their shareholders or managers. Credit institutions are defined as legal persons, who perform banking operations as their regular business, i.e.:

- the receipt of funds from the public (funds that a person collects from a third party, in particular in the form of deposits, with the right to dispose of them for own account but under an obligation to return them. Funds from the issuance of interest-bearing notes are deemed to have been received from the public);
- credit operations and the provision of overdraft facilities;
- management of means of payment.

243. Under Articles 1 and 2, credit institutions are authorised as banks or financial institutions of a banking nature. Under Article 13, the exercise of banking activity is subject to prior authorisation and inclusion in the list of banks or financial institutions of a banking nature. Applications for authorisation must be addressed to the finance minister and filed with the central bank, which processes them. Authorisation is given by order of the finance minister on a favourable opinion from the Banking Commission. There were 13 banks in Burkina Faso at 31 March 2016.

244. Banks are incorporated as public limited companies with fixed capital or, by special authorisation of the finance minister on a favourable opinion from the Banking Commission, as co-operative or mutual societies with variable capital. They may in exceptional cases take the form of other legal entities except that of a one-person company.

245. The banking sector is regulated by the central bank through the WAMU Banking Commission. The central bank for Burkina Faso is the same

as for the seven other WAEMU Member States. It is the Central Bank of West African States, which has its headquarters in Dakar in Senegal and national branches in each Member State. The Banking Commission Secretariat is located at Abidjan in Côte d'Ivoire. Credit institutions may not oppose supervision by the Banking Commission and Central Bank. Supervision consists in ensuring compliance with all the legal requirements contained in the Banking Act and in the various other pieces of legislation governing banking activity such as the regulations of the Central Bank and the AML/CFT regulations. The Banking Commission is empowered to impose penalties for non-compliance on banks and their managers. Penalties include imprisonment, fines, default interest and other administrative sanctions including withdrawal of authorisation.

246. Credit institutions must keep specific accounting records of the transactions they perform in Burkina Faso at their registered office, main establishment or main branch. Under Article 51, they are required to keep consolidated and combined accounts in compliance with accounting rules and other rules laid down by the Central Bank. Their accounts must be closed at 31 December of each year and submitted to the Central Bank and the Banking Commission by 30 June of the following year at the latest. The accounts must be certified by one or more auditors chosen from the list of auditors approved by the Court of Appeal or any other equivalent authorised organisation. Under Article 51, the Banking Commission must approve the choice of auditor.

Anti-money laundering regulations

247. Article 5 of Act no. 016-2016 of 3 May 2016 on the fight against money laundering and the financing of terrorism in Burkina Faso, following on from the aforementioned Directive no.02/2015/CM/UEMOA, names financial institutions as being governed by AML/CFT obligations. Financial institutions are subject to know-your-customer rules and document retention requirements. Financial institutions include banks and financial establishments, post office financial services, bureaux de change, leasing companies and insurance and reinsurance companies and brokers.

248. In relation to verification of identity, Article 18 of the Act no. 016-2016 of 3 May 2016 states that those governed by this law must, before entering into a business relationship with a client or assisting in the preparation or execution of a transaction, “identify the client and where necessary the final beneficiary of the business relationship using suitable means and verifying these identification elements on the basis of any reliable written document.” Article 26 specifies that financial institutions are required to identify their clients and where necessary, the identity and powers of people acting on their behalf, using independent and reliable documents, sources,

data or information, during operations such as opening accounts, deposits of shares, securities or bonds, issuing of safe-deposit facilities, and the establishment of business relations and transfers of funds nationally and internationally. By 31 December 2014, Burkina Faso's banks had opened 1 227 617 bank accounts.

249. The identity of a natural person is verified by the presentation of a valid national identity card or any equivalent original official document, a copy of which must be taken. The business address and domicile is verified by the presentation of any document which constitutes proof. If the natural person has trader status, they must also provide documentation certifying registration in the RCCM.

250. The identity of a legal person or branch is verified by the production of an original or certified true copy of any instrument or excerpt from the RCCM certifying its legal form, registered office and the powers of persons acting on its behalf.

251. Financial institutions are also required to verify the identity and real address of managers, employees and nominees acting on another person's behalf, who must produce documents certifying the delegation of power or power of attorney granted to them and the identity and address of the beneficial owner. The beneficial owner is defined as "the principal, i.e. the person on whose behalf the agent acts or on whose account the transaction is performed".

252. With regard to document retention, Article 11 of the AML Act no. 016-2016 of 3 May 2016 states: "Without prejudice to provisions instituting more restrictive requirements, financial institutions shall retain for a period of 10 years, from the closure of their accounts or the cessation of their relationship with their regular or occasional customers, all items and documents relating to their identity. They must also retain the items and documents relating to the transactions they have performed, including accounting ledgers, commercial correspondence for 10 years following the operation."

253. Lastly, financial institutions are required to:

- Provide regular training and information to their employees to ensure the respect of AML/CFT legislation;
- Draw up and implement harmonised programmes for the prevention of money laundering and financing of terrorism;
- Put in place internal audit procedures that make it possible to identify the risks of money laundering and the financing of terrorism presented by their activities.

Penalties

254. When a person subject to know-your-customer rules and document retention requirements fails to comply with them, the supervisory authority with disciplinary powers may act as of right under the conditions stipulated in the prevailing laws and regulations in the matter. The Banking Commission and the Central Bank are the supervisory authorities for banks and other financial institutions. The penalties are those set forth in Burkina Faso's Banking Act and in other regulations issued by the Central Bank.

255. Under Article 71 of the Banking Act, any person acting on their own or a third party's behalf who knowingly provides the Central Bank or the Banking Commission with inaccurate documents or information or opposes their supervision is liable to imprisonment for one month to one year and a fine of CAF 5 million (EUR 7 752) to CAF 50 million (EUR 76 224) or to one only of those penalties.

256. The laws in force in Burkina Faso require banks and other financial institutions to retain information on the identity of the customers and the transactions they perform for their customers' benefit.

In practice

257. In practice the Banking Commission of the WAMU is in charge of monitoring the organisation and supervision of credit establishments, as defined in the Banking Regulation Act. It also contributes to the monitoring of decentralised financial systems (*Systèmes Financiers Décentralisés*, SFD). Chaired by the Governor of the BCEAO, the Banking Commission of the WAMU consists of two colleges, one of which is made up of the designated representative of each country involved in the management of the Central Bank, and the other by members appointed by the Council of Ministers of the WAMU. The Banking Commission has adopted rules of procedure as well as a code of ethics applicable to its members, and which notably deals with conflicts of interest. The Banking Commission meets as often as is necessary and at least twice a year. The Banking Commission of the WAMU is therefore the supervisor of banking activity in Burkina Faso.

258. On 31 December 2014, the organisation of the General Secretariat was based around the following structures : Operations Control (*Contrôle des Opérations*, CO), the Legal Affairs Directorate (*Direction des Affaires Juridiques*, DAJ), the Studies and External Relations Directorate (*Direction des Études et des Relations Extérieures*, DERE), the Inspection of Credit and Micro-finance Establishments Directorate (*Direction de l'Inspection des Établissements de Crédit et de Microfinance*, DIECM), the Administration Directorate (*Direction de l'Administration*, DA) and the Accounting, Budget and Information Systems Directorate (*Direction de la Comptabilité, du*

Budget et de l'Informatique, DCBI). The DIECM is organised as a cabinet and is in charge of implementing all the monitoring procedures on the individual situation of authorised credit and micro-finance establishments. Its duties cover the two aspects of these monitoring procedures (desk-based and onsite inspections). At the end of the 2014 financial year, the General Secretariat employed 118 officers, 48% of whom were dedicated to monitoring activities (supervision, studies and licenses, legal affairs).

259. Desk-based inspections involve the monitoring of individual credit and micro-finance institutions (keeping individual files, audit and analysis of accounting situations, monitoring respect of prudential regulations, monitoring the financial situation, rating, etc.). Desk-based inspections draw on the analysis of prudential documents, accounting and financial data provided electronically to the National Directorates of the BCEAO by the establishments it governs.

260. Onsite inspections are carried out on the basis of a rolling three-year programme approved by the Chairman of the Banking Commission, taking into account the need to proceed with regular evaluations within each credit and micro-finance institution. Where necessary, this programme is readjusted during the year by the Banking Commission or its Chairman, according to any particular concerns or risks identified by the desk-based inspections. Onsite inspections serve to complete desk-based inspections through the use of targeted investigations. In addition to their primary purpose of identifying and assessing the risks to which an institution is exposed, they also make it possible to evaluate the accuracy of the financial and accounting information communicated to the Monitoring authority, respect for regulations, notably prudential, the quality of management and the outlook of the credit institution. Similarly, they make it possible to assess the governance of the institution, the effectiveness of the internal and external auditing and the AML/CFT measures, and see whether a Banking Accounting Plan or recommendations from the Banking Commission have been implemented.

261. Over the review period, the Banking Commission carried out six inspections in Burkina Faso in 2013, two in 2014 (two other inspections of banking programmes in 2014 could not take place due to the instability in the country which occurred at the start of the inspections on 30 and 31 October). In 2015, two inspections were carried out.

262. In 2014, for the eight member states of the WAMU, the Banking Commission performed 42 inspections of institutions governed by it, including seven micro-finance institutions and one holding company. These investigations highlighted inadequacies in the keeping of accounting records, the implementation of adequate procedures for the automatic processing of accounting data, non-respect of the administrative measures of the banking law as well as the prudential measures relating to accounting and the

provisioning of outstanding credits. The observations led to the writing of reports which invited the credit establishments affected to take the necessary corrective measures. In addition, over the same period (2014) the Banking Commission proceeded to remove the authorisation of one establishment, lifted a close supervision order, instigated nine injunctions, one warning, six reprimands and three resignations of post, meaning a ban on holding an administration, management or supervisory functions in a credit institution or decentralised financial system.

263. In conclusion, the supervision of the banking sector in the WAEMU area, of which Burkina Faso is a member, means that banking information is available in practice in Burkina Faso.

264. During the review period, Burkina Faso received one EOI request seeking banking information (existence of bank accounts held by the taxpayer and copies of bank statements). The information was provided in a satisfactory manner to the partner country.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place
Phase 2 rating
Compliant

B. Access to information

Overview

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

266. The Book of Tax Procedures gives Burkina Faso's tax authorities extensive powers of access to information for tax purposes. In particular, they may request information from any taxpayer or third party who may possess information sought in order to verify the accuracy or truthfulness of tax returns. The law provides that the same powers may be used without restriction for information exchange purposes.

267. Banks, financial institutions, insurance companies and any natural or legal persons that hold funds or assets on behalf of third parties are also required to provide the tax authorities on request with all necessary information to audit taxes and duties. There is no restriction with respect to access to banking information. Likewise, professional secrecy is not an obstacle to the exchange of information.

268. Burkina Faso's tax law does not provide tax authorities with specific powers to gather information only for the purposes of international exchange with treaty partners. However, there is no domestic tax interest in Burkina Faso. The competent authority who is the head of the Tax administration (Director General of Taxes) uses without any restriction for exchange on information purposes the information-gathering powers that are provided to the tax administration under the Book of Tax Procedures.

269. The rights and safeguards which apply to individuals in Burkina Faso are compatible with the effective exchange of information. The country's laws do not require the tax authorities to inform the taxpayers concerned in Burkina Faso of requests for information received from foreign authorities.

270. The penalties for failing to provide information or documents appear sufficiently dissuasive to ensure that the Burkina Faso tax authorities can obtain such information. Thus, the authorities can have access to all types of information that must be retained by persons located in Burkina Faso.

271. In practice, the Burkina Faso competent authority regularly used its information-gathering powers during the review period, both for domestic and for EOI purposes. The investigations covered all types of information including ownership information, accounting information and banking information.

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).

272. Under the tax conventions concluded by Burkina Faso, the competent authority to respond to information requests is the finance minister or his duly appointed representative. The Director General of Taxes, who is the head of Burkina Faso's tax administration, has been empowered by the finance minister for information exchange purposes. He is supported in this task by the Tax Audit Director, who is his delegated competent authority. Under order 2013-193/MEF/SG/DGI of 17 May 2013, that delegation allows the Director General of Taxes to use the information-gathering powers conferred on the tax authorities under Burkina Faso law. Since order 2015/387MEF/SG/DGI setting out the responsibilities, structure and functioning of the Directorate General of Taxes, the Director of Tax Investigations and Research (*Directeur des Enquêtes et des Recherches Fiscales*) assists the Director-General of Taxes as the competent authority. Article 64 of the Book of Tax Procedures further states that "the Directorate General of Taxes may exchange information with the tax authorities of States with which Burkina Faso has concluded a reciprocal assistance agreement relating to the assessment, audit and collection of tax or a bilateral or multilateral tax information exchange agreement. For that purpose, it shall implement the procedures set forth at Articles 4 to 11 and 31 to 50 of this Book." That article provides the basis for the tax authorities' right, as competent authority, to provide information to Burkina Faso's treaty partners. It also empowers them to use all lawful means conferred on them by Burkina Faso law to gather and transmit such information provided that there is a convention in force which allows for it.

273. The information-gathering powers that may be used for tax purposes stem from the tax authorities' right to information, right of investigation, right of examination and right of search.

274. The right to information derives from Articles 31 to 49 of the Book of Tax Procedures. It is the most extensive right, allowing the tax authorities to obtain information and documents held by any natural or legal person, including government agencies and public bodies.

275. The right of investigation, provided for at Article 50 of the Book of Tax Procedures, allows the tax authorities to seek out failure to comply with the rules on invoicing, account-keeping and the filing of returns applicable to taxpayers who are liable to duties and indirect taxes. The tax authorities are thus entitled to inspect stock records, books, registers and business documents that must be kept under the prevailing laws and regulations.

276. The right of examination is a procedure whereby the tax authorities verify the accuracy of tax returns submitted by taxpayers and hence of taxes paid. A corollary of the declarative system in effect in Burkina Faso, it is a general prerogative which gives the authorities extensive powers to examine the various instruments or documents used to assess taxes and duties, including accounting documents. Provided for at Article 3 et seq. of the Book of Tax Procedures, the right of examination may take the form of a documentary audit or an inspection of accounts.

277. The right of search provided for at Article 8 of the Book of Tax Procedures allows the tax authorities, in the context of identifying and ascertaining breaches of tax law, to search all places where items, documents, goods or products relating to such breaches may be held and to seize them.

278. Under the tax conventions concluded by Burkina Faso, all these powers to seek and gather information may be used equally for the purposes of tax audits in Burkina Faso or exchanges of information.

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

279. The tax authorities have powers which enable them to obtain ownership and identity information and accounting records held by both taxpayers and third parties.

Taxpayers

280. The tax authorities' power to obtain information from taxpayers in Burkina Faso may be exercised as of right or on request. A taxpayer in Burkina Faso is any natural person or legal entity subject to taxes or who is likely to be subject to taxes in Burkina Faso.

281. Under Article 62 of the Corporate Tax Act and Article 17 of the Tax Code, as a general rule and without any prior request from the tax authorities, companies and natural persons carrying on an agricultural, industrial or commercial activity are required, before 30 April of each year, to declare the amount of their taxable profits for the period ended on 31 December of the previous year. Likewise, under Article 51 of the Tax Code, natural persons carrying on a non-commercial profession are required, at the latest on the last day of February of each year, to produce a declaration stating the amount of their gross revenues, giving a detailed breakdown of their business expenses and stating the amount of their net profit for the previous year. Thus, all taxpayers are required to submit an annual tax return which must include a number of supporting documents, the most important of which are the financial statements (balance sheet, income statement, statement of sources and applications of funds and notes to the financial statements including the list of shareholders) and copies of any instruments amending the articles of association.

282. In addition to information obtained automatically through the annual tax return, the tax authorities may at any time obtain from taxpayers on request the necessary documents to examine their returns. Article 36 of the Book of Tax Procedures states that “in order to allow for the examination of returns submitted by taxpayers themselves or by third parties, all bankers, asset managers and other traders whose profession involves paying income from transferable securities or whose profession incidentally involves making payments of such a nature and all traders are required on request from officials responsible for assessing income tax and having at least the rank of inspector to present the books and all other documents, including in dematerialised form, which must be kept pursuant to the provisions of the Uniform act on commercial law and all supporting books and documents such as receipts and expenditure vouchers and business correspondence”.

283. Under Article 13 of the Uniform Commercial Law Act, every trader, whether a natural or legal person, must keep a day book, a general ledger, a trial balance and an inventory book. In the case of companies and partnerships, the authorities may also obtain deliberations and minutes of shareholders’ meetings, attendance sheets for shareholders’ meetings, share and bond transfer registers and auditors’ reports.

284. The tax authorities may also conduct on-site inspections at the taxpayer’s business premises in order to verify the accuracy of tax returns. During such inspections, they may examine all documents in the taxpayer’s possession.

Third parties

285. In the same way as for taxpayers, the tax authorities may as of right or on request obtain information held by third parties in order to verify the accuracy of tax returns submitted by taxpayers.

286. Under Article 93 of the Corporate Tax Act, companies, bureaux de change, discounters, public and judicial officers, associations and all persons taking transferable securities on deposit as a regular business are required to send the tax authorities a report of any opening or closure of a securities or cash deposit account, loan account, current account or similar account. This requirement is repeated at Article 42 of the Book of Tax Procedures. Likewise, under Article 19 of the Tax Code, industrial enterprises, importers, wholesalers and semi-wholesalers must include with their annual tax return a list of customers with whom the aggregate amount of sales during the period is equal to at least XOF 5 million (EUR 7 622). The list must state, for each customer, the single financial identification number, the full identity, including the name and first names of natural persons, the legal form and company name of legal persons, their geographical and postal address, telephone number and the total amount of sales.

287. Article 41 of the Book of Tax Procedures states that any natural or legal person that pays interest, dividends, income or other revenue from transferable securities as a business or whose business incidentally involves such transactions may not make any payment in this regard or open any account without requiring proof of the claimant's identity and an indication of their real domicile. The payer is required to provide the relevant tax authority with a statement of all amounts paid out in whatsoever form. The statement must include the name, first name and real domicile of each beneficiary and the net amount of sums received in that regard.

288. Under Article 40 of the Book of Tax Procedures, the judicial authorities must also inform the tax authorities of any information they may receive, whether in civil or commercial litigation or in a criminal investigation, even if no charges are brought, from which it may be presumed that a tax fraud or some other operation has been committed, the purpose or outcome of which is to evade or compromise tax.

289. Where the information needed by the tax authorities in order to conduct an audit has not been provided spontaneously by taxpayers or persons required to do so, the provisions contained in the Book of Tax Procedures relating to the right to information enable them to obtain such information from third parties in whose possession it may be found. Under Article 36 aforesaid, this power is justified by the need to examine returns "submitted by taxpayers themselves or by third parties". The following persons are required to provide the tax authorities on request with the information and documents

in their possession: custodians of public documents (custodians of civil status registers and all other persons responsible for keeping public records, notaries, officers of justice, court registrars and administrative authorities for instruments they draw up or receive on deposit), insurance companies, agents, representatives, managers, brokers and intermediaries, persons pursuing non-commercial activities (members of the professions), employers, payers of annuities and public agencies. The right of investigation also allows the tax authorities to obtain invoicing information.

Powers of investigation and access to information

The right to information

290. The main way for the tax authorities to respond to information requests is through the right to information, which enables the authorities to obtain on request the documents and information it needs for tax purposes. Under article 36 of the Book of Tax procedures, that power applies to all persons, whether natural or legal persons, taxpayers or not, including public agencies, groupings, local authorities and non-profit associations. Banks are clearly covered by the provision of article 36. The right to information may be exercised by correspondence or on-site. In all events, the authorities may at their own expense make copies of documents, whether hardcopy or paperless.

291. Tax officials with at least controller status may exercise the right to information, which indicates a certain degree of flexibility. At 31 December 2014, Burkina Faso's tax administration numbered 1 705 officials, all public employees, in three grades: 636 tax inspectors, 577 tax controllers and 492 assessment clerks. Tax controllers are in the intermediate grade and have high-level executive functions. The Burkina Faso authorities consider that because of the large number of tax controllers and their geographical distribution in the country, it is easy for the tax authorities to avail themselves of the right to information.

292. The only restriction on the right to information is professional secrecy. Under Article 32 of the Book of Tax Procedures, however, professional secrecy extends only to information relating exclusively to medical records and to files classified as "top secret" (*secret défense*). Books, registers, documents and other records of any sort to which the right to information may apply must be kept for ten years as of the date of the last transaction recorded therein or the date at which the documents or records were drawn up. The retention period is the same as the one defined in the Uniform Accounting Act.

293. In addition to the right to information, the Burkina Faso tax authorities have three other powers which may, depending on the circumstances, help them to obtain information for exchange purposes. They are the right of examination, the right of investigation and the right of search.

The right of examination

294. Under Article 2 of the Book of Tax Procedures, the tax authorities have full powers with regard to the assessment and audit of taxes payable by a taxpayer. It examines returns as well as the various instruments or documents used to assess taxes, duties, levies and licence fees, whatever their nature. The purpose of examination is to verify the accuracy and truthfulness of tax returns submitted by taxpayers and to make adjustments where necessary. The right of examination may take the form of a documentary audit or an inspection of accounts.

295. A documentary audit enables the tax authorities to examine returns submitted by taxpayers from their own offices, without giving the taxpayer prior notice. In this case, the tax authorities may issue a written request for all information, explanations or clarifications deemed necessary. It may interview the persons concerned should it so wish or if they ask to provide oral explanations. This type of audit may prove very useful for information exchange purposes in practice, insofar as it enables the authorities, on receipt of a request from a foreign partner, to start enquiries by asking the taxpayer concerned in Burkina Faso for information as necessary. However, its effectiveness is limited by the fact that a documentary audit does not give the authorities access to accounting documents and other documents not spontaneously provided by taxpayers as part of their obligation to submit returns.

296. In an audit of the accounting system, tax officials with at least controller status carry out an on-site examination of the taxpayer's accounting system and/or documents in their possession. The main restriction with an on-site audit (and also one of the main differences with a documentary audit) is that the tax authorities are required to inform the taxpayer eight days in advance by means of an audit notice. However, the authorities may carry out unannounced audits, in which case the taxpayer is given the audit notice at the start of the operation. An inspection carried out on the day on which notice is given concerns only material findings relating to the existence of accounts, how business is carried on, how many salaried employees are present, the consistency of inventories, the day's takings and a note of prices, to the exclusion of any critical examination of the accounting system. For an on-site audit, the authorities may be assisted by an expert appointed by them, especially when the accounting system is computerised. Professional secrecy rules may not be invoked against such experts.

297. The tax authorities may thus audit accounts in order to gather information for the requesting foreign partner. This method of obtaining information is all the more effective in that it does not only apply to taxpayers. The tax authorities may audit persons and organisations which do not have trader status, which pay salaries, fees and remuneration of any kind and which receive, manage or distribute funds on their members' behalf. To that end, the

persons and organisations concerned, especially non-governmental organisations, associations and all non-profit organisations, must provide the authorities upon request with the account books and related documents in their possession and with documents relating to their activity.

298. The main restriction on the right of examination is the time-bar, which prevents the authorities from auditing accounts after certain time limits (three years after the taxable period, for direct taxes and value added tax). However, the time-bar does not prevent exercise of the right of examination per se where an audit of the accounts does not result in an adjustment of the taxpayer's situation in Burkina Faso, i.e. where the taxpayer is not notified of any adjustment. Audits may be conducted without restriction where the tax authorities do so solely for information exchange purposes, unless the period and the taxes concerned have already been audited. Under Article 16 of the Book of Tax Procedures, even where accounts cannot be audited because of the "immunity of a tax period", the authorities can still carry out a documentary audit and exercise their right to information for information exchange purposes.

The right of investigation

299. The right of investigation concerns identification of non-compliance with the rules relating to invoicing, book-keeping and the filing of returns applicable to persons liable to indirect taxes and duties. It allows the tax authorities to access business premises, land and warehouses, means of transport used for business and their loads at the place of business and on the premises and in adjacent areas of stations, ports, airports and transport companies. Such investigations may be carried out only in relation to indirect taxes. The Burkina Faso tax authorities may in principle make use of them for information exchange purposes only where the requested information relates to indirect taxes in accordance with the relevant information exchange agreement or convention.

The right of search

300. The right of search instituted at Article 8 of the Book of Tax Procedures allows tax officials having at least controller status, in the presence of a police officer and any other person whose presence is deemed necessary by the Director General of Taxes, to enter any premises (including exclusively residential premises, with a court order) where records, documents, goods or products relating to breaches of tax law may be held and, where applicable, to seize them. According to the Burkina Faso tax authorities, the term "breaches of tax law" also applies to exchanges of information, insofar as the information exchange arrangements state that information is exchanged for the

enforcement of the tax legislation of the States Parties. Should they consider it necessary, the tax authorities may therefore use the right of search in order to obtain information where the foreign partner submits its request on the grounds of enforcement of the requesting State's tax law.

Information-gathering in practice

301. Research and investigation activities within the Burkina Faso tax authority were reorganised in 2015 to respect the new organisation chart of the Directorate General of Taxes (order 2015/387MEF/SG/DGI of 23 November 2015).

302. Before the reorganisation in November 2015, the power of investigation for tax purposes was held by both the centralised and decentralised departments of the Directorate General of Taxes. At the centralised level, the former tax inspection directorate (*Direction du contrôle fiscale*) carried out investigations using its right of investigation, right to information and right of search powers. At the deconcentrated level, the tax department in charge of managing taxpayers' files (the large taxpayer's directorate, medium-sized taxpayer's directorate, regional tax directorates) also have competency in the area of investigation of information about the taxpayers for whom they are responsible.

303. Since the reorganisation on 23 November 2015, the Tax Investigation Directorate (*Direction des Enquêtes et des Recherches Fiscales*, DERF) has full competency in terms of investigations at the centralised level. Its duties are to co-ordinate and supervise the operational departments in charge of tax investigations. Among other duties, it draws up guidance notes on tax investigations, carries out enquiries, gathers, centralises and disseminates cross-referencing information. The DERF includes an investigations department and a tax information management department. The duties of the DERF also include the large taxpayers' directorate and the medium-sized taxpayers' directorate, who are no longer authorised to carry out tax investigations. Alongside the DERF, each of Burkina Faso's 13 regional tax directorates has an investigation team (*Brigade d'enquête et de recherche*) with competency for the region. But the Directorate General of Taxes has indicated that only two regional investigation teams were operational during the onsite visit. One was the team from the Centre region, to which the tax departments of the capital, Ouagadougou, report, and the other was from the Hauts-Bassin region, to which the country's second city, Bobo-Dioulasso, reports.

304. For information-gathering purposes, the departments authorised to investigate, mainly the DERF, have access to the One-stop shop integrated system, SIGU (*Système Intégré du Guichet Unique*) which manages business

creation and to all the databases of the tax authorities, the most important of which are:

- The Single Financial Identification Number, IFU (*Identifiant Financier Unique*), which allows taxpayers to be registered with their IFU and manages general information such as the tax regime, legal form of the company, address, telephone number, activity, registration date, taxpayers tenants, the RCCM number, the CNIB number for natural persons, etc). It is interfaced with other databases such as SINTAX and SYDONIA (customs);
- The computerised tax system, SINTAX (*Système Informatisé de Taxation*), used to register tax returns and payments by taxpayers, to register unregistered taxpayers, to register public contracts and leases and cross-reference information with other administrations. It also shows sales, operations with suppliers and imports;
- The Tax residency system, STARE (*Système de la Taxe de Résidence*) which manages those who have to pay local tax, the land registry details of taxpayers, the level of comfort in their homes (the amperage of the electricity meter and water meter, presence of a pool, the neighbourhood or town, etc) ;
- The Land Information System, SIF (*Système d'Information Foncière*) which manages statistics on rural land, the location of buildings and land, the type of deed for each property, the use of these properties, etc ;
- Computerised public procurement system, SIMP (*Système Informatisé des Marchés Publics*) which registers public procurement contracts and tracks the award process: number of public contracts, contract recipient, contract awarder, the financial mass of public procurement contracts, contract duration.

305. When information required for domestic purposes by the tax authorities or for international EOI purposes is not available from the databases to which the tax authorities have access, the investigation department can use one of the information-gathering powers to access information held by the taxpayer or a third parties. The right to information is used by the DERF, the tax assessment departments, the tax audits departments and the tax investigation departments. However, the other information-gathering tools, namely the right of search and the right of investigation can only be used by the DERF (at the national level) and the investigation teams (at the regional level).

306. The right to information is the tool which allows the tax authorities the widest access to information and documentation held by a natural or legal person, including administrations and public bodies. A letter is sent to the

designated person informing them of their obligation to provide the information within 30 days. The information can be provided in writing or the tax officers can be invited to come to the premises to collect the requested information. Generally this procedure allows information to be gathered from the Burkina Faso authorities. For other entities and designated persons, use of the right of investigation power is often needed. To use this power, a tax official with at least the rank of controller hands the taxpayer the right of investigation notice on the day of the first intervention.

Access powers used during the review period by the investigation team of the DGR and the Investigation department of the DERF (formerly the tax inspection directorate)

Data of the investigation team of the Large Taxpayers Directorate			
	2013	2014	2015
Right to information	230	210	154
Right of investigation	19	31	28
Right of search	-	-	3
Data of the DERF			
	2013	2014	2015
Right to information	-	195	64
Right of investigation	-	78	116
Right of search	-	-	-

307. During the review period, the competent authority used the right of investigation and the right to information to access the information required by its partner in the three EOI requests received. The information was obtained without any particular difficulties.

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

308. The concept of “domestic tax interest” describes situations in which a contracting party can only provide information to another contracting party if it has an interest in gathering such information for its own needs.

309. Under Article 64 of the Book of Tax Procedures, the tax authorities are expressly authorised to exchange information with foreign partners where a convention or agreement concluded by Burkina Faso authorises them to do so: “The Directorate General of Taxes may exchange information with the tax authorities of States with which Burkina Faso has concluded a reciprocal

assistance agreement relating to the assessment, audit and collection of tax or a bilateral or multilateral convention for the exchange of information for tax purposes. To that end, it shall implement the procedures set forth at Articles 4 to 11 and 31 to 50 of this Book.” Thus, where a convention exists, the tax authorities may use all legal means allowed to them by law in order to obtain and exchange information without any restriction as to domestic tax interest. They can thus avail themselves of their right to information and their right of examination, investigation and search even if there is no domestic tax interest.

310. Order 2013-193/MEF/SG/DGI of 17 May 2013 delegating power from the competent authority to the Director General of Taxes, who is the head of the tax administration, states that he “receives requests for information and takes the necessary steps to process them and transmit the results”. The Director General of Taxes thus causes his colleagues, in this case the Director for Tax investigations who is also a delegatee of the competent authority, to use the information-gathering powers conferred on the tax authorities by Burkina Faso law.

311. In addition, under Article 151 of Burkina Faso’s Constitution, duly ratified or approved treaties and agreements take precedence as of their publication over domestic laws. This means that the competent authority is required to enforce the provisions of tax treaties or information exchange agreements which require it to provide the information requested by the other contracting State. It must use all the means provided by tax law in order to do so, notwithstanding any provision to the contrary in domestic law.

312. In practice, the tax authorities do not have any difficulty in using their information gathering powers exclusively for EOI purposes with treaty partners. The information provided in response to the three EOI requests received during the review period is an illustration of this.

Compulsory powers (ToR B.1.4)

313. Under Article 45 of the Book of Tax Procedures, refusal to provide documents and information on-site is ascertained in an official report drawn up by the tax authorities and penalised with a fiscal fine of XOF 100 000 (EUR 152). The fine is applicable to each reported refusal. Independently of the fiscal fine, the courts may order any taxpayer to disclose records or documents not provided subject to a fine of CF1 50 000 (EUR 76) per day of non-compliance.

314. Under Article 46 of the Book of Tax Procedures, refusal to provide information by correspondence in response to a request from the tax authorities within 30 days of receipt is followed immediately by service of notice on the taxpayer concerned by registered letter with acknowledgment of receipt or by correspondence book. If the information has not been provided within ten days

of receipt, a fiscal fine of XOF 100 000 (EUR 152) is imposed. The amount of the fine is doubled for a repeat offence. An additional fine of XOF 50 000 (EUR 76) is also imposed for each month or part-month of non-compliance.

315. Under Article 48 of the Book of Tax Procedures, any omission or inaccuracy identified in information provided to the tax authorities is punishable by a fine of XOF 50 000 (EUR 76). Failure to keep documents for the required ten-year period is punishable by a fiscal fine of XOF 100 000 (EUR 152) per missing document. A fine of XOF 5 000 000 (EUR 7 622) is imposed if it is found that non-retention is due to the deliberate destruction of the documents concerned before expiry of the ten-year period.

316. Under the same article, a fine of XOF 2 000 000 (EUR 3 048) is imposed for failure to keep documents in respect of which the tax authorities have a right to information. Lastly, any person who, in any way whatsoever, prevents officials responsible for the assessment and audit of taxes and exercise of the right of investigation from performing their duties is liable to a fine of XOF 25 000 (EUR 38) to XOF 1 000 000 (EUR 1 524). In the event of a repeat offence, the courts may also order imprisonment for six days to six months. The latter penalty may be imposed in the event of opposition to the exercise by tax officials of their prerogatives such as the right of examination, investigation and search.

317. In practice, the Burkina Faso authorities have not reported any case of penalties being applied during the review period for refusal to co-operate with a right to information notice or refusal to provide information. The tax authorities believe that the sanctions are sufficiently dissuasive to generally incite taxpayers and third parties holding information to comply with each requisition.

Secrecy provisions (ToR B.1.5)

318. Jurisdictions should not refuse to respond to an information request made under information exchange arrangements on the grounds of secrecy rules (e.g. banking or business secrecy). Under Articles 32 and 63 of the Book of Tax Procedures, information may not be exchanged where there is a defence or medical secrecy interest or where exchanging the information is liable to prejudice public policy. This is consistent with international norms, but certain cases of professional secrecy merit closer examination.

Bank secrecy

319. Article 30 of the Banking Act states that “persons who participate in the direction, administration, management, supervision or operation of credit institutions are bound by professional secrecy”. The Act gives no

information as to the content of the professional secrecy requirement applied to banks and other financial institutions. However, it may be deduced from Article 374 of Burkina Faso’s Criminal Code, which penalises breaches of professional secrecy, that it is a secret which covers information held by a person by reason of their profession or duties, the disclosure of which is prohibited “except in cases where otherwise required or authorised by law”. Thus, the banking secrecy requires bankers not to disclose information about their clients except where the law provides otherwise.

320. Article 53 of the Banking Act states that professional secrecy may not be invoked against the Banking Commission or the Central Bank or the judicial authorities acting in criminal proceedings. Although the Act does not mention the tax authorities among those against which banking secrecy may not be invoked, no bank may refuse to provide information requested by tax officials.

321. That is because under Article 93 of the Corporate Tax Act and Article 42 of the Book of Tax Procedures, companies, banks, bureaux de change, discounters, public and judicial officers, associations and all persons taking transferable securities on deposit as a regular business are required to send the tax authorities a report of any opening or closure of a securities or cash deposit account, loan account, current account or similar account. A similar obligation applies under Article 41 of the Book of Tax Procedures to any natural or legal person that pays interest, dividends, income or other revenue from transferable securities as a business or whose business incidentally involves such transactions.

322. More fundamentally, the tax authorities’ right to information applies to banks. Under Article 36 of the Book of Tax Procedures, in order to allow for the examination of returns submitted by taxpayers themselves or by third parties, all banks, asset managers and other traders whose profession involves paying income from transferable securities or whose profession incidentally involves making payments of such a nature and all traders are required on request from officials responsible for assessing income tax to present the books and all other documents, including in dematerialised form, which must be kept pursuant to the provisions of the uniform act on general commercial law and all supporting books and documents such as receipts and expenditure vouchers and business correspondence. Thus, banking secrecy may not be invoked against the tax authorities in Burkina Faso.

323. In practice, the tax authorities do not have any difficulty in obtaining information held by banks and other financial institutions. This was confirmed by the Central Bank and well as by the professional association of banks and financial establishments of Burkina Faso (*Association Professionnelle des Banques et Établissements Financiers du Burkina Faso*, APBEF) which stated that banks are required to respond to all EOI requests

from the tax authorities. The APBEF and the Directorate General of Taxes agreed that they had a very good relationship with regard to information-gathering. The banks simply wished that the tax authorities would provide them with a named referent for EOI purposes, to further facilitate information exchange and ensure that the confidentiality required in their communication was always respected.

Other professional secrecy requirements

324. Under Article 374 of the Criminal Code, medical practitioners, surgeons or health officials, pharmacists and any other persons who on account of their status or profession or permanent or temporary duties hold secrets entrusted to them and who disclose such secrets except in cases where they are required or authorised to do so by law are liable to imprisonment for six months to two years and to a fine of XOF 300 000 (EUR 457) to XOF 1 000 000 (EUR 1 524). The secrecy protected by law is first and foremost medical secrecy, which is one of the grounds allowed by the Book of Tax Procedures for not acceding to an information request from the authorities. The Criminal Code also protects professional secrecy in general, while stating that no penalty may be imposed where the law itself requires or authorises a person to disclose information or a document covered by professional secrecy. In other words, persons who are required by the provisions of the Book of Tax Procedures to provide the tax authorities with information or documents upon request may not refuse to comply on the grounds of Article 374 of the Criminal Code or any other provision of law.

325. Article 46 of Act no. 081-2015/CNT of 24 November 2015 on the general status of the State's public service states that public service employees are bound by a professional secrecy obligation which covers all facts, information or documents which come to their attention in the performance or on the occasion of the performance of their duties, where disclosure is liable to harm the interests of users of public services or the interests of public agencies and institutions. Under Article 62 of the Book of Tax Procedures, any person who, in the performance of their duties or assignments, has occasion to participate in the assessment or collection of taxes or in tax litigation is bound by professional secrecy under the terms of the Penal Code and liable to the penalties set forth therein. Secrecy extends to all information collected during such operations. However, the professional secrecy obligation which applies to tax officials does not prevent the exchange of information. Article 64 of the Book of Tax Procedures states that "the Directorate General of Taxes may exchange information with the tax authorities of States with which Burkina Faso has concluded a reciprocal assistance agreement relating to the assessment, audit and collection of tax or a bilateral or multilateral convention for the exchange of information for tax purposes".

326. Concerning the secrecy requirement for attorneys, Article 64 of Act 016-2000/AN regulating the legal profession states that “attorneys are bound by the most absolute professional secrecy. In particular, they must respect the secrecy of criminal investigations by refraining from disclosing information on file or making public documents, records or letters relating to an ongoing investigation.” The professional secrecy requirement for attorneys thus covers information and documents which come to their knowledge in their capacity as counsel, i.e. in defending the interests of their clients in court or in legal proceedings. The secrecy requirement applies equally to client files and those of other parties to proceedings. In such circumstances, attorney-client privilege may be invoked against the tax authorities, who may not obtain information relating to proceedings pending before the courts or contained in files which clients entrust to their attorneys.

327. In contrast, the Burkina Faso authorities state that attorney-client privilege is not an obstacle to the exchange of information where the attorney acts as a manager of a company, depository of a contract or agent in legal instruments, outside any judicial proceedings or instruction as counsel. Thus, an attorney who represents a client for example in the incorporation of a company or in other acts of civil life unrelated to judicial proceedings is subject to the tax authorities’ right to information in such matters, professional secrecy notwithstanding. Article 38 of the Book of Tax Procedures states unequivocally that “the right to information is exercised with regard to the members of non-commercial professions and persons who engage in non-commercial activities who, governed by an order, a code of conduct or a particular status or who, without being a member of any such order or having such status, participate in the provision of services or operations of a legal, financial or accounting nature or who hold funds or assets on the behalf of third parties”.

328. In addition, Article 30 of the AML/CFT Act relating to the identification of the beneficial owner specifies that where it is not certain that the client is acting on their own behalf, the financial institution must investigate by any means to find the identity of the order giver. If the client is an attorney, a notary, an accountant, an auditor, or a stockbroker acting as a financial intermediary, they may not invoke professional secrecy to decline to communicate the identity of the beneficial owner.

329. In practice, professional secrecy does not constitute an impediment to obtaining information held by the legal professions in Burkina Faso, other than in the cases accepted by international standards. In the particular case of attorney-client privilege, representatives of this profession have confirmed with the tax authorities that their professional secrecy obligation cannot be invoked against the tax authorities when they are seeking information held outside of any criminal proceeding or their advisory role. This information notably includes information on the creation of companies, or about the

nominee or administrator of a company or an asset. However, the Burkina Faso tax authority has never had to ask for information from attorneys and only rarely from the other legal professions because the information that they hold is generally held elsewhere either by the tax authorities themselves or by other public administrations such as the CEFOR, the RCCM or by taxpayers.

330. In light of the foregoing, the competent authority in Burkina Faso (the tax authorities) have a wide range of powers which enable them to seek and gather information and respond to information requests submitted by the country's treaty partners where such requests relate to ownership or accounting or banking information, whoever the person holding such information.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 rating
Compliant

B.2. Notification requirements and rights and safeguards

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

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

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

332. Burkina Faso law guarantees the respect of taxpayers' rights in their relations with the tax authorities, especially in information-gathering procedures, i.e. the right to information and the right of examination, investigation and search. However, there is no provision in Burkinabe domestic law which requires a person to be informed when it is the subject of an information request, including in the framework of international administrative assistance.

333. In practice, the Burkina Faso Directorate General of Taxes, the competent authority in matters of exchange of information, has been able to use its powers of access to information without impediment resulting from the implementation of the rights and safeguards of persons.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 rating
Compliant

C. Exchanging information

Overview

334. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Burkina Faso, the legal authority to exchange information is derived from regional and bilateral mechanisms (double tax conventions) and domestic law. This section of the report assesses Burkina Faso's network of EOI agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

335. Burkina Faso has a network of three tax conventions (with France, Morocco and Tunisia) and a regional instrument including provisions on the exchange of information for tax purposes (Regulation 08/CM/UEMOA to prevent double taxation in the Community and to institute mutual tax assistance). These exchange mechanisms comply with the standard and are in force, except the convention with Morocco. The Burkina Faso authorities indicated that the convention with Morocco should have been ratified since the end of Phase 1 of the peer review, but this had proved impossible as a result of the political transition, during which time the priority of the authorities was the stability of the country and the return to constitutional order. Nevertheless, the procedure with the aim of ratifying this instrument has been restarted. The authorities of Burkina Faso are recommended to accelerate the domestic procedures in order to ratify the tax treaty with Morocco as soon as possible to allow both countries to effectively exchange information.

336. Burkina Faso has entered into negotiations with three jurisdictions with a view to concluding tax information exchange agreements (TIEA) and has not to date declined any request in this regard. Likewise, the country has officially asked to be invited to sign the Convention on Mutual Administrative Assistance in Tax Matters, which already has over 90 participating jurisdictions.

337. All information exchange mechanisms include confidentiality provisions and Burkina Faso's domestic law also contains rules on that subject.

The provisions apply equally to the information and documents concerned by the request received by Burkina Faso's competent authority and to the answers provided to the treaty partner.

338. Each of the treaties concluded by Burkina Faso ensures that the parties involved will not be required to disclose information relating to an industrial, trade or business secret or information subject to attorney-client privilege or information contrary to public policy.

339. There is no restriction in Burkina Faso's domestic law that would limit the country's capacity to exchange information within the 90-day period set by international standards or that would prevent the country's competent authority from informing its partners of the state of progress of their requests.

340. During the review period, a dedicated exchange of information unit did not exist in Burkina Faso. The EOI requests were processed by the tax investigation department within the tax inspection directorate (*Direction du contrôle fiscal*). However, with the adoption of a new organisation chart within the Directorate General of Taxes, a dedicated EOI unit has been put in place within the new tax investigation directorate (*Direction des Enquêtes et des recherches fiscales – DERF*). This unit is already operational and has adequate resources for ensuring effective processing of EOI requests.

341. Burkina Faso received three EOI requests from a partner during the review period. These demands were processed appropriately and in all three cases the information was provided, within 180 days for one request, and within a year for the other two requests. Burkina Faso is recommended to ensure that, within the context of the new organisation put in place for exchange of information purposes, EOI requests from its partners are processed within a reasonable timeframe.

C.1. Information exchange mechanisms

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

342. Under Article 148 of Burkina Faso's Constitution, the President of the Republic "negotiates, signs and ratifies international treaties and agreements". This power may be delegated to the prime minister or other ministers.

343. Burkina Faso has ten exchange of information partners based on four instruments: the tax conventions with France, Morocco and Tunisia and Regulation 08/CM/UEMOA to prevent double taxation in the Community and to institute mutual tax assistance (the WAEMU Regulation). The three bilateral conventions and the WAEMU Regulation comply with the standard.

344. Burkina Faso has not concluded any TIEAs to date but is currently on discussion for negotiating two drafts.

Foreseeably relevant standard (ToR C.1.1)

345. The international standard in information exchange assumes that information should be exchanged upon request to the widest possible extent. However, it does not allow “fishing expeditions”, meaning speculative requests for information which appear to have no clear link with an ongoing audit or investigation. The balance between these two competing aspects is expressed in the concept of “foreseeable relevance” contained in Article 26 (1) of the OECD Model Tax Convention, which states:

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

346. The conventions with Tunisia and Morocco and the WAEMU Regulation state that the competent authorities will exchange the information “necessary” to apply the provisions of the convention or of the contracting States’ domestic law relating to the taxes covered by the convention. The term “necessary” is considered in the commentary on Article 26 of the OECD Model Convention as being equivalent in effect to “foreseeably relevant” with regard to the exchange of information.

347. The convention with France mentions information relating to tax “which they [the tax authorities] have at their disposal and which is useful” in order to assess and collect the taxes covered by the convention and the enforcement, with regard to those taxes, of legal rules relating to the prevention of tax fraud. The Burkina Faso authorities consider “information which the tax authorities have at their disposal” to mean not only directly available information but also all information which they can access by using the powers conferred on them by law. The term “useful” is interpreted in the same way as “foreseeably relevant”. France confirmed in its peer review⁶ that it supported this interpretation.

348. In practice, all the EOI requests received by Burkina Faso during the review period were processed using a broad application of the standard of foreseeable relevance. Consequently, the information was provided on the basis of an agreement which sets out the exchange of “information available to the tax authorities”. According to the Burkina Faso authorities, the

6. Paragraph 214, Peer Review Report – Combined Phase 1 and Phase 2 Report – France © OECD 2011.

new procedure of approving EOI requests outlined in the EOI manual also guarantees this non-restrictive interpretation of foreseeable relevance. This procedure notably makes it possible to check that EOI requests are:

- Founded on a valid convention or an agreement in force, having the scope needed to process the request;
- Signed and transmitted by a competent authority;
- Respect the conditions of the applicable convention or agreement, notably the foreseeable relevance;
- Are complete.

In respect of all persons (ToR C.1.2)

349. Effective information exchange presupposes that the obligation of a jurisdiction to provide information should not be limited by the residence or nationality of either the person to whom the requested information relates, or the person who possesses or holds the information requested. For this reason, the international standard in information exchange states that the mechanisms for exchange can permit an exchange of information concerning all persons.

350. None of the conventions in force in Burkina Faso contains any express provision extending the scope of information exchange to persons who are not residents of the contracting States. However, all of the conventions allow for the exchange of information necessary or useful in order to enforce their provisions or those of the contracting States' domestic law. As the domestic tax law of each State Party applies equally to residents and non-residents, Burkina Faso confirms that the information covered by the conventions also concerns non-residents. Thus, none of the information exchange mechanisms concluded by Burkina Faso limits the scope of information exchange to one category of persons to the exclusion others, such as those who are not deemed to be residents of one of the States.

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

351. Jurisdictions cannot undertake effective information exchange if they are unable to exchange information which is held by financial institutions, nominees or persons acting in an agency or fiduciary capacity. According to the OECD Model Tax Convention and the OECD Model TIEA, which are the main sources of authority for the standard, bank secrecy cannot serve as a reason for refusing to provide information and an information request cannot be declined simply because the information is held by a nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

352. Article 33.4 of the WAEMU Regulation states: “The provisions of paragraph 2 aforesaid may not be interpreted as allowing a Member State to decline to supply information solely because it is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person”. These provisions are consistent with Article 26 (5) of the OECD Model Tax Convention and with the international standard.

353. The conventions with France and Tunisia do not contain the provisions of Article 26 (5) of the OECD Model Tax Convention because they were concluded long before the article was amended. It is the same for the tax convention between Burkina Faso and Morocco. However, that does not systematically restrict the exchange of information. The Commentary on the Model Tax Convention states that whilst paragraph 5 represents a change in the structure of Article 26, it should not be interpreted as suggesting that the previous version of the Article did not authorise exchanges of banking information or information held by financial institutions, nominees or persons acting in an agency or fiduciary capacity. Reference should therefore be made to the domestic law of each State in order to see whether it contains restrictions on access to banking information.

354. As shown above, Burkina Faso law, through the Book of Tax Procedures and the Corporate Tax Act, effectively allows the competent authority to access and exchange information held by banks, other financial institutions, nominees and persons acting in an agency or fiduciary capacity.

355. In practice, Burkina Faso effectively exchanged a variety of categories of information during the review period, including ownership information, accounting information and banking information.

Absence of domestic tax interest (ToR C.1.4)

356. The concept of domestic tax interest describes situations in which a contracting party can only provide information to another contracting party if it has an interest in obtaining the desired information for its own tax purposes. Inability to provide information which is based on any such domestic tax interest does not comply with the international standard. The contracting parties should use domestic information-gathering powers, even if they are used solely for the purpose of obtaining and providing information for the other contracting party.

357. Article 33.3 of the WAEMU Regulation states that “if information is requested by a Member State in accordance with this Article, the other Member State shall use its information gathering measures to obtain the requested information, even though the other State may not need such

information for its own tax purposes”. This provision is consistent with Article 26 (4) of the OECD Model Convention and with the international standard.

358. The other three conventions concluded by Burkina Faso, with France, Morocco and Tunisia, do not contain any provision to prevent the assertion of domestic tax interest as a ground for declining to provide information requested by a treaty partner. However, that does not mean that the conventions allow the assertion of domestic tax interest. Reference should therefore be made to the domestic law of the contracting States in order to see whether it prevents the competent authority from using its information gathering powers solely for information exchange purposes.

359. There is no specific provision in Burkina Faso’s domestic law relating solely to the gathering and exchange of information pursuant to an international convention. The competent authority uses the same powers for information exchange purposes as it does for the assessment and audit of taxes and duties, without restriction. Article 64 of the Book of Tax Procedures expressly authorises the tax authorities to exchange information with foreign partners where a convention or agreement concluded by Burkina Faso allows them to do so: “the Directorate General of Taxes may exchange information with the tax authorities of States with which Burkina Faso has concluded a reciprocal assistance agreement relating to the assessment, audit and collection of tax or a bilateral or multilateral convention for the exchange of information for tax purposes. To that end, it shall implement the procedures set forth at Articles 4 to 11 and 31 to 50 of this Book”. According to the Burkina Faso authorities, this provision means that where a convention exists, the tax authorities may use all legal means at their disposal to obtain and exchange information, with no restriction as to domestic tax interest.

360. In practice, Burkina Faso effectively provided the requested information during the review period, despite the information being of no use to it for its own tax purposes.

Absence of dual criminality principles (ToR C.1.5)

361. The dual criminality principle states that assistance can only be provided if the matter under investigation (and prompting the request for information) would constitute a criminal matter in the requested country if it had arisen in that country. If it is to be meaningful, information exchange must not be restricted by the enforcement of a dual criminality principle.

362. None of the information exchange mechanisms established by Burkina Faso provide for the application of the dual criminality principle in order to restrict the exchange of information.

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

363. Communicating information may be necessary for both tax and criminal purposes. The international standard is not limited to exchanges of information for criminal purposes and may also include exchanges for tax purposes.

364. The tax convention between Burkina Faso and France provides for the exchange of information helpful to ensure the proper assessment and collection of the taxes covered by the convention and “the enforcement with regard to such taxes of legal provisions relating to the prevention of tax fraud”. As the prevention of tax fraud implies criminal prosecution, the convention thus explicitly provides for the exchange of information in both civil and criminal tax matters.

365. The WAEMU Regulation and the two other bilateral convention conclude by Burkina Faso (Morocco and Tunisia) provide for the exchange of information necessary to enforce the provisions of the convention or regulation and those of the domestic legislation of Member States or the contracting States relating to the taxes concerned. As the provisions of domestic laws also include criminal measures to sanction fraudulent behaviour in connection with tax, it may be concluded that the two mechanisms implicitly allow for the exchange of information in both civil and criminal tax matters.

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

366. In certain cases, a contracting party may need to receive information in a specific form in order to meet its evidentiary standards or other legal requirements. These forms may include witness statements and certified copies of original documents. The requested party may decline to provide information in the specific form requested if, for example, it is unknown or not authorised in its administrative practice. Declining to provide information in the requested form does not affect the requirement to provide the information.

367. The information exchange mechanisms established by Burkina Faso do not expressly provide for the provision of information in the specific form requested by a contracting party, though nor do they contain restrictions which would prevent that. The Burkina Faso authorities state that there is nothing to prevent them from providing information in the form requested, provided that it is consistent with their administrative practice.

368. The Burkina Faso authorities have confirmed that they provide the information in the form requested provided that this form can be obtained under their legislation and their administrative practices.

In force (ToR C.1.8)

369. The exchange of information cannot occur unless a jurisdiction has information exchange mechanisms in force. Where such mechanisms have been signed, the international standard requires a jurisdiction to complete the measures needed for them to take effect.

370. Under Article 149 of Burkina Faso's Constitution, peace treaties, trade treaties, treaties which engage State finances, those which amend provisions of a legislative nature and those that concern the status of persons may be ratified or approved only by statute. They take effect only after they have been ratified or approved. Tax conventions and information exchange agreements number among those which engage State finances and must therefore be ratified before they take effect.

371. Requests to negotiate international conventions are generally transmitted to the Ministry of Foreign Affairs. Technical negotiations are conducted by experts from the ministries concerned by the subject matter of the convention. For tax conventions, the Ministry of the Economy and Finance, represented by the Directorate General of Taxes, carries out the negotiations once the Ministry of Foreign Affairs has entered into talks with the foreign country. When the negotiations are concluded, the tax conventions are signed by the Minister of Foreign Affairs. The ratification procedure is conducted by the Ministry of Foreign Affairs and the convention is ratified by the National Assembly. The tax information exchange agreements (TIEA) do not require ratification by parliament.

372. Except the convention signed with Morocco, the tax conventions concluded to date by Burkina Faso (with France and Tunisia) have been ratified and are in force. With regard to the Treaty instituting the West African Economic and Monetary Union (WAEMU), of which Burkina is a member, Article 43 states that "regulations are general in scope. They are mandatory in all their parts and directly applicable in all Member States". Regulations thus apply in all States Party with no need for ratification. Thus Regulation 08/CM/UEMOA to prevent double taxation in the Community and to institute mutual tax assistance entered into effect on the date set in the Regulation, i.e. 1 January 2009 (Article 44 of the Regulation). Regarding the Tax convention with Morocco signed in 18 May 2012, the Burkinabe authorities state that the ratification process has not yet been completed due to the 2014 political crisis which slowed down the functioning of the parliament. However, with the return to constitutional order as illustrated by new political authorities taking office, the minister of finance has recently restarted the ratification process. The authorities of Burkina Faso are recommended to accelerate the domestic procedures in order to ratify the tax treaty with Morocco as soon as possible to allow both countries to effectively exchange information.

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

373. In order for information exchange to be effective, the contracting parties must take the necessary measures to comply with their commitments.

374. Under Article 151 of Burkina Faso’s Constitution, treaties or agreements that have been duly ratified or approved take precedence as of their publication over domestic laws. Burkina Faso’s legal system does not require the adoption of a specific law in order for an international convention to take effect once it has been ratified by both parties. The competent authority is thus required to implement the provisions of information exchange agreements in effect, using the powers invested in it by the various laws governing taxes and duties in Burkina Faso (see Section B.1). At most, the tax authorities may, should they deem it necessary, issue administrative circulars to let officials know how the provisions of a tax convention should be interpreted.

375. WAEMU Regulations are immediately enforceable in all Member States without any need for transposition. Under the provisions of Article 24 of the WAEMU Treaty, the WAEMU Commission alone is authorised to issue the implementing regulations needed to apply a Regulation. For Regulation 08/CM/UEMOA, implementing regulation 005/2010/COM/UEMOA was adopted on 17 November 2010 and is applicable in all Member States, including Burkina Faso.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 rating
Compliant

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

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

376. According to the international standard, jurisdictions should be able to exchange information with all relevant partners, meaning partners interested in concluding an EOI agreement. Agreements cannot be concluded solely with partners of no economic importance. If a jurisdiction refuses to conclude or negotiate agreements with partners, especially those which have reasonable grounds for seeking information from that jurisdiction in order to properly administer and enforce their tax laws, that fact may indicate a lack of commitment to implementing the standards.

377. Burkina Faso has EOI agreements with ten partners: Benin, Côte d'Ivoire, France, Guinea-Bissau, Mali, Morocco, Niger, Senegal, Togo and Tunisia. Six of these ten jurisdictions are members of the Global Forum (Côte d'Ivoire, France, Morocco, Niger, Senegal and Tunisia). Burkina Faso's main trading partners are the Member States of the Economic Community of West African States (ECOWAS), which include the eight WAEMU Member States plus Ghana and Nigeria, the European Union and Japan. Its main suppliers are France, China and Côte d'Ivoire.

378. Burkina Faso has not concluded any TIEAs to date, but discussions are underway for negotiating three drafts. Likewise, the country has officially asked to be invited to sign the Convention on Mutual Administrative Assistance in Tax Matters, which already has over 90 signatory jurisdictions and 15 or so territorial extensions. The procedure is at a relatively advanced state. Burkina Faso's responses to the confidentiality questionnaire have been sent to the co-ordination body. But clarifications were requested in return. The procedure was also slowed by the political instability experienced by the country between the end of 2014 and early 2016. The Burkina Faso authorities have restarted the procedure and taken measures to accelerate it with the aim of signing the convention as soon as possible. No jurisdiction to date has approached Burkina Faso with a view to negotiating a TIEA, except the three jurisdictions concerned by the TIEAs under negotiation.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying Recommendations	Recommendations
.	Burkina Faso should continue to extend its network of information exchange mechanisms with all its relevant partners.
Phase 2 rating	
Compliant	

C.3. Confidentiality

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

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

379. Governments could not become involved in exchanging information without being certain that the details communicated will be used solely for the purposes specified in the relevant information exchange agreement and that they will be kept confidential. Information exchange mechanisms should thus contain provisions indicating exactly the persons to whom the information may be circulated. Furthermore, the domestic legislation in force in the countries concerned usually contains strict regulations on protecting the confidentiality of information gathered for tax purposes.

International mechanisms

380. The tax conventions signed by Burkina Faso contain provisions relating to confidentiality. The convention with Tunisia states that “any information exchanged in this way shall be kept secret and may be disclosed only to persons or authorities responsible for assessing or collecting the taxes covered by this Convention”. The convention with France states that “information exchanged in this way, which shall remain secret, may not be disclosed to persons other than those responsible for the assessment and collection of the taxes covered by this Convention”. The convention with Morocco further clarifies that information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including the courts and administrative bodies) concerned with the assessment or collection of taxes covered by the Convention, the enforcement or prosecution in respect of, or the determination of appeals in relation to such taxes.

381. According to Burkina Faso, persons “responsible” for assessing and collecting tax are not only tax officials but also the judicial authorities (prosecution service and court registries), since the two conventions state that the exchange of information also concerns “enforcement of the legal provisions relating to the prevention of tax fraud” or “enforcement of domestic laws”. The conventions do not permit information received or to be sent to be disclosed to taxpayers or persons concerned in Burkina Faso. This is consistent with Burkina Faso’s domestic law, which does not require the tax authorities to notify the persons concerned of information requests.

382. Regulation 08/CM/UEMOA does not contain any provisions relating to confidentiality, even though it is the most important information exchange mechanism established by Burkina Faso to date since it allows for the exchange of information with seven of the country's nine partners. However, Article 14 of implementing regulation 005/2010/COM/UEMOA states that "information received by a Member State shall be kept secret in the same way as information obtained under that Member State's own domestic law". This supplements Regulation 08/CM/UEMOA and is binding on Member States in the same way, because although implementing regulations are adopted by the Commission, they have the same nature as regulations adopted by the WAEMU Council of Ministers. Article 24 of the WEAMU Treaty states that "The Council may delegate to the Commission adoption of the regulations implementing the instruments it enacts. Such implementing regulations shall have the same legal force as the instruments for the implementation of which they are adopted."

Burkina Faso law

383. Under Burkina Faso tax law, criminal law and public service law, tax officials are bound by a professional secrecy obligation. Under Article 374 of the Criminal Code, the penalty for breach of confidentiality is imprisonment for six months to two years and a fine of XOF 300 000 (EUR 457) to XOF 1 000 000 (EUR 1 524). Article 23 of Act 13/98/AN of 28 April 1998 on the legal rules applicable to public service positions and officials states that public service employees are bound by a professional secrecy obligation which covers all facts, information or documents which come to their attention in the performance or on the occasion of the performance of their duties, where disclosure is liable to harm the interests of users of public services or the interests of public agencies and institutions. Article 62 of the Book of Tax Procedures states that "any person who, in the performance of their duties or assignments, has occasion to participate in the assessment or collection of taxes or in tax litigation is bound by professional secrecy under the terms of the Penal Code and liable to the penalties set forth therein".

384. Professional secrecy extends to all information gathered on the occasion of operations relating to tax assessment, audit, litigation and collection. However, the confidentiality requirement for tax officials does not prevent the exchange of information with the tax authorities of States with which Burkina Faso has established an information exchange mechanism. Likewise, the Burkina Faso tax authorities may, without breaching confidentiality, exchange information with the Central Bank of West African States or state supervisory authorities. Under Article 64 of the Book of Tax Procedures, it may also provide information helpful for the preparation of statistics to the National Institute of Statistics and Demography.

Other information exchanged (ToR C.3.2)

385. The provisions concerning confidentiality which are included both in the relevant agreements and in Burkina Faso’s domestic legislation do not distinguish between information received in reply to a request and information that forms part of the request. These provisions apply in the same manner to requests, attached documents, and all communications between Burkina Faso and its information exchange partners.

In practice

386. In practice, respect for the rules of confidentiality set out by the EOI agreements and the laws of Burkina Faso is ensured through the organisation and operation of the EOI unit and the general supervision of services performed by the technical inspectorate of tax services (*Inspection technique des services des impôts*).

387. The EOI unit which is part of the DERF has specific confidentiality measures in place. Only the officers of this unit process and are aware of the EOI requests. They have computers protected by passwords and are only in possession of the files while they are working on them. No hard-copy file is stored overnight in the offices of the unit officers. The hard-copy files are stored overnight in the office of the Director of the DERF, who has a safe for this purpose. The authorities indicated that a larger secure cupboard is being purchased in preparation of a future increase in EOI requests. The door giving access to the DERF office has additional security measures, namely an iron door with strong locks. Access to the DERF office is restricted, only the assistant to the Director may enter in his absence. In addition, access to the DERF office is protected by CCTV, as is the rest of the Directorate General of Taxes building.

388. In application of the procedure put in place by the EOI manual, requests received by the Director-General of Taxes are transmitted to the DERF in a sealed envelope stamped “confidential”. The DERF registers the EOI request in the computerised register designed for this purpose and then transfers it directly to one or more of the officers of the EOI unit, who are to process it. The officers of the EOI unit gather the information themselves. When the assistance of a decentralised department of the Directorate General of Taxes is required, the EOI unit officers take the necessary measures to ensure the confidentiality of the elements of the file. The other tax authority departments contacted because they hold the requested information are not told of the purpose of the request. They are never given a copy of the request from the foreign partner; they simply receive an internal memorandum which only gives information about the people concerned and the information required. The EOI manual includes the possibility of asking the Legislation

and Litigation directorate for advice should there be doubt about the validity of an EOI request. However, this functional collaboration is organised so as to preserve the anonymity of the request (the identity of the persons targeted and certain details that individualise the request are not revealed). In all cases, the confidential nature of the EOI request is respected.

389. The technical inspectorate of tax services (ITI) is in charge of auditing and monitoring the departments of the Burkina Faso tax administration. To this end, it *(i)* ensures the respect of tax laws and regulations by tax officers, *(ii)* provides assistance to the various structures of the Directorate General of Taxes for the promotion of quality, ethics and professional ethics, and *(iii)* carries out any other assignments given to it by the Director-General of Taxes, notably internal administrative audits and investigations. The ITI thus performs a number of supervisory duties within the Directorate General of Taxes on the basis of a risk analysis programme. Risk mapping has been performed. The monitoring carried out during the review period did not look at any aspects of respect of confidentiality by tax officials. However, no cases of clear breaches were brought to the attention of the tax authorities, who specified that the revised examination of the risk mapping would make it possible to take into account any particular risks related to the EOI process with foreign competent authorities, including breaches of confidentiality.

390. In conclusion, the confidentiality of the three EOI requests processed by Burkina Faso during the review period was ensured. Similarly, the new organisation and procedures in place during the onsite visit to Burkina Faso guarantee the respect of confidentiality when processing EOI requests. Nevertheless, this new organisation will not be tested until future EOI requests are received. Burkina Faso is recommended to ensure that the implementation of this new organisation effectively respects confidentiality in practice.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 rating
Compliant

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

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

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

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

392. The four information exchange mechanisms established by Burkina Faso ensure that the parties concerned will not be required to provide information that would reveal an industrial, trade or professional secret or information, the disclosure of which would be contrary to the public policy.

393. In addition to information that would reveal a trade, industrial or professional secret, the tax convention with France does not authorise the exchange of information where the requested State considers that it is “liable to endanger its sovereignty or its security or harm its general interests”. The notions of “security”, “sovereignty” and “general interests” are interpreted as having the same content as “public policy” in Article 26 (3)(c) of the OECD Model Tax Convention. This interpretation was confirmed by the Burkina Faso authorities and by the French authorities in the Combined Peer Review Report on France.

394. Information exchange mechanisms give no definition of professional secrecy. Reference to Burkina Faso domestic law, especially the Criminal Code and other specific laws, indicates that banking secrecy is not an obstacle to information exchange (see Section B.1.5 above). Likewise, attorney-client privilege applies only to information that comes to the attorney’s knowledge in proceedings pending before the courts, whether the information comes from the client or from other parties to the proceedings. In contrast, attorneys are required to provide the tax authorities on request with information arising from their involvement in legal instruments on their clients’ behalf or in their own name, outside of any legal proceedings. Article 38 of the Book of Tax Procedures states unequivocally that “the right to information is exercised with regard to the members of non-commercial professions and persons who engage in non-commercial activities who, governed by an order, a code of conduct or a particular status or who, without being a member of any such order or having such status, participate in the provision of services or operations of a legal, financial or accounting nature or who hold funds or assets on the behalf of third parties”.

395. The Burkina Faso authorities indicated that in practice, the rights and safeguards of taxpayers and third parties are compatible with an effective exchange of information insofar as they cannot impede the access and transmission of information, other than in cases included in the exchange mechanisms affecting public order and trade, industrial or professional secrecy. Professional secrecy, notably attorney-client privilege and that of the other liberal professions cannot be invoked to block access to information by the tax authorities in application of tax legislation. Burkina Faso effectively proceeded with the investigation and exchange of all the information requested by its partner during the review period without any impediment relating to the rights and safeguards of taxpayers and third parties.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 rating
Compliant

C.5. Timeliness of response to requests for information

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

Responses within 90 days (ToR C.5.1)

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

397. Burkina Faso's information exchange mechanisms do not impose any time limit for responding to requests received from partner countries, nor is there any time limit for processing requests in Burkina Faso's domestic law. In most cases, the statutory time limits imposed on the tax authorities concern tax audit procedures, tax litigation and the collection of taxes and duties. However, there is nothing to prevent the authorities from responding to information requests within 90 days.

398. Over the review period which ran from 1 July 2012 to 30 June 2015, the Burkina Faso competent authority received three EOI requests from a partner. Two requests related to natural persons and sought to obtain information about their professional activities, earnings and the assets (including banking assets) held by these persons in Burkina Faso. The other EOI request related to a company and sought to obtain accounting information (notably on the tax status of the company) as well as information on its shareholders (ownership). Burkina Faso provided responses within a timeframe of

- 180 days for one request, and
- One year for two requests.

399. According to the Burkina Faso competent authority, these lengthy response times are not due to slow processing of requests, nor the complexity of the information, but simply due to the means by which the requests were sent by their partner, namely using the diplomatic channels. Nevertheless, measures have been taken to reorganise the EOI structure within the Directorate General of Taxes, notably by including the contact details of the competent authority in the database of competent authorities of the Global Forum, and by communicating this information to Burkina Faso's EOI partners. This should allow direct contact to be made with the foreign competent authorities and facilitate the rapid circulation of EOI requests and responses. Furthermore, the Burkina Faso's information exchange manual stipulates that the requested information should be exchanged within 90 days, except in complex cases requiring extensive investigations.

Organisational process and resources (ToR C.5.2)

Organisation and resources

400. Under the terms of Burkina Faso's information exchange mechanisms, the competent authority is the Finance Minister or his authorised representative. The Director General of Taxes, who is the head of Burkina Faso's tax administration, has received a delegation of powers from the Finance Minister to act as competent authority.

401. Article 4 of order 2013-193/MEF/SG/DGI of 17 May 2013 delegating the power of the competent authority sets out that the Director-General of Taxes is replaced by the Director of Tax Inspections should the former be unavailable. Since 23 November 2015 and the entry into force of the new organisation chart of the Directorate General of Taxes, the Director-General of Taxes is henceforth replaced by the Director of the tax investigation directorate (DERF). In the terms of Article 51 of order 2015/387/MEF/SG/DGI of 23 November 2015 setting out the responsibility, structure and functioning of

the Directorate General of Taxes, the DERF is responsible for processing EOI requests. The Burkina Faso authorities stated that the abovementioned order will be amended to take into account this new organisation.

402. Within the DERF, the structure authorised to work on EOI requests is the tax information management department (*Service de gestion du renseignement fiscal*) (Article 51 of the organisation chart mentioned above). This department forms the EOI unit, placed under the direct authority of the Director of the DERF. It has substantial material resources at its disposal, namely computers, and a safe for locking away hard-copy files. The unit does not have its own financial resources, as its operation is ensured by the state budget and the DGI's own development funds. The unit also uses all the computer-based materials allocated to the DERF, namely the professional software (IFU, SINTAX, etc.) and a database of information that has been gathered.

403. The members of the Unit are chosen from the DERF staff and designated by a memorandum from the Director-General of Taxes. At the date of the onsite visit, four (04) tax inspectors of the 16 at the DERF were working in the Unit. But given the limited amount of EOI activity, these persons spend some of their time working on other information investigations for internal purposes. A training session on exchange of information is scheduled to take place in Burkina Faso before the end of 2016, and will cover a number of officers of the tax authorities including the EOI Unit. It will be led by the Secretariat of the Global Forum as part of the Global Forum's Africa Initiative to which Burkina Faso is participating as a "first-mover" country.

The information exchange process

404. Since January 2016, the Directorate General of Taxes has a manual at its disposal outlining EOI procedures for tax purposes. According to the manual, EOI requests received by the Director-General of Taxes are transferred to the Director of the DERF in a sealed envelope stamped "confidential". The Director of the DERF registers the EOI request in the Excel file created for this purpose. He then directly transfers the EOI request to one or more members of the EOI unit that he has designated to work on this request. The request is then registered in the hard-copy register by the officer in charge of the file. The hard-copy register is kept in the safe, along with the EOI request itself. For each EOI request received, the registers (hard-copy and electronic version) include the following information:

- Date of reception;
- References ;
- Requesting jurisdiction ;

- The natural or legal person(s) who are the object of the request ;
- The information requested ;
- The officer(s) of the EOI Unit in charge of the file ;
- The timeframe for processing the file allocated to the officers ;
- The date of transmission of the response.

405. After the EOI request is registered, it is validated (see section C.1.1 foreseeable relevance) by the officer who then prepares an acknowledgment letter. Once the EOI request has been validated, the information are immediately gathered, using the investigation and information-gathering powers described in section B.1.1 of this report (Access to information).

406. Once the information has been gathered, the officers of the EOI unit in charge of the case prepare a draft response which is sent to the director of the DERF within a maximum of 15 days. The draft response must contain the following information:

- Reference to the legal bases on which the information is provided;
- Reference to the request from the jurisdiction;
- The information required and the reasons why certain information has not been provided or is not in the requested format;
- How the information was gathered;
- The first and last name(s), fax number, telephone number and email address of the Director-General of Taxes or another person if that authority has been delegated to them;
- A request for confirmation of receipt.

407. Before the draft response is sent to the Director-General of Taxes, the Director of DERF checks that it respects the format described above and satisfies (even partially) the demand made by the requesting jurisdiction. If this is not the case, the Director takes the necessary measures and gives instructions to ensure the request is satisfied. The response is sent to the requesting jurisdiction in the format by which the EOI request had been sent to the Director-General of Taxes (unless the requesting competent authority indicates another means of transmission). But, the preferred method is by courier. A response sent by email must imperatively be sent from the professional address of the Director-General of Taxes. Hard-copy files are kept in the DERF Director's office safe.

408. The registration procedures described above apply in the same way to EOI requests sent by Burkina Faso.

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

409. There is no provision in Burkina Faso’s legislation or in its EOI agreements which contains specific conditions governing the exchange of information, other than those included in Article 26 of the OECD Model Convention or the OECD Model TIEA. No condition likely to restrict the exchange of information was identified in practice.

Conclusions and factors underlying recommendations

Conclusion
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Phase 2 rating	
Largely compliant	
Factors underlying the recommendations	Recommendations
During the review period, Burkina Faso had an ad hoc organisation that allowed the treatment of the three exchange of information requests received. This organisation has recently been improved by the establishment of an information exchange unit with significant resources and appropriate processes. However, the operation and effectiveness of this new organisation were not tested in practice.	Burkina Faso is recommended to monitor the operation of the new organisation for processing EOI requests, including the new EOI unit.

Summary of determinations and factors underlying recommendations

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1.)</i>		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement	The Uniform Act on commercial Companies and economic interest groupings provides for the dematerialisation of securities and allows companies a two-year period to comply with the new obligation. However, the law does not provide enforcement measures to ensure that all the shares (including bearer shares) will be effectively dematerialised during the transition period	The Burkina Faso authorities should take appropriate measures to ensure the dematerialisation of all shares on expiry of the two-year transition period allowed to companies for that purpose.
Phase 2 rating: Partially compliant	The two-year transition period set out by the Uniform Companies Act allowing all public limited companies and simplified joint-stock companies to proceed with the dematerialisation of shares expired on 5 May 2016. However, Burkina Faso has taken no practical measures to ensure that the dematerialisation of shares is being effectively carried out by relevant entities. Failure to dematerialise shares would make it impossible to know the identity of owners of any bearer shares that might exist in Burkina Faso.	The Burkina Faso authorities must take practical measures to ensure the effective dematerialisation of all shares issued by public limited companies and simplified joint-stock companies.

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Banking information should be available for all account-holders. <i>(ToR A.3.)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1.)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2.)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1.)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determinations	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.2.)</i>		
Phase 1 determination: The element is in place.		Burkina Faso should continue to extend its network of information exchange mechanisms with all its relevant partners.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3.)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4.)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5.)</i>		
Phase 1 determination: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review		

Determinations	Factors underlying recommendations	Recommendations
<p>Phase 2 rating: Largely compliant</p>	<p>During the review period, Burkina Faso had an ad hoc organisation that allowed the treatment of the three exchange of information requests received. This organisation has recently been improved by the establishment of an information exchange unit with significant resources and appropriate processes. However, the operation and effectiveness of this new organisation were not tested in practice.</p>	<p>Burkina Faso is recommended to monitor the operation of the new organisation for processing EOI requests, including the new EOI unit.</p>

Annex 1: The jurisdiction’s response to the peer review⁷

Burkina Faso is entirely satisfied with the findings and recommendations contained in the Phase II Peer Review Report and expresses its appreciation to the assessment team, the Global Forum Secretariat and the members of the Peer Review Group (PRG). Our jurisdiction wishes to express its gratitude to them for the very professional work and for their support during the Phase II review.

The lessons learned from this assessment allow Burkina Faso to express its satisfaction with the conclusions and recommendations contained in the report.

These findings are certainly the result of actions and reforms implemented by Burkina Faso since it joined the Global Forum. These include:

- The amendment of its tax legislation in order to meet the international standards of exchange of information;
- The establishment of the Directorate for tax investigations and research and its Exchange of Information Unit;
- The signing of the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters;

Burkina Faso is committed to the implementation of the PRG’s recommendations and reiterates its commitment to transparency and effective exchange of information for tax purposes.

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

Annex 2: List of Burkina Faso’s information exchange mechanisms

Burkina Faso is party to three double taxation conventions and one regional instrument (Regulation 08/CM/UEMOA to prevent double taxation in the Community and to institute mutual tax assistance), in force in eight jurisdictions: Benin, Burkina Faso, Côte d’Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo.

	Jurisdiction	Type of EOI agreement	Date of signature	Date of entry into effect
1	Benin	Regional tax convention	26-09-2008	01-01-2009
2	Côte d’Ivoire	Regional tax convention	26-09-2008	01-01-2009
3	France	Tax convention	11-08-1965	15-02-1967
4	Guinea-Bissau	Regional tax convention	26-09-2008	01-01-2009
5	Mali	Regional tax convention	26-09-2008	01-01-2009
6	Niger	Regional tax convention	26-09-2008	01-01-2009
7	Senegal	Regional tax convention	26-09-2008	01-01-2009
8	Togo	Regional tax convention	26-09-2008	01-01-2009
9	Tunisia	Tax convention	15-04-2003	24-04-2013
10	Morocco	Tax convention	18-05-2012	Not in force

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

Commercial legislation

- OHADA Uniform Act on general commercial law
- OHADA Uniform Act on the law of commercial companies and economic interest groupings
- OHADA revised Uniform Act on the organisation and harmonisation of the accounting systems of undertakings
- OHADA Uniform Act on the organisation and harmonisation of the accounting systems of undertakings
- OHADA Uniform Act on the law of co-operative societies

Tax legislation

- Burkina Faso tax law handbook (2014 edition), containing:
 - Act 08-2010/AN of 29 January 2010 instituting a corporate tax
 - Direct and Indirect Tax Code
 - Registration Duty, Stamp Duty and Investment Income Tax Code
 - Investment Code
 - Mining Code
- Act 004-2010/AN of 28 January 2010 instituting a Book of Tax Procedures
- Tax convention between Burkina Faso and France signed on 11 August 1965, effective on 15 February 1967
- Tax convention between Burkina Faso and Tunisia with a view to avoiding double taxation in relation to income tax

WAEMU Community tax rules (including Regulation 08/CM/UEMOA to prevent double taxation in the Community and to institute mutual tax assistance, and implementing regulation 005/2010/COM/UEMOA)

ECOWAS tax rules

Act 001-2014/CNT of 29 December 2014 (Finance Act implementing the 2015 State budget)

AML/CTF legislation

Act 026-2006/AN on the fight against money laundering

Act 061-2009/AN on the fight against the financing of terrorism

Directive No. 02/2015/CM/UEMOA on the fight against money laundering and the financing of terrorism in the member states of WAEMU.

Act no. 016-2016 of 3 May 2016 on the fight against money laundering and the financing of terrorism in Burkina Faso

Financial legislation

Act 058-2008/AN regulating the banking system in Burkina Faso

Other legislation

Burkina Faso Constitution

West African Economic and Monetary Union (WAEMU) Treaty as amended

Criminal Code

Civil Code

Act 10-93 ADP of 17 May 1993 organising the judicial system in Burkina Faso

Act 10/92/ADP of 15 December 1992 on the freedom of association

Act 016-2000 regulating the legal profession

Act 014/99/AN on the regulation of co-operative societies and groups in Burkina Faso

Act 032-2007/AN establishing responsibilities, composition and functioning of a Superior Control Authority of the State

- Act no. 081-2015/CNT of 24 November 2015 on the general status of the State's public service
- Decree setting deadlines for completing the formalities of modification and termination of activities undertaken by governments and concerned agencies
- Order No. 2005/332 on the organisation and operation of the Centre for Business Formalities (CEFORE)
- Order No. 2005/766/MFB/SG/DGI establishing a Financial Unique Identifier (IFU)
- Order No. 2009/070/MEF/SG/DGI/DIP carrying reactivation process of the Financial Unique Identifier
- General Regulation of the DC/BR Central Depository/WAEMU Settlement Bank
- WAEMU Instruction No. 3/97 on the approval of the central depository/settlement bank
- WAEMU Instruction No. 16/98 authorising banks of the union to exercise the account holder and countervailing duties
- WAEMU Instruction No. 20/99 relating to the securities account opening agreement
- Decree 2000-426/PRES/PM/MJ organising the legal profession
- Report on the study relating to the second reading of Act 10/92/ADP of 15 December 1992 on the freedom of association
- Organisational chart of the Ministry of Economy, Finances and Development
- List of banks and credit institutions in Burkina Faso
- List of documents to be provided to CEFORE for the creation of a new business

Annex 4: List of persons interviewed during the on-site visit

Ministry of Finance – Directorate General of Taxes

- Director General
- Technical inspectorate of tax services
- Directorate for tax investigations
- Directorate for tax audits
- Directorate for tax policy and litigation
- Large Taxpayers Directorate
- Medium size Taxpayers Directorate
- Regional tax Directorate for Hauts-Bassins
- Exchange of Information Unit

One Stop Business Centre – CEFORE

- Directorate for business facilitation
- Company registry for Ouagadougou
- Tax administration

Financial Intelligence Unit (CENTIF)

Ministry of Foreign Affairs

- Directorate for treaties

Bank sector

Central bank

Association of banks

Legal professions

Bar association

Chartered accountants association

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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

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

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

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: BURKINA FASO

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

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

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

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

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

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

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please visit www.oecd.org/tax/transparency and www.eoi-tax.org.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264266070-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.

Visit www.oecd-ilibrary.org for more information.

