

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

SAUDI ARABIA



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Saudi Arabia 2014

PHASE 1:
LEGAL AND REGULATORY FRAMEWORK

April 2014
(reflecting the legal and regulatory framework
as at December 2012)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Saudi Arabia. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners.
2. Saudi Arabia’s economy, which is for an important part based on the oil sector, opened up to foreign investment early in the 21st century, resulting in a significant increase in foreign direct investment in recent years. The Saudi Arabian tax system is built around an income tax and zakat, which are complementary. Income tax is levied from non-Saudi citizens while zakat is levied from Saudi citizens.
3. Availability of ownership and identity information in respect of companies is generally ensured by the requirement to keep an up to date shareholder register. Joint stock companies and partnerships limited by shares have a possibility to issue bearer shares under the Companies Law, although registration of these entities would not be accepted in these circumstances. In addition, this possibility is negated by the obligation under tax and zakat law to identify all owners and submit this information to the tax authorities with the annual tax return or zakat declaration.
4. Both partnerships and endowments (*waqfs*) must be registered with the authorities in Saudi Arabia. In respect of partnerships, ownership information must be provided upon registration and must be updated regularly. Identity information on *waqfs* is kept directly by the Waqf Administration, which is part of the Ministry of Islamic Affairs. As regards resident trustees of foreign trusts, further guidance is needed on what ownership information should be maintained by the trustee.
5. An obligation to keep reliable accounting records including underlying documentation for a period of at least five years is generally in place in

respect of companies and partnerships. However, no express requirements exist for partnerships with a capital of SAR 100 000 (EUR 20 189) or less to keep underlying documentation or to keep documentation for at least five years. With respect to *waqfs*, the accounting records, including underlying documentation, are generally kept directly by the Waqf Administration.

6. The obligations under the AML/CFT legislation ensures that all records pertaining to the accounts as well as to related financial and transactional information are required to be kept by Saudi Arabian banks.

7. The Department of Zakat and Income Tax has broad powers to obtain information for exchange purposes, irrespective of whether Saudi Arabia needs the information for their own purposes, where the agreement contains a provision corresponding to Article 26(4) of the OECD Model Tax Convention. This is because the hierarchy of laws in Saudi Arabia, based on the Islamic *Shari'ah*, places international agreements providing for exchange of tax information above domestic legislation once the international agreement is implemented in Saudi Arabian domestic law by Royal Decree. For the same reason, Saudi Arabian authorities can obtain information from banks when requested to do so under an information exchange agreement containing a provision corresponding to Article 26(5) of the OECD Model Tax Convention. However, this is currently only the case for 10 out of 30 of Saudi Arabia's agreements.

8. Saudi Arabia has the possibility to apply search and seizure powers in order to obtain information from persons subject to income tax. In addition, zakatpayers may be refused a zakat certificate. Both compulsory powers are, however, not very well adapted to obtaining information for EOI purposes, and Saudi Arabia should therefore review its powers for compelling the provision of information for EOI purposes to ensure access to this information.

9. Saudi Arabia has a network of Double Taxation Conventions covering 30 jurisdictions. These agreements all contain provisions that would in principle allow the contracting parties to exchange all relevant information. However, Saudi Arabia's domestic law does not allow it to access bank information, or to obtain information in the absence of a domestic tax interest unless the information exchange agreement contains provisions corresponding to Articles 26(4) and 26(5) of the OECD Model Tax Convention (which is generally the case for the recent agreements). Consequently, Saudi Arabia is currently not in a position to exchange information according to the international standard under 20 out of its 30 DTCs. In addition, it is recommended that Saudi Arabia should be prepared to enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

10. Saudi Arabia’s response to the recommendations in this report, as well as the application of the legal framework in practice, will be considered in detail in the Phase 2 peer review of Saudi Arabia. The Phase 2 review of Saudi Arabia is scheduled to be launched in the first half of 2014, which would provide very little time for Saudi Arabia to address the recommendations made in this Phase 1 report. It is therefore proposed to reschedule the launch of the Phase 2 peer review of Saudi Arabia to the first half of 2015. In the meantime, a follow up report on the steps undertaken by Saudi Arabia to answer the recommendations made in this report should be provided to the PRG within one year following the adoption of this report.

Introduction

Information and methodology used for the peer review of Saudi Arabia

11. The assessment of the legal and regulatory framework of Saudi Arabia was based on the international standards of transparency and exchange of information as described in the Global Forum’s *Terms of Reference*, and was prepared using the *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations and exchange of information mechanisms in force or effect as at December 2012, other information, explanations and materials supplied by Saudi Arabia, and information supplied by partner jurisdictions.

12. The *Terms of Reference* (“ToR”) 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 Saudi Arabia’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of the findings against the elements is set out on pages 41-44 of this report.

13. The assessment was conducted by a team which consisted of two expert assessors and a representative of the Global Forum Secretariat: Ms. Harizan Hussin, Principal Assistant Secretary (Head of DTA & Bilateral Unit), Tax Analysis Division of the Ministry of Finance of Malaysia; Mr. Brian Harrington, IRS Chief Counsel attorney, United States; and Mr. Mikkel Thunnissen from the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Saudi Arabia.

Overview of Saudi Arabia

14. The Kingdom of Saudi Arabia (Saudi Arabia) covers 2 149 690 square kilometres, making up most of the Arab peninsula. It shares land borders with Iraq, Jordan, Kuwait, Oman, Qatar, the United Arab Emirates and Yemen. Riyadh is Saudi Arabia's capital, with Mecca and Medina (holy cities) and Dammam and Jeddah (economic centres) being the other main cities. Saudi Arabia's population is estimated to be around 26.5 million, of which more than 20% are non-nationals. The official language in Saudi Arabia is Arabic.

15. Saudi Arabia's economy is estimated to have grown by more than 6% in 2011 after a slowdown caused by the global economic crisis and low oil prices in 2009. This resulted in an estimated gross domestic product of USD 677 billion in 2011. The Saudi Arabian economy is dominated by the industrial sector which accounts for 67.5% of the economy, while services and agriculture make up 30.5% and 2% respectively. Oil forms the basis of the economy and most importantly the industrial sector, as Saudi Arabia has one of the largest proven oil reserves in the world and is one of the biggest exporters of oil. Saudi Arabia's main trading partners are the United States, China and Japan, followed by Korea, India, Germany and France. The official currency in Saudi Arabia is the Saudi riyal (SAR), which is pegged to the US dollar. As at 21 December 2012, SAR 4.96 = EUR 1.

Legal system

16. The system of rule in Saudi Arabia is that of a monarchy. The King is the Head of State and exercises executive power. The King is also the Prime Minister and the Crown Prince is the Deputy Prime Minister. The Council of Ministers assists the King in the performance of his duties and, besides the King and the Crown Prince, currently comprises 21 other ministers with portfolio (backed up by government ministries) and seven ministers of state.

17. In 1992 the Basic Law was ratified. It defines the Kingdom of Saudi Arabia as an Arab and Islamic sovereign state, with Islam as its religion and the Holy *Qur'an* and the *Sunnah* as its constitution. It also provides that "government in the Kingdom of Saudi Arabia is based on the premise of justice, consultation, and equality in accordance with the Islamic *Shari'ah*" (Section 8, Basic Law), making the *Shari'ah* the primary body of law in Saudi Arabia. *Shari'ah* also binds the rulers of Saudi Arabia and it therefore serves as a guideline for all legal matters. In general, *Shari'ah* law is derived primarily from the Holy *Qur'an* and secondarily from the *Sunnah* as noted down in *hadith*. The third source is *Ijma'*, the consensus of opinion of Muslim scholars on the principles involved in a specific case. *Qias*, reasoning by analogy, is the fourth source of *Shari'ah* law.

18. *Shari'ah* law is not codified as such. Specific legislation, which must be based on *Shari'ah* law, is adopted by resolution of the Council of Ministers and then ratified by the King, making it a Royal Decree. The Consultative Council (*Majlis al-Shura*), consisting of 150 members, usually advises on legislation and may also propose new or amending legislation. Both the members of the Council of Ministers and of the Consultative Council are appointed by the King. International agreements, like domestic legislation, are implemented in domestic law by Royal Decree. Saudi Arabia recognises a hierarchy of laws that is based on the principles of the *Shari'ah*. One of these principles is that laws that are directed to the good of humanity in general shall have precedence over laws applying to specific persons or a specific group of persons. In this hierarchy, as explained by Saudi Arabia, international agreements generally take precedence over domestic laws as they are considered for the larger good of humanity as opposed to domestic laws that cater to a smaller group.

19. The main part of Saudi Arabia's court system is formed by the *Shari'ah* courts, which have general jurisdiction over most civil and criminal cases. Cases are generally brought to the Courts of the First Instance (Summary and General Courts), and their decisions may be appealed to the Courts of Cassation and the Supreme Judicial Council. Supplementing the *Shari'ah* courts is the Board of Grievances, which mainly hears cases that involve the government. The third part of the Saudi court system consists of various committees within government ministries that address specific disputes, including tax disputes (dealt with by the Tax Committees). Finally, the King acts as the final court of appeal and as a source of pardon.

Investment and financial sector

20. In 2000 a new foreign investment law was enacted, opening up the Saudi Arabian economy to foreign investors. A license can now be obtained from the Saudi Arabian General Investment Authority (SAGIA) for any type of foreign investment, unless it is included in the Negative List (which includes the exploration and production of petroleum substances and a number of specified services). For some activities, such as distribution services (trading) and real estate projects, a considerable minimum investment must be made in order to obtain an investment license from SAGIA. Foreign investors often set up a limited liability company through which to conduct their business, which is subject to further approval of the Ministry of Commerce and Industry. The restructuring of its investment climate made it possible for Saudi Arabia to join the World Trade Organization in December 2005.

21. The Foreign Direct Investment (FDI) statistics show the developments in Saudi Arabia's investment climate. After being steady for many years, the FDI stock invested in Saudi Arabia increased from USD 17 577 million in

2000 to USD 170 450 million in 2010, with the most significant rise in recent years. From 2008-10 the inward FDI flows averaged USD 32 785 million, while the outward FDI flows averaged only USD 3 194 million.¹

22. The main regulator and supervisor of the financial sector is the Saudi Arabian Monetary Agency (SAMA). This institution acts as the Central Bank and supervises commercial banks and insurance companies. Investment funds are regulated and supervised by the Saudi Arabian Capital Market Authority. All banks must be licensed by SAMA and are subject to the Banking Control Law. The banking sector comprises 12 domestic banks and 11 branches of foreign banks. The assets in the (commercial) banking sector amounted to SAR 1 544 434 million (EUR 311 634 million) as at December 2011. The total assets managed by investment companies stood at SAR 82.2 billion (EUR 16.6 billion) (domestic assets SAR 64.5 billion (EUR 13 billion), foreign assets SAR 17.7 billion (EUR 3.6 billion)) in December 2011. Insurance companies are not allowed to conduct commercial for-profit insurance business.²

23. The Capital Market Authority is responsible for regulating and overseeing the Saudi Stock Exchange (*Tadawul*) and related activities. As at July 2012, 154 companies were listed on the *Tadawul* and their shares represented a market value of SAR 1 426 billion (EUR 288 billion).

24. All providers of financial services, trust services and company services, as well as lawyers and accountants are subject to obligations under AML/CFT legislation. In this regard they must carry out customer due diligence and report any suspicious transactions to the Saudi Arabia Financial Intelligence Unit, which is an autonomous authority under the Ministry of the Interior.

Taxation and international cooperation

25. The Saudi tax system is built around an income tax and zakat, which are complementary. The basic distinction is that income tax is levied on non-Saudi citizens while zakat is levied on Saudi citizens. A Saudi citizen is defined as a person holding Saudi nationality or who is treated as such. This means that nationals from one of the member states of the Cooperation Council for the Arab States of the Gulf, also known as Gulf Cooperation

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1. Data drawn from the United Nations Conference on Trade and Development (UNCTAD), available on <http://unctadstat.unctad.org>.
 2. The data in this paragraph was drawn from publications available on the website of the Saudi Arabian Monetary Agency: www.sama.gov.sa/sites/samaen/Pages/Home.aspx.

Council (GCC)³, are also regarded Saudi citizens for income tax and zakat purposes.

Income tax

26. Persons subject to income tax are:

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

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

28. Resident individuals are only subject to income tax if they are non-Saudi citizens conducting business in Saudi Arabia. The tax rates are the same as for companies.

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

30. Non-residents are subject to income tax on any income from sources in Saudi Arabia. With the exception of income attributable to a permanent establishment in Saudi Arabia, income from non-residents is subject to a withholding tax, including dividends (except those paid by companies in the oil and gas sector), loan charges (interest), royalties, management fees, rents and payments for technical and consulting services. The withholding tax

3. Current GCC member states are: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

rates vary from 5% to 20%. Payments for other services are also subject to a withholding tax of 15% and this includes any work performed for compensation except for the purchase and sale of goods.

Zakat

31. Zakat can be characterised as a direct tax on property and income which is levied in accordance with *Shari'ah* from all Saudi citizens and Saudi companies and partnerships to the extent of the participation of Saudi citizens. Private *waqfs*, dedicated to the benefits of certain persons, may also be subject to zakat. Zakat is levied on the payer's capital resources and its proceeds, receipts, profits and gains. Zakat is levied at a rate of 2.5%.

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

International cooperation

33. As a member of the G20, Saudi Arabia became a member of the Global Forum at its restructuring in 2009. Saudi Arabia started concluding Double Taxation Conventions (DTCs) including a provision on the exchange of information in 2006. It now has a network of 30 DTCs. Exchange of tax information is delegated to the Department of Zakat and Income Tax.

Recent developments

34. Saudi Arabia reports that new Zakat Regulations are currently under review, which would update the current regulations dating back to 1950. In addition, a new Company Law is under review by the Consultative Council. The new Company Law has no provision for issuance of bearer shares by any entity.

Compliance with the Standards

A. Availability of Information

Overview

35. 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 describes and assesses Saudi Arabia's legal and regulatory framework on availability of information.

36. Availability of ownership and identity information in respect of companies is generally ensured by the requirement to keep an up to date shareholder register. Joint stock companies and partnerships limited by shares have a possibility to issue bearer shares under the Companies Law, although registration of these entities would not be accepted in these circumstances and details of all shareholders must be provided to the Ministry of Commerce and Industry upon incorporation. In addition, this possibility is negated by the obligation under tax and zakat law to identify all owners and submit this information to the tax authorities with the annual tax return or zakat declaration.

37. Partnerships must be registered with the authorities and details of each partner must be furnished upon registration. Any change in this respect must also be registered, ensuring up to date ownership information on partnerships.

38. All *waqfs* (a concept similar to an endowment) are required to register with the Waqf Administration belonging to the Ministry of Islamic Affairs and Waqf. The Waqf Administration directly manages all public charitable *waqfs* and supervises the private *waqfs*. It keeps identity information on all these *waqfs*. In respect of foreign trusts with a Saudi Arabian trustee, further guidance should be introduced on what (ownership) information must be obtained by the trustee under AML/CFT legislation.

39. An obligation to keep reliable accounting records including underlying documentation for a period of at least five years is generally in place in respect of companies and partnerships. An express requirement to keep underlying documentation or to keep documentation for at least five years applies under the Commercial Books Law and the Income Tax Law. This requirement does, however, not cover partnerships with a capital of SAR 100 000 (EUR 20 189) or less. With respect to *waqfs*, the accounting records, including underlying documentation, are generally kept directly by the Waqf Administration.

40. The obligations under the AML/CFT legislation ensure that all records pertaining to the accounts as well as to related financial and transactional information are required to be kept by Saudi Arabian banks.

41. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities. The effectiveness of the enforcement provisions which are in place in Saudi Arabia will be assessed as part of its Phase 2 review.

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)

42. Under section 1 of the Companies Law (CL), a company is defined as “a contract under which two or more persons undertake to participate in an enterprise together, with each contributing a share in the form of money or services, with a view to dividing any profits or losses (incurred) as a result of such enterprise”. This definition comprises not only the concept of a “company”, but also that of a “partnership”, and the CL governs both types of entities. The term “partner” is used to refer to any person participating in the enterprise, whether as a shareholder or otherwise. The entities that may issue shares are discussed in this section of the report, as their characteristics are most similar to those of companies. The other entities governed by the CL are discussed in section A.1.3 (Partnerships) of this report.

43. The following main types of companies can be distinguished:
- Joint stock companies: these entities must have at least five shareholders, whose liability is limited to the amount payable on their shares. The shares in joint stock companies are freely transferable. As at 1 March 2012, there were 4 670 joint stock companies registered.
 - Limited liability companies (also referred to as limited liability partnerships, but the characteristics of this type of entity are more in line with those of a company): these entities must have at least two but not more than fifty shareholders. The shareholders are liable to the extent of their share in the company's capital, although in practice the courts generally do not recognise this as it is not supported by the corporate concepts of *Shari'ah* law. Shares are transferred before a public notary after having obtained the approval of the Ministry of Commerce and Industry and, if the company has foreign shareholders, the Saudi Arabian General Investment Authority. As at 1 March 2012, there were 50 212 limited liability companies registered.
 - Partnerships limited by shares: an entity which has at least one general partner, who is personally liable for the partnership's debts, and at least four limited partners, who are liable for the partnership's debts only to the extent of their shares in the capital of the partnership. The limited partners own shares as proof of their interest in the partnership's capital. As at 1 March 2012, there were 2 partnerships limited by shares registered.
44. Where the company's articles of association or bylaws provide that its capital may be increased by additional payments made by the shareholders or by the admission of new shareholders, or that their capital may be reduced by withdrawal of shareholders' shares from the capital, it is also referred to as a variable capital company (s. 181 CL).
45. Joint stock companies and limited liability companies may also be set up as co-operative companies when they have the object of reduction of cost, purchase, or sale price of certain products or services by engaging in the business of producing or brokering (s. 189 CL). A co-operative company remains subject to the provisions governing either the joint stock companies or the limited liability companies, depending on their form (s. 190 CL).
46. All companies formed under Saudi Arabian law are required to establish their head office in Saudi Arabia and are deemed to have Saudi Arabian nationality (s. 14 CL).
47. Registered shares (as opposed to bearer shares, see section A.1.2) in a joint stock company shall be transferred by means of entry in the shareholders register kept by the company. This register must contain the name,

nationality, residence address and occupation of each shareholder, and the number of shares held by him and the amount paid up on such shares (s. 102 CL). These rules equally apply to partnerships limited by shares (s. 155 CL).

48. Limited liability companies shall keep a register containing the shareholders' names, the number of shares held by them and the transactions affecting such shares. A transfer of shares is effective only after the reason of such transfer has been entered into the register (s. 166 CL).

49. Any official from a company who fails to observe the obligation to keep a shareholder register is liable to imprisonment for a period of at least three months but not more than one year and to a fine of at least SAR 5 000 (EUR 1 009) but not more than SAR 20 000 (EUR 4 037), or both (s. 229(8) CL).

Ownership information held by the authorities

50. The articles of association of a company and any amendments thereto must be recorded in writing in the presence of a registrar (s. 10 CL). The registrar is commonly known as a "public notary" and is in fact a public office of the Ministry of Justice. The registrar keeps a register of all companies formed in Saudi Arabia and the information kept by him includes the latest articles of association. Standard templates of articles of association have been issued in respect of the different types of companies. The templates for joint stock companies and partnerships limited by shares do not require full ownership information to be included. However, the names of the general partners in a partnership limited by shares must be included (s. 151 CL).

51. In respect of limited liability companies, the articles of association must at least include the same information as is included in the shareholders register (s. 161 CL), which means that ownership information is available at the public notary.

52. The incorporation of each company is announced by the Ministry of Commerce and Industry. For joint stock companies and partnerships limited by shares the subscribers' names and the number of shares subscribed to by each should also be furnished to the Ministry of Commerce and Industry in order to obtain a decision announcing the company's incorporation (s. 63 CL). For limited liability companies only the names of the subscribers contributing in kind must be provided to the Ministry of Commerce and Industry (s. 161 CL).

Commercial Register

53. In addition to recording its articles of association with the public notary and providing certain details to the Ministry of Commerce and Industry, companies must also apply for registration in the Commercial

Register within thirty days of the date on which its articles of association was recorded at the public notary (s. 52 CL and s. 3 Commercial Register Law (CRL)). The following details must be registered:

- (a) the type of company and its trade name;
- (b) the company's activity;
- (c) the company's capital;
- (d) the date of the company's incorporation and expiration;
- (e) the names, place and date of birth, address and nationality of the managers of the company and the signatories on their behalf; and
- (f) the address of the head office of the company and its branches and agencies inside and outside Saudi Arabia.

54. A copy of the company's articles of association and its bylaws (if any) must also be provided. The manager of the company shall apply for registration of any amendment to the information already registered within thirty days of the occurrence of the amendment (s. 4 CRL). Non-compliance with the registration requirements can result in a fine of not more than SAR 50 000 (EUR 10 094) (s. 15 CRL).

Tax and zakat law

55. To properly administer the income tax and zakat regimes, the Saudi Arabian tax authorities need full ownership information of companies, as it depends on the status of the shareholders (Saudi or non-Saudi) whether the company's income is subject to income tax or zakat, or both (see also the Introduction). To facilitate this, all companies formed under Saudi Arabian law are registered with the Department of Zakat and Income Tax ("the tax authorities").

56. In respect of the companies that have one or more foreign shareholders, the obligation to register is found in section 57(a) of the Income Tax Law (ITL). The registration form for companies contains a sheet for filling out details on all of their shareholders, including their names, addresses, the date on which the shares were acquired and the ownership percentage. The tax authorities have stated that they send out a form to all taxpayers at the start of every year requesting them to submit any changes to the registered details. In addition, an income tax return must be filed on an annual basis (s. 60 ITL), which requires the company to indicate whether changes have occurred in its ownership and if so, to provide the updated ownership information. Non-compliance with the timely filing of the complete annual income tax return can result in a penalty of maximum SAR 20 000 (EUR 4 038) or between 5% and 25% of unpaid tax (s. 76 ITL).

57. Companies that only have Saudi citizens as shareholders are not subject to income tax (see also Introduction). However, these companies are subject to zakat (s. 2 Royal Decree on Zakat Regulations and s. 1 Zakat Regulations). This requires them to file an annual declaration to the tax authorities (s. 8 Zakat Regulations). If not already registered, the tax authorities register the company upon its first zakat declaration. The tax authorities confirmed that the same details as for companies subject to income tax are registered, and this information is updated annually following the same procedure as for such companies, including the annual submission of a zakat declaration.

Ownership information held by service providers

58. Any person which is considered a “financial or non-financial institution” under the Anti-Money Laundering Law (AMLL) is required to verify the identity of its clients at the outset of dealing with these clients or when concluding transactions (s. 5 AMLL). The list of institutions covered by this obligation includes persons practicing law, and persons providing accounting or company services (s. 1 AMLL and Regulation 1-2 AMLL). These service providers must obtain and verify, among other details, the following information in respect of a company (Regulation 4-1 AMLL):

- (a) commercial registration issued by the Ministry of Commerce and Industry; and
- (b) a copy of the identification card of the persons who own the company and whose names are provided in the articles of association and their amendments.

59. This puts an express obligation on the service provider to identify all owners whose names are included in the articles of association of the company. The articles of association of limited liability companies should include the names of all owners. In respect of joint stock companies and partnerships limited by shares the names of the owners are generally not included in the articles of association, meaning that where such entity is a client, the service provider is not obliged to identify all owners. However, it should be noted that full ownership information on the legal owners is available through the register that the company is required to maintain (see above). Documentation in respect of the customer due diligence carried out must be kept by the service provider for at least ten years after completing the transaction (s. 6 AMLL). Failure to carry out customer due diligence or to keep the documentation for at least ten years can lead to imprisonment for a period not exceeding two years and a fine not exceeding SAR 500 000 (EUR 100 939) (s. 20 AMLL).

Foreign companies

60. In general, foreign companies need a license to carry on business in Saudi Arabia. As at February 2013, there were 3 089 companies wholly owned by foreigners licensed to carry on business in Saudi Arabia. Any foreign company that is licensed to open a branch or an office in Saudi Arabia must register with the Commercial Register (s. 6 LCR). This registration procedure, further specified in Implementing Regulations, does not include the furnishing of full ownership information on the foreign company.

61. For purposes of the income tax, a foreign company is considered a resident in Saudi Arabia if its central management is located in Saudi Arabia (s. 3(b)(2) ITL). The Saudi Arabian authorities report that only eight foreign companies are centrally managed from Saudi Arabia. These companies must register with the tax authorities as described above (under the heading “Tax and zakat law”). Such registration process includes the furnishing of ownership information. This information is then updated through the annual tax returns and zakat declarations, as well as through the practice of the Saudi Arabian authorities to send out a form to all taxpayers at the start of every year requesting them to submit any changes to the registered details.

Nominees

62. Nominee shareholdings are not expressly regulated under Saudi Arabia’s commercial laws, but nothing prevents shares from being held by a nominee, although it is unclear what legal status a nominee contract has. In any case, under the AMLL service providers must verify the identity of their clients and also determine whether a client is acting on behalf of another person, and if so, verify the identity of that other person (s. 5 AMLL and Regulation 4-4 AMLL). Service providers covered by these obligations include financial institutions, lawyers, accountants and persons providing company services (s. 1 AMLL and Regulation 1-2 AMLL). It may be expected that providing nominee shareholding services is regarded a company service, although the term “company services” is not defined. In any case, persons who would be expected to act professionally as a nominee shareholder are generally covered by the obligations under the AMLL to identify the person they are acting for. Non-compliance with these obligations can lead to imprisonment for a period not exceeding two years and a fine not exceeding SAR 500 000 (EUR 100 939) (s. 20 AMLL).

63. Nominee shareholders that are not service providers covered by the AMLL do not have a specific legal obligation to retain identity information on the person for whom they act as the legal owner. It may be expected that such nominees do know who their client is in order to correctly perform their duties as a nominee. In addition, these nominees might establish a

relationship with a financial institution in Saudi Arabia (e.g. opening a bank account to receive dividends on the shares they hold) and, as explained in the previous paragraph, in that case the financial institution is required to verify the identity of the person for whom the nominee acts as a legal owner, and to retain this information. In any case, the group of nominee shareholders not covered by the AMLL would primarily consist of persons performing services gratuitously or in the course of a purely private non-business relationship and is therefore likely to be limited. A practical assessment of the matter will take place in the Phase 2 peer review of Saudi Arabia.

Conclusion

64. The availability of ownership information on companies is ensured by the requirement for all companies to keep a register of shareholders including the details of all shareholders and any transfer of shares (except in relation to bearer shares, see also A.1.2). In addition, ownership information on limited liability companies is also available at the public notary and the Commercial Register. Finally, all companies incorporated in Saudi Arabia as well as foreign companies having their place of effective management in Saudi Arabia are registered with the tax authorities, which includes the furnishing of ownership information. This information is then updated through the annual tax returns and zakat declarations as levy of income tax or zakat is dependent on the proportion of Saudi and non-Saudi owners. Persons acting professionally as a nominee shareholder must identify the person who they are acting for as a nominee according to the AML/CFT legislation.

Bearer shares (ToR A.1.2)

65. With respect to limited liability companies, identity details of all shareholders must be included in the articles of association and in the shareholders register (ss. 161 and 166 CL). In addition, a transfer of shares is effective only after the reason of such transfer has been entered into the register (s. 166 CL). It is therefore not possible for anyone to own shares in a limited liability company without having their name entered in the register of members, thus bearer shares in limited liability companies do not exist in Saudi Arabia.

66. Section 99 CL provides that a share of a joint stock company may be issued to a registered holder or to bearer. Bearer shares are transferable by mere delivery (s. 102 CL). These rules equally apply to partnerships limited by shares (s. 155 CL). On the other hand, upon incorporation of these entities the subscribers to the shares, or their representative, must sign a document containing the subscriber's name, address, occupation and nationality, as well as the number of shares subscribed to (s. 57 CL). The subscribers' names and

the number of shares subscribed to by each should also be furnished to the Ministry of Commerce and Industry in order to obtain a decision announcing the company's incorporation (s. 63 CL).

67. The Saudi Arabian authorities state that they interpret the obligation to identify and register all initial shareholders of a joint stock company as a prohibition on bearer shares in general. The Ministry of Commerce and Industry stated that they would not accept the registration of a company that has issued bearer shares, and also indicated that they have never encountered a joint stock company which had issued bearer shares, while representatives of the Ministry of Commerce and Industry attend the shareholder meetings of all joint stock companies.

68. Notwithstanding the reference in the CL to bearer shares, joint stock companies must also comply with tax and zakat law. As mentioned above under A.1.1, the Saudi Arabian tax authorities need full ownership information of companies, as it depends on the status of the shareholders (Saudi or non-Saudi) whether the company's income is subject to income tax or zakat, or both. For that reason, ownership information must be furnished to the tax authorities upon registration and with the annual income tax return or zakat declaration. In order to meet these obligations, joint stock companies need to be able to identify their shareholders at all times and bearer shares would therefore not be issued.

69. Finally, it is noted that in respect of companies the shares of which are traded on the stock exchange, section 27 of the Capital Market Law requires the registration of ownership records. According to the Saudi Arabian authorities, this means that no bearer shares can be traded on the Saudi Stock Exchange. As at July 2012, 154 companies are traded on the Saudi Stock Exchange.

70. It can be concluded that it is not possible for limited liability companies to issue bearer shares. Joint stock companies and partnerships limited by shares may have a possibility to issue bearer shares under the Companies Law, but registration of such entities would not be accepted in these circumstances. In addition, this possibility is negated by the obligation under tax and zakat law to identify all owners and submit this information to the tax authorities with the annual tax return or zakat declaration. Finally, the Saudi Arabian authorities have stated that no bearer shares exist in practice. Nevertheless, the reference to bearer shares in the Companies Law as well as the impact of the discrepancy between the Companies Law and the tax and zakat law in practice shall be further examined during the Phase 2 review of Saudi Arabia.

Partnerships (ToR A.1.3)

71. In Saudi Arabia, partnerships are governed by the same law as companies, the CL, and the definition of the term “company” of section 1 CL (see above) also applies to partnerships. The CL sets out rules for the following types of partnerships:

- General partnership: an association of two or more persons who are jointly and personally liable for the partnership’s debts (s. 16 CL). Only natural persons may act as a general partner (Decision No. 17, 20 Muharram 1402 (16 November 1981)). As at 1 March 2012, there were 9 668 general partnerships registered.
- Limited partnership: this entity includes two types of partners. General partners are personally liable for partnership debts to the full extent of their personal assets, while limited partners are liable for partnership debts to the extent of their investment in the partnership (s. 36 CL). As at 1 March 2012, there were 4 101 limited partnerships registered.

72. Establishing a partnership in Saudi Arabia occurs through entering into a written partnership agreement and having it recorded with a public notary (s. 10 CL). Partnerships are separate legal entities and can do business and own property in their own name. All partnerships formed under Saudi Arabian law are required to establish their head office in Saudi Arabia (s. 14 CL).

73. The partnership agreement of general and limited partnerships would contain detailed information about the partners. An abstract of the partnership agreement must be published in a daily newspaper which is distributed near the location of the partnership’s head office (s. 21 CL). This abstract must contain the following details (ss. 22 and 39(2) CL):

- (a) the partnership’s name, object, head office, and branches (if any);
- (b) the name, residence address, occupation and nationality of every general partner;
- (c) the amount of the partnership’s capital with sufficient details concerning the contribution each partner (including the limited partners) has undertaken to make, and the date on which it becomes payable;
- (d) the names of the managers and the persons authorised to sign for the partnership;
- (e) the date of formation of the partnership and its term; and
- (f) the beginning and end of the partnership’s financial year.

74. The abstract contains information on the identity of all general partners and also refers to the contribution made by the limited partners where there is a limited partnership. The identity of the limited partners is not published, as this could be regarded as an act giving the impression that the limited partner is in fact a general partner, making the limited partner liable for all partnership debts (ss. 37 and 38 CL). The identity of the limited partners is available in the partnership agreement which is kept by the public notary.

Ownership information held by the authorities

75. In addition to the publication of an abstract in a daily newspaper, the complete partnership agreement and any amendment thereto, including where a new partner enters the partnership or where a partner leaves the partnership, is also recorded by the public notary (s. 10 CL). As the partnership agreement contains details of both general and limited partners, this means that full ownership information on all partnerships is available with the public notary.

76. In addition to recording its partnership agreement with the public notary, partnerships must also apply for registration in the Commercial Register within thirty days of the date on which its partnership agreement was recorded with the public notary (ss. 21 and 39(2) CL and s. 3 Commercial Register Law (CRL)). The details to be registered are the same as for companies (see above) and include the name, place and date of birth, address and nationality of each general partner in a (general or limited) partnership (s. 3 CRL). A copy of the partnership agreement must also be provided. The manager of the partnership shall apply for registration of any amendment to the information already registered within thirty days of the occurrence of the amendment (s. 4 CRL). Non-compliance with the registration requirements can result in a fine of not more than SAR 50 000 (EUR 10 094) (s. 15 CRL).

Tax and zakat law

77. Even though partnerships are legally considered separate legal entities, for income tax purposes they are regarded as transparent and tax is imposed on the partners. However, the partnership (if subject to tax) must file a tax return showing all financial details of the partnership for the taxable year (s. 36(a) ITL). In addition, the partners must also file a tax return stating their income subject to tax from the partnership (s. 17(2) Income Tax Regulations).

78. All partnerships formed under Saudi Arabian law are registered with the tax authorities. Partnerships with one or more foreign partners as well as foreign partnerships carrying on business in Saudi Arabia through

a permanent establishment must register according to section 57(a) of the Income Tax Law (ITL). The registration form for partnerships is the same as for companies (partnerships are often referred to as “personal companies” in Saudi Arabia) and contains a sheet for filling out details on their shareholders (= partners), including their names, addresses, the date on which the “shares” were acquired and the ownership percentage. The tax authorities indicated that they send out a form to all taxpayers at the start of every year requesting them to submit any changes to the registered details. In addition, an income tax return must be filed on an annual basis (s. 60 ITL), which includes an attachment containing information on the partners. Non-compliance with the timely filing of the complete annual income tax return can result in a penalty of maximum SAR 20 000 (EUR 4 038) or between 5% and 25% of unpaid tax (s. 76 ITL).

79. Partnerships that only have Saudi citizens as partners are not subject to income tax (see also Introduction). However, these partnerships are subject to zakat (s. 2 Royal Decree on Zakat Regulations and s. 1 Zakat Regulations). This requires them to file an annual declaration to the tax authorities (s. 8 Zakat Regulations). If not already registered, the tax authorities register the partnership upon its first zakat declaration. The tax authorities confirmed that the same details as for partnerships subject to income tax are registered, and this information is updated annually following the same procedure as for such partnerships including the annual submission of a zakat declaration.

Conclusion

80. Information on the partners in a Saudi Arabian partnership is available in the partnership agreement which has to be recorded by the public notary. An abstract of the partnership agreement, including the names of the general partners, must be published in a daily newspaper. In addition, details of all partnerships formed under Saudi Arabia’s law or of foreign partnerships carrying on business in Saudi Arabia through a permanent establishment must be provided to the tax authorities upon registration. The extent to which this information is updated annually shall be examined in the Phase 2 review of Saudi Arabia.

Trusts (ToR A.1.4)

81. In Saudi Arabia, the concept of trusts does not exist. However, there is nothing in Saudi Arabia’s laws that would prevent a person from acting as a trustee or trust administrator of a trust formed under foreign law.

Waqf

82. A fiduciary concept, similar to endowments, known as *waqf*, exists. A *waqf* is formed if one person, the waqif, brings assets under the control of another person, in Saudi Arabia called a nad'r. In general, *waqf* is seen as a voluntary act of benevolence, which means that it cannot be established for the benefit of rich people alone, and the waqif's wishes must be respected to the letter unless they violate Islamic law. The concept of *waqf* is generally used to provide public charitable services. These are directed to the use of a property or asset towards common good and benefit to the public at large, and the vast majority of the *waqfs* falls into this category. It is also possible to form a private *waqf*, which still must adhere to the general principle of benevolence.

83. A *waqf* is in principle also established forever. This means that the assets in a *waqf* are often real estate or other assets with a certain level of perpetuity. The assets generally become inalienable and the proceeds are spent for the benefit of the beneficiaries or, if no specific beneficiaries exist, for a philanthropic purpose. The perpetuity of *waqf* means that the asset's proceeds fall either to the benefit of a string of beneficiaries or a (general) philanthropic purpose. Where the (string of) beneficiaries are no longer alive, the revenues of the assets of the *waqf* will be allocated to a philanthropic purpose as close as possible to the initial purpose.⁴

Ownership information held by the authorities

84. For a *waqf* to be valid, the waqif needs to obtain a court order converting the assets from privately owned assets to assets under the *waqf*. A court order will only be issued after the court has received and reviewed the necessary documents, including the deed establishing the *waqf* which contains details of the nad'r and, where identifiable, the beneficiaries. Changes to the instrument pertaining to the *waqf* must also be approved by a court.

85. After receiving a court order validating the *waqf* or validating changes to the *waqf* instrument, every *waqf* is required to register with the Waqf Administration belonging to the Ministry of Islamic Affairs and Waqf (s. 9 Waqf Regulations). As at July 2012, there were 8 133 *waqfs* registered. The Waqf Administration has local offices administering or supervising all *waqfs*. In respect of public charitable *waqfs* the Waqf Administration keeps a copy of the *waqf* deed identifying the waqif, the endowed property or asset and the purpose of the *waqf*. Public charitable *waqfs* are directly managed by

4. The general information on the concept of *waqf* is mainly taken from http://monzer.kahf.com/papers/english/WAQF_A_QUICK_OVERVIEW.pdf.

the Waqf Administration in the town where the assets are located (s. 2 Waqf Regulations).

86. The Waqf Administration also supervises private *waqfs*. For that purpose, the Waqf Administration keeps a copy of the *waqf* deed of private *waqfs* as well, and keeps a file identifying the waqif, the nad'r, the endowed property or assets and the beneficiaries (s. 7 Waqf Regulations). If there are no more surviving beneficiaries or upon approval of the nad'r or a court, the administration of a private *waqf* falls into the hands of the Waqf Administration and its proceeds will be allocated to a public purpose (s. 4 Waqf Regulations). Of the approximately 8 000 *waqfs* registered in Saudi Arabia only about 1% are managed by private individuals (nad'r) and all others are directly managed by the Waqf Administration.

Tax and zakat law

87. *Waqfs* are only subject to zakat where they are engaged in any type of commercial activity or where persons who are Saudi citizens are beneficiaries of the *waqf*. As the annual zakat declarations require ownership information to be submitted, information on the beneficiaries should be available with the tax authorities in these cases. Currently, two *waqfs* are registered with the tax authorities.

Foreign trusts

88. Any person providing trust services, which would include a trustee or a trust administrator of a foreign trust, is subject to the requirements under the AMLL (Regulation 1-2 AMLL). This means that the identity of their clients must be verified (s. 5 AMLL). No specific requirements on which information must be obtained if the client is a trust are provided for. However, the AML/CFT Guidelines for banks and money exchangers provides that where the client is a trustee, the bank must determine the provider of the funds (settlor), those who have control over the funds (trustees) and the persons who have the power to remove the trustee (paragraph 4.5.7 AML/CFT Guidelines for banks and money exchangers). This implies that where the trustee itself is the person who must perform customer due diligence, such information is the minimum that he would have to obtain. However, such information does not include information on the identity of the beneficiaries.

89. Documentation in respect of the customer due diligence carried out must be kept by the service provider for at least ten years after completing the transaction (s. 6 AMLL). Failure to carry out customer due diligence or to keep the documentation for at least ten years can lead to imprisonment for a period not exceeding two years and a fine not exceeding SAR 500 000 (EUR 100 939) (s. 20 AMLL).

Conclusion

90. All *waqfs* in Saudi Arabia are registered with the Waqf Administration, which is part of the Ministry of Islamic Affairs. Public charitable *waqfs*, which do not have identified persons as beneficiaries, are managed by the Waqf Administration directly. Information kept by the Waqf Administration includes a copy of the *waqf* deed identifying the waqif, the endowed property or asset and the purpose of the *waqf*. In respect of private *waqfs*, the Waqf Administration maintains a file identifying the waqif, the nad'r, the endowed property or assets and the beneficiaries. This ensures the availability of identity information on all *waqfs* in Saudi Arabia.

91. Saudi Arabian trustees of foreign trusts are subject to requirements to identify their client (which is typically the trust and/or the settlor and/or the beneficiaries) under the AML/CFT legislation. However, no clear guidance is provided on what information must be obtained by the trustee to satisfy these requirements. It is therefore recommended that Saudi Arabia ensures that ownership information on foreign trusts with a trustee or trust administrator in Saudi Arabia is available in all cases.

Foundations (ToR A.1.5)

92. Foundations exist in Saudi Arabia to the extent that it is possible to form a legal entity to which assets are transferred by the founder(s), which are then held for the benefit of a particular purpose. Such entities are referred to as philanthropic associations. However, it is only possible to form such entities for charitable purposes (ss. 3 and 4 of the Implementing Regulations of By-Law of Philanthropic Associations and Organisations), and therefore they are of limited pertinence to the exchange of information for tax purposes. As at July 2012, there were 623 philanthropic associations registered in Saudi Arabia with the Ministry of Social Affairs, which is responsible for regulating and overseeing their operations. Saudi Arabian authorities stated that for supervision purposes, the Ministry of Social Affairs has available up-to-date information on the members of the associations as well as on the members of the governing body.

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

93. Jurisdictions should have in place effective enforcement provisions to ensure the availability of ownership and identity information, one possibility among others being sufficiently strong compulsory powers to access the information. This subsection of the report assesses whether the provisions requiring the availability of information with the public authorities or within the entities reviewed in section A.1 are enforceable and failures are punishable. Questions linked to access are dealt with in Part B.

94. Companies are required to keep a shareholder register, which must record all share transfers (except for bearer shares) for them to take effect. Any official from a company who fails to observe this obligation is liable to imprisonment for a period of at least three months but not more than one year and to a fine of at least SAR 5 000 (EUR 1 009) but not more than SAR 20 000 (EUR 4 037), or both (s. 229(8) CL).

95. Ownership information on limited liability companies is also included in its articles of association, which must be recorded in the presence of a public notary and registered in the Commercial Register. Amendments to the articles of association must be registered in the Commercial Register within thirty days of the occurrence of the amendment. Non-compliance with the registration requirements (which includes registering any amendments) can result in a fine of not more than SAR 50 000 (EUR 10 094) (s. 15 CRL).

96. Full ownership information in respect of partnerships must be provided at the time of registration in the Commercial Register and any amendments must be registered within thirty days. Non-compliance with the registration requirements can result in a fine of not more than SAR 50 000 (EUR 10 094) (s. 15 CRL).

97. All *waqfs* in Saudi Arabia are registered with the Waqf Administration and are either directly managed or supervised by the Waqf Administration, which ensures that the Waqf Administration has full identity information on all waqfs. In relation to trustees and trust administrators of foreign trusts subject to AMLL, a failure to identify their client (which may contain identifying the settlors and/or beneficiaries) can lead to imprisonment for a period not exceeding two years and a fine not exceeding SAR 500 000 (EUR 100 939) (s. 20 AMLL).

98. Ownership information must also be provided to the tax authorities upon registration and upon filing the annual tax or zakat return. This applies to all entities and arrangements subject to income tax or zakat, which includes all companies (including foreign companies effectively managed from Saudi Arabia) and partnerships. In respect of persons subject to income tax, a fine not less than SAR 1 000 (EUR 202) and not exceeding SAR 10 000 (EUR 2 019) shall be imposed for failure to register (s. 57(c) ITL), while non-compliance with the timely filing of the complete annual income tax return can result in a penalty of maximum SAR 20 000 (EUR 4 038) or between 5% and 25% of unpaid tax (s. 76 ITL). While there are no monetary penalties for failure to register as a zakat payer or for failure to file the annual zakat declaration, which comprises all entities with no foreign participation, this will result in the denial by the tax authorities to issue a zakat certificate. The zakat certificate is issued annually to certify that a person has complied with its duties to pay zakat, and is required for a person to bid for contracts and obtain licenses to do business.

Conclusion

99. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements. The effectiveness of these enforcement provisions will be assessed as part of Saudi Arabia’s Phase 2 review.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Although a general obligation exists for trustees and trust administrators of foreign trusts to identify their client under AML/CFT legislation, no clear guidance is provided on what information needs to be obtained.	Saudi Arabia should ensure that ownership information on foreign trusts with a trustee or trust administrator in Saudi Arabia is available in all cases.

A.2. Accounting records

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

100. A condition for exchange of information for tax purposes to be effective is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction, is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records.

General requirements (ToR A.2.1)

101. Joint stock companies and partnerships limited by shares must make an inventory of the value of the company’s assets and liabilities at the end of every financial year, as well as preparing a balance sheet, a profit and loss statement, a report on their operations and financial position for that financial year and the proposed method for allocation of the net profits (ss. 123 and 155 CL). Their accounts must also be audited and the auditor must submit its report to the annual general shareholders meeting (ss. 129-133 CL). In addition, copies of the balance sheet, the profit and loss statement, the directors’ report and the auditor’s report must be submitted to the Commercial Register and the Companies Register (s. 128 CL).

102. Similar to joint stock companies and partnerships limited by shares, limited liability companies must prepare a balance sheet, a profit and loss statement, a report on the operations and financial position of the company and a proposal on the appropriation of net profits within four months of the end of each financial year (s. 175 CL). Its accounts must then be audited as well (s. 169 CL). In addition, copies of the documentation prepared by the company must be submitted to the Companies Register (s. 175 CL).

103. With respect to general and limited partnerships, the profits or losses and the share of every partner therein shall be determined at the end of the partnership's financial year on the basis of the balance sheet and the profit and loss statement (ss. 26 and 39(3) CL). Also, all partners have a right to examine the partnership's books and records, and extract therefrom a summary statement on the financial position of the partnership (ss. 24 and 39(3) CL).

104. The following persons are liable to imprisonment for a period of at least three months but not more than one year and to a fine of at least SAR 5 000 (EUR 1 009) but not more than SAR 20 000 (EUR 4 037), or both (s. 229(6 and 8) CL):

- Any manager, director, auditor or liquidator of a company or partnership who knowingly includes false information in the balance sheet or profit and loss statement, or in the related reports, or who omits facts from such reports with the intention of concealing the financial position of the company or partnership.
- Any official from a company or partnership who fails to observe the mandatory rules issued under the CL. The rules on keeping accounting records are mandatory.

105. It follows from the obligations described above that accounting records must be kept by companies and partnerships that (i) correctly explain all transactions through the profit and loss statement, (ii) enable the financial position to be determined with reasonable accuracy through the balance sheet and (iii) allow financial statements to be prepared using the previously mentioned information.

106. In respect of *waqfs*, it is the Waqf Administration, part of the Ministry of Islamic Affairs, which administers almost all *waqfs* directly and therefore keeps all relevant data. This includes information on the type of property endowed, the location and size of the property endowed, the type of investment made as well as the property's yield, and endowment identification documents (sections 5 to 9 Waqf Regulations and sections 3(9) and 6(5) Waqf Supreme Council System). Similar information is kept by the Waqf Administration regarding private *waqfs*, which are administered by another person, in order for the Waqf Administration to carry out its task as supervisor of these private *waqfs* (s. 4 Waqf Regulations).

107. The Saudi Arabian authorities indicate that the Public Auditing Bureau performs an annual audit of the accounts of the *waqfs* administered by the Waqf Administration.

Commercial books

108. Under the Commercial Books Law (CBL) merchants are required to keep the commercial books required by the nature and importance of his trade in a way that shows his exact financial status and the rights and obligations pertaining to his trade. In addition, the merchant shall at least keep an original journal, an inventory book and a general ledger (s. 1 CBL). More specific requirements are that all financial transactions shall be recorded, and a copy of the annual statement regarding the financial position of the merchant shall be kept (ss. 3 and 4 CBL). A person who fails to comply with the record-keeping requirements is liable to a fine of at least SAR 5 000 (EUR 1 009) but not more than SAR 20 000 (EUR 4 037) (s. 12 CBL).

109. The term “merchant” is not defined in the CBL, but the term “merchant” is defined in section 1 of the Law of Commercial Court as “a person engaged in commercial transactions and making such engagement his profession”. The Saudi Arabian authorities confirmed that this definition also applies to the CBL and includes all companies and partnerships, since these are defined as “a contract under which two or more persons undertake to participate in an enterprise together, [...]” (s. 1 CL).

110. Any merchant whose capital does not exceed SAR 100 000 (EUR 20 189) is exempt from keeping books and records under the CBL (s. 1 CBL). The different kinds of companies are not affected by this rule, as they must have a minimum capital ranging from SAR 500 000 (EUR 100 939) in the case of limited liability companies to SAR 10 million (EUR 2 million) for joint stock companies with shares offered to the public (ss. 49, 150 and 158 CL). Smaller partnerships are covered by the exemption. However, it is noted that all partnerships are subject to the record-keeping obligations of the CL.

Tax and zakat law obligations

111. Section 58(a) ITL requires taxpayers (other than non-residents with no permanent establishment in Saudi Arabia) to maintain the necessary commercial books and accounting records for precise determination of the tax payable by it. This requirement is further explained as an obligation to keep at a minimum the general journal, ledger, inventory book and other accounting records as may be necessary to accurately determine tax liability (s. 56(1) ITL Regulations). It is also stated that taxpayers must comply with the CBL as well (s. 56(1) ITL Regulations). A failure to keep accurate accounting records may lead to a fine of 25% of the tax unpaid as a result of such failure (s. 77(b)(1-3 and 5) ITL).

112. The concept of taxpayer under the ITL is limited and does not include companies and partnerships with no foreign shareholders or partners (ss. 1 and 2 ITL). The obligation to keep accounting records under ITL therefore only applies to a limited number of entities.

113. Companies and partnerships with Saudi citizens as shareholders or partners as well as *waqfs* which have identified persons as beneficiaries, are subject to the Zakat Regulations (ZR). This means that they are required to keep organised books that show capital, receipts and expenditure relevant to their activity for each year (s. 6 ZR). This obligation should ensure that accounting records are held that correctly explain all transactions (“receipts and expenditure”) and enables the entities financial position to be determined with reasonable accuracy (“capital”). This information should then allow financial statements to be prepared. No penalties apply for not keeping accounting records under s. 6 ZR.

114. An obligation to keep certain accounting records also applies to all residents in Saudi Arabia who make payments to a non-resident from a source in Saudi Arabia that are subject to withholding tax (s. 68(a) ITL). All payments for services provided are subject to withholding tax, as well as dividends, loan charges (interest) and royalties (s. 63 ITL Regulations). The records to be held are the records relevant to prove compliance with the withholding tax provisions, and shall at least include the name and address of the recipient, the type and amount of the payment and the amount withheld (s. 68(b)(4) ITL and s. 63(9)(c) ITL Regulations).

115. Another source for the tax authorities to obtain certain accounting information lies in the obligation for all persons (not only taxpayers) and government bodies to provide them with information on contracts concluded with the private sector within three months of the date of conclusion of the contract (s. 61(c) ITL). The Saudi Arabian authorities indicate that the “private sector” includes all individuals, entities and arrangements that conduct business in Saudi Arabia. The information shall include the names and addresses of the parties, the subject of the contract, its value and financial terms and the execution and completion dates. Section 58 ITL Regulations further clarifies that the obligation applies with respect to construction, service and delivery contracts with a value of at least SAR 100 000 (EUR 20 189). The tax authorities also have the right to request a copy of the contract. Any person responsible for notifying the tax authorities which fails to comply with such obligation shall be jointly liable with the taxpayer for the tax due on the contract and for any tax penalties resulting therefrom (s. 58(2) ITL Regulations).

Underlying documentation (ToR A.2.2)

116. The CL does not expressly state that underlying documentation must be kept by companies and partnerships. The accounts of all companies do

have to be audited. However, an express obligation to keep underlying documentation is included in the CBL. Section 6 CBL reads as follows:

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

117. A person who fails to comply with the record-keeping requirements is liable to a fine of at least SAR 5 000 (EUR 1 009) but not more than SAR 20 000 (EUR 4 037) (s. 12 CBL). As explained under section A.2.1 the obligations of the CBL apply to all companies and to partnerships with a capital of more than SAR 100 000 (EUR 20 189). These entities are also subject to the obligations under the CL, which requires them to keep accounting records generally. The Saudi Arabian authorities indicate that this includes the keeping of underlying documentation, even though this is not expressly stated.

118. Saudi Arabian authorities confirmed that the Waqf Administration follows the same principle as included in the CBL in keeping accounting records with respect to the *waqfs* managed and supervised by them.

119. Persons subject to income tax, which is only a limited group of persons (companies and partnerships with foreign shareholders or partners, are also expressly required to keep supporting documents and explanatory data and remarks (s. 56(1) ITL Regulations). A failure to keep accurate accounting records (including underlying documentation) may lead to a fine of 25% of the tax unpaid as a result of such failure (s. 77(b)(1-3 and 5) ITL). Furthermore, explicit reference is made to the CBL and the fact that all taxpayers must comply with the obligations contained in that law as well.

120. Whether or not otherwise caught by an obligation to keep underlying documentation, any person must keep contracts concluded with the private sector with a value of at least SAR 100 000 (EUR 20 189), as it is required to furnish information on such contracts to the tax authorities and a copy should be available for the tax authorities at all times (s. 61(c) ITL and s. 58 ITL Regulations).

5-year retention standard (ToR A.2.3)

121. Under section 8 CBL, all merchants must keep the accounting records, including underlying documentation, for a period of at least ten years. This obligation also applies to taxpayers subject to income tax (s. 56(1) ITL Regulations). The documentation on contracts concluded with the private sector must also be kept for a period of at least ten years (s. 63(9)(c) ITL Regulations).

122. The obligation to keep accounting records, including underlying documentation, for a period of at least ten years applies to the same persons as the obligation to keep underlying documentation, which excludes partnerships with a capital of less than SAR 100 000 (EUR 20 189). However, section 12 of the Certified Public Accountants Law requires that all public accountants maintain “documents received from clients, audit working papers and copies of financial statements pertaining to his clients” for a minimum period of ten years. This means that if partnerships have their accounts audited, this information, which is understood not to include the full accounting records of these partnerships, will be available in Saudi Arabia.

123. In respect of *waqfs*, accounting records, including underlying documentation, are kept indefinitely by the Waqf Administration according to the Saudi Arabian authorities.

Conclusions on A.2

124. All companies and partnerships must keep general accounting records under both the Companies Law and the Commercial Books Law. In respect of *waqfs*, accounting information, including underlying documentation, is kept by the Waqf Administration.

125. Obligations to keep underlying documentation and to keep accounting records for a period of at least ten years are only provided for under the Commercial Books Law and the Income Tax Law. These pieces of legislation do not apply to partnerships with a capital of less than SAR 100 000 (EUR 20 189), unless these partnerships have foreign partners. It is therefore recommended that Saudi Arabia ensures that all partnerships are required to keep underlying documentation and to keep accounting records for a period of at least five years.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Partnerships with a capital of SAR 100 000 (EUR 20 189) or less without foreign partners are not expressly required to keep underlying documentation or to keep documentation for at least 5 years.	Saudi Arabia should ensure that all partnerships are required to keep underlying documentation and to keep accounting records for a period of at least 5 years.

A.3. Banking information

Banking information should be available for all account-holders.

126. No person is allowed to engage in banking business in Saudi Arabia unless it holds a valid license for that purpose issued by the Ministry of Finance on a recommendation from the Saudi Arabian Monetary Agency (ss. 2 and 3 Banking Control Law). The Saudi Arabian Monetary Agency (SAMA) is the regulatory and supervisory body for the banking industry. As at December 2011, a total of 23 banks (12 domestic banks and 11 branches of foreign banks) operate in Saudi Arabia.

Record-keeping requirements (ToR A.3.1)

127. Banks must produce all required books and records of accounts and other documents when an inspection is conducted by SAMA or auditors appointed by SAMA (s. 18 Banking Control Law). This would include all records that a bank, as a business entity, is required to keep under the CBL and the CL (see A.2), but also the records that must be kept under AML legislation, as explained below.

128. Under section 1(5) AMLL in conjunction with Regulation 1-2 AMLL banks are regarded as financial institutions and they must therefore carry out customer due diligence and keep, for a period of at least ten years after a transaction or the closing of an account, all records and documents to show the financial dealings, commercial and cash transactions, account files, business correspondence and copies of personal identification documents of their clients (ss. 5 and 6 AMLL).

129. Paragraph 4.10 of the AML/CFT Guidelines for banks and money exchangers specifically state that the records that are kept should be adequate enough to be able to reconstruct a transaction and offer a complete audit trail of all financial transactions, in particular cash transactions and funds transfer. It then goes on to list the following records to be kept permanently:

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

130. Failure to carry out customer due diligence or to keep the documentation for at least ten years can lead to imprisonment for a period not exceeding two years and a fine not exceeding SAR 500 000 (EUR 100 939) (s. 20 AMLL).

131. The customer identification obligations and record keeping obligations on all transactions require banking information to be available in Saudi Arabia for all account holders.

Determination and factors underlying recommendations

Determination
The element is in place.

B. Access to Information

Overview

132. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access 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. This section of the report examines whether Saudi Arabia's legal and regulatory framework gives to its competent authority access powers that cover all relevant persons and information, and whether the rights and safeguards that are in place would be compatible with effective exchange of information.

133. Saudi Arabia's competent authority, the Department of Zakat and Income Tax, has the power to request all types of information from any person, including other government bodies, irrespective of whether or not the person is subject to tax in Saudi Arabia. This power can be used for information exchange purposes under a relevant international agreement, such as a Double Taxation Convention, where the agreement contains a provision corresponding to Article 26(4) of the OECD Model Tax Convention. This is because the hierarchy of laws in Saudi Arabia, based on the Islamic *Shari'ah*, places international agreements providing for exchange of tax information above domestic legislation once the international agreement is implemented in Saudi Arabian domestic law by Royal Decree.

134. Following the same hierarchy of laws, the principle of bank secrecy is overridden by international agreements containing a provision corresponding to Article 26(5) of the OECD Model Tax Convention. In these cases, the Saudi Arabian Monetary Agency (SAMA) will use its own information gathering powers to obtain information from banks when requested to do so by Saudi Arabia's competent authority.

135. As at January 2013, 10 out of the 30 DTCs concluded by Saudi Arabia contain provisions corresponding to Articles 26(4) and 26(5) of the

OECD Model Tax Convention. Saudi Arabia should ensure that its competent authority has the power to obtain all relevant information with respect to all information exchange agreements (regardless of their form).

136. Saudi Arabia has the possibility to apply search and seizure powers in order to obtain information from persons subject to income tax. In addition, zakatpayers may be refused a zakat certificate if they refuse to provide information for EOI purposes. Both compulsory powers are, however, not very well adapted to obtaining information for EOI purposes. It is therefore recommended that Saudi Arabia reviews its powers for compelling the provision of information for EOI purposes to ensure access to this information.

137. In Saudi Arabia, the rules regarding attorney-client privilege are in line with the international standard. There is also no requirement in Saudi Arabia's domestic legislation that the taxpayer under investigation or examination must be notified of a request, and no other rights and safeguards exist in Saudi Arabia that will unduly prevent or delay effective exchange of 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).

138. Under Saudi Arabia's DTCs the Minister of Finance or his authorised representative is the designated competent authority. The Department of Zakat and Income Tax ("DZIT") has been delegated this task. DZIT also exercises the powers to obtain information for information exchange purposes.

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

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

140. In respect of bank information, it is noted that DZIT will not request the information directly from a bank, but will make a request to SAMA under section 61(a) ITL, which in turn will seek the information from the banks under the Banking Control Law (BCL). The background to this procedure is that SAMA, like DZIT, is a government authority falling under the responsibility of the Minister of Finance and any dealings with banks from the government side should go through SAMA (see further B.1.5).

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

141. Section 61(a) ITL contains an obligation for persons to provide information on request to DZIT for taxation purposes stipulated in the ITL. The exchange of information with foreign tax authorities under an information exchange agreement is not as such mentioned as a purpose of the ITL. However, section 35 ITL contains the following rule:

“In case the conditions of a treaty or an international agreement to which the Kingdom is a party are inconsistent with articles and provisions of this Law [the ITL], the conditions of the treaty or international agreement shall prevail.”

142. This provision supports the general hierarchy of laws in Saudi Arabia, which generally places international agreements above domestic legislation once the international agreement is implemented in Saudi Arabian domestic law by Royal Decree. The basis for this hierarchy of laws can be found in the Islamic *Shari'ah*, under which priority should be given to the general interest of the people over the specific interest of one person or a group of persons. As international agreements generally affect more people than domestic laws, they are regarded by Saudi Arabia to be in the general human interest and therefore take precedence over domestic law. An official opinion of the Saudi Arabian Ministry of Justice puts it as follows (unofficial translation):

“The treaties ratified by the Kingdom have the priority in implementation. It is noted that Islamic *Shari'ah* and its general rules are to realise the people's common and private interests that conform with justice and fairness – regardless of the level of the human or national interest, or the interest of a category of people the legal rule addresses. This means that as far as the transparency standards realise the interests and conform with justice, *Shari'ah* principles expand the application ceiling. In regard to ratified Tax Treaties on Avoidance of Double Taxation and the exchange of information with other countries based on these treaties and according to transparency standards they are considered a general human interest and have priority in application.”

143. With respect to the access powers of the Saudi Arabian tax authorities, it should be noted that, as a general rule, international agreements do not directly provide authorities with access powers; such access powers should have their basis in domestic law. As the access powers stipulated in section 61(a) ITL are expressly limited to information necessary for (domestic) taxation purposes, it does not appear that these powers can be extended to other purposes, such as exchange of information.

144. However, this is different where the international agreement contains a provision corresponding to Article 26(4) of the OECD Model Tax Convention. This provision states that the contracting parties shall use their information gathering measures irrespective of whether they need such information for their own tax purposes. Following section 35 ITL and the general hierarchy of law as described above, this means that Saudi Arabia can and must use its access powers for information exchange purposes under a DTC or other international agreement, such as a Tax Information Exchange Agreement (TIEA) or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, in order to fulfil the obligations under that international agreement, if the agreement contains a provision corresponding to Article 26(4) of the OECD Model Tax Convention. As at January 2013, such provision is included in 10 out of the 30 information exchange agreements concluded by Saudi Arabia. It is therefore recommended that Saudi Arabia ensures that it can use its information gathering powers in all cases, even though Saudi Arabia has no domestic tax interest in the information.

Compulsory powers (ToR B.I.4)

145. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

146. If a person does not provide the information requested by DZIT under section 61(a) ITL, no penalties apply.

147. The tax authorities do, however, have the power to conduct audits on taxpayers at their premises without prior notice, including seizing books, records and other documents for 15 days, to ensure that this taxpayer or another taxpayer fulfils its obligations under the ITL (s. 61(b) ITL and s. 59 ITL Regulations). However, the power to conduct an audit only applies to taxpayers under the ITL. As the concept of taxpayer under the ITL is very limited and does not include companies and partnerships with no foreign shareholders or partners, the scope of the power to conduct an audit for information exchange purposes is very limited.

148. Persons subject to zakat only, i.e. Saudi citizens and Saudi companies and partnerships wholly owned by Saudi citizens, are not subject to the authorities' power to conduct an audit under the ITL. However, the Saudi

authorities indicated that if a zakatpayer would refuse to provide information for EOI purposes, as an administrative measure this person would not be issued a zakat certificate as it would not have complied with all its obligations. A zakat certificate is required to bid for contracts and obtain and maintain licenses to do business.

149. Considering the above, Saudi Arabia has the possibility to apply search and seizure powers in order to obtain information from persons subject to income tax. In addition, zakatpayers may be refused a zakat certificate if they refuse to provide information for EOI purposes. Both compulsory powers are, however, not very well adapted to obtaining information for EOI purposes. It is therefore recommended that Saudi Arabia reviews its powers for compelling the provision of information for EOI purposes to ensure access to this information, for example by introducing direct monetary penalties for not complying with section 61(a) ITL.

Secrecy provisions (ToR B.1.5)

150. Jurisdictions should not decline on the basis of its secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

Bank secrecy

151. The principle of bank secrecy is recognised in Saudi Arabia, and finds its basis in section 19 of the Banking Control Law (BCL). Although section 17 BCL in conjunction with clause 3(1)(G) of Ministerial Decision no. 3/2149, dated 14/10/1406 H (1986) [Rules for Enforcing Provisions of the Banking Control Law] provides powers to SAMA to obtain any information from banks, this power isseems limited to information necessary for ensuring the realisation of the purposes of the BCL. Nevertheless, this limitation is lifted where an international agreement is effective which requires Saudi Arabia to provide bank information to other jurisdictions, following the general hierarchy of laws as explained above under section B.1.3. This means that where an international agreement contains a provision corresponding to Article 26(5) of the OECD Model Tax Convention, SAMA is required to use its information gathering powers to obtain information from banks and provide it to the Saudi Arabian competent authority in response to a request from the Saudi Arabian competent authority based on an EOI request under such international agreement.

152. SAMA has confirmed in a letter to the Saudi Arabian competent authority that requests for bank information coming from the competent authority (i.e. DZIT) will be complied with if those requests are based on a relevant DTC (i.e. where the DTC contains a provision corresponding to

Article 26(5) of the OECD Model Tax Convention). The same will apply where such request is based on another international agreement, such as a TIEA.

153. As at January 2013, 10 out of the 30 DTCs concluded by Saudi Arabia contain a provision corresponding to Article 26(5) of the OECD Model Tax Convention. In respect of the other DTCs concluded by Saudi Arabia, bank secrecy forms an impediment to obtain and exchange bank information. It is recommended that Saudi Arabia ensures that its competent authority has access to bank information for information exchange purposes under all of its information exchange agreements.

Professional privilege

154. The attorney-client privilege in Saudi Arabia is implemented through the Code of Law Practice (Royal Decree No. M/38, “CLP”). The first sentence of section 23 CLP reads as follows:

“A lawyer shall not disclose any confidential information which has been communicated to him or of which he has become aware in the course of practising his profession [...], unless such non-disclosure constitutes a violation of a Shari’ah requirement.”

155. The above rule only pertains to *confidential* information. In addition, information must only be kept confidential when it has been communicated to the lawyer *in the course of practising his profession*. The definition of “law practice” is included in section 1 of the CLP, which states:

“As herein used, the phrase “law practice” shall mean representation of third parties before courts of law, the Board of Grievances, and other committees as may be set up pursuant to laws, decrees and decisions to consider the cases falling within their respective jurisdictions. It shall also mean rendering consultancy services based on the principles of Shari’ah and the rule of law. Whoever practices this profession shall be called a lawyer. Any person shall be entitled to litigate for himself.”

156. The attorney-client privilege is therefore limited to information produced in the course of legal proceedings (first sentence of section 1 CLP) and information produced for the purposes of providing legal advice (second sentence of section 1 CLP). It is also clear that any information coming to the knowledge of a lawyer when acting in a different capacity, such as a nominee shareholder, a trustee or a company director, is not covered by the attorney-client privilege. Hence, it may be concluded that the principles of attorney-client privilege in Saudi Arabia are in line with the international standard.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The domestic tax interest requirement provided for by Saudi Arabia's domestic legislation, applying also to information held by banks, is currently overridden in respect of only 10 out of the 30 information exchange agreements signed by Saudi Arabia, i.e. where the agreement contains provisions corresponding to Articles 26(4) and 26(5) of the OECD Model Tax Convention.	Saudi Arabia should ensure that its competent authority has the power to obtain all relevant information with respect to all information exchange agreements (regardless of their form).
The compulsory powers available to the Saudi Arabian authorities to ensure that information is obtained are not designed to address non-compliance with the access powers used to obtain information for EOI purposes.	Saudi Arabia should review its powers for compelling the provision of information for EOI purposes in order to ensure that non-compliance with a request to provide such information can be appropriately addressed.

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.

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

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

158. There is no requirement in Saudi Arabia's domestic legislation that the taxpayer under investigation or examination must be notified of a request.

159. It should be noted that section 43 of the Basic Law provides that "[t]he King's Court and that of the Crown Prince shall be open to all citizens and

to anyone who has a complaint or a plea against an injustice.” This means that in theory it is possible for any Saudi citizen to challenge the furnishing of information to foreign tax authorities. However, it is unclear how a person would obtain knowledge of the fact that information will be exchanged to a foreign authority in a specific case, as there is no obligation to notify anyone of such act. Whether the procedure provided for in section 43 of the Basic Law provides an impediment to the effective exchange of information will be examined in the Phase 2 review of Saudi Arabia.

Determination and factors underlying recommendations

Determination
The element is in place.

C. Exchanging Information

Overview

160. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Saudi Arabia, the legal authority to exchange information derives from its information exchange agreements, as soon as the agreement is effective and approved by Royal Decree. This section of the report examines whether Saudi Arabia has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

161. Saudi Arabia has a network of DTCs covering 30 jurisdictions. However, Saudi Arabia's domestic law does not allow them to access bank information or to obtain information in the absence of a domestic tax interest unless the information exchange agreement contains provisions corresponding to Articles 26(4) and 26(5) of the OECD Model Tax Convention. Consequently, only 10 of its DTCs, of which 7 are in force, allow Saudi Arabia to fully exchange information according to the international standard.

162. A number of jurisdictions wish to negotiate an information exchange agreement with Saudi Arabia. It is recommended that Saudi Arabia should be prepared to enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

163. The confidentiality of information exchanged with Saudi Arabia is protected by obligations implemented in the information exchange agreements, complemented by domestic legislation which provides for maintaining confidentiality of information by tax officials.

164. Saudi Arabia's agreements ensure that the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

C.1. Exchange of information mechanisms

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

165. Saudi Arabia has concluded 30 DTCs (see Annex 2). This section of the report explores whether these agreements allow Saudi Arabia to effectively exchange information.

Foreseeably relevant standard (ToR C.1.1)

166. The international standard for exchange of information envisages information exchange to the widest possible extent. Nevertheless it does not allow “fishing expeditions”, i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 26(1) of the OECD Model Tax Convention, set out below:

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

167. Eight of Saudi Arabia’s DTCs (with the Czech Republic, France, Ireland, Japan, Poland, Singapore, Spain and the United Kingdom) use this or similar language and therefore clearly meet the “foreseeably relevant” standard.

168. The other DTCs concluded by Saudi Arabia provide for the exchange of information that is “necessary” for carrying out the provisions of the Convention or of the domestic laws of the Contracting States. The Commentary to Article 26(1) of the OECD Model Tax Convention refers to the standard of “foreseeable relevance” and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing “foreseeably relevant” with “necessary”. However, the Saudi Arabian authorities state that they interpret the term “foreseeably relevant” to have a wider scope than the term “necessary” in this respect. It is, however, not clear what information would not be covered where the term “necessary” is used in the information exchange agreements, as this is something which generally only arises where a request is refused because the requested information would not be “necessary” for the requesting jurisdiction’s domestic tax laws. Nevertheless, it is recommended

that Saudi Arabia update its DTCs in this regard to ensure a consistent application which is in accordance with the international standard. The impact of the different interpretation as used by the Saudi Arabian authorities in this respect shall be examined in the Phase 2 review of Saudi Arabia.

In respect of all persons (ToR C.1.2)

169. For EOI to be effective it is necessary that a jurisdiction's obligations to provide information are not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for EOI envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

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

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

171. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity, as well as ownership information. Both the OECD Model Convention (Article 26(5)) and the OECD Model TIEA (Article 5(4)), which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

172. The absence of a provision corresponding to Article 26(5) of the OECD Model Tax Convention does not automatically create restrictions on the exchange of information held by banks, other financial institutions, nominees, agents and fiduciaries, as well as ownership information. The Commentary to Article 26(5) indicates that while paragraph 5 represents a change in the structure of the Article (as compared to previous versions), it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

173. Only the DTCs with the Czech Republic, France, Japan, Malta, Poland, Singapore and Vietnam contain a provision corresponding to Article 26(5) of the OECD Model Tax Convention. In addition, the DTCs with Ireland, Spain and the United Kingdom contain a similar provision, with the specific condition

that information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity shall be exchanged as long as the domestic laws of both Contracting States so allow. According to the Saudi Arabian authorities, all of these DTCs allow them to exchange bank information.

174. As described in section B.1.5 of this report, Saudi Arabia cannot access bank information for information exchange purposes where the information exchange agreement does not contain a provision corresponding to Article 26(5). It is therefore recommended that Saudi Arabia update its DTCs to include a provision corresponding to Article 26(5) of the OECD Model Tax Convention.

Absence of domestic tax interest (ToR C.1.4)

175. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. Jurisdictions must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

176. Only the DTCs with the Czech Republic, France, Ireland, Japan, Malta, Poland, Singapore, Spain, the United Kingdom and Vietnam contain a provision corresponding to Article 26(4) of the OECD Model Tax Convention, which was introduced at the 2005 update and which stipulates that a domestic tax interest may not be a reason to decline an information request. As described in section B.1.3 of this report, the absence of this provision restricts the Saudi Arabian authorities in accessing information for exchange purposes under its information exchange agreements. It is therefore recommended that Saudi Arabia update its DTCs to include a provision corresponding to Article 26(4) of the OECD Model Tax Convention.

Absence of dual criminality principles (ToR C.1.5)

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

178. None of the DTCs concluded by Saudi Arabia applies the dual criminality principle to restrict the exchange of information.

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

179. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

180. All of the DTCs and concluded by Saudi Arabia cover both civil and criminal tax matters.

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

181. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

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

In force (ToR C.1.8)

183. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where such arrangements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously. International agreements are approved by the Council of Ministers, after which a Royal Decree ratifying the agreement is issued. The process is finalised by Saudi Arabia notifying its treaty partner of the completion of the ratification procedure in Saudi Arabia.

184. Of the 30 DTCs concluded by Saudi Arabia, six are not in force (Czech Republic, Ireland, Kazakhstan, Malta, Tunisia and Ukraine). In respect of the DTCs with Kazakhstan and Tunisia, Saudi Arabia has completed its internal ratification procedure and notified the Tunisian authorities. The other DTCs are still in the process of ratification, which takes on average 10 months to complete, according to the Saudi Arabian authorities.

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

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

186. Saudi Arabia's domestic law does not allow them to access bank information (see sections B.1.5 and C.1.3) where the DTC does not contain a provision corresponding to Article 26(5) of the OECD Model Tax Convention. In addition, a domestic tax interest applies where the DTC does not contain a provision corresponding to Article 26(4) of the OECD Model Tax Convention (see sections B.1.3 and C.1.4). Of the 30 DTCs signed, only 10 contain such provisions. Of these 10 agreements, 7 are in force. The information exchange agreements have therefore not been given full effect through domestic law in Saudi Arabia.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Saudi Arabia's domestic law does not allow them to access bank information or to obtain information in the absence of a domestic tax interest unless the information exchange agreement contains provisions corresponding to Articles 26(4) and 26(5) of the OECD Model Tax Convention. Of the 30 DTCs signed, only 10 of them contain such a provision. Of these 10 agreements, 7 are in force.	Saudi Arabia should ensure that all of its information exchange agreements allow the Saudi Arabian authorities to effectively exchange information in accordance with the international standard.

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

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

187. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement.

Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

188. Saudi Arabia has DTCs in place with 30 jurisdictions, including with five of its main trading partners (Japan, China, Korea, India and France, but not Germany and the United States). Another 15 DTCs are expected to be signed within the coming months. However, as explained in section C.1 of this report, a number of its DTCs do not allow Saudi Arabia to exchange information according to the international standard, and it is recommended that Saudi Arabia remedies this situation.

189. It is noted that, in November 2011, Saudi Arabia has signed a letter of intent to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which is currently awaiting approval by the Saudi Arabian authorities. Furthermore, Saudi Arabia has proposed many of its treaty partners with which a DTC is in force that does not contain Articles 26(4) and 26(5) of the OECD Model Tax Convention, to conclude an amending protocol through which these provisions would be implemented.

190. Comments were sought from Global Forum member jurisdictions in the course of the preparation of this report. Three jurisdictions commented that it approached Saudi Arabia to indicate their interest in entering into an information exchange agreement. Saudi Arabia has confirmed that it is now in contact with these three jurisdictions with a view to enter into negotiations. It is recommended that Saudi Arabia ensures that it enters into exchange of information agreements (regardless of their form) with all relevant partners.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Not all of Saudi Arabia's information exchange agreements allow them to exchange information according to the international standard.	Saudi Arabia should ensure that all its information exchange agreements with its partners allow them to exchange information according to the international standard.

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
A number of jurisdictions wish to negotiate an information exchange agreement with Saudi Arabia.	Saudi Arabia should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

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)

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

192. All of the information exchange agreements concluded by Saudi Arabia contain a provision targeted at ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received, which has to be respected by Saudi Arabia as a party to these agreements.

193. Section 59 ITA provides for the Department of Zakat and Income Tax and all its staff to maintain confidentiality of information pertaining to taxpayers to which they have access. Any information received by the Saudi Arabian authorities in response to an information exchange request must therefore be kept confidential, as such information must relate to a person (potentially) subject to Saudi Arabian tax (otherwise the request would not be valid). Penalties can be imposed on officials breaching confidentiality on the basis of section 32 of the Officials Disciplinary Measures Law and section 12 of Civil Service Minister's Resolution no. 10800/703.

All other information exchanged (ToR C.3.2)

194. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, background documents to such requests, and any other documents or communications reflecting such information.

195. The confidentiality provision of section 59 ITA only refers to information pertaining to taxpayers under the ITL. Although information may be related to other persons than taxpayers under the ITL, e.g. in the case of information provided in a request made to the Saudi Arabian authorities, all DTCs concluded by Saudi Arabia contain a provision stating that “any information received [...] by a Contracting State shall be treated as secret *in the same manner* as information obtained under the domestic laws of that Contracting State”. As Saudi Arabia is bound by the provisions of these DTCs, all information received by the Saudi Arabian authorities under the DTCs must be kept confidential in the same manner as under section 59 ITL.

196. An exception to the obligation to keep information confidential exists for the purpose of disclosing it to the competent authorities of another jurisdiction in accordance with a treaty to which Saudi Arabia is a party (s. 59(a)(4) ITL).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

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

197. The international standard allows requested parties not to supply information in response to a request in certain identified situations.

198. In line with the standard, under all of Saudi Arabia’s DTCs the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. These terms are not defined in the respective agreements, meaning that domestic law definitions apply. In this context, no issues were found in Saudi Arabia’s domestic legal and regulatory framework (see section B.1.5 of this report).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

199. In order for exchange of information to be effective it needs to be provided in a timeframe which allows the 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.

200. The DTC with Uzbekistan provides for the competent authorities to exchange information through diplomatic channel. Whether this procedural requirement prevents Saudi Arabia from responding to a request within 90 days, shall be evaluated in the Phase 2 review. There are no other specific legal or regulatory requirements in place which would prevent Saudi Arabia from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

201. As regards the timeliness of responses to requests for information, the assessment team is not in a position to evaluate whether this aspect is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Organisational process and resources (ToR C.5.2)

202. The Department of Zakat and Income Tax (DZIT) is the competent authority of Saudi Arabia for exchange of information purposes. This department also has the powers to obtain information in this respect. The Department of Policy and International Affairs, within DZIT, has the day-to-day responsibility for the exchange of information. A review of Saudi Arabia's organisational process and resources will be conducted in the context of its Phase 2 review.

Unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

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

Determination and factors underlying recommendations

Phase 1 determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The element is in place.	Although a general obligation exists for trustees and trust administrators of foreign trusts to identify their client under AML/CFT legislation, no clear guidance is provided on what information needs to be obtained.	Saudi Arabia should ensure that ownership information on foreign trusts with a trustee or trust administrator in Saudi Arabia is available in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The element is in place.	Partnerships with a capital of SAR 100 000 (EUR 20 189) or less without foreign partners are not expressly required to keep underlying documentation or to keep documentation for at least 5 years.	Saudi Arabia should ensure that all partnerships are required to keep underlying documentation and to keep accounting records for a period of at least 5 years.
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
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>)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The domestic tax interest requirement provided for by Saudi Arabia’s domestic legislation, applying also to information held by banks, is currently overridden in respect of only 10 out of the 30 information exchange agreements signed by Saudi Arabia, i.e. where the agreement contains provisions corresponding to Articles 26(4) and 26(5) of the OECD Model Tax Convention.	Saudi Arabia should ensure that its competent authority has the power to obtain all relevant information with respect to all information exchange agreements (regardless of their form).
	The compulsory powers available to the Saudi Arabian authorities to ensure that information is obtained are not designed to address non-compliance with the access powers used to obtain information for EOI purposes.	Saudi Arabia should review its powers for compelling the provision of information for EOI purposes in order to ensure that non-compliance with a request to provide such information can be appropriately addressed.
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>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Saudi Arabia's domestic law does not allow them to access bank information or to obtain information in the absence of a domestic tax interest unless the information exchange agreement contains provisions corresponding to Articles 26(4) and 26(5) of the OECD Model Tax Convention. Of the 30 DTCs signed, only 10 of them contain such a provision. Of these 10 agreements, 7 are in force.	Saudi Arabia should ensure that all of its information exchange agreements allow the Saudi Arabian authorities to effectively exchange information in accordance with the international standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Not all of Saudi Arabia's information exchange agreements allow them to exchange information according to the international standard.	Saudi Arabia should ensure that all its information exchange agreements with its partners allow them to exchange information according to the international standard.
	A number of jurisdictions wish to negotiate an information exchange agreement with Saudi Arabia.	Saudi Arabia should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
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.		

Annex 1: Jurisdiction’s Response to the Review Report⁵

This page is left blank as Saudi Arabia has chosen not to provide any material to include in it.

5. 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 all Exchange-of-Information Mechanisms in Force

Bilateral agreements

Exchange of information agreements signed by Saudi Arabia as at December 2012, in alphabetical order:

	Jurisdiction	Type of Eol arrangement	Date signed	Date entered into force
1	Austria	DTC	19 March 2006	1 June 2007
2	Bangladesh	DTC	4 January 2011	1 October 2011
3	Belarus	DTC	20 July 2009	1 August 2010
4	China (People's Rep.)	DTC	23 January 2006	1 September 2006
5	Czech Republic	DTC	25 April 2012	
6	France	DTC	18 February 1982	1 March 1983
		Protocol	18 February 2011	1 June 2012
7	Greece	DTC	19 June 2008	1 May 2010
8	India	DTC	25 January 2006	1 November 2006
9	Ireland	DTC	19 October 2011	
10	Italy	DTC	13 January 2007	1 December 2009
11	Japan	DTC	15 November 2010	1 September 2011
12	Kazakhstan	DTC	7 June 2011	
13	Korea	DTC	24 March 2007	1 December 2008
14	Malaysia	DTC	31 January 2006	1 July 2007
15	Malta	DTC	4 January 2012	
16	Netherlands	DTC	13 October 2008	1 December 2010
17	Pakistan	DTC	2 February 2006	1 December 2006
18	Poland	DTC	22 February 2011	1 June 2012

	Jurisdiction	Type of Eol arrangement	Date signed	Date entered into force
19	Romania	DTC	26 April 2011	1 July 2012
20	Russia	DTC	11 February 2007	1 February 2010
21	Singapore	DTC	3 May 2010	1 July 2011
22	South Africa	DTC	13 March 2007	1 May 2008
23	Spain	DTC	19 June 2007	1 October 2008
24	Syria	DTC	7 October 2009	1 October 2010
25	Tunisia	DTC	8 July 2010	
26	Turkey	DTC	9 November 2007	1 April 2009
27	Ukraine	DTC	2 September 2011	
28	United Kingdom	DTC	31 October 2007	1 January 2009
29	Uzbekistan	DTC	18 November 2008	1 November 2010
30	Vietnam	DTC	10 April 2010	1 February 2011

Annex 3: List of all Laws, Regulations and Other Material Consulted

Commercial laws

- Companies Law
- Commercial Books law
- Commercial Register Law
- Implementing Regulations of By-Law of Philanthropic Associations and Organisations
- Law of Commercial Court (excerpts)
- Waqf Organisation By-Law

Financial sector laws

- AML/CFT Guidelines for banks and money exchangers
- Anti-Money Laundering Law
- Banking Control Law
- Capital Market Law
- Foreign Investment Law

Taxation laws

- Income Tax Law
- Income Tax Regulations
- Zakat Law
- Zakat Regulations

Other laws

Basic Law (Constitution)

Certified Public Accountants Regulations

Code of Law Practice

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: SAUDI ARABIA

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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

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

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