

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

SAUDI ARABIA



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Saudi Arabia 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

March 2016
(reflecting the legal and regulatory framework
as at December 2015)

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Please cite this publication as:

OECD (2016), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Saudi Arabia 2016: Phase 2: Implementation of the Standard in Practice*, OECD Publishing, <http://dx.doi.org/10.1787/9789264250895-en>

ISBN 978-92-64-25088-8 (print)
ISBN 978-92-64-25089-5 (PDF)

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

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

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Table of Contents

About the Global Forum	5
Executive summary	7
Introduction	13
Information and methodology used for the peer review of Saudi Arabia	13
Overview of Saudi Arabia	14
Recent developments	19
Compliance with the Standards	21
A. Availability of information	21
Overview	21
A.1. Ownership and identity information	24
A.2. Accounting records	50
A.3. Banking information	60
B. Access to information	65
Overview	65
B.1. Competent Authority’s ability to obtain and provide information	67
B.2. Notification requirements and rights and safeguards	76
C. Exchanging information	79
Overview	79
C.1. Exchange-of-information mechanisms	81
C.2. Exchange of information mechanisms with all relevant partners	87
C.3. Confidentiality	88
C.4. Rights and safeguards of taxpayers and third parties	91
C.5. Timeliness of responses to requests for information	92

Summary of determinations and factors underlying recommendations	101
Annex 1: Jurisdiction’s response to the review report	107
Annex 2: List of all exchange-of-information mechanisms in force	109
Annex 3: List of all laws, regulations and other material consulted.	115
Annex 4: Persons interviewed during the on-site visit	117

About the Global Forum

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

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

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

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

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

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

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Saudi Arabia, as well as the practical implementation of that framework. 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. The assessment of effectiveness in practice has been performed in relation to a three-year period: from 1 January 2012 to 31 December 2014.

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. The Ministry of Commerce and Industry (MCI) verifies the completeness and the correctness of the register of joint stock companies on an annual basis. For listed joint stock companies the register is kept up-to date by the Capital Market Authority (CMA) on a daily basis. Updates are electronically registered in the Depository and Settlement System in the Securities Depository Centre at the Saudi Stock Exchange. A transfer of shares of limited liability companies requires an amendment of the articles of association, and this can only be done after approval of MCI and the execution before a notary. As the transfer only becomes legally effective after the completion of the procedure, this ensures that ownership information in respect of limited liability companies is available with the MCI. Joint stock companies and partnerships limited by shares have a possibility to issue bearer shares under the Companies Law, although Saudi Arabia clarified that registration of these entities would not be accepted in these circumstances

and details of all shareholders must be provided to MCI upon incorporation. No issues in this respect came up in practice. In addition, this possibility is negated by the obligation of relevant entities and arrangements 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. In respect of supervision and overview, all measures to ensure compliance with registration, filing and payment requirements by companies apply to partnerships similarly. Identity information on *waqfs* is kept directly by the Waqf Administration, which is part of the Ministry of Islamic Affairs. The *Waqf* Administration registers this information in its electronic database. Field inspections may take place by the *Waqf* Administration to ensure compliance and to keep oversight. Saudi Arabia further explains that major investments have to be approved separately by the High *Waqf* Council. 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 24 159) or less to keep underlying documentation or to keep documentation for at least five years. Compliance is reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices. With respect to *waqfs*, the accounting records, including underlying documentation, are generally kept directly by the Waqf Administration.

6. Compliance with the requirement to maintain accounting records and underlying documentation by all legal or accounting entities under the tax law is monitored also by the MCI and the Capital Market Authority. Joint stock companies, limited liability companies and partnerships limited by shares are subject to a statutory audit, and they are required to prepare an annual report, including the auditor's report and the financial statements. Because of this statutory obligation, these entities and arrangements must have their accounts audited. Furthermore, the approved financial statements have to be filed with MCI. Nevertheless, compliance with a timely submission to MCI was relatively low during part of the period under review. Although steps taken by MCI to reduce the number of late filings or non-filings as well as the recent introduction of a specific database known as *Qawaem* seem to have solved this issue, it is recommended that Saudi Arabia monitors this issue to ensure that reliable accounting records, supported by underlying documentation, are kept by all the entities and arrangements.

7. 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. Compliance by banks in respect of these legal obligations is checked and supervised by the Saudi Arabian Monetary Agency (SAMA). Through their inspections, it has been established that banks keep the required information on their clients and transactions.

8. 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 23 out of 43 of Saudi Arabia's agreements.

9. Saudi Arabia has the possibility to apply search and seizure powers in order to obtain information from persons subject to income tax. In addition, zakat payers may be refused a zakat certificate if they refuse to provide information for EOI purposes. Furthermore, Saudi Arabia introduced some amendments in 2014 to clarify that a person can be held jointly liable for the tax due on a Saudi Arabian taxpayer, if this person does not provide information for EOI purposes. All these 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.

10. Saudi Arabia has a network of Double Taxation Conventions covering 43 jurisdictions. In addition, Saudi Arabia also signed the Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention) in May 2013. Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016. Once in force, it will provide Saudi Arabia with an EOI network that covers a total of 102 jurisdictions. These agreements, as well as the Multilateral Convention, 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 as well as the Multilateral Convention). Consequently, Saudi Arabia is currently not in a position to exchange information according to the international standard under 20 out of its 43 DTCs. Nevertheless, the entry into force of the Multilateral Convention will bring EOI with 36 of its 43 DTC partners in line with the standard. However,, 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.

11. The designated Competent Authority for exchanging information for tax purposes under all Saudi Arabian exchange of information instruments is the Minister of Finance or his authorised representative. The Department of Zakat and Income Tax (“DZIT”) has been delegated this task. However, the function of competent authority was shifted from the International Economic Relations directorate within the Ministry of Finance to the international operations department within DZIT during the period under review. It appears that peers had difficulty to clearly identify this change in the contact information for Saudi Arabia’s competent authority. Requests that were still being sent to the Ministry of Finance were initially not answered, as it appears that these requests did not arrive with DZIT. Since June 2015 contact information for Saudi Arabia’s competent authority is fully identifiable on the Global Forum website.

12. Saudi Arabia has fairly limited experience in EOI but is considered by its EOI partners to be an important partner. Saudi Arabia has received nine requests for information over the period of review. From these nine requests, initially only six requests actually arrived with DZIT. From these six requests initially only one was replied to. More recently, Saudi Arabia has communicated with its EOI partners regarding pending requests as well as requests that were initially not received. As a result, information has been exchanged in some cases, while in other cases the EOI partner has been informed of the reason why information could not be exchanged.

13. It appears that Saudi Arabia only recently implemented organisational processes to ensure effective exchange of information. During the review period, no clear organisational processes were in place, which led to EOI requests not being processed in a timely manner. Saudi Arabia should therefore ensure that it has appropriate organisational processes in place to process and answer to EOI requests in a timely manner. Saudi Arabia should also respond to EOI partners in cases where it is not able to respond to requests and provide status updates in cases where it is not in a position to meet the 90 day deadline.

14. Saudi Arabia has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations, any recommendations made in respect of Saudi Arabia's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Saudi Arabia has been assigned the following ratings: Compliant for elements A.1, A.3, B.2, C.1, C.3 and C.4 Largely Compliant for elements A.2 and B.1, and C.2 Partially Compliant for element C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Saudi Arabia is Largely Compliant.

15. A follow up report on the steps undertaken by Saudi Arabia to answer these recommendations should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Saudi Arabia

16. The assessment of the legal and regulatory framework of Saudi Arabia as well as its practical implementation 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 has been conducted in two stages: the Phase 1 review assessed Saudi Arabia’s legal and regulatory framework for the exchange of information as at January 2013, while the Phase 2 review assessed the practical implementation of this framework during a three year period (1 January 2012 to 31 December 2014) as well as amendments made to this framework since the Phase 1 review up to 23 December 2015. The following analysis reflects the integrated Phase 1 and Phase 2 assessments.

17. The assessment was based on the laws, regulations and exchange of information mechanisms in force or effect as at December 2015, as well as other information, explanations and materials supplied by Saudi Arabia, information supplied by partner jurisdictions and explanations provided by Saudi Arabia during the on-site visit that took place from 31 May-4 June 2015 in Riyadh, Saudi Arabia. During the on-site visit, the assessment team met a wide range of officials and representatives of the Ministry of Finance and the Department of Zakat and Income Tax (DZIT), as well as representatives of the Ministry of Commerce and Industry, the Ministry of Justice, the Ministry of Islamic Affairs and representatives of a local Waqf Administration, as well as representatives of the Saudi Arabian Monetary Agency (SAMA) and the Ministry of Foreign affairs, among others.

18. 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 and its application in practice 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. In addition, to reflect the Phase 2 component, recommendations are made concerning Saudi Arabia's practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the standards (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

19. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum Secretariat. The 2014 Phase 1 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 and 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. For the Phase 2 assessment Mr. Thunnissen was assisted by Mr. Boudewijn van Looij, also from the Global Forum Secretariat, while Ms. Harizan Hussin was replaced by Mr. Bhaskar Goswami, Additional Commissioner of Income Tax, India. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Saudi Arabia and their application in practice.

Overview of Saudi Arabia

20. 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.

21. Saudi Arabia's economy is estimated to have grown by more than 3% in 2014 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 746 billion in 2014. The Saudi Arabian economy is dominated by the industrial sector which accounts for 57% of the economy, while services and

agriculture make up 41% and 2% respectively.¹ 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, the People's Republic of China (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 27 October 2015, SAR 4.14 = EUR 1.

Legal system

22. 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, comprises 21 other ministers with portfolio (backed up by government ministries) and seven ministers of state.

23. 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.

24. *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

1. World CIA Factbook <https://www.cia.gov/library/publications/the-world-factbook/geos/sa.html> (accessed 23 December 2015).

considered for the larger good of humanity as opposed to domestic laws that cater to a smaller group.

25. 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

26. 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.

27. 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 242 600 million in 2014, with the most significant rise in recent years. In 2014 the inward FDI flows averaged USD 8 012 million, while the outward FDI flows averaged USD 5 39 6million.²

28. 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

2. Data drawn from the United Nations Conference on Trade and Development (UNCTAD), available on <http://unctadstat.unctad.org> (accessed 23 December 2015).

Law. The banking sector comprises 12 domestic banks and 12 branches of foreign banks. The assets in the (commercial) banking sector amounted to SAR 2 132 577 million (EUR 515 115 million) as at December 2014. 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.³

29. 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 344 billion).

30. 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

31. 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 person⁴ holding Saudi nationality or who is treated as such. This means that nationals from one of the member states of the Co-operation Council for the Arab States of the Gulf, also known as Gulf Co-operation Council (GCC)⁵, are also regarded as Saudi citizens for income tax and zakat purposes.

Income tax

32. 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.

3. 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.

4. A person is defined as any natural or corporate person.

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

- 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.

33. 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.

34. Resident individuals are only subject to income tax if they are non-Saudi citizens conducting business in Saudi Arabia.⁶ The tax rates are the same as for companies.

35. 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.

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

Zakat

37. 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%.

6. Excluding the (Saudi and non-Saudi) persons engaged in natural gas investment and/or oil and hydrocarbons production in Saudi Arabia.

38. 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

39. 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 43 DTCs. Exchange of tax information is delegated to the Department of Zakat and Income Tax.

Recent developments

40. Saudi Arabia reports that on 9 November 2015, the Ministry of Commerce and Industrial (MCI) announced the new Saudi Companies Law. The new law will come into force on 2 May 2016, being 150 days after its publication in the Official Gazette, which occurred on 4 December 2015. When effective, it will entirely replace the current Companies Law that dates from 1965.

41. The new Companies Law represents a significant overhaul and modernisation of the Saudi Companies Law. Some of the key aspects of the new law include a reduction of the number of corporate Forms. Three of the corporate forms permitted by the current regime, namely Co-operative Companies, Partnerships Limited by Shares, and Variable Capital Companies, have been eliminated, and it will no longer be possible to establish such companies.

42. In respect of Limited Liability Companies (LLCs) the main changes include the possibility to establish a LLC with only one shareholder, while under the current law a minimum of two shareholders were required. In cases where the number of shareholders in an LLC exceeds 50, the company should be converted to a joint stock company within a one year time period (otherwise the company shall be considered dissolved). Another change relates to the publication when incorporating and amending articles of association. In these cases publication on MCI's website will be sufficient instead of publication in the official gazette or a newspaper.

43. With regard to Joint Stock Companies (JSCs) the number of shareholders required for a Closed JSC will be reduced from five to two shareholders, although a one-person joint stock company may also be incorporated under certain (more restricted) circumstances. The minimum capital required for

JSCs has been reduced from SAR2 million (EUR 483 180) to SAR500, 000 (EUR 120 795). Furthermore, JSC general meetings may be convened by using new technology, no longer necessitating the physical presence of everyone involved. The new law permits a JSC to issue debt instruments and financing instruments (*Sukuks*). Furthermore, JSCs are allowed to purchase or mortgage their shares. Further provisions set out that the external certified auditor can be appointed for a continuous period of five years. The new law also obliges partnerships and a branch of the foreign company to have its accounts audited by a licensed external auditor. The new Company Law has no provision for issuance of bearer shares by any entity.

44. As noted, Saudi Arabia signed the Multilateral Convention in May 2013. Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016.

Compliance with the Standards

A. Availability of information

Overview

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

46. Availability of ownership and identity information in respect of companies is generally ensured by the requirement to keep an up to date shareholder register. The Ministry of Commerce and Industry (MCI) verifies the completeness and the correctness of the register of joint stock companies on an annual basis. For listed joint stock companies the register is kept up-to date by the Capital Market Authority (CMA) on a daily basis. Updates are electronically registered in the Depository and Settlement System in the Securities Depository Centre at the Saudi Stock Exchange. A transfer of shares of limited liability companies requires an amendment of the articles of association, and this can only be done after approval of MCI and the execution before a notary. As the transfer only becomes legally effective after the completion of the procedure, this ensures that ownership information in respect of limited liability companies is available with the MCI.

47. Joint stock companies and partnerships limited by shares have a possibility to issue bearer shares under the Companies Law, although Saudi Arabia clarified that 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. No issues in this respect came up in practice. In addition, this possibility should be 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. Compliance with these requirements is checked by DZIT through desk and field audits in respect of all zakat and income tax payers and is further secured by penalties that have been applied in practice.

48. In Saudi Arabia, partnerships are governed by the same law as companies, the Companies Law (CL), and the definition of the term “company” also applies to partnerships. 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. In respect of supervision and overview, all measures to ensure compliance with registration, filing and payment requirements by companies apply to partnerships similarly.

49. 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*. The *Waqf* Administration registers this information in its electronic database. Field inspections may take place by the *Waqf* Administration to ensure compliance and to keep oversight. Saudi Arabia further explains that major investments have to be approved separately by the High *Waqf* Council. 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.

50. 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. Compliance is reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices. This requirement does, however, not cover partnerships with a capital of SAR 100 000 (EUR 24 159) or less. With respect to *waqfs*, the accounting records, including underlying documentation, are generally kept directly by the Waqf Administration.

51. Compliance with the requirement to maintain accounting records and underlying documentation by all legal or accounting entities under the tax law is monitored also by the MCI and the Capital Market Authority. Joint stock companies, limited liability companies and partnerships limited by shares are subject to a statutory audit, and they are required to prepare an annual report, including the auditor's report and the financial statements. Because of this statutory obligation, these entities and arrangements must have their accounts audited. Furthermore, the approved financial statements have to be filed with MCI (and this would be in the hands of the tax authority). However, compliance with a timely submission to MCI was relatively low during part of the period under review. And, although compliance with the accounting requirements is also reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices, it should be noted that there is no full overlap between the companies that are registered with MCI and the companies that are registered as tax or zakat payers with DZIT. The number of companies registered with MCI substantially exceeds the number companies that are registered with DZIT. Although steps taken by MCI to reduce the number of late filings or non-filings as well as the recent introduction of a specific database known as *Qawaem* seem to have solved this issue, it is recommended that Saudi Arabia monitors this issue to ensure that reliable accounting records, supported by underlying documentation, are kept by all the entities and arrangements.

52. 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. Compliance by banks in respect of these legal obligations is checked and supervised by the Saudi Arabian Monetary Agency (SAMA). Through their inspections, it has been established that banks keep the required information on their clients and transactions.

53. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities. These enforcement provisions are adequately applied in practice and generally ensure that ownership information with regard to the relevant entities is available.

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)

54. Under section 1 of the 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.

55. 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 29 April 2015, there were 1 098 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 29 April 2015, there were 37 709 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 29 April 2015, there were no partnerships limited by shares registered.

56. It can be noted that the number of registered companies dropped quite considerably, by approximately 30%, since 2012. In this respect, Saudi Arabia explains that this relates to the introduction, in 2013, of fees for registration with the Chamber of Commerce. The fees apply both for the initial registration, as well as the yearly renewal. As a consequence, a significant number of (mainly inactive) companies were liquidated or merged after these fees were introduced. Statistics provided by Saudi Arabia demonstrate that in total 31 746 commercial registration certificates (CR's) were issued during the years 2012-14. This number includes individual businesses that are not in the form of companies. In 3614 cases (around 11%) there was no renewal of the CR, as Saudi Arabia explains these cases mainly reflect situations where the companies involved did not actually start business operations after they got their CRs.

57. 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).

58. Joint stock companies and limited liability companies may also be set up as co-operative companies when they have the objective of reducing the 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). Saudi Arabia reports that, as at 29 April 2015, there were no co-operative companies registered.

59. 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).

60. 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, with the amount paid up on such shares (s. 102 CL). These rules equally apply to partnerships limited by shares (s. 155 CL). In regard to joint stock companies, the register is verified annually by a representative from the MCI who is present during the general assembly meeting. In respect of listed joint stock companies, Saudi Arabia explains that the Capital Market Authority (CMA) updates the register daily. Updates are electronically registered in the Depository and Settlement System in the Securities Depository Centre at the Saudi Stock Exchange. Regarding the obligation to keep the shareholders register, Saudi Arabia reports that

there were no cases of non-compliance and therefore no penalties had been imposed during the period under review.

61. 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). The articles of association must at least include the same information as is included in the shareholders register. Share transfers can only be accomplished through amendment of the articles of association. Shares are transferred before a public notary (who is supervised by the Ministry of Justice) 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.

62. 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, to a fine of at least SAR 5 000 (EUR 1 207) but not more than SAR 20 000 (EUR 4 830), or both (s. 229(8) CL).

Ownership information held by the authorities

63. 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 officer 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).

64. 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). This means ownership information is available at the public notary.

65. 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).

66. Within 15-30 days of the decision of the Minister of Commerce to declare the founding of the company, all company forms are required to be registered in the Register of Companies that is maintained by the General Administration of Companies within the Ministry of Commerce and Industry (s. 21, 65, 164 and 200 CL).

Commercial Register

67. 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.

68. 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 12 075 10 094) (s. 15 CRL).

In practice

69. As noted, incorporation of companies includes the involvement of the Ministry of Justice (public notary) and the Ministry of Commerce and Industry. In practice, the articles of association of each company are reviewed by the Ministry of Commerce and Industry before being referred to the public notary. The public notary will only authenticate the articles of association after it has certified that these documents have been reviewed by the Ministry of Commerce and Industry. Following this, the Ministry of Commerce and Industry in its turn, will not register a company in the Commercial Register unless it has the articles of association authenticated by the public notary.

70. In respect of limited liability companies, all shareholder information is stated in the articles of association. This document is registered both with the public notary and with the Ministry of Commerce and Industry. After the initial registration, any transfer of shares of a limited liability company is based on a sale and purchase agreement and involves an amendment of the articles of association. This amendment can only be made after approval of the Ministry of Commerce and Industry and the execution before the public notary. A copy of the shareholder resolutions to amend the articles will then be published in the Official Gazette and one daily newspaper, by the company seeking the amendment. After this publication, a request should be made to MCI for it to issue an amended commercial registration certificate. As the transfer becomes legally effective only after the completion of this procedure, it ensures that ownership information in respect of limited liability companies is available with both the public notary (under the Ministry of Justice) and the Ministry of Commerce and Industry.

71. With respect to joint stock companies and partnerships limited by shares, transfers of shares are only reported to an authority if the company is listed on the Saudi Stock Exchange. For this purpose, a fully automated system is kept by the Capital Market Authority. As noted above, ownership information concerning non-listed joint stock companies and non-listed partnerships by shares is available with the company.

Tax and zakat law

72. Saudi Arabia has to a large degree integrated zakat with income tax. It established the Department of Zakat and Income Tax (DZIT) under the Ministry of Finance by Ministerial Resolution no. 394, dated 7/8/1370 H. (14/06/1951). DZIT's Headquarters is in Riyadh. The Large Taxpayers Administration that deals with large zakat and tax payers is also in Riyadh. There are sixteen other DZIT's branches in the main cities of the Kingdom, which deal with zakat and tax payers in their areas. In addition, there are 42 Financial Offices (administratively report to Ministry of Finance) in smaller cities and towns, which deal with zakat and taxpayers in their areas where no DZIT branches exist.

73. In the last five years DZIT has put great efforts to automate the zakat and tax process and to improve and standardise procedures and forms for zakat and taxpayers. As a result the collection of zakat/tax has to a large degree been automated and zakat and tax payers can use the internet to deal with procedures through a growing number of e-services online.⁷ The idea

7. According to Saudi Arabia around 77% of return filing done electronically and payments are done online by accessing an electronic payment system available at all banks through the payment system that is known as SADDAD.

behind this is to improve the collection of zakat and tax through enhanced compliance and a reduction in processing time. As a result, zakat and tax revenues have been increasing at a rate of around 20 percent per year through the last five years.

74. 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) to determine 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 should register with the Department of Zakat and Income Tax ("the tax authorities").

75. 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 4 830) or between 5% and 25% of unpaid tax (s. 76 ITL).

76. In total there are 280 455 taxpayers and zakat payers in Saudi Arabia as of 29 April 2015. Statistics from DZIT further show that this number is composed as follows:

- registered taxpayers (Individuals): 4 342
- registered taxpayers (Companies): 6 864
- registered zakat payers (Individuals): 248 679
- registered zakat payers (Companies): 19 990

77. Companies had to register separately with DZIT during the three year review period and fill out a subscription form on-line and submit a number of documents, including the companies' Commercial Registration. Upon registration, DZIT allocates a TIN to the requesting company, as well as a registration certificate that is valid for one year.⁸

8. Registration, filing, payment and certification procedures are the same for all entities, whether taxpayers or zakat payers. If the mixed company is a capital company, it is considered one legal entity regardless of its shareholders. If the mixed company

78. During the review period, non-compliance with registration was mostly detected by cross-checking payments reported by other tax and zakat payers to recipients who should be identifiable in DZIT’s databases. Any person who is resident in the Kingdom and is subject to zakat regulations or income tax law should be registered with DZIT; in case it is found out that payments are made to persons that are not registered for tax or zakat purposes, DZIT would require registration of the taxpayer concerned and a penalty would usually be imposed. In the last three years, the following number of penalties for failure to register with DZIT has been imposed:

Registration penalties issued by DZIT

Type of entity	2012	2013	2014
Limited liability companies	2 137	1 451	1 445
Joint stock companies	88	39	25
General partnerships	186	151	90

79. As these statistics demonstrate, the number of registration penalties generally dropped by 30% to 50% since 2012. However, it should also be noted that the number of registered companies dropped in this period as well. As Saudi Arabia explains a considerable number of inactive companies got cancelled and were removed from the Chamber of Commerce registration, following a sharp increase of the (initial and yearly) registration fees in 2013 (see section above). A closer look at the number shows that the decrease in the number of registration penalties keeps abreast with the number of registered entities and arrangements in Saudi Arabia, as there was a comparable decrease in the same period.

80. A similar pattern can be noted in respect of the filing penalties that DZIT imposed for non-timely or non-complete filing of the annual tax returns, as can be demonstrated with the following statistics that were provided by Saudi Arabia.

Filing penalties issued by DZIT in respect of tax payers

Type of entity	2012	2013	2014
Limited liability companies	2 457	1 209	665
Joint stock companies	76	38	15
General partnerships	197	137	66
Limited Partnerships	17	2	0

is a partnership, the partnership itself is not subject to tax but it is required to file information return, and each partner is required to file its own return showing the result of all its activities including its share from the partnership.

81. 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.

82. While there are no monetary or criminal penalties for failure to register as a zakat payer or for failure to file the annual zakat declaration (which includes ownership information), 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. Moreover, Government agencies do not provide services nor make payments to a party unless that party presents such a clearance certificate from DZIT. According to the Saudi Arabian authorities it would be very difficult if not impossible to (commercially) operate in Saudi Arabia without a valid zakat certificate.

83. Nevertheless, it should be noted that there is a significant difference in the number of companies registered with the Ministry of Commerce and Industry, which amounts to approximately 40 000, and with DZIT, where approximately 25 000 companies are registered. As Saudi Arabia explains, the main reasons for this gap are primarily inactive companies that don't trigger any zakat liability because they don't start any business activities. However, there are no cases where the availability of relevant ownership and identity information would solely depend on a registration of company with DZIT.⁹ In addition it can be noted that monitoring in respect of the requirements to keep and update ownership information takes place primarily by the MCI (see also A.1.6 below). This issue is therefore not likely to have influence on the availability of ownership information if an EOI partner would so require.¹⁰

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9. Full ownership information in respect of limited liability companies and partnerships is available with the MCI. The same information regarding joint stock companies is included in the shareholder register that is kept by the company itself (for listed joint stock companies this information is kept with the Capital Market Authority).
10. Saudi Arabia states that it envisages to significantly reduce the gap further. As Saudi Arabia explains this is a combined effort by all agencies concerned, and DZIT is working closely with MCI to close this gap. Saudi Arabia notes that

Ownership information held by service providers

84. 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. 5AMLL). 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.

85. 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 (or) a fine not exceeding SAR 500 000 (EUR 120 757) (s. 20AMLL).

although MCI has no powers to strike off a company just for being inactive, it is empowered to suspend services to companies that fail to comply with statutory requirements, such as a failure to renew the Commercial Register or to submit financial statements. Failures that can typically be associated with inactive companies. In this respect Saudi Arabia further reports that to date, MCI has suspended services to a total of 26 143 companies. In respect of 13 132 companies this was related to issues concerning the expiry of CR and non-filing of financial statements, in the remaining 13 011 cases it was related to a non-filing of financial statements. Saudi Arabia stresses that DZIT is working closely with MCI to close the remaining gap.

86. AML-related supervision on company service providers, including accountants, is exercised by the Ministry of Commerce and Industry. Oversight on the performance of auditing activity takes place by the Saudi Organisation for Certified Public Accountants (SOCPA). SOCPA oversees accountants and auditors, both with respect to their AML obligations, as well as the quality of the review. All auditors are subject to independent monitoring and review through desk audits and on-site inspections by SOCPA. In addition, there is a joint Committee of MCI and SOCPA, chaired by MCI, to look at malpractices by accountants in respect of AML. In this respect, Saudi Arabia reports that, to date, there has been no malpractice reported nor any fines or penalties imposed. Supervision of lawyers is in the hands of the follow-up administration of the Ministry of Justice. The inspections could be targeted and sudden (for instance in case of a complaint), or at random taking into account a variety of factors. During inspections checks take place regarding license, contracts, clients, staff and office signs to ensure that this information corresponds fully with the license information of the concerned attorney office (Name, qualification, classification). Regarding the frequency of the inspections Saudi Arabia explains that audit offices are reviewed based on an annual desk-audit. For this purpose all audit offices are required to submit specified information to SOCPA. In addition to these annual desk-audits field audits take place. All audit offices are subject to field-audits by SOCPA. Large audit offices that are licensed to audit stock companies will be subject of a field audit once every three years. The other offices will be subject to such an audit every five years. In addition SOCPA also conducts Sudden Field Inspections. Saudi Arabia reports that SOCPA makes sudden field inspections of all audit offices at least once a year to ensure compliance with specified procedures. The Joint Investigation Committee looks at malpractices of auditors and accountants reported by any party, such as SOCPA, individuals, Capital Market Authority, DZIT and the Audit Bureau. Over the last two years more than 500 lawyer offices were inspected Kingdom-wide including Riyadh, Makkah, Jeddah, Dammam, Al-Khobar, Al-Ehsa, Al-Madina, Hail and Tabouk. As a result of the inspections, it was found that that the major cases of non-compliance were mainly related to cases of persons impersonating lawyers (95 cases in 2014). These cases were referred to the Prosecutor General. Apart from this, Saudi Arabia explains that no major issues came up and inspections would confirm that required information is generally available.

Foreign companies

87. In general, foreign companies need a license to carry on business in Saudi Arabia. As at June 2015, there were 5932 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). However, this registration

procedure with the Commercial Register, further specified in Implementing Regulations, does not include the furnishing of full ownership information on the foreign company.

88. 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.

89. In practice, in order to be able to register with the Commercial Register, a foreign company should first obtain a license from the General Investment Authority (SAGIA). Such a license is also needed in cases where a foreign company would buy shares in a Saudi company or in cases where it would like to open a branch in Saudi Arabia. In order to obtain such license, the foreign company has to provide SAGIA with information, including ownership information, on the foreign entity, such as details about shareholders, capital of the company and past experiences. At the same time DZIT will allocate a TIN to the foreign company. SAGIA carries out field inspections to ensure compliance by foreign investors with the license conditions and other relevant legal provisions. Saudi Arabia notes that supervision in this respect is further facilitated by the fact that since 2013 the Commercial Register is linked directly with SAGIA.

Nominees

90. 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 (or) a fine not exceeding SAR 500 000 (EUR 120 757) (s. 20 AMLL).

91. 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. As to this, Saudi Arabia reports that ownership details of nominee shareholders that are not service providers will be available at local financial institutions and are obtainable by the competent authority to be exchanged with a partner under an effective treaty nominees not acting by way of business which are not covered by AML obligations.

92. In practice peers did not flag any issues regarding professional or non-professional nominees during the period under review. The Saudi Arabian competent authority, from its end, confirms that it did not encounter any requests for this type of ownership information or any other practical difficulties in this respect either.

Conclusion and practice

93. 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 must register 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.

94. In practice, the MCI verifies the completeness and the correctness of the register of shareholders of all the joint stock companies on an annual basis. This is checked by a representative of MCI that is present during the

shareholder meetings that take place on an annual basis. In addition, the Capital Market Authority (CMA) up-dates the register of shareholders of listed joint stock companies on a daily basis. Updates are electronically registered in the Depository and Settlement System in the Securities Depository Centre at the Saudi Stock Exchange. Furthermore, a transfer of shares of limited liability companies requires an amendment of the articles of association, and this can only be done after approval of the MCI and the execution before a notary. As the transfer only becomes legally effective after the completion of the procedure, this ensures that ownership information in respect of limited liability companies is available with the MCI. Requirements to register with DZIT are ensured by cross checking this information with the information that is available through DZIT's databases.

95. Saudi Arabia did not receive any request related to ownership information in respect of companies during the review period. Accordingly, no issue in respect of availability of ownership information regarding companies was reported by peers.

Bearer shares (ToR A.1.2)

96. 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.

97. 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).

98. 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 on an annual basis (Article 84 of the company Law provides that companies are legally obliged to hold a general assembly meeting every year). At these meetings, the representative of the Ministry of Commerce and Industry must establish that the quorum (50%) is met and if not, the meeting cannot take place. For this purpose, the representative checks the capital and voting structure of the company, which includes a check of the register of shareholders and other documentation relevant to determine the percentage of shares and voting rights kept by each shareholder. In addition, the identity of the attendees or their proxies is checked. This means that, whether or not all shareholders attend the meeting, the comprehensive checks done by the representative of the Ministry of Commerce and Industry give a decisive answer as to whether all the shares are in registered form and all the shareholders are included. The checks performed by the representative of the Ministry of Commerce and Industry are based on Article 83 of the CL and the MCI Operating Procedures.

99. 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, which is further ensured through the comprehensive checks on all joint stock companies by the Ministry of Commerce and Industry as described in the previous paragraph. In addition, compliance with these requirements is checked by DZIT through desk and field audits in respect of all zakat and income tax payers and is further secured by penalties that have been applied in practice.

100. 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 2015, 171 companies are traded on the Saudi Stock Exchange.

101. 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 this situation MCI would not authorise the establishment of the company, effectively blocking the establishment of such a company. This would also be the case if MCI would see any indication of such shares in practice, or would detect a joint stock company with bearer shares in practice, such action would be considered a violation of the Company Law which stipulates the registration of ownership information at the initial offering and at any later capital increases while the Company Law has no provision to convert a nominal share to a bearer share. In addition, as noted above, 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. It can therefore be concluded that the non-existence of bearer shares is based on a comprehensive policy that is applied through monitoring conducted by the Ministry of Commerce and Industry. This regards both the authorisation of the establishment of the company, in case of newly created joint stock companies, as well the annual shareholder meetings where MCI verifies the completeness and the correctness of the register of shareholders of all the existing joint stock companies. Based on this monitoring, the Saudi Arabian authorities have stated that no bearer shares exist in practice.

Partnerships (ToR A.1.3)

102. 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 29 April 2015, there were 4 035 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 29 April 2015, there were 1419 limited partnerships registered.

103. As is the case for companies, the number of registered partnerships dropped considerably since 2012, with approximately 60%, due to the introduction of fees for registration with the Chamber of Commerce and its annual renewal.

104. 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).

105. 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.

106. 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

107. 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.

108. 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 12 076) (s. 15 CRL).

109. As noted, partnerships are governed by the same law as companies, the CL. The establishment and subsequent registering of a partnership is very similar to the incorporation of a company. All relevant information in respect of a partnership is stated in the partnership agreement that is reviewed by the MCI before being authenticated by the public notary. The public notary will only authenticate the agreement after it has certified that it has been reviewed by the MCI. The MCI in its turn will not register a partnership in the Commercial Register unless it has the authenticated partnership agreement. Any change of any of the partners involves the same procedure as a transfer of shares in a LLC. This means that in case of a change of a partner in a partnership, the following sequence takes place: submittal of partners declaration of the partnership agreement amendment to MCI, followed by authentication by the public notary and publication in a daily paper, and completed with the amendment of the Commercial Register. As all information on the partnership, including information on the partners, is stated in the partnership agreement that is referred by the MCI to the notary public, it is ensured that all relevant information is available with both ministries as well as Commercial Register at time of registration. The measures described above to ensure compliance with registration, filing and payment requirements by companies apply to partnerships similarly.

Tax and zakat law

110. 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).

111. 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 4 830) or between 5% and 25% of unpaid tax (s. 76 ITL).

112. 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.

113. Regarding supervision, Saudi Arabia explains that all measures described above to ensure compliance with registration and filing requirements by companies also apply to partnerships.

Conclusion and practice

114. 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.

115. Saudi Arabia did not receive any request related to ownership information of a partnership during the review period. Accordingly, no issue in respect of availability of ownership information regarding partnerships was reported by peers.

Trusts (ToR A.1.4)

116. 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

117. 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.

118. 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. However, recipients can only be Saudi nationals and the proceeds of the *waqf* are restricted to the geographical area (often the town or province) where the *waqf* was established. 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.¹¹

Ownership information held by the authorities

119. 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. The *waqf* has to appear in person before the court as part of the procedure of issuing of the court order. Changes to the instrument pertaining to the *waqf* must also be approved by a court. Saudi Arabia explains that the main regions have specialised courts for these purposes since 2013.

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

120. 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). The Waqf by-law provides that a copy of each *waqf* deed is to be provided by the concerned court to Ministry of Islamic Affairs. For this purpose the court will issue a specific certificate (“the *waqf* deed”) that states that the court validates the *waqf* or the changes to the *waqf* instrument. As at November 2015, there were 8570 *waqfs* registered. These *waqfs* are public *waqfs* or they become public after the decease of beneficiaries. 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 the Waqf Administration in the town where the assets are located (s. 2 Waqf Regulations).

121. In practice, the court will provide a copy of the *waqf* deed to the local office. The *waqf* Administration registers this information in its electronic database. A full copy of all relevant information is also available on the central level. Saudi Arabia further explains that this database will be further linked to the central database in the near future. Field inspections may take place by the *waqf* Administration to ensure compliance and keep oversight. Saudi Arabia further explains that major investments have to be approved separately by the High Waqf Council.

122. 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 8 500 *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. As Saudi Arabia explains purely private *waqfs* are overseen by the Ministry of Social Affairs. For this purpose representatives of the Ministry attend the meetings of the *Waqf* board that administers this type of *waqfs*.

Tax and zakat law

123. *Waqfs* are only subject to zakat where they are engaged in any type of commercial activity and where persons who are Saudi citizens are beneficiaries of the *waqf*. 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, ten *waqfs* are registered

with the tax authorities (all private *waqfs*). Regarding oversight and compliance with annual zakat declarations reference can be made to the sections regarding companies above.

Foreign trusts

124. 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.

125. 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 (or) a fine not exceeding SAR 500 000 (EUR 120 765) (s. 20 AMLL). As noted above under the item “Nominee identity information”. AML-related supervision on company service providers including accountants is exercised by Ministry of Commerce and Industry as well as the Ministry of Justice in respect of lawyers.

Conclusion and practice

126. 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*. The *waqf* Administration registers this information in its electronic database. Field inspections may take place by *waqf* Administration to ensure compliance and to keep oversight. Saudi Arabia further explains that major investments have to be approved separately by the High Waqf Council. 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. As Saudi Arabia explains purely

private *waqfs* are overseen by the Ministry of Social Affairs. For this purpose representatives of the Ministry attend the meetings of the Waqf board that administers this type of *waqfs*. This combination of legal requirements and oversight ensures the availability of identity information on all *waqfs* in Saudi Arabia.

127. 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)

128. 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. The Ministry of Social Affairs issues licenses to ensure the foundation operation is in line with the foundation's purposes and objectives. The Ministry of Social Affairs has the jurisdiction to monitor the performance of foundations including its assets (could be *waqfs*) consecrated in full or in part for these foundations. As at 29 April 2015, there were 666 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)

129. 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.

Companies and partnerships

130. 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 1 208) but not more than SAR 20 000 (EUR 4 830), or both (s. 229(8) CL).

131. 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 12 076) (s. 15 CRL).

132. As noted above, the articles of association of a limited liability company, which contain full ownership information, are registered with the MCI upon incorporation. Subsequently, any transfer of shares of a limited liability company is based on a sale and purchase agreement and involves an amendment of the articles of association. This amendment can only be made after approval of the Ministry of Commerce and Industry and the execution before the Notary. As the transfer becomes legally effective after the completion of the procedure this ensures that full ownership information in respect of limited liability companies is available with the MCI, and there has not been a need to impose any penalties.

133. As noted above, with regard to joint stock companies, the shareholder register is verified annually by a representative from the MCI that is present during the annual shareholder meeting. In respect of listed joint stock companies the Capital Market Authority (CMA) up-dates the register daily. Updates are electronically registered in the Depository and Settlement System in the Securities Depository Centre at the Saudi Stock Exchange. The procedure applied when verifying includes a review of the shareholder register kept by the company (in case of closed stock companies) and by TADAWAL (in case of listed companies). Further to this identity cards of the present shareholders are checked to ensure that they are the ones in the register. Regarding the obligation to keep a shareholder register, it can be noted that 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 1 207 009) but not more than SAR 20 000 (EUR 4 830 037), or both (s. 229(8) CL). Regarding this obligation to keep the shareholders register, Saudi Arabia reports that there were no cases of non-compliance and therefore no penalties had been imposed during the period under review.

134. 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 12 076) (s. 15 CRL).

135. As noted, partnerships are governed by the same law as companies, the CL. The establishment and subsequent registering of a partnership is very similar to the incorporation of a company. Regarding supervision and oversight, all measures that are relevant to ensure compliance with registration and filing requirements by companies also apply to partnerships. Ownership information is directly available with the MCI, and there has not been a need to impose any penalties.

Waqfs

136. 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*. As noted, the court will provide a copy of the *waqf* deed to the local office of the *waqf* Administration. This includes full identity information regarding the founder and the beneficiaries of the *waqf*, the *waqf* Administration will also include this information in its electronic database. A full copy of all relevant information is therefore also available on the central level. 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 (or) a fine not exceeding SAR 500 000 (EUR 120 076) (s. 20 AMLL). AML-related supervision on company service providers, including accountants, is exercised by the Ministry of Commerce and Industry. Supervision of lawyers is in the hands of the follow-up administration of the Ministry of Justice. Reference can be made to the section regarding AML supervision of service providers that is included in paragraph 86 above.

Registration with DZIT and filing of the annual tax or zakat return

137. 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 242) and not exceeding SAR 10 000 (EUR 2 416) 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 4 831) 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. As explained in the sections above it is very difficult - if not impossible - for a company or business to (commercially) operate in Saudi Arabia without a valid zakat certificate or tax clearance certificate.

138. Compliance with all tax and zakat requirements is checked by DZIT through desk and field audits and requirements to register with DZIT are further secured by registration and filing penalties that have been applied in practice as demonstrated in the statistic included in paragraphs 78 to 80 above. Foreign companies need to obtain a license from SAGIA. At the same time DZIT will allocate a TIN to the foreign company. SAGIA carries out field inspections to ensure compliance by foreign investors with the license conditions and other relevant legal provisions. In addition, and as noted above, DZIT performs cross checks and matches payments reported by audited taxpayers to recipients who should be identifiable in DZIT's databases; in case it is found out that payments are made to persons not registered, DZIT takes action to ensure that such persons get registered and comply with their obligations.

139. Compliance with all tax and zakat requirements is checked by DZIT through desk and field audits. The correctness of ownership information is being checked during these audits. As Saudi Arabia explains that the inspection the shareholder register is part of DZIT standard operating procedure for conducting desk and field audits in order to verify the shares that are subject to either tax or zakat. In this respect DZIT reports that around 25% of all persons subject to zakat and income tax get audited on annual basis. As DZIT further explains the goal is to have 100% of the zakat and tax payers audited within a cycle of four years, either through a field or a desk audit. Field audits comprise to around 10% of all audits conducted in a year. From the 1648 officials working with DZIT around 80% are qualified to conduct audits in respect of zakat and/or tax purposes.

Conclusion regarding availability of information

140. Relevant information in respect of joint stock companies is kept by the company or by the Capital Market Authority (CMA) for companies that are listed. The MCI verifies the completeness and the correctness of the register of shareholders of all the joint stock companies on an annual basis. The CMA updates the register of shareholders of listed joint stock companies

on a daily basis. Updates are electronically registered in the Depository and Settlement System in the Securities Depository Centre at the Saudi Stock Exchange. These measures are adequately applied in practice to ensure that this information is available. Furthermore, ownership information in respect of limited liability companies is kept by the MCI and the Ministry of Justice (public notary). The establishment of an LLC or a transfer of shares requires an amendment of the articles of association, and this can only be done after approval of the MCI and the execution before a public notary. As the transfer becomes legally effective only after the completion of the procedure, this ensures that ownership information in respect of limited liability companies is available with the MCI and the Ministry of Justice.

141. Regarding availability of ownership information of partnerships supervisory measures to ensure compliance with registration and filing requirements by companies also apply to partnerships. This ensures that ownership information in respect of partnerships is available with the MCI and the Ministry of Justice.

142. All *waqfs* in Saudi Arabia are registered with the *Waqf* Administration, which is part of the Ministry of Islamic Affairs. Relevant ownership information is kept by the *Waqf* Administration. The *waqf* Administration registers this information in its electronic database. The *Waqf* Administration uses field inspections to ensure compliance and to keep oversight. Purely private *waqfs* are overseen by the Ministry of Social Affairs. For this purpose representatives of the Ministry attend the meetings of the *Waqf* board that administers this type of *waqfs*. This combination of legal requirements and oversight ensures the availability of identity information on all *waqfs* in Saudi Arabia.

143. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements. Enforcement provisions are adequately applied in practice and generally ensure that ownership information with regard to the relevant entities is available.

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.

Phase 2 rating

Compliant

A.2. Accounting records

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

144. 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)

145. 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 Register of Companies (s. 128 CL). Both the Commercial Register and the Register of Companies are administered by the Ministry of Commerce and Industry.

146. 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, including a copy of the auditor's report, must be submitted to the Register of Companies (s. 175 CL).

147. 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).

148. 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 1 207) but not more than SAR 20 000 (EUR 4 830), 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.

149. 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.

150. 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).

151. 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

152. 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 1 207) but not more than SAR 20 000 (EUR 4 830) (s. 12 CBL).

153. 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).

154. Any merchant whose capital does not exceed SAR 100 000 (EUR 24 159) 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. In practice this mainly concerns 4035 businesses that are organised in the form of general partnerships. However, although exempt from book keeping, record keeping requirements for these smaller partnerships still apply, as it is noted that all partnerships are subject to the record-keeping obligations of the CL.

Tax and zakat law obligations

155. 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). In this regard Saudi Arabia reports that during the period under review in 487 cases penalties have been imposed on companies and partnerships for income tax purposes. However, these penalties include a variety of issues, including for failing to keep accounting records and late registration and late filing. Saudi Arabia reports that 95.1% of all of companies and partnerships keep books and record as part of their accounting obligations. For these companies and partnerships that are included in the percent of 95.1%, the monthly average number of cases not complying with accounting obligations, based on actual supervision and checks, is 1-2 cases.

156. 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.

157. 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. However, it can be noted that DZIT will not issue a new Zakat certificate if the person or company involved has not met all relevant requirements.

158. 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).

159. 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 24 159). The tax authorities also have the right to request a copy of the contract. Any person responsible for notifying the tax authorities who 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). Saudi Arabia explains that DZIT makes sure that all contractors are registered. This information is further supplemented with data regarding imports that the Customs

Department gathers and reports to DZIT via a direct link. In addition, the Ministry of Commerce and Industry provides DZIT directly with Commercial Register Data, as well as industrial and professional licenses and their updates. DZIT in its turn performs cross checks and matches payments reported by audited taxpayers to recipients who should be identifiable in DZIT's databases; in case it is found out that payments are made to persons not registered or non-compliant, DZIT takes action to ensure that such persons get registered and comply with their obligations.

Underlying documentation (ToR A.2.2)

160. 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.

161. A person who fails to comply with the record-keeping requirements is liable to a fine of at least SAR 5 000 (EUR 1 207) but not more than SAR 20 000 (EUR 4 830) (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 24 159). 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.

162. 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.

163. 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.

164. 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 24 159), 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)

165. 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).

166. 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 24 159). As noted, this mainly concerns general partnerships. 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.

167. 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 and practice

168. 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.

169. 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 24 159), 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.

170. As noted, joint stock companies, limited liability companies and partnerships limited by shares are subject to a statutory audit, and they are

required to prepare an annual report, including the auditor's report and the financial statements. Because of this statutory obligation, these entities and arrangements must have their accounts audited.¹²

171. Oversight on the performance of auditing activity takes place by the Saudi Organisation for Certified Public Accountants (SOCPA¹³). SOCPA oversees accountants and auditors, both with respect to their AML obligations, as well as the quality of the review. All auditors are subject to independent monitoring and review through desk audits and on-site inspections by SOCPA, as can be demonstrated by the following statistics that have been provided by Saudi Arabia:

Number of desk and onsite inspections conducted by SOCPA in respect of certified accountants regarding AML/CFT obligations, as well as the quality of the review

Year	No. of offices subject to sudden visits ^a	No. of offices subject to periodical field reviews ^b	No. of offices that filed their annual information and were subject to desk-review ^c
2012	-	21	126
2013	14	32	129
2014	38	23	124

Notes: a. This programme started in 2013. According to information available at its website www.socpa.org.sa as of August 2015, SOCPA in total has approximately 5000 members, divided over 147 offices.

b. Normally an office is reviewed once every 4 years.

c. An office that fails to file this information is automatically referred to the SOCPA Investigation Committee.

172. During the inspections the adherence to accounting and (international) auditing standards is assessed, as well as the competence of the individual auditors. During an onsite inspections specialised review groups review samples of audit files (performed by the office under review) to assure compliance with laws and professional standards, and with the approved quality control standards for accounting offices and their elements such as independence. Both procedural aspects and the quality of the work and

12. It can be noted that the requirement to be audited is not dependent on whether the company is active or inactive.
13. SOCPA was formed by Royal Decree. It is an independent legal entity managed by a board of directors chaired by Minister of Commerce and Industry, with members from government agencies, private and academic sectors. As Saudi Arabia explains SOCPA basically oversees the certified public accountants performance. MCI is the competent authority to monitor compliance with keeping accounting records requirements.

independence are reviewed. In case of minor remarks, the concerned office is addressed to correct the problem. In case of non-compliance, as would for instance be the case if a public accountant provides both auditing services as well as consultation services to the same customer or in cases where relevant work papers or records are absent or insufficiently kept, the case is referred to SOCPA's Investigation Committee (concerned with non-compliance with the provisions of Public Accountants Regulations). Disciplinary measures and other sanctions have been taken as a result of the reviews. Saudi Arabia reports that this includes reprimand, warning, temporary closure, cancellation of license, imprisonment and financial fines.

173. Compliance with the requirement to maintain accounting records and underlying documentation by all legal entities is monitored also by the MCI, as well as the Capital Market Authority in respect of listed joint stock companies. Until 1 January 2015 all companies had to submit their accounting records manually to MCI. This included the auditor's report. Within MCI records were checked by a team of 5 persons. Saudi Arabia explains that compliance with a timely submission during the period up to 2014 was relatively low and only around 50%.

174. In response Saudi Arabia has taken a number steps to improve this situation. First, as of 2012, MCI has stopped the renewal of the companies' registration in the Commercial Registry if the company failed to submit their financial accounts to MCI. Second, an extra 100 staff were hired in the course of 2015. Third, as of 1 January 2015 a new automated system that is known as *Qawaem* became mandatory to use for all companies. It enables companies and audit firms to upload and send their financial statements in a standard XBRL language. Alerts are sent out automatically if the records are not submitted within 6 months after the fiscal year. Saudi Arabia reports that a renewal of registration with the Commercial Registry is not done in cases of non-filing or non-timely filing of the financial statements and other relevant documents.

175. Although it seems likely that all these steps that were initiated by MCI will significantly improve the issue of late or non-filing of audited accounting records with MCI, it should be noted that most of these improvements still had to be implemented at the end of the three year review period.

176. However, MCI should monitor whether all relevant entities actually meet their obligation to have their accounts audited, as the auditors and SOCPA can only ensure that reliable accounting records are kept by companies that actually meet this requirement. As noted, as of April 2015 there were 1 098 JSCs and 37 709 LLCs registered in the Companies Register.

177. With a staff of only 5 persons and with only half of the audited accounting documents being submitted in a timely way, it is highly unlikely that MCI's monitoring was sufficient to ensure that reliable accounting

records were kept in practice for all relevant entities and arrangements that were not within the scope of the auditors and SOCPA.

178. Nevertheless, the tax administration audits a percentage of filed returns every year, and the audited item(s) is (are) traced back to the taxpayer's books and records. In cases where DZIT has reason to doubt the validity and soundness of the books and records presented, it may not accept such books and records and make a presumptive assessment in certain cases and based on the taxpayer's relevant facts and circumstances. In practice this procedure may also be used by the Department in order to enforce taxpayers' compliance with statutory requirements. Saudi Arabia reports that in total 4108 taxpayers and 10 052 zakat payers were audited by DZIT in the course of field audits during the last three years.

179. However, with around 40 000 Joint Stock Companies and LLCs registered in the Companies Register and only around 25 000 companies registered with DZIT as taxpayers or zakat payers¹⁴, it is clear that in practice there is quite a significant number of companies (around 30%) that is not registered with DZIT. Therefore, the oversight that takes place by the tax authorities is only likely to cover part of the relevant entities and arrangements that should be monitored by the MCI.

180. Although it can be noted that MCI already initiated some important steps with the introduction of *Qawaem* and the hiring of an additional 100 staff, it is recommended that Saudi Arabia should improve its monitoring to ensure that reliable accounting records are kept for all relevant entities and arrangements.

181. In respect of *waqfs* Saudi Arabian authorities report that the Public Auditing Bureau performs an annual audit of the accounts of the *waqfs* administered by the *waqf* Administration. Field inspections, which include verification of the accounting records, may take place by *waqf* Administration to ensure compliance and to keep oversight.

182. In practice, Saudi Arabia reports that it went to the tax payer to obtain accounting information. Saudi Arabia received a limited number of requests for accounting information. However, none of these requests were answered at the time of the onsite visit. However, as will be further elaborated below within the context of element B.1.3 and C.5, this does not seem to be related to the availability of accounting information, but rather to limitations based on the interpretation of its treaties as well as the organisation of the competent authority.¹⁵

14. In total 6864 companies are registered as taxpayers and 19 990 companies are registered as zakat payers with DZIT.

15. As noted in para 302 Saudi Arabia reports that after inspecting the Saudi taxpayer involved, it obtained the data requested (involving accounting information) and responded in an (second) e-mail on November 29, 2015.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Partnerships with a capital of SAR 100 000 (EUR 24 159) or less without foreign partners are not expressly required to keep underlying documentation or to keep documentation for at least 5 years.	Saudi Arabia should ensure that all partnerships are required to keep underlying documentation and to keep accounting records for a period of at least 5 years.

Phase 2 rating	
Largely compliant.	
Factors underlying recommendations	Recommendations
With a staff of only 5 persons and with only half of the audited accounting documents being submitted to the MCI in a timely way during the period under review, there were not sufficient safeguards in place to ensure that reliable accounting records in practice were kept for all relevant entities and arrangements. Furthermore, it appears that a significant number of companies in Saudi Arabia is not registered with DZIT, although Saudi Arabia indicated that the vast majority of these are inactive. Therefore, the oversight that takes place by the tax authorities in this respect is only likely to cover part of the relevant entities and arrangements that should be monitored by the MCI. It can be noted, however, that MCI already initiated a number of important steps to enhance its oversight activities, including the hiring of an additional 100 staff as well as the recent introduction of a specific database known as <i>Qawaem</i> , to reduce the number of late filings or non-filings.	Saudi Arabia should monitor the recently introduced oversight activities to ensure that reliable accounting records are kept for all relevant entities and arrangements.

A.3. Banking information

Banking information should be available for all account-holders.

183. 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 2014, a total of 24 banks (12 domestic banks and 12 branches of foreign banks) operate in Saudi Arabia.

Record-keeping requirements (ToR A.3.1)

184. 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.

185. 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).

186. 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.

187. 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 (or) a fine not exceeding SAR 500 000 (EUR 121 908) (s. 19 AMLL).

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

In practice

189. The Saudi Arabian Monetary Agency (SAMA) is responsible for supervision of the compliance with all the requirements stemming from the AMLL, including the record keeping requirements for banks. SAMA supervises compliance with these requirements, as a part of the general supervision, but also through targeted on-site inspections focused on AML issues. Within SAMA the Inspection (on-site) and Supervision (off-site) Departments are responsible for banking supervision.

190. The supervision model takes into account a combination of on-site and off-site inspections. Off-site supervision consists of an analysis of the documents and reports that are submitted by financial institutions on a periodical basis as well as the specific issues that were flagged during onsite visits. As Saudi Arabia explains, all banks will get a full scope audit by SAMA each year. Full scope on-site work is usually done by a joint team of SAMA examiners and staff from an accounting firm (usually a big four firm). SAMA checks selected institutions on their compliance with Saudi Arabia's anti-money laundering laws, evaluates the adequacy of customer due diligence (CDD) measures taken and assesses the sufficiency of the implementation of know your customer (KYC) rules, while the accounting firm will be looking at the financial accounts of the bank involved. In February 2012, SAMA updated the rules of opening bank accounts and the general rules for their operation which stress that banks shall not conduct any transaction for any customer unless having sufficiently reviewed and verified the customer identity.

191. SAMA carried out around 100 on-site targeted inspections annually relating to AML/CFT in financial institutions regarding the years 2011, 2012 and 2013, as demonstrated in the table below. This included all domestic banks (12) and all branches of foreign banks (12). Field inspections cover various programmes. In addition to full scope inspections, SAMA conducts targeted inspections regarding AML and CFT, UN Security Council resolutions implementation, or fiscal evasion. The same entity could therefore be inspected several times a year under different programmes. Although Saudi Arabia did not yet have the numbers for the year 2014, it stated that SAMA representatives carried out supervisory visits to all banks branches of foreign banks operating in Saudi Arabia during 2014 and prepared reports risks related thereof.

Examinations and Inspections by SAMA of Banks and Exchange Companies to verify fulfilment of AML/CFT requirements

Year	Examinations	Field inspections
2011	84	125
2012	29	71
2013	63	112

192. Regarding the amount of penalties imposed in relation to the breaching of AML/CFT requirements and the number of entities involved, statistics provided by Saudi Arabia show that the number of entities involved reached a peak in the year 2012 and fell quite drastically in the year after that. As Saudi Arabia explains this is related to the AML/CFT programmes that were carried out mainly during the years 2010 to 2012 and which specifically targeted compliance with customer identification requirements as well as CDD measures. Supervisory bodies continued during the years 2013 and 2014 to implement inspection programmes and follow up to verify that such institutions comply. The drop in penalties reflects the improvements that the supervised entities made in this field following these programmes conducted in the period 2010-12. Saudi Arabia confirms that the seriousness of the contravention in 2013 was on average less important than in 2011, explaining why the average gross amount of penalty in 2013 is considerably lower.

Number of institutions and financial fines that were imposed by SAMA to the subjected institutions in respect of AML/CFT

Year	No. of entities	Gross amount of penalties (SAR)
2011	26	3 887 000
2012	91	8 000 000
2013	58	456 433

193. During the three-year review period, bank information was requested in at least four cases. Peers indicated that bank information was not provided in all the cases where they requested for that type of information. Saudi Arabia explains that in these cases the information exchange agreements did not contain a provisions corresponding to Articles 26(4) and 26(5) of the OECD Model Tax Convention, and therefore it was not able to provide bank information in response to EOI requests. However, Saudi Arabia stated that it would not face any difficulties in obtaining this type of information in cases where the EOI agreement did contain these provisions. Saudi Arabia explains that it was able to obtain this type of information for EOI purposes in three cases. Saudi Arabia further clarifies that it asked for this type of information

in domestic cases, and that the information in these cases was available. They further explain that in these cases SAMA would be the main source for banking information in cases where this type of information is requested. Saudi Arabia reports that SAMA provided information to DZIT for domestic purposes in response to (in total) 9 requests from DZIT in 2012, 34 requests in 2013, 31 request in 2014, and 81 requests during the year 2015. Saudi Arabia explains that these numbers include responses to three EOI requests that were made in 2014 and 2015.

194. The customer identification obligations and record keeping obligations on all transactions require banking information to be available in Saudi Arabia for all account holders. Compliance by banks in respect of these legal obligations is checked and supervised by the SAMA. Through their inspections, it has been established that banks keep the required information on their clients and transactions.

Determination and factors underlying recommendations

Determination
The element is in place.
Phase 2 rating
Compliant

B. Access to information

Overview

195. 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. It also assesses the effectiveness of this framework in practice.

196. 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.

197. 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.

198. As at July 2015, 23 out of the 43 DTCs concluded by Saudi Arabia contain provisions corresponding to Articles 26(4) and 26(5) of the OECD Model

Tax Convention. However, Saudi Arabia signed the Multilateral Convention on 29 May 2013, and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016.

199. The Multilateral Convention will also be a complementary basis for exchanging information with jurisdictions with which Saudi Arabia is already linked by a bilateral EOI instrument. In the case of Saudi Arabia, the entry into force of this instrument will bring EOI with 36 of its 43 DTC partners in line with the standard and will bring the possibility to exchange information in line with the standard with an additional 60 jurisdictions and will provide Saudi Arabia with an EOI network that covers a total of 102 jurisdictions. In all, the entry into force of this instrument will bring EOI with 95 of its 102 partners in line with the standard. So, once the Multilateral Convention enters into force for Saudi Arabia and these jurisdictions, Saudi Arabia can use its information gathering powers to obtain information for EOI purposes with respect to requests received from these jurisdictions under the Multilateral Convention. Nevertheless, 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).

200. Saudi Arabia has the possibility to apply search and seizure powers in order to obtain information from persons subject to income tax. In addition, zakat payers may be refused a zakat certificate if they refuse to provide information for EOI purposes. Furthermore, Saudi Arabia introduced some amendments in 2014 to clarify that a person can be held jointly liable for the tax due on a Saudi Arabian taxpayer, if this person does not provide information for EOI purposes. All these 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.

201. 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. In practice, peer input did not identify any issues regarding professional secrecy of lawyers during the period under review. In addition, the Saudi Arabian competent authority reports that it did not encounter any practical difficulties with the application of professional secrecy.

202. Concerning the rights and safeguards that apply to persons in Saudi Arabia, DZIT is not subject to any obligation to notify any person regarding the access and exchange of information pursuant to its EOI agreements. Although in theory it would be possible for any Saudi citizen to challenge the furnishing of information to foreign tax authorities, 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. Consequently these issues did not come up in practice.

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).

203. 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. Since June 2015 contact information for Saudi Arabia’s competent authority is fully identifiable on the Global Forum website.

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

204. 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.

205. The main sources of information for DZIT are:

- The tax and zakat databases. The Saudi Arabian competent authority has access to an increasingly wide range of information collected as part of the (electronic) registration and filing requirements applicable in Saudi Arabia and stored in its institutional databases. Many of the e-filing and e-registration services and requirements for zakat and taxpayers have been introduced in recent years and the information collected by these means now starts flowing into tax and zakat databases. This includes the information contained in zakat returns, income tax returns as well as zakat and tax clearance certificates. While the EOI office has access to the basic information related to

the taxpayer such as address, TIN and branch, full access is granted to the Audit Department within DZIT and they would get involved to obtain the requested information from the database. This would include information regarding zakat and tax returns, accounting information, audits etc. Most other taxpayer related information would be asked directly from the taxpayer or a third party through one of the regional and local tax offices.

- Further databases accessible to and used by the Competent Authority for gathering information include the databases of the Ministry of Commerce and Industry as well as the Customs Department. Ownership information in respect of a company or a partnership is obtained mainly from the registration or investment certificate which sets out all ownership details. In respect of a *waqf* this type of information is obtained from the Ministry of Islamic Affairs.
- In cases where the requested information is in the possession or control of a third party such as a service provider, e.g. a trustee, the EOI office will request the information from the party that has such information.
- Accounting information in respect of a company or a partnership is primarily obtained directly from the taxpayer. From 2014 onwards financial accounts that have been audited by chartered accountants are deposited by the auditors in a specific database known as *Qawaem*. This database is accessible for banks as well as various government authorities, including DZIT. Accounting information, including underlying documentation, in respect of a *waqf* is primarily to be obtained from the *Waqf* Administration.
- Banking information is obtained via the Saudi Arabian Monetary Agency (SAMA).

206. 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). Saudi Arabia clarified that it has responded on 20 September 2015 to a request for bank information in response to the request sent on 17 December 2014. Regarding the question whether the name of the account holder is required to obtain bank information, Saudi Arabia clarifies that an IBAN number or any other unique identifying information is sufficient to obtain the information.

207. Regarding the use of its access powers for domestic purposes, it can be noted that Saudi Arabia has quite considerable experience with the employment of its access powers to obtain bank information for domestic purposes. As noted in the context of element A.3 above, Saudi Arabia reports that DZIT obtained bank information for domestic purposes from SAMA in response to (in total) 31 request in 2014, and 81 requests during the year of 2015.

208. Saudi Arabia received a total of 9 requests during the period under review. However, due to a number of different reasons, which are further elaborated under this element and element C.5 below, Saudi Arabia only used its access powers in a limited amount of cases. The situation is the following:

- One request was answered based on information available in DZIT's database, so there was no need to use access powers;
- In relation to three requests, it appears that these requests did initially not arrive with the EOI unit. This issue will be further discussed under C.5. However, it can be noted that Saudi Arabia reported that it has contacted the relevant EOI partners and has now exchanged all requested information for two of the requests and partial information for the third request. In these cases, access powers have been applied.
- Two requests were not answered as the EOI agreement lacked provisions similar to art. 26, paragraph 4 and 5 of the OECD Model DTC, although in one of these cases it could also not be established whether the entity actually existed in Saudi Arabia. These issues are further clarified in sections B1.3 and B.1.5 of the report;
- In one request information was not exchanged as it pertained to periods prior to the entry into force of (the protocol to) the EOI agreement. The EOI partner agreed with this interpretation;
- Two requests are still pending and in different stages of being processed. Some of these cases are pending for a longer period of time. One request (in respect of purchases in relation to companies in the requesting jurisdiction regarding the years 2007-10) was sent 31 July 2013 and sent to one of the branches of DZIT. These cases are further dealt with under C.5.

209. In practice, therefore, Saudi Arabia obtained information by using its access powers in respect of only three requests that were received during the period under review, and only very recently. Other cases where access powers could potentially be applied have been pending for a long time. Therefore, Saudi Arabia has limited experience with the use of its access powers for EOI purposes.

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

210. 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.

211. 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.

212. 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.

213. 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.

214. This is supported by an amendment that Saudi Arabia made to its Income Tax Law Implementing Regulations as of 19 March 2014 to further clarify the applicability of the access powers stipulated in section 61(a) ITL. Following the amendment, section 58 (1) of the Implementing Regulations now clarifies that the scope of DZIT's access powers of section 61 ITL includes the power to obtain "*information it may request relevant to the administration of Income Tax Law including implementation of tax treaties to which the Kingdom is a party*".¹⁶ Although this amendment clarifies that the access powers stipulated in section 61(a) ITL can be used for EOI purposes, it does not extend the use of these powers to situation where the treaty or agreement lacks a provision corresponding to Article 26(4) of the OECD Model Tax Convention.

215. In practice, this situation materialised in 2012 when Saudi Arabia received two requests for accounting information from one of its EOI partners. One of the requests also asked for bank information. The peer involved noted that it did not receive any answer to these requests. In response, Saudi Arabia explains that the EOI agreement did not include provisions similar to paragraphs 4 and paragraph 5 (in respect of bank information) of the OECD Model Tax Convention, although the EOI requests made reference to the existence of such provisions. These issues are further clarified in section B.1.5 of the report.

16. In this respect Saudi Arabia further explains that any natural and corporate person, taxpayer or not, who refuses to provide information to DZIT for exchange of information purposes is considered to be not in compliance with statutory requirements. This requirement applies to zakat payers as well, being persons. Saudi Arabia explains that in case of non-compliance, DZIT will use available means to enforce those who fail to comply with this requirement, including denying the zakat certificate to zakat payers who refuse to comply with this requirement.

216. As at July 2015 Article 26(4) is included in 23 out of the 43 bilateral information exchange agreements concluded by Saudi Arabia. Furthermore, Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016. The entry into force of this instrument will bring EOI with 95 of its 102 partners in line with the standard.

Conclusion

217. Saudi Arabia was unable to answer two requests for information during the period under review due to the restrictions under its domestic law and the applicable EOI agreements. Although the entry into force of the Multilateral Convention will bring the EOI relationship with 36 of its 43 DTC partners, including its main EOI partners, in line with the standard, it should be noted that Saudi Arabia still has little practical experience in obtaining information for EOI purposes in general and in exchanging (bank) information under bilateral EOI agreements which include 26(4) (and 26(5)) for EOI purposes (see also B.1.5 below). Saudi Arabia should therefore monitor that it obtains and exchanges information in accordance with the standard under the EOI agreements that allow Saudi Arabia to obtain information regardless of a domestic tax interest provided for by Saudi Arabia's domestic legislation.

Compulsory powers (ToR B.1.4)

218. Jurisdictions should have in place effective enforcement provisions to compel the production of information. The Saudi Arabian authorities have certain compulsory powers at their disposal in this respect.

219. Firstly, Saudi Arabia introduced, in March 2014, a new provision as section 58(2) of the Income Tax Implementing Regulations: *“A natural or corporate person who fails to comply with the provisions of the preceding paragraph [which explicitly provides the power to DZIT to obtain information for EOI purposes under section 61 ITL] shall be jointly liable with the taxpayer for the tax due on taxpayer and for any penalties resulting therefrom.”* Although this can be considered a positive step, the penalty can only be imposed if there is a connection with a Saudi Arabian taxpayer which will generally not be the case in EOI requests.

220. Second, the tax authorities 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.

221. Third, 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 zakat payer 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.

222. 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, zakat payers may be refused a zakat certificate if they refuse to provide information for EOI purposes. Finally, Saudi Arabia introduced some amendments in 2014 to clarify that a person can be held jointly liable for the tax due on a Saudi Arabian taxpayer, if this person does not provide information for EOI purposes. All these 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 without linking them to Saudi Arabian income tax payers.

Secrecy provisions (ToR B.1.5)

223. 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

224. 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 seems limited to information necessary for ensuring the realisation of the purposes of the BCL.

225. 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.

226. 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 or the Multilateral Convention.

227. As noted Saudi Arabia cannot use its information gathering powers in respect of bank information if the EOI agreement lacked a provision similar to art. 26, paragraph 5 of the OECD Model DTC. In practice this situation came up in the beginning of 2012 when Saudi Arabia received a request for accounting and banking information from one of its EOI partners. The case is described above under B.1.3 and the principle applies similarly here in respect to the bank information that the request asked for. Also here it can be noted, that both Saudi Arabia and the peer are now parties to the Multilateral Convention, so once the Convention enters into force in respect of Saudi Arabia both parties will be covered.

228. As at July 2015 23 out of 43 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. However, as noted, Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016. The entry into force of this instrument will bring EOI with 36 of its 43 DTC partners in line with the standard.

229. Nevertheless, Saudi Arabia was unable to answer two requests for information during the period under review due to the restrictions under its domestic law and the applicable EOI agreements. Although the entry into force of the Multilateral Convention will bring the EOI relationship with 95 of its 102 EOI partners, including its main EOI partners, in line with the standard, it should be noted that Saudi Arabia has little practical experience in obtaining information for EOI purposes in general and no experience in exchanging banking information for EOI purposes under bilateral EOI agreements including article 26(5) or the Multilateral Convention. Saudi Arabia should therefore monitor that it exchanges bank information and other types

of relevant information in accordance with the standard under the EOI agreements that allow Saudi Arabia to obtain information regardless of a domestic tax interest provided for by Saudi Arabia’s domestic legislation.

Professional privilege

230. 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 practicing his profession [...], unless such non-disclosure constitutes a violation of a Shari’ah requirement.

231. 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 practicing 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.

232. 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. As Saudi Arabia explained, there was no case during the period under review where the requested information was covered or might have been covered by the attorney-client privilege and no issues in this respect came up in practice.

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 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.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
Saudi Arabia was unable to answer two requests for information due to the restrictions under its domestic law and the applicable EOI agreements. Although the entry into force of the Multilateral Convention will bring the EOI relationship with most of its EOI partners in line with the standard, it should be noted that Saudi Arabia has little practical experience in obtaining information for EOI purposes in general and in exchanging banking information for EOI purposes under bilateral EOI agreements in particular.	Saudi Arabia should monitor that it exchanges bank information and other types of relevant information in accordance with the standard under the EOI agreements that allow Saudi Arabia to obtain information regardless of a domestic tax interest provided for by Saudi Arabia's domestic legislation.

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.

233. 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)

234. There is no requirement in Saudi Arabia’s domestic legislation that the taxpayer under investigation or examination must be notified of a request.¹⁷

235. 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. Consequently these issues did not come up in practice.

236. Peer input did not identify any issues during the period under review and the Saudi Arabian authorities did not mention any issue in this respect.

Determination and factors underlying recommendations

Determination
The element is in place.
Phase 2 rating
Compliant

17. For purposes of this report, unless treatment of tax and zakat payers may vary, the term taxpayer also refers to zakat payer.

C. Exchanging information

Overview

237. 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.

238. Saudi Arabia has a network of DTCs covering 43 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, as of the cut-off date only 23 of its DTCs, of which 10 are in force, allow Saudi Arabia to fully exchange information according to the international standard. However, Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016 and will provide Saudi Arabia with an EOI network that covers a total of 102 jurisdictions. The entry into force of this instrument will also bring EOI with 36 of its 43 DTC partners in line with the standard.

239. A number of jurisdictions wish to negotiate an information exchange agreement with Saudi Arabia. Although these particular jurisdictions are covered by the Multilateral Convention since 2014, it is nevertheless 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.

240. 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. This is also ensured in practice. Consequently there was no case where information was unlawfully disclosed during the period under review.

241. 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.

242. The designated Competent Authority for exchanging information for tax purposes under all Saudi Arabian exchange of information instruments is the Minister of Finance or his authorised representative. The Department of Zakat and Income Tax ("DZIT") has been delegated this task. However, the function of competent authority was shifted from the International Economic Relations directorate within the Ministry of Finance to the international operations department within DZIT during the period under review. It appears that peers had difficulty to clearly identify this change in the contact information for Saudi Arabia's competent authority. Requests that were still sent to the Ministry of Finance were not answered, as it appears that these requests did not arrive with DZIT. Since June 2015 contact information for Saudi Arabia's competent authority is fully identifiable on the Global Forum website.

243. Saudi Arabia still has fairly limited experience in EOI but is considered by its EOI partners to be an important partner. Saudi Arabia has received nine requests for information over the period of review. From these nine requests initially only six requests actually arrived with DZIT. From these six requests only one was initially replied to. More recently, Saudi Arabia has communicated with its EOI partners regarding pending requests as well as requests that were initially not received. As a result, information has been exchanged in some cases, while in other cases the EOI partner has been informed of the reason why information could not be exchanged.

244. Although Saudi Arabia more recently undertook efforts to get in touch with the requesting jurisdictions and respond to their requests or provide them with an explanation as to why certain information could not be provided, it appears that Saudi Arabia only recently implemented organisational processes to ensure effective exchange of information. It appears that these processes were not functioning or monitored during the period under review. In all, there are certain areas which need improvement in order to ensure that information is provided in a timely manner in all cases (see section C.5). Saudi Arabia should also respond to EOI partners in cases where it is not able to respond to requests and provide status updates in cases where it is not in a position to meet the 90 day deadline.

C.1. Exchange-of-information mechanisms

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

245. Saudi Arabia has concluded 43 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)

246. 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.

247. Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016. Saudi Arabia’s exchange of information with over 55 jurisdictions is likely to occur exclusively under this Convention once this is in force in Saudi Arabia and the partner jurisdictions, as Saudi Arabia currently has no bilateral agreements with them. The Multilateral Convention will also be a complementary basis for exchanging information with jurisdictions with which Saudi Arabia is already linked by a bilateral EOI instrument.

248. Saudi Arabia concluded 13 DTCs with EOI partners that are not signatories to the Multilateral Convention. Six of these DTC’s were signed after January 2013 and are in line with the standard.¹⁸ The other seven 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. This relates to the DTCs with Bangladesh,

18. This regards the DTCs with Algeria, Ethiopia, FYROM, Kyrgyzstan, Tajikistan and Venezuela.

Belarus, Malaysia, Pakistan, Syria, Uzbekistan and Viet Nam. 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, Saudi Arabian authorities explained that in practice they do not use a different interpretation in this respect and peers did not report any issues in this respect either.

249. It should be noted, however, that Saudi Arabia did not exchange information in one case, because the requested information pertained to periods prior to the entry into force of relevant provisions (included in the protocol) of the EOI agreement.¹⁹

In respect of all persons (ToR C.1.2)

250. 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.

251. 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.

252. In practice, no issue restricting exchange of information in respect of the residence or nationality of the person to whom the information relates or of the holder of information has been indicated by Saudi Arabian authorities or peers.

19. Saudi Arabia clarified that it has responded to this request after the onsite visit via e-mail on 7 June 2015 in which it stated that the requested information relates to periods prior to the effective date of the Protocol for exchange of information between the two countries and, therefore, it could not provide the requested information. In its response the requested jurisdiction stated that it agreed with the position of the Saudi Arabia’s competent authority on this request.

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

253. 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.

254. 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.

255. As of January 2013 it was noted that only the DTCs with the Czech Republic, France, Japan, Malta, Poland, Singapore and Viet Nam contain a provision corresponding to Article 26(5) of the OECD Model Tax Convention. This is also the case for the 12 DTCs that Saudi Arabia concluded after the Phase 1 report. 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. Furthermore, Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016. Since the Multilateral Convention will also be a complementary basis for exchanging information with jurisdictions with which Saudi Arabia is already linked by a bilateral EOI instrument, exchange of bank information with all these jurisdictions will in practice be covered.

256. As a result, there remain only a small number of bilateral agreements with EOI partners that are not signatories to the Multilateral Convention and where the information exchange agreement does not contain a provision corresponding to Article 26(5). This regards the DTCs with Bangladesh, Belarus, Malaysia, Syria, Uzbekistan and Viet Nam. It is recommended that

Saudi Arabia updates these remaining DTCs to include a provision corresponding to Article 26(5) of the OECD Model Tax Convention.

257. 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). This issue materialised in practice as Saudi Arabia did not answer a request for banking information that it received in the beginning of 2012 because it could not use its information gathering powers as the EOI agreement with the jurisdiction involved lacked a provision similar to art. 26, paragraph 5 of the OECD Model Tax Convention. 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)

258. 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.

259. As of January 2013 it was noted that only a limited number of Saudi Arabia’s DTCs contained a provision corresponding to Article 26(4). It was also noted that the absence of this provision restricts the Saudi Arabian authorities in accessing information for exchange purposes under its information exchange agreements. Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016. The entry into force of this instrument will bring EOI with 95 of its 102 partners in line with the standard. Since the Multilateral Convention will also be a complementary basis for exchanging information with jurisdictions with which Saudi Arabia is already linked by a bilateral EOI instrument, exchange of information regardless of a domestic tax interest with all these jurisdictions will in practice be covered.

260. As a result, there remain only a small number of bilateral agreements with EOI partners that are not signatories to the Multilateral Convention and where the information exchange agreement does not contain a provision corresponding to Article 26(5). This regards the DTCs with Bangladesh, Belarus, Malaysia, Syria, Uzbekistan and Viet Nam. It is recommended that Saudi Arabia updates these DTCs to include a provision corresponding to Article 26(5) of the OECD Model Tax Convention.

Absence of dual criminality principles (ToR C.1.5)

261. 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.

262. None of the DTCs concluded by Saudi Arabia applies the dual criminality principle to restrict the exchange of information. Accordingly, there has been no case when Saudi Arabia declined a request because of a dual criminality requirement.

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

263. 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”).

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

265. In practice, there has been no case where Saudi Arabia declined a request because it related to a criminal tax matter, and no peers have raised any issues in this regard.

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

266. 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.

267. No restrictions apply in any DTC concluded by Saudi Arabia for information to be provided in the specific form requested. Accordingly, there has been no case when Saudi Arabia declined to provide the requested information in adequate form and no issue in this respect has been reported.

In force (ToR C.1.8)

268. 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.

269. Of the 43 DTCs concluded by Saudi Arabia, nine are not in force. This regards eight DTCs that were signed after February 2013 (Algeria, Ethiopia, Former Yugoslav Republic of Macedonia, Gabon, Morocco, Portugal, Sweden and Venezuela) as well as the DTC with Kazakhstan (). In respect of the DTC with Kazakhstan, Saudi Arabia has completed its internal ratification and notified the Kazakhstan authorities. This is also the case for the DTCs with Algeria and Ethiopia. The remaining six DTCs (Former Yugoslav Republic of Macedonia, Gabon, Morocco, Portugal, Sweden and Venezuela) are still in the process of ratification, which takes on average 10 months to complete, according to the Saudi Arabian authorities.

270. In respect of a few of its signed DTCs, Saudi Arabia has not yet taken all steps necessary on its part to bring those agreements into force. Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. Consequently, the Multilateral Convention will enter into force on 1 April 2016.

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

271. 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).

272. Saudi Arabia's domestic law does not allow them to access bank information (see sections B.1.5 and C.1.3) where there is not a possibility to exchange information under the Multilateral Convention and 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 *mutatis mutandis* 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).

273. Of the 43 DTCs signed, only 23 contain provisions corresponding to Article 26(4) and 26(5) of the OECD Model Tax Convention. Of these

23 agreements, 10 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

Determination
The element is in place.

Phase 2 rating
Compliant

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

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

274. 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.

275. Saudi Arabia has DTCs in place with 43 jurisdictions, including with five of its main trading partners (Japan, China, Korea, India and France, but not Germany and the United States). 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. However, it is also noted that Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. Consequently the Convention will enter into force on 1 April 2016. It can be noted that Germany and the United States are also signatories to the Multilateral Convention. Furthermore, since the Multilateral Convention, once in force for these jurisdictions, will also be a complementary basis for exchanging information with jurisdictions with which Saudi Arabia is already linked by a bilateral EOI instrument, exchange of information in line with the standard with all these jurisdictions will in practice be covered.

276. Comments were sought from Global Forum member jurisdictions in the course of the preparation of this report. Three jurisdictions commented

that they approached Saudi Arabia to indicate their interest in entering into an information exchange agreement. As of January 2013 Saudi Arabia confirmed that it then was in contact with these three jurisdictions with a view to enter into negotiations. However, it appears that an official response was not received by these jurisdictions or with long delay. Even though these jurisdictions are now covered by the Multilateral Convention, Saudi Arabia should have contacted these jurisdictions with a view to enter into exchange of information agreements more expeditiously, as the international standard requires that a jurisdiction exchanges information with all relevant partners, meaning those partners who are interested in entering into an information exchange agreement. It is therefore recommended that Saudi Arabia ensures that it, expeditiously, 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
Some delays have been experienced in Saudi Arabia responding to requests from other jurisdictions to start negotiations with a view to enter into an information exchange agreement.	Saudi Arabia should, expeditiously, 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.
Phase 2 rating	
Largely compliant.	

C.3. Confidentiality

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

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

277. 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.

278. 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. No issues in this respect came up in practice.

279. Section 59 ITA provides for the Department of Zakat and Income Tax and its entire 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)

280. 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.

281. 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.

282. In addition, the By-Law of the Public Service Law stipulates in Article 15, Paragraph (e) that a public servant should not disclose any confidential information to which he has access by virtue of a public position. Saudi Arabia explains that this provision includes the competent authority officials and is applicable even after the official retires.

283. 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).

In practice

284. All officials dealing with information on taxpayers are obliged to keep all the information confidential. The confidentiality rules are provided mainly in the Income Tax Law (ITL), as well as in the provisions on confidentiality contained in bilateral agreements. They are also part of the Multilateral Convention.

285. The requests received by the EOI office are registered in a database, which is accessible only by authorised officials. All EOI related information is kept separately and treated as confidential. Paper documents are safely stored in secure cabinets in the EOI Unit. Access to files is restricted to authorised officials only. Information obtained from a treaty partner, including the EOI request itself, is never disclosed to the taxpayer.

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

287. DZIT was audited and certified compliant with the international standard on information security ISO 27001:2013. This means that the main information security risks of DZIT have been identified and brought under explicit management control. Saudi Arabia explains that monitoring in respect of data confidentiality takes place at various levels. First, at the level of the tax authorities, supervision and verification of compliance with work requirements, including protecting data confidentiality, is part of the internal control and audit function that is undertaken by a specialised unit within the tax authorities. This unit reports (directly) to the Director General. In addition, the General Audit Bureau, an official independent entity that reports to the Council of Ministers, verifies that all official entities and agencies, including the Tax Authority, are complying with their requirements, including confidentiality requirements for the Tax Authority.

288. As Saudi Arabia explains the information provided to the holder of information when he/she is asked by DZIT to provide the information which is requested by a treaty partner is limited to necessary information such as the reason for request, reference to the relevant DTA and a description of the information requested.

289. As discussed in the report under element C.5, three requests were initially not received by the competent authority at the time. Saudi Arabia explained that this was due to the fact that the function of competent authority was shifted from the International Economic Relations Directorate within the Ministry of Finance to the International Operations Department within DZIT (also part of the Ministry of Finance), and the requests were sent to the former competent authority. As explained under element C.5, this change was not efficiently communicated to all of Saudi Arabia’s exchange of information partners. Nevertheless, the former competent authority was also subject to the obligation to keep the information received confidential. The three requests were located by the new competent authority in June 2015 and the files were transmitted to their offices. This means that at all times the information was in a location where it was protected from unauthorised disclosure. Therefore, no breach of confidentiality was encountered during the review period either in a domestic or in an exchange of information context. Also, no issues regarding confidentiality of information have been raised by Saudi Arabia’s exchange of information partners.

Determination and factors underlying recommendations

Determination
The element is in place.
Phase 2 rating
Compliant

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

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

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

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

291. 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).

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

Determination and factors underlying recommendations

Determination
The element is in place.
Phase 2 rating
Compliant

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)

293. 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.

294. The DTC with Uzbekistan provides for the competent authorities to exchange information through diplomatic channel. As there were no EOI requests received from or sent to Uzbekistan it could not be assessed whether this procedural requirement prevents Saudi Arabia from responding to a request within 90 days. 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.

295. During the period of review from 1 January 2012 to 31 December 2014 in total nine requests for information were sent to Saudi Arabia. However, as will be discussed further below, it appears that Saudi Arabia initially only received six of these requests. The three cases that did initially

not arrive with the EOI Unit, have been received after Saudi Arabia contacted the relevant EOI partners following the on-site visit. Saudi Arabia clarifies that it has provided the requested information in response to two of these cases. In the remaining case it reported that it was able to provide parts of the requested information, and as a result this case is still pending.

296. The following table shows the time taken to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked) over the three year period from 1 January 2012 to 31 December 2014.

Response times for requests sent to Saudi Arabia during the three-year review period

		2012		2013		2014		Total	Average
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received ^a	(a+b+c+d+e)	3	100%	3	100%	3	100%	9	100%
Full response ^b	≤ 90 days	1	33%	0	0%	0	0%	1	11%
	≤ 180 days (cumulative)	1	33%	0	0%	0	0%	1	11%
	≤ 1 year (cumulative)	(a)	33%	0	0%	1	33%	2	22%
	> 1 year	(b)	0%	1	33%	1	33%	2	22%
Declined for valid reasons	(c)	0	0%	1	33%	0	0%	1	11%
Failure to obtain and provide information requested	(d)	2	67%	0	0%	0	0%	2	22%
Requests still pending	(e)	0	0%	1	33%	1	33%	2	22%

Notes: a. The Saudi Arabian method of counting requests: Saudi Arabia counts a request in respect of a single taxpayer where more than one piece of information is requested or where a further request for information on the same matter where the original request has not yet been fully satisfied as one request. (e.g. per letter received or per entity involved).

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

297. As the table shows a limited number of nine requests were sent to Saudi Arabia during the three year period. The number of requests received was fairly stable throughout the review period, as Saudi Arabia received three requests per year during the review period. Most requests were sent by three EOI partners.

298. In practice, Saudi Arabia initially replied to only one of the requests that it received during the period under review. This request asked for the address of a taxpayer, and could be answered within 90 days with information from the databases that are directly accessible by the Competent Authority. The peer involved was satisfied with the timeliness of the response and the information provided.

299. Nevertheless, in the other eight cases the EOI partners did initially not receive any information or an update from Saudi Arabia clarifying the status of their request. Three different peers stated in their peer input that they did not receive any response from Saudi Arabia after sending their requests, although it can be noted that Saudi Arabia more recently undertook efforts to get in touch with the requesting jurisdictions and respond to their requests or provide them with an explanation as to why certain information could not be provided.

300. Saudi Arabia reports that the function of competent authority was shifted from the International Economic Relations directorate within the Ministry of Finance to the international operations department within DZIT two years ago. Although Saudi Arabia reports that it sent a letter and an e-mail to update the Competent Authority contact details to EOI partners in some cases, it appears that peers had difficulty to clearly identify this change in the contact information for Saudi Arabia's competent authority. Nevertheless, Saudi Arabia states that it generally provides this information to treaty partners when finalising treaty negotiations. Since June 2015 contact information for Saudi Arabia's competent authority is fully identifiable on the Global Forum website. However, it appears that three requests sent during the period under review did initially not arrive with the EOI unit.

301. Officials from DZIT confirmed during the onsite visit that they had not received these requests at their end and stated that communication gaps in the transitional period could be the reason for these requests ending up in the wrong place. Nevertheless, DZIT stated its willingness to look at these requests and contacted these jurisdictions directly after the onsite visit in order to see whether these requests could still be processed and answered. As mentioned above, information has been provided with respect to all these requests, although one is still partially pending.

302. In relation to the remaining five requests, the situation is the following:

- In three cases (involving accounting information) Saudi Arabia initially didn't provide any feedback or answer to the partners that it declined the request.
 - As discussed in sections B.1.3 and B.1.5 of the report two requests from 2012 were not answered as the EOI agreement lacked provisions similar to art. 26, paragraph 4 and 5 of the OECD Model DTC. The peer involved noted in its peer input that it did not receive any answer to these requests, but Saudi Arabia stated that it had recently informed this peer of the fact that information could not be exchanged.
 - One request was declined as it pertained to periods prior to the entry into force of (the protocol to) the EOI agreement. Although

the peer involved eventually noted that it agreed with the position of Saudi Arabia's competent authority, also in this case Saudi Arabia initially didn't provide any feedback or answer to the partner that it declined the request.

- The two remaining cases were pending for a longer time, but the Saudi Arabian authorities did initially not provide an update on the status of the request to the EOI partner.
 - These requests that were sent in 2013 and 2014 were pending and in different stages of being processed. One request was sent 31 July 2013 and sent to one of the branches of DZIT. This case is still pending. The second request was sent on 25 September 2014 and asked for a control of the tax residency of certain individuals;
 - In both cases the peers involved commented in their input that they initially didn't get any response from Saudi Arabia in any of its cases. However, in respect to the second request Saudi Arabia clarified that it has responded to this request after the onsite visit via e-mail on 20 September 2015, in which it provided part of the requested information (this request involved accounting information - economic reality, activity of a company located in SA and control of the payment of an invoice). Saudi Arabia further reports that after inspecting the Saudi taxpayer involved, it obtained the data requested and responded in an (second) e-mail on November 29, 2015.

303. During the three-year review period, Saudi Arabia did not send an acknowledgment of receipt. Moreover, Saudi Arabian authorities did not provide an update on the status of the request where, for any reason, Saudi Arabia had not been able to obtain and provide the information requested within 90 days of receipt of the request. The Saudi Arabian authorities report that their internal procedures (manual) will be updated in this respect. Saudi Arabia is recommended to provide status updates to its EOI partners within 90 days where relevant, including in cases where it declined the EOI request.

Organisational process and resources (ToR C.5.2)

304. 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.

305. Within The Department of Policy and International Affairs, the Exchange of Information Administration is a newly-established unit that has the overall responsibility for handling exchange of information.

306. Out of the seven employees working within this department, about three persons are, amongst other things, dealing with exchange of information (the EOI unit).

307. All international requests for information are handled and processed by the EOI Unit. The EOI Unit is responsible for communication with the other competent authorities and for the administration of gathering the requested information. This includes checking whether the responses sent by the regional branches include all the requested information and are in the requested format, and, if the requested information cannot be provided, ensuring that it provides an explanation as to why it was not able to provide all the requested information.

Handling of EOI requests

308. When analysing the handling of EOI requests, it should first be noted Saudi Arabia's experience in exchange of information is fairly recent and the volume of exchange of information has been limited. The EOI unit was newly-established when the function of competent authority was shifted two years ago from the Ministry of Finance to the international operations department within DZIT. In terms of timing this shift coincided with the retirement of the official within the Ministry of Finance that had been responsible for handling all EOI related issues up to then. No specific written procedures existed and DZIT, in its role as the new Competent Authority, had to develop instruction manuals for its different operations in respect of EOI. At this moment written administrative procedures for processing incoming requests for information, including an EOI manual, are still being prepared.

309. Saudi Arabia reports that the following procedures apply when a request for information is received:

- Once an EOI request is received the request will first be registered in the EOI office's own internal registration database. A number of key features will be entered into the database including the requesting jurisdiction, the subject of the request, the recipient of the request and the date that the request was received. All documents are to be scanned and included, while the originals are still being kept separately in a hand file. The system will then automatically produce a registration number. The database enables the CA to log and track the handling of a request within DZIT and its branches until the completion, answering and closure of the request. The system also enables

DZIT to trace all mails related to the case and specifics regarding status and time-limits.

- As a second step one of the managers will allocate the request to one of the officials in the EOI team that will be involved. The EOI official will start with reviewing the request and the specific DTC or agreement to determine the validity of the request.
- In case the request is found to be invalid, a response is to be prepared showing the reason for invalidity of the request and that has to be sent to the requesting jurisdiction. If the request is found to be valid, the official involved will start collecting the requested information (either from sources within DZIT or from external sources) along the following lines:
 - Where information needed to respond to a request is already in the hands of the tax authorities, the EOI official will obtain the requested information from DZIT's records and returns and the request is answered. The standard time for this procedure is one month. The EOI office only has access to some basic information related to the taxpayer such as address, TIN, branch. For full access, the Audit Department within DZIT would get involved to obtain the requested information from the database. The local tax unit (the regional branch) will get involved if the requested information relates to a taxpayer whose file is in that branch. This would include information regarding zakat and tax returns, accounting information, audits etc.;
 - In cases where the requested information is in the hands of another governmental authority, the EOI official will get in touch with the concerned government authority and the request is to be answered within 90 days. Based on administrative procedures all government authorities within Saudi Arabia should answer to requests for information that they make among themselves within a period of 15 days. DZIT officials further explain that DZIT currently communicates with a growing number of ministries via an electronic link.²⁰ The idea is that this new system will completely replace the traditional paper system which used to link government agencies with each other. DZIT is currently able to use this new system in its contacts with a number of government agencies and ministries, including the MCI, the Ministry of Interior and they state that this facilitates access to specific

20. Saudi Arabia adds that a web service based application between MCI and DZIT will be launched in March 2016 (latest) to automatically create a TIN for all newly registered commercial entities.

sources of information (for instance the verification of information about PE's as well as the status of foreigners employed in Saudi Arabia) as well as the speediness of the process in general;

- In cases where the requested information is in the possession or control of the taxpayer/person/entity that is the subject of the enquiry, the EOI unit will contact the taxpayer or person involved and request the information from the taxpayer/person/entity in whose possession the information is. In most cases the request will be forwarded to a regional branch of DZIT, and the information will be collected by DZIT officials that are working in the branch. If DZIT determines to examine the taxpayer to obtain the requested information, the taxpayer will be informed in a registered mail of the date of audit and of the records to be made available for the audit team. The audit is carried out by the audit staff of audit administrations of the Large Taxpayers Admin or of the branches. Saudi Arabia reports that the audit would normally start within a period of 30 days from the date of contact with the taxpayer. It further clarifies that the audit may take from 1-15 work days, depending also on the scope of audit and the size of the entity that is to be audited. In case the information is available, the request is to be answered within 90 days;
- In cases where the requested information is in the possession or control of a third party such as a service provider, e.g. a trustee, the EOI office will request the information from the party that has such information. Saudi Arabia adds that if there is a need, they would communicate with the regulatory government agency under whose jurisdiction/supervision the service provider falls. In case the information is available, the request is to be answered within 180 days;
- In cases where the requested information is in the hands of a bank, DZIT will ask the Saudi Arabian Monetary Agency (SAMA). As Saudi Arabia explains SAMA will then forward the request by entering it into an electronic system that links all banks with SAMA. Once SAMA receives the answer (s) from the bank (s), it will check the information to ensure that it is complete, before it is sent to DZIT. On average it takes around three weeks for SAMA to respond to an information request from DZIT. DZIT states that it is able to reply to the requesting jurisdiction within 90 days after receiving the request.
- Once the requested information is collected, the official in the EOI unit will in all cases check the information that is gathered to ensure that it is responsive to the EOI request. Following this, the official will draft a response that goes with the requested information.

- Once the manager approves the answer, it is signed and sent to the requesting party by regular mail or electronic mail depending on the request.

310. Although Saudi Arabia states that it implemented these organisational processes for EOI, it is clear that these processes were not functioning or monitored during the period under review. In practice, Saudi Arabia did not provide any feedback or replies in cases where it declined requests. Furthermore, two cases are pending with branches of DZIT for more than two years and no status updates or replies to reminders were sent. During the onsite visit it was further noted that there is not a clear overview within DZIT regarding the actual number of requests received and the processing that takes place in respect of the pending requests. As a result, there was no follow up in respect of the two requests that were pending for a longer period of time.

311. As pointed out above, these shortcomings are complemented by various communication issues that impacted an effective and efficient EOI during the review period. First there is a lack of effective communication following the change of the Competent Authority contact details. This does not only regard its communication with EOI partners – which were generally not notified about this change, but also the contacts between DZIT and the Ministry of Finance in respect of forwarding requests that still were being received by the Ministry after function of the Competent Authority was moved to DZIT. Moreover there was a lack of communication in respect of the requests that did arrive with the EOI unit. From the 6 cases that Saudi Arabia received only one was actually responded to and the rest of the cases remained unanswered. Several peers commented that they did not get any response from Saudi Arabia in any of their cases. It is therefore recommended that Saudi Arabia ensures that it has appropriate organisational processes in place to process and answer to EOI requests in a timely manner.

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

312. 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. In practice, there has been no case where any issue in this regard came up, and no peers have raised any issues in this regard either.

Determination and factors underlying recommendations

Phase 1 determination	
<p>This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</p>	
Phase 2 rating	
<p>Partially Compliant</p>	
Factors underlying recommendations	Recommendations
<p>Over the review period, Saudi Arabia did not communicate a change in its competent authority details to all its treaty partners. As a result, out of 9 requests sent during the review period only 6 requests were received by the EOI unit. In 3 of these cases, Saudi Arabia initially did not provide a response where it declined the EOI request. Two cases are pending for more than 2 years. In these cases, Saudi Arabia has not provided any status updates during the review period.</p>	<p>Saudi Arabia should communicate regularly with all treaty partners. Saudi Arabia should answer in cases where it declined the EOI request and provide status updates to its EOI partners within 90 days where relevant.</p>
<p>During the review period, no clear organisational processes were in place, which led to EOI requests not being processed in a timely manner.</p>	<p>Saudi Arabia should ensure that it has appropriate organisational processes in place to process and answer to EOI requests in a timely manner.</p>

Summary of determinations and factors underlying recommendations

Overall Rating		
LARGELY COMPLIANT		
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.
Phase 2 rating: Compliant		
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 24 159) or less without foreign partners are not expressly required to keep underlying documentation or to keep documentation for at least 5 years.	Saudi Arabia should ensure that all partnerships are required to keep underlying documentation and to keep accounting records for a period of at least 5 years.

Determination	Factors underlying recommendations	Recommendations
<p>Phase 2 rating: Largely compliant</p>	<p>With a staff of only 5 persons and with only half of the audited accounting documents being submitted to the MCI in a timely way during the period under review, there were not sufficient safeguards in place to ensure that reliable accounting records in practice were kept for all relevant entities and arrangements. Furthermore, it appears that a significant number of companies in Saudi Arabia is not registered with DZIT, although Saudi Arabia indicated that the vast majority of these are inactive. Therefore, the oversight that takes place by the tax authorities in this respect is only likely to cover part of the relevant entities and arrangements that should be monitored by the MCI. It can be noted, however, that MCI already initiated a number of important steps to enhance its oversight activities, including the hiring of an additional 100 staff as well as the recent introduction of a specific database known as <i>Qawaem</i>, to reduce the number of late filings or non-filings.</p>	<p>Saudi Arabia should monitor the recently introduced oversight activities to ensure that reliable accounting records are kept for all relevant entities and arrangements.</p>
<p>Banking information should be available for all account-holders (<i>ToR A.3</i>)</p>		
<p>The element is in place.</p>		
<p>Phase 2 rating: Compliant</p>		

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 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.
Phase 2 rating: Largely Compliant	Saudi Arabia was unable to answer two requests for information due to the restrictions under its domestic law and the applicable EOI agreements. Although the entry into force of the Multilateral Convention will bring the EOI relationship with most of its EOI partners in line with the standard, it should be noted that Saudi Arabia has little practical experience in obtaining information for EOI purposes in general and in exchanging banking information for EOI purposes under bilateral EOI agreements in particular	Saudi Arabia should monitor that it exchanges bank information and other types of relevant information in accordance with the standard under the EOI agreements that allow Saudi Arabia to obtain information regardless of a domestic tax interest provided for by Saudi Arabia's domestic legislation.
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.		
Phase 2 rating: Compliant		

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.		
Phase 2 rating: Compliant		
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.	Some delays have been experienced in Saudi Arabia responding to requests from other jurisdictions to start negotiations with a view to enter into an information exchange agreement.	Saudi Arabia should, expeditiously, 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.
Phase 2 rating: Largely compliant		
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.		
Phase 2 rating: Compliant.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The element is in place.		
Phase 2 rating: Compliant.		
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		

Determination	Factors underlying recommendations	Recommendations
<p>Phase 2 rating: Partially compliant</p>	<p>Over the review period, Saudi Arabia did not communicate a change in its competent authority details to all its treaty partners. As a result, out of 9 requests sent during the review period only 6 requests were received by the EOI unit. In 3 of these cases, Saudi Arabia initially did not provide a response where it declined the EOI request. Two cases are pending for more than 2 years. In these cases, Saudi Arabia has not provided any status updates during the review period.</p>	<p>Saudi Arabia should communicate regularly with all treaty partners. Saudi Arabia should answer in cases where it declined the EOI request and provide status updates to its EOI partners within 90 days where relevant.</p>
	<p>During the review period, no clear organisational processes were in place, which led to EOI requests not being processed in a timely manner.</p>	<p>Saudi Arabia should ensure that it has appropriate organisational processes in place to process and answer to EOI requests in a timely manner.</p>

Annex 1: Jurisdiction’s response to the review report²¹

Since the inception of the Global Forum (GF) in its current form, as a member Saudi Arabia actively participates in its work. Aside from complying with the international standards, which are promoted, monitored, and assessed by the GF, Saudi Arabia supports the work of the GF by participating in all of the key meetings and the policy making decisions. We have went an extra mile in our support by assigning one of our staff to work with the GF, and another one to work with the GF as an expert assessor. Saudi Arabia would like to express its appreciation for the assessment team for their professional work and excellent cooperation during the Phase 2 Peer review process. It was a great pleasure to work with such professional and experienced assessors. Saudi Arabia also would like to thank the Peer Review Group and member countries for their inputs, comments, and questions. During the Peer review process of the completed phase 1 and the current phase 2 we have studied a lot of issues and gained valuable experience. We believe that our mutual contributions will lead to full compliance with the standards of transparency and exchange of information. Our country looks at compliance with the standards of transparency and exchange of information as a matter of a national need as well as a commitment toward other jurisdictions. We believe that the assessment team has tried to make its recommendations as objective and complete as possible and we are in full agreement with the determinations and ratings. As pointed out in the report, Saudi Arabia has a network of Double Taxation Conventions covering 43 jurisdictions, with a few more being negotiated. In addition, Saudi Arabia also signed the Convention on Mutual Administrative Assistance in Tax Matters, as amended, ratified it and deposited its instrument of ratification last year. This will provide Saudi Arabia with an EOI network that covers a total of over 100 jurisdictions. These agreements, as well as the Multilateral Convention, all contain provisions that would, in principle, allow the contracting parties to exchange all relevant information. We have started to up-date the small number of effective agreements that do not fulfill the standard. Hopefully, the partners to these

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

agreements are willing and cooperative to expedite this up-date process. We believe that considering all Saudi Laws that are effective, and with the DTAs and the Multilateral Convention being enacted in the domestic laws per Royal Decrees, the competent authority of Saudi Arabia has all powers it needs to have effective exchange of information according to the Forum's standards with other jurisdictions. We look forward to enhancing cooperation in the transparency and exchange of information for tax purposes with other jurisdictions.

Thank you

Annex 2: List of all exchange-of-information mechanisms in force

Exchange of information agreements signed by Saudi Arabia as at 17 December 2015.

Saudi Arabia ratified the Multilateral Convention and deposited its instrument of ratification on 17 December 2015. The Multilateral Convention will enter into force on 1 April 2016.

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Albania	Multilateral Convention	Signed	In force in Albania ^a
2	Algeria	DTC	18 august 2014	Not yet in force
3	Andorra	Multilateral Convention	Signed	Not yet in force
4	Anguilla ^b	Multilateral Convention	Extended	In force in Anguilla ^a
5	Argentina	Multilateral Convention	Signed	In force in Argentina ^a
6	Aruba ^c	Multilateral Convention	Extended	In force in Aruba ^a
7	Australia	Multilateral Convention	Signed	In force in Australia ^a
8	Austria	DTC	19 March 2006	1 June 2007
		Multilateral Convention	Signed	In force in Austria ^a
9	Azerbaijan	DTC	13 May 2014	1 May 2015
		Multilateral Convention	Signed	In force in Azerbaijan ^a
10	Bangladesh	DTC	4 January 2011	1 October 2011
11	Barbados	Multilateral Convention	28 October 2015	Not yet in force
12	Belarus	DTC	20 July 2009	1 August 2010
13	Belgium	Multilateral Convention	Signed	In force in Belgium ^a
14	Belize	Multilateral Convention	Signed	In force in Belize ^a
15	Bermuda ^b	Multilateral Convention	Extended	In force in Bermuda ^a

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
16	Brazil	Multilateral Convention	Signed	Not yet in force
17	British Virgin Islands ^b	Multilateral Convention	Extended	In force in British Virgin Islands ^a
18	Bulgaria	Multilateral Convention	26 October 2015	Not yet in force
19	Cameroon	Multilateral Convention	Signed	In force in Cameroon ^a
20	Canada	Multilateral Convention	Signed	In force in Canada ^a
21	Cayman Islands ^b	Multilateral Convention	Extended	In force in Cayman Islands ^a
22	Chile	Multilateral Convention	Signed	Not yet in force
23	China, People's Republic of	DTC	23 June 2006	1 October 2006
		Multilateral Convention	Signed	Not yet in force ^{a, e}
24	Colombia	Multilateral Convention	Signed	In force in Colombia ^a
25	Costa Rica	Multilateral Convention	Signed	In force in Costa Rica ^a
26	Croatia	Multilateral Convention	Signed	In force in Croatia ^a
27	Curaçao ^c	Multilateral Convention	Extended	In force in Curaçao ^a
28	Cyprus ^f	Multilateral Convention	Signed	In force in Cyprus ^a
29	Czech Republic	DTC	25 April 2012	1 May 2013
		Multilateral Convention	Signed	In force in Czech Republic ^a
30	Denmark	Multilateral Convention	Signed	In force in Denmark ^a
31	El Salvador	Multilateral Convention	Signed	Not yet in force
32	Estonia	Multilateral Convention	Signed	In force in Estonia ^a
33	Ethiopia	DTC	28 February 2013	Not yet in force
34	Faroe Islands ^d	Multilateral Convention	Extended	In force in Faroe Islands ^a
35	Finland	Multilateral Convention	Signed	In force in Finland ^a
36	France	DTC	18 February 1982	1 March 1983
		Protocol	18 February 2011	1 June 2012
		Multilateral Convention	Signed	In force in France ^a

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
37	Former Yugoslav Republic of Macedonia	DTC	15 Dec. 2014	Not yet in force
38	Gabon	DTC	17 Dec 2015	Not yet in force
		Multilateral Convention	Signed	Not yet in force
39	Georgia	Multilateral Convention	Signed	In force in Georgia ^a
40	Germany	Multilateral Convention	Signed	In force in Germany ^a
41	Ghana	Multilateral Convention	Signed	In force in Ghana ^a
42	Gibraltar ^b	Multilateral Convention	Extended	In force in Gibraltar ^a
43	Greece	DTC	19 June 2008	1 May 2010
		Multilateral Convention	Signed	In force in Greece ^a
44	Greenland ^d	Multilateral Convention	Extended	In force in Greenland ^a
45	Guatemala	Multilateral Convention	Signed	Not yet in force
46	Guernsey ^b	Multilateral Convention	Extended	In force in Guernsey ^a
47	Hungary	DTC	24 March 2014	1 May 2015
		Multilateral Convention	Signed	In force in Hungary ^a
48	Iceland	Multilateral Convention	Signed	In force in Iceland ^a
49	India	DTC	25 January 2006	1 November 2006
		Multilateral Convention	Signed	In force in India ^a
50	Indonesia	Multilateral Convention	Signed	In force in Indonesia ^a
51	Ireland	DTC	19 October 2011	1 Dec. 2012
		Multilateral Convention	Signed	In force in Ireland ^a
52	Isle of Man ^b	Multilateral Convention	Extended	In force in Isle of Man ^a
53	Italy	DTC	13 January 2007	1 December 2009
		Multilateral Convention	Signed	In force in Italy
54	Japan	DTC	15 November 2010	1 September 2011
		Multilateral Convention	Signed	In force in Japan ^a
55	Jersey ^b	Multilateral Convention	Extended	In force in Jersey ^a
56	Kazakhstan	DTC	7 June 2011	Not in force
		Multilateral Convention	Signed	In force in Kazakhstan ^a

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
57	Korea	DTC	24 March 2007	1 December 2008
		Multilateral Convention	Signed	In force in Korea ^a
58	Kyrgyzstan	DTC	2 December 2014	1 October 2015
59	Latvia	Multilateral Convention	Signed	In force in Latvia ^a
60	Liechtenstein	Multilateral Convention	Signed	Not yet in force
61	Lithuania	Multilateral Convention	Signed	In force in Lithuania ^a
62	Luxembourg	DTC	7 May 2013	1 September 2014
		Multilateral Convention	Signed	In force in Luxembourg ^a
63	Malaysia	DTC	31 January 2006	1 July 2007
64	Malta	DTC	4 January 2012	1 December 2012
		Multilateral Convention	Signed	In force in Malta ^a
65	Mauritius	Multilateral Convention	Signed	In force in Mauritius ^a
66	Mexico	Multilateral Convention	Signed	In force in Mexico ^a
67	Moldova	Multilateral Convention	Signed	In force in Moldova ^a
68	Monaco	Multilateral Convention	Signed	Not yet in force
69	Montserrat ^b	Multilateral Convention	Extended	In force in Montserrat ^a
70	Morocco	DTC	14 April 2015	Not yet in force
		Multilateral Convention	Signed	Not yet in force
71	Netherlands	DTC	13 October 2008	1 December 2010
		Multilateral Convention	Signed	In force in Netherlands ^a
72	New Zealand	Multilateral Convention	Signed	In force in New Zealand ^a
73	Nigeria	Multilateral Convention	Signed	In force in Nigeria ^a
74	Norway	Multilateral Convention	Signed	In force in Norway ^a
75	Pakistan	DTC	2 February 2006	1 December 2006
76	Philippines	Multilateral Convention	Signed	Not yet in force
77	Poland	DTC	22 February 2011	1 June 2012
		Multilateral Convention	Signed	In force in Poland ^a

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
78	Portugal	DTC	8 April 2015	Not yet in force
		Multilateral Convention	Signed	In force in Portugal ^a
79	Romania	DTC	26 April 2011	1 July 2012
		Multilateral Convention	Signed	In force in Romania ^a
80	Russian Federation	DTC	11 February 2007	1 February 2010
		Multilateral Convention	Signed	In force in Russian Federation ^a
81	San Marino	Multilateral Convention	Signed	In force in San Marino ^a
82	Seychelles	Multilateral Convention	Signed	In force in the Seychelles ^a
83	Singapore	DTC	3 May 2010	1 July 2011
		Multilateral Convention	Signed	Not yet in force
84	Sint Maarten ^c	Multilateral Convention	Extended	In force in Sint Maarten ^a
85	Slovak Republic	Multilateral Convention	Signed	In force in Slovak Republic ^a
86	Slovenia	Multilateral Convention	Signed	In force in Slovenia ^a
87	South Africa	DTC	13 March 2007	1 May 2008
		Multilateral Convention	Signed	In force in South Africa ^a
88	Spain	DTC	19 June 2007	1 October 2008
		Multilateral Convention	Signed	In force in Spain ^a
89	Syria	DTC	7 October 2009	1 October 2010
90	Sweden	DTC	19 October 2015	Not yet in force
		Multilateral Convention	Signed	In force in Sweden ^a
91	Switzerland	Multilateral Convention	Signed	Not yet in force
92	Tajikistan	DTC	13 May 2014	1 June 2015
93	Tunisia	DTC	8 July 2010	1 April 2013
		Multilateral Convention	Signed	In force in Tunisia ^a
94	Turkey	DTC	9 November 2007	1 April 2009
		Multilateral Convention	Signed	Not yet in force
95	Turks and Caicos Islands ^b	Multilateral Convention	Extended	In force in Turks and Caicos Islands ^a

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
96	Uganda	Multilateral Convention	4 November 2015	Not yet in force
97	Ukraine	DTC	2 September 2011	1 Dec. 2012
		Multilateral Convention	Signed	In force in Ukraine ^a
98	United Kingdom	DTC	31 October 2007	1 January 2009
		Multilateral Convention	Signed	In force in United Kingdom ^a
99	United States	Multilateral Convention	Signed	Not yet in force
100	Uzbekistan	DTC	18 November 2008	1 November 2010
101	Venezuela	DTC	11 November 2015	Not yet in force
102	Viet Nam	DTC	10 April 2010	1 February 2011

Notes: a. It will enter into force on 1 April 2016.

b. Extension by the United Kingdom.

c. Extension by the Kingdom of the Netherlands.

d. Extension by the Kingdom of Denmark.

e. China deposited its instrument of ratification on 16 October 2015, and the Multilateral Convention will enter into force in China on 1 February 2016.

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

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

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

Annex 4: Persons interviewed during the on-site visit

During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance and the Department of Zakat and Income Tax (DZIT), as well as representatives of the Ministry of Commerce and Industry, the Ministry of Justice, the Ministry of Islamic Affairs, as well as representatives of the Saudi Arabian Monetary Agency (SAMA) and the Ministry of Foreign affairs, as well as representatives of local Waqf Administration.

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: SAUDI ARABIA

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

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

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

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

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

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