GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

BOTSWANA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Botswana 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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Table of Contents

About the Global Forum 5

Executive summary 7

Introduction 11

Overview 12
Botswana tax system 13

Compliance with the Standards 17

A. Availability of information 17

Overview 17
A.1. Ownership and identity information 19
A.2. Accounting records 39
A.3. Banking information 44

B. Access to information 49

Overview 49
B.1. Competent Authority's ability to obtain and provide information 50
B.2. Notification requirements and rights and safeguards. 53

C. Exchanging information 55

Overview 55
C.1. Exchange-of-information mechanisms 56
C.2. Exchange-of-information mechanisms with all relevant partners 62
C.3. Confidentiality 64
C.4. Rights and safeguards of taxpayers and third parties. 68
C.5. Timeliness of responses to requests for information 69

Summary of determinations and factors underlying recommendations 75

Annex 1: Jurisdiction's response to the review report 79
Annex 2: List of all exchange-of-information mechanisms in force 83
Annex 3: List of all laws, regulations and other material received 85
Annex 4: List of authorities interviewed 87

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 (EOI) in the Republic of Botswana as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three-year period (1 January 2012 to 31 December 2014). 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 partners.

2. Botswana is an independent state located in southern Africa. Its economy is traditionally based on diamonds and agriculture, with tourism and financial services also making a contribution.

3. Relevant entities and arrangements in Botswana include companies, partnerships, trusts and societies. There are no bearer shares or international entities or arrangements in Botswana.

4. Ownership information in Botswana is generally available for relevant entities and arrangements through commercial, tax and anti-money laundering legislation. However, a recommendation is made regarding the availability of information on the members of societies. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. However, in practice the overall compliance by companies with their annual return filing obligation and tax return filing obligation is low. In addition, the oversight of anti-money laundering obligations commenced recently with respect to parties other than banks. Botswana is recommended to continue to ensure that the compliance with company obligations, tax obligations and customer due diligence obligations are effectively implemented and monitored.

5. Accounting records are generally available in Botswana through tax and commercial law obligations in respect of entities and arrangements

that are carrying on a business. However, recommendations are made for Botswana to ensure that accounting records, including all underlying documentation, are always maintained for all entities and arrangements. In practice, some monitoring of the availability of accounting information indicates that accounting information generally appears to be available, however Botswana is recommended to increase the monitoring of these obligations.

6. Financial institutions in Botswana are required to keep records pertaining to the accounts held by them, as well as related financial and transactional information. In practice, banks are closely supervised to ensure that they comply with record keeping obligations and banking information is available.

7. Botswana's legal and regulatory framework permits access to information for the purpose of responding to a valid request for information pursuant to a DTC or TIEA, including access to banking information. These powers are exercised predominately by issuing notices to require the production of relevant information. There are no domestic secrecy provisions that would interfere with exchange of information, and there is no domestic tax interest requirement or prior notification requirements. In practice, the competent authority has not received any EOI requests during the review period, but the tax authority has exercised its powers to access information for domestic tax purposes.

8. The Income Tax Act enables the entry into, and exchange of information pursuant to, Tax Information Exchange Agreements (TIEAs), Double Tax Conventions (DTC) and agreements for assistance in the administration of and collection of tax. The Income Tax Act also imposes confidentiality obligations with respect to information exchanged in relation to such agreements. Botswana has been pursuing new DTCs, protocols amending its existing DTCs and TIEAs in conformity with the international model agreements. Botswana has signed 25 EOI agreements and 14 of these are in force. As a number of signed agreements have not been brought into force for a period of more than two years, Botswana is recommended to swiftly bring its agreements into force.

9. Botswana's practical experience with exchanging information is relatively limited to date. During the review period, Botswana did not receive any EOI requests. Botswana has a sound organisational structure in place and clear written procedures to respond to EOI requests. The policies and practices with respect to confidentiality also appear to be sound.

10. Botswana 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 and recommendations made in respect of Botswana's legal

and regulatory framework, and the effectiveness of its exchange of information in practice. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. On this basis, Botswana has been assigned a rating of Compliant for elements A.3, B.1, B.2, C.2, C.3, C.4, Largely Compliant for elements C.1 and C.5 and Partially Compliant for elements A.1, A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Botswana is Largely Compliant.

11. A follow up report on the steps undertaken by Botswana to answer the recommendations made in this report should be provided to the Peer Review Group by June 2017 and thereafter in accordance with the process set out under the Methodology for the second round of reviews.

Introduction

12. The assessments of the legal and regulatory framework of Botswana and the practical implementation and effectiveness of this framework were based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*. The assessment has been conducted across three assessments: Phase 1, carried out in 2010; a supplementary phase 1 report in 2014, and a Phase 2, carried out in 2015.

13. The Phase 1 assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at May 2010, other materials supplied by Botswana, and information supplied by partner jurisdictions. The Phase 1 report of Botswana was adopted and published by the Global Forum in September 2010.

14. The Supplementary report was based on the laws, regulations and exchange of information arrangements in force as at February 2014, other materials supplied by Botswana and information supplied by partner jurisdictions. The Supplementary report, which followed the Phase 1 report of Botswana, was prepared pursuant to paragraph 58 of the Global Forum's methodology and was adopted and published by the Global Forum in April 2014.

15. The Phase 2 assessment looked at the practical implementation of Botswana's legal framework during the three year review period of 1 January 2012-31 December 2014, as well as amendments made to the legal and regulatory framework since the supplementary Phase 1 review. The assessment was based on the laws, regulations, and EOI mechanisms in force or effect as at December 2015. It also reflects Botswana's responses to the Phase 1 and Phase 2 questionnaires, other information, explanations and materials supplied by Botswana during and after the Phase 2 on-site visit that took place in Gaborone from 16-18 September 2015 and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the Botswana Unified Revenue Service (BURS), Companies and Intellectual Property Authority, Ministry of Finance

and Development Planning, Registrar of Societies, Financial Intelligence Agency, Bank of Botswana, Non Bank Financial Institutions Regulatory Authority (NBFIRA), Botswana Investment and Trade Centre and Office of the Attorney General. A list of all those interviewed during the on-site visit is provided in Annex 4.

16. 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 Botswana's legal and regulatory framework against these elements and each of the enumerated aspects, as well as the practical implementation of the framework. 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. To reflect the Phase 2 component, an assessment is made concerning Botswana'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. An overall rating is also assigned to reflect Botswana's overall level of compliance with the standards.

17. The Phase 1 assessment was conducted by an assessment team consisting of one representative of the Global Forum Secretariat and two expert assessors: Ms. Hyonae Park, Republic of Korea; and Ms. Oshna Maharaj, South African Revenue Service; and Mr. Andrew Auerbach from the Global Forum Secretariat. The Supplementary assessment was conducted by Ms. Yanga Mputa, South Africa; Ms. Ann Andréasson, Sweden; and Ms. Melissa Dejong from the Global Forum Secretariat. The Phase 2 assessment was conducted by Ms. Ann Andréasson, Sweden, Mr. Morne van Niekerk, South Africa, and Ms. Melissa Dejong from the Global Forum Secretariat.

Overview

18. Botswana is located in southern Africa and has a population of 2.2 million. From independence in 1966 to date, Botswana has transformed from one of the poorest nations in the world to a middle income country. Gross domestic product in 2014 was EUR 14.5 billion, growing at a rate of 4-5% in recent years. In 2013, the mining sector contributed 24.5% to GDP, wholesale and retail contributed 16.3%; public administration and defence contributed 16.3%, finance, and real estate and business services contributed 15.2%.

19. The form of government in Botswana is a parliamentary republic. The system of government is based on the Westminster model (similar

to that of England) which provides for a separation of powers between the Legislature, the Executive and the Judiciary. The supreme law is the Constitution of Botswana. The hierarchy of the laws is, in decreasing order of rank: (i) the Constitution, (ii) legislation enacted by Parliament, (iii) subsidiary legislation, (iv) common law, and (v) Botswana customary law. International agreements are enacted as legislation and thus rank alongside other acts of parliament.

20. The Constitution establishes that the head of state is the President. The legislature is the National Assembly, a unicameral parliament comprised of 57 elected members, 4 Specially Elected members and the President as an ex officio member. In addition, the House of Chiefs acts as an advisory body to the National Assembly, comprised of 35 members that advise on matters or customary and tribal law. The executive is comprised of the President, Vice-President and a cabinet of Ministers. The highest court is the Court of Appeal, to which final appeals from other courts lie. The High Court has original jurisdiction to hear criminal and civil matters. The Magistrates courts are subordinate courts created by statute and deal with matters such as civil claims, family matters and criminal cases.

Botswana tax system

21. Persons are subject to tax in Botswana if they have income sourced in Botswana, or income deemed to be sourced in Botswana (Income Tax Act, s. 9). Capital gains are included in the tax base, although with some reductions and specific exemptions. Income of a person is deemed to be sourced in Botswana in a number of circumstances, including if it is in respect of: a contract made by the person in Botswana for the sale of goods, a service or work done by the person in Botswana, work rendered by a Botswana resident outside of Botswana for a Botswana employer, work rendered outside of Botswana for the Botswana Government, and disposal of certain interests in mining rights in respect of land in Botswana. In addition, certain foreign income of Botswana residents is deemed to be sourced in Botswana, being if it is in respect of any investment made outside of Botswana or any business carried on outside Botswana. This special deeming rule in respect of foreign income does not apply to individuals that are resident in Botswana but are not citizens of Botswana. (Income Tax Act, s. 11)

22. Taxable persons include individuals, companies, trustees, partnerships and every other juridical person. An individual is generally resident in Botswana if his/her permanent place of abode is in Botswana, or is present for 183 days in a tax year. A company is resident in Botswana if it has its registered office, place of incorporation or management and control in Botswana. A trust is resident in Botswana if the trust was established in Botswana or is administered in Botswana (Income Tax Act, s. 2).

23. Generally, any person earning taxable income in Botswana must register with, and file an annual return with, BURS for tax purposes (Income Tax Act, s. 65). Taxable persons include individuals, companies and trusts. Resident individuals pay tax at progressive rates between 0 and 25% and non-resident individuals pay tax at progressive rates between 5 and 25%. Resident companies pay tax at a rate of 22% and non-resident companies pay tax at a rate of 30%. Tax in respect of trusts is charged in the hands of the trustee, and will therefore be paid at the relevant rate depending on whether the trustee is an individual or company. Partnerships are not charged tax in their own right, but a partnership with taxable income in Botswana will register for tax purposes and file tax returns. The partners with taxable income in Botswana are also each subject to filing and tax obligations. Certain types of investment income are taxed by withholding, such as dividends and rental income.

Overview of the financial sector

24. The central bank is the Bank of Botswana, established under the Bank of Botswana Act. The local currency is the Botswana pula (EUR 1 = BWP 12). There are 10 commercial banks, three statutory banks (National Development Bank, Botswana Savings Bank and Botswana Building Society), one micro-finance institution and 56 money exchange offices. Banks are licensed and supervised by the Bank of Botswana (Banking Act, s. 3 and Parts II-IV). The banking sector grew to BWP 68 billion (EUR 5.8 billion) in 2014, a 13.4% increase on the previous year.

25. In addition, the non-bank financial sector includes nine life insurers, 12 short term insurers, three reinsurers, 45 insurance brokers, six investment funds, one stock exchange and four stock brokers. These entities are licensed and supervised by the Non Bank Financial Institutions Regulatory Authority.

26. Banks are subject to anti-money laundering and combatting the financing of terrorism (AML/CFT) obligations under the Banking Act, Banking (Anti-Money Laundering) Regulations 2003, the Financial Intelligence Act 2009 and the Financial Intelligence Regulations 2013. Banks, non-bank financial institutions (and other designated persons such as lawyers and accountants) are subject to AML/CFT obligations under the Financial Intelligence Act 2009 and the Financial Intelligence Regulations 2013. The Banking (Anti-Money Laundering) Regulations and the Financial Intelligence Regulations are generally consistent in terms of customer due diligence obligations.

The Botswana International Financial Services Centre

27. In 2003, Botswana established the International Financial Services Centre (IFSC), which is marketed of behalf of the government of Botswana by the Botswana Investment and Trade Centre (BITC), with the aim of

developing Botswana as a hub for cross border financial and business services into Africa and the region. The Botswana IFSC is one of the initiatives that the government of Botswana has taken to reduce the country's reliance on mineral revenues, especially diamonds.

28. The attraction of the IFSC is the tax benefits that are granted to IFSC entities. These include a discounted corporate tax rate of 15% on profits (Income Tax Act, 8th Schedule), although they are taxable on their worldwide income (Income Tax Act, s. 139). Payments of interest, dividends, management fees and royalties are exempt from tax when paid to a non-resident and to an IFSC company and specified collective investment undertakings (Income Tax Act, ss. 33, 58). IFSC companies are also exempted from VAT and capital gains tax.

29. The IFSC is focused primarily on international banking and insurance industries. The activities permitted in the IFSC are:

- banking and financing operations transacted in foreign currency;
- the broking and trading of securities denominated in foreign currency;
- investment advice;
- management and custodial functions in relation to collective investment schemes;
- insurance and related activities;
- registrars and transfer agency services;
- exploitation of intellectual property;
- development and supply of computer software for use in the provision of services described above;
- accounting and financial administration;
- holding and administration of group companies;
- shared financial services;
- business process outsourcing (BPOs) and call centres; and
- mutual funds

30. In practice, the most common of the above activities has been holding and administration of group companies. There are currently 51 companies that have IFSC certification, 20 of which are still in the process of commencing their operations. From its inception in 2003, there have been a total of 88 companies that have received IFSC certification. 37 of those have since

been de-certified, generally on account of the companies failing to commence their intended business within the first 12 months. The policy of the BITC is to require a high degree of genuine business substance in Botswana.

31. Companies with IFSC status that carry on their business as a bank or non bank financial institution are licensed and supervised by the Bank of Botswana or Non Bank Financial Institution Regulatory Authority (NBFIRA) as relevant.

32. An Act to create a Special Economic Zones Authority was passed by Parliament in August 2015. This creates an authority to establish, licence and oversee special economic zones, such as free trade zones, export processing zones and free ports. The purpose of the creation of these zones includes attracting business to Botswana, generating economic growth and creating employment.

Compliance with the Standards

A. Availability of information

Overview

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

34. In most cases, ownership and identity information is available for relevant entities and arrangements. All companies formed under Botswana's laws must maintain a shareholder register or register of members that identifies the legal owner of the company. Any transfers in ownership must be recorded in the register and notified to the Registrar. While there is no explicit prohibition on bearer shares in the Companies Act, Botswana's officials have confirmed that such shares are not issued.

35. Foreign companies limited by shares that are operating in Botswana are required to register with the Registrar of Companies where they are "carrying on business" in Botswana. While there is no requirement that

these companies maintain a share register or other ownership information as required of companies incorporated in Botswana, a resident of Botswana must be appointed to accept service of process and to be answerable for all matters required of the company under the Companies Act. In addition, a foreign corporation doing business in Botswana will be required to register for tax purposes, and file annual tax returns, which includes the current list of shareholders. Foreign companies must also obtain a business licence which requires providing shareholder information to the Ministry of Trade and Industry.

36. In the case of nominee shareholders, the corporate tax return has been amended to require disclosure of nominee shareholding arrangements. In addition, to the extent that a nominee is a lawyer, accountant, financial institution or other specified party, anti-money laundering customer due diligence obligations will apply and ensure that information on the underlying shareholder is available.

37. For partnerships, the tax law requires partners earning income in Botswana through a partnership or which earns taxable income in Botswana to register for tax and file annual tax returns. The partners and the partnership itself are required to file a return. The tax return for a partnership must be completed by the precedent resident acting partner or the resident agent and must include the name, address and taxpayer identification number of each partner. Ownership and identity information may also be available through anti-money laundering obligations which require banks, lawyers, accountants and other specified parties to conduct customer due diligence, and through the business licensing requirements.

38. In the case of trusts, the tax laws require that income of the trust is taxed in the hands of the trustee. For these purposes the term "trustee" is very broadly defined and includes any person administering trust assets or any person acting in any fiduciary capacity. While Botswana's tax system is a territorial one, investment income earned by a resident of Botswana is deemed to be from a source situated in Botswana. Accordingly, even where a Botswana resident trustee invests the trust property outside of Botswana, the trustee must register for tax purposes and file annual returns. On registration for tax purposes, the trust deed must be provided to the tax authority, and any subsequent changes to the trust deed must also be filed. The trust tax return form requires disclosure of the full name and taxpayer identification number of all beneficiaries, as well as a scheduled explaining any distributions made to beneficiaries during the year. In addition, ownership and identity information may also be available through anti-money laundering obligations which require banks, lawyers, accountants and other specified parties to conduct customer due diligence.

39. Societies must be registered but only information concerning the identity of the officers of the society must be provided. The society is not obligated to maintain a register of membership. However, societies have very limited relevance for EOI and to the extent they were carrying on a business, ownership information would be regulated through tax obligations.

40. Accordingly, element A.1 was determined to be in place.

41. In practice, compliance by companies with their annual return filing obligation is low, although compliance with tax return filings appears to be somewhat better. The monitoring of customer due diligence obligations commenced relatively recently with respect to non-bank parties. Element A.1 was rated as Partially Compliant.

42. Accounting records are required to be maintained by entities and arrangements that are carrying on a business under commercial and tax laws, and also maintained by specified parties under anti-money laundering laws, for at least five years. However, this does not appear to require all entities and arrangements to always maintain accounting records in accordance with the international standard. In practice, the monitoring of compliance with the obligation to maintain all underlying documentation is undertaken with respect to a relatively small group of persons. As such, element A.2 was determined to be in place but needing improvement and is rated as Partially Compliant.

43. Banking information is available through obligations in the Banking Act as well as the anti-money laundering legislation. In practice, the licensing of banks and supervision of customer record keeping is sound. Element A.3 was determined to be in place, and rated as Compliant.

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.

44. The relevant entities and arrangements in Botswana are companies (*ToR A.1.1*), which are not authorised to issue bearer shares (*ToR A.1.2*), partnerships (*ToR A.1.3*), trusts (*ToR A.1.4*) and societies. This section also deals with enforcement provisions to ensure compliance with the laws on the ownership of relevant entities (*ToR A.1.6*).

Companies *(ToR A.1.1)*

45. The Companies Act (Ch. 42:01) provides for the creation of three types of companies: companies limited by shares; close companies; and companies limited by guarantee.

46. The Registrar of Companies and Business Names is responsible for maintaining a register of all companies registered or deemed to be registered under the Companies Act, all external companies and dormant companies. The Companies Act sets out the essential requirements for incorporation (Companies Act, ss. 19-24) and requires that an application for incorporation must be made to the Registrar that includes the full name and residential address of every shareholder or member of the proposed company (Companies Act, s. 21(2)(d). The application must be accompanied by a declaration by a person engaged in the formation of the company that the application complies with the provisions of the Act, and this person must be a legal practitioner; a member of the Botswana Institute of Accountants; a member of the Southern African Institute of Chartered Secretaries and Administrators; or such other class of persons as the Minister may prescribe.

47. A company having share capital is required to maintain in Botswana a share register, which shall state, with respect to each class of shares, the names and the latest known address of each person who is, or has within the last seven years been, a shareholder (Companies Act, ss. 83, 84). The name of any transferee shareholder must be entered on the share register (Companies Act, section 81). In order to transfer shares, the transferor must provide a transfer form to the company (or an agent of the company that maintains the register). On receipt of the form, the company shall enter the name of the transferee on the share register as holder of the shares. In addition, within 30 days of a transfer in shares in a company, a copy of the updated share register shall be lodged with the Registrar (Companies Act, s. 48(3A)). The share register must be available for public inspection (Companies Act, s. 218(1)(c)). Other information kept by companies at their registered office in Botswana includes the constitution, minutes of meetings, a list of directors, and records of communications with shareholders. (Companies Act, s. 186)

48. Close companies are private companies not having more than five members, each of which must be an individual and which applies for registration under Part XIX of the *Companies Act*. The management of a close company is vested in its members, and each member stands in a fiduciary relationship to the company and the other members (Companies Act, s. 262). Close companies may not carry on the business of banking or insurance. As with companies limited by guarantee, the provisions of the Companies Act apply with necessary modifications to a close company, references to shareholders are read as referring to members. Close companies must maintain a register of members, stating the name and address of all members, the date

at which each person was entered in the register, and the date at which a person ceased to be a member (Companies Act, s. 83(3)). For close companies, wherever a change has occurred with respect to the names and addresses of each member, in addition to the obligation to update the share register, notice in writing of this change must be provided to the Registrar within 30 days (Companies Act, s. 261).

49. Companies limited by guarantee are subject to similar requirements and must maintain a register of members that includes the name and address of each person who has been a member of the company (Companies Act, s. 83(3)).

50. A private company is a company limited by shares that has no more than 25 shareholders and is subject to less stringent governance rules. In particular, private companies are exempt from certain bookkeeping and accounting requirements, however, these exemptions do not affect the requirements for maintenance of ownership information under the general rules.

51. In practice, registration of all of the above types of companies is by application to the Registrar of Companies and Business Names, an office within the Companies and Intellectual Property Authority (CIPA). The application form requires information on the names of the directors, name of each proposed shareholder/member, and their residential address. When the application is received, it is reviewed by the Registrar to verify that all information is complete and correct (such as the directors are over age 18, and if a director is a non-citizen that a copy of the passport has been provided). The information in the form is then entered into the CIPA database. Since 2014, an updated copy of the share register is now also filed within 30 days of the share transfer. In practice, some companies are providing the entire historical copy of the share register which is inputted into the CIPA database.

52. An annual return must be filed with CIPA each year within 28 days of the annual general meeting of the company (Companies Act, s. 217) and a fee of BWP 300 paid (EUR 25). The annual return includes updated information on the name, address and identity number of directors, name, address and identity number of all shareholders, place of the registered office, place where shareholder register is kept, a list of the shares transferred since the last annual return (including the name of the transferor and transferee), and the place where financial records are kept. The forms are filed in paper with the office and entered into the CIPA database. When a company files its annual returns, CIPA may at that time verify that the prior year returns are not outstanding. In addition, when reviewing the annual return, the list of current shareholders is compared to the share register filed during the year after a transfer in shareholding (if any).

53. The filing of annual returns is monitored by CIPA on its database, which displays the due date for annual returns. The due date is 18 months after the company is first registered, and each 12 month anniversary thereafter. The database allows CIPA to run a report to generate a list of companies for which the annual return is outstanding and fees are owing. This is done on an ad hoc basis, but generally once per year. Reminder letters are sent to companies that have failed to file their annual return, which is then followed up by telephone. In addition, CIPA regularly publishes the names of non-compliant companies in the daily newspaper.

54. In addition, a company is required to be in good standing with CIPA in order to maintain their business trade licence, which is an authorisation to do business issued by the Ministry of Trade under the Trade Act (see below). Business licenses are renewed annually. To demonstrate that they are in good standing, a company must submit copies of their submitted annual returns to the Ministry of Trade.

55. The CIPA company database is interfaced with BURS. This allows BURS to directly access the list of companies registered with CIPA and their shareholders.

56. Companies may be deregistered voluntarily or for non-compliance. Voluntary deregistration may occur, for example, where a company was incorporated to bid for a particular tender but is not successful. In order to voluntarily deregister, a company first requires a "no objection" letter from BURS which confirms that no tax obligations are outstanding. It will then file an application for deregistration with CIPA. CIPA publishes the notice of intended deregistration in the Government Gazette, and then after two weeks, the company will be deregistered and the confirmation notice is again published in the Government Gazette.

57. Deregistration by CIPA for non-compliance may occur, for example, where a company has not submitted annual returns. Before deregistering a company, CIPA will issue reminder letters of the outstanding obligation. If the company continues to default, CIPA will issue a notice to the company of the intent to deregister the company. There is no prescribed timeframe in the Companies Act given to non-compliant companies to rectify the outstanding annual returns. CIPA has taken an administrative decision to offer up to three months to these non-compliant companies to file their outstanding annual returns and pay the annual return fee. If the company remains in default, CIPA will contact BURS to determine whether it has an objection to deregistering the company. If there is no objection from BURS, CIPA will publish the notice of intended deregistration in the Government Gazette, and then after two weeks, the company will be deregistered and the confirmation notice is published in the Government Gazette.

58. In June 2015, a list of 110 000 non-compliant companies was sent by CIPA to BURS to ask whether there was an objection to de-registration during the review period. However, compliance with tax filings appears to be somewhat better than compliance with CIPA annual return filings, averaging around 48% for company taxpayers (see below in section A1.6 for details). As such, BURS did in fact object to approximately 50 000 of those cases, where the company in question had been otherwise compliant with tax obligations. In October 2015, BURS formally provided its letter of no objection in respect of the other 60 000 cases, and CIPA advises that efforts are underway to proceed with the de-registration of these companies.

59. The statistics on the number of new companies incorporated each year, and the number of companies deregistered each year is as follows:

		Share capital	Limited by guarantee	Close company
2012	Total	15 447	4	0
	Deregistered	85	0	0
	Cumulative total (including those previously deregistered)	147 209		
2013	Total	15 002	0	1
	Deregistered	231	0	0
	Cumulative total (including those previously deregistered)	162 211		
2014	Total	16 851	1	0
	Deregistered	257	0	0
	Cumulative total (including those previously deregistered)	179 062		

Tax laws

60. Companies are subject to tax obligations if they are earning taxable income in Botswana. This includes income sourced in Botswana, as well as income deemed to be sourced in Botswana, such as income of resident companies from investments and business activities outside Botswana (Income Tax Act, ss.9, 11).

61. Taxpayers (other than individual taxpayers earning less than BWP 36 000, EUR 3 060 per year) must initially register with BURS (Income Tax Act, s. 64A). The registration form is used by all individuals, entities and arrangements. A company must include the name and address of two directors and two major beneficial shareholders, which is defined in the

registration form to mean natural persons exercising control of the company. The registration form also requires the details of at least one bank account of the taxpayer in Botswana, for the purpose of making direct refunds or garnishing the account if necessary.

62. Attachments must be submitted with the registration form, which includes the memorandum and articles of a company. The same form is also used to provide updates to taxpayer registration information. This would occur where there was a change in identity of the directors, the content of the memorandum and articles or major beneficial shareholders.

63. Tax returns are filed annually. The return for companies requires a full list of shareholders, as well as the beneficial shareholders if applicable. In practice, where BURS has noted that information is missing from the annual return, the taxpayer is required to correct the filing.

64. BURS is also responsible for issuing tax compliance certificates, which are required by companies wishing to compete in government tenders, entities wishing to renew their business licence, or non-citizen individuals proposing to leave Botswana or extend their residency permit period. Compliance with tax obligations is described in section A1.6 below.

Business licensing

65. In order to carry on certain businesses and trades in Botswana, a business licence is required from the Ministry of Trade and Industry (Trade Act, s. 3). These include a wide range of types of business, including agricultural shop, auctioneer, bookshop, carwash, cell phone shops, department stores, electronic shops, grocery store, clothing shop, internet café, jewellery shop, car dealer, restaurant, pharmacy. Other types of services such as law firms, accounting firms and medical practitioners are regulated separately. Small and micro businesses which cannot have more than a defined small number of employees and generally could carry on their business from the home do not require a business licence.

66. To obtain a business licence, an application form and fee is submitted to the Ministry of Trade and Industry. Where the applicant is a company, the application form requires the name and address of all shareholders with a certified copy of the passport or Botswana identity card, a copy of the certificate of incorporation and the latest copy of the company's annual return filed with CIPA.

67. Licenses are renewed annually (Trade Act, s. 13). To renew the licence, the applicant must pay the fee and submit a copy of the most recent CIPA annual return. Approval of the licensing committee is required before transferring a business licence to another person (Trade Act, s. 17).

68. Penalties apply for a failure to obtain a licence (fine of up to BWP 10 000 (EUR 850) and/or imprisonment up to three years), and for providing false information and fraudulent use of a business licence (fine of up to BWP 1 000 (EUR 85) for a first offence, BWP 10 000 (EUR 850) and/or imprisonment for up to five years for subsequent offences) (Trade Act, ss.3, 30).

Foreign companies

69. The Companies Act provides for the registration of foreign companies doing business in Botswana, known as "external companies." External companies that either have a place of business in Botswana or are carrying on business in Botswana must register with the Registrar (Companies Act, s. 344). The term "carrying on business in Botswana" includes establishing or using a share transfer office or a share registration office in Botswana; or (ii) administering, managing, or dealing with property in Botswana as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner.

70. Section 344 of the Companies Act provides that an external company does not carry on business in Botswana merely because it:

- is or becomes a party to a legal proceeding or settles a legal proceeding or claim or dispute;
- holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs in Botswana;
- maintains a bank account in Botswana;
- effects a sale of property through an independent contractor;
- solicits or procures an order for delivery in Botswana or elsewhere that becomes a binding contract only if the order is accepted outside Botswana;
- creates evidence of a debt or creates a charge on property;
- secures or collects any of its debts or enforces its rights in relation to securities relating to those debts;
- conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
- invests its funds or holds property in Botswana.

71. The registration requirements for an external company do not require that the company provide information concerning the identity of the

company's shareholders or members. The external company must provide copies of its articles of incorporation or registration, its constitution, charter or articles, a list of its directors, and the name and address of a person resident in Botswana (other than an external company) who is appointed to have responsibility for the management of the company in Botswana, accept service of process and to be answerable for all matters required of the company under the Companies Act. Where any changes are made to these, or the place of the registered office, name of the company or powers of Botswana resident directors, the external company must lodge the details of the change with the Registrar within one month (Companies Act, s. 347). The Registrar has the power to call for the production of or inspect any book required to be kept by the company in Botswana (Companies Act, s. 14).

72. All companies registered as external companies (i.e. foreign companies doing business in Botswana) must file an annual return. However, in practice CIPA does not require that an external company includes the name and address of each shareholder but simply fill in "not applicable" for this section of the annual return form. External companies are also not required to file with CIPA a copy of the share register when there has been a share transfer.

73. In practice, there are 375 external companies registered as at December 2015. The process for filing and monitoring of annual returns and the de-registration process is the same as for domestic companies, described above. During the review period, one external company was de-registered.

74. External companies are subject to tax in Botswana in respect of their Botswana source income (Income Tax Act, s. 9). External companies must register for tax purposes after obtaining registration from CIPA. The registration process is as described above for domestic companies, which includes the requirement to have a bank account. As such, external companies will be subject to anti-money laundering customer due diligence from at least one bank in Botswana. In addition, external companies must annually file their tax return. Shareholder information is contained in the tax return, as described under tax obligations above in paragraphs 65-67. Compliance with tax obligations is described in section A1.6 below.

75. In addition, an external company must obtain a business license from the Ministry of Trade and Industry, as described above, and which requires the filing of a list of shareholders with the application. Business licenses must be renewed annually, by pay the payment of a fee, submission of the most recent CIPA annual return and submission of a list of shareholders.

International Financial Services Centre Companies

76. No special regime applies to companies that are part of the Botswana IFSC. Applicants for certification of IFSC status must first be incorporated as Botswana companies under the Companies Act and register with BURS and file tax returns, and are therefore subject to the requirements described above.

77. Any company applying for IFSC status must:

- Meet CIPA requirements on company registration including selection of a name, signing a declaration of compliance, complete and file statutory returns about directors, auditors, company secretary and registered office;
- Obtain a trade license from the Ministry of Trade and Industry, and secure other industry specific licenses such as a banking license;
- Register for tax purposes with BURS.

78. Accordingly, IFSC status does not create a separate corporate formation regime or otherwise allow for the creation of entities that would be subject to a distinct set of rules than those that apply to companies generally. The Income Tax Act provides a separate tax regime that applies to IFSC certified companies; however the general requirement to register for tax purposes and provide annual returns continues to apply to such companies.

79. In practice, the accreditation process is undertaken by the International Financial Services Centre Certification Committee. The Committee includes representatives of the BITC (which also undertakes secretariat functions for the Committee), Ministry of Finance and Development Planning, BURS, Bank of Botswana and NBFIRA (International Financial Services Centre Certification Committee Order 2005). Applicants submit their proposal and business plan, financial credentials, list of shareholders, and explanation of how the business will benefit Botswana. The BITC vets the proposal and presents credible proposals to the Committee, which are decided by majority vote. The Committee then makes a recommendation to the Minister of Finance and Development Planning, who undertakes his own assessment, and if accepted, grants the tax certificate to confer IFSC status.

80. Depending on what type of activity the company is undertaking, it may also require a licence from the relevant regulator, such as a banking license from the Bank of Botswana. No IFSC certificate would be granted without such regulatory licence.

81. In addition to the monitoring of compliance undertaken with respect to the Companies Act and Income Tax Act, the BITC undertakes monitoring of the activities of IFSC companies to ensure the company is meeting the

expected performance. Companies in the banking or non-banking financial institution sector will also be regulated by the Bank of Botswana or NBFIRA as relevant and subject to anti-money laundering customer due diligence obligations, described in section A.3 below.

82. Once granted, IFSC status is indefinite, subject to de-certification. The Committee may de-certify a company where there has been non-compliance with regulatory requirements (including failure to comply with tax obligations or Companies Act obligations). In practice, IFSC companies have been de-certified for failure to commence operations within the required 12 month period, or voluntary deregistration where the company was not meeting its own business performance targets, rather than for breach of tax or regulatory requirements. From the commencement of the IFSC in 2003, there have been a total of 88 companies that have received IFSC certification, 37 of which have since been de-certified.

Nominees

83. Situations in which a nominee holds a share on behalf of another person are not adequately addressed in Botswana's company law. The term "nominee" is defined in the Companies Act to mean a person who, in exercising a right in relation to a share, debenture or other property, is entitled to exercise that right only in accordance with instructions given by some other person either directly or through the agency of one or more persons. This definition has relevance for a number of aspects of the Companies Act (e.g. determining control of a company), but does not appear to have any impact on the application of the rules related to the maintenance of ownership information. For example, the definition of "shareholder", as discussed above, appears to require that only the nominal shareholder is listed in the share register, regardless of whether that shareholder holds the share for the benefit of a third party. CIPA does not require information on nominee shareholding to be reported to CIPA, and the CIPA annual return forms do not require nominee shareholding arrangements to be reported.

84. The income tax return form for companies (Form SAT ITA-22) requires a company to declare the name, address and number and class of shares of each beneficial shareholder where such shares are held by a nominee. Companies are required to file the tax return in respect of their gross income (Botswana source income and deemed-Botswana source income) each year, per section 65 of the Income Tax Act.

85. The company therefore has the onus of obtaining ownership and identity information as to any of its shareholders which are acting as nominees. Given the potential for a criminal conviction for failure to do so, the

disclosure requirement on the income tax return is significant in evaluating the availability of information regarding nominee shareholders.

86. Customer due diligence obligations are imposed in the Financial Intelligence Act 2009 and Financial Intelligence Regulations 2013. The Act and Regulations commenced in full in June 2013. Under the Financial Intelligence Act, specified parties are subject to customer due diligence obligations. The specified parties include lawyers, accountants, banks and non-bank financial institutions (such as insurance, custodians, asset managers and investment advisors). Customer due diligence must be completed when a specified party is establishing a business relationship or conducting a transaction. Where a specified party had commenced business relationship with a customer prior to the Act coming into force, they are required to undertake the necessary due diligence before concluding a transaction for the customer (Financial Intelligence Act, s. 10(2)). Records of the customer identification must be kept for at least five years from the date a transaction is concluded (Financial Intelligence Act, s. 12).

87. As such, to the extent that a specified party is acting as a nominee, they will have obligations to conduct customer due diligence. This includes an obligation to undertake due diligence to establish and verify the identity of the customer; if the customer is acting on behalf of another person, to establish the identity of the other person; and if another person is acting on behalf of the customer, to establish the identity of the customer (Financial Intelligence Act, s. 10(1)). Where a customer relationship was established prior to the Financial Intelligence Act coming into force in 2013, specified parties are also required to conduct the due diligence to obtain the information before conducting another transaction for the customer. As such, information on nominee shareholding should be available in respect of professional nominee arrangements. Enforcement of anti-money laundering obligations is described below in section A1.6.

Bearer shares *(ToR A.1.2)*

88. There are no bearer shares in Botswana. While the issue of bearer shares is not dealt with explicitly in the Companies Act, the term "shareholder" is defined in section 90 to mean:

- a person whose name is entered in the share register as the holder for the time being of one or more shares in the company,
- until the person's name is entered in the share register, a person named as a shareholder in an application for the registration of a company at the time of registration of the company, or

- until the person's name is entered in the share register, a person who is entitled to have that person's name entered in the share register under a registered amalgamation proposal as a shareholder in an amalgamated company.

89. While there is no explicit prohibition on bearer shares in the Companies Act, the rights attaching to the ownership of a share do not transfer until the transferee's name is entered in the share register (apart from limited exceptions regarding initial formation of the company and amalgamation). As such, any bearer share purported to be issued by a company in Botswana would have no legal status.

Partnerships *(ToR A.1.3)*

90. There are no statutory provisions relating to the formation or governance of partnerships under Botswana's laws. Partnerships are therefore governed by the common law, which in Botswana primarily come from South African, English and other common law jurisdictions. Generally, the criteria for formation of a partnership are similar to the English common law, namely a partnership consists of two or more persons working together with a view to profit. Information about partnerships is ensured primarily through income tax, business license and anti-money laundering obligations.

Income Tax Law

91. Partnerships carrying on a business in Botswana will register a business name with CIPA (other than where the business name consists solely of the surnames of the partners) (Registration of Business Names Act, s. 4). Information must be provided to CIPA within 28 days of the commencement of business, including the business name, address of all places of business, and the names and address of each partner (Registration of Business Names Act, ss. 6, 8). Information on any changes must also be provided to CIPA within 28 days of the change (Registration of Business Names Act, s. 9). Failure to meet these requirements is an offence, and upon conviction the court is to order a production of the required information (Registration of Business Names Act, s. 10). The penalty for failure to register or update the information is a fine not exceeding BWP 200 (EUR 16), and in default of payment, imprisonment for a term not exceeding three months.

92. Generally, any person earning taxable income in Botswana must file an annual return with BURS (Income Tax Act, s. 65). A partnership carrying on business in Botswana is required to be represented by a resident individual who is either the "precedent" partner or, if no partner is resident in Botswana, the agent of the partnership in Botswana (Income Tax Act, s. 136).

93. In addition, partnerships carrying on business in Botswana must register for tax purposes (Income tax Act, s. 64A). The registration process requires disclosure of the name and contact details of two major partners, details of the precedent partner in Botswana, details of the partnership bank account and a copy of the partnership agreement. As such, the tax obligations apply irrespective of whether the partnership is comprised of resident or non-resident partners. However, a partnership is not subject to tax in its own right (Income Tax Act, s. 21). Rather each partner is chargeable to tax in proportion to the partner's entitlement to the partnership's "chargeable income" for the year.

94. Partnerships earning income chargeable to tax in Botswana are required to file a tax return with BURS, and each partner must also file an individual return. The partnership return requires that the name and taxpayer identification number of each partner be included. The tax return used by individual partners requires the partner to disclose the share of profit and loss from the partnership. Compliance with tax obligations is described in section A1.6 below.

95. In practice, the following numbers of partnerships were registered as taxpayers during the review period:

	2012	2013	2014
New	5	17	14
Deregistered	0	1	0

Anti-money laundering law

96. As described above, customer due diligence obligations are imposed in the Financial Intelligence Act 2009 and Financial Intelligence Regulations 2013. A specified party (such as lawyers, accountants, banks and non-bank financial institutions) must undertake due diligence to establish and verify the identity of the customer; if the customer is acting on behalf of another person, to establish the identity of the other person; and if another person is acting on behalf of the customer, to establish the identity of the customer (Financial Intelligence Act, s. 10(1)). This must be completed when establishing a business relationship or conducting a transaction. Where a specified party had commenced business relationship with a customer prior to the Act coming into force, they are required to undertake the necessary due diligence before concluding a new transaction for the customer (Financial Intelligence Act, s. 10(2)). As such, the customer due diligence obligations apply when a business relationship is established or a transaction is conducted by a specified party in Botswana, irrespective of whether the partnership is comprised

of resident or non-resident partners. Records of the customer identification must be kept for at least five years from the date a transaction is concluded (Financial Intelligence Act, s. 12).

97. Specific requirements are set out in the Financial Intelligence Regulations as to the information that must be obtained where the customer is a partnership. The specified party must ascertain the name of the partnership, and for each partner the name, address, date of birth and Botswana identity card number or passport number (regulation 8). The information ascertained must be verified by comparing the information to the partnership agreement, national identification document or other reliable document (regulation 11).

98. In addition, banks are subject to similar obligations in the Banking (Anti-Money Laundering) Regulations 2003. These obligations are monitored by the Bank of Botswana, described in section A.3 below.

99. Since all taxpayers in Botswana must have a bank account in Botswana in order to register for tax purposes, customer due diligence information would be available through at least one bank and BURS would have information on which bank had this customer information. Furthermore, where the partnership is created by a lawyer or uses the services of a lawyer or accountant in Botswana, that person would have customer due diligence information on the trust. The supervision of the Financial Intelligence Act obligations is described below in section A1.6.

Trusts *(ToR A.1.4)*

100. There are no statutory provisions relating to the creation or governance of trusts under Botswana's laws. Trusts are therefore governed by the common law. There are no decided cases in Botswana touching on the scope of a trustee's duties, and as such Botswana draws upon the common law of England and other Commonwealth nations. Generally, the criteria for the creation of a trust are similar to the English common law, namely a trust is created where assets are transferred by a person (the settlor) to a trustee for the benefit of another person. Common law fiduciary duties require that the trust execute his or her duties faithfully, which would include keeping sufficient information on the trust property and beneficiaries (*Armitage v Nurse* [1998], Ch 241). In addition to common law duties, information on trusts is ensured through tax obligations and anti-money laundering laws.

101. Trusts are identified as a person for tax purposes and must register for tax and file tax returns if earning income from Botswana sources or sources deemed to be from Botswana (Income Tax Act, ss.2, 9). A trust will be considered resident in Botswana if it is created under Botswana law, or the trustee administering the trust is resident in Botswana (Income Tax Act, s. 2). As discussed above in paragraph 22, the deemed source rule means that

income from investments made outside of Botswana by a trust resident in Botswana is deemed to be from a source situated in Botswana. Therefore, a Botswana resident trust earning income in Botswana, or holding foreign assets in trust, is liable to tax on the income in Botswana and is required to register with BURS. Given the broad definition of income, a trust earning passive income on investments, for example, would be required to register and file tax returns.

102. The trustee is responsible for the initial registration of the trust as a taxpayer. To register, the trustee must provide a certified copy of the trust deed and the details of a bank in Botswana that the trust has an account with. Where the trust deed has been registered with the Registrar of Deeds, the registration number is also provided. In practice, a majority of trust deeds are registered. The registration form is also used by trustees where changes to the registration details occur, including a change in the trust deed. It is expected that the filing of the trust deed would provide the identity of the settlors, trustee and beneficiaries or the class of potential beneficiaries.

103. The trustee is responsible for filing the tax return relating to the income of the trust. In accordance with section 19 of the Income Tax Act all income accruing to a trust is subject to tax in the hands of the trustee notwithstanding that a distribution may have been made to beneficiaries of the trust. The beneficiaries declare distributions received on their own tax return, but do not pay any further taxes on trust income that has already been subjected to tax in the hands of the trustee.

104. Since 2014, the income tax return form for trustees has required details of the name and taxpayer identification number of each beneficiary (irrespective of whether the beneficiary is entitled to a distribution in the year), as well as a schedule explaining any payment, benefit or property provided to a beneficiary during the year. Since 2014, very few trusts have recorded any changes to their beneficiaries or to their trust instruments. Compliance with tax obligations is described in section A.1.6 below.

105. In addition, information on trusts would be available through customer due diligence obligations imposed by the Financial Intelligence Act 2009 and Financial Intelligence Regulations 2013, which entered into operation in 2013. As described above in section A1.3, the Financial Intelligence Act and Financial Intelligence Regulations obligate a specified party to conduct customer due diligence. Specified parties include lawyers, accountants, banks and non-bank financial institutions.

106. Where the customer is a trust, the Financial Intelligence Regulations specify that the following information must be obtained and verified against the trust deed: the name of the trust, the jurisdiction of creation, the management company of the trust if any, and the name, Botswana identity card or

passport number and date of birth of the trustee, beneficiaries and settlor (regulation 9). Where the beneficiaries are not identified by name in the trust deed, the specified party must use reasonable efforts to identify the beneficiary and notify the Financial Intelligence Agency of the inability to identify them (regulations 4(2), 9(2)).

107. Since all trusts that are taxpayers in Botswana must have a bank account in Botswana in order to register for tax purposes, customer due diligence information would be available through at least one bank and BURS would have information on which bank had this customer information. Furthermore, where the trust is created or administered by a lawyer or accountant in Botswana, that specified party would have customer due diligence information on the trust. The supervision of the Financial Intelligence Act obligations is described below in section A.1.6 and A.3.

Foundations *(ToR A.1.5)*

108. Botswana's laws do not provide for the establishment of foundations.

Other relevant entities and arrangements

109. Botswana law allows for the creation of societies. Societies cannot be formed for the sole purpose of carrying on a business. These entities include any club or association of 10 or more persons, whatever its nature or objects, but does not include, for example, companies, trade unions, or building societies (Societies Act, section 2).

110. The registration rules (Societies Act Subsidiary Legislation – Registration of Societies Regulations) applicable to societies require the provision of identity information concerning the name and address of the officers of the society, but there are no rules requiring that a register of each member of the society must be maintained. However, a list of members can be compelled at any time. (See access to information concerning societies at paragraph 184, below). Failure to provide such information may result in cancellation of registration, and is a criminal offence punishable by fine imposed on the office bearer (Societies Act, s. 11). It can reasonably be inferred that each society would have, or be able to produce, information identifying its members, notwithstanding that this may not be found in a formal register of members. However, this would not ensure that information on historical members was available.

111. In practice, during the review period there were 511 societies in 2012, 545 societies in 2013 and 538 in 2014. Most societies are religious organisations, sporting clubs and cultural groups. The Registrar of Societies provides a guide to applicants regarding the rules to be included in a society's

constitution. The guideline issued to societies advises that societies must open a bank account in Botswana. Societies must submit an annual return, which includes the total number of members (but not a list of the name of each member) and the identity of the executive committee.

112. Societies are expected to generate sufficient revenue to sustain the organisation, from members' fees or other revenue-making activity (such as a sporting club selling snack items). Where revenue-making activities are undertaken, these are not taxable if the profits are applied for the purposes of the society. If a society was generating profits that were not applied for the purposes of the society (such as a church renting out a property and not applying the revenue for the purposes of the church), it would be obligation to register for tax purposes and file tax returns. The information that would be included in a tax return filed by a society would include the names of two persons holding positions of responsibility in the society, such as the manager or chairman of the society.

113. Penalties can be imposed for failing to register as a society, of up to BWP 1 000 (EUR 85) and/or imprisonment for up to seven years (Societies Act, ss.21, 22). As a matter of policy and practice, monetary penalties have not been enforced, as the preference of the Registrar is to educate these community organisations about their obligations and encourage voluntary compliance. The Registrar of societies is empowered to cancel registration of a society for non-compliance, and this power has been exercised in recent years.

114. As there is no legal requirement for societies to maintain a record of their members, and maintain this for at least five years, it is recommended that Botswana ensure that societies be required to maintain a register of members. Given that this is the only recommendation made for the phase 1 aspect of element A.1., and that societies are likely to be of more limited relevance for EOI as they generally do not conduct business (and if they do, they are subject to tax filing obligations), this recommendation does not carry significant weight in concluding the overall determination of element A.1.

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

115. Companies as well as their directors are subject to fines under the Companies Act for failure to maintain documentation required by the Act. A failure to maintain the share register carries a BWP 10 000 fine (approximately EUR 850) under sections 83, 492 and 493. Section 186 imposes a BWP 20 000 (EUR 1 700) fine on the company and its directors for failure to maintain its company records (including the share register) at its registered office. Failure to file an annual returns subjects the directors to penalty of up to BWP 20 000 (EUR 1 700) (Companies Act ss. 217, 493(2)).

116. In practice, the CIPA system automatically calculates outstanding filing fees and generates a statement of arrears. There is no prescribed time-frame on the Companies Act given to non-compliant companies to rectify the outstanding annual returns. CIPA has taken an administrative decision to offer up to three months to these non-compliant companies to file and pay their outstanding annual returns. Continuing failure will subject the company to the deregistration process described above in section A.1.1.

117. During the review period, the numbers of annual returns filed, and the penalties imposed for late filing of returns, were as follows. These figures include both domestic and external companies, although external companies represent only a small number of the total companies in existence. In some cases, the number of filings includes cases where a company has filed several of its outstanding annual returns in one year. Notwithstanding that CIPA has a system for issuing reminders, applying penalties, and commencing deregistration processes, the compliance rates are particularly low. As such, the accuracy of ownership information held by CIPA cannot be assured.

		2012	2013	2014
Share capital	Annual returns	29 102	30 561	31 992
	Penalties	BWP 5 614 500 (EUR 477 858)	BWP 5 121 500 (EUR 435 898)	BWP 3 975 300 (EUR 338 364)
Limited by guarantee	Annual returns	67	58	77
	Penalties	BWP 20 400 (EUR 1 736)	BWP 20 400 (EUR 1 736)	BWP 15 600 (EUR 1 328)
Close company	Annual returns	7	1	7
	Penalties	BWP 13 500 (EUR 1 149)	BWP 12 300 (EUR 1047)	BWP 7 500 (EUR 638)
Total number of companies		147 209	162 211	179 062
Total number of annual returns		29 176	30 620	32 076
Percentage of non-compliance		80%	81%	82%
Total penalties		BWP 5 648 400 (EUR 480 743)	BWP 5 154 200 (EUR 438 681)	BWP 3 998 400 (EUR 340 330)

118. Penalties for non-compliance with tax obligations are contained in the Income Tax Act. The penalty for failure to file a tax return is interest is charged at the rate of 2 per cent per month on the amount of tax due and a penalty not to exceed the amount of tax due (Income Tax Act, s. 117). Where no tax return is filed, an estimated assessment can be made by BURS (Income Tax Act, s. 78(6)). The penalty for filing an incorrect return is the shortfall in tax on account of the inaccuracy, or twice the shortfall in tax where there has been fraud or wilful default (Income Tax Act, s. 118(1)).

The penalty for failure to provide access to books and records is BWP 100 (EUR 8.50) per day or 1% of the tax due, for each month or part thereof that the failure continues (Income Tax Act, s. 118(6)). There are also penalties for failure to comply with the Act generally, including failure to furnish any return or document (including a tax registration form), failure to disclose material facts required to be disclosed in a tax return, or for signing any return without reasonable grounds for believing that return to be correct. A fine of BWP 1 000 (EUR 85) and imprisonment for one year applies for these offences (*Income Tax Act,* s. 122).

119. BURS monitors the failure to register for tax. For example, BURS determined that apartment building owners were a high risk category for non-registration. A recent survey was undertaken in the capital city to detect non-registration and action was taken by BURS to rectify this. BURS also uses third party information from banks, employers, other government sources and informants. Where failure to register is detected, the policy of BURS has been to ensure the taxpayer is registered, rather than imposing fines.

120. BURS monitors the failure to file a tax return. The taxpayer database system will generate reports automatically and identify the taxpayers that have not filed their return. A standard demand notice is issued, with a period for the taxpayer to file within 14 days. If the return is still outstanding, a second reminder is sent. In the event that the non-compliance continues, BURS can raise an estimated assessment of tax liability and can garnish the bank account to collect payment.

	2012	2013	2014
Number of tax returns filed	159 837	214 155	229 939
Number of registered taxpayers	250 280	328 223	322 627
Percentage of all taxpayers that filed a tax return	64%	65%	71%
Percentage of all company taxpayers that filed a tax return	49%	48%	46%
Percentage of all partnership/trust/estates that filed a tax return	48%	43%	36%
Number of garnishes	348	382	430

121. In practice, BURS imposes penalties on a case by case basis depending on the quantum of the possible tax loss and the nature of non-compliance. In respect of individuals, the compliance policy for the review period was to focus on taxpayer education and voluntary compliance. For large businesses, penalties have been imposed in the following table:

	2012	2013	2014
Value of penalties	[data not available for this period]	BWP 5 179 415 (EUR 440 820)	BWP 4 501 565 (EUR 383 180)

122. Under the Financial Intelligence Act, the penalty for failure of a specified party to comply with the customer due diligence requirements is a fine not exceeding BWP 250 000 (EUR 21 280) (Financial Intelligence Act, s. 10(5)). The penalty for failure to maintain such records is a fine up to BWP 10 000 (EUR 850) (Financial Intelligence Act, s. 15(1)), and the penalty for destroying such records is a fine up to BWP 10 000 and/or imprisonment for up to five years (Financial Intelligence Act, s. 15(2)).

123. Customer due diligence obligations under the Financial Intelligence Act and Financial Intelligence Regulations are supervised by the Bank of Botswana (in respect of banks), the Law Society of Botswana (in respect of lawyers), the Botswana Institute of Accountants (in respect of accountants), the Non Bank Financial Institutions Regulatory Authority (in respect of non-bank financial institutions) (Financial Intelligence Act, s. 2) and by other named regulatory authorities in respect of other types of specified parties such as casinos and dealers in precious stones. Each supervisory authority is required to regulate and supervise the relevant specified parties for compliance with the Act, including through on-site inspections (Financial Intelligence Act, s. 27).

124. During the review period, NBFIRA has undertaken pre-licencing inspections. During such inspections NBFIRA confirms that specified parties are aware of their obligations under the Financial Intelligence Act. NBFIRA intends to commence full scale inspections including of customer due diligence records from early 2016. In respect of persons that were already operating under the previous regulatory framework, a pre-licensing inspection of the existing customer AML/KYC files is undertaken in addition.

125. In practice, the customer due diligence obligations of banks have been in force since 1995 under the Banking Act, and for the other non-bank financial institutions, since 2000 under the Proceeds of Serious Crime Amendment Act 2000. Monitoring of compliance is described in section A.3. below. The monitoring of compliance with the Financial Intelligence Act and Financial Intelligence Regulations commenced relatively recently, given that the customer due diligence obligations commenced in June 2013. The Financial Intelligence Agency became fully operational in October 2014, and is in the process of building capacity to undertake more active oversight of the compliance with the customer due diligence obligations and other obligations in the Financial Intelligence Act. It is recommended that Botswana continues to ensure that the customer due diligence obligations are effectively implemented and monitored for all banks, non-bank financial institutions and other specified parties.

Determination and factors underlying recommendations

Determination
The element is in place

Phase 2 Rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
Compliance by companies with their annual return filings is particularly low. Compliance with tax return filings is also low. As such, ownership information held by CIPA and BURS may not be accurate.	Botswana should ensure that the monitoring and enforcement of companies' compliance with annual return filing obligations and tax return obligations is effective.
The monitoring of compliance with the Financial Intelligence Act and Financial Intelligence Regulations commenced relatively recently, given that the customer due diligence obligations commenced in 2013.	Botswana should also continue to ensure that the customer due diligence obligations are effectively implemented and monitored.

A.2. Accounting records

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

126. 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. The *Terms of Reference* set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements.

127. To be reliable, accounting records should (i) correctly explain all transactions, (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time, and (iii) allow financial statements to be prepared (*ToR A.2.1*). In addition, accounting records should include underlying documentation, such as invoices, contracts, etc. (*ToR A.2.2*) and they must be kept for a minimum period of five years (*ToR A.2.3*).

General requirements (ToR A.2.1)

128. Companies limited by shares must keep accounting records (*Companies Act*, s. 189) that:

i. correctly record and explain the transactions of the company;

ii. shall at any time enable the financial position of the company to be determined with reasonable accuracy;

iii. shall enable the directors to prepare financial statements that comply with the Act; and

iv. shall enable the financial statements of the company to be readily and properly audited.

129. These requirements include an obligation to maintain records containing entries of money received and spent each day and the matters to which it relates, a record of assets and liabilities of the company, and, where the business relates to the provision of services or dealing in goods, a record of services provided and the relevant invoices (*Companies Act*, sub-section 189(2)). Where the board of directors fails to maintain accounting records in accordance with the Act, section 189 provides that each director is liable to a BWP 20 000 (EUR 1 700) fine. Notwithstanding that a person ceases to hold office as a director (e.g. by vacation of office or dissolution of the company), directors remain liable for acts or omissions while that person was a director (Companies Act, s. 152(3)). In addition, companies must prepare financial statements that give a true and fair view of the state of affairs of the company and the profit and loss or income and expenditure. These financial statements must be in accordance with IFRS for public companies and companies with total assets of BWP 5 000 000 (EUR 425 709) or more and annual turnover of BWP 10 000 000 (EUR 851 420) or more, or in accordance with generally accepted accounting principles for other companies (Companies Act, ss.2(3), 205, 206 and Companies Regulations regulation 2).

130. Private companies and companies limited by guarantee are subject by reference to these same rules. Close companies are subject to similar accounting rules as other companies, including the obligation to maintain records containing entries from day to day of all cash received and paid out as well as identifying the parties to the transactions, and must prepare annual financial statements (Companies Act, ss. 270, 271). The requirements that apply to domestic companies also apply to external companies (Companies Act, s. 349).

131. Public companies and companies with an annual turnover of BWP 10 000 000 (EUR 851 420) or more must submit audited financial statements to CIPA with the annual return (Companies Act, s. 209). The monitoring

and penalties for the filing of annual returns is therefore as described in section A1.1 above, which notes that compliance by companies with the annual return filing obligation is low. No monitoring is undertaken by CIPA with respect to the maintenance of accounting records by private companies with a turnover of less than BWP 10 000 000.

132. The Income Tax Act requires that every person carrying on a business must maintain "such records or books of account as the Commissioner General considers reasonable to reflect the true and full nature of the transactions of the business, regard being had to the nature of the activities concerned and the scale on which they are carried on" (Income Tax Act, s. 26). The Commissioner General has not issued any rulings or further guidance as to what is considered reasonable for this purpose. The term "business" is defined to mean, "any business, trade, adventure or concern in the nature of trade, profession or vocation" (*Income Tax Act*, s. 2) and this would include income from property rental. As such, a trust or partnership is not required by this section to maintain records where the partnership or trust merely holds passive investments. The penalty for failure to maintain the records required by section 26 is a fine of BWP 1 000 (EUR 850) and imprisonment for one year (*Income Tax Act,* s. 122).

133. The tax return of a person that carries on a business in a tax year must be accompanied by a copy of the accounts, with a certificate stating the nature of books and documents from which the accounts were prepared and whether the accounts present a true and fair view of the profits (Income Tax Act, s. 71). The company, partnership and trust tax returns require the partnership or trust to attach copies of the trading, profit and loss and appropriation accounts with the balance sheet for all business activities of the company, trust or partnership in the accounting period. The penalty for failure to furnish any return or document, failure to disclose material facts required to be disclosed in a tax return, or for signing any return without reasonable grounds for believing that return to be correct is a fine of BWP 1 000 (EUR 850) and imprisonment for one year (Income Tax Act, s. 122)

134. In respect of societies registered under the Societies Act, there do not appear to be any requirements to maintain accounting records. However, the Registrar may at his or her discretion require the production of accounts (Societies Act, s. 17). As noted in element A.1, societies generally do not conduct business (and if they did, they would be subject to tax obligations including the obligations under sections 26 and 71 of the Income Tax referred to above), and generally have limited relevance for EOI.

Underlying documentation (ToR A.2.2)

135. Subsection 89(2) of the Companies Act specifies that the records must contain entries of money received and spent each day and the matters to which it relates. As well, there is a specific requirement that, in the case of a company engaged in the provision of services or dealing in goods, a record of the services or goods provided and the relevant invoices must be maintained.

136. For income tax purposes, every person (including a partnership or trust) carrying on a business is required to maintain and preserve in Botswana all books of account and other documents which are essential to the explanation of any entry in such books of account relating to that business for a period of eight years after the end of the tax year or accounting period to which such books of account or documents relate (Income Tax Act, section 26, 144). Botswana's officials indicate that this provision is interpreted to require the maintenance of such items as invoices, vouchers and receipts.

137. However, there is no requirement in the Income Tax Act for the maintenance of underlying documentation such as invoices and contracts by an entity or arrangement that is not carrying on business.

138. In practice, BURS undertakes audits of taxpayers. The statistics are as follows:

	2012	2013	2014
Target number of audits	1 200	1 200	1 200
Number completed	514	911	746
Number of registered taxpayers	159 837	214 155	229 939

139. Taxpayers are targeted based on risk models, such as high net worth individuals, taxpayers that suppress sales, taxpayers with government contracts. Where an audit is undertaken, BURS will look at the taxpayer's files as well as third party information. Accounting records are examined, and records can be printed from the taxpayer's accounting system. BURS has generally found that accounting records, including invoices, have been available and were retained for more than five years.

Five year record retention standard (ToR A.2.3)

140. Companies must maintain accounting records for the current accounting period and the last seven completed accounting periods must be maintained at its registered office (Companies Act, s. 186). For tax purposes this period is eight years (*Income Tax Act*, s. 144). Records maintained under the Financial Intelligence Act must be retained for at least five years after the transaction is concluded (Financial Intelligence Act, s. 12).

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**
There is no obligation for any entity to maintain underlying documentation unless they are carrying on a business.	All relevant entities and arrangements should be required to keep accounting records, including underlying documentation, in accordance with the standard.

Phase 2 Rating	
Partially Compliant	
Factors underlying recommendation	**Recommendation**
Public companies and companies with turnover of more than BWP 10 000 000 (EUR 851 420) file their accounting statements with company's annual returns. However, compliance with the annual return filing obligation is low. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records, including underlying documentation, is undertaken on a relatively small number of taxpayers. It is therefore not clear whether accounting records are always available and retained for at least five years.	Botswana should enhance the monitoring and enforcement of the availability of accounting records of these companies and enhance the monitoring of availability of accounting records for tax purposes.
Companies with turnover of BWP 10 000 000 (EUR 851 420) or less are not required to file financial statements and there is no monitoring by CIPA of the obligation on these companies to maintain accounting records. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records, including underlying documentation, is undertaken on a relatively small number of taxpayers. It is therefore not clear whether accounting records are always available and retained for at least five years.	Botswana should monitor the availability of accounting records in respect of these companies and enhance the monitoring of availability of accounting records for tax purposes.

A.3. Banking information

Banking information should be available for all account-holders.

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

142. Botswana has 10 commercial banks, which are all subsidiaries of international banks based in the United Kingdom, India, South Africa, Namibia and Malawi. Each must be formed as a Botswana domestic company under the Companies Act and must register for tax and file tax returns. In addition, banks must be licensed and supervised by the Bank of Botswana under the provisions of the Banking Act. Pursuant to their licensing requirements, the banks have obligations under the anti-money laundering law to conduct customer due diligence.

Record-keeping requirements (ToR A.3.1)

143. Every bank must be licensed by the Bank of Botswana (Banking Act, s. 3). The application must include certified copies of the applicant's certificate of incorporation in Botswana and the applicant's memorandum and articles of association (Banking Act, s. 7). Licenses are renewed annually and are not transferrable without the prior written approval of the Bank of Botswana (Banking Act, ss. 6(7), 9(2)).

144. In practice, in order to be licensed, the applicant must be incorporated as a Botswana company under the Companies Act. When a company wishes to apply for a banking license, a meeting is arranged between the Bank of Botswana and the applicant. In addition to examining the financial viability of the applicant, the Bank of Botswana evaluates the members and senior management as to expertise and integrity (fit and proper test), and any potential for conflict of interest. The fit and proper test includes (i) skills and relevant experience of conducting financial operations commensurate with the intended activities of the bank; (ii) record of criminal activities or adverse regulatory judgements that would make a person unfit to uphold influential position in a bank. The organisation structure of the applicant company is examined, including the identity and reputation of the majority shareholders. The Bank of Botswana identifies and determines the applicant's major shareholders, including the ultimate beneficial owners, and others that may exert significant influence. The Bank of Botswana also assesses the transparency of the ownership structure, the sources of initial capital and the ability of the shareholders to provide additional financial support where needed. Any change in ownership or management requires regulatory approval. The same background checks are undertaken in respect of the new applicant. A

number of applicants have been rejected in the past, usually because of prior poor financial conduct.

145. Every bank in Botswana must keep records that exhibit clearly and accurately the state of its affairs and to explain its transactions and financial position so as to enable the Central Bank to determine whether the bank concerned has complied with the provisions of the Act (*Banking Act*, s. 18).

146. Banks in Botswana must keep records of their customers and their transactions pursuant to the Banking Act, Banking (Anti-Money Laundering) Regulations 2003, the Financial Intelligence Act 2009 and the Financial Intelligence Regulations 2013. Although contained in separate legislation, the obligations are generally consistent with each other. Banks are also required to establish the identity of the account-holder before establishing a customer relationship, conducting a transaction, opening a bank account, accepting a security deposit or renting out a safe deposit box.

147. The information required to establish the identity of a customer includes the national identity card (for Botswana nationals) or passport (for foreign nationals) for an individual. The documents must be verified with supporting information such as an employer reference, utility bill or credit reference (Banking (Anti-Money Laundering) Regulations, regulation 6). The information required to establish the identity of a customer that is a body corporate is the identity of the directors, managers and beneficial owners, certificate of incorporation, details of registered office or place of business, nature of the business and source of funds and information verifying the identity of signatories to the account (Banking (Anti-Money Laundering) Regulations, regulation 7). Under the Financial Intelligence Regulations, the information required to establish the identity of a customer that is a company includes the registered name, place of incorporation, nature of the business, income tax registration number and the identity of the manager or nature person authorised to establish the business relationship or conduct a transaction (regulation 7).

148. Under the Financial Intelligence Regulations 2013, the information required to establish the identity of a customer that is a partnership is the name of the partnership, and for each partner the name, address, date of birth and Botswana identity card number or passport number (regulation 8). The information ascertained must be verified by comparing the information to the partnership agreement, national identification document or other reliable document (regulation 11).

149. The information required to establish the identity of a customer that is a trust is information to understand the structure of the trust sufficiently to determine the provider of funds and those who have control over the funds (Banking (Anti-Money Laundering) Regulations, regulation 8). Under the

Financial Intelligence Regulations, where the customer is a trust, the following information must be obtained and verified against the trust deed: the name of the trust, the jurisdiction of creation, the management company of the trust if any, the name, Botswana identity card or passport number and date of birth of the trustee, beneficiaries and settlor (regulation 9).

150. These records must be maintained for five years after the account is closed (*Banking Act*, s. 44). A bank in contravention of the obligations to identify their customers is liable to a fine of BWP 250 000 (EUR 21 286) (Financial Intelligence Act, s. 10(5). An employee of a bank in contravention of the obligations to identify their customers is liable to a fine of BWP 15 000 (EUR 1 277) and imprisonment for five years (Banking (Anti-Money Laundering) Regulations, regulation 25). Under the Financial Intelligence Act, the penalty for failure to comply with the customer due diligence requirements is a fine of BWP 100 000 (EUR 8 514) and/or imprisonment for up to five years (Financial Intelligence Act, s. 10(5)). The penalty for failure to maintain such records is a fine up to BWP 10 000 (EUR 851), and the penalty for destroying such records is a fine up to BWP 10 000 (EUR 851) and/or imprisonment for up to five years (Financial Intelligence Act, s. 15).

151. The Bank of Botswana carries out on-site inspections for prudential purposes and to verify compliance with customer due diligence and record keeping (Banking Act, s. 24). The target is that a full scope prudential on-site examination, which covers issues such as capital adequacy, asset quality and so on, should be conducted at least every 18 months for each bank. A limited scope on-site examination focuses on specific risks such as consumer loans or operational risk. On average a full on-site examination for a bank takes four to six weeks, and a limited scope examination could take one to three weeks. In both types of examination, the compliance with customer due diligence obligations is examined, including the existence of the customer due diligence programme. The numbers of on-site inspections of the 10 commercial banks during the review period was as follows. It is noted that during the review period, the Bank of Botswana gave priority to the Basel II reforms and enhancing its Risk-based supervision approach:

	2012	2013	2014
Full scope supervision	3	2	2
Follow up examination	[data not available]	2	2

152. During the on-site inspections, the Bank of Botswana undertakes interviews of senior management to understand the customer due diligence policies, when they were implemented, when they were last reviewed, and how new officers are trained. Interviews of the customer tellers are also undertaken to assess their awareness and compliance with the policies. The

Bank of Botswana obtains a list of accounts opened, selects a representative sample and verifies if the required identification documents are present. During an inspection the Initial focus will be on the most recent opened accounts. If there are concerns over compliance the Bank of Botswana will increase the sample size to older accounts.

153. The Bank of Botswana will produce an examination report, detailing deficiencies or weaknesses in the examined bank, with recommendations. During the review period, recommendations have included that a bank enhance its staff training programme on AML/CFT issues, and specific recommendations on areas of the AML/CFT requirements. The recommendations will state the timelines within which recommendations must be actioned, depending on the seriousness of the issue. An officer at the Bank of Botswana tracks these action timelines and will follow up with a telephone call if the inspected bank has not responded within the allotted time. The follow up call will remind the bank to submit its response to the recommendation, agree a date for submission, and if necessary remind that if the response is not submitted, fines will be imposed. In practice during the review period, it has not been considered by the Bank of Botswana to be necessary to impose fines for non-compliance, and the Bank of Botswana purposely tries to use a consultative rather than penal approach in working with its licensed banks on AML/CFT issues.

154. Banks wishing to operate as IFSC companies are also licensed in Botswana by the Bank of Botswana. These banks only conduct their business with non-Botswana residents and in currency other than Botswana Pula. The benefit for the bank to be licensed under the IFSC is to obtain the associated tax benefits, and it is intended by the Botswana government as a means of increasing the opportunities for skilled employment Botswana residents. These banks are supervised by the Bank of Botswana and subject to the same anti-money laundering customer due diligence obligations as described above. During the review period, there was only one IFSC bank, and it was liquidated due to liquidity problems.

Determination and factors underlying recommendations

Determination
The element is in place

Phase 2 Rating
Compliant

B. Access to information

Overview

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

156. The competent authority for EOI is the Minister of Finance and Development Planning, represented by the Commissioner General of BURS or his authorised representative, who has in turn delegated the function to the Commissioner of Internal Revenue. Botswana's legal and regulatory framework permits access to information for the purpose of responding to a valid request for information pursuant to agreements for the prevention, mitigation or discontinuance of double taxation and the rendering of reciprocal assistance in the administration and collection of tax, which includes a DTC or TIEA. These powers are consistent regardless of from whom the information is sought (e.g. from a government authority, bank, company, trustee, or individual). There is no statutory bank secrecy or professional secrecy provision in place that restricts the tax authorities' access powers or prevents effective exchange of information. For the reasons above, element B.1 was found to be in place.

157. In practice, Botswana did not receive any EOI requests during the review period. However, the BURS has used its access powers for domestic tax inquiries. Therefore element B.1 was rated as Compliant.

158. The application of rights and safeguards (e.g. notification, appeal rights) in Botswana do not restrict the scope of information that the tax authority can obtain. Therefore, element B.2 was found to be in place. In practice, the powers of the competent authority do not apply to items subject to legal privilege, and the information covered by legal privilege in Botswana is in accordance with the standard. No notification rights or similar procedures exist in Botswana that could unduly prevent or delay the exchange of information. Therefore element B.2 was rated as Compliant.

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).

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

159. The Commissioner General of the BURS has broad powers to obtain information for EOI purposes. Sub-section 69(3) of the Income Tax Act permits the Commissioner General to "by notice in writing, require any person to furnish annually, or at such intervals as the Commissioner General may determine, any information that the Commissioner General considers necessary to enable him or her to fulfil his or her duties under this Act."

160. The duties under the Act include providing assistance pursuant to EOI agreements. This is so as the Minister of Finance and Development Planning may "enter into an agreement with the government of any other country with a view to the prevention, mitigation or discontinuance of double taxation, the levying of tax under this Act and the income tax laws of that other country, or to the rendering of reciprocal assistance in the administration of and in the collection of tax under this Act and such income tax laws" (*Income Tax Act*, s. 53). Therefore, it is reasonable to read this as establishing a duty of the Commissioner General to render such assistance under an applicable agreement, and as such the powers under section 69(3) would be available.

161. While this power in s. 69(3) is quite broad, it does not appear to be coupled with the same compulsory powers as the general powers BURS has to require information for domestic tax assessment purposes as contained in s. 69(1). Section 69(1) permits the use of search and seizure powers granted under section 70 for the purposes of obtaining information necessary to the determination of a liability to tax. However, a person who fails to supply any information as requested under the Act is guilty of an offence and liable to a fine or imprisonment for one year (*Income Tax Act*, s. 122).

162. In practice, BURS has direct access to the database of CIPA, which allows it to instantly obtain company shareholder information. However, given the low rates of compliance by companies with their annual return filings, the information in the CIPA database may not always be accurate. BURS can also access information held on the databases of national identity card database, government procurement contracts system and the immigration authorities. Further, the BURS has entered into working arrangements on information sharing with the Registrar of Deeds and Land Transfers and Memoranda of Understanding with other agencies, being the Financial Intelligence Agency, NBFIRA. BURS is currently negotiating a Memorandum of Understanding with the Competition Authority for information on transactions relating to competitive practices of business entities including companies. BURS advises that the access it has to these sources of information would allow it to access and use the information for tax purposes, including to respond to an EOI request.

163. Botswana did not receive any EOI requests during the review period, and thus has not had occasion to utilise its access powers for EOI. However, powers to request information under s. 69(3) have been used in domestic tax compliance actions in 11 cases in 2013 and 39 cases in 2014, and no punitive measures for failure to provide information have been necessary.

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

164. 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. Section 69(3) gives tax authorities in Botswana have a broad power to obtain information necessary for the Commissioner-General to fulfil his or her duties under the Income Tax Act, which includes the provision of reciprocal assistance in the administration of the tax laws of a foreign country. As such, there is no domestic tax interest required in order for access powers to be used for EOI purposes.

165. In practice, Botswana did not receive any EOI requests during the review period.

Compulsory powers (ToR B.1.4)

166. Jurisdictions should have in place effective enforcement provisions to compel the production of information. Section 70 of the Income Tax Act provides the Commissioner General with powers of search and seizure "for the purposes of obtaining information which he or she considers necessary in relation to the liability of any person to tax". The term "tax" means tax

payable under the Income Tax Act. To the extent that the exercise of a power to obtain information under s. 69(3) does not relate to the determination of a liability for tax in Botswana, the power to access information does not appear to be supported by search and seizure powers in the event that the person concerned does not comply with the request.

167. However, a person is guilty of an offence and liable to a fine of BWP 1 000 (EUR 85) and imprisonment for one year if they (*Income Tax Act*, s. 122):

- fail or neglect to furnish to the Commissioner General any return or document as and when required under the Income Tax Act;
- fail to comply with the requirements of any notice in writing served on him or her under the Income Tax Act;
- refuse or neglect to answer truly and fully any questions put to him or her or to supply any information required from him or her respecting his or her gross income or the gross income of any other person;
- obstructs or hinders any person appointed or employed under the Income Tax Act in the discharge of his or her duties.

168. In practice, during the review period no EOI requests were received. No penalties were charged under s 122 of the Income Tax Act in domestic tax matters for failure to provide information during the review period.

Secrecy provisions *(ToR B.1.5)*

169. There are no provisions under Botswana law relating to the secrecy of ownership, identity or accounting information. The Banking Act provides that information maintained by banks concerning any customer's deposits, borrowings or transactions, or other personal, financial or business affairs, may not be disclosed without the written and freely given permission of the customer concerned. However, the duty to keep customers' banking information confidential does not apply where the information is required by the BURS "for the purpose of responding to a valid request for information under an agreement referred to under section 53 of the Income Tax Act." Section 53 of the Income Tax Act provides for the entry into EOI agreements such as DTCs and TIEAs.

170. The BURS may therefore access banking information using its information access power in section 69(3) of the Income Tax Act, which provides the Commissioner General with the power to request any information he considers necessary to fulfil his duties under the Income Tax Act. This is enforced by section 122, which includes a penalty of 1 year imprisonment and a fine of BWP 1 000 (EUR 85) for failure to provide information as requested.

171. The law governing non-bank financial institutions (Non-Bank Financial Institutions Regulatory Authority Act (Ch. 46:08) provides that officers of the Regulatory Authority are bound by secrecy regarding any information obtained in the course of his or her duties. However, disclosure of such information to the Commissioner General of Taxes is specifically authorised (section 38(3)(e)).

172. Legal professional privilege is governed by the common law in Botswana, and applies in respect of "information communicated by a lawyer to his client or vice versa, [where] such information is of a confidential nature and furnished for the purpose of obtaining legal advice."[1] The scope of this professional secrecy is in accordance with the international standard.

173. In practice, Botswana did not receive any EOI request during the review period. However, BURS has accessed banking information for domestic tax purposes, with 119 requests made in 2014, and no punitive measures for failure to provide information have been necessary.

Determination and factors underlying recommendations

Determination
The element is in place

Phase 2 Rating
Compliant

B.2. Notification requirements and rights and safeguards

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

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

174. 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).

1. Masita v Mukuwa and Others In Re Leseriseri Pty Ltd and Another v Mukuwa and Others 2010 1 BLR 581 HC; see also Moremi and Another v African Banking Corporation of Botswana Ltd 2009 2 BLR 18 HC.

175. The Income Tax Act is silent on the need to inform a taxpayer when information is exchanged. This is therefore interpreted as not requiring the BURS to inform the taxpayer when fulfilling such an exchange.

176. In practice, the policy of BURS is that taxpayers are not to be notified that it has received a request for information pertaining to him/her. The only circumstance that notification is envisaged is if the information required is only available from the taxpayer himself/herself. In this regard, the Competent Authority acknowledged that such a request to the taxpayer should provide only the minimum amount of information needed to allow the taxpayer to provide the required information. Botswana's EOI Manual states that on no account should the letter of request from the foreign competent authority be provided. If the requesting competent authority had stated that the taxpayer was not to be notified, and the taxpayer was the only available source of information, BURS would advise the requesting competent authority before contacting the taxpayer.

177. Botswanan taxpayers do not have the right to access their taxpayer file. In any case, all EOI files are kept separately from individual taxpayer files.

178. Taxpayer's appeal rights are limited to an appeal of a determination of tax liability or ruling by the Commissioner General. An exchange of information is not interpreted by BURS to fall within the meaning of determination or ruling and thus it is not expected that a taxpayer would have any legal standing to appeal against an EOI request.

Determination and factors underlying recommendations

Determination
The element is in place

Phase 2 Rating
Compliant

C. Exchanging information

Overview

179. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report examines whether Botswana has a network of information exchange agreements that meet the standard and whether its institutional framework is adequate to achieve effective exchange of information (EOI) in practice.

180. The Income Tax Act permits the entry into agreements for the prevention, mitigation or discontinuance of double taxation and the rendering of reciprocal assistance in the administration and collection of tax, which includes both Double Tax Conventions (DTCs) and Tax Information Exchange Agreements (TIEAs).

181. Botswana has signed agreements that provide for the exchange of information with 25 jurisdictions, and 14 of these are in force. A list of these agreements can be found in Annex 2. Domestic law does not impose any impediment to the exchange of information pursuant to a DTC or TIEA or other agreement for reciprocal assistance in administration of tax. However, as a number of agreements have been signed more than two years ago but not yet been brought into force by Botswana, Botswana is recommended to ensure that all agreements are brought into force expeditiously. Element C.1. is determined to be in place but requiring improvement, and is rated as Largely Compliant.

182. Botswana's treaty network allows for EOI with all relevant partners. In addition, Botswana is negotiating with an additional four jurisdictions, and has commenced initial correspondence with a further 18 jurisdictions. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that Botswana has refused to negotiate or conclude an EOI agreement with any other jurisdiction it. Element C.2 was therefore found to be in place and is rated as Compliant.

183. The confidentiality of information exchanged with Botswana is protected by obligations implemented in the agreements, supplemented by domestic legislation which provides for an oath of secrecy taken and observed by all public officers and specific provisions to protect confidentiality of information obtained in the course of duties of administering the Income Tax Act. Element C.3 was found to be in place. No concerns as to confidentiality have arisen in practice and element C.3 is rated as Compliant.

184. Botswana's treaties are based on its model DTC, which is based on the Southern Africa Development Community model (which is based on both the UN or OECD Model Tax Conventions), and contains the equivalent of Article 26(4) and 26(5) of the OECD Model Tax Convention. Botswana also concludes TIEAs which are based on the OECD Model TIEA. These agreements protect the disclosure of information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy. Element C.4 was found to be in place. No concerns as to rights and safeguards have arisen in practice and element C.4 is rated as Compliant.

185. Botswana did not receive any EOI requests during the review period. However, it has put in place the necessary processes and organisational structure to respond to EOI requests when received. Botswana is recommended to continue to monitor the organisational processes of the competent authority in responding to EOI requests and element C.5 is rated as Largely Compliant.

C.1. Exchange-of-information mechanisms

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

186. The Minister of Finance and Development Planning may enter into an agreement with the government of any other country with a view to the prevention, mitigation or discontinuance of double taxation, the levying of tax under the Income Tax Act and the income tax laws of that other country, or to the rendering of reciprocal assistance in the administration of and in the collection of tax under the Income Tax Act and such income tax laws (Income Tax Act, s. 53). The competent authority nominated under Botswana's treaties is the Minister of Finance and Development Planning, represented by the Commissioner General or his authorised representative. This power is delegated in practice to the Commissioner of Inland Revenue Division. In practice, representatives of the tax policy section in the Ministry of Finance and Development Planning manage the negotiation of agreements, with the advice and support of BURS.

Foreseeably relevant standard *(ToR C.1.1)*

187. Botswana has agreements in force with 14 jurisdictions that provide for exchange of information in tax matters. These jurisdictions are: Barbados; Finland; France; India; Mauritius; Mozambique, Namibia; Russia; Seychelles; South Africa; Sweden; United Kingdom; Zambia and Zimbabwe. Except for Botswana's agreement with the United Kingdom, each of these agreements provides for the exchange of information that is "necessary" for carrying out the domestic laws of the Contracting States concerning taxes covered by the agreements. Botswana's agreement with the United Kingdom uses the term "foreseeably relevant" in place of "necessary".

188. All of the agreements meet the "foreseeably relevant" standard, as the term "necessary" is recognised in the commentary to Article 26 (Exchange of Information) of the OECD Model Tax Convention to allow for the same scope of exchange as does the term "foreseeably relevant." Protocols to amend existing agreements, and new agreements under negotiation, include the term "foreseeably relevant." The officials in the EOI unit are aware of the standard of foreseeable relevance.

In respect of all persons *(ToR C.1.2)*

189. For exchange of information 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 exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

190. None of Botswana's agreements are restricted to certain persons such as those considered resident in one of the states, or precludes the application of the exchange of information provisions in respect of certain types of entities.

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

191. 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. Both the OECD Model Tax Convention and the OECD Model TIEA 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.

192. Botswana's DTCs with the United Kingdom, Seychelles, South Africa and Sweden and the TIEAs with Denmark, Faroe Islands, Finland, Greenland, Guernsey, Iceland, Isle of Man and Norway include the equivalent of Article 26(5) of the OECD Model Tax Convention, which provides that a contracting state may not to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Botswana's other agreements do not contain this language, however there are no restrictions in Botswana's laws regarding access to bank information prevents the exchange of bank information.

193. As neither Botswana nor at least nine of its DTC partners have domestic law limitations on access to bank information, the presence or absence of a provision in line with Article 26(5) of the OECD Model Tax Convention does not cause those agreements to fall below the international standard for EOI. The jurisdictions with which the other three agreements are in force have not been reviewed by the Global Forum in this respect (Mozambique, Namibia, Zimbabwe). Furthermore, all DTCs, Protocols and TIEAs negotiated since 2010 contain the equivalent of Article 26(5) of the OECD Model Tax Convention.

Absence of domestic tax interest (ToR C.1.4)

194. 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. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

195. As Botswana's DTCs follow the OECD and UN Model Tax Conventions they do not restrict the exchange of information to information that is relevant for the determination of tax in the requested state. Botswana's DTCs with the United Kingdom, Seychelles, South Africa and Sweden and the TIEAs with Denmark, Faroe Islands, Finland, Greenland, Guernsey, Iceland, Isle of Man and Norway include the equivalent of Article 26(4) of the OECD Model Tax Convention, which provides that a contracting state may not to decline to supply information solely because it has no interest in obtaining the information for its own tax purposes.

196. There are no domestic tax interest requirements in the domestic law governing exchange of information and Botswana's agreements for the exchange of information do not impose a domestic tax interest requirement. As neither Botswana nor at least nine of its DTC partners require a domestic tax interest

in order to exchange information, the presence or absence of a provision in line with Article 26(4) of the OECD Model Tax Convention does not cause those agreements to fall below the international standard for EOI. The jurisdictions with which the other three agreements are in force have not been reviewed by the Global Forum in this respect (Mozambique, Namibia, Zimbabwe). Since 2010 all signed DTCs, Protocols and TIEAs contain the equivalent of Article 26(4) of the OECD Model Tax Convention.

Absence of dual criminality principles *(ToR C.1.5)*

197. 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.

198. There are no dual criminality provisions in Botswana's agreements for the exchange of information in tax purposes.

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

199. 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").

200. All of Botswana's agreements for the exchange of information provide for exchange of information in all tax matters. There are no domestic law impediments to the collection of information for criminal or civil purposes, and there are no practical differences in the access powers and processes to collect information for criminal tax matters.

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

201. In some cases, a jurisdiction 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. Jurisdiction should endeavour as far as possible to accommodate such requests. The requested jurisdiction 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.

202. There are no restrictions in the exchange of information provisions that would prevent Botswana from providing information in a specific form.

In force (ToR C.1.8)

203. Exchange of information cannot take place unless a jurisdiction has EOI arrangements in force. Where EOI arrangements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

204. Botswana has signed agreements that provide for the exchange of information with 25 jurisdictions, and 14 of these are in force. In addition, protocols have been concluded and signed with South Africa, Sweden and Seychelles and these have entered into force.

205. Ten of these agreements have been signed and ratified by parliament. However these have not yet entered into force. These are the TIEAs with Denmark, Faroe Islands, Greenland, Guernsey, Iceland, Isle of Man and Norway and the DTCs with China, Ireland, and Swaziland. In three of these cases, the treaty partner has notified the Global Forum that they have completed the necessary procedure to bring the agreement in effect and are awaiting notification from Botswana of the same in order to bring the agreement into force. Botswana has advised that in eight cases, the exchange of notes has been sent through its diplomatic channels in the period April – September 2015. Botswana is currently contacting those treaty partners to confirm receipt and investigating the cause of the communication delay through its diplomatic channels. Botswana is arranging to send the exchange of notes to the remaining three treaty partners.

206. Botswana signed agreements with Swaziland and Lesotho in April 2010 but these agreements do not contain the equivalent of the current version of Article 26 of the OECD or UN Model Tax Conventions and are not yet in force. Botswana has suggested to both jurisdictions that the agreement should be amended prior to its ratification. The Agreement with Swaziland was signed on 10 September 2014. It was ratified by Botswana Parliament on 03 February 2015. The Agreement with Lesotho with an updated Article 26 is intended to be signed in March 2016.

207. In addition, Botswana has pursued new EOI agreements with five jurisdictions that are concluded and ready to be signed.

208. In practice, the time taken between signing and entry into force has been more than two years in respect of 15 of the 25 signed agreements. Botswana is therefore recommended to swiftly bring the remaining agreements into force and ensure that all new agreements are brought into force expeditiously.

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

209. International agreements do not have the force of law in Botswana until ratified by parliament and enacted into domestic law.[2] The Ministry of Finance and Development Planning will present the signed agreement to the Office of the Attorney General. The Office of the Attorney General will review it to determine whether the agreement conflicts with any other domestic law, and if so, whether any consequential amendments are required. The agreement is prepared in the form of a statutory instrument under the Income Tax Act. The draft is then vetted by the Office of the Attorney General and sent to the Ministry of Finance and Development Planning for approval. If approved, the Minister will sign the statutory instrument and have it published in the Government Gazette. Upon publication, the instrument is laid before parliament but does not take effect unless or until it is approved by resolution of parliament. The instrument comes into operation or is deemed to have come into operation on the date specified in the agreement.

210. Exchange of information under the 14 agreements in force is permitted under domestic law. These agreements are with Barbados, France, India, Mauritius, Mozambique, Namibia, Russia, Seychelles, South Africa, Sweden, United Kingdom and Zimbabwe. Exchange of information is not yet permitted under the new signed agreements until ratified by parliament.

211. In practice, the time taken between the Office of the Attorney General receiving the signed agreement and it being laid before parliament is approximately seven months.

Conclusion

212. Botswana has a network of EOI agreements that allow for EOI on request in accordance with the international standard. Botswana's legal framework and practice does not present any issue that would compromise the effective exchange of information or otherwise frustrate the application of these EOI mechanisms. Botswana is in the process of bringing all of these agreements into force and is recommended to do so expeditiously.

2. Attorney-General v Dow [1992] BLR 119; Kenneth Good v The Attorney-General [2005] 1 BLR 462.

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**
A number of agreements signed more than two years ago have not yet been brought into force by Botswana.	Botswana should ensure that its exchange of information mechanisms are brought into force expeditiously.

Phase 2 Rating
Largely Compliant

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

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

213. 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 with 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.

214. All of Botswana's agreements provide for effective exchange of information in tax matters. Botswana has concluded double tax conventions with two of its important trading partners, South Africa and Zimbabwe. Botswana has also negotiated four new DTCs containing the current Article 26, one signed in 2012 (China), one signed in 2013 (Zambia) and two which are being arranged for signing in early 2016 (Belgium, Luxembourg).

215. In addition, Botswana has been pursuing negotiations with several of its treaty partners to amend existing DTCs to include the most current version of Article 26 of the OECD Model Tax Convention. Of these, four have been signed in 2013 (including the Protocol with South Africa, an important trading partner, Seychelles, Sweden and Zambia) and three are being pursued.

216. Botswana has also signed Tax Information Exchange Agreements with eight partners (Denmark, Faroe Islands, Finland, Greenland, Guernsey,

Iceland, Isle of Man, and Norway). Each of these follows the OECD Model Tax Information Exchange Agreement.

217. Botswana is also engaged in DTC negotiations in the Southern African Development Community with regional partners, and is considering the African Multilateral Agreement on Assistance in Tax Matters, an agreement prepared by the African Tax Administration Forum which provides a legal basis for exchange of information on request, automatically and spontaneously as well as other forms of administrative assistance for tax purposes. Botswana is also considering joining the multilateral Convention on Mutual Administrative Assistance in Tax Matters.

218. Given Botswana's aim of establishing itself as an international hub for investment into Africa, effective exchange of information should be available for all jurisdictions from which investment flows originate and to which the capital is destined to be invested. The Botswana Investment and Trade Centre website advertises access to Botswana's expanding network of tax treaties as benefit of being part of the IFSC. Botswana's officials report that negotiations for agreements with four jurisdictions have commenced, and correspondence has commenced with a further 18 jurisdictions. Agreements with Swaziland and Lesotho have been signed, but these do not include the current wording of Article 26 and they have been amended. The agreement with Swaziland was signed in 2014 and ratified by Botswana Parliament in February 2015. The agreement with Lesotho with an updated Article 26 is intended to be signed in March 2016. This group of jurisdictions covers a number of key regional partners as well as major sources of foreign investment.

219. No jurisdiction has reported that Botswana has refused to negotiate a treaty when approached. One jurisdiction has approached Botswana to enter into a DTC but has not yet received a response. Botswana has since contacted this jurisdiction to progress the negotiation.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place	
Factors underlying recommendations	**Recommendations**
	Botswana should continue to develop its EOI network to the standard with all relevant partners.

Phase 2 rating
Compliant

C.3. Confidentiality

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

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

220. 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.

221. The Income Tax Act provides in section 5 that:

> every person appointed under, or employed in carrying out the provisions of, this Act shall regard and deal with all documents and information relating to any person, and all confidential instructions in respect of the administration or management of this Act, which may come into his or her possession or to his or her knowledge in the course of his or her duties, as secret and shall not disclose the contents of any such document or communicate any such information or instruction to any other person, other than the person to whom the document or information or instruction relates or his or her lawful representative, except as required in the performance of his or her functions under this Act or by order of a court.

222. Section 5(3) provides that the above provision does not apply to prevent the disclosure of any information to

- to the Attorney-General;
- to the Governor of the Bank of Botswana or his or her lawful representative;
- to the Minister, or any other person, where such disclosure is necessary for the purposes of this Act;
- to the Director or Deputy Director of the Directorate on Corruption and Economic Crime, or to the authorised representative of the Director, to the Director of Public Prosecutions, or to the authorised representative of the Director, or to the commissioner of Police or his

or her authorised representative for the purposes of an investigation into corruption or economic crime, including any offence against any fiscal law, or other criminal offence, and a prosecution in respect of such crime, or to any other person for the purposes of a prosecution under this Act;

- to any person being a consultant to or an officer employed by the Government who is approved by the Minister to receive such confidential information; or
- to any authorised officer of the Government of a country with which a tax information exchange agreement or an agreement for the avoidance of double taxation exists, for the purposes of that agreement.

223. In addition, Section 5(4) of the Income Tax Act provides that information obtained by the Commissioner General of BURS in performing his duties (which includes exchange of information pursuant to international agreements) could be disclosed to any public officer or used by the Commissioner General for the administration of any fiscal law administered by him or the other public officer.

224. Section 5(4A) overrides section 5(4). The override prohibits disclosure by the Commissioner General to a public officer in respect of information obtained from another government pursuant to an agreement for the avoidance of double taxation or agreement for exchange of information. Instead, such information may only be disclosed to persons or authorities concerned with the assessment, collection, enforcement, prosecution or determination of appeals in connection with taxes covered by the international agreement, and the information may only be used by the recipient for that purpose.

225. The drafting of this amendment makes the continuing operation of section 5(3) unclear. The amendment limits the use of information by the Commissioner General as otherwise allowed in section 5(4) but does not clearly apply "notwithstanding" section 5(3), which allows disclosure by all persons employed in carrying out the Income Tax Act of information to the Attorney-General, Governor of the Bank of Botswana and so on. However, construing section 5 in a way that preserves the operation of section 5(3) would render section 5(4A) ineffective.

226. There are two means by which this ambiguity is resolved. First, Botswana's DTCs provide in their terms that information obtained pursuant to the agreement shall only be disclosed to persons or authorities concerned with the assessment, collection, enforcement, prosecution or determination of appeals in connection with taxes covered by the international agreement and only used for that purpose. In respect of the DTCs that have the force of domestic law, there is a legal obligation on the part of Botswana to comply with this restriction.

227. Secondly, Botswana's Interpretation Act provides guidance on resolving ambiguity in statutes. Section 27 of the Interpretation Act provides that an interpretation which would render an enactment ineffective shall be disregarded in favour of an interpretation which will enable it to have effect. Furthermore, section 29(2) of the Interpretation Act provides that where there is inconsistency within an Act, and the inconsistency cannot be resolved by construing the enactment as a whole, then the provision that appears later in the enactment shall prevail. In this case, the amendment in section 5(4A) appears later in the enactment than section 5(3) and arguably must prevail. Finally, to aid in the construction of an enactment, section 24 of the Interpretation Act provides that regard may be had to relevant international treaties, including those which are not yet in force. The Botswana Court of Appeal has held that "unless it is impossible to do otherwise, it would be wrong for its courts to interpret its legislation in a manner which conflicts with the international obligations Botswana has undertaken."[3]

228. Accordingly, given the legal effect of ratified international agreements, and the approach mandated by the Interpretation Act in the event of ambiguity, the amendments to section 5 of the Income Tax Act should be adequate to ensure that information obtained pursuant to exchange of information mechanisms will be treated confidentially.

229. The penalty for a breach of the confidentiality obligations contained in section 5 is a fine of BWP 1 000 (EUR 85) and imprisonment for one year (Income Tax Act, s121).

230. In practice, all BURS employees receive induction training which includes an explanation of their confidentiality obligations. Upon employment, all BURS officers swear an oath of secrecy, which endures notwithstanding cessation of employment with BURS. Employees' access rights to BURS information is determined on a need to know basis, depending on the sensitivity of the information. Access to EOI-related information is limited to the Competent Authority and designated EOI staff.

231. A dedicated team within BURS examines risks to the organisation, and is responsible for responding to a breach of confidentiality. If necessary, a breach may be reported to the Department of Corruption and Economic Crime's Integrity Office. More generally, the Botswanan government encourages members of the public to contact the Integrity Office if they are concerned about government officials misusing their position.

232. The BURS EOI Manual includes a chapter dedicated to confidentiality of EOI information. All information gathered pursuant to EOI requests is

3. Attorney-General v Dow [1992] BLR 119 at 154; ; see also Kenneth Good v The Attorney-General [2005] 1 BLR 462.

kept with the EOI personnel, who sit in close physical proximity in the BURS headquarters. Members of the public are not permitted to enter the EOI Unit's offices.

233. Only the EOI officers have access to the EOI files and EOI database. Hard copies of documents that are no longer needed are disposed of by shredding. Access to passwords and keys is restricted to officers working in the EOI Unit. When an EOI file is not being worked on, it is kept in a fire-proof locked cabinet in the officer of the EOI Manager. The EOI Manager's office is locked whenever he is not in the office.

234. If it is necessary to ask other officials in BURS to gather the information to response to an EOI request, such as officials in regional offices or officials that have the access to other government databases, they are advised only of the minimum information necessary to collect the information. It would be made clear to the person asked to obtain such information that the information is treaty-protected confidential information. The cover letter would state that the information must be kept confidential, that the documents must be stored in a secure place and that copies of the material should not be made, nor should e-mails containing the information be forwarded, without consent of the EOI Manager.

235. If a third party information holder outside BURS is requested to provide information, they are not informed that the information is required in order to respond to an EOI request. In addition, memoranda of understanding signed with other government authorities for providing assistance and information include confidentiality clauses protecting the nature or content of the information sharing with BURS from being disclosed. If it were necessary for EOI related information to be disclosed outside of the EOI personnel or Competent Authority, such as in court proceedings, the consent of the foreign competent authority would be obtained in advance.

236. Before sending information to a treaty partner, the Competent Authority will confirm whether the person that requested the information was authorised to make the request, and that the name and address of the foreign competent authority is correct. All correspondence is signed by the Competent Authority sent by registered mail or courier. All documents related to an exchange of information case would bear a clearly visible confidentiality stamp to state "THIS INFORMATION IS FURNISHED UNDER THE PROVISIONS OF A TAX TREATY AND ITS USE AND DISCLOSURE ARE GOVERNED BY THE PROVISIONS OF SUCH TAX TREATY."

All other information exchanged (ToR C.3.2)

237. Section 5(4A) discussed above covers information contained in a request for information as well as information received in response to a request made by Botswana. The confidentiality practices described above apply to all other information exchanged.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

Phase 2 rating
Compliant

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

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

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

238. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other listed secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative.

239. Where attorney-client privilege is more broadly defined, it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

240. Each of Botswana's exchange of information mechanisms ensure that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information

which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy. Botswana's domestic law does not define attorney client privilege. It is recognised as a fundamental duty of a lawyer to protect attorney client privilege. A case decided by the Botswana High Court[4] states that "information is privileged if it is information communicated by a lawyer to his client or vice versa, and such information is of a confidential nature and furnished for the purpose of obtaining legal advice" citing a case decided in South Africa. This is in accordance with the international standard.

241. In practice, there have been no EOI requests during the review period. For the purposes of domestic tax administration, legal privilege has not been claimed by any person in response to a request for information by BURS.

Determination and factors underlying recommendations

Phase 1 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)*

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

243. There are no specific legal or regulatory requirements in place which would prevent Botswana responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

4. Masita v Mukuwa and Others In Re Leseriseri Pty Ltd and Another v Mukuwa and Others 2010 1 BLR 581 HC; see also Moremi and Another v African Banking Corporation of Botswana Ltd 2009 2 BLR 18 HC.

244. In practice, Botswana has not received any requests during the review period. The EOI manual governing the practices of the EOI unit in BURS states that either an answer or status update should be provided within 90 days of receipt of the information. The EOI manual further provides that if information requested is already in the possession of BURS (which would also include the information it can directly access from the Companies and Intellectual Property Authority, Registrar of Deeds and Land Transfers, national identity card database, the immigration authorities, Financial Intelligence Agency and the Non-Bank Financial Regulatory Authority), the request should be answered within 90 days. The EOI manager would expect that in practice, it would take a maximum of 30 days to provide the response in these cases.

245. In respect of information that must be obtained from a third party, the EOI manual provides that information should be provided within six months. The EOI manager advises that the target is to provide the answer within 90 days, and the six month timeframe is intended to allow for situations where the request was unclear, the information provided by the third party was incomplete and required additional follow up, or where it was necessary to use compulsory powers to obtain the information. Botswana is encouraged to continue to ensure that EOI staff do all things practicable to reach the 90 day target.

Organisational process and resources *(ToR C.5.2)*

246. Under the EOI agreements concluded by Botswana, the Competent Authority is the Minister of Finance and Development Planning represented by the Commissioner General of BURS, or his authorised representative. In practice, this function is delegated to the Commissioner of Internal Revenue Division. The contact details of the Competent Authority are published on the BURS website.

247. In practice, during the review period there were four people working in the EOI unit, all of whom work in the Internal Revenue Division of BURS and are trained in EOI matters. These are the General Manager of the Technical Services Section (the manager of the EOI unit), Revenue Manager of the International Relations Unit (supervisor of the EOI unit) and two Principal Revenue Officers (the case officers in the EOI unit). There are currently three people working in the EOI unit, as one of the Principal Revenue Officers has since moved on to other employment. Given the very low volume of EOI requests received by Botswana to date, it is not necessary to have personnel in the EOI unit working on EOI full time. Each of these persons have full time roles working on revenue matters, however where an EOI request were to be received, they would prioritise the EOI request.

248. Procedures for handling EOI requests are set out in a step-by-step guide developed by BURS, based on the Global Forum manual. The manual divides the procedure that applies for responding to a request for exchange of information is into four steps: (1) logging the request; (2) validating the request; (3) working the request; and (4) responding to the request. The EOI manual was finalised in July 2015 and has been available for use since August 2015.

249. An EOI database has been created and is available for use by officers in the EOI unit. The database is developed on an excel platform. The database contains the following:

- Reference numbers of both jurisdictions for the exchange
- Status of the case (open/closed/reopened)
- Due date for response
- Identity details for each person or entity including name, address, date of birth, and taxpayer identification number
- Dates request was sent and received
- Name of other jurisdiction
- Details of contact in other jurisdiction (name, phone number and e-mail address)
- EOI officer assigned to the exchange
- Summary of the information requested
- Actions taken
- Last action date
- Actions due
- Reminder for next action due
- Summary of information provided
- Date final response issued/received

250. Mail received from a foreign Competent Authority will be addressed to the Competent Authority. The Competent Authority will mark the request for the attention of the EOI Manager and pass it to the EOI Manager on the same day. All requests would be seen and signed by the EOI Manager as a record of receipt, and stamped "confidential."

251. The EOI Manager would create a new record of the request including the details of the case (including case name, date the case was received, case

reference number, requesting Competent Authority and details of the type of information requested). An acknowledgement letter would be posted on behalf of the Commissioner within seven days.

252. The request would be passed to the EOI Supervisor who would then validate the request. This involves examining the request against the requirements of the relevant treaty. A request would be considered to be invalid, for example, if there were no agreement in force, if it related to taxable periods that are not covered by the agreement or it is not signed by an authorised person from the requesting state. If necessary, clarifications would be asked by formal letter within 60 days, drafted by the EOI Supervisor, checked by the EOI Manager and prepared for signing by the Competent Authority. If the request was incomplete or unclear, the EOI staff would work to provide as much information as possible to answer the request while waiting for further clarification from the foreign competent authority.

253. If valid, the request is then assigned to the EOI case officer for processing. Sensitive or complex cases may be worked on by the EOI Supervisor directly. In order to process the request, the case officer creates a hard copy file, which is placed in the secure filing cabinet in the EOI Manager's office when not being worked on. The case officer would note whether the requesting jurisdiction has assigned any particular urgency to the request and whether they have asked that the taxpayer not be contacted directly.

254. If information requested is already in the possession or control of BURS, then the case officer will collect all necessary information and a final response should be sent within 30 days. If the information was obtainable by access to another government agency's database, the relevant person in BURS would be asked to collect the information, but would not be informed of the details of the EOI request.

255. If the assistance of a BURS regional office or specialised office (such as risk or investigations team) were required, a letter would be sent by the EOI Supervisor or EOI Manager, requesting the information to be provided within 30 days. Where it is necessary to contact a third party information holder, the case officer will draft a formal letter of request using the templates provided in the EOI Manual. If the information was requested of a bank, the bank would be given 15 days to provide the response. If the information was requested of a third party other than a bank, they would be given 30 days to provide the response.

256. If no answer was received within the allotted time, a follow up phone call would be made and a further period of less than 30 days would be provided to obtain the information. If a response was still outstanding, the EOI Supervisor and EOI Manager would decide the next steps, which could include issuing a second letter of request including more serious language,

and where necessary, the use of the Commissioner's compulsory powers. There is no involvement of the attorney-general's department necessary when requiring information from a third party. Each time action is taken in respect to the EOI file, a file note would be made. Dates for follow up action are diarised by the case officer.

257. Interim updates would be provided, either to notify the foreign competent authority that information is not yet available, or to provide as much of the requested information as possible. Interim updates would be provided each 90 days until a final response is provided.

258. Once the information needed to respond to a request has been gathered, the EOI case officer would draft a response to the request, for review by the EOI Supervisor and EOI Manager and then for signature by the Competent Authority. A template and checklist would be used to guide the response.

259. To send a reply to the request, the documents would be sent by courier. The envelope would be stamped to note that the use and disclosure of all information furnished is governed by the provisions of the relevant agreement. A signed copy is kept on file with the EOI Manager with the EOI files, which are kept in a secure filing cabinet.

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

260. There were no aspects of Botswana's laws that appeared to impose restrictive conditions on exchange of information.

Determination and factors underlying recommendations

Phase 1 Determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 Rating	
Largely Compliant	
Factors underlying recommendation	**Recommendation**
Botswana has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Botswana did not receive any requests during the review period.	Botswana should continue to monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

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. *(ToR A.1)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Partially Compliant	Compliance by companies with their annual return filings is particularly low. Compliance with tax return filings is also low. As such, ownership information held by CIPA and BURS may not be accurate.	Botswana should ensure that the monitoring and enforcement of companies' compliance with annual return filing obligations and tax return obligations is effective.
	The monitoring of compliance with the Financial Intelligence Act and Financial Intelligence Regulations commenced relatively recently, given that the customer due diligence obligations commenced in 2013.	Botswana should also continue to ensure that the customer due diligence obligations are effectively implemented and monitored.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement	There is no obligation for any entity to maintain underlying documentation unless they are carrying on a business.	All relevant entities and arrangements should be required to keep accounting records, including underlying documentation, in accordance with the standard.
Phase 2 rating: Partially Compliant	Public companies and companies with turnover of more than BWP 10 000 000 (EUR 851 420) file their accounting statements with company's annual returns. However, compliance with the annual return filing obligation is low. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not clear whether accounting records are always available and retained for at least five years.	Botswana should enhance the monitoring and enforcement of the availability of accounting records of these companies and enhance the monitoring of availability of accounting records for tax purposes.
	Companies with turnover of BWP 10 000 000 (EUR 851 420) or less are not required to file financial statements and there is no monitoring by CIPA of the obligation on these companies to maintain accounting records. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not clear whether accounting records are always available and retained for at least five years.	Botswana should monitor the availability of accounting records in respect of these companies and enhance the monitoring of availability of accounting records for tax purposes.

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place but certain aspects of the legal implementation of the element need improvement	A number of agreements signed more than two years ago have not yet been brought into force by Botswana.	Botswana should ensure that its exchange of information mechanisms are brought into force expeditiously.
Phase 2 rating: Largely Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place		Botswana should continue to develop its EOI network to the standard with all relevant partners.
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.	.	
Phase 2 rating: Largely Compliant	Botswana has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Botswana did not receive any requests during the review period.	Botswana should continue to monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

Annex 1: Jurisdiction's response to the review report[5]

1. Mr. Chairman, let me start by introducing the entities of the Republic of Botswana represented in this delegation. Botswana Unified Revenue Service represented at Commissioner of Internal Revenue level, Ministry of Finance and Development Planning, Non-Bank Financial Insitutions Regulatory Authority, Companies & Intellectual Property Authority, Financial Intelligence Authority and Attorney General's Chambers.

2. Mr Chairman, our delegation brings with it warm greetings from our Minister of Finance and Development Planning on behalf of the Government and the people of Botswana. Our Government wishes to extend to you and to the Global Forum our sincerest gratitude for the opportunity to, once again, present the position of Botswana in the area of transparency and exchange of information for tax purposes.

3. Mr Chairman, you will recall that in 2009 Botswana was identified as one of the countries who are important to the work of the Global Forum on Transparency and Exchange of Information for Tax Matters. Even though Botswana was clearly not ready for the Review, Botswana agreed to be reviewed. Botswana's Phase 1 Review started in April 2010 and the Phase 1 Report was discussed in the Bahamas in July 2010.

4. Mr Chairman, we do not wish to revisit the undesirable outcome of that Review. However, within the spirit of the peer review process, Botswana looked forward to a second opportunity to present her legislative and administrative framework in light of developments in the area of exchange of information that happened between 2010 and 2013. Many of the changes to our EOI landscape were the direct result of the recommendations coming out of the Botswana's Phase 1 Review.

5. Botswana joined the Global Forum in 2011. We did not hesitate to sign up to become members notwithstanding that the Review that took place in the Bahamas the previous year had rattled our regulatory environment and

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

casted doubts as to the wisdom of our accession to the Peer Review process. However, wisdom prevailed and we persevered.

6. In September 2013 Botswana requested for a supplementary review and the Supplementary Review Report was discussed in March 2014 in Malta. Botswana succeeded and was able to move to a Phase 2 Review. We believe that the changes that we made to our legislative framework for EOI between 2010 and 2013 played a critical role in ensuring our result. On the other hand, we are also thankful to the Peer Review Group and to the Global Forum Secretariat for their endless support.

7. Mr Chairman, Botswana is committed to an open and transparent regulatory environment in all areas requiring regulation. To this end, Botswana has entered into various regional and global agreements and protocols with an aim to promote bilateral and multilateral assistance and exchanges of information in various areas.

8. Mr. Chairman, Botswana is not only a member of the Global Forum but also a member of the Eastern and Southern Africa 'Anti-Money' Laundering Group (ESAAMLG), to which we are earnestly committed. To this end, Botswana is currently undergoing a Mutual Evaluation by ESAAMLG which will start later this month.

9. We must add that this peer review process has been instrumental in pointing out some areas to look out for even during the ESAAMLG review. Botswana has also been successfully reviewed by the Government of the United States on fiscal transparency.

10. Mr Chairman, Botswana has opened her economy to global processes such as the IMF Article IV consultations and Financial Action Task Force. On the regional front, Botswana is a member of the Southern African Development Community (SADC) whose tax work involves transparency in the area of tax incentives and an open database of the tax systems of each member state that is accessible to anyone. Botswana's economy has consistently received and maintained high ratings by various rating agencies such as Standard and Poor's and Moody's due, largely to strong institutional frameworks, macroeconomic stability and fiscal prudence.

11. In our view this is testament to our pledge to an open and transparent model of fiscal governance and backstopped our accession to the invitation to participate in this peer review process.

12. Mr. Chairman, Botswana is a founding member of the African Tax Administration Forum (ATAF) and has consistently participated in ATAF events including participating in the comprehensive Base Erosion and Profit Shifting (BEPS) reviews that have been undertaken in the last year.

13. Botswana's accession to the ATAF Agreement in 2014 reaffirms our commitment to being a participant in all matters of tax including EOI.

14. Mr Chairman, I must add that Botswana has acceded to the African Multilateral Agreement on Assistance in Tax Matters; the purpose of which is for member states to collaborate on matters involving tax investigations and exchange of information on tax matters.

15. Mr Chairman, let me take you back to the year 1996; in which Botswana undertook to develop a national developmental plan upon which the nation would rely, to determine her socio-economic roadmap as a country with a final destination of the year 2016. This Vision 2016, I quote, *"was precipitated by the need for Botswana to intentionally define and manage its path to 'Prosperity for All', as well as how it adjusts to the rapidly changing global economy and social order"* close quote.

16. The Vision is premised on 7 pillars. The 5th Pillar is *'An Open, Democratic and Accountable Nation'*. This pillar underpins Botswana's overarching aim to ensure that robust systems and institutions are in place that ensure good governance and accountability.

17. Mr Chairman, in 2015 we opened our doors to the Global Forum Assessors to critically analyse our institutions and systems and to rate our position in relation to the global standards of transparency and our ability to exchange tax information with other tax jurisdictions.

18. From the on-site visit undertaken in September 2015 until last week my Ministry, the Ministry of Finance and Development Planning, together with our various stakeholders, namely the Bank of Botswana, Botswana Unified Revenue Service, Financial Intelligence Agency, Companies and Intellectual Property Authority, Registrar of Societies, Non-Banking Financial Regulatory Authority, Ministry of Trade and Industry and the Attorney General's Chambers have spent many hours completing the questionnaire, facilitating the on-site visit, and responding to various observations coming from the Assessors. We were also committed in responding to the comments of Global Forum members on the draft report.

19. Mr Chairman, throughout the entire process, our team has been candid and honest in responding to questions and comments. During this process, we learnt many lessons, including that the development of institutions and processes relevant to EOI are premised on having adequate capacity and relevant data. We also learnt that the development of new institutions such as the Financial Intelligence Agency and Companies and Intellectual Property Authority (which had not been established when Botswana underwent Phase 1 Review) will ensure that key information is maintained and available for purposes of EOI and transparency. This calls for very close working relations between these new institutions and our Revenue Authority.

20. Mr Chairman, we present to you our Phase 2 Report with open minds and we assure you that any shortcomings identified and articulated in this Report (and that may still be pointed out by the PRG) are a result of our transparent approach to the Review. We stand to be guided by the PRG in any way that would achieve a desirable rating for Botswana.

21. I thank you very much indeed and we submit.

By Boikanyo M. Mathipa

Head of Botswana Delegation

Peer Review Group Meeting

9th February, 2016

Paris

France

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

The list of EOI mechanisms entered into by Botswana as at December 2015 is set out below.

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
1	Barbados	Double Taxation Convention (DTC)	23.02.2005	25.08.2005
2	China	DTC	11.04.2012	Not yet in force
3	Denmark	TIEA	20.02.13	Not yet in force
4	Faroe Islands	TIEA	20.02.13	Not yet in force
5	Finland	TIEA	20.02.13	16.05.2015
6	France	DTC	15.04.1999	01.06.2003
7	Greenland	TIEA	20.02.13	Not yet in force
8	Guernsey	TIEA	10.05.13	Not yet in force
9	Iceland	TIEA	20.02.13	Not yet in force
10	India	DTC	08.12.2006	30.01.2008
11	Ireland	DTC	06.2015	Not yet in force
12	Isle of Man	TIEA	14.06.13	Not yet in force
13	Lesotho	DTC	20.04.10	Not yet in force
14	Mauritius	DTC	26.09.1995	13.03.1996
15	Mozambique	DTC	27.2.09	01.2011
16	Namibia	DTC	16.06.2004	01.07.2005
17	Norway	TIEA	20.02.13	Not yet in force
18	Russia	DTC	08.12.2003	23.12.2009
19	Seychelles	DTC	26.09.2004	22.06.2005
		Protocol	12.03.13	08.04.2014

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
20	South Africa	DTC	07.08.2003	20.04.2004
		Protocol	21.05.13	19.08.2015
21	Swaziland	DTC	20.04.10	Not yet in force
		Protocol	10.09.14	Not yet in force
22	Sweden	DTC	19.10.1992	18.12.1992
		Protocol	20.02.2013	14.05.2015
23	United Kingdom	DTC	09.09.2005	04.09.2006
24	Zambia	DTC	09.03.13	14.08.2015
		Protocol	09.13	14.08.2015
25	Zimbabwe	DTC	16.06.2004	25.02.2008

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

Fiscal Legislation and Regulations

Income Tax Act Chapter 52-01

Income Tax (Amendment) Act, 2012 No. 21 of 2012

Commercial laws dealing with registration of entities and retention of information

Companies Act Chapter 42-01

Companies Regulations 2007

Societies Act Chapter 18-01

Registration of Business Names Act Chapter 42-05.

Legislation and regulations for financial services and anti-money laundering/anti-terrorist financing measures

Banking Act Chapter 46-04

Banking (Amendment) Act, 2013 No. 9 of 2013

Banking (AML) Regulations

Bank of Botswana Act Chapter 55-01

Non-Bank Financial Regulatory Authority Act Chapter 46-08

Financial Intelligence Act 2009

Financial Intelligence Regulations 2013

Proceeds of Serious Crime Act Chapter 08-03

Other Legislation

Constitution of Botswana

Interpretation Act Chapter 01-04

Penal Code Chapter 08-01

FATF Mutual Evaluation Report of Botswana, August 2007

Case Law

Attorney-General v Dow [1992] BLR 119

Kenneth Good v The Attorney-General [2005] 1 BLR 462

Forms

Income Tax Return: Companies (Form SAT ITA-22)

Income Tax Return: Partnerships or Trusteeship (Form ITA.21)

Income Tax Return: Individuals (Form ITA 20/96

Companies Act forms

Annex 4: List of authorities interviewed

Botswana Unified Revenue Service

Ministry of Finance and Development Planning

Companies and Intellectual Property Authority

Registrar of Societies

Bank of Botswana

Financial Intelligence Agency

Botswana Investment and Trade Centre

Non-Bank Financial Institutions Regulatory Authority

Office of the Attorney General

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: BOTSWANA

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

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

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

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

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

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

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

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