GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 1 Legal and Regulatory Framework

POLAND



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Poland 2013

PHASE 1

March 2013
(reflecting the legal and regulatory framework as at January 2013)

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Poland. 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. Poland is a parliamentary democracy and a member of the European Union. Since 1990, it has pursued a policy of economic liberalisation and privatisation. Poland has a fully developed tax system including an income tax based on taxation of worldwide income of residents.

3. Comprehensive registration requirements exist for entities in Poland, which must register in different registers. Full ownership information on limited liability companies, partnerships and foreign partnerships carrying on business in Poland is available in the National Court Register, in the Central Records and Information on Economic Activity, or with the tax authorities. In respect of joint-stock companies and joint-stock limited partnerships, up-to-date information on the owners of registered shares issued is available at the level of the entity. Joint-stock companies and joint-stock limited partnerships can issue bearer shares, and the availability of ownership information is not ensured in respect of bearer shares not traded in the regulated market.

4. Although the concept of a trust is not recognised in Poland, residents may act as a trustee or trust administrator of a foreign trust. Under tax law information may be available to the Polish tax authorities regarding the settlor and the beneficiaries of the trust, but the tax law is not complemented by obligations under other laws, such as the AML Law. The founders, members of the foundation council, and beneficiaries of foundations can be identified either in the National Court Register, in the annual report submitted to the Ministry of Justice, or at the level of the foundation itself which, under AM/CFT legislation, is obliged to perform customer due diligence.

5. The accounting law and tax law impose adequate obligations on entities to keep accounting records, including underlying documentation. Approved financial statements must be kept permanently, while other accounting records must be kept for five years.

6. The AML/CFT legislation ensures that all records pertaining to the accounts as well as to related financial and transactional information is required to be kept by Polish banks.

7. The Polish competent authority has broad powers to gather relevant information from any person in Poland by way of requesting information from the person holding the information, and by way of a tax control, which includes entering of the premises, inspecting documents, taking copies thereof, and hearing witnesses. Tax advisors are covered by professional privilege, preventing the authorities from obtaining information from them in civil tax matters.

8. Poland has a network of information exchange mechanisms that covers 98 jurisdictions, including all relevant partners. Information can be exchanged under DTCs, TIEAs, the *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters* and EU instruments. The confidentiality of information exchanged with Poland is protected by obligations implemented in the information exchange agreements, complemented by domestic legislation, which provides for tax officials to keep information confidential.

9. Poland's response to the determinations, factors and recommendations in this report, as well as the application of the legal framework to the practices of its competent authority, will be considered in detail in the Phase 2 Peer Review of Poland, which is scheduled for the first half of 2014. In the meantime, a follow up report on the steps undertaken by Poland to answer the recommendations made in this report should be provided to the PRG within six months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Poland

10. The assessment of the legal and regulatory framework of Poland was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at January 2013, other materials supplied by Poland, and information supplied by partner jurisdictions.

11. The *Terms of Reference* breaks 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) exchange of information. This review assesses Poland's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

12. The assessment was conducted by a team which consisted of two assessors and two representatives of the Global Forum Secretariat: Deepak Garg, Ministry of Finance of India, Ana Yesenia Rodriguez Calderon, Ministry of Finance of Costa Rica; Mikkel Thunnissen and Francesco Positano from the Global Forum Secretariat.

Overview of Poland

13. The Republic of Poland (hereafter referred to as Poland) is a country in the geographical center of Europe bordering Russia's Kaliningrad enclave, Lithuania, Belarus, Ukraine, the Slovak Republic, the Czech Republic and Germany. Its total land area is 312 677 sq km, and the population consists of more than 38 million people.[1] Warsaw is the largest city and the capital of Poland.

14. Since 1990, Poland has pursued a policy of economic liberalisation, encouraging the development of the private business sector through privatisation of state-owned companies and enactment of liberal laws on establishing new firms. The economy is the sixth largest in the EU and one of the fastest growing in Europe. In 2010 the Polish economic growth rate was 3.9%, and it had the best growth performance within the OECD throughout the global economic crisis.[2] Its gross domestic product (GDP) amounted to about USD 754 billion in 2010, with a GDP per capita of USD 19 747.[3] The service sector accounts for the largest component of the GDP at 63%, followed by industry (33.6%) and agriculture (3.4%).[4] The national currency is the Polish Zloty (PLN).[5]

15. In 2010, Poland's main import partners were Germany 21.9%, Russia 10.2%, and China 9.4%; its main export partners were Germany 26.1%, France 6.8%, and the United Kingdom 6.3%.[6] Machinery and transport equipment, as well as manufactured goods are the main trading products.

16. Poland joined the European Union in 2004 and is also a member of the Shengen area. Other international organisations of which Poland is a member include the United Nations, the OECD, the World Trade Organization, the Council of Europe, North Atlantic Treaty Organisation, and the Intra European Organisation of Tax Administrations.

Governance and legal system

17. Poland is a parliamentary democracy with a bicameral Parliament, composed of the lower house (*Sejm*) and the upper house (*Senat*), made of 460 and 100 members respectively. The head of state is the president, who is elected by popular vote every five years. The president appoints the cabinet

1. Source: Demographic yearbook of Poland, 2011, by Polish Central Statistical Office.
2. OECD – economic survey of Poland 2012.
3. OECD Factbook 2011-2012.
4. CIA Factbook.
5. As of 16 April 2012: EUR 1 = PLN 4.1808 (Source: European Central Bank).
6. Central Statistical Office, *www.stat.gov.pl/gus/index_ENG_HTML.htm*.

according to the proposals of the prime minister. The Council of Ministers holds the executive power.

18. Poland has 16 administrative provinces *(voivodeships*). Administrative authority at this level is shared between a government-appointed governor (*voivode*), an elected regional assembly and an executive elected by that assembly. These provinces are further sub-divided into counties (*powiats*) and then municipalities (*gminas*).

19. Poland's legal system is based on civil law. Poland's current Constitution, adopted in 1997, guarantees a multi-party state, the freedoms of religion, speech and assembly and specifically sanctions a free market economic system. The Constitution regulates the relations between the central and the local administrations. Local governments have the right to form associations and participate in international associations of local and regional communities and to cooperate with local and regional communities of other states.

20. There is a single, unified juridical system in Poland. Pursuant to Article 87 of the Constitution the sources of universally binding law are the Constitution itself, statutes, ratified international agreements (after promulgation in the Journal of Laws) regulations and enactments of local law issued by the local authority organs. Statutes are enacted by the Parliament (*Sejm* and *Senat*) and must be signed by the President before their promulgation. Pursuant to article 91 of the Constitution, after promulgation in the Journal of Laws (*Dziennik Ustaw*), an international treaty constitutes part of the domestic legal order and is applied directly, unless its application depends on the enactment of a statute. Moreover, international agreements ratified upon prior consent granted by statute shall have precedence over domestic law if such an agreement cannot be reconciled with the provisions of domestic law (Constitution, Art. 91(2)). Both double-taxation conventions and tax information exchange agreements must be ratified upon prior consent granted by statute.

21. The judicial branch is an independent power. The administration of justice is carried out by the Supreme Court, which supervises general courts, administrative courts and military courts, as well as the Supreme Administrative Court (the court of last resort in administrative cases adjudicated by administrative courts) and the Constitutional Tribunal. The Constitutional Tribunal adjudicates on the conformity of statutes and international agreements to the Constitution; the conformity of any statute to ratified international agreements of which ratification required prior consent granted by statute; and the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes.

Tax System

22. The legal grounds for imposing tax obligations are found in the Constitution. Pursuant to article 217 of the Constitution, the imposition of taxes, as well as other public levies, the specification of those subject to tax and the rates of taxation, as well as the principles for granting reliefs and remissions, along with categories of taxpayers exempt from taxation, must be regulated by means of statutes.

23. The Polish tax system includes both direct taxation – corporate income tax, personal income tax, tax on civil law action, real estate tax, inheritance and donation tax – and indirect taxation – goods and services tax (VAT), excise duties, gambling tax.

24. Relevant legislation includes the Act on Legal Persons' Income 1992 (LPIT Act), Act on Natural Persons' Income 1991 (NPIT Act), Act on Tax on Acts in Civil Law 2000, Act on Goods and Services Tax Act 2004.

25. Companies and foundations are considered legal persons for tax purposes (LPIT Act, art. 1). Companies and foundations that have their registered office or their management board in Poland are liable to corporate income tax on their worldwide income. All types of income are subject to corporate income tax. The income of a foundation, which is an organisation of public benefit, is tax exempt to the extent it relates to its statutory activities, but business activities[7] carried on by a foundation are always subject to tax (LPIT Act, art. 17§1). The corporate income tax rate is 19%.

26. Individuals who are resident in Poland (*i.e.* all persons having their centre of personal and economic interests in Poland, and all persons being present in Poland for more than 183 days in the tax year) are also liable to income tax on their worldwide income. Poland's taxation of an individual's income is progressive. The income tax rate for an individual ranges from 18 % or 32%, depending on the amount of income. Under certain conditions, individuals can choose to pay a flat rate of 19% on business income without allowances. Partnerships are tax transparent and accordingly income tax is paid by the partners (NPIT Act, art 5b§2).

27. Value-added tax (VAT) is imposed on the supply of goods, the provision of services and the import of goods into Poland unless the transaction is exempt. The VAT system is harmonised with European VAT legislation. The standard rate of VAT is 23%, which is charged on most of goods and services. A reduced rate of 8% or 5% is imposed on certain foods, medicine,

7. The Freedom of Economic Activity Act defines business activity as a profit-gaining activity in the business of production, construction, trade, services and in the prospecting for, exploration and extraction of minerals, as well as a professional activity carried on in an organised and uninterrupted manner (art. 2).

hotel and catering services, certain transport services and municipal services. A zero-rate applies on the intra-community supply of goods, the export of goods, and certain international transportation and related services. A Polish entity is required to register for VAT once its annual turnover on transactions subject to VAT exceeds PLN 150 000 (EUR 36 000). Foreign entrepreneurs must register for VAT in Poland before they start any VAT-related activity in Poland.

28. The government further levies a capital tax on certain contracts, such as sales, loans, donations, mortgages, and partnership or company deeds. A number of taxes are imposed by the municipalities, such as real property tax, road vehicle tax, agricultural tax and forestry tax.

29. The Tax Ordinance Act 1997 (TOA) is the legislation pursuant to which Poland provides assistance under its exchange of information agreements. Pursuant to this act, the Ministry of Finance or a tax authority designated by the Ministry is the competent authority for exchange of information in tax matters.

30. In addition to its bilateral and multilateral agreements, Poland, as a European Union member state, also exchanges tax information under various EU mechanisms, including:

- *Council Directive 2011/16/EU* of 15 February 2011 on administrative cooperation in the field of taxation, replacing *Council Directive 77/799/EEC* concerning mutual assistance by the competent authorities of the Member States of the EU in the field of direct taxation and taxation of insurance premiums.
- *Council Directive 2003/48/EC* of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.
- *Council Regulation (EU) 904/2010* of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

Overview of commercial laws and the financial sector

31. The commercial sector in Poland comprises limited liability companies, joint-stock companies, commercial partnerships (registered partnerships, professional partnerships, limited partnerships, and limited joint-stock partnerships), and civil partnerships.

32. The Code of Commercial Partnerships and Companies 2000 regulates the formation, structure, operation, dissolution, merging, division and transformation of commercial partnerships and companies. Pursuant to the National Court Register Act 1997 (NCR Act) all entrepreneurs, including foreign entrepreneurs, must register with the National Court Register, which keeps the Register of Entrepreneurs. The term "entrepreneur" is defined by the Freedom of Economic Activity Act 2004 (FEA Act) as including natural persons, legal persons and organisational entities which are not legal persons (*e.g.* municipal entities providing certain services to the public, such as public transport) and which are endowed with legal capacity by force of a separate act, and who are carrying on economic activity in their own name.

33. In addition, natural persons commencing economic activities in Poland must register with the Central Records and Information on Economic Activity (CEIDG), part of the Ministry of Economy (FEA Act, art. 23). Each entrepreneur registered in CEIDG or in the National Court Register must mention its Tax Identification Number (TIN) on each written statement or declaration as well as use this number in its legal and business transactions. For the purposes of the registries, the entrepreneur is identified by TIN. Finally, the Law on Official Statistics 1995, article 42, establishes that all legal persons, organisational units without the status of a legal person, and natural persons running economic activities must also register with the National Official Business Register (REGON).

34. The Polish financial market comprises four sectors: banking, capital market, insurance and pension savings. These activities are licensed and supervised by the Polish Financial Supervision Authority (PFSA)

35. Banking is regulated by the Banking Act 1997 which prescribes that all entities willing to engage in banking business must obtain a permit from the PFSA. Domestic and foreign banks can be incorporated as joint-stock companies or cooperative banks. Branches of foreign credit institutions can operate in Poland within the scope provided for in the authorisation granted by the home supervisory authority. As of 30 September 2012, there were 10 domestic banks, 36 foreign banks, and 23 branches of foreign credit institutions permitted by the PFSA.

36. The capital market sector includes investment firms providing intermediaries services and brokerage activities as well as investment fund managers. The Act on Trading in Financial Instruments 2005 (ATFI) governs the principles of trading in securities and other financial instruments, as well as the rights and duties of the persons participating in this trade. Only investment firms are entitled to offer broker services. Brokerage services include the acceptance and transfer of orders to acquire or dispose of financial instruments, investment advice, storage and registration of financial instruments, including the keeping of securities accounts and cash accounts. All shares

traded on a regulated market must be dematerialised and registered with the National Depository for Securities (KDPW), a single entity entitled to keep custody of securities (ATFI, art. 5). As of 21 November 2012, there were 54 brokerage houses registered in Poland and 15 banks were authorised to offer brokerage services.

37. The Polish financial sector had PLN 2 001 billion (EUR 479 billion) in assets as of 30 June 2012, including PLN 1 315 billion (EUR 315 billion) of banking sector assets.

38. With reference to professional service providers, tax advisors are regulated by the Tax Advisory Act 1996. Tax advisory activities may be carried out not only by individuals entered into the registry of tax advisors, but also by attorneys-at-law, legal advisors and chartered auditors.

39. Commissioned book-keeping is a regulated profession under the Act on Accounting 1994. Persons providing bookkeeping services to third parties are required to possess a bookkeeping certificate issued by the minister of finance. Rules for providing legal assistance services by attorneys as well as legal advisers are stipulated in the Act on Legal Advisers 1982. Attorneys and legal advisers generally are obligated institutions under the anti-money laundering legislation.

40. As of January 2012, there were 12 559 advocates and 30 147 legal advisors authorised to practice law. As of November 2012, there were 8 954 tax advisors, and approximately 25 000 accountants registered with the Accountants Association in Poland.

41. Financial institutions and non-financial businesses listed in the Act on Counteracting Money Laundering and Terrorism Financing 2000 (AML Law) are obliged to perform financial security measures on their clients, including the identification and verification of the client's identity (AML Law, art. 8b(3)), an attempt to identify and verify the beneficial owner, including by determining the ownership structure and to constantly monitor the current economic relationships with a client. In performing financial security measures, obligated persons must also survey the transactions carried out by their client (AML Law, art. 8(a)(1)). The central authority in Poland in the area of the prevention and detection of money-laundering and terrorist financing is the General Inspector of Financial Information.

Recent developments

42. The Polish Parliament is in the process of transposing the Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation, replacing Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States of

the EU in the field of direct taxation and taxation of insurance premiums. The amendments to the TOA will concern, for example, the extension of the scope of the information to be exchanged, setting up deadlines for responding to the requests, and introducing e-forms. This Directive came into force on 1 January 2013, ensuring that the EU standards for transparency and exchange of information are aligned with the international standard.

Compliance with the Standards

A. Availability of Information

Overview

43. 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[8] may not be able to obtain and provide it when requested. This section of the report describes and assesses Poland's legal and regulatory framework for availability of information.

44. Companies and cooperatives incorporated in Poland must register with the National Court Register. Full ownership information on limited liability companies is available in this register. In respect of joint-stock companies and joint-stock limited partnerships, up-to-date information on the owners of registered shares issued is available at the level of the entity. Foreign companies must also be registered when establishing a branch in Poland or when they are managed and controlled in Poland. However, no ownership information has to be provided upon registration, nor is such

8. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange.

information available otherwise. Nominee shareholders acting by way of business must identify the person for whom they act as a legal owner under AML/CFT legislation and the Act of Trading in Financial Instruments. Cooperatives must keep information on their members.

45. Joint-stock companies and joint-stock limited partnerships are permitted to issue bearer shares. However, information on the holder of bearer shares is available to the authorities only with regard to bearer shares that are traded in the regulated market. Poland is therefore recommended to introduce mechanisms enabling the identification of all holders of bearer shares.

46. Partnerships – except civil partnerships – formed in Poland must register with the National Court Register. Updated information on the partners of partnerships is available to the authorities as partnerships need to provide the National Court Register with updated ownership information. In addition, all types of domestic partnerships and foreign partnerships carrying on business in Poland need to register for tax purposes, and ownership information must be provided upon registration and when any change occurs.

47. Trusts cannot be formed in Poland and no other similar fiduciary arrangements exist. Polish residents nonetheless may act as a trustee or trust administrator of a foreign trust. Even though under tax law information may be available to the Polish tax authorities regarding the settlor and the beneficiaries of the trust, the tax law is not complemented by obligations under other laws, such as the AML Law.Therefore, it is recommended that Poland ensures that ownership and identity information on foreign trusts administered in Poland or in respect of which a trustee is resident in Poland is available in all cases.

48. In respect of foundations, the National Court Register contains information on the founders and, if the foundation also conducts business activities, on persons authorised to represent the foundation (governing board). Information on the persons on the governing board is made available to the Ministry for Revenues in the annual report. Foundations are obligated institutions under anti-money laundering legislation and are accordingly required to identify all their donors and beneficiaries. As foundations may only be established for beneficial or charitable purposes, they may not be created to benefit named individuals or solely members of a family.

49. A general obligation to keep accounting records is in place in respect of all relevant entities and arrangements, either under the tax law or under the Act on Accounting. In all cases, accounting records must be supported by underlying documentation. Records and documents must be kept for at least five years, while approved financial statements of entities falling under the Act on Accounting must be kept permanently. Certain natural persons, civil partnerships of natural persons, registered partnerships of natural persons

and professional partnerships with an annual revenue of EUR 150 000 or less may elect to pay tax in the form of a tax card and be exempted from keeping accounting records.

50. The AML/CFT legislation ensures that all records pertaining to the accounts as well as to related financial and transactional information is required to be kept by all banks operating in Poland for five years. Information on the owners of former anonymous accounts may only be available when they claim these accounts, however the amount of funds affected is approximately EUR 4.5 million.

A.1. Ownership and identity information

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

Companies (ToR 9 A.1.1)

51. Polish legislation recognises the following types of companies:

- **Limited liability-company** (LLC) (*spółka z ograniczoną odpowiedzialnością*), regulated in Section I of Title III of the Code of commercial Partnerships and Companies (CCCP): the LLC is the basic type of company in Poland. It has a separate legal personality. An LLC has capital which is created from shareholders' contributions, but shareholders are not liable for the liabilities of the company. There are no restrictions on the number, nationality or residence of shareholders but an LLC may not be formed solely by another single shareholder limited liability company. The minimum capital required to establish a limited liability company is PLN 5 000 (EUR 1 200). There were 278 494 limited liability companies in Poland as at June 2012.
- **joint stock company** (JSC) (*spółka akcyjna*), regulated in Section II of Title III of the CCCP: a joint stock company must be founded by at least one individual or legal person. A JSC may not be formed solely by a single shareholder limited liability company. There are no residence or nationality requirements. The minimum initial capital for a JSC is PLN 100 000 (EUR 24 000), of which 25% must be paid up before registration. This form of company is sometimes required by law (e.g. banks, insurance companies). Joint stock companies may issue bearer shares. There were 10 010 joint stock companies in Poland as at June 2012.

9. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

- **limited joint-stock partnership** (LJSP) (*spolka komandytowo–akcyjna*), regulated in the CCCP: a limited joint-stock partnership (usually larger scale business) must be established by at least two individuals or legal persons. In general, at least one partner is liable to the creditors for the debts and obligations of the partnership without limitation and at least one partner must be a shareholder who is not liable for debts and obligations of the entity. The minimum initial capital required is PLN 50 000 (EUR 12 000). LJSPs can issue bearer shares. As at June 2012, there were 2 034 limited joint-stock partnerships.

Limited liability companies

52. Limited liability companies (LLC) must be established by notarial deed, and are incorporated and assume full legal personality when entered into the Registrar of Entrepreneurs which is part of the National Court Register. LLCs have to register at the competent district (voivodeship) court. The application for an entry into the register must be submitted within six months from its establishment. Before filing for registration, an LLC, which is then called "company in organisation", can operate and conclude valid contracts, though it is not (yet) considered a legal entity and in practice its activity may be limited.[10]

53. Information on the owners of an LLC is available to authorities upon registration. When registering with the Registrar of Entrepreneurs, the National Court Register Act (NCR Act) requires LLCs to specifically disclose the identity of the persons holding at least 10% of the initial capital, as well as the number of shares held by such shareholders and their total value (NCR Act, art. 38(8)(c)). In addition, article 9 of the NCR Act requires that for each person entered in the Register separate registration files shall be kept, containing in particular the documents forming the basis for the entry. The Polish authorities indicated that this would include the list of shareholders of an LLC. This is confirmed by article 167§2 and §4(2) of the Code of Commercial Partnerships and Companies 2000 (CCCP), which provides that the data to be filed upon registration include the list of all shareholders, disclosing the names and surnames or business names of the individual shareholders and the nominal value of shares held by each.

54. Pursuant to article 188 of the CCCP, the management board of an LLC must keep a register of shares containing the surname and forename or business name and seat of each shareholder, its address, number and nominal value of its shares as well as any change relating to the shareholder and the shares to which they are entitled (CCCP, art. 188 §1). In case of a transfer of

10. *www.paiz.gov.pl/files/?id_plik=12374*.

shares, the interested parties (*i.e.* the transferor and transferee) must notify the company of such transfer, and the transfer is effective upon receipt by the company of the notification (CCCP, art. 187 §1). Moreover, each time that an entry is made in the register, the management board must submit to the registration court a new list of shareholders signed by all management board members, showing the number and nominal value of shares held by each shareholder (CCCP, art. 188 §3). This ensures that up-to-date information on owners of LLCs is available to the authorities as well.

Joint-stock companies

55. Joint-stock companies (JSC) can issue nominal as well as bearer shares. Like LLCs, JSCs must be established by notarial deed and are required to register with the National Court Register, specifying the amount of initial capital, and the number and nominal value of shares. The application for registration includes the business name, seat and address of the company, the name of the members of the management board as well as of the supervisory board (NCR Act, 38(9)). However, with the exception of JSCs owned by a single shareholder, no identity or ownership information on the shareholders needs to be disclosed to the authorities upon registration.

56. Up-to-date ownership information of the nominal shares is, nonetheless, available with the company. Article 341 of the CCCP requires the management board of a JSC to maintain a register of registered shares and provisional certificates. Provisional certificates are issued in case of a partial payment for bearer shares and they provide documentary evidence of the partial payment. Provisional certificates can be traded and entitle the owner to the same rights as registered shares. They are not bearer shares as long as they have not been paid up in full.

57. The register to be kept by JSCs contains the shareholder's surname and forename or business name and the seat and address, amount of payments made and, on request of the transferor, an entry on the share having been transferred to another person and the date of the entry (CCCP, art. 341§1). Alternatively in case of a share transfer, the acquirer of a share can request the management board to make an entry recording that the share was transferred (CCCP, art. 341§2). No person is deemed a shareholder of the company except those entered in the register of shares or those holding bearer shares, subject to the provisions on trading in financial instruments (CCCP, art. 343 §1). The company may commission a bank or an investment firm in Poland to keep its register of shares (CCCP, art. 342).

Limited joint-stock partnerships

58. Limited joint-stock partnerships (LJSP) consist of at least one (general) partner and one partner who is a shareholder. LJSPs can issue nominal as well as bearer shares. For commercial and civil law purposes, LJSPs are treated as entities separate from their partners. Therefore they can be subject to legal rights (e.g. a party to an agreement, an owner of a real estate) and bear legal responsibility. Similar to other partnerships (see section A.1.3 below), LJSPs are transparent for tax purposes.

59. In respect of ownership information on the shareholders of LJSPs, the provisions of the CCCP obliging joint-stock companies to keep a share register also apply to LJSPs (CCCP, art. 126). Accordingly, the general partners, or the supervisory board, must maintain a register of the shares issued by the LJSP providing for up-to-date ownership information on the shareholders holding nominal shares.

60. LJSPs are also required to register with the National Court Register. Upon registration with the Court Register, an LJSP must provide information on the partnership deed, the designation of general partners (surname and forenames), the amount of the initial capital and the number and nominal value of shares (NCR Act, art. 38(7)). Any changes in this information must also be reported to the Registrar (NCR Act, art. 47 and CCCP, art. 133 §2).

Foreign companies

61. The establishment of a branch or an agency in the territory of Poland by foreign enterprises or foreign entrepreneurs is regulated under the NCR Act and the Freedom of Economic Activity Act 2004 (FEA Act). Foreign companies must be registered with the Registrar of Entrepreneurs, disclosing the name and address of the person that obtained a licence to run the enterprise in Poland (NCR Act art. 38(12)) and the articles of association of the company, or the deed in case of a limited joint-stock partnership (FEA Act art. 89). However, neither the NCR Act nor the FEA Act require ownership information about the shareholders to be disclosed. Information on the owners of a foreign company would only be available where the laws of the jurisdiction of incorporation require disclosure of ownership information in the articles of association.

62. According to the Legal Persons Income Act 1992 (LPIT Act), foreign entities are resident for tax purposes when they have their seat or management office within Poland, and are then subject to tax on their worldwide income (LPIT Act, art. 3(1)). If taxpayers do not have their seat or management office within Poland, they are only subject to tax on the income earned within Poland (LPIT Act, art. 3(2)).

63. All foreign companies that are considered tax resident in Poland are obliged to file tax returns. However, no ownership information is included in the form (see form CIT-8). Accordingly, Poland is recommended to ensure that information on the owners of a foreign company that is tax resident in Poland be available.

Nominees

64. Nominee shareholdings are not expressly regulated under Poland's commercial laws, but nothing prevents shares from being held by a nominee. Nominee shareholding is not specifically considered as an activity or institution covered under the Act on Counteracting Money Laundering and Terrorism Financing 2000, as amended in 2010 (AML Law). However, a number of persons who can be expected to act professionally as nominee shareholders are covered by the AML Law. These include financial institutions, investment companies, investment funds, attorneys, accountants and legal advisers (AML Law, art. 2). These service providers are under a general obligation to identify and verify the identity of their clients (AML Law, art. 8b(3)). This means that if these persons act as a nominee shareholder, they must know whom they are acting for and keep this information (AML Law, art. 9k).

65. In addition, a specific rule exists with respect to entities providing brokerage services. When these entities manage the shares of their clients through securities accounts in their own name, they must do so in such a way that the person who enjoys the rights attached to the securities can be identified (Act of Trading in Financial Instruments, art. 4).

66. Nominee shareholders, other than service providers covered by the AML Law, do not have a specific legal obligation to retain identity information on the person for whom they act as the legal owner. However, these nominees might establish a relationship with a financial institution in Poland (*e.g.* opening a bank account to receive dividends on the shares they hold), in which case the financial institution is required to identify and verify the identity of the person acting as nominee as well as the beneficial owner (AML Law, art. 8b§3). In any event, the group of nominee shareholders not covered by the obligations described above would primarily consist of persons performing services gratuitously or in the course of a purely private non-business relationship. This issue will be monitored in the Phase 2 review of Poland.

Cooperatives

67. The Act on Cooperatives (AOC) allows for the formation of cooperative enterprises. Cooperatives must register with the National Court Register (NCR, art. 36). Article 30 of the AOC provides that the management board of

a cooperative must keep a register of members indicating, among others, their names and addresses, the amount of participation shares which have been declared and actually contributed to, and the date on which membership was accepted and terminated. All members of a cooperative, their spouses and the cooperative creditors have the right to inspect the register of members (AOC, art. 30). Membership of a cooperative becomes effective on the date of the cooperative's registration with the National Court Registry. New members must be accepted by the body of the cooperative nominated by its statute and receive a membership certificate that is also signed by two members of the cooperative management (AOC, art. 17).

Conclusion

68. Full up-to-date identity information is available for shareholders holding nominal shares and members on Poland's domestic companies and cooperatives as a result of the obligation on those entities to keep a share register or a register of members. In the case of LLCs and JSCs with a single shareholder, ownership information is also available in the National Court Register. Foreign companies that are tax resident in Poland continue to be regulated by the laws of their jurisdiction of incorporation and are not expressly required to maintain or file identity and ownership information under Polish laws. Persons acting professionally as a nominee shareholder must generally identify the person whom they are acting for as a nominee according to the AML Law and the Act of Trading in Financial Instruments. The situation where nominee shareholders do not act by way of business will be monitored in the Phase 2 review of Poland.

Bearer shares *(ToR A.1.2)*

69. The entities allowed to issue bearer shares in Poland are joint-stock companies (JSC) and limited joint-stock partnerships (LJSP). Upon registration with the Registrar, these entities must append to the articles of association the nominal value of shares and number of shares, stating whether these shares are registered or bearer shares (CCCP, artt. 130(5) and 304). However, JSCs and LJSPs do not have to register ownership information on bearer shares in the book of shares.

70. With regards to JSCs, each holder of a bearer share has a right to participate in the general meetings of shareholders by submitting its bearer shares (or a document confirming the possession of these shares) to the joint-stock company at least one week in advance (CCCP, art. 406). Information on the owner of the bearer shares would be available when the owner participates in a general meeting.

71. Pursuant to the Act on Trading in Financial Instruments 2008 (ATFI), all shares which are admitted to trading on a regulated market must be dematerialised and registered with the National Depository for Securities (KDPW), a single entity required to keep custody of securities (ATFI, art. 5). Other shares offered under a public offer or introduced exclusively to an alternative trading system may also be dematerialised and registered with the KDPW (*ib.*). Registration and transfers of dematerialised securities registered with the KDPW must be done through securities accounts managed by an eligible entity (*i.e.* a brokerage house or other entity, fiduciary banks, foreign investment firms, banks and foreign legal persons pursuing brokerage activity in Poland). The designation of any securities account must enable the persons who enjoy the rights attached to securities to be identified (ATFI, art. 4), which means that the owner of the bearer shares must be recorded. The owner can then obtain a certificate from the holder of the securities account entitling him to exercise the rights attached to the security (ATFI, art. 9).

72. The number of JSCs and LJSPs that have their shares registered with KDPW was 1 030 as at July 2012. The owners of bearer shares in these companies can be identified through the mechanism described in the previous paragraph. In respect of the other 11 014 entities that may issue bearer shares, no mechanism to identify the owners of bearer shares exists.

Conclusion

73. While the owners of bearer shares can be identified where the shares are registered with KDPW (mostly shares traded on a regulated market), there are no mechanisms in place to ensure the identification of owners of bearer shares issued by JSCs and LJSPs of which the shares are not registered with KDPW. Accordingly, Poland is recommended to ensure that information is available which ensures that all owners of bearer shares can be identified.

Partnerships *(ToR A.1.3)*

Types of partnerships

74. Polish law allows for the formation of registered partnerships, professional partnerships, limited partnerships, and civil partnerships. All partners of partnerships who are natural persons need to register with the Central Records and Information on Economic Activity (CEIDG) as entrepreneurs.

- A registered partnership is established by two or more persons for the purpose of wide scale business and conducts an enterprise in its own name. Every partner is liable for obligations of the partnership, without limit, with all his assets jointly and severally with the remaining partners and the partnership (CCCP, art. 22). A registered partnership

can only be established through a written deed and comes into existence only upon entry into the National Court Register. As of June 2012, there were 33 065 registered partnerships.

- Professional partnerships are established for the purpose of practicing a liberal profession, and they conduct business under their own business name. Partners of these partnerships must be natural persons and at least two of them must be individuals authorised to practise the given profession (CCCP, art. 88). A professional partnership must be formed through written deed and comes into existence upon entry into the National Court Register. As of June 2012, there were 1 708 professional partnerships.
- Limited partnerships are established for the purpose of conducting business under their own business name. They must be established by at least two persons. Limited partnerships possess legal capacity and may in their own name acquire rights, incur obligations, sue and be sued. At least one partner is liable for the debts and obligations of the partnership without limitation (general partner) and at least one partner has a limited liability. As of June 2012, there were 9 357 limited partnerships.
- Civil partnerships must be established by at least two natural or legal persons through written deed. Civil partnerships have no legal personality and each partner is jointly liable for the debts and obligations of the partnership without limits and with all his assets. As of June 2012, there were 278 232 civil partnerships.

75. Registered partnerships, professional partnerships, and limited partnerships must register with the Registrar of Entrepreneurs, part of the National Court Register (NCR). When applying for such registration, these types of partnership must provide a designation of the partners, disclosing names and surnames of the natural persons, or the business name for legal persons (NCR Act, art. 35 and 38(4)(5)(6)). Changes to such information must be reported to the NCR within seven days (CCCP, artt. 22, 26(2) and 93(3)).

76. In the case of limited partnerships, the deed of a limited partnership must be made in writing in notarial form and must include business name and seat of the partnership, the object of the partnership's activity, lifetime of the partnership, if defined, and a specification of contributions made by each partner and their value (CCCP, art. 105). The application to the NCR must also designate the general partner and the limited partner. In addition, it must indicate the amount in cash being the upper limit of a limited partner's personal liability (commandite sum), the object of the contribution made by each limited partner, and the return of contributions, even if partial (NCR Act, artt. 35 and 38(6); CCCP, art. 110). Changes to such information must be reported to the NCR within seven days (CCCP, artt. 22 and 110§2).

77. In the case of registered partnerships, the deed provided to the NCR must be concluded in notarial form, include the particulars of the business name and seat of the partnership, the specific contributions made by each partner and their value, the object of the partnership's activity, and lifetime of the partnership if defined (CCCP, art. 25). Moreover, a notification to the NCR of a registered partnership must include the surnames and forenames or business names of the partners and addresses of partners or their delivery addresses, as well as surnames and forenames of the persons who have the right to represent the partnership and the manner of representation (CCCP, art. 26). Any change of the particulars reported in the notification must be reported to the NCR within seven days (CCCP, artt. 22 and 26§2).

78. In the case of professional partnerships, the deed, concluded in notarial form, must contain surnames and names of the partners who bear unlimited liability, the business name and the seat, lifetime of the partnership, and a specification of contributions made by each partner and their value (CCCP, art. 91). A notification of a professional partnership to the NCR must include the business name, seat and address of the partnership, and surnames and forenames of the partners and their addresses or delivery addresses, surnames and forenames of procurators or persons appointed members of the management board, and surnames and forenames of the partners who bear unlimited liability for obligations (CCCP, art. 93). Any change to this notification must be reported to the NCR within seven days (CCCP, artt. 22 and 93§3).

79. Pursuant to Article 860 of the Civil Code, a contract of a civil partnership must be made in writing. The Civil Code does not specify what information should be included in the deed but such agreement would as a matter of course contain details of the partners. It is expected that the names of all partners would be disclosed in the deed particularly because each partner bears joint and several liability for the partnership's obligations (Civil Code, art. 864). The identification of the partners is also a necessary element which identifies the parties involved in this act of law. Upon formation, civil partnerships must register with the National Official Business Register (REGON). In addition, the contracts of civil partnerships must be registered with the local tax office for identification as well as taxation purposes (see section *Tax law* below). Civil partnerships are allowed to engage in profit seeking activities and are mainly used as a form of cooperation in conducting small scale business (e.g. a car repair garage, a hair dresser, etc.).

80. Partners of civil partnerships who are natural persons also need to register individually with the CEIDG when signing the partnership deed. While registering with the CEIDG, partners of a civil partnership must include their place of residence, the business name, the address of the principal place of pursuit of economic activity and of any branch, and the REGON number of

the civil partnership (FEA Act, art. 25). Where any change to this information occurs, the partners must file such change with the CEIDG within seven days (FEA Act, art. 30). As such, ownership information on partners who are natural persons is available in the CEIDG. Ownership information on partners who are not natural persons may be available in the partnership deed (see also section *Tax law* below).

Tax law

81. Pursuant to the Tax on Acts in Civil Law Act (TACLA), the deeds establishing partnerships must be filed with tax offices for tax identification purposes as well as for taxation purposes (TACLA, art. 1§1(k)). Amendments to the deed must also be reported to the tax authorities in cases of transformation or merger of partnerships, contributions the value of which results in an increase of the partnership's assets or initial capital, loans granted to the partnership by a partner, additional capital payments, as well as a partner's giving things or property rights to the partnerships for gratuitous use (TACLA, art. 1§2).

82. Under the Natural Persons Income Tax Act (NPIT Act), all types of partnerships are tax transparent and are not required to file tax returns. Instead, partners have to submit separate income tax returns individually (NPIT Act, art. 5a; LPIT Act, art. 5). However, all partnerships must register for tax purposes and obtain an identification number (Act on Principles of Registration and Identification of Taxpayers and Tax Remitters 1995, artt. 5 and 6). The registration forms require the identification of all partners of the partnership (NIP 2 and NIP-D). This information needs to be updated within 30 days following the change (Act on Principles of Registration and Identification of Taxpayers and Tax Remitters 1995, art. 9). Registration is required for both domestic partnerships and foreign partnerships carrying on business in Poland, meaning that ownership information on all partnerships is available with the tax authorities.

Conclusion

83. Up-to-date information on partners of registered partnerships, professional partnerships, and limited partnerships is available with the Registrar of Entrepreneurs, part of the National Court Register. In addition, the tax authorities also have ownership information on the partners of all domestic partnerships and all foreign partnerships carrying on business in Poland.

Trusts (ToR A.1.4)

84. The concept of trusts does not exist under Polish law and Poland is not a party to the *Hague Convention on the Law of Trusts*. Anti-money laundering legislation does not explicitly cover trusts, trustees, or trust service providers. Moreover, there are no other legal arrangements similar to trusts that exist in Poland. Nevertheless, there are no obstacles for a Polish resident to act as a trustee of a foreign trust. The Polish tax authorities have advised that they are not aware of cases where Polish residents render services to foreign trusts.

85. Residents of Poland are taxed on their worldwide income from whatever source. The Polish authorities indicated that this means that trustees or trust administrators of foreign trusts who reside in Poland and receive income earned by the trust, are subject to income tax on that income as if it was their own income. The assets and income of the trust are subject to tax as any other assets or income of the trustee and should therefore be declared in their tax return. Distributions to beneficiaries may be regarded as expenses. Resident trustees or trust administrators may only avoid such tax liability by demonstrating that the income should be attributed to another person, such as by providing evidence of the existence of a fiduciary relationship (typically the trust deed) and disclosing the identity of the settlor(s) and beneficiaries to the tax authorities. However, there are no specific obligations requiring trustees to maintain information on the settlors, other trustees and beneficiaries.

86. The AML Law does not specifically nominate trustees as service providers covered by anti-money laundering obligations. Accordingly, not all persons acting professionally as trustees are governed by the AML Law. Even when a service provider covered by AML Law is administering a trust or has a trust as a client, the AML law does not specify who needs to be identified as the beneficial owner.

87. It can be concluded that, although under tax law information on the settlors, (other) trustees and beneficiaries of a foreign trust with a Polish trustee may be available in certain circumstances, these requirements are not complemented by obligations under other laws, such as the AML Law. Poland is therefore recommended to amend its legislation to ensure the availability of ownership and identity information of foreign trusts administered in Poland or in respect of which a trustee is resident in Poland.

Foundations (ToR A.1.5)

88. Foundations in Poland are governed by the Law on Foundations 1984. Article 1 of the Law on Foundations determines that a foundation may be established to pursue socially or economically useful objectives that are consonant with the basic interests of Poland. These may in particular

be objectives such as health protection, advancement of the economy and science, education, literacy, culture, art, social services, environmental protection, and protection of historical landmarks. Foundations may carry on profit-making activities to accomplish their purposes (Law on Foundations, art. 5(5)), and, if its statute specifies the purposes to which the foundation's assets are to be allocated following its dissolution, these assets must be allocated for the objectives referred to in Article 1 (Law on Foundations, art. 5(4)). These rules limit the use of Polish foundations to charitable purposes and it is therefore not permitted to establish a foundation for the benefit of private individuals. As of June 2012, there were 14 397 foundations registered in Poland.

89. Foundations must be registered in the Register of Associations, other voluntary and vocational organisations, foundations, and independent public health-care centres, which is part of the National Court Register (NCR Act, art. 49). Information that must be included and maintained in this Register includes the statute of the foundation, its name or business name, a determination of the legal form, the seat and address (NCR Act, artt. 38 and 53a, and Law on Foundations, art. 10). In addition, at the time of registration, a statement of establishment of the foundation in the form of a deed must be attached to the request for registration (NCR Act, artt. 38§3 and 53a). According to the Polish authorities, this deed includes the name of the founder(s) of the foundation. Finally, where foundations carry on economic activity, they also need to be registered in the Register of Entrepreneurs disclosing the names of members of the body entitled to represent the foundation (governing body) (NCR Act, 39(1)).

90. Polish foundations must submit an annual report on the foundations' activities to the relevant minister, having regard to the scope of activity and purpose of the foundation (Law on Foundations, artt. 9§2 and 12§2). This annual report discloses the identity and function of the members of the foundation board and contains information on the economic and financial situation of the foundation (Minister of Justice Regulation of 8 May 2001, §2).

91. Foundations are also obligated institutions under the AML Law and are consequently required to undertake CDD measures on their clients (AML Law, art. 2§1(r)). Polish authorities have indicated that the clients of a foundation required to be identified under AML Law would include all persons that the foundation has concluded contracts with, all the donors, and all persons receiving assistance from the foundation (including beneficiaries (where applicable)).

92. To sum up, information on the identity of the founders is available in the Register of Associations, other voluntary and vocational organisations, foundations, and independent public health-care centres at the time of registration. The identity of the members of the board of foundation is disclosed

in the Register of Entrepreneurs, when a foundation carries on economic activity, as well as in the annual report provided to the Minister of Justice. Any person receiving assistance from the foundation (including beneficiaries (where applicable)), as well as donors, are known as a consequence of the CDD measures that foundations are obliged to undertake in respect of all their clients.

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

93. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information.

94. Ownership and identity information about the shares issued by LLCs, JSCs, and LJSPs is available in the register of shares required to be kept by the company under articles 188 and 341 of the CCCP. Article 594 of the CCCP establishes that whoever, being a member of the management board of a company or partnership, contrary to his duty, allows the management board not to keep a register of shares pursuant to the provisions of Article 188, paragraph 1 or Article 341, paragraph 1 is liable to a fine of up to PLN 20 000 (EUR 4 800) (CCCP, art. 594 §1). Full ownership information on cooperatives is available in the register of members that must be maintained by the management board pursuant to article 30 of the AOC. Any person holding a position in a cooperative's body is liable to a fine or imprisonment up to two years if he or she provides false information to the public or reports false information to the cooperative's bodies, public authorities or auditors (AOC, art. 267(d)).

95. Information on owners of LLCs and partners of a partnership (excluding civil partnerships) is also made available to the authorities in the National Court Register upon registration (NCR Act, art. 38 and CCCP, art. 167). Updated information on the shareholders of LLCs and partners of a partnership must also be provided to the Registrar (CCCP, art. 188§3; NCR Act, art. 47). The court of registration verifies the veracity of the information entered in the Register and may remove it, or correct it, if it is ascertained that the information does not reflect the actual state of facts (NCR, artt. 23, 24§3 and 24§4). Whenever it is ascertained that a person compelled to make an entry in the Register fails to do so or fails to provide documents within the time-limit, that person is liable to a fine, that may be imposed several times (NCR Act, art. 24). Any member of the management board of an LLC or partnership who, contrary to his/her duty, allows the management board not to submit the list of partners or shareholders to the court of registration is liable to a fine of up to PLN 20 000 (EUR 4 800) (CCCP, art. 594§1). If, despite imposing fines, a legal person entered in the register of entrepreneurs fails to

make a compulsory entry, the court of registration may appoint a curator for this person for a period of up to a year or more (NCR Act, 26§1).

96. In case of a partnership, if despite imposing a fine, a commercial partnership entered in the Register fails to make a compulsory entry in the Register, the court of registration may decide on the dissolution of the partnership and appoint a liquidator ex officio (NCR Act, art. 25). Moreover, the persons who are liable for the partnership's obligations bear the liability referred to jointly and severally with the partnership (NCR Act, art. 18§2).

97. Information on the partners of all partnerships (including civil partnerships and foreign partnerships carrying on business in Poland) is also available to the tax authorities. Under article 81 of the Penal and Fiscal Code, a taxpayer or tax remitter who fails to make an identification declaration and to update the data included therein is subject to a fine for fiscal misdemeanour.[11]

98. Pursuant to the ATFI, all shares, including bearer shares, which are admitted to trading on a regulated market must be dematerialised and registered with the National Depository for Securities (KDPW) (ATFI, art. 5). Article 176a prescribes that where the issuer fails to perform or improperly performs the obligations specified in Article 5, the Commission may impose a monetary penalty of up to PLN 1 000 000 (EUR 240 000). Registration and transfers of dematerialised securities registered with the KDPW must be done through securities accounts which must enable the persons who enjoy the rights attached to securities to be identified (ATFI, art. 4). Where a company operating a regulated market, a brokerage house, a bank conducting brokerage activity or a foreign legal person conducting brokerage activity in Poland (these entities are under the obligation to register all shares, including bearer shares, on the regulated market with the KDPW) breaches the

11. The Penal and Fiscal Code provides for fines expressed in daily rates. In setting a fine, the court determines the number of daily rates as well as the amount of each rate. Unless otherwise provided for by the Penal and Fiscal Code, the lowest number of daily rate is 10, the highest 720. The minimum daily rate may not be lower than one thirtieth of the minimum wage, which is established by regulation, and the maximum is 400 times the minimum daily rate. The Council of Ministers' Regulation of September 13th 2011 (Journal of Law No.183/1141) determined that the minimum wage for the year 2012 is PLN 1 500. Accordingly, for the year 2012, the court may define a daily rate between PLN 50 (which is a thirtieth of the minimum wage) and PLN 20 000 (which is the equivalent of 400 times the minimum daily rate). The minimum penalty imposed by the court ranges between PLN 500 (10 times the minimum daily rate) and PLN 14 400 000 (720 times the highest daily rate). In setting the daily rate the court takes into consideration the income of the perpetrator, his personal situation, family situation, property relations and his earning capacity.

provisions governing the organisation of a regulated market or conduct of brokerage activity, the Commission may impose a monetary penalty of up to PLN 100 000 (EUR 24 000) on the persons responsible for the infringements (ATFI, art. 169a).

99. Persons covered by the AML Law, which would include most persons acting as nominee shareholders, are obliged to know and verify the identity of their customer when providing nominee services (AML Law, art. 8b(3)). Any obligated institution failing to conduct customer due diligence measures may be subject to a penalty not exceeding PLN 750 000 (EUR 180 000) (AML Law, art. 34a). Any person purposefully involved in such failure is subject to imprisonment not exceeding three years. Where his/her involvement is unintentional he/she is subject to a fine (AML Law, art. 35).

100. Information on the founders of foundations is available in the National Court Register and appropriate enforcement measures are in place to ensure that the information provided is true and complete (NCR Act, art. 23, 24 and 26; see also relevant paragraph above). The members of the Foundation Board are disclosed in the annual report submitted to the competent ministry. If the Foundation Board substantially violates any provisions of law or the foundation's statute, the competent ministry may demand a change of board within a specified time limit, or may apply to the court to suspend the board and appoint a temporary administrator until the infringement ceases (Law on Foundations, art. 14). The identity of the board may also be available in the National Court Register when the foundation is carrying on economic activity. Any person receiving assistance from a foundation, as well as donors and any person with which a foundation has concluded a contract, must be identified as a consequence of the CDD measures imposed on each foundation (AML Law, art. 2§1(r)). Any foundation that fails to conduct customer due diligence measures may be subject to a penalty not exceeding PLN 750 000 (EUR 180 000) (AML Law, art. 34a). Any person purposefully involved in such failure is subject to imprisonment not exceeding three years. Where his/her involvement is unintentional he/she is subject to a fine (AML Law, art. 35).

101. Penalties are in place with respect to all key obligations that exist to ensure the availability of ownership and identitiy information. The effectiveness of these enforcement provisions will be considered as part of the Phase 2 review of Poland.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Foreign companies having their place of effective management in Poland are not obliged to maintain ownership information in all circumstances.	Poland should require foreign companies having their place of effective management in Poland to maintain information on their ownership.
Bearer shares may be issued by JSCs and LJSPs, and mechanisms to ensure that the owners of such shares can be identified are not systematically in place for all bearer shares.	Poland should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
Polish law does not ensure that information is available identifying the settlors, trustees and beneficiaries of a foreign trust with a Polish trustee or trust administrator.	Poland should ensure that information identifying the settlors, trustees and beneficiaries of foreign trusts, which are administered in Poland or in respect of which a trustee is resident in Poland, is available.

A.2. Accounting records

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

102. The *Terms of Reference* sets 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. 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. Accounting records should further include underlying documentation, such as invoices, contracts, *etc*. Accounting records need to be kept for a minimum of five years.

General requirements *(ToR A.2.1)*

Act on Accounting

103. Limited liability companies, joint-stock companies, commercial partnerships (registered partnerships, professional partnerships, limited partnerships, and limited joint-stock partnerships), civil partnerships, cooperatives, foundations, and foreign entities with their seat or head office in Poland are obliged to keep accounting records according to the provisions set out in the Act on Accounting 1994 (Act on Accounting, art. 2.1).

104. These entities are obliged to adopt accounting rules that ensure a true and fair presentation of their property and financial position and their financial result (Act on Accounting, art. 4.1). The accounting of these entities must include:

- keeping account books consisting of the records of events regularly entered in chronological order, based on book-keeping vouchers;
- periodical determination or checking of the actual balance of assets and liabilities by means of stocktaking;
- valuation of assets and liabilities, and determination of the financial result;
- preparation of financial statements;
- gathering and keeping of book-keeping vouchers (Act on Accounting, art. 4.3).

105. Account books comprise files of account records, transactions (sums of the records) and balances which constitute a journal, general ledger, subsidiary ledger, a statement of transactions and balances of the general ledger accounts and subsidiary ledger accounts, and a list of component assets and liabilities (Act on Accounting, art. 13.1).

106. Entries in account books must at least: specify the date of business transaction, specify the type and identification number of a book-keeping voucher forming the basis for an entry, and its date if different from the date of transaction, provide a comprehensible transaction narrative, abbreviation or code, as well as a written explanation of the contents of abbreviations or codes, specify the amount and date of entry, and specify the accounts it refers to (Act on Accounting, art. 23.1).

107. The manager of an entity and members of the supervisory board must ensure that financial statements and reports on activities are in compliance with the requirements of the Act on Accounting (Act on Accounting, art. 4a.1). The manager of an entity and members of the supervisory board

are jointly and severally liable to this entity for any damage caused by acts or omissions constituting a breach of this duty (Act on Accounting, art. 4a.2). An entity may entrust another person with the keeping of the account books, but the manager of the entity must ensure that account books along with book-keeping vouchers are accessible for inspection or supervision at the seat or head office of the entity (Act on Accounting, artt. 11 and 11a).

108. Pursuant to article 77 of the Act on Accounting, whoever allows that account books are not kept, are kept in contradiction to the provisions of this Act, or showing incorrect data, is be liable to a fine or a penalty of deprivation of liberty of up to two years, or both penalties together. The same penalties apply if a person allows that financial statements are prepared in a way that is contrary to the provisions of this Act or not at all, or allows that the financial statement contains incorrect data.

109. The Act on Accounting does not apply to natural persons, civil partnerships of natural persons, registered partnerships of natural persons and professional partnerships with revenues not exceeding EUR 1 200 000 (art. 2(1) and NPIT Act, art. 24a(4)). These persons must nonetheless keep accounting records pursuant to the tax obligations.

Tax law

110. Under tax law, all taxpayers are obliged to keep accounting records in a manner which ensures the assessment of the amount of income (or loss), tax base and the tax due for a tax year, and also to include, in respect of tangible and intangible fixed assets, the information necessary to calculate the amount of depreciation write-offs (LPIT Act, art. 9, NPIT Act, art. 24a). Most entities are required to follow the rules of the Act on Accounting regarding the records that must be kept.

111. However, in respect of civil partnerships of natural persons, registered partnerships of natural persons and professional partnerships with revenues not exceeding EUR 1 200 000, the manner in which these accounting records for tax purposes should be kept is further explained in a Regulation issued by the Minister of Finance on 26 August 2003on the Keeping of the Revenue and Expense Ledger. Pursuant to this Regulation, taxpayers must keep a ledger recording the fixed assets and intangible assets, equipment, details of employees' salaries, and any transfer of merchandise indicating the entry sequence number, date of transfer, name of goods and materials and their quantity and value (Minister of Finance Regulation on the Keeping of the Revenue and Expense Ledger, §4).

112. Entries in the ledger must be based on VAT invoices, other evidence confirming that a business operation has been carried out in accordance with its actual course and containing at least the name and address of the parties

involved in the business transaction, the date of issue and the date or period of the business operation, the object of business transaction and its value and quantity, and signatures of the persons involved (Minister of Finance Regulation on the Keeping of the Revenue and Expense Ledger, §12). Failure to maintain a ledger, or maintaining the ledger in an unreliable manner, may lead to the penalty of up to PLN 4 800 000 (EUR 1 148 000) (Penal and Fiscal Code, artt. 60 and 61). [12]

113. Natural persons, civil partnerships of natural persons, registered partnerships of natural persons and professional partnerships that have revenues from business activity of EUR 150 000 or less, may elect to pay tax either on a lump-sum basis or in the form of a tax card (Lump-Sum Income Tax Act, Article 6). In that case, these entities are not subject to the obligations to keep accounting records as described above (NPIT Act, art. 24a(3)(1)). However, pursuant to article 15 of the Lump-Sum Income Tax Act, taxpayers who choose to pay tax on a lump-sum basis are required to keep a register of revenues (which should contain all transactions), a register of tangible and intangible assets, a register of equipment, and must also keep receipts of all purchased goods. These requirements are sufficient to correctly explain all transactions and enable the financial position of the business to be determined; and that information will then allow financial statements to be prepared. The Lump-Sum Income Tax Act provides for sanctions where taxpayers do not keep the registers of revenues or do not keep them in accordance with the conditions required in order to be recognised as evidence in tax proceedings (Lump-Sum Income Tax Act, Article 17).

114. Taxpayers who pay tax in the form of a tax card are exempted altogether from the obligation to keep tax books (Lump-Sum Income Tax Act, art. 24(1)). Such taxpayers are only obliged to keep an employment register if they act as employers in their business activity, and must keep in numerical order copies of the bills and invoices where such bills and invoices have been issued at the request of customers (Lump-Sum Income Tax Act, art. 24). The type of taxpayers who can apply for this form of taxation extends to persons who carry out services activity and manufacturing, food and beverage retail, transportation, entertainment, and others, but not if (part of) their activities are carried out abroad (Lump-Sum Income Tax Act, artt. 23 and 25).

115. The Polish authorities indicated that in 2011 there were 117 911 taxpayers who paid tax in the form of a tax card, representing approximately 0.5% of all Polish taxpayers. These taxpayers are all either natural persons (which are not considered relevant entities or arrangements under the Terms of Reference), civil partnerships of natural persons, registered partnerships of natural persons or professional partnerships with an annual revenue of

12. See footnote 10.

EUR 150 000 or less, and thus small scale businesses. Given the limited scope of the gap, both in terms of proportion of taxpayers and size of business, its practical application and impact on the exchange of information should be reviewed during Poland's Phase 2 review.

Trusts

116. If legal or natural persons act as a trustee of a foreign trust, the income earned by the trust is subject to income tax in the hands of that person, unless they demonstrate that the income should be attributed to another person. Where a legal person acts as a trustee, it will very likely do so by way of business, and this legal person will then be subject to the accounting obligations under both the Act on Accounting and the LPIT Act. Where a natural person (or a civil partnership of natural persons, registered partnership of natural persons or professional partnership) acts as a trustee, he/she will be covered by the accounting obligations under the Act on Accounting where the trust has a revenue exceeding EUR 1 200 000; where the revenues of the trust are below that threshold, the natural person will be required to keep accounting records under tax law, unless he or she chooses to pay tax in the form of a tax card.

Conclusion

117. Relevant entities are generally obliged to keep accounting records that correctly explain all transactions, enable the financial position of the entity to be determined with reasonable accuracy and allow financial statement to be prepared. These obligations are found in the Act on Accounting as well as in tax law. Civil partnerships of natural persons, registered partnerships of natural persons and professional partnerships, as well as natural persons acting as a trustee or trust administrator of a foreign trust with an annual revenue of EUR 150 000 or less are excluded from the obligation to keep accounting records if they choose to pay tax in the form of a tax card. The practical application of this gap and impact on the exchange of information should be reviewed during Poland's Phase 2 review.

Underlying documentation *(ToR A.2.2)*

118. All persons subject to the Act on Accounting are required to keep subsidiary ledger accounts which must include (Act on Accounting, art. 17):

- tangible assets, including tangible assets under construction, intangible fixed assets and related depreciation or amortisation write-offs;
- settlements with contracting parties;

- settlements with employees and, in particular, individual employees' payroll records providing information on the whole employment period;
- sales (numbered issued invoices and other book-keeping vouchers, sufficiently detailed for tax purposes);
- purchases (obtained invoices and other book-keeping vouchers, sufficiently detailed for the valuation of component assets and for tax purposes);
- costs and component assets important for an entity;
- cash transactions, in the case of keeping a cash register.

119. Moreover, entries in the books of account must be based on book-keeping vouchers evidencing execution of business transactions (Act on Accounting, art. 20). Pursuant to article 21 of the Act on Accounting, book-keeping vouchers must, as a minimum, specify the type of transaction, its value, the date, and the date of a book-keeping voucher if different, the parties involved in a transaction (names, addresses), and bear a signature of an issuer of a book-keeping voucher and a person to whom component assets were issued or from whom the assets were received (Act on Accounting, art. 21.1). Book-keeping vouchers must be reliable, that is they must provide a true and fair view of the transaction they document, containing at least the information referred to in Article 21, and be free from counting errors (Act on Accounting, art. 22.1). Book-keeping vouchers and stocktaking documents must be kept by an entity in the original form, in an established order compatible with the method of keeping account books, divided by reporting periods, in a manner enabling them to be found easily (Act on Accounting, art. 73.1).

120. In respect of civil partnerships of natural persons, registered partnerships of natural persons and professional partnerships with revenues not exceeding EUR 1 200 000, which are not subject to the Act on Accounting, the Minister of Finance Regulation on the Keeping of the Revenue and Expense Ledger contains a requirement that records must be kept in a reliable and correct way and must be based on accounting evidences. As such, entries in the ledger must be based on VAT invoices, other evidence confirming that a business operation has been carried out in accordance with its actual course and containing at least the name and address of the parties involved in the business transaction, the date of issue and the date or period of the business operation, the object of the business transaction and its value and quantity, as well as signatures of the persons involved (Minister of Finance Regulation on the Keeping of the Revenue and Expense Ledger, §12).

121. Other accounting documents to be kept are a daily statement of accounting evidence (invoices related to sales), proofs of purchase,

accounting notes drawn up in order to correct the record of the business operation, evidence of transfers, evidence of postal and banking charges, other evidence of payment of charges (Minister of Finance Regulation on the Keeping of the Revenue and Expense Ledger, §13 and §16). Taxpayers with revenues equal to EUR 150 000 or less and who pay tax on a lump-sum basis must keep accounting records in a register and must keep the evidence on which entries are made therein as well as receipts of all purchased goods (Lump-Sum Income Tax Act, art. 15).

122. To sum up, all entities which are required to keep accounting records are also required to keep reliable underlying documentation, either under the Act on Accounting or under tax law.

Document retention *(ToR A.2.3)*

123. All persons falling under the provisions of the Act on Accounting must keep approved financial statements permanently (Act on Accounting, art. 74.1). Account books, book-keeping vouchers and other documentation must be kept for five years from the beginning of the year following the financial year to which they refer (Act on Accounting, art. 74.2 and 74.3).

124. Under tax law (which includes the LPIT Act, the NPIT Act, the Minister of Finance Regulation on the Keeping of the Revenue and Expense Ledger and the Lump-Sum Income Tax Act), accounting records and related documentation must be kept until the end of the taxable period (Tax Ordinance Act, art. 86§1), which is five years from the end of the calendar year in which the tax was due (Tax Ordinance Act, art. 70§1).

Conclusion

125. Under the Act on Accounting, extensive requirements are in place to keep reliable accounting information and underlying documentation for a period of five years or more with regard to limited liability companies, joint-stock companies, partnerships, cooperatives, foundations, and foreign entities with their seat or head office in Poland. These requirements are complemented by the obligation under tax law to (also) keep accounting records for tax purposes. Civil partnerships of natural persons, registered partnerships of natural persons and professional partnerships, as well as natural persons acting as a trustee or trust administrator of a foreign trust, are not subject to any of these requirements if they have a revenue of less than EUR 150 000 a year and choose to pay tax in the form of a tax card. Given the limited scope of the gap, both in terms of proportion of taxpayers and size of business, the practical application of this gap and its impact on the exchange of information should be reviewed during Poland's Phase 2 review.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

A.3. Banking information

Banking information should be available for all account-holders.

126. Banks are regulated by the Banking Act 1997 (BA) setting forth the principles of conducting banking activity, establishment and organisation of banks, branches and agencies of foreign banks and branches of foreign credit institutions (BA, art. 1). Banks operating in Poland must be licensed by the Financial Supervision Commission. They are also obligated institutions under the AML Law (AML Law, art. 2.1(c)).

Record-keeping requirements (ToR A.3.1)

127. When opening a bank account, the client and the bank must conclude a contract in writing, specifying, among other things, the parties, the kind of account opened, the contract duration, and the conditions and procedure for amending the contract (BA, art. 52). When concluding such contract, banks have to undertake costumer due diligence measures, identifying and verifying the client's identity, obtaining information regarding the purpose and nature of the economic relationship, and, on an AML-risk based approach, attempting to understand the ownership structure of the client (AML Law, 8b).

128. As part of the costumer due diligence measures, banks are required to monitor constantly the current economic relationship with a client. This duty includes the surveying of all transactions carried out as well as, if possible, surveying the origins of assets, and constantly updating documents and information in possession of the bank (AML Law, 8b). In addition, banks are generally obliged to register one-off transactions of the equivalent of more than EUR 15 000, regardless of whether the transaction is carried out as a single operation or as several operations if the circumstances indicate linkages (AML Law, art. 8§1). When such one-off transaction is carried out with a client with whom the bank has not previously concluded any agreements, the bank must apply costumer due diligence measures (AML Law, art. 8b§4(3)). If a bank is not able to perform its identification duties, it may not conclude any contract with the client, nor conduct transactions (AML Law, art. 8b(5)).

129. Information obtained as a result of costumer due diligence measures and all transactions must be kept for a period of five years calculated from the first day of the year following the year of the transaction (AML Law, art. 9k).

130. The AML Law imposes penalties on banks and individuals that fail to comply with the customer due diligence and record keeping requirements. Any bank that fails to conduct customer due diligence measures, which includes both the identification of its clients and the surveying of all transactions, or fails to store this information for the required period of time is subject to a penalty not exceeding PLN 750 000 (EUR 180 000) (AML Law, art. 34a). Any person purposefully involved in such failure is subject to imprisonment not exceeding three years. Where his/her involvement is unintentional he/she is subject to a fine (AML Law, art. 35).

131. The Polish authorities have indicated that before the introduction of amendments to the AML Law in 2009, there was the possibility of having anonymous accounts in Poland. Article 19 of the Act of 25 June 2009 (which amended the previous AML Law) clearly stated that any contracts allowing for anonymous accounts to be kept, shall be deemed null and void by law, after 12 months of this act entering into force. That meant that since 22 October 2010 anonymous products do not exist in Poland as the obliged institutions had to perform customer due diligence measures on the owners of anonymous accounts, if such accounts existed.

132. The anonymous accounts that have not been converted to nominal accounts by 22 October 2010 have been deposited in a separate non-interest account, held by the same retail bank. Any owners of former anonymous accounts can claim their funds back indefinitely by presenting to the bank an identity card together with evidence of the ownership of account. Even though the owners cannot use their accounts to perform transactions, they are still entitled to the funds. This leads to the possibility of a physical transfer of the evidence of ownership of the account by holder without getting the transfer recorded in the bank records. The Polish authorities confirmed that the amount of funds deposited in non-interest accounts is approximately EUR 4.5 million. Nevertheless, it is recommended that Poland ensures that all information on the owners of these accounts is available.

Conclusion

133. There are clear legal obligations in place for banks and other financial institutions to maintain records pertaining to all accounts as well as to all related financial and transactional information, except information on former anonymous account may not be available.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to Information

Overview

134. 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 Poland's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information.

135. The Polish competent authority is the Tax Information Exchange Office, within the Ministry of Finance. The competent authority, through the tax administration, has broad powers to gather relevant information from any person in Poland. The competent authority's information gathering powers can be exercised by way of requesting information from the person holding the information and by way of a tax control, which includes entering of the premises, inspect any documents, taking copies thereof, and hearing witnesses. Tax control may also be used where the information has not been provided on request. Penalties can be imposed on any person failing to comply with a request to provide information to the Polish tax authorities.

136. The Polish tax administration can exercise its access powers with regard to all types of information relevant for the administration of the tax laws as well as information needed in order to comply with the provisions of ratified tax treaties.

137. A person who is the subject of an information request need not be notified by the tax authority. Taxpayers do need to be notified of the intention to conduct a tax control, but exceptions to this requirement exist and can be expected to cover cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction.

138. Bank information is protected from disclosure under the Banking Act. This information must nonetheless be divulged upon demand from the Polish tax authorities in order to respond to an EOI request. Professional privilege is extended to tax advisors, preventing the authorities from obtaining information from them in civil tax matters.

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).

139. The Minister of Finance or its authorised representative is Poland's competent authority for international exchange of information. Within the Ministry of Finance, the Minister has delegated the operative role of the competent authority to the Tax Information Exchange Office (TIEO). Accordingly, the TIEO acts as the competent authority in the field of mutual assistance in tax matters and is the point of contact for foreign authorities wishing to request information from Poland.

Bank, ownership, and identity information (ToR B.1.1) and accounting records (ToR B.1.2)

140. The competent authority's powers to access and exchange ownership and accounting information are found in the Tax Ordinance Act 1997 (TOA). Article 82§1 of the TOA provides that, on request from the tax authority, legal persons, organisational units having no legal personality and natural persons carrying on economic activity must collate and furnish (to the tax authority) information "on events resulting from relationships under civil law which may have an influence upon a tax liability arising or upon the amount of tax obligation of the person or organisational units with which a contract was concluded" (TOA, art. 82§1). The tax authority determines the scope of information to be provided as well as the time limits for transmitting it (TOA, art. 82§5).

141. The information that may be requested by the Polish tax authorities is information "on events resulting from relationships under civil law which may have an influence upon a tax liability arising or upon the amount of tax obligation of the person or organisational units with which a contract was concluded". Information can thus be obtained from either the taxpayer itself or a third person with whom "a contract" was concluded. It may be expected that relevant information will always be in the possession of the taxpayer itself or a person with which the taxpayer has concluded a contract (either written or oral), such as the buyer or supplier of goods or services, a bank, and a shareholder of

a company. Accordingly, the Polish authorities confirm that any information that may affect a person's obligations under tax law can be obtained.

142. The power to request information allows the Polish tax authorities to ask information from "legal persons, organisational units having no legal personality and natural persons carrying on economic activity". Economic activity is broadly defined and includes any profit-gaining activity in the fields of production, construction, commerce, and services, use of things and intangible fixed assets as well as any professional activity carried on in an organised and uninterrupted manner (TOA, art. 3(9) and FEA Act, art. 2).

143. However, instead of using the power provided for in article 82§1 of the TOA, the Polish tax authorities indicate that, where information is not readily available in their systems and is not bank information (see paragraph 146 below), they can in any case carry out a "tax control" or take further measures if necessary (such as initiating a "tax proceeding" by issuing a formal ruling, where irregularities have been discovered) in order to verify the fulfilment by a person of duties resulting from provisions of tax law. In that regard the Polish authorities state that they can carry out a tax control on the basis of a request from the foreign tax authorities alone, as this occurrence will normally be sufficient to create a supposition that a person conducted undeclared activities in Poland. During a tax control, which can be carried out on every person resident in Poland and subject to tax liability, the tax authorities can gather records, books, and other material necessary to perform the control by making copies, reproductions, extracts, notes and printouts (see further B.1.4). The information gathered during such investigation may then be exchanged according to article 305a of the TOA.

Conclusion

144. The Polish authorities have two main access powers at their disposal, the power to request information from a person under Article 82§1 of the TOA and the power to carry out a tax control. The power to request information is subject to the conditions that a contract (written or oral) should exist and that, in the case of a natural person, this person must carry out economic activity. These conditions suggest that there may be limits to the use of this power. A tax control can be carried out on the basis of a request from the foreign tax authorities, and is thus not subject to such conditions. Whether the conditions for using the power provided for under Article 82§1 of the TOA limit its use in practice, and whether a tax control can be carried out in all cases where this is necessary in practice, will be examined in the Phase 2 review of Poland.

Specific rules for obtaining information from certain sources

145. Where information must be obtained from entities falling under the Minister of National Defence, the Minister competent for Internal Affairs or the Minister competent for Public Administration, the scope of and procedure for furnishing the information are determined in a regulation issued by the Minister of Finance (TOA, art. 83). This regulation requires that information be provided within 30 days of receiving the request, and that such information be treated as "restricted" in accordance with the regulations regarding classified documents.

146. In some cases, an obligation to furnish information to the tax authorities on a spontaneous or automatic basis exists. This is the case in respect of certain contracts, certain information on bank accounts, and, information in the hands of courts, court executive officers, and notaries resulting from legal events which may cause a tax obligation to arise (TOA, artt. 82§1(2), 82§2 and 84).

147. Finally, a specific provision exists for collecting information from banks and financial institutions for EOI purposes, under which banks, cooperative savings and credit funds, and other financial institutions are obliged to provide information upon demand by the Polish authorities, pursuant to an EOI request by a partner jurisdiction, and within the scope and rules set out in the TOA (TOA, art. 82§3).

148. The powers of the competent authority to actually exchange information with other authorities are found in article 305a of the TOA. Pursuant to this article, the competent authority of Poland may furnish the information included in records of tax cases or other tax information to the competent authorities of partner jurisdictions, provided that such information will be used in compliance with the principles set out in such agreements.

Specific rules in relation to EU member states and where bank information must be obtained

149. Chapter 2 of section VII of the TOA (artt. 305b-305m) lays out detailed rules for the exchange of information with EU member states. These rules have been introduced in the process of implementing the EU *Council Directive 77/799/EEC* concerning mutual assistance by the competent authorities of the Member States of the EU in the field of direct taxation and taxation of insurance premiums, but they are not limited to exchange of information under this instrument, meaning that they also apply where another EU member state sends an information exchange request under a Double Taxation Convention. In addition, the rules apply where information must be obtained from a bank or other financial institution, regardless of whether the requesting jurisdiction is an EU member state (TOA, art. 82§3). Most of the rules relate to the procedures regarding how the Polish tax authorities should handle an information request and are in accordance with the international

standard. Article 305e of the TOA indicates that a request for information from another jurisdiction should include:

- identification data concerning the subject the information is to refer to: surname or name (business name), address and other particulars, necessary for the identification of the subject the request refers to;
- an indication of the scope of requested information and purpose for its use;
- a statement that all attempts have already been made to obtain the information under national law provisions of the state submitting a request; and
- confirmation that an obligation exists to keep the information furnished secret, in accordance with the national law provisions of the state submitting a request.

150. In relation to these requirements, the Polish authorities have indicated that they are used as an internal directive to indicate the information that is normally expected to be included in an information request. The requirements are not meant to set conditions to be met by the requesting party in case of submitting a request for information. According to the Polish authorities, this interpretation is supported by the use of the words "should include" instead of "shall include". An information request cannot be refused simply because one of the elements mentioned in Article 305e of the TOA is not included in the information request.

151. It is determined on a case-by-case basis whether the information included in the request is sufficient to demonstrate the foreseeable relevance and to obtain and provide the information. If the information provided by the requesting competent authority is considered sufficient in this regard, the Polish authorities will provide the information even if not all of the elements mentioned in Article 305e of the TOA are included in the request. If the information is considered to be not sufficient to furnish the information, the competent authority of Poland requests further information from the foreign competent authority (TOA, art. 305g§1). Where additional information is not provided by the requesting state or where it is still not sufficient, the Polish authorities will refuse the request (TOA, art. 305g§2). How the combination of articles 305e and 305g of the TOA are applied in practice, will be examined in the Phase 2 review of Poland.

152. Article 305h of the TOA contains the grounds for refusing an information request of another EU member state or where the request concerns bank information. Information shall be refused if:

- there is a justified suspicion that the foreign authority has not made

use of all the opportunities to obtain the requested information under the national law provisions;

- a tax authority or fiscal control authority does not have the rights to obtain the requested information;
- separate provisions or ratified international agreements make it impossible for the state submitting the request to furnish the requested information or use them for the purposes indicated in such request;
- furnishing of such information leads to disclosing a business secret of an enterprise, industrial or professional secret or secret of a production process;
- furnishing of such information violates the public order of the Republic of Poland;
- the state submitting the request is unable to furnish information of a similar nature;
- national law provisions of the state submitting the request do not ensure that the information is kept secret under the same principles as those applied to the information obtained by virtue of the national law provisions of the said state.

153. These grounds are drawn from the Model TIEA and its Commentary and also include the principle of reciprocity.

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

154. 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.

155. The access powers provided for in Article 82 of the TOA do not specifically refer to them being used to obtain information for exchange purposes. However, Article 2(1)(4) of the TOA states that the provisions of the TOA apply to cases covered by the "provisions of tax law" belonging to the competence of the tax authorities. "Provisions of tax law" is defined to specifically include the provisions of any tax-related agreement (including DTCs and TIEAs) ratified by Poland (TOA, art. 3(2)). Accordingly, Poland's tax administration does not need to have a domestic tax interest in the information sought to activate its information gathering measures.

156. In addition, Article 305a of the TOA specifically provides the power to actually exchange information to the authorities of another jurisdiction, as long as this falls within the scope of an international agreement to which

Poland is a party. The information to be exchanged can be information already in the possession of the tax authorities or information obtained for exchange purposes.

Compulsory powers (ToR B.1.4)

157. The Penal and Fiscal Code provides for penalties in case a person does not comply with article 82 by furnishing to the tax authority the requested information. Article 80 of the Penal and Fiscal Code establishes general penalties when, contrary to the obligation, a person fails to submit the required tax information to a competent authority within the deadline. The penalty is a fine ranging from PLN 500 to PLN 2 400 000 (from EUR 120 to EUR 574 000).

158. The Polish tax administration can carry out a "tax control" in order to verify the fulfilment by a person of duties resulting from provisions of tax law. Such duties include the furnishing of information under article 82§1 of the TOA (TOA, art. 281). Taxpayers, tax remitters, tax collectors and legal successors can be subject to a tax control (TOA, art. 281§1), which, by definition of the term taxpayer found in the TOA, includes every person subject to tax liability which is resident in Poland (TOA, art. 7). The powers to which the tax authority is entitled while conducting a tax control include (i) entering the areas, buildings, premises or other room of the controlled person, (ii) gathering records, books, and other material necessary to perform the control by making copies, reproductions, extracts, notes, printouts, and (iii) hear witnesses, the person under control, and certain other persons (TOA, artt. 286§1 and 287§4). The tax administration can also access the residential premises of the party under control with written authorisation from the district public prosecutor (TOA, art. 288§2).

159. The tax authority may also enforce a tax control by resorting to the Police, Frontier Guard or the city (*gmina*) guard in case it encounters resistance (TOA, art. 286a).

Secrecy provisions (ToR B.1.5)

Bank secrecy

160. Confidentiality of bank information is protected under article 104 of the Banking Act (BA) and covers all information concerning banking operations obtained in the course of negotiations, and during the conclusion and performance of the contract on the basis of which the bank performs operations. This obligation encompasses banks, persons employed therein, as well as persons through whom the bank performs banking operations.

161. Various exceptions exist to the obligation to keep bank information confidential. Article 105§3(2) of the BA states that the scope of and rules for disclosing information held by banks to tax authorities are regulated by separate acts. As mentioned above (B.1.1 and B.1.2), bank information must be provided upon demand by the Polish tax authorities in order to respond to an EOI request (TOA, art. 82§3). This specific obligation in connection with the reference in the BA ensures that bank secrecy does not form an impediment to the effective exchange of information by Poland.

Professional secrecy

162. Rules for providing legal assistance services by attorneys as well as legal advisers are stipulated in the Law on Barristers, 1982 and the Act on Legal Advisers 1982. Both laws contain provisions on maintaining professional secrecy in respect of facts and information gathered or learned by attorneys or legal advisers in connection with providing services to their clients.

163. Article 6 of the Law on Barristers and article 3 of the Law on Legal Advisers stipulate that barristers and legal advisers are obliged to maintain secret indefinitely everything they have learned in the course of providing legal assistance. The duty to maintain professional secrecy regarding facts that barristers and legal advisers have learned in the course of providing legal assistance or whilst running a case cannot be lifted (Law on Barristers, art. 6(3)). While the legal adviser's profession generally consists of rendering legal assistance, the professional activities of a barrister include giving legal advice, drafting legal opinions, *preparing drafts of legal acts* and acting before courts and administrative authorities (Law on Barristers, art. 4).

164. According to Article 7(3) of the OECD Model TIEA, confidential information between a client and an attorney is considered as privileged only if such communication is "produced for the purposes of seeking or providing legal advice, or use in existing or contemplated legal proceedings."[13] Although the activities of barristers are generally restricted to the activities foreseen under the international standard, they do include the "preparing of legal drafts", which would include company articles and other documents that may not usually be covered by professional secrecy. In that regard, the scope of professional secrecy goes beyond the international standard.

165. The Polish authorities indicate that, although the Law on Barristers covers as secret "everything" learned in the course of providing legal assistance, the fact that a legal act is prepared by a barrister does not mean that

13. See OECD Model TIEA, art. 7(3) and its Commentary. See also OECD Model Taxation Convention, art. 26(3) and its Commentary.

this act is covered by professional secrecy. Moreover, it should be noted that most of the information related to the preparation of legal acts seems to be in connection with drawing up official documents, of which it is likely that they are available in public registers or otherwise could not be considered confidential. Nevertheless, it is recommended that Poland amend its legislation to ensure that the broader scope of professional privilege applying to barristers and legal advisers does not constitute a limitation to the powers of the Polish tax administration to collect information subject to an EOI request which is held by such persons. Whether the current scope of the attorney-client privilege forms an impediment to the effective exchange of information will be further examined in the Phase 2 review of Poland.

166. The Act on Tax Advisory Services establishes that a tax advisor, as well as individuals employed by a tax adviser and entities having right to perform tax consulting services, is required to maintain professional secrecy with respect to all facts and information of which they have become aware in connection with providing professional services (art. 37§1). This confidentiality obligation is not limited in time (*ib.*art. 37§1a). Professional secrecy cannot be invoked in respect of information disclosed pursuant to the AML Law. In addition, tax advisors cannot decline to provide information covered by professional privilege in respect to criminal tax matters, when summoned by a court as witnesses in a criminal proceeding (Act on Tax Advisory Services, art. 37§2 and Code of Criminal Proceedings, art. 180§2). Thus, the ability of the Polish tax authority to obtain information held by tax advisors that is covered by professional secrecy is restricted to criminal cases. This constitutes a limitation on the powers of the Polish competent authority to obtain and exchange privileged information held by tax advisors. It is recommended that Poland amend its legislation to ensure that its competent authority has the power to obtain and exchange all information held by tax advisors.

167. With respect to the exchange of information to other EU member states and where information must be obtained from a bank, it is specifically stated that the Polish competent authority can refuse to furnish information to a partner jurisdiction where furnishing such information would lead to disclosing a business secret of an enterprise, industrial or professional secret or secret of a production process (TOA, art. 305h(4-5)). These grounds for refusal are similar to those included in Article 26(3)(c) of the OECD Model Tax Convention and Article 7(2) of the Model TIEA.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
Professional privilege is extended to tax advisors, preventing the authorities from obtaining information from them in civil tax matters.	Poland should ensure that domestic provisions on professional privileges allow exchange of information in line with the standard.

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)

168. The *Terms of Reference* provides that 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).

169. There is no requirement in Poland's domestic legislation that the taxpayer under investigation or examination must be notified of a request. In addition, no other legal rights or safeguards, such as a right to appeal the exchange of information, exist that would unduly prevent or delay effective exchange of information.

170. Nonetheless, when the Polish tax administration carries out a tax control because a person has not provided information to the authorities upon request, it must notify the person subject to this control of the intention to initiate the tax control (TOA, art. 282b§1). The tax control should then be carried out between seven and thirty days after the notification (TOA, art. 282b§2). Exceptions to such notification are provided for in article 282c of the TOA, which, among others, include cases where such control:

- is to be initiated on demand of the authority conducting the preparatory proceedings in the case of an offence or fiscal offence;
- is related to taxation of revenues not justified by the revealed sources or revenues from unrevealed sources; or
- is related to economic activity not declared for taxation.

171. These exceptions appear to be extensive, as they cover cases where a person has committed an offence or not declared parts of their income. As such, the exceptions can be expected to cover cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. In any case, it is reiterated that notification is not required if the Polish authorities use their "regular" access powers (see B.1.1), which would need to be used before carrying out a tax control.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging Information

Overview

172. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Poland, the legal authority to exchange information is derived from its EOI agreements as well as from domestic law. This section of the report examines whether Poland has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

173. Poland's network of exchange of information agreements covers 98 jurisdictions, including all its major trading partners (Germany, France, United Kingdom, China and Russia). Poland exchanges information under DTCs, TIEAs, the *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters* and EU instruments. Its DTCs and TIEAs generally contain provisions enabling Poland to exchange all relevant information.

174. The confidentiality of information exchanged with Poland is protected by obligations included in the information exchange agreements, complemented by domestic legislation which provides that tax officials must keep information secret and confidential. Breach of this confidentiality obligation may lead to the tax officials concerned being fined or imprisoned.

175. Poland's EOI agreements ensure that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. However, as noted in part B of this report, tax advisors are also covered by professional privilege, which is not in accordance with the international standard.

176. There appears to be no legal restriction on the ability of Poland's competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

C.1. Exchange-of-information mechanisms

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

177. Thus far, Poland has concluded 92 bilateral EOI agreements (7 TIEAs and 85 DTCs), of which 83 are in force. This section of the report explores whether these agreements allow Poland to effectively exchange information.

178. In addition to its bilateral agreements, on 19 March 1996 Poland signed the *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters*, and on 9 July 2010 the Amending Protocol, under which information can be exchanged according to the international standard with 6 jurisdictions[14] with which Poland does not have a bilateral agreement, provided that the domestic laws of the relevant jurisdictions do not impose any restrictions. This Convention was ratified by Poland in June 2011 and entered into force for Poland on 1 October 2011.

179. As an EU member state, Poland also exchanges tax information under various other multilateral mechanisms, including:

- *Council Directive 2011/16/EU* of 15 February 2011 on administrative cooperation in the field of taxation, replacing *Council Directive 77/799/EEC* concerning mutual assistance by the competent authorities of the Member States of the EU in the field of direct taxation and taxation of insurance premiums.
- *Council Directive 2003/48/EC* of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.
- *Council Regulation (EU) 904/2010* of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

180. When more than one legal instrument may serve as the basis for exchange of information – for example where there is a bilateral agreement with an EU member state which also applies *Council Directive 2011/16/EU* – the problem of overlap is generally addressed within the instruments themselves. There are no domestic rules in Poland requiring it to choose between mechanisms where it has more than one agreement involving a particular

14. These jurisdictions are: Argentina, Brazil, Colombia, Costa Rica, Ghana, and South Africa.

partner and thus the competent authority is free to invoke all of the available mechanisms or to choose the most appropriate one.

Foreseeably relevant standard (ToR C.1.1)

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

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

182. Poland's DTCs are generally based on the OECD *Model Taxation Convention* and its Commentary with regard to the scope of information that can be exchanged. The DTCs concluded or amended after 2004 therefore mostly adopt the "foreseeably relevant" standard (Canada, Cyprus,[15] Czech Republic, Denmark, Finland, Luxembourg, Malta, New Zealand, Norway, Saudi Arabia, Sweden, Switzerland and the United Kingdom). The other DTCs use the term "necessary" or "relevant" in lieu of "foreseeably relevant". The Commentary to Article 26(1) of the OECD Model Tax Convention refers to the standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably

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

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

relevant" with "necessary". Poland's authorities state that they interpret these alternative formulations as equivalent to the term "foreseeably relevant".

183. In four cases, the DTCs do not meet the foreseeably relevant standard. In two of these cases (Kuwait and United Arab Emirates), the scope of the exchange of information is limited to the provisions of the DTC. In addition, the DTCs with Malaysia and Pakistan limit the exchange of information only to cases that concern tax fraud. It is recommended that Poland update these DTCs to remove these limitations.

184. The TIEAs signed by Poland generally meet the "foreseeably relevant" standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA.

In respect of all persons (ToR C.1.2)

185. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is 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.

186. Most of Poland's DTCs specifically include a provision which extends the scope of the exchange of information Article to persons other than residents of one of the Contracting States. DTCs applicable to 29 jurisdictions limit the application of the treaty to residents of the contracting States (Azerbaijan, Belarus, Bosnia and Herzegovina,[16] Cyprus, Former Yugoslav Republic of Macedonia, France, Greece, India, Israel, Japan, Kuwait, Malaysia, Montenegro,[17] Morocco, Pakistan, Philippines, Russia, Singapore, Spain, Sri Lanka, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United States, Uzbekistan, Zambia, Zimbabwe). However, these DTCs do provide for the exchange of information as is necessary for carrying out the provisions of the domestic laws of the Contracting States. As Poland's domestic laws are applicable to non-residents as well as to residents, under these agreements information can be exchanged in respect of all persons. There is nonetheless one exception.

187. In the case of the DTC with Russia, its Phase 1 Peer Review concluded that Russia interprets the absence of an explicit extension to persons not covered in the convention as limiting the scope only to persons who are residents of one or both Contracting States. As such, this agreement is not in

16. Agreement signed with Yugoslavia.
17. Agreement signed with Yugoslavia.

line with the international standard. However, Poland and Russia are signatory to the *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters*, which will enable these jurisdictions to exchange information to the standard once it is in force for both jurisdictions (it is already in force for Poland).

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

188. 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. The OECD *Model Taxation Convention* stipulates 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.

189. Twelve of Poland's DTCs include provisions corresponding to Article 26(5) of the OECD *Model Taxation Convention*, which provides that a contracting party may not 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 (Canada, Cyprus, Czech Republic, Denmark, Finland, Malta, New Zealand, Norway, Saudi Arabia, Sweden, Switzerland, United Kingdom). Poland's other DTCs do not include such a provision. However, the absence of this provision does not automatically create restrictions on the exchange of information held by banks, other financial institutions, nominees, agents and fiduciaries, as well as ownership information. The Commentary to Article 26(5) indicates that while paragraph 5 represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. Poland's domestic laws allow it to access and exchange the information covered by Article 26(5) even in the absence of such provision in the DTC.

190. At least three of Poland's treaty partners (Austria, Lebanon and Malaysia) currently have restrictions in accessing bank information in the absence of a provision corresponding to Article 26(5) of the OECD Model Tax Convention, which limits the effective exchange of information under these DTCs. Such restrictions may also exist in other jurisdictions with which Poland has concluded a DTC. It is recommended that Poland update its DTCs with relevant partners to remove this limitation.

191. All TIEAs concluded by Poland include a provision that mirrors Article 5(4) of the OECD Model TIEA, providing for the exchange of

information held by banks, other financial institutions, nominees, agents, fiduciaries, as well as ownership and identity information.

Absence of domestic tax interest (ToR C.1.4)

192. 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. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

193. Poland's DTCs with Canada, Chile, Cyprus, Czech Republic, Denmark, Finland, Malta, New Zealand, Norway, Saudi Arabia, Sweden, Switzerland and the United Kingdom[18] incorporate wording in line with Article 26(4) of the OECD *Model Taxation Convention*, obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. Poland's other DTCs do not contain such a provision. However, the absence of this provision does not automatically create restrictions on the exchange of information. The Commentary to Article 26(4) indicates that paragraph 4 was introduced to express an explicit obligation to exchange information also in situations where the requested information is not needed by the requested State for domestic tax purposes. No domestic tax interest restrictions exist in Poland's laws even in the absence of a provision corresponding with Article 26(4) of the OECD *Model Tax Convention*.

194. A domestic tax interest requirement may however exist for some of Poland's treaty partners, although no such treaty partners have currently been identified in other peer review reports of the Global Forum. It is recommended that Poland monitor effective exchange of information with such treaty partners and, if necessary, renegotiate its older DTCs to incorporate wording in line with Article 26(4) of the OECD *Model Taxation Convention*.

195. Poland's TIEAs include a provision that mirrors Article 5(2) of the OECD Model TIEA, allowing for information to be obtained and exchanged notwithstanding it is not required for any domestic tax purpose.

18. Protocols to DTCs with Cyprus and the new DTC with Canada have not entered into force yet.

Absence of dual criminality principles (ToR C.1.5)

196. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an 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.

197. None of the information exchange agreements concluded by Poland applies the dual criminality principle to restrict the exchange of information.

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

198. 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").

199. Most of the information exchange agreements concluded by Poland cover both civil and criminal tax matters. The DTCs with Malaysia and Pakistan limit the exchange of information only to cases of fraud, which is regarded a criminal tax matter in Poland. It is recommended that Poland update these DTCs to remove this limitation.

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

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

201. No restrictions apply in any information exchange agreement concluded by Poland for information to be provided in the specific form requested. The TIEAs concluded by Poland and the DTCs concluded with Chile and the United States specifically state that information shall be provided in the form of depositions of witnesses or authenticated copies of original records, to the extent possible under the domestic laws of the requested State.

In force *(ToR C.1.8)*

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

203. International agreements are ratified by vote of the Lower Chamber (*Sejm*) and the Senate, followed by ratification by the President and publication in the Journal of Laws. Of the 92 information exchange agreements concluded by Poland, 14 are not in force (with Algeria, Andorra, Canada (new DTC), Cyprus (protocol), Dominica Grenada, Iceland (Protocol) Luxembourg (protocol), Nigeria, Saudi Arabia, San Marino, Singapore (new DTC), Uruguay and Zambia). Poland has completed all internal procedures and notified its treaty partners of the completion of the ratification procedure in respect of the agreement with Saudi Arabia. However, the other 13 agreements still need to be approved by the Lower Chamber and the Senate. The DTCs with Algeria, Nigeria, Uruguay, and Zambia have been signed more than ten years ago and ratification is no longer pursued. All of the other agreements, with the exception of the ones with Malta and Switzerland, have been signed less than one year ago.

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

204. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

205. Pursuant to articles 87 and 91 of the Constitution, ratified international agreements are binding and apply directly after their promulgation in the Journal of Laws (*Dziennik Ustaw*), unless their application depends on the enactment of a statute. In case of conflict between a statute (domestic law) and a ratified agreement, the agreement prevails.

206. Poland's legal and regulatory framework ensures that the authorities can access and provide information under its information exchange agreements.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

207. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

208. Poland has exchange of information agreements with 98 jurisdictions, of which 85 are through a DTC and 7 through a TIEA. In addition, the *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters* covers 43 jurisdictions, 6 of which Poland does not have a bilateral agreement with. The exchange of information relationships cover jurisdictions representing:

- all of its main trading partners (Germany, Russia, China, France, United Kingdom);
- all of the G20 member jurisdictions; and
- 71 of the Global Forum member jurisdictions.

209. It is noted that the DTC with Russia only allows for the exchange of information in respect of residents of one of the contracting parties. However, Poland and Russia are signatory to the *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters*, which will enable these jurisdictions to exchange information to the standard once it is in force for both jurisdictions (it is already in force for Poland).

210. 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 Poland had refused to negotiate or conclude an information exchange agreement with it. In summary, Poland's network of information exchange agreements covers all relevant partners.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Poland should continue to develop its exchange of information network with all relevant partners.

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)*

211. 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.

212. All of the agreements for the exchange of information concluded by Poland contain a provision ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received, which has to be respected by Poland as a party to these agreements. In fact, the confidentiality provisions of Poland's information exchange agreements can be applied directly according to article 91 of the Constitution.

213. The confidentiality provisions of Poland's information exchange agreements are backed by general confidentiality provisions in Poland's domestic tax legislation. The Tax Ordinance Act (TOA) provides that individual particulars included in a tax return or other documents filed by taxpayers, tax remitters, or tax collectors as well as information received by the tax authorities other than from those sources shall constitute a fiscal secret (TOA, art. 293). Fiscal secrecy applies indefinitely to, among others, tax officials, who must file a written promise as to keeping fiscal secrecy, and other persons to whom the information under fiscal secrecy was made

available (TOA, art. 294). Unduly disclosure of information regarded as a fiscal secret constitutes criminal liability, punished with imprisonment of the liable person up to five years (TOA, art. 306).

214. With regard to information received by European Union Member States in connection with requests for assistance, Poland's legislation specifically allows the Polish competent authority to refuse a request for assistance where the law of the jurisdiction submitting the request does not ensure that the information is kept secret under the same principles as those applied to the information obtained by virtue of the national law provisions of the said jurisdiction (TOA, art. 305h(7)). This rule follows the general principle of reciprocity.

215. A specific provision is included in the TOA (art. 297a) providing that information received from European Union Member States may be disclosed to other Polish authorities. Such other authorities include the Minister for Public Finance, heads of revenue offices or customs offices, the General Inspector of Financial Information (under the provisions on counteracting money laundering and the financing of terrorism), and the General Prosecutor (TOA, art. 297). Information can be disclosed to such other authorities in the case where the proceedings pending before the said authority or actions performed by the said authority are "connected with the correct assessment of tax bases and amount of tax obligation or other due payments which may be vindicated upon request of a foreign state" (TOA, art. 297a). Although it is not clear when an action by an authority other than the tax authorities is connected to tax, it must be remembered that international agreements ratified by Poland apply directly and prevail over domestic legislation in case of conflict (Constitution, art. 91). As such, the confidentiality provisions found in the exchange of information agreements will override any statutory provisions to the contrary, and information should only be disclosed to those foreseen in the respective information exchange agreement. The extent to which information obtained from other EU member states is disclosed to authorities other than the tax authorities in cases where this is not allowed under an EOI agreement, will be assessed in Poland's Phase 2 review.

All other information exchanged (ToR C.3.2)

216. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, background documents to such requests, and any other documents or communications reflecting such information. In this regard it is noted that the confidentiality provisions and related penalties in the TOA as described under C.3.1 apply to any information received from a treaty partner.

217. It is specifically provided for that Poland's tax authorities can make accessible the information contained in records of tax cases to EOI partner jurisdictions within the scope and according to the principles established in the information exchange agreements (TOA, art. 299).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

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

218. 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 secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by legal professional privilege.

219. The limits on information which must be exchanged under Poland's DTCs and TIEAs mirror those provided for under the international standard.

220. The term "professional secret" is not defined in the DTCs and according to the definition provisions of the DTCs (see Article 3(2) of the *Model Taxation Convention*), this term would derive its meaning from the partner jurisdictions' domestic laws. As noted in part B of this report, tax advisors are also covered by professional privilege, which is not in accordance with the international standard.

221. In respect of rights and safeguards of persons, the OECD Model TIEA provides that they remain applicable "to the extent that they do not unduly prevent or delay effective exchange of information". In relation to this, Poland's TIEA with Dominica provides that the requested party "shall use its best endeavours" to ensure that taxpayers' rights and safeguards do not so unduly prevent or delay effective EOI. This appears to give greater leeway to the parties than the text of the OECD Model TIEA. While it is unlikely that this variation will materially affect the effectiveness of EOI, it will be further reviewed in the Phase 2 Review of Poland.

222. In relation to exchange of information with other EU member states, and where bank information must be exchanged, a specific provision applies allowing the Polish competent authority to refuse to furnish information to a partner jurisdiction where furnishing such information would lead to disclosing a business secret of an enterprise, industrial or professional secret or secret of a production process (TOA, art. 305h(4)).

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
Professional privilege is extended to tax advisors under Poland's domestic law, which is not in accordance with the international standard.	Poland should ensure that the scope of professional privilege is in line with the international standard.

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)*

223. 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 cooperation as cases in this area must be of sufficient importance to warrant making a request.

224. Poland's DTC do not regulate the timeliness of the response to an EOI request. Nonetheless, there are no specific legal or regulatory requirements in place which would prevent Poland from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

225. Poland's TIEAs generally require the requested party to respond to a request within the timeframes provided for in Article 5(6) of the OECD Model TIEA. These compel the competent authority of the requested party to immediately inform the applicant party when it has been unable to obtain or provide the information within 90 days of receipt of the request, including

if it encounters obstacles in furnishing the information or it refuses to furnish this information. It is noted that the TIEA with Andorra extends this timeframe to 120 days. However, as regards the timeliness of responses to requests for information the assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

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

226. The Minister of Finance or its authorised representative, being the Tax Information Exchange Office, is the competent authority of Poland for exchange of information purposes. A review of Poland's organisational process and resources will be conducted in the context of its Phase 2 review.

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

227. There are no laws or regulatory practices in Poland that impose restrictive conditions on exchange of information. However, the assessment team is not in a position to evaluate whether this aspect is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The element is not in place.	Foreign companies having their place of effective management in Poland are not obliged to maintain ownership information in all circumstances.	Poland should require foreign companies having their place of effective management in Poland to maintain information on their ownership.
	Bearer shares may be issued by JSCs and LJSPs, and mechanisms to ensure that the owners of such shares can be identified are not systematically in place for all bearer shares.	Poland should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
	Polish law does not ensure that information is available identifying the settlors, trustees and beneficiaries of a foreign trust with a Polish trustee.	Poland should ensure that information identifying the settlors, trustees and beneficiaries of foreign trusts, which are administered in Poland or in respect of which a trustee is resident in Poland, is available to its competent authority.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The element is in place.		
Banking information should be available for all account-holders *(ToR A.3)*		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The element is in place.	Professional privilege is extended to tax advisors, preventing the authorities from obtaining information from them in civil tax matters.	Poland should ensure that domestic provisions on professional privileges allow exchange of information in line with the standard.
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)*		
The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
The element is in place.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The element is in place.		Poland should continue to develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received*(ToR C.3)*		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The element is in place.	Professional privilege is extended to tax advisors under Poland's domestic laws, which is not in accordance with the international standard.	Poland should ensure that the scope of professional privilege is in line with the international standard.

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's Response to the Review Report[19]

Poland would like to reiterate its commitment to the principles of international cooperation and exchange of information in tax matters.

We appreciate the work that has been done so far during the Peer Review process and note the positive outcome of the Phase 1 report on the Polish EOI legal system.

We would also like to thank the Peer Review Group members and the assessment team for all the engagement and a constructive discussion on the report.

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

Annex 2: List of All Exchange-of-Information Mechanisms in Force

EU regulations and multilateral agreements

Poland exchanges tax information under:

- *EU Council Directive 2011/16/EU* of 15 February 2011 on administrative co-operation in the field of taxation. This Directive is in force since 11 March 2011. It repeals Council Directive 77/799/EEC of 19 December 1977 and provides *inter alia* for exchange of banking information on request for taxable periods after 31 December 2010 (Article 18). All EU members are required to transpose it into national legislation by 1 January 2013. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom;
- *EU Council Directive 2003/48/EC* of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states; and
- *EU Council Regulation 904/2010* of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

Multilateral agreement

Poland is a signatory to the multilateral *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters*. The status of the multilateral Convention and its amending 2010 Protocol as at January 2013 is set out in the table below.[20] When two or more arrangements for the exchange of information for tax purposes exist between Poland and a treaty partner, the parties may choose the most appropriate agreement under which to exchange the information.

Bilateral Mechanisms

Poland has signed a number of information exchange agreements (TIEA) and tax treaties (DTC).

Table of EOI instruments

The table below contains the list of jurisdictions with whom Poland is linked by an EOI instrument as of January 2013. For jurisdictions with which Poland has several agreements, a reference to all those EOI instruments is made.

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
1	Albania	DTC	05-03-1993	01-01-1995
2	Algeria	DTC	31-01-2000	
3	Andorra	TIEA	15-06-2012	
1	Argentina	Multilateral Convention	Signed	01-01-2013
4	Armenia	DTC	14-07-1999	01-01-2006
5	Australia	DTC	07-05-1991	01-01-1993
		Multilateral Convention	Signed	01-12-2012
6	Austria	DTC	13-01-2004	01-01-2006
8	Azerbaijan	DTC	26-08-1997	01-01-2006
		Non-amended Multilateral Convention	Signed	01-10-2004
9	Bangladesh	DTC	08-07-1997	01-01-2000
10	Belgium	DTC	20-08-2001	01-01-2005
		Multilateral Convention	Signed	01-12-2000 (Protocol not yet in force in Belgium)

20. The updated table is available at *www.oecd.org/document/14/0,3746,en_2649_33767_2489998_1_1_1_1,00.html.*

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
11	Belarus	DTC	18-11-1992	01-01-1994
12	Bosnia and Herzegovina	DTC	10-01-1985	01-01-1986
13	Brazil	Multilateral Convention	signed	Not yet in force in Brazil
14	Bulgaria	DTC	11-04-1994	01-01-1996
15	Canada	DTC	04-05-1987	01-01-1989
		DTC	15-05-2012	
		Multilateral Convention	Signed	Not yet in force in Canada
16	Chile	DTC	10-03-2000	01-01-2004
17	China	DTC	07-06-1988	01-01-1990
18	Colombia	Multilateral Convention	Signed	Not yet in force in Colombia
19	Costa Rica	Multilateral Convention	Signed	Not yet in force in Costa Rica
20	Croatia	DTC	19-10-1994	01-01-1997
21	Cyprus	DTC	04-06-1992	01-01-1992
		PROTOCOL	22-03-2012	
22	Czech Republic	DTC	24-06-1993	20-12-1993
		DTC	30-09-2011	11-06-2012
		Multilateral Convention	Signed	Not yet in force in the Czech Rep.
23	Denmark	DTC	06-12-2001	01-01-2003
		Multilateral Convention	Signed	01-02-2012
24	Dominica	TIEA	10-07-2012	
25	Egypt	DTC	24-06-1996	01-01-2002
26	Estonia	DTC	09-05-1994	01-01-1995
27	Finland	DTC	08-06-2009	01-01-2011
		Multilateral Convention	Signed	01-02-2012 (non amended in force since 1 Nov 1996)
28	FYROM	DTC	28-11-1996	17-12-1999
29	France	DTC	20-06-1975	01-01-1974
		Multilateral Convention	Signed	01-04-2012 (non amended in force since 01-09-2005)

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
30	Georgia	DTC	05-11-1999	16-06-2006
		Multilateral Convention	Signed	01-02-2012
31	Germany	DTC	14-05-2003	01-01-2005
		Multilateral Convention	Signed	Not yet in force in Germany
32	Ghana	Multilateral Convention	Signed	Not yet in force in Ghana
33	Greece	DTC	20-11-1987	01-01-1992
		Multilateral Convention	Signed	Not yet in force in Greece
34	Grenada	TIEA	18-07-2012	
35	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala
36	Guernsey	TIEA	06-12-2011	01-11-2012
37	Hungary	DTC	23-09-1992	01-01-1996
38	Iceland	DTC	19-06-1998	01-01-2000
		Multilateral Convention	Signed	01-02-2012 (non amended in force since 01-11-1996)
39	India	DTC	21-06-1989	01-01-1990
		Multilateral Convention	Signed	1 June 2012
40	Indonesia	DTC	06-10-1992	01-01-1994
		Multilateral Convention	Signed	Not yet in force in Indonesia
41	Iran	DTC	02-10-1998	01-01-2007
42	Ireland	DTC	13-11-1995	01-01-1996
		Multilateral Convention	Signed	Not yet in force in Ireland
43	Isle of Man	TIEA	07-03-2011	27-11-2011
44	Israel	DTC	22-05-1991	01-01-1992
45	Italy	DTC	21-06-1985	26-09-1989
		Multilateral Convention	Signed	01-05-2012
46	Japan	DTC	20-02-1980	01-01-1983
		Multilateral Convention	Signed	Not yet in force in Japan
47	Jersey	TIEA	2-12-2011	01-11-2012
48	Jordan	DTC	04-10-1997	01-01-2000
49	Kazakhstan	DTC	21-09-1994	01-06-1995

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
50	Republic of Korea	DTC	21-06-1991	01-01-1991
		Multilateral Convention	Signed	01-07-2012
51	Kyrgyzstan	DTC	19-11-1998	01-09-2004
52	Kuwait	DTC	16-11-1996	01-01-1996
53	Latvia	DTC	17-11-1993	01-01-1995
54	Lebanon	DTC	26-07-1999	01-01-2004
55	Lithuania	DTC	20-01-1994	01-01-1995
56	Luxembourg	DTC	14-06-1995	01-01-1997
		PROTOCOL	07-06-2012	
57	Malaysia	DTC	16-09-1977	01-01-1977
58	Malta	DTC	07-01-1994	01-01-1995
		PROTOCOL	06-04-2011	
		Multilateral Convention	Signed	Not yet in force in Malta
59	Mexico	DTC	30-11-1998	01-01-2003
		Multilateral Convention	Signed	01-09-2012
60	Moldova	DTC	16-11-1994	01-01-1996
		Multilateral Convention	Signed	01-03-2012
61	Mongolia	DTC	18-04-1997	01-01-2002
62	Montenegro	DTC	12-06-1997	01-01-1999
63	Morocco	DTC	24-10-1994	01-01-1997
64	Netherlands	DTC	13-02-2002	01-01-2004
		Multilateral Convention	Signed	Non amended convention in force since 1 February 1997 (amended convention not yet in force in the Netherlands)
65	New Zealand	DTC	21-04-2005	01-01-2007
		Multilateral Convention	Signed	Not yet in force in New Zealand
66	Nigeria	DTC	12-02-1999	
67	Norway	DTC	09-09-2009	01-01-2011
		Multilateral Convention	Signed	01-02-2012
68	Qatar	DTC	18-11-2008	01-01-2010
69	Pakistan	DTC	25-10-1974	01-01-1973

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
70	Philippines	DTC	09-09-1992	01-01-1998
71	Portugal	DTC	09-05-1995	01-01-1999
		Multilateral Convention	Signed	Not yet in force in Portugal
72	Romania	DTC	23-06-1994	01-01-1996
		Multilateral Convention	Signed	Not yet in force in Romania
73	Russia	DTC	22-05-1992	01-01-1994
		Multilateral Convention	Signed	Not yet in force in Russia
74	San Marino	TIEA	31-03-2012	
75	Saudi Arabia	DTC	22-02-2011	
76	Serbia	DTC	12-06-1997	01-01-1999
77	Singapore	DTC	23-04-1993	01-01-1993
		DTC	04-11-2012	
78	Slovak Republic	DTC	18-08-1994	01-01-1996
79	Slovenia	DTC	28-06-1996	01-01-1999
		Multilateral Convention	Signed	01-02-2012
80	South Africa	DTC	10-11-1993	01-01-1996
		Multilateral Convention	Signed	Not yet in force in South Africa
81	Spain	DTC	15-11-1979	01-01-1983
		Multilateral Convention	Signed	01-01-2013
82	Sri Lanka	DTC	25-04-1980	01-01-1983
83	Sweden	DTC	19-11-2004	01-01-2006
		Multilateral Convention	Signed	1-02-2012
84	Switzerland	DTC	02-09-1991	01-01-1993
		PROTOCOL	20-04-2010	17-10-2011
		Mutual Agreement	29-12-2011	01-01-2012 (eff.)
85	Syria	DTC	15-08-2001	01-01-2004
86	Tajikistan	DTC	27-05-2003	01-09-2004
87	Thailand	DTC	08-12-1978	01-01-1983
88	Tunisia	DTC	29-03-1993	01-01-1994
		Multilateral Convention	Signed	Not yet in force in Tunisia

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
89	Turkey	DTC	03-11-1993	01-01-1998
		Multilateral Convention	Signed	Not yet in force in Turkey
90	Ukraine	DTC	12-01-1993	01-01-1995
		Multilateral Convention	Signed	Non amended convention in force since 01-07-2009 (amended convention not yet in force in Ukraine)
91	United Arab Emirates	DTC	31-01-1993	01-01-1995
92	United Kingdom	DTC	20-07-2006	01-01-2007
		Multilateral Convention	Signed	01-02-2012
93	United States	DTC	08-10-1974	01-01-1974
		Multilateral Convention	Signed	Non amended convention in force since 01-11-1996 (amended convention not yet in force in USA)
94	Uruguay	DTC	02-08-1991	
95	Uzbekistan	DTC	11-01-1995	01-01-1996
96	Vietnam	DTC	31-08-1994	01-01-1996
97	Zambia	DTC	19-05-1995	
98	Zimbabwe	DTC	09-07-1993	01-01-1995

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

Commercial laws

Act on Cooperatives 1982

Act on Accounting 1994

Code of Commercial Partnerships and Companies 2000

Freedom of Economic Activity Act 2004

Minister of Justice Regulation 8 May 2001National Court Register Act 1997

Taxation laws

Act on Goods and Services Act 2004

Act on Principles of Registration and Identification of Taxpayers and Tax Remitters, 1995

Act on Legal Persons' Income 1992

Act on Natural Persons' Income 1991

Act on Tax on Acts in Civil Law 2000

Act on Tax of Acts in Civil Law 2000

Lump-Sum Income Tax Act (excerpts)

Penal and Fiscal Code, 1999

Tax Ordinance Act 1997

Minister of Finance Regulation on the Keeping of the Revenue and Expense Ledger, August 2003

Financial sector laws

Banking Act 1997

Act on Trading in Financial Instruments 2005

Anti-money laundering laws

Act on Counteracting Money Laundering and Terrorism Financing 2000

Miscellaneous

Constitution of the Republic of Poland 1997

Law on Barristers, 1982

Act on Legal Advisers 1982

Act on Tax Advisory Services

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PEER REVIEWS, PHASE 1: POLAND

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