GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

# Peer Review Report Phase 2 Implementation of the Standard in Practice

## POLAND



OECD

# Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Poland 2015

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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



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# About the Global Forum

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

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

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

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

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

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

# Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Poland, as well as the practical implementation of that framework. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners. The assessment of effectiveness in practice has been performed in relation to a three-year period: January 2011 through December 2013.

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. In practice, the tax authorities conduct audits and verify that ownership information is maintained and provided in order to administer domestic taxes. As such, ownership information is available for all domestic entities and arrangements, with the exception of bearer shares for which a serious legal gap exist.

5. 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 AML/CFT legislation, is obliged to perform customer due diligence.

6. 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. The legal and regulatory framework to keep accounting records and underlying documentation is appropriately applied in practice. Financial statements of most entities have to be filed with the National Court Register or published in the Court Business Journal (Gazette), and a number of these financial statements must be audited by independent statutory auditors. The tax authorities perform a number of audits to verify that accounts and documents are effectively available.

7. 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. The legal obligations to keep banking information are effectively monitored and enforced by the Polish Financial Supervision Authority, the Financial Intelligence Unit, and other supervisory authorities, ensuring that banking information is available in practice.

8. 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. In practice, these powers have worked in practice in order to collect information for exchange of information purposes. Tax advisors are covered by professional privilege, preventing the authorities from obtaining information from them in civil tax matters. Information from tax advisors is nonetheless collected when they have been authorised by the taxpayer to represent him/her.

9. Poland has a network of information exchange mechanisms that covers 117 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.

10. During the review period, Poland received 1 445 requests for exchange of information related to direct taxes. A final response was provided within 90 days, within 180 days and within one year in 61%, 79% and 92% of the time respectively. Only in 1% of the cases, the request is still pending, although it should be noted that a final response is counted as a closed case, regardless of whether the information was effectively provided. Poland generally has in place appropriate organisational process and resources to deal with exchange of information. However, there is no system to ensure that status updates are provided to the partner jurisdictions in case a request cannot be satisfied within 90 days, and so Poland should implement such a system. While generally no peer raised an issue concerning the rejection of EOI requests by Poland, in one case Poland has not provided the information requested by a treaty partner.

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

12. 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

13. The assessment of the legal and regulatory framework of Poland and the practical implementation of this framework 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 has been conducted in two stages: Phase 1 assessed Poland's legal and regulatory framework for the exchange of information as at January 2013, while Phase 2, conducted across 2014 and 2015 in relation to a three year period (1 January 2011 through 31 December 2013), looked at the practical implementation of that framework, as well as any amendments made to the legal and regulatory framework since the Phase 1 review.

14. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 2 March 2015. It reflects Poland's responses to the Phase 2 questionnaire and supplementary questions, information supplied by partner jurisdictions, and other relevant sources, including information supplied during the on-site visit in Warsaw and Konin in September-October 2014. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance, the Ministry of Justice, the Central Statistical Office of Poland, the Polish Financial Supervision Authority, the Ministry of Economy, Economy and regional and local tax authorities. A list of all those interviewed during the on-site visit is attached to this report in Annex 4.

15. 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 on how certain aspects of the system could be strengthened where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Poland's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect Poland's overall level of compliance with the standards.

16. The Phase 1 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. During the Phase 2 review, the assessment team was composed of: Deepak Garg, Ministry of Finance of India; Alexander Zelzer, Fiscal Authority of the Principality of Liechtenstein; and Francesco Positano from the Global Forum Secretariat.

## Overview of Poland

17. The Republic of Poland (hereafter referred to as Poland) is a country in the geographical centre 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.

18. 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. Its gross domestic product (GDP) amounted to about USD 855 billion in 2013.[2] The service sector accounts for the largest component of the GDP at 63.7%, followed by industry (33.3%) and agriculture (4%).[3] The national currency is the Polish Zloty (PLN).[4]

1. Source: Demographic yearbook of Poland, 2011, by Polish Central Statistical Office.
2. GDP is calculated at purchasing power parity. OECD Economic Outlook No 96 – November 2014.
3. CIA Factbook.
4. As of 20 February 2015 : EUR 1 = PLN 4.18 (Source: European Central Bank).

19. In 2013, Poland's main import partners were European Union member countries, Russia, Ukraine, United States and Norway; Poland's main export partners were European Union member countries, Russia, China, United States and Korea.[5]

20. Poland joined the European Union in 2004 and is also a member of the Schengen 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*

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

22. 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*).

23. 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 co-operate with local and regional communities of other states.

24. 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

5. World Trade Organisation: http://stat.wto.org.

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.

25. 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*

26. 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.

27. 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.

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

29. 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[6] carried on by a foundation are always subject to tax (LPIT Act, art. 17§1). The corporate income tax rate is 19%.

6. The Freedom of Economic Activity Act defines business activity as a profit-gaining activity in the business of production, construction, trade, services and

30. 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).

31. 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, 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.

32. 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.

33. 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 Minister of Finance or a tax authority designated/authorised by the Minister is the competent authority for exchange of information in tax matters.

34. 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 co-operation 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. This Directive was transposed into

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).

national legislation in 2013 (except for the automatic exchange of information clause contained in article 8 of that Directive).

- *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 co-operation and combating fraud in the field of value added tax.

### *Overview of commercial laws and the financial sector*

35. 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.

36. 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.

37. In addition, natural persons commencing economic activities in Poland must register with the Central Records and Information on Economic Activity (CEIDG), which is effected by 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). Since January 2013, each entrepreneur, including all business entities, will obtain the tax identification number and the REGON number by simply registering with the National

Court Register. Prior to 2013, the applications to obtain these numbers were submitted separately.

38. 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).

39. 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 co-operative 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.

40. 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.

41. 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.

42. 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 statutory auditors.

43. 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.

44. 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.

45. 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.

# Compliance with the Standards

## A. Availability of information

### Overview

46. 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[7] 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.

47. Companies and co-operatives 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

7. 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.

48. 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.

49. 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.

50. 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.

51. 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 relevant minister 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.

52. 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 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.

53. 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.

54. In practice, the oversight system performed by the National Court Register ensures that information on LLCs, registered partnerships, professional partnerships, and limited partnerships is available with the Polish authorities. According to the tax administration, which examines the data received from the National Court Register during tax audits, information in the hands of the National Court Register is not always reliable or up-to-date. Nonetheless, the tax authorities conduct audits and verify that ownership information is maintained and provided in order to administer domestic taxes. The system of auditing performed by the tax administration provides for a further mechanism to monitor that ownership and identity information is maintained. Overall, the combination of oversight provided by the National Court Register and the tax administration appears adequate to ensure the availability of ownership and identity information, with the exception of bearer shares for which a serious legal gap exists.

55. The legal and regulatory framework to keep accounting records and underlying documentation is appropriately applied in practice. Financial statements of most entities have to be filed with the National Court Register or published in the Court Business Journal (Gazette), and a number of these financial statements must be audited by independent statutory auditors. The tax authorities perform a number of audits to verify that accounts and documents are effectively available.

56. The legal obligations to keep banking information are effectively monitored and enforced by the Polish Financial Supervision Authority, the Financial Intelligence Unit, and other supervisory authorities, ensuring that banking information is available in practice.

57. During the review period (2011-13), Poland received 1 445 EOI requests related to direct taxes. The Polish authorities do not know exactly how many requests concern ownership or accounting information, although they have indicated that ownership information is requested in a minority of cases. A total of 70 requests related to banking information, all of which were answered. It should be noted that the Polish competent authority does not keep track of the cases in which an answer was provided but the information

was actually not transmitted either because not available or not obtainable (see section C.5 below). In any case, inputs from peers were generally positive and did not identify major issues with receiving ownership and identity information from Poland (see also section B.1 below).

## 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 8 A.1.1)*

58. 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 264 013 limited liability companies in Poland as at December 2014.
- **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 8 472 joint stock companies in Poland as at December 2014.
- **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

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

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 December 2014, there were 5 361 limited joint-stock partnerships.

*Limited liability companies*

59. Pursuant to the Code of Commercial Partnerships and Companies 2 000 (CCCP) limited liability companies (LLC) must be established by notarial deed, and are incorporated upon approval of the company deed (CCCP, art. 161). They assume full legal personality when entered into the Registrar of Entrepreneurs which is part of the National Court Register (CCCP, art. 21). 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 otherwise the company deed will be considered terminated (CCCP, art. 169). Before filing for registration, an LLC, which is then called "company in organisation", can acquire rights, operate and conclude valid contracts (CCCP, art. 11), though it is not (yet) considered a legal entity and in practice its activity may be limited.[9]

60. 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 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.

61. 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 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

9. www.paiz.gov.pl/files/?id_plik=12374.

company of the notification (CCCP, art. 187 §1). Moreover, each time that an entry is made in the register, the management board, within seven days, 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, and NCR Act, art. 22). This ensures that up-to-date information on owners of LLCs is available to the authorities as well. In addition, any transfer of shares must be made in writing and the signatures of the parties must be notarised by a notary (CCCP, art. 180). A notary must then inform "immediately" the National Court Register of the transfer of shares (NCR Act, art. 9§4 and 21§1).

*Joint-stock companies*

62. 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. JSCs come into existence upon approval of the company deed, and acquire legal personality only upon registration with the National Court Register. The application for registration must be submitted within six months, failure of which the company deed will be terminated (CCCP, art. 325 and 326). A JSC that has not yet registered can acquire rights, operate and conclude valid contracts (CCCP, art. 11), but cannot issue bearer shares and provisional certificates (CCCP, art. 322). 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.

63. 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.

64. 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*

65. 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. The articles of a LJSP must be drawn up in the form of a notarial deed (CCCP, art. 131). 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.

66. 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.

67. LJSPs are also required to register with the National Court Register. JSLPs are considered as incorporated and can start doing business as a separate entity after registration with the National Court Register (CCCP, art. 134). Upon registration with the National 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 (CCCP, art. 133 and NCR Act, art. 38(7)). Any changes in this information must also be reported to the National Court Register within seven days (NCR Act, art. 22 and 47 and CCCP, art. 133 §2).

### *Foreign companies*

68. 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 requires 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.

69. 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)).

70. 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).Where a company is tax resident of Poland, the tax on the dividends distributed to the shareholders (either natural persons or legal entities) is withheld by the company (LPIT Act, art. 22). Whenever dividends are distributed (to either foreign or resident persons), the name of the receivers of the dividends must be disclosed to the tax authorities (CIT-6R, IFT-2, or PIT-8AR). This requirement, however, does not ensure the availability of information in all cases. Accordingly, Poland is recommended to ensure that information on the owners of a foreign company that is tax resident in Poland be available.

### *Nominees*

71. 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).

72. 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).

73. 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. The AML authorities have indicated that, on the basis of inspections conducted by the Financial Intelligence Unit (see below, section A.1.1 "Information held by companies and service providers" and section A.1.6) there is no indication of the existence of any nominee not acting by way of business in Poland.

### *Cooperatives*

74. The Act on Cooperatives (AOC) allows for the formation of co-operative enterprises. Cooperatives must register with the National Court Register (NCR, art. 36). Article 30 of the AOC provides that the management board of a co-operative 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 co-operative, their spouses and the co-operative creditors have the right to inspect the register of members (AOC, art. 30). Membership of a co-operative becomes effective on the date of the co-operative's registration with the National Court Registry. New members must be accepted by the body of the co-operative nominated by its statute and receive a membership certificate that is also signed by two members of the co-operative management (AOC, art. 17).

### *Availability of information in practice*

75. In the case of LLCs and JSCs with a single shareholder, ownership information is available in the National Court Register. As discussed below, the availability of this information in practice is verified by the National Court Register, which verifies the formal correctness of the information provided by entities with an obligation to register and cross-checks ownership information provided by LLCs with the information transmitted by the competent notary. Full up-to-date identity information is available for shareholders holding nominal shares and members on Poland's domestic companies, LJSPs and co-operatives as a result of the obligation on those entities to keep a share register or a register of members. The availability of

this information in practice is verified by the tax authorities in the context of tax audits and by the supervision of AML authorities. The tax authorities also verify the information provided by the National Court Register.

### Registration of entities

76. The registration of legal entities in Poland is strongly regulated. Any legal entity in Poland must register with the National Court Register, and must have the tax identification number as well as a REGON number. Prior to 2013, entities had to obtain the tax identification number and the REGON number separately. Since December 2014, entities can obtain these numbers by applying only once to the National Court Register, which will then automatically communicate the information to the relevant office.

### National Court Registry

77. Registration of all types of legal entities is carried out by the National Court Register. The National Court Register has 27 registration departments in 21 district courts in Poland. The NCR maintains three separate registers: the register of entrepreneurs, the register of associations, other social and professional organisations and public health service establishments, and the register of insolvent debtors. Information on every entity is kept in a centralised electronic database, digitalised in 2001.

78. An application for registration must be filed with the registration court under which jurisdiction the company has its registered address. The cost of an application range from PLN 250 to PLN 500 (EUR 60 to EUR 120). Registration of entities and of subsequent information is done by submitting to the relevant court a dedicated application form. An electronic form is available for LLCs only. The information to be provided is specified in the NCR Act and in the CCCP. The information that is generally provided by all companies to the court registry includes the notarised incorporation deed or articles, the indication of the management board, the seat and address of the company, and the number and types of shares. Entities must also provide tax identification number and the REGON number. For LLCs, as well as for some types of partnerships (see A.1.3 below), full ownership information must be provided at the time of incorporation. For LJSPs, the information provided must include an indication of the general partners. After the first registration, all entities must update the existing registered information seven working days.

79. Once incorporated, LLCs and JSCs have six months to submit their application for registration to the competent registration court. If a company fails to register within six months, it is dissolved. Unlike JSCs and LLCs, LJSPs cannot incorporate and then register with the national Court Register.

LJSPs are considered as incorporated and can start doing business only after registration with the National Court Register. Between 2011, 2012, and 2013, the NCR has dismissed 1 844 applications from LLCs and JSCs failing to register with the NCR within the prescribed time limits (1 777 LLCs and 67 JSCs).

80. Before formally registering an entity, as well as before recording updates to pre-existing information, the registration court performs a formal verification to ensure that all required information is correctly submitted by the applicant. The verification activity of the NCR is based on the documents received and focuses on their conformity with law requirements or their consistency with the information in possession of the court (e.g. the judge verifies that an application fully provides all necessary information and that it is not inconsistent with other available information, such as an address). The court registry has seven working days to make a determination of whether to make the entry. Electronic applications must be dealt with in 24 hours. If the application is not correct, the applicant is informed in a letter of the identified deficiencies and has seven working days to correct the application (NCR Act, art. 24). If the required information is not provided within the time limits the registration is denied. Sanctions may also apply (see section A.1.6 below). Each application for registration is verified by a judge. During 2011, 2012, and 2013, around 300 000 applications for registration were submitted to the registration departments by entities; approximately 3 600 were rejected and 40 000 were returned due to formal defects.

81. In relation to LLCs, the registration courts receive information on any share transfer from both the company and the notaries, and they are thus able to conduct cross-checks. The management board of the company is obliged to submit a new list of shareholders within seven days from the share transfer, although the National Court Register would not be able to enforce the obligation to submit updates, unless it has received this information from other sources. The signatures on the share transfer contract must be notarised, and the notary must communicate the event to the registration court "immediately". Even though, there is no specific timeline to inform the registration court, representatives from the National Court Register have indicated that this is not problematic as notaries transmit all notarised documentation very quickly. Updates on the situation of companies are also reported to the National Court Register by the tax authorities. Once it has obtained the information, the registration court cross-checks that the data match. When the data do not match, or when the registration court becomes aware that a company has failed to submit the updated list of shareholders, the registration court will summon the company to correct the entry. Penalties may apply. If the summon does not result in a correction, the registration court can delete the entry ex officio. For the entry to be deleted ex officio, it is necessary to conduct a compulsory proceedings. In the first quarter of 2014 there were

14 605 compulsory proceedings initiated, while in the second quarter 8 446. These statistics refer to a number of deficiencies identified by the National Court Register and do not all necessarily relate to data on LLCs that have been cross-checked.

82. The database maintained by the National Court Register is public. The database is the main source of information for tax authorities, including the competent authority, when they need to identify legal entities. It allows searching entities by name, place of registration, tax identification number, and REGON number. Sometimes, solely the name of the entity would not be enough to ensure identification; name and address would be generally sufficient. Once the entity has been found on the database, all information available about that entity will be displayed. In relation to ownership information of LLCs, only the current shareholders will be shown, but not historical information on any previous owners. In relation to JSCs and LJSPs, only the initial owners will be available in the register. According to the representatives of the National Court Register, the information contained is very reliable. According to the tax administration, which examines the data received from the National Court Register during tax audits (see below), this information is not always reliable or up-to-date, as the National Court Register does not have an obligation to verify the veracity of all the data provided by the entity (for example, its address) and it does not have the ability to obtain an update if the entity does not report it and it has not received this information from other sources. The availability of ownership information is nonetheless ensured by the monitoring activity of the tax authorities.

### Tax authorities

83. Some identity and ownership information of companies is available with the tax authorities as a consequence of registration requirements. Any legal entity must be registered with the local tax office in order to obtain a tax identification number (TIN). Up to 1 December 2014, each company (including "companies in organisation") had to submit a separate application for registration to the pertinent local tax office within seven days from its incorporation. According to representatives of the tax authorities, registration was almost always performed within the time limits prescribed by law, as companies need the TIN in order to carry out a number of activities, including opening a bank account. Since 1 December 2014, tax registration is automatically performed by the National Court Register upon registration in the Register of Entrepreneurs. The database maintained by the tax authorities is held locally by each tax office. It is not public, and only an authorised person in the tax office can access the information concerning taxpayers.

84. The information provided at the time of application for registration included identity information, such as name of the company, address, and

name of the management board, but not full information on the owners of the applying company. The National Court Register also transmitted identity information to the National Register of Taxpayers (CRP KEP), which means that the tax authorities should have updated information on the owners of LLCs. Since 1 December 2014, transmission of data from NCR to CRP KEP is immediate and takes approximately one day.

85. The local tax office had three days to register the company and assign a TIN. The local tax office verified that all information required by law was effectively provided. When the information was provided by both the applying entity and the National Court Register, the local tax office could perform cross-checks and in case it identified incongruities, it would request the entity to rectify the entry. Where the company did not correct the entry, the local tax office would not register the entity and would not assign a TIN.

86. Updates to registered information must be provided within seven days. Updates to information must also be provided while filing the annual tax returns. The representatives from the tax authorities have indicated that the provision of updates is generally not a problem, except for some "problem entities", which are taxpayers that recurrently have failed to effectively communicate with the local tax office. In respect to these "problem entities", the local tax office would perform inspections. In case the tax office finds that updates were not provided, it applied sanctions (see section A.1.6 below).

87. In relation to filing annual tax returns, in case of distribution of dividends, companies must also submit form "CIT-6R" identifying the names of the persons to whom distributions were made. In 2013, the tax authorities received about 5 500 CIT-6R forms.

88. The tax authorities maintain databases on immovable property. Information is obtained either from taxpayers who are owners of such property as well as from notaries who must report to the tax office any sale of land. The databases on immovable property are held locally by each tax office.

### Information held by companies and service providers

89. In respect of information held by companies, the supervision is done by the tax authorities in the context of auditing to the extent relevant for tax purposes. Service providers – notably, banks or investment firms that keep a register of shares for JSCs – are also supervised by the anti-money laundering authorities to verify their fulfilment with AML law obligations.

90. The tax authorities have a programme for the conduct of audits in order to administer their domestic taxes. Entities covered by audits include LLCs, JSCs, JSLPs and co-operatives. In the context of audits, ownership information is verified as needed (e.g. where the tax office wishes to verify

the ownership of an entity), by checking the shareholders register or other corporate documents, such as the list of participants to annual meetings. During the years 2011, 2012 and 2013, the tax administration carried out, respectively, 131 228, 117 813, and 99 630 audits, which represents around 2% of the total number of entities which could be subject to audit. Each year, around 70% of these audits finds some irregularities with compliance with the provisions of tax law (though not necessarily with the availability of ownership and identity information). The audits have been conducted based on the National Plan of Tax Discipline, which establishes a risk-based approach to select the taxpayers to be audited. Since the taxpayers who are audited pose the highest risk, the high level of irregularities found is to be expected and does not point to a general problem with availability of ownership and identity information.

91. A JSC may commission a bank or an investment firm in Poland to keep its register of shares. These entities have obligations to conduct customer due diligence under AML law and are supervised by the Financial Intelligence Unit (FIU). The FIU has a monitoring programme based on a risk approach. The monitoring programme includes both off-site and on-site inspections. Per year, the FIU conducts around 90 on-site inspections. While the majority of the on-site inspections are made to banks, 17% of these are made to brokers and asset managers, which according to the AML authorities represent a medium risk. In the period 2011-13, 18 on-site inspections have been conducted in relation to brokers. The type of breaches identified related to a diversity of failures, such as failure to register transactions in accordance with the AML legislation, to store the records of the transactions or documents relating to this transaction for the required period of time, or to apply financial security measures. In the same period 17 on-site inspections have been conducted in relation to investment funds and one on-site inspection was conducted to the asset manager. In two cases in 2013, breaches were identified in relation to failure to apply financial security measures.

92. AML supervision also concerns possible nominee shareholders. The laws in Poland do not envisage that a nominee can hold shares for someone else, although this is not forbidden. The AML Law does not specifically cover nominees as obligated institutions, nonetheless, the AML authorities have undertaken supervisory activities (off-site and on-site inspections) in relation to many entities which could provide the service of holding a share for someone else. Persons holding shares for other persons have not been identified during the inspection conducted. The AML authorities have also indicated that there is no indication of the existence of any nominee not acting by way of business in Poland. In any case, it should be noted that by law, any person who is registered as owner of shares is considered as the effective owner of the shares.

93. Under article 4 of the Act on Trading in Financial Instruments, in relation 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. The Polish Financial Supervision Authority supervises financial institutions, including brokerage houses, in terms of client and beneficial ownership identification. On-site visits are conducted on a risk-sensitive basis by the AML/CFT Unit and identification of client and beneficial ownership is always verified. In 2012 and 2013, there have been, respectively, 7 and 3 cases where the Polish Financial Supervision Authority has not been satisfied with the level of scrutiny in beneficial owner information. All cases have been referred to the Polish FIU, which is the body with the power to sanction shortcomings in relation to the AML legislation. The Polish authorities have indicated that no sanctions have been applied as the inspections have not established any breach of the AML Act. No sanctions in relation to article 4 of the Act on Trading in Financial Instruments have been applied.

### *Conclusion*

94. Full up-to-date identity information is available for shareholders holding nominal shares and members on Poland's domestic companies, LJSPs and co-operatives 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.

95. In practice, the oversight system performed by the National Court Register ensures that information on LLCs is available with the Polish authorities, particularly because of the cross-checks performed with the information received by notaries after a share transfer. According to the tax administration, which examines the data received from the National Court Register during tax audits, information in the hands of the National Court Register is not always reliable or up-to-date. Nonetheless, the tax authorities conduct audits and verify that ownership and identity information is maintained by all entities in order to administer domestic taxes. Even though a high level of irregularities are found (around 70% of the total audits yearly), this does not point to a lack of availability of ownership and identity information of legal entities in Poland. The irregularities found are in relation to different

provisions of tax law, and not necessarily in relation to ownership and identity information. As audits are conducted on the basis of a risk assessment, a high level of irregularities is to be expected. The system of auditing performed by the tax administration provides for a further mechanism to monitor that ownership and identity information is maintained. Overall, the combination of oversight provided by the National Court Register and the tax administration appears adequate to ensure the availability of ownership and identity information.

96. During the review period (2011-13), Poland received 1 445 EOI requests related to direct tax. The Polish authorities do not know exactly how many requests concern ownership information, although they have indicated that such information is requested in a minority of cases. It should be noted that the Polish competent authority does not keep track of the cases in which an answer was provided but the information was actually not transmitted either because not available or not obtainable (see section C.5 below). In any case, inputs from peers were generally positive and did not identify major issues with receiving ownership and identity information from Poland (see also section B.1 below). Only a few peers highlighted that in a very limited number of cases, Poland had difficulties providing ownership information, though not necessarily for lack of its availability: in some cases (raised by three peers), the taxpayer could not be identified; in other cases (raised by one peer), the taxpayer was not found or did not result as being the owner of the company. One peer noted that ownership information could not be provided in less than 1% of its request. No other peer reported an issue regarding availability of ownership and identity information in Poland.

### ***Bearer shares*** *(ToR A.1.2)*

97. 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.

98. 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, as well as when the owner exercises the rights attached to the shares (e.g. dividends).

99. 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).

100. The number of JSCs and LJSPs whose shares are dematerialised and 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. More recent figures are not available. Statistics are not available regarding how many entities have in fact issued bearer shares, or on how many bearer shares have been issued.

101. It would appear that the tax legislation provides that the legal act of a share transfer creates a 2% tax obligation based on a self-declaratory system 14 days after the transaction. However, it is not clear which persons are subjected to tax obligation (e.g. whether Polish taxpayers only or also any other foreign persons). In any case, it appears that no regulatory measures exist.[10]

### *Conclusion on the legal framework*

102. 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 in all cases 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.

10. The information on this tax obligation is taken from the MONEYVAL REPORT, 2012, paragraph 1 1040.

*Availability of information in practice in respect of bearer shares*

103. With regards to those shares registered with KDPW, the KDPW does not exercise oversight on whether ownership information is available, as registration and transfers of dematerialised securities must be done through securities accounts managed by an eligible entity and the designation of any securities account must enable the persons who enjoy the rights attached to securities to be identified. The availability of ownership information maintained by financial institutions is supervised by the Polish Financial Supervision Authority (see A.1.1 above). The KDPW nonetheless ensures that the number of securities registered in the depository and traded is dematerialised and has not increased or decreased without a legal basis but corresponds to the number of securities actually issued. This supervision is carried out through an analysis of the documents, information and reports provided to the KDPW and through on-site inspections at the registered office of the participants of the regulated market.

104. The Polish authorities have indicated that in practice they have generally no problem with obtaining ownership information from all commercial entities, even when they have issued bearer shares. This is mainly because of the existence of 19% tax on the income from dividends and of legal consequences arising from the concealing of income, and as such, the tax authorities maintain that "hiding information of the bearer shares would be irrational". Also, the Polish authorities are of the view that this information is accessible in the context of their access powers (see section B.1.1, B.1.2 below) as the owners of the bearer shares of JSCs and LJSPs are required to disclose their data in case of participation in the general meeting or in order to receive the dividend. When the control is performed in relation to JSCs (around 90% of the companies that are subject to "tax control" are LLCs), the tax authorities would seek to understand the ownership structure of the company primarily by looking at the shareholder register, the list of shareholders present at the general meetings, and may also perform checks with any transfer in the bank account of the company. The tax authorities have indicated that they have generally no difficulty obtaining full ownership of companies.

105. Notwithstanding that the Polish authorities have indicated that they generally have no problem obtaining ownership information (including on the owners of bearer shares), the mechanisms in place do not ensure that this information is always available, and there may be cases where in practice the information on the owners of the bearer shares cannot be found (for example, when the owner has not directly participated in shareholders meetings or has not exercised his/her rights to receive dividends). Statistics are not available regarding how many entities have in fact issued bearer shares, or on how many bearer shares have been issued. The number of entities that have potentially issued bearer shares is approximately 11 000. Even though these

entities represent around 4% of the total number of companies in Poland, they raise concern in relation to the availability of information in relation to bearer shares in practice.

### ***Partnerships*** *(ToR A.1.3)*

#### *Types of partnerships*

106. 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 December 2014, there were 34 493 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 December 2014, there were 2 070 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 December 2014, there were 15 697 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. More recent figures are not available.

107. 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)).

108. 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).

109. 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).

110. 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).

111. 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.).

112. 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*

113. 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).

114. 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, except for civil partnerships that are not liable to value added tax, 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 Polish authorities have indicated that 99% of the existing civil

partnerships are registered as taxpayer. 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.

### Availability of information in practice

115. Information on partners in registered partnerships, professional partnerships, and limited partnerships is filed with the competent registration court of the National Court Register, and is required to be updated upon change within seven days. Since 2015, registered partnerships and limited partnerships can use electronic forms. Updates to ownership information are provided by the partnership. Formation and updates of limited partnerships must be done by a notarial deed. The information is contained in the electronic database maintained by the National Court Register, and is publicly available.

116. Civil partnerships are not legal entities and are formed after the conclusion of a written contract. Upon formation, civil partnerships must register with REGON in order to obtain a REGON number. REGON is a register of business activity which is mainly used for statistical purposes. Civil partnerships have a dedicated application form, which includes ownership information. In relation to legal entities, REGON records the names of the partners, the main and secondary activities of the civil partnership, relevant dates (establishment, suspension of activity, liquidation, etc.), seat and place of residence, identification numbers (tax numbers, PESEL number, NCR number). In relation to civil partnerships, REGON also maintains the names of the partners.

117. Partners of civil partnerships must register with REGON. This allows REGON to cross-check ownership information of partners of civil partnerships.

118. After formation, a civil partnership has 14 days to submit an application for registration. Whenever a change to registered information occurs, the civil partnership has 20 days to report updated information to REGON. According to the Polish authorities, registration is often done quickly when it is the first registration to obtain a REGON number. The REGON number is necessary, for example, in order to open a bank account in Poland. For updates to registered information, the Polish authorities have indicated that registration is slower, and there are no means to enforce it. REGON, nevertheless, seeks to obtain information from other authorities, notably the NCR (for legal entities), the tax authorities, or the CEIDG which has information on natural partners.

119. Information on partners of civil partnerships who are natural persons is available with CEIDG, part of the Ministry of Economy. CEIDG maintains a public register which can be sorted by names of the partners of civil partnerships who are natural persons and by name and REGON of the civil partnership. Where any change to information on partners who are natural persons occurs, the partners must file such change with the CEIDG within seven days, though there is no enforcement mechanism. Information on partners of civil partnership is verified by the tax authorities.

120. Information on all types of partnerships is maintained by the tax authorities. As all partnerships are tax transparent, all partners of any partnership must submit separate tax returns separately indicating the origin of the profits/losses of the fiscal year. Even though statistics on the number of tax returns by these entities are not available, it is noted that sanctions are applied for failure to submit tax returns correctly (see below, section A.1.6). Ownership information of partnerships is also verified during tax audits, which also take place in relation to entities are arrangements (see above, section A.1.1 "Information held by companies and service providers"). For registered partnerships, professional partnerships, and limited partnerships, ownership information is also provided either at the time of registration for tax or as provided by the National Court Register, which is in possession of this information as a consequence of the obligation to register with it.

### *Conclusion*

121. 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.

122. In practice, the oversight system performed by the National Court Register ensures that information on registered partnerships, professional partnerships, and limited partnerships is available to the Polish authorities. As mentioned in section A.1.1 above, according to the tax administration, which examines the data received from the National Court Register during tax audits (see below), the information in possession of the National Court Register is not always reliable or up-to-date, as the National Court Register does not have an obligation to verify the veracity of all the data provided by the entity (for example, its address) and it does not have the ability to obtain an update if the entity does not report it and it has not received this information from other sources. Nonetheless, the supervisory activity of the tax authorities ensures that ownership information of all partnership is available.

123. During the review period (2011-13), Poland received 1 445 EOI requests related to direct tax. The Polish authorities do not know exactly how many requests concern ownership information. Nevertheless, inputs from peers were generally positive and did not identify any major issue with receiving ownership and identity information from Poland (see also sections A.1.1 above and B.1 below).

### ***Trusts*** *(ToR A.1.4)*

124. 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.

125. 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.

126. 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. The representatives of the authority responsible for AML in Poland have indicated that the supervision programme has not identified any financial institution acting as a trustee. They have nonetheless identified few clients of these financial institutions who were acting as trustee of foreign persons. The Polish authorities have indicated that these persons were all Polish lawyers, who are obligated institutions under the AML legislation when performing their profession (AML Act, Art. 2). The activities performed by lawyers that are considered as part of their profession

includes the preparation of drafts of legal acts (Law on Barristers, Art. 4(1)). Where the lawyers had contributed to the preparation of any legal act in the context of the foreign trust for which he or she is the trustee, customer due diligence rules would apply. Nonetheless, because the AML Act does not contemplate what needs to be identified in relation to a foreign trust, it cannot be expected that identity and ownership information of the foreign trusts with Polish trustees will be available.

127. 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.

128. In practice, during the review period (2011-13), Poland received 1 445 EOI requests related to direct tax. No peer indicated that it requested information from trustees resident in Poland.

### ***Foundations*** *(ToR A.1.5)*

129. 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 December 2014, there were 17 522 foundations registered in Poland.

130. Foundations must be registered in the Register of Associations, other voluntary and vocational organisations, foundations, and independent public health-care centres, which are 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)).

131. 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).

132. 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)).

### *Conclusion and practice*

133. 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. It should be noted that foundations in Poland can only be created for charitable purposes and it is not permitted to establish a foundation for the benefit of private individuals. Foundations may carry on profit-making activities only to accomplish their purposes. As such it can be concluded that foundations in Poland are not relevant entities for this review.

134. In practice, the Polish authorities supervise that foundations comply with the stated charitable purposes. Every year, foundations must submit an annual report to providing information on the economic and financial situation of the foundation. The annual report must be submitted to the Minister which is competent for the activities carried out by the foundations, and enforcement measures can be applied if a foundation fails to submit the

annual return (see section A.1.6 below). For example, the Ministry of Justice was the responsible Ministry for 135 foundations in 2013; annual reports for that period have been submitted by 61 foundations. It is not clear what actions have been taken by the Ministry of Justice to enforce the submission of the annual reports. It is also not clear whether the reports are analysed to ensure that the foundations comply with the existing legislation.

135. On the basis of a risk assessment, the Polish Financial Supervision Authority determine that foundations, and the activities they engage in, pose low risk for money laundering and terrorist financing purposes. The Financial Intelligence Unit has carried out one on-site inspections of foundations in order to verify the compliance with the AML Law in 2013. Pursuant to article 21(3) of the AML Law, controls can be carried out by the tax authorities, and in relation to foundations the Tax Inspection Fiscal Audit Office carried out five on-site inspections in 2013. The tax authorities also receive information from foundations, as these entities are obliged to register for tax purposes regardless of whether they carry out economic activities. Foundations must also submit annual tax returns. The tax authorities perform checks on foundations. It is not clear how many foundations submit their annual tax returns.

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

136. 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.

137. 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 co-operatives 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 co-operative'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 co-operative's bodies, public authorities or auditors (AOC, art. 267(d)).

138. 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). These enforcement measures are implemented directly by the competent registration court.

139. 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).

140. The Ministry of Justice and each court of the National Court Register (part of the Ministry of Justice) are responsible for applying the penalties for breaches of the CCCP, the NCR Act, and the AOC. In the first quarter of 2014 there were 14 605 compulsory proceedings, while in the second quarter 8 446. The Ministry of Justice does not have data on the fines imposed, or on the proceedings initiated prior to 2014. It is not clear whether and how many penalties have been applied in relation to failure to submit information to the National Court Register in accordance with the law. Actions have nonetheless been taken by registration courts: between 2011, 2012, and 2013, the NCR has dismissed 1 844 applications from LLCs and JSCs "in organisation" failing to register for the first time with the NCR within the prescribed time limits (1 777 LLCs and 67 JSCs).

141. 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. The statute of limitations for misdemeanour is one year. Whenever a

violation is found – either through the audits carried out by the tax office, by receiving tax returns, or because the tax office received information from another authority – the relevant tax office directly applies the fine, whose amount is decided by the office acting "reasonably". The sanction is applied to the natural person responsible for the violation. If the perpetrator disagrees with the amount of the fine imposed, he or she can apply to court. In 2011, 2012, and 2013, a total of 308 sanctions were applied by the tax administration on the basis of article 81 of the Penal and Fiscal Code. In the past seven years, only one case was brought to court against the application of article 81 of the Penal and Fiscal Code.

142. Ownership and identity information of all partnerships, is reported to the authorities also in tax returns, which must be submitted separately by each partner. In relation to companies, the tax return would include some identity information and ownership information in case of distribution of dividends. Under the Penal and Fiscal Code, the failure to submit a tax return, or submitting an incorrect tax return which may result in tax reduction, is considered as a tax crime ("fiscal offence"), which is punished by a fine up to 720 daily rates or imprisonment up to five years [11] (Penal and Fiscal Code, Art. 54(1) and Art. 27). A taxpayer who by filing a tax declaration to a tax authority or other competent authority or tax remitter, declares false data or conceals the truth or does not fulfil an obligation to inform about the change of data included therein, which may result in tax reduction, shall be subject to the penalty of fine up to 720 daily rates or penalty of deprivation of liberty, or both penalties jointly (Penal and Fiscal Code, art. 56). It is not clear how many tax returns have been submitted by entities. Nonetheless, the tax

11. The Penal and Fiscal Code provides for fines expressed in daily rates. In general the amount of a fine is determined by the number of daily rates and is in proportion of the minimum wage determined by the Government. 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 11th 2013 (Journal of Law 2013 No. 1074) determined that the minimum wage for the year 2014 is PLN 1 680. Accordingly, for the year 2014, the court may define a daily rate between PLN 56 (which is a thirtieth of the minimum wage) and PLN 22 400 (which is the equivalent of 400 times the minimum daily rate). The minimum penalty imposed by the court ranges between PLN 560 (10 times the minimum daily rate) and PLN 16 128 000 (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.

administration applied penalties under article 56 of the Penal and Fiscal Code in 5 450 cases in 2011, 5 594 cases in 2012 and 5 766 cases in 2013.

143. The Polish authorities have indicated that there is generally no problem obtaining updates to information, apart from a number of "problem entities". In relation to these entities, the tax office would carry out inspections. ". In the context of audits, ownership information is verified as needed (e.g. where the tax office wishes to verify the ownership of an entity), by checking the shareholders register or other corporate documents, such as the list of participants to annual meetings. During the years 2011, 2012 and 2013, the tax administration carried out, respectively, 131 228, 117 813, and 99 630 audits. Each year, around 70% of these audits finds irregularities with provisions of tax law. When irregularities are found, the tax office may decide to start proceedings to assess tax liability and may apply sanctions directly or refer the violation to court in case of serious fiscal offence. It is not clear how many penalties have been applied by the tax administration in relation to the violations identified during tax audits.

144. 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 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). The Polish Financial Supervision Authority supervises financial institutions, including brokerage houses, in terms of client and beneficial ownership identification. On-site visits are conducted on a risk-sensitive basis by the AML/CFT Unit and identification of client and beneficial ownership is always verified. In 2012 and 2013, there have been, respectively, 7 and 3 cases where the Polish Financial Supervision Authority has not been satisfied with the level of scrutiny in beneficial owner information. All cases have been referred to the polish FIU, which is the body with the power to sanction shortcomings of AML legislation. In these specific cases, the FIU did not impose any sanction as the inspections have

not established breaches of the AML Act No sanctions in relation to articles 4 and 5 of the ATFI have been applied.

145. 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). The authority responsible to supervise obligated institutions and apply any sanction is the FIU. The FIU supervises obligated institutions through a programme of off-site and on-site inspections. On average, about 90 on-site inspections are made, of which 17% are made to brokers and asset managers. In the period 2011-13, 18 on-site inspections have been conducted in relation to brokers. The type of breaches identified related to a diversity of failures, such as failure to register transactions in accordance with the AML legislation, to store the records of the transactions or documents relating to this transaction for the required period of time, or to apply financial security measures. The total amount of the imposed pecuniary fines was PLN 910 000 (approximately EUR 220 000). In the same period 17 on-site inspections have been conducted in relation to investment funds and one on-site inspection was conducted to the asset manager. In two cases in 2013, breaches were identified in relation to failure to apply financial security measures. The proceedings regarding the pecuniary fines are still pending.

146. 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). For example, the Ministry of Justice was the responsible Ministry for 135 foundations in 2013; annual reports for that period have been submitted by 61 foundations. It is not clear what actions have been taken by the Ministry of Justice to enforce the submission of the annual reports. It is also not clear whether the reports are analysed to ensure that the foundations comply with the existing legislation. 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). On the basis of a risk assessment, the Polish Financial Supervision Authority determine that foundations, and the activities they engage in, pose low risk for money laundering and terrorist financing purposes. The AML authorities carried out one on-site inspection in relation to foundations in 2013. As discussed in section A.1.5 above, foundations in Poland are not relevant entities for this review.

147. Penalties are in place with respect to all key obligations that exist to ensure the availability of ownership and identity information. Entities and arrangements are monitored in their obligations to maintain ownership and identity information. The tax administration carries out audits to administer its domestic taxes and verifies identity and ownership information as needed. As for supervising LLCs, the oversight system also involves the National Court Register as both entities and the notaries must report ownership changes to it, which allows for double-checking. Sanctions have been applied. Peers confirmed that Poland was able to transmit ownership information in virtually all cases, which indicates that this information is generally available in practice.

**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. |

| Phase 1 determination | |
|---|---|
| **The element is not in place.** | |
| **Factors underlying recommendations** | **Recommendations** |
| 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. |

| Phase 2 rating |
|---|
| **Non-compliant.** |

## A.2. Accounting records

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

148. 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. The availability of accounting records in practice is supervised by the National Court Register, independent statutory auditors, and the tax authorities.

### *General requirements (ToR A.2.1)*

#### *Act on Accounting*

149. Limited liability companies, joint-stock companies, commercial partnerships (registered partnerships, professional partnerships, limited partnerships, and limited joint-stock partnerships), civil partnerships, co-operatives, 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).

150. 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).

151. 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).

152. 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. 23.2).

153. The Act on Accounting requires that all consolidated financial statements as well as annual financial statements of a number of entities are audited by an independent statutory auditor (Act on Accounting, Art. 64). The entities obliged to audit their financial statements include banks, joint stock-companies (except "joint-stock companies in organisation"), entities under provisions on trading in securities, insurance and reinsurance companies, credit unions, investment funds, pension funds, and other entities which fulfil two out the following three criteria: (a) average annual full-time employment attained or exceeded the level of 50 persons; (b) total balance sheet assets at the end of the financial year attained or exceeded a Polish currency equivalent of EUR 2.5 million; c) net revenue from the sales of products and goods, as well as financial transactions for the financial year attained or exceeded a Polish currency equivalent of EUR 5 million. These obligations are in addition to the requirements to keep accounting records as described in the previous paragraphs, as well as under tax law (see below).

154. Fifteen days after the financial statements have been approved; any entity and any civil partnership must submit them to the competent registration court of the National Court Register, including the resolution of the relevant approving body on the approval of the profit distribution and loss coverage (Act on Accounting, Art. 69). In case the entity was audited, the manager of the entity must also submit the opinion of the statutory auditor. Natural persons conducting economic activity and civil partnerships of natural persons which meet the conditions to audit their financial statements must submit the introduction to the financial statements, balance sheet, profit and loss account, statement of changes in equity, and cash flow statement for the financial year as well as the statutory auditor's opinion to the Court Business Journal (Gazette) within 15 days from their approval (Act on Accounting, Art. 70).

155. The manager of an entity and members of the supervisory board must ensure that financial statements and management reports 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 bookkeeping vouchers are accessible for inspection or supervision at the seat or head office of the entity (Act on Accounting, artt.11 and 11a).

156. 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. An entity that fails to submit to the registration courts or to publish its financial statements or that fails to have financial statements audited, or that provides incorrect information to an independent statutory auditor is liable to a fine or restriction of liberty (Act on Accounting, Art. 79). If an independent statutory auditor draws its opinion on the financial statements of an entity that is contrary to the facts, that statutory auditor is liable to a fine and/or imprisonment up to two years (Act on Accounting, Art. 78).

157. 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.

### In practice

158. The National Court Register and the authority managing the Court Business Journal (Gazette) ensure that financial statements and accounts are properly submitted and published. Statistics were not provided on the number of financial statements received annually by the National Court Register and the authority managing the Court Business Journal (Gazette). Nonetheless, articles 77 and 79 of the Accounting Act were enforced by criminal courts: sanctions were applied in 484 cases in 2011, 605 cases in 2012, and 877 cases in 2013 and took the form of fine, imprisonment, a combination of both fine and imprisonment, and restriction of liberty.

159. The independent statutory auditors are chosen by the entities themselves, notably by the body approving the financial statements. Independent auditors are a group of professionals which must obtain a qualification and be admitted to the National Chambers of Statutory Auditors. An opinion on the financial statements must be made available to the owners of the entity 15 days before the general meeting of an entity at the latest. If the auditor gives negative opinion, the financial statements cannot be approved, and without approval of the financial statements, any distribution of the profit would be illegal.

160. Auditors are supervised by the National Supervision Commission (NSC), which is a body of the National Chamber of Statutory Auditors. The NCS is responsible to carrying out inspections in audit firms aimed at ensuring the proper quality of the audits performed. The ultimate responsibility for inspections in audit firms is held by the Audit Oversight Commission. As of January 2015, there were 7 109 statutory auditors admitted to the National Chamber of Statutory Auditors, including 3 086 practicing ones. In the last four years, there was only one case when the statutory auditor was sanctioned for drawing up an opinion contrary to the facts.

### *Tax law*

161. 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). Taxpayers must submit to the revenue office financial statements within 10 days after the day of approval of the annual financial statement (LPIT, art. 27(2)). In case the financial statements must be audited, the taxpayer must submit the auditor's opinion. Most entities are required to follow the rules of the Act on Accounting regarding the records that must be kept.

162. 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 2003 on 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).

163. 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]

164. 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).

165. 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,

12. See section A.1.6 above.

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).

166. The Polish authorities indicated that in 2013 there were 109 706 taxpayers who paid tax in the form of a tax card, representing approximately 0.4% 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 EUR 150 000 or less, and thus small scale businesses. The scope of the gap is limited, both in terms of proportion of taxpayers and size of business. On the basis of the peer inputs obtained for this review, it does not appear that this gap had any impact on the ability of Poland to obtain and exchange information to foreign jurisdictions.

### *Trusts*

167. 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.

## In practice

168. The local tax offices are responsible for monitoring and enforcing accounting records under tax law. The local tax offices check compliance with accounting obligations during the course of tax and fiscal audits. During the years 2011, 2012 and 2013, the tax administration carried out, respectively, 131 228, 117 813, and 99 630 audits, which represents around 2% of

the total number of entities which could be subject to audit. Each year, around 70% of these audits finds some irregularities with the provisions of tax law. The audits have been conducted based on the National Plan of Tax Discipline, which establishes a risk-based approach to select the taxpayers to be audited. Since the taxpayers who are audited pose the highest risk, the high level of irregularities found is to be expected and does not point to a general problem with availability of accounting information. Sanctions have been applied for failure to maintain a ledger, or maintaining the ledger in an unreliable manner: 831 in 2011, 843 in 2012, and 806 in 2013.

### *Underlying documentation (ToR A.2.2)*

169. 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.

170. 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).

171. 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).

172. 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).

173. 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. In practice, availability of underlying documentation is supervised by the tax authorities together with availability of accounting records. The same supervisory and enforcement measures apply as outlined above (see section A.2.1).

### ***Document retention*** *(ToR A.2.3)*

174. 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). Account books, book-keeping vouchers, stocktaking documents and financial statements of entities which have been liquidated shall be kept by an

appointed person or entity; the manager of an entity, liquidator or bankruptcy estate trustee shall notify a competent court or another body keeping the register or economic activity records and the revenue office (Act on Accounting art. 76(2)).

175. 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).

176. In practice, the tax authorities have not encountered issues regarding failure to retain accounting documents for the required period. If the accounting records or documentation are not available, sanctions as indicated above apply.

### *Conclusion*

177. 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, co-operatives, 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. The scope of the gap is nonetheless limited, both in terms of proportion of taxpayers and size of business, and on the basis of the peer inputs obtained for this review, it does not appear that it has had any impact on the ability of Poland to obtain and exchange information to foreign jurisdictions.

178. The legal and regulatory framework to keep accounting records and underlying documentation is appropriately applied in practice. Financial statements of most entities have to be filed with the National Court Register or published in the Court Business Journal (Gazette), and a number of these financial statements must be audited by independent statutory auditors. The tax authorities perform a number of audits to verify that accounts and documents are effectively available. Even though a high level of irregularities are found (around 70% of the total audits yearly), this does not point to a general failure to maintain accounting information. The irregularities found are in relation to different provisions of tax law, and not necessarily in relation to

accounting information. As audits are conducted on the basis of a risk assessment, a high level of irregularities is to be expected Specific sanctions on the failure to maintain accounting records properly have been applied. The system of auditing performed by the tax administration provides for a sound mechanism to monitor that accounting information is maintained.

179. The availability of accounting records in practice is confirmed by Poland's EOI experience. During the review period (2011-13), Poland received 1 445 EOI requests related to direct tax. The Polish authorities do not know exactly how many requests concern accounting information, although they have indicated that such information is requested in a majority of cases together with requests for income tax returns. Of all requests, Poland was not able to provide an answer only in around 1% of the cases, even though it should be noted that the Polish competent authority does not keep track of the cases in which an answer was provided but the information was actually not transmitted either because not available or not obtainable (see section C.5 below). In any case, inputs from peers were generally positive and did not identify any major issue with accounting information from Poland (see also section B.1 below). Two peers highlighted that accounting records were not provided in a few cases, but this was not because the information was unavailable – rather the information could not be obtained from a liquidated company in one case (see B.1 below) or the taxpayer itself was not found. One peer noted that accounting information was received in almost all cases, without specifying the reason why the information was not provided by Poland.

**Determination and factors underlying recommendations**

| Phase 1 determination |
|---|
| **The element is in place.** |

| Phase 2 rating |
|---|
| **Compliant.** |

## A.3. Banking information

Banking information should be available for all account-holders.

180. 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 Polish Financial Supervision Authority (KNF). They are also obligated

institutions under the AML Law (AML Law, art. 2.1(c)). In practice, the KNF and the FIU monitor and enforce the obligations on banks and other financial institutions. Information on bank accounts is also held by the Ministry of Finance in a secured database called "Cerber".

### *Record-keeping requirements (ToR A.3.1)*

181. 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).

182. 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)).

183. 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).

184. 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).

185. 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.

186. 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.

### *Availability of banking information in practice*

187. The availability of banking information in practice is monitored and enforced by the KNF and the FIU. Information on bank accounts is also held by the Ministry of Finance in a secured database called "Cerber".

188. The FIU (General Inspector of Financial Information) supervises obliged institutions in their implementation of the AML legislation. Its supervisory activity consists of both off-site and on-site inspections. The programme of on-site inspections consists of three different types: "general inspections" look holistically at the implementation of the AML legislation; "thematic inspections" check whether previous recommendations have been fulfilled; and "cross-checking inspections", though during 2011-13 no such inspections have been carried out. The inspections may lead to recommendations that obliged institutions need to follow-up, and eventually sanctions.

189. In 2013, the FIU conducted a total of 16 on-site inspections, including 3 banks and 2 investment fund management companies. The deficiencies identified are divided into formal shortcomings and content irregularities. The formal shortcomings include failure to adjust the internal procedures to existing AML/CFT provisions, failure to include all the provisions required by law, and lack of provisions concerning the methods of transaction

monitoring and conducting a risk assessment analysis concerning possible money laundering and terrorist financing, on the basis of which suitable financial security measures are applied. The content irregularities include: no record of transactions exceeding the EUR 15 000 threshold; missing the deadline for registration of these transactions; and failure to apply financial security measures.

190. In addition to the FIU, other supervisory authorities conduct controls on the compliance of obligated institutions to AML legislation. In 2013, 1 627 controls have been carried out, of which 1 225 by the National Bank of Poland and 22 by the National Cooperative Savings and Credit Union. A written report about the results of these controls is forwarded to the FIU within 14 days after its completion.

191. As irregularities were found in 2013, 34 administrative procedures were initiated, 8 on the basis of controls carried out by the FIU directly, and 26 on the basis of controls carried out by the supervisory authorities. In 2013, a total of 55 administrative decisions were issued for procedures initiated in previous years. A total of 47 sanctions were imposed ranging from PLN 500 to PLN 550 000, for a total amount of PLN 1 496 300.

192. During its on-site inspections, the FIU also supervised the requirement of banks to maintain separate non-interest accounts for holders of anonymous accounts opened prior to 2010. No violation was identified on the obligation of banks to identify the person claiming the anonymous account.

193. The KNF supervises the financial services sector in Poland, which includes credit institutions, insurance firms, investment companies, exchanges, pension schemes as well as payment institutions and credit unions. KNF supervision includes off-site and on-site inspections aimed at ensuring regular operation of the financial market, its stability, security, and transparency. The KNF writes reports on financial institutions making recommendations to service providers, and issuing written warnings where appropriate.

194. Opening a bank account in Poland requires the provision of identity information. For individuals, this includes an identification document and proof of residential address in Poland. For legal entities, the requirements would include the name and the PESEL number (or date of birth in case of a person without PESEL) of the person representing the customer, and the extract from the National Court Register, or another document which contains a reference to the date of establishment of the customer's, the customers' name, the organisational form, the registered office and the tax identification number. Banks perform cross-verification that the person opening a bank account has not committed fraud, or that his/her identification document has been stolen. The representatives from the KNF have indicated that foreign persons can open a

bank account, but should have proof of a residential address in Poland; exceptions can be made for citizens of an EU country, in which case the bank would inform the central bank of the EU country of origin.

195. The Ministry of Finance maintains information on the bank accounts opened and closed by legal entities in a secured database, called "Cerber". The Ministry of Finance has this information because twice a month banks transmits the list of bank accounts closed and opened during that period. The database "Cerber" discloses information on the name of the entity, bank account number, tax identification, and dates of opening/closure of the account. Access to "Cerber" is granted only to authorised persons on a need-basis, and any access is monitored. The offices that have authorised persons to access "Cerber" are: all tax offices in Poland, all tax chambers, Custom Authority, Direction of Fiscal Office (Ministry of Finance), as well as the competent authority for EOI, the Tax Information Exchange Office.

196. Legal entities are required to report to the tax office all bank accounts related to their business and update the data within seven days (e.g. to inform about the liquidation of the account). The legal entity must indicate which account could be used for tax refunds and overpayments. Natural persons resident of Poland can inform the competent tax office of the existence of one account, in case of tax refunds and overpayments.

### *Conclusion*

197. 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. These legal obligations are effectively monitored and enforced by the KNF and the FIU, ensuring that banking information is available in practice.

198. Availability of banking information in practice is also confirmed by Poland's EOI experience. During the review period (2011-13), banking information was requested in 70 cases, and the information was provided in all cases.

**Determination and factors underlying recommendations**

| Phase 1 determination |
|---|
| **The element is in place.** |

| Phase 2 rating |
|---|
| **Compliant.** |

# B. Access to information

## Overview

199. 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.

200. The Minister of Finance or its authorised representative is Poland's competent authority for international exchange of information. The Minister has delegated the operative role of the competent authority to the Tax Information Exchange Office (TIEO). 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, tax proceedings and inspection acts, 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.

201. 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.

202. 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.

203. 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. In practice, tax information is collected from tax advisors when they have been authorised by the taxpayer to represent him/her.

204. The collection of information in practice is generally performed by the relevant local tax office. The request to collect the information comes from the TIEO to the competent Tax Chamber, and from the Tax Chamber to the competent tax office. In order to collect the information for EOI purposes, the tax office generally uses a provision of the tax law which was designed to collect information for domestic purposes. In addition to this power, the tax authorities also rely on tax control procedures – "tax proceedings" and "tax control", which can be launched solely on the basis of an EOI request. For a tax control to take place, a link to a domestic tax should be made in the notice. The use of this powers for EOI purposes has never been challenged and EOI experience has generally been good, with more than 1 400 requests answered to during the period under review. Despite some uncertainty as to the interaction between the letter of the law and the use of access powers in practice, a large positive EOI experience indicates that the competent authority can obtain and exchange the requested information.

205. Banking information may be collected directly by the TIEO from the banks. In a very few cases out of 70 a bank initially refused to provide the information to the TIEO on the basis of banking secrecy, but the information was eventually collected and exchanged.

## 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).

206. The Minister of Finance or its authorised representative is Poland's competent authority for international exchange of information. The Minister has delegated the operative role of the competent authority to the Tax Information Exchange Office (TIEO), which was established in 2005. 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.

207. The information requested is collected either by the TIEO directly, or by the competent local tax office. The TIEO generally collects the information directly when the EOI request concerns information on addresses and solely banking information. Local tax offices are involved in any other cases, regardless of whether the information is already available with the authorities or must be obtained from taxpayers or third parties.

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

208. 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).

209. 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.

210. 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).

211. 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 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 in connection with 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). Tax control can be the basis for tax proceedings which are normally concluded with a final decision of the tax authority to assess the tax liability, in which case another tax control may not normally be initiated again on the same case (TOA, art. 282a). Tax control and tax proceeding can be resumed if new facts intervene (TOA, art. 240 and 282a). In one calendar year, a taxpayer cannot be subject to a tax control for more than 12 to 48 working days depending on the size of the taxpayer (Freedom of Economic Activity Act, art. 83). This time limitation does not apply in particular to fiscal offences, VAT refund, and advance pricing agreements. The information gathered during such investigation may then be exchanged according to article 305a of the TOA.

212. In addition, the Polish authorities have indicated that information for EOI purposes can be obtained in the context of "tax proceedings" under the procedures outlined in Section IV of the TOA. Pursuant to article 165 of the TOA; a "tax proceeding" can be initiated at the request of a party, or ex officio. As part of a "tax proceeding" procedure, the tax authority can summon the taxpayer or other persons to make explanations, to give testimony or to perform a certain act personally, through an attorney or in writing if this is necessary to explain the state of fact or to settle the case (TOA, art. 155). Tax proceedings can be conducted only once on the same case.

213. Article 305f of the TOA establishes that an EOI request from a European Union (EU) member state "shall initiate the proceedings for furnishing the information". This would include the use of Polish tax procedures – "tax proceedings", "inspection acts", and "tax control". Article 305f of the TOA specifically refers to EOI requests from EU member states, and so an EOI request from a non-EU jurisdiction would not automatically trigger the proceedings to furnish the information. Nonetheless, the Polish authorities maintain that similar actions may be taken by the tax authorities in order to fulfil an EOI request from a non-EU jurisdiction on the basis of article 305a,

which allows the competent authority to exchange information with a foreign jurisdiction according to an international agreement, and considering that international agreements prevail over domestic legislation; in addition, article 120 of the TOA refers to the obligation of tax authorities to act pursuant to the provisions of law, which includes abiding by the wording of EOI provisions contained in international agreements.

### *Conclusion*

214. 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. Moreover, information can be requested in the context of a "tax proceeding". The power to request information under article 82§1 of the TOA 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 in connection with a request from the foreign tax authorities, and is thus not subject to such conditions.

### *Specific rules for obtaining information from certain sources*

215. 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.

216. 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).

217. Finally, a specific provision exists for collecting information from banks and financial institutions for EOI purposes, under which banks, co-operative 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).

218. 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*

219. 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.

220. 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.

221. 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). In practice, the Polish competent authority seeks to identify the person who is the subject of the request with all information that the foreign partner makes available. If the person cannot be identified – for example, because there is no indication of the address and multiple persons bear the same name – the competent authority will ask for more information. If in the end the person still cannot be identified, the competent authority will not process the request.

222. 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.

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

### *Obtaining the information in practice*

224. The requested information is collected either by the TIEO directly, or by the competent local tax office. When the tax office is involved, the TIEO sends a request to the competent tax chamber, which will then transmit the request to the competent tax office. TIEO's request does not indicate any deadline within which the information must be provided to the TIEO, but under the TOA, the deadline is two months if information is available with the authorities, and six months if it not available (see also section C.5 below). The TIEO generally collects the information directly when the EOI request concerns information on addresses and solely banking information. Local tax offices are involved in any other cases, regardless of whether the information is already available with the authorities or must be obtained from taxpayers or third parties.

225. During the review period (2011-13), Poland received 1 445 EOI requests. The TIEO directly collected the information in about 43% of the cases, of which addresses of individuals and legal entities constituted about 41%, and banking information about 2%. For the rest of the requests, the relevant tax office collected the requested information.

### Information available with the authorities

226. The TIEO and the local tax offices use a number of databases maintained by the authorities in order to obtain information for EOI purposes:

- The National Court Register – current ownership and identity information on LLCs and partnerships (other than civil partnerships), financial statements received by all entities.
- Tax databases held locally by each tax office – ownership information on all types of partnerships, on shareholders to which distributions have been made, as well as on tax returns; information on immovable property.
- "Cerber" – information on all bank accounts opened and closed in Poland by all legal entities.
- PESEL database maintained by the Ministry of Internal Affairs – information on the status of residency of individuals.

227. The information obtained through the databases allows to identify the person who is the subject of the request and in some cases it is sufficient to successfully provide the information. The TIEO can satisfy virtually all requests for addresses on the basis of the information available in the National Court Register and PESEL database. The TIEO uses "Cerber" to identify the holders of bank accounts held by legal entities. The TIEO does not have access to the tax databases, as these are held locally by each tax office. Any request that is not (or not only) for addresses or for bank accounts (see below) will be dealt with by the competent tax office. Figures are not available on how much these databases are sufficient to satisfy an EOI request that is processed by a tax office. It should be noted that according to the tax administration, which examines the data received from the National Court Register during tax audits, information in the hands of the National Court Register is not always reliable or up-to-date (see A.1.1 above). Nonetheless, even though the identification of the person under investigation has been slow in some cases, no peer complained about the quality of the information received, which indicates that Poland was generally able to exchange the requested information successfully.

### Collecting information (other than banking information) from taxpayers and third parties

228. When information (other than banking information) is not available with the authorities, or more information is needed, this is collected from the taxpayer or from a third party. The tax office has four ways to collect the information. Around 95% of the times, the tax offices collect the information by using "Inspection of Acts".

229. The first is to directly request the information from the taxpayer or third party who is in possession of the information by sending a letter. The tax authorities have indicated that the legal basis to request information is article 272 of the TOA. This provision is included in Section V "Inspection of Acts" of the TOA. This section allows the tax authority to carry out activities in order to verify the filing of tax returns and payment of declared taxes (TOA, Art. 272). The content of the notice does not specify the reasons why information is sought, but simply lists the information requested, and gives 14 days to reply. This provision was designed to collect information for domestic purposes, and it does not specify whether it can be used for exchange of information in direct tax matters. Article 305f of the TOA establishes that an EOI request from an EU member state "shall initiate the proceedings for furnishing the information", which would include the use of "inspection acts". For EOI requests from non-EU jurisdictions, there is not a similar provision, though the Polish authorities maintain that similar actions may be taken by the tax authorities in order to fulfil an EOI request from a non-EU jurisdiction on the basis of article 305a (see above). Although the

number of EOI requests that have been dealt with on the basis of article 272 of the TOA is not available, it is noted that during the review period Poland received 405 EOI requests from 12 non-EU jurisdictions. In any case, the tax authorities have indicated that no person has ever challenged the ability of the tax office to obtain information for EOI purposes via article 272 of the TOA.

230. In case the information is not obtained in this way, the tax administration can use a second tool, which is, launching a "tax proceeding". According to the Polish authorities, "tax proceedings" can be launched by a tax office on the basis of an EOI request in all cases (see discussion above). Information could be requested under article 155 and article 159 of the TOA. The representatives of the tax offices indicated that articles 155 and 159 are used in conjunction with article 272 to collect information (other than banking information) for EOI purposes.

231. The third is to use article 82§1 of the TOA, by which a contract (oral or written) must exist and in case of a natural person, he or she must carry out economic activity. The Polish authorities have indicated that this provision is not used in practice by itself to collect information for EOI purposes. Rather it is used in the context of a "tax control".

232. When information is not available with the authorities, and cannot be obtained via article 272 of the TOA, the tax office resorts to a fourth tool, called "tax control". Under "tax control", the information is obtained from the person under control on the basis of articles 286 and 287 of the TOA (see section B.1.4 below). Tax control is sometimes used to collect information for EOI purposes. Tax control can be performed more than once within a certain number of days in a calendar year (from 12 to 48 working days depending on the size of the taxpayer). This time limitation does not apply in particular to fiscal offences, VAT refund, and advance pricing agreements. In case a taxpayer has been subject to a control for domestic purposes, this fact would not impede the initiation of another control on the basis of an EOI request provided that the tax control does not exceed the time limits. In case a request for information needs to be followed-up with additional information, the tax administration will be able to collect the information by way of tax control. Considering the availability of sufficient number of working days per calendar year for tax control and that exceptions to these time limits apply, the existence of time limits does not appear to hinder the ability of the competent authority to obtain and exchange the information.

233. A "tax control" can be generally initiated after notification of the person under control (see element B.2 below). The content of the notification must include the indication of the person under control, and the scope of the control, which means the period and the information under control, as well as the type of domestic tax related to the control. The Polish authorities have indicated that in case of a tax control initiated to administer a foreign tax, the

tax office would relate the foreign tax to an equivalent Polish tax. The tax authorities have indicated that in practice the notice is never waived when a tax control is carried out in EOI cases, and this issue has not been raised as a problem by any peer. Exceptions to notification are nonetheless provided in the law (see element B.2 below).

234. The Polish authorities have indicated that "tax control" is more often used to answer foreign requests concerning value-added tax, but also in some cases in direct tax matters. Over the review period, one peer noted that in one case information on transactions between a Polish taxpayer and an entity from the requesting partner could not be received. The company under investigation in the requesting jurisdiction was liquidated and so no tax control could be initiated against this person. The Polish authorities have explained that a tax control cannot be carried out against a person that does not have a physical address in Poland, and so a company that has been liquidated cannot be the subject of a control. In case a person does not have a physical address in Poland, the tax administration can collect the information by using article 272 of the TOA or initiating a tax proceeding. Transactional information, nonetheless, should have been available for at least five years, and it is not clear why the tax office did not seek to obtain that information by using the other means at its disposal ("inspection acts" and "tax proceedings").

### Banking information

235. When the information requested is solely banking information, the TIEO always seeks to obtain it directly from the financial institution on the basis of article 82(3) of the TOA. If the EOI request is not only about banking information, the TIEO would generally ask the tax office to collect the whole information (bank and non-bank information). Around half of the requests for banking information are dealt with by the TIEO. Before sending a request to the financial institution, the TIEO needs to identify the bank where the account mentioned in the request is held. With solely the bank account number, the TIEO would be able to process the EOI request.

236. Within the TIEO, requests for banking information are dealt with by an assigned official, who has access to the database "Cerber". In order to obtain the information, the TIEO sends a letter, signed by the head of TIEO, to the bank requesting the information. The content of the letter lists the following facts: that the TIEO has been granted the authority from the Minister of Finance to act as competent authority for EOI; the legal basis for requesting the information (i.e. article 82(3) of the TOA); the international agreement under which the EOI request is made; the name of the country submitting the request; the reference number of the request; the date of when the EOI request was received, and the name and address of the person for whom banking information is sought (if available).

237. The letter does not contain any deadline within which the bank has to provide the information. The representatives from the TIEO explained that they do not do so because the law does not foresee any deadline. In any case, as a practice, the TIEO sends a reminder to the bank if the information is not received within one month. The representatives from the TIEO have indicated that timing has not been an issue as the average response from banks is around 30 days. Only in some cases, it took from three to four months. In one case in particular, the response was slow because the bank initially objected on the basis of bank secrecy (see below).

238. The TIEO requests the tax office to obtain information from banks only when banking information is just one part of the information sought. The tax office can request the information from the bank in the context of an open "tax proceeding", on the basis of article 182 of the TOA. The tax office must first approach the taxpayer in order to obtain the banking information, or in order to obtain an authorisation to request the information from the bank (TOA, art. 183). Then, if the taxpayer has not responded on time, has not provided the information, or the information obtained is not sufficient or must be cross-checked, the tax office can approach the bank or the financial institution. In case a foreign jurisdiction specifies that the taxpayer should not be informed of a request for banking information, then the information could be collected by the TIEO directly from the bank without the need for a notification. During the review period, banking information was requested in 70 cases and the information was always obtained (in around 40% of the cases by the TIEO, in around 60% of the cases by the tax offices). The figures on the number of cases where the tax offices collected banking information from the taxpayer or the bank are not available.

### Conclusions on the use of the powers to access information in practice

239. The actual collection of information is done either by the TIEO (generally where addresses or banking information need to be exchanged), or by the competent tax office. Some information is available in a number of databases to which the competent authority has access.

240. Where information needs to be sought from persons, the legislation in Poland gives the Polish authorities the powers to request information under Article 82§1 of the TOA and the power to carry out a tax control. Moreover, information can be requested during a "tax proceeding". Banking information is collected under article 82(3) of the TOA, or under article 182 of the TOA during a "tax proceeding".

241. In practice, in order to collect information for EOI purposes, the tax authorities do not use article 82§1 of the TOA, but rather article 272 of that

law ("inspection acts"). Article 272 of the TOA, nonetheless, is linked to the verification of the filing of tax returns and payment of declared taxes. While article 272 does not explicitly envision access for EOI purposes, the TOA specifically requires the starting of tax procedures (including "inspection acts", "tax proceedings" and "tax control") in order to reply to an EOI request from EU member states. A similar provision does not exist for EOI requests from non-EU jurisdictions, though the Polish authorities maintain that similar actions may be taken by the tax authorities. In any case, this provision has worked in practice and has never been challenged.

242. The Polish authorities have indicated that the tax authorities could use article 155 and 159 of the TOA to collect information in the context of a "tax proceeding". A tax proceeding can be initiated on the basis of an EOI request, although these provisions are generally not used to collect information for EOI purposes. In relation to EOI, the tax offices only use "tax proceedings" in order to collect information from banks, under the procedures established by article 182 of the TOA.

243. Information is also obtained during a "tax control", with the use of article 286 and 287 of the TOA, or by requesting information under article 82§1 of the TOA. A tax control is carried out in order to verify the fulfilment by a person of duties resulting from provisions of tax law, and a foreign request would be sufficient to initiate this control. The notice to be served before commencing a tax control must indicate, among others, the type of domestic tax related to the control. In case of a foreign request, the tax office would try to link the foreign tax to a Polish tax. In practice, the Polish authorities have indicated that no issue has been raised in this respect. Even though no problem was raised, the practice to link foreign tax to domestic tax leaves some doubt as whether the tax administration can obtain information on the basis of a tax control in all cases (e.g. when no equivalent domestic tax exist). The Polish authorities have indicated that a notice may not be served, although in practice this has not happened in relation to EOI cases. In addition, obtaining information through a tax control may not be possible in all cases (e.g. when a person does not have a physical address in Poland), as highlighted by a peer, which noted that in one case the information could not be exchanged because the Polish authorities could not carry out a tax control in relation to a liquidated company.

244. The EOI experience shows that Poland's access powers have generally been sufficient to obtain and exchange the requested information. As explained above, the Polish authorities can access information under various provisions of TOA namely Article 82, "tax proceedings", "tax control" and Article 272. In practice, Polish authorities use access powers under "tax control" and Article 272. Even though, legally, there may be some limitations on access power of the Polish authorities under Article 272 or "tax control",

in practice, Poland's access powers under these provisions have generally been sufficient to obtain and exchange the requested information. The Polish authorities can also access information in the course of "tax proceedings", as well as under article 82§1 provided that a contract (oral or written) must exist and in case of a natural person, he or she carries out economic activity.

245. During the review period (2011-13), Poland received 1 445 EOI requests related to direct tax. Of all requests, Poland was not able to provide an answer only in around 1% of the cases (i.e. the cases are still pending). In any case, inputs from peers were generally positive and did not identify any major issue with the ability of Poland to collect information. Only in one case, a peer indicated that the access powers did not allow the competent authority to obtain and exchange the information. The use of this powers for EOI purposes has never been challenged and EOI experience has generally been good, with more than 1 400 requests answered to during the period under review. Despite some uncertainty as to the interaction between the letter of the law and the use of access powers in practice, a large positive EOI experience indicates that the competent authority can obtain and exchange the requested information.

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

246. 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.

247. 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.

248. 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.

249. A "tax control" can be launched on the basis of an EOI request, nonetheless, when serving the notice its commencement, the tax authorities

designate the domestic tax subject to the control. In any case, it should be noted that the Polish authorities can obtain information by other means that are not linked to the existence of a link to a domestic tax: tax proceedings, and article 82§1 of the TOA. In practice, Poland received a large number of requests over the period under review, and no issue has been raised in relation to the ability of the tax authorities to obtain information absent a domestic tax interest.

### *Compulsory powers (ToR B.1.4)*

250. 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 560 to PLN 688 000 (from EUR 134 to EUR 165 000). The number of penalties applied under article 80 of the Penal and Fiscal Code were: 110 in 2011, 95 in 2012, and 91 in 2013. Article 83 of the Penal and Fiscal Code provides that whoever prevents from or obstructs the execution of official duties to a person authorised to conduct inspection acts, tax control, treasury control or control activities within the scope of special tax supervision, in particular whoever against the demand of that person fails to show a ledger or other document concerning the conducted economic activity or destroys, damages, conceals or removes a ledger or other document or makes them useless, shall be subject to the penalty of fine up to 720 daily rates (that is, PLN 16 128 000 or approximately EUR 4 million).

251. 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).

252. 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).

253. When served with the notice to provide the information on the basis of article 262 of the TOA, the information holder has 14 days to comply. If the information holder is not responsive, the tax office would launch a tax proceeding or a tax control. In the context of a tax proceeding, the tax office can obtain information from the bank after it had approached the account holder (see above), on the basis of article 182 of the TOA; the letter must contain a specific deadline.

254. The Polish authorities have indicated that tax control is very often successful in collecting the information needed, including documents and witnesses. In some cases the police are also involved. In the cases where the taxpayer is not co-operative in providing information, the tax authorities seek, and often obtain, the information from third parties.

255. In order to collect information from banks, the TIEO sends a letter requesting to provide the information. No deadline is included. As a practice, the TIEO sends a reminder after one month. If the banks still does not provide the information, the TIEO could apply sanctions on the basis of articles 80 and 83 of the Penal and Fiscal Code. Tax offices can apply the same sanctions in relation to the taxpayers and the bank if information is not provided. Thus far, the bank has always provided the information to the TIEO, on average within 30 days (see also B.1.5 below).

### ***Secrecy provisions*** *(ToR B.1.5)*

#### *Bank secrecy*

256. 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.

257. 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.

258. Banking information is in most cases obtained directly by the TIEO. In only very few cases, the bank initially refused to provide the information on the basis of banking secrecy. The Polish authorities have indicated that, in the rare cases where the bank objected to provide the information upon request by the TIEO, the TIEO explained details or legal provision imposing obligations on the bank to provide the requested information; so far, as a result, all banks have eventually complied.

### *Professional secrecy*

259. 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.

260. 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).

261. 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.

262. The Polish authorities indicate that, although the Law on Barristers covers as secret "everything" learned in the course of providing legal

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

assistance, the fact that a legal act is prepared by a barrister does not mean that 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.

263. 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.

264. 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.

265. In practice, the tax authorities have collected information from third parties, including lawyers. Tax advisors, and accountants, generally in the context of a "tax control". Tax information is collected from tax advisors only when they have been authorised by the taxpayer to represent him/her. Then the tax advisor is authorised to provide the information. The Polish authorities have indicated that no issues were raised with professional secret.

**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. |

| Phase 2 rating |
|---|
| **Compliant** |

## B.2. Notification requirements and rights and safeguards

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

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

266. 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).

267. 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. Taxpayers have a right to appeal the final decisions (i.e. the decision of the appeal body in the tax administration) of tax proceedings and tax controls. Yet, they cannot challenge at any time the collection of the information. Also, where the information for EOI purposes is obtained through tax proceedings or tax controls, the final decisions may be challenged in court, but the information would be already transmitted to the TIEO which then forwards the information to the foreign partner.

268. 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.

269. 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. Also, it should be highlighted that the tax control would be carried out in relation to the information holder, and not necessarily in relation to the subject of the request. After initiating the control, the person under control must be notified of the reason for the lack of the notification of the intention to initiate control (TOA, Art. 282c§3). In practice the notice is never waived when a tax control is carried out in EOI cases No peer has indicated that notification of the subject of the EOI request has been an issue and, as mentioned above, Polish legislation does not require the competent authority to notify the subject of the EOI request. In case a foreign jurisdiction specifically requests Poland not to notify the subject of the EOI request, the tax offices will generally be able to obtain the information through powers other than a tax control which do not require a notification to the subject of the examination (i.e. "inspection acts" and "tax proceedings"), or will be able to apply an exception to notification as provided in article 282c of the TOA.

**Determination and factors underlying recommendations**

| Phase 1 determination |
|---|
| **The element is in place.** |

| Phase 2 rating |
|---|
| **Compliant.** |

# C. Exchanging information

## Overview

270. 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.

271. Poland's network of exchange of information agreements covers 117 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.

272. The process of negotiations in Poland includes officials from the Tax Policy Department in the Ministry of Finance. Negotiations of Tax Information Exchange Agreements are generally conducted via emails.

273. 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.

274. 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.

275. Poland's competent authority for exchange of information is the Tax Information Exchange Office (TIEO), situated within the Ministry of

Finance, and more precisely within the Tax Chamber of Poznan. The TIEO is responsible for exchange of information in the field of direct and indirect taxes.

276. 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. During the review period, Poland received 1 445 requests related to direct taxes and addresses of individuals and legal entities. Including the time taken by the requesting jurisdiction to provide additional information, a final response was provided within 90 days, within 180 days and within one year in 61%, 79% and 92% of the time respectively. Only in 1% of the cases, the request is still pending, although it should be noted that a final response is counted as a closed case, regardless of whether the information was eventually exchanged or not.

277. Poland generally has in place appropriate organisational process and resources to deal with exchange of information. However, there is no routine process to ensure that status updates are provided to the partner jurisdictions in case a request cannot be satisfied within 90 days, and so Poland should implement such a system.

278. While generally no peer raised an issue concerning the rejection of EOI requests by Poland, in one case, relating to the holders of 1 300 heavy-truck vehicles, Poland has not provided the information requested by a treaty partner. The information requested belongs to a type of tax covered by an EOI arrangement between Poland and the peer, and it is foreseeably relevant. Poland considers this case a communication issue and has confirmed that it will act on the request, as well as similar future requests.

## C.1. Exchange-of-information mechanisms

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

279. Thus far, Poland has concluded 99 bilateral EOI agreements (14 TIEAs and 85 DTCs), of which 89 are in force. This section of the report explores whether these agreements allow Poland to effectively exchange information.

280. 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, 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.

281. 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 co-operation 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 co-operation and combating fraud in the field of value added tax.

282. Considering the bilateral and multilateral instruments altogether, Poland's EOI network comprises 117 jurisdictions.

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

284. The authority competent for exchange of information in direct tax matters is the Minister of Finance. The Minister of Finance delegated the Director of the Tax Chamber in Poznan to deal with the operation side of exchange of information in the area of direct taxes (sending and receiving requests, spontaneous and automatic information, as well as in any related correspondence). The Director of the Tax Chamber in Poznana passed on his competence in this area to the Deputy Director of the Tax Chamber in Poznan who acts as the Chief of the Tax Information Exchange Office in Konin (TIEO), which was established in 2005.

285. In addition to exchanging information on request, Poland participates also in other forms of administrative co-operation such as spontaneous and automatic exchange of information, and recovery assistance. These forms

of co-operation are mainly based on the EU Mutual Assistance Directive,[14] EU Savings Directive,[15] EU Recovery Directive,[16] and EU Regulation on Administrative Cooperation in the Field of VAT.[17] Poland shares information on automatic basis with EU countries and non-EU countries, including Australia, Canada, Iceland, and Norway. The TIEO is the central point of contact and the operative unit for these forms of international co-operation. A partner has indicated that it had submitted a request for carrying out a joint investigation to a company in Poland in May 2013, and that a final response on this issue has not been provided yet. In August 2013, Poland replied that the request was not appropriate, though without mentioning what was inappropriate in the request. The request was re-submitted in June 2014, and a reply has not yet been provided by Poland despite a reminder being sent in September 2014. It is not clear what the policy is in Poland regarding joint investigations.

### *Foreseeably relevant standard (ToR C.1.1)*

286. 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.

287. Poland's DTCs are generally based on the OECD *Model Taxation Convention* and its Commentary with regard to the scope of information that

14. Council Directive No. 2011/16/EU on administrative co-operation in the field of taxation.
15. Council Directive No. 2003/48/EC on taxation of savings income in the form of interest payments.
16. Council Directive No. 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.
17. Council Regulation No. 904/2010 EEC, on Administrative Cooperation and Combating Fraud in the Field of Value Added Tax.

can be exchanged. The DTCs concluded or amended after 2004 therefore mostly adopt the "foreseeably relevant" standard (Canada, Cyprus,[18, 19] Czech Republic, Denmark, Finland, Luxembourg, Malta, Malaysia, New Zealand, Norway, Saudi Arabia, Sweden, Switzerland, United Arab Emirates, 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 relevant" with "necessary". Poland's authorities state that they interpret these alternative formulations as equivalent to the term "foreseeably relevant".

288. In two cases, the DTCs do not meet the foreseeably relevant standard. In one of these cases (Kuwait), the scope of the exchange of information is limited to the provisions of the DTC. In addition, the DTC with Pakistan limits the exchange of information to the provisions of the DTC or to cases that concern tax fraud. It is recommended that Poland update these DTCs to remove these limitations.

289. 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.

290. Poland did not decline any request for information during the period under review on the basis that the requested information was not foreseeably relevant. The Polish authorities verify that the following information is included in the request:

- identity of the competent authority;
- that the agreement is in force and the request relates to taxable periods covered by the agreements;
- identity of the person under investigation;

18. 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 Islands. 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".

19. 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.

- place of residence of the person under investigation;
- statement of the information sought;
- the tax purpose for which the information is sought, particularly to see whether the purpose is consistent with the international agreement.

291. If the information needed to proceed with the request is not provided the Polish authorities will attempt to supplement it with information from their own sources (e.g. the tax database, National Court Register, database of the Ministry of Interior, etc.). If the information cannot be supplemented the Polish authority will ask for clarification. Clarification is also sought when the request is received from an authority that does not result as the competent authority in the TIEO's records. Three peers highlighted that in a few cases the taxpayer could not be identified, or the identification was slow. In most of these cases the information provided did not allow identification of the person concerned. Clarifications were sought in respect of individuals with a common name where no address or other identifying information was provided. The Polish authorities have indicated that the cases where the request could not be processed further and had to be closed as the TIEO did not have sufficient information were very rare.

292. Identification of the subject of the request may sometime be difficult. The reason why identification may sometime be difficult is mainly due to the fact that only the name of the company or of the taxpayer is not sufficient to identify the person, as the same name can be carried by many persons, including entities. In such cases, the TIEO would request additional information, such as tax identification numbers, address, or date of birth/incorporation. In some cases, particularly for individuals and for requests on immovable property, the Polish authorities would also need the exact place of residence of the person under investigation, as, absent of a central tax database, the competent authority needs to know the address in order to transfer the request to the competent tax chamber and then to the competent tax office (see sections A.1.1 above and C.5.2 below).

293. To sum up, notwithstanding some practical difficulties in identifying the person under investigation, Poland interprets the criteria of foreseeable relevance to the widest possible extent as was confirmed by peers.

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

294. 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.

295. 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,[20] Cyprus, Former Yugoslav Republic of Macedonia, France, Greece, India, Israel, Japan, Kuwait, Malaysia, Montenegro,[21] 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.

296. 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 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).

297. In practice no issue restricting exchange of information in this respect has been experienced by the Polish authority or by Poland's peers.

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

298. 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.

20. Agreement signed with Yugoslavia.
21. Agreement signed with Yugoslavia.

299. Twenty-three 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 (Belgium, Bosnia and Herzegovina, Canada, Cyprus, Czech Republic, Denmark, Finland, Iceland, India, Luxembourg, Malta, Malaysia, New Zealand, Norway, Saudi Arabia, Slovak Republic, Singapore, Korea, Sweden, Switzerland, United Arab Emirates, and United Kingdom, and United States. The DTCs or the relevant provisions with Belgium, Bosnia and Herzegovina, Malaysia, Korea, United Araba Emirates and United States are not in force yet). 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.

300. At least two of Poland's treaty partners (Austria, Lebanon) 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. In relation to the EOI relationship with Austria, both Austria and Poland are signatory to the *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters*. The Convention is in force in both countries.

301. 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.

302. In practice, Poland never declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. This has been confirmed by peers. Banking information is obtained directly by the TIEO in most cases. In one case, a bank initially refused to provide the information to the TIEO on the basis of banking secrecy, but then provided the information after the TIEO explained the legal

basis which allows it to request information from banks and financial institutions (see section B.1.5 above).

303. Poland applies reciprocity with regard to the exchange of banking information. In a few cases related to banking information, the TIEO asked the requesting partner whether it could provide the same information to Poland. The partner confirmed and the information was finally obtained and exchanged.

### *Absence of domestic tax interest (ToR C.1.4)*

304. 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.

305. Poland's DTCs with Belgium, Bosnia and Herzegovina, Canada, Cyprus, Czech Republic, Denmark, Finland, Iceland, India, Luxembourg, Malta, Malaysia, New Zealand, Norway, Saudi Arabia, Slovak Republic, Singapore, Korea, Sweden, Switzerland, United Arab Emirates, the United Kingdom, and the United States[22] 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*.

306. 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

22. DTCs or Protocols to DTCs with Belgium, Bosnia and Herzegovina, Malaysia, Korea, United Arab Emirates, and United States have not entered into force yet.

treaty partners and, if necessary, renegotiate its older DTCs to incorporate wording in line with Article 26(4) of the OECD *Model Taxation Convention*.

307. 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.

308. In practice, Poland is able to use all its domestic information gathering measures for EOI purposes regardless of a domestic tax interest (see sections B.1.1, B.1.2 and B.1.3 above). This was also confirmed by peers as no peer indicated any issue in this respect.

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

309. 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.

310. None of the information exchange agreements concluded by Poland applies the dual criminality principle to restrict the exchange of information. Accordingly, there has been no case where Poland declined a request because of dual criminality requirement as has been confirmed by peers.

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

311. 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").

312. Most of the information exchange agreements concluded by Poland cover both civil and criminal tax matters. The DTCs with 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 this DTCs to remove this limitation.

313. Poland does not require information from the requesting competent authority as to whether the requested information is sought for criminal or civil tax purposes and no peer input indicated any issue in this respect. No issue was raised by peers in this respect.

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

314. 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.

315. 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.

316. Peer inputs indicate that Poland provides the requested information in adequate form and no issue in this respect has been reported.

### *In force* *(ToR C.1.8)*

317. 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.

318. 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. Prior to this the agreement is distributed for intergovernmental consultations. The ratification process usually should take no longer than 4-6 months from signing, mostly depending on the schedule of work of Parliamentary committees. Of the 99 bilateral information exchange agreements concluded by Poland, 18 are not in force (with Algeria, Bahamas, Belgium (protocol), Belize, Bermuda,[23] Bosnia and Herzegovina (new DTC), Cayman Islands, Dominica Grenada, Liberia, Malaysia (Protocol), Nigeria, South Korea (protocol), United Arab Emirates (Protocol), United States (new DTC), Uruguay, Virgin Islands (British), and Zambia). Poland has completed all internal procedures and notified its treaty partners of the completion of the ratification procedure in respect of all agreements but four. The DTCs with

23. The agreement with Bermuda is in force as of 15 March 2015.

Algeria, Nigeria, Uruguay, and Zambia have been signed more than ten years ago and ratification is no longer pursued.

319. Poland signed the *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters*, and on 9 July 2010 the Amending Protocol This Convention was ratified by Poland in June 2011 and entered into force for Poland on 1 October 2011.

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

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

321. 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.

322. 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.** |

| Phase 2 rating |
|---|
| **Compliant.** |

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

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

323. 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.

324. The process of negotiations in Poland includes officials from the Tax Policy Department in the Ministry of Finance. Negotiations of Tax Information Exchange Agreements are generally conducted via emails and – if possible – Poland's request is to finalise them by the exchange of initialed text, confirming the agreement on substance. Poland's model DTC follows the letter of Article 26 of the OECD Model Tax Convention; Poland's TIEA model generally follows the OECD model, with the addition of a clause on automatic and spontaneous exchange of information. Thus far, only one TIEA (Grenada) includes the possibility to exchange information automatically and spontaneously.

325. Poland has exchange of information agreements with 99 jurisdictions, of which 85 are through a DTC and 14 through a TIEA. In addition, the *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters* covers 84 jurisdictions. Poland also exchange information with EU member States under EU mechanisms. In total, the exchange of information relationships cover 117 jurisdictions representing:

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

326. 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).

327. 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. |

| Phase 2 rating |
| --- |
| **Compliant.** |

## C.3. Confidentiality

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

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

328. 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.

329. 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.

330. 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).

331. 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.

332. 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. As a matter of practice, the competent authority always asks the foreign partner for permission to share the information received to authorities other than tax authorities. The information is shared only after the permission is obtained.

333. The competent authority has comprehensive policy to protect the confidentiality of the information received from a foreign partner. The TIEO maintains an electronic database called "Sowip" where information on EOI requests is stored (see C.5.2 below). Access to "Sowip" is strictly authorised to TIEO personnel, and the status of an EOI case is accessible only to the assigned case officer, the head of unit, the head of the division, and the head of TIEO. The physical request, including any annex, is stored in a file archive within the premises of the TIEO. Requests for banking information are dealt with by an assigned official, and the information is stored in a different file archive whose access is monitored. The TIEO is located in Konin, in an autonomous building only accessible to authorised officials. The activities of the TIEO (receiving and replying to EOI requests, obtaining the information directly from banks or from the available databases, and requesting Tax Chambers to obtain the information via the relevant tax office) do no give rise to any circumstance where the person who is the subject of an EOI request, or any other person, would have the right to obtain additional information, nor to inspect the files maintained by the TIEO.

334. When the information needs to be collected by the tax office, the TIEO electronically contacts the relevant tax chambers, which then contacts the relevant

tax office by encrypted email. Information exchanged between the TIEO and the tax chambers and between the tax chambers and the tax offices is encrypted by use of "Zip7", and is password-protected. In any tax chamber and tax office, there are two contact persons responsible for communication. The information received from the TIEO via the tax chamber is encoded. The tax office stores the information in the file of the taxpayer for ten years (Regulation of Ministry of Finance in terms of the implementation of uniform material register of acts in Tax Offices and Tax Chambers). Although it may be assumed that a taxpayer has a right to inspect his/her file, article 297a of the TOA indicates that exclusively certain authorities have the right to obtain the information provided by a tax authority of an EU country. As for the information provided by non-EU jurisdictions, it must be remembered that international agreements ratified by Poland apply directly and prevail over domestic legislation in case of conflict and as such, the confidentiality provisions found in the exchange of information agreements will override any statutory provisions to the contrary. It may be expected that when a taxpayer asks to inspect his/her file, the information provided by a foreign tax authority (including EOI requests), would not be made available.

### *Notices to the holder of the information*

335. In order to obtain the requested information, the information holder receives a notice from the local tax office or from the TIEO requesting the information. The letter from the tax office indicates the legal basis on which the notice is served (i.e. article 282 of the TOA), and the information to be transmitted, indicating that the person has 14 days to reply. In the letter to the bank, the tax office indicates the scope of information and the time limit for its furnishing, as well as an indication of the prerequisites justifying the necessity to obtain information covered by the request and evidence confirming that the account holder refused to furnish the information or did not agree to grant authorisation to the tax office to request the information. When banking information is sought directly by the TIEO, the letter indicates the legal basis (i.e. article 82§3 of the TOA and the international treaty), the name of the jurisdiction requesting the information, the assigned reference number, the list of the information to be transmitted, and it is accompanied by a copy of the Minister of Finance's authorisation to act as competent authority. In any circumstances, the information holder cannot obtain more information and cannot appeal the provision of the information.

### *Tax control and tax proceedings*

336. Under tax control procedure and tax proceedings, the audited person must receive some information on the reason and content of the audit. Seven days before the commencement of a tax control, the tax office must notify the person under control. The notification must include: *(i)* the designation of the authority (i.e. the tax office carrying out the control); *(ii)* the date and place

of issuance of the notification; *(iii)* the designation of the party under control; *(iv)* the indication of the control scope (i.e. the tax period under control, the related domestic tax); *(v)* the instruction on the right to file a tax return correction; *(vi)* the signature of the person authorised as regards the notification. When carrying out a control to collect information for EOI purposes, there is no indication that the control is carried out on the basis of a foreign request. As mentioned in section B.2 above, the tax office would relate the foreign tax to an equivalent Polish tax. At the end of a tax control, the tax office must issue a decision, which can be appealed, although not in a way that would prevent the exchange of the information (see B.2 above). The Polish authorities have indicated that audit files do not contain the EOI request, and the taxpayer would not be able to access the EOI request when appealing the decision following a tax control.

337. In the case of tax proceedings, the summons must indicate: *(i)* the name and address of the tax authority (i.e. the tax office carrying out the audit); *(ii)* the forename and surname of the summoned person; *(iii)* the matter and purpose of the summons and description of the person summoned; *(iv)* whether the summoned person must appear personally or be represented by an attorney, or if the person may make explanation or testimonies in writing; *(v)* the time limit for the request must be satisfied, or the day, hour and place of appearance of the person summoned or his or her attorney; *(vi)* the legal effects of non-compliance with the summons. In order to obtain banking information, which can be requested from banks only after the tax office has contacted the taxpayer, the tax office must indicate: the prerequisites justifying the necessity to obtain information covered by the request and evidence that the account-holder refused to provide the information or to provide the authorisation (TOA, art. 184). The requests for banking information are considered as "tax secrecy". At the end of a tax proceeding, a party shall be entitled to inspect the case records, to make notes, reproductions or copies thereof (TOA, art. 178§1). The Polish authorities have indicated that in the tax proceedings that are initiated in EOI cases, the taxpayer is not party to the proceeding and so he/she would not have access to the files (TOA, art. 305j).

### *All other information exchanged (ToR C.3.2)*

338. 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.

339. 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.** |

| Phase 2 rating |
|---|
| **Compliant** |

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

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

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

340. 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.

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

342. 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.

343. In practice, there was no case during the period under review where Poland refused to provide the information on the basis of professional privilege. In a number of cases, the information was obtained from company's lawyers, tax advisors, and accountants. Tax information is collected from tax advisors only when they have been authorised by the taxpayer to represent him/her. Then the tax advisor is authorised to provide the information. The Polish authorities have indicated that the tax authorities never experienced a refusal on the basis of secrecy provisions.

344. 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. Nevertheless, during the review period, there was no exchange of information between these two jurisdictions.

345. 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. |

| Phase 2 rating |
|---|
| **Compliant.** |

## C.5. Timeliness of responses to requests for information

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

### *Responses within 90 days* *(ToR C.5.1)*

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

347. Poland's DTC do not regulate the timeliness of the response to an EOI request. 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, even though the Tax Ordinance Act allows the tax chambers and the tax office to reply to the TIEO within two months if the information is available with the tax databases, and six months if the information is not immediately available.

348. 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.

349. During the review period (2011-13), Poland received 1 445 EOI requests related to direct tax, including requests for addresses of individuals and legal persons. Requests are counted as per number of requests received, regardless of the number of taxpayers involved. If additional questions arise concerning details of the same case, the request is not counted as a new request. The following table shows the time needed to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide further clarification and the time taken by Poland to seek clarification to assess the identity of the person under investigation.

| | 2011 | | 2012 | | 2013 | | Total | |
|---|---|---|---|---|---|---|---|---|
| | num. | % | num. | % | num. | % | Num. | % |
| Total number of requests received [a] | 328 | 100% | 571 | 100% | 546 | 100% | 1 445 | 100% |
| Final response [b]: ≤90 days | 145 | 44% | 358 | 63% | 382 | 70% | 885 | 61% |
| ≤180 days (cumulative) | 204 | 62% | 463 | 81% | 474 | 83% | 1 142 | 79% |
| ≤1 year (cumulative) | 262 | 80% | 538 | 94% | 532 | 97% | 1 322 | 92% |
| >1 year | 60 | 18% | 28 | 5% | 9 | 0.2% | 97 | 7% |
| Declined for valid reasons | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |
| Failure to obtain and provide information requested | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |
| Requests still pending at date of review | 6 | 2% | 5 | 1% | 6 | 1% | 17 | 1% |

a. Requests are counted as per number of requests received, regardless of the number of taxpayers involved.

b. The time periods in this table are counted from the date of receipt of the request to the date on which the final response was issued. It does not take into account partial responses provided in the meantime or any delays resulting from the need to seek clarifications of requests from a requesting jurisdiction.

350. As the table shows, the number of EOI requests increased steadily from 2011 to 2012, and remained stable in 2013. Most of the requests are received from Germany, France, Ukraine, United Kingdom, Belgium, and Norway. The competent authority does not keep track of whether requests relate to a particular type of information. In any case, the requests concerned ownership, accounting, banking, and tax information, as well as information on the addresses of companies and individuals. The number of EOI requests for address data was 547. The Polish authorities have indicated that ownership information is requested in a minority of cases, which is confirmed by the peer inputs received. Other than requests for address data, the majority related to income and transactional information. Banking information was requested in 70 cases.

351. Overall, Poland was able to provide a final response within 90 days in 61% of the cases, and within 180 days in 79% of the cases. Around 92% of the requests were satisfied within one year, and only 7% over one year. The trend shows a significant improvement in the timeline of responses from 2011 to 2013. The requests to which a final response is provided very quickly generally relate to addresses of companies and individuals (around 62% of the total number of requests dealt with in 90 days). Many peers did not raise concern about Poland's ability to provide the information timely. Nonetheless, three peers noted that information could be transmitted faster, particularly banking information when this is not the only type of information sought, and immovable property. One of these peers noted that information on immovable property was not received in a timely manner. The Polish authorities are aware of this shortcoming and confirmed that the provision of final response normally takes longer when the request relate to immovable property, for which there is no central database, or when the information needs to be collected from the tax offices in cases the information is not already in the hands of the authorities (see C.5.2 below).

352. Of all requests, Poland has not yet been able to provide a final response in 17 cases, that is, around 1% of the cases. All the pending requests are pending for more than one year. The information has not been collected by the local tax offices. Partial responses have been provided in a few cases.

353. It should be noted, however, that a final response is counted as a closed case, regardless of whether the information was effectively provided. The answers to EOI requests are generally vetted at the level of the tax chamber, and by the TIEO. The TIEO nonetheless only checks that all questions are given an answer to and that any document is properly attached, but does not keep track of the cases in which the information sought by the foreign partner was actually not transmitted, either because not available or not obtainable. Inputs from peers were generally positive and did not identify major issues with receiving the requested information, or with its quality. Three peers noted that in a very few circumstances the information was not

provided. In another case, a request concerning the period 2011-13 could not be satisfied because the tax office was not able to verify the transactions mentioned in the request because the taxpayer moved out of Poland to the jurisdiction making the request since 2011; the residential address in the requesting jurisdiction was nonetheless provided.

354. The TIEO verifies that the requests meet the formal requirements to be processed (such as, identification of the person, treaty in force, etc.) and interprets the foreseeable relevant standard to the widest possible (see C.1.1 above). The TIEO normally rejects the EOI request only when the formal requirements are not met, or when the person under investigation cannot be identified. The Polish authorities have indicated that they undertake everything in their power to identify the person being the subject of the request. Before rejecting the request because the person under investigation cannot be identified, the competent authority always engages with the requesting jurisdiction in order to obtain more information that would enable the identification. These requests are counted as "closed cases".

355. Peers did not generally raise any issue concerning the rejection of EOI requests by Poland. However, in one case, a peer complained that its request was declined. The request relates to the identity of holders of 1 300 heavy-truck vehicles (name and address of the holder of the vehicle and details about the vehicle such as weight, make and model) which might have violated the tax law of the requesting jurisdiction. The Polish authorities have indicated that they did not formally reject the request. The Polish authorities have also indicated that some information would be available in the central register of cars and heavy-weight vehicles, but that this information would not fully satisfy the request from the peer, because the register may not have the details of the actual holder of the vehicles. In order to fully satisfy the request, the tax administration would be required to undertake a time-consuming, expensive and laborious action, with ambiguous and questionable data. The Polish authorities also argued that processing this request could result in receiving more similar requests, which would cause severe resource burden. However, the peer has noted that it only requested basic information in relation registration numbers: name and address of the holder of the vehicle and details about the vehicle such as weight, make and model. The information requested belongs to a type of tax covered by an EOI arrangement between Poland and the peer, and the request is foreseeably relevant, though it belongs to an atypical case. Moreover, the Polish authorities have indicated that basic information is available and accessible, and therefore it should be exchanged. In view of the Polish authorities, there has been a communication issue with the partner and they confirm that, despite the administrative constraints, they will act on the request as well as on future similar requests. It is recommended that Poland work with its partner to ensure that it takes all reasonable efforts to provide available information.

356. Where a final response is not given within 90 days, the competent authority does generally not provide a status update, unless requested by the foreign partner. This has been confirmed by many peers. Status updates are not provided mainly because of an organisational issue (see section C.5.2 below). In any case, it is recommended that Poland establishes a routine process to update requesting authorities on the status of their requests where the response takes more than 90 days. The Polish authorities have indicated that new procedures have been introduced in 2014 to monitor the provision of status updates, however, this change is outside the review period.

357. Partial responses can be provided to the foreign partner when some part of the information is transmitted by the local tax office to the TIEO. Partial responses have been provided sometimes: in the years 2011-13 Poland sent 101 partial responses.

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

358. 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. The delegated competent authority is the TIEO, which is located in Konin, within the Tax Chamber of Poznan. The TIEO is the office competent for exchange of information in direct tax matters – both in-bound and out-bound requests. The TIEO is also responsible for exchange of information in value-added tax matters within the EU, as well as in-bound automatic and spontaneous requests, and recovery of claims.

#### *Organisation of EOI*

359. The exchange of information in practice is organised on three levels – central, provincial and local. At the central level is the TIEO, which is responsible for communication between the competent authorities as well as for the administration of the gathering of the requested information. This includes receiving all EOI requests and sending the answer, translation, checking whether these requests are formally correct, identifying the person under investigation in the foreign jurisdiction, ensuring that a response and related documents are provided to all questions, and contacting tax chambers. The verification that the request is foreseeably relevant is done by the TIEO and it takes the form of verifying that certain formal elements are provided by the requesting jurisdiction (see section C.1.1 above). The TIEO is also responsible for collecting directly banking information. The TIEO is organised with two units: prior to April 2014, one unit dealt with EOI in direct tax and the other dealt with EOI in value-added tax; since April 2014, the units have a geographical allocation, one for EU partners and the other for non-EU partners.

360. Tax chambers are the provincial and second level of the organisation of EOI in Poland. Tax chambers do not collect the information, but contact the relevant local tax office. The tax office would then collect the information and transmit it to the tax chamber. The tax chamber would then pass on the information to the TIEO. There are 16 tax chambers and 400 tax offices in Poland. Within each tax chamber there is an International Cooperation Unit, which comprises two contact persons in the field of exchange of information in direct taxes and two contact persons in value added tax. The structure of tax offices is similar, with two contact persons who are appointed for EOI in direct taxes and two for value added tax; specific International Cooperation Units are formed depending on needs.

361. Communication flow is handled via the "contact persons". In each tax chamber there are two contact persons responsible to communicate with the TIEO and with the relevant tax office. The tax office also has two contact persons, specialised in EOI, to communicate with the tax chamber.

362. In relation to EOI, the responsibilities of tax chambers are: *a)* co-ordination of the exchange of information in the region; *b)* responsibility for quality, accuracy and relevance of the generated requests and notices; *c)* sending of requests in cases initiated by Tax Chamber/Fiscal Audit Office; *d)* monitoring of time limits in exchange of information; *e)* monitoring of: the correctness of formal and substantive validity of requests for information, spontaneous information, answers, and feedback, as well as potential tax advantages for the Polish tax administration. In its responsibility of monitoring the formal validity of requests for information, the tax chambers do not assess the foreseeable relevance of the EOI request, as this work is already undertaken by the TIEO. When a draft reply for the foreign partner has been prepared by the tax office, the contact person within the tax chamber verifies that the reply is *(i)* to the subject, and *(ii)* formulated in a way that is understandable, bright, concise and logical, as well as whether it is compliant with Polish law and internal regulations. In cases where the decisions of a tax proceeding or a tax control is appealed, the tax chamber acts as the second instance in verifying the decision of the tax office, and in that case, it would check the substantial correctness of the reply.

363. Contact details of Poland's competent authority are available to competent authorities of EU Member states through the CIRCA database. In respect of competent authorities of non-EU jurisdictions contact details are communicated by Poland during treaty negotiations, face to face meetings or emails and are available on the Global Forum's Competent Authority database. The identity of the competent authority is also disclosed in Annex B of the Convention on Mutual Administrative Assistance in Tax Matters, which is available on the Council of Europe website.

364. The Polish competent authority contacts EOI partners depending on the gravity of the particular case, in the form of letters, e-mails, telephone contacts, workshops or meetings.

### *Handling of EOI requests*

365. General procedures to handle EOI requests are the same for all jurisdictions and types of the requested information. The practical administration of each request depends on the availability of information (e.g. whether the information is already at the disposal of the tax administration, or needs to be obtained directly from the taxpayer or third party), type of information requests, or other specific aspects of the case.

366. As soon as a request for information reaches the TIEO, the head or the deputy head of the TIEO distributes it to the relevant head of unit; since April 2014, the competent unit depends on the jurisdiction which sent the request; prior to April 2014 the unit depended on sort of tax (direct tax or value added tax). The head of unit allocates the request to an officer on the basis of his/her workload and language skills. The case officer enters the request to the database maintained by the TIEO (Sowip) and then translates and sends acknowledgment of receipt to the requesting partner at the same time. Requests received from EU Member countries via the CCN network automatically generate acknowledgment of receipt. Translation and acknowledgments generally take seven days, although in some cases the translation may be longer, and the acknowledgment is sent separately. Once the translation is done, the case officer verifies that the request meets the requirements to process the request, including the identification of the person under investigation as well the information-holder. When the request is translated, validated, and the information-holder is identified, the case officer sends the translated EOI request to the contact persons in the relevant tax chamber, as well as any attachment. Clear and detailed internal guidelines exist to support the work of case officers within TIEO. It is noted that one peer outside the EU has indicated that Poland general does not send acknowledgements of receipt of an EOI request.

367. The tax chamber would then contact the relevant tax office for the collection of information. The request to the tax chamber is made through an internal electronic system. The request does not contain any deadline within which the information has to be collected and transmitted back, although the Tax Ordinance Act specifies that the tax office has two months to reply if the information is already available with the tax authorities, or six months in case not. The Polish authorities have indicated that in case of an urgent request, the TIEO would specify in the notice to the tax chamber that the EOI request should take priority, although it does not have the power to establish a shorter deadline. Because of these deadlines, the tax office does not communicate to

the tax chamber on the status of the request before two or six months, and the tax chamber does not notify the TIEO in case the request cannot be dealt with within the established deadlines. Moreover, the TIEO does not request status updates from the tax chambers when the information cannot be provided to the treaty partner within 90 days. As a consequence, there is no mechanism to provide a status update. Status updates are only provided if requested by the treaty partner. The Polish authorities have indicated that new procedures have been introduced in 2014 to monitor the provision of status updates; however, this change is outside the review period.

368. Once the tax office has received the request from the tax chamber, the contact person within the tax office would either collect the information or instruct a unit within the office. Depending on the type of information sought, the unit generally collects it by a desktop audit or a tax audit. Once the process to collect the information has been concluded by the tax office, the contact person transmits the information and any attachment to the tax chamber. The tax chambers verify that answers have been provided to all questions and transmit the information to the TIEO. The case officer and the head of unit within the TIEO also perform a verification that all questions have been answered to. If not all the questions are answered, the tax chamber or the TIEO would send the request back. Once all answers are given an answer to, the TIEO sends the information to the partner jurisdiction, signed by the head or the deputy head of the TIEO.

369. In case of requests for banking information, the TIEO can collect the information directly. Specialised persons within the TIEO deal with such requests. Because these requests are considered more sensitive, the head of the TIEO and the deputy head would supervise the work of the specialised officer directly. The letters to the banks are signed by the head of TIEO. The letter does not contain any deadline within which to provide the information, as the law does not specify such circumstance. The Polish authorities have indicated that banks nonetheless provide the answer on average within one month. The TIEO sends a reminder to the bank if the information is not provided within one month.

370. To conclude, the handling of EOI requests is generally well structured and organised, although the monitoring aspect could be strengthened. This is because long deadlines to collect information in case the information is not already available to the authorities (six months), together with the practice of the TIEO not to require updates from tax chambers in case a request cannot be fulfilled within 90 days, mean that status updates are not provided to treaty partners automatically. In addition, even though the TIEO, tax chambers, and tax offices vet that all EOI requests are fully answered, there is no thorough qualitative analysis of whether the answer has been answered correctly. The lack of this thorough check might mean that the EOI request is

not correctly answered, yet it should be stressed that no peer has complained about the quality of the answers received and have in many occasion praised the completeness of Poland's responses. In any event, it is recommended that Poland ensure that status updates are provided in all cases where the response takes more than 90 days. Poland should also strengthen its supervision of handling EOI requests to ensure that all answers are qualitatively checked.

### *Resources and training*

371. The TIEO has sufficient human and technological resources to carry out its tasks. The TIEO comprises 29 people working full time on inbound and outbound requests for information. The staff is divided into two units of 12 people each, including a head of unit, plus a head and a deputy head of the TIEO. Two people work on automatic EOI. Since April 2014, the units were divided according to a geographical distribution (EU partners and non-EU partners). Prior to April 2014, the units were divided into direct tax and value added tax matters. According to the Polish authorities, this change has sensibly improved efficiency. All staff members graduated from higher studies in the area of economics, law or administration, some of them also competed post-graduate studies. They all have a fluent knowledge of at least one of the following foreign languages: English, German or French.

372. The technological resources available to the TIEO include an IT database to monitor EOI requests (Sowip) that generates automatic deadline alerts, an internal software allowing communication between the TIEO and tax chambers, and the CCN with EU Member states. Other electronic databases used by the TIEO include:

- The National Court Register, for information on companies and other legal entities
- "Cerber", for information on all bank accounts opened and closed in Poland by all legal entities.
- PESEL database maintained by the Ministry of Interior database, for information on the status of residency of individuals.

373. Tax databases on all Polish taxpayers and on immovable property are held locally by each tax office. The Polish authorities have indicated that these databases will be centralised in between 2015 and 2017, and this should improve timeline for what concerns identification of taxpayers and requests on property.

374. Staff members at the TIEO are trained on the job through a buddy-system, whereby a more senior official assists a more junior staff member. Twice a year the TIEO organises seminars for "contact persons" on different topics. A latest seminar for contact persons in tax chambers focused on

keeping the confidentiality of information. Contact persons in tax chambers are responsible for training of contact persons in tax offices.

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

375. There are no laws or regulatory practices in Poland that impose restrictive conditions on exchange of information.

**Determination and factors underlying recommendations**

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

| Phase 2 rating | |
|---|---|
| **Compliant.** | |
| **Factors underlying recommendations** | **Recommendations** |
| Where a final response is not given within 90 days, the competent authority does generally not provide a status update, unless requested by the foreign partner. Status updates are not provided mainly because of an organisational issue. | Poland should establish a routine process to update requesting authorities on the status of their requests where the response takes more than 90 days. |

# Summary of Determinations and Factors Underlying Recommendations

| Overall Rating |
|---|
| **Largely Compliant** |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)* | | |
| **Phase 1 determination: The element is 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. |
| **Phase 2 rating: Non-compliant** | | |

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

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)* | | |
| **Phase 1 determination: The element is in place.** | | Poland should continue to develop its exchange of information network with all relevant partners. |
| **Phase 2 rating: Compliant** | | |
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received*(ToR C.3)* | | |
| **Phase 1 determination: The element is in place.** | | |
| **Phase 2 rating: Compliant** | | |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)* | | |
| **Phase 1 determination: The element is in place.** | 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. |
| **Phase 2 rating: Compliant** | | |
| The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)* | | |
| **This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.** | | |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| **Phase 2 rating: Compliant** | Where a final response is not given within 90 days, the competent authority does generally not provide a status update, unless requested by the foreign partner. Status updates are not provided mainly because of an organisational issue. | Poland should establish a routine process to update requesting authorities on the status of their requests where the response takes more than 90 days. |

# Annex 1: Jurisdiction's response to the review report[24]

Poland would like to acknowledge its commitment to the principles of international cooperation and exchange of information in tax matters. The Phase 2 Report fairly reflects the situation of our country in terms of transparency and exchange of tax information process.

We want to thank the members of the assessment team for their work, constructive discussions and professionalism.

We would also like to express our gratitude to the Peer Review members for their input and comments to the report.

Poland will continue its work on constant improvement and will support Global Forum in its activities taken to achieve more transparent environment in the global perspective.

24. 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

## 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, Croatia, 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 co-operation and combating fraud in the field of value added tax.

## Multilateral agreement

Poland is a signatory to the amended *OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters* (*Multilateral Convention*). This Convention was ratified by Poland in June 2011 and entered into force for

Poland on 1 October 2011. The status of the multilateral Convention and its amending 2010 Protocol as at December 2014 is set out in the table below.[25] 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 December 2014. For jurisdictions with which Poland has several agreements, a reference to all those EOI instruments is made.

| No. | Jurisdiction | Type of EOI agreement | Signature[a]/ Territorial scope | Date of entry into force/Status |
|---|---|---|---|---|
| 1 | Albania | DTC | 05-03-1993 | 01-01-1995 |
| | | Multilateral Convention | Signed | 12-1-2013 |
| 2 | Algeria | DTC | 31-01-2000 | |
| 3 | Andorra | TIEA | 15-06-2012 | 1-1-2014 |
| | | Multilateral Convention | Signed | Not in force |
| 4 | Anguilla[b] | Multilateral Convention | Extended | 1-3-2014 |
| 5 | Argentina | Multilateral Convention | Signed | 01-01-2013 |
| 6 | Armenia | DTC | 14-07-1999 | 01-01-2006 |
| 7 | Aruba[c] | Multilateral Convention | Extended | 1-3-2013 |
| 8 | Australia | DTC | 07-05-1991 | 01-01-1993 |
| | | Multilateral Convention | Signed | 01-12-2012 |
| 9 | Austria | DTC | 13-01-2004 | 01-01-2006 |
| | | Protocol | 4-2-2008 | 1-1-2009 |
| | | Multilateral Convention | Signed | 1-12-2014 |
| | | EU Council Directive 2011/16/EU (EU Directive) | 15.02.2011 | 01.01.2013 |

25. 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 | Signature[a]/ Territorial scope | Date of entry into force/Status |
|---|---|---|---|---|
| 10 | Azerbaijan | DTC | 26-08-1997 | 01-01-2006 |
| | | Multilateral Convention | Signed | 01-10-2004 (Protocol not in force) |
| 11 | Bahamas | TIEA | 28-6-2013 | |
| 12 | Bangladesh | DTC | 08-07-1997 | 01-01-2000 |
| 13 | Belarus | DTC | 18-11-1992 | 01-01-1994 |
| 14 | Belgium | DTC | 20-08-2001 | 01-01-2005 |
| | | Protocol | 14-04-2014 | |
| | | Multilateral Convention | Signed | 01-12-2000 (Protocol not yet in force) |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 15 | Belize | TIEA | 16-05-2013 | |
| | | Multilateral Convention | Signed | 01-03-2014 |
| 16 | Bermuda[b] | Multilateral Convention | Extended | 1-3-2014 |
| 17 | Bosnia and Herzegovina | DTC | 10-01-1985 | 01-01-1986 |
| 18 | Brazil | Multilateral Convention | signed | Not in force |
| 19 | British Virgin Islands[b] | TIEA | 28-11-2013 | |
| | | Multilateral Convention | Extended | 01.03.2014 |
| 20 | Bulgaria | DTC | 11-04-1994 | 01-01-1996 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 21 | Cameroon | Multilateral Convention | Signed | Not in force |
| 22 | Canada | DTC | 04-05-1987 | 01-01-1989 |
| | | DTC | 15-05-2012 | 1-1-2014 |
| | | Multilateral Convention | Signed | 01-03-2014 |
| 23 | Cayman Islands[b] | TIEA | 29-11-2013 | |
| | | Multilateral Convention | Extended | 1-1-2014 |
| 24 | Chile | DTC | 10-03-2000 | 01-01-2004 |
| | | Multilateral Convention | Signed | Not in force |
| 25 | China (People's Republic of) | DTC | 07-06-1988 | 01-01-1990 |
| | | Multilateral Convention | Signed | Not in force |
| 26 | Colombia | Multilateral Convention | Signed | 01-07-2014 |

| No. | Jurisdiction | Type of EOI agreement | Signature[a]/ Territorial scope | Date of entry into force/Status |
|---|---|---|---|---|
| 27 | Costa Rica | Multilateral Convention | Signed | 01-08-2013 |
| 28 | Croatia | DTC | 19-10-1994 | 01-01-1997 |
| | | Multilateral Convention | Signed | 01-06-2014 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 29 | Curaçao[c] | Multilateral Convention | Extended | 01-09-2013 |
| 30 | Cyprus[e] | DTC | 04-06-1992 | 01-01-1992 |
| | | PROTOCOL | 22-03-2012 | 1-1-2014 |
| | | Multilateral Convention | Signed | Not in force |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 31 | Czech Republic | DTC | 24-06-1993 | 20-12-1993 |
| | | DTC | 30-09-2011 | 11-06-2012 |
| | | Multilateral Convention | Signed | 01-02-2014 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 32 | Denmark | DTC | 06-12-2001 | 01-01-2003 |
| | | Multilateral Convention | Signed | 01-02-2012 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 33 | Dominica | TIEA | 10-07-2012 | |
| 34 | Egypt | DTC | 24-06-1996 | 01-01-2002 |
| 35 | Estonia | DTC | 09-05-1994 | 01-01-1995 |
| | | Multilateral Convention | Signed | 01-11-2014 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 36 | Faroe Islands[d] | Multilateral Convention | Extended | 01 06 2011 |
| 37 | Finland | DTC | 08-06-2009 | 01-01-2011 |
| | | Multilateral Convention | Signed | 01-06-2011 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 38 | Former Yugoslav Republic of Macedonia | DTC | 28-11-1996 | 1-1-2000 |
| 39 | France | DTC | 20-06-1975 | 01-01-1974 |
| | | Multilateral Convention | Signed | 01-04-2012 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |

| No. | Jurisdiction | Type of EOI agreement | Signature[a]/ Territorial scope | Date of entry into force/Status |
|---|---|---|---|---|
| 40 | Gabon | Multilateral Convention | Signed | Not in force |
| 41 | Georgia | DTC | 05-11-1999 | 16-06-2006 |
| | | Multilateral Convention | Signed | 01-02-2012 |
| 42 | Germany | DTC | 14-05-2003 | 01-01-2005 |
| | | Multilateral Convention | Signed | Not yet in force |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 43 | Ghana | Multilateral Convention | Signed | 01-09-2013 |
| 44 | Gibraltar[b] | TIEA | 31-01-2013 | 5-12-2013 |
| | | Multilateral Convention | Extended | 01-03-2014 |
| 45 | Greece | DTC | 20-11-1987 | 01-01-1992 |
| | | Multilateral Convention | Signed | 01-09-2013 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 46 | Greenland | Multilateral Convention | Extended | 01-06-2011 |
| 47 | Grenada | TIEA | 18-07-2012 | |
| 48 | Guatemala | Multilateral Convention | Signed | Not in force in Guatemala |
| 49 | Guernsey[b] | TIEA | 06-12-2011 | 01-11-2012 |
| | | Multilateral Convention | Extended | 01-08-2014 |
| 50 | Hungary | DTC | 23-09-1992 | 01-01-1996 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 51 | Iceland | DTC | 19-06-1998 | 01-01-2000 |
| | | Multilateral Convention | Signed | 01-02-2012 |
| 52 | India | DTC | 21-06-1989 | 01-01-1990 |
| | | Multilateral Convention | Signed | 01-06-2012 |
| 53 | Indonesia | DTC | 06-10-1992 | 01-01-1994 |
| | | Multilateral Convention | Signed | Not yet in force |
| 54 | Iran | DTC | 02-10-1998 | 01-01-2007 |
| 55 | Ireland | DTC | 13-11-1995 | 01-01-1996 |
| | | Multilateral Convention | Signed | 01-09-2013 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 56 | Isle of Man[b] | TIEA | 07-03-2011 | 27-11-2011 |
| | | Multilateral Convention | Extended | 01-03-2014 |
| 57 | Israel | DTC | 22-05-1991 | 01-01-1992 |

| No. | Jurisdiction | Type of EOI agreement | Signature[a]/ Territorial scope | Date of entry into force/Status |
|---|---|---|---|---|
| 58 | Italy | DTC | 21-06-1985 | 26-09-1989 |
| | | Multilateral Convention | Signed | 01-05-2012 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 59 | Japan | DTC | 20-02-1980 | 01-01-1983 |
| | | Multilateral Convention | Signed | 01-10-2013 |
| 60 | Jersey[b] | TIEA | 2-12-2011 | 01-11-2012 |
| | | Multilateral Convention | Extended | 01-06-2014 |
| 61 | Jordan | DTC | 04-10-1997 | 01-01-2000 |
| 62 | Kazakhstan | DTC | 21-09-1994 | 01-06-1995 |
| | | Multilateral Convention | Signed | Not in force |
| 63 | Korea | DTC | 21-06-1991 | 01-01-1991 |
| | | Protocol | 22-10-2013 | |
| | | Multilateral Convention | Signed | 01-07-2012 |
| 64 | Kyrgyzstan | DTC | 19-11-1998 | 01-09-2004 |
| 65 | Kuwait | DTC | 16-11-1996 | 01-01-1996 |
| 66 | Latvia | DTC | 17-11-1993 | 01-01-1995 |
| | | Multilateral Convention | Signed | 01-11-2014 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 67 | Lebanon | DTC | 26-07-1999 | 01-01-2004 |
| 68 | Liberia | TIEA | 7-8-2013 | |
| 69 | Liechtenstein | Multilateral Convention | Signed | Not in force |
| 70 | Lithuania | DTC | 20-01-1994 | 01-01-1995 |
| | | Multilateral Convention | Signed | 01-06-2014 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 71 | Luxembourg | DTC | 14-06-1995 | 01-01-1997 |
| | | PROTOCOL | 07-06-2012 | 1-1-2014 |
| | | Multilateral Convention | Signed | 01-11-2014 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 72 | Malaysia | DTC | 16-09-1977 | 01-01-1977 |
| 73 | Malta | DTC | 07-01-1994 | 01-01-1995 |
| | | PROTOCOL | 06-04-2011 | |
| | | Multilateral Convention | Signed | 01-09-2013 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |

| No. | Jurisdiction | Type of EOI agreement | Signature[a]/ Territorial scope | Date of entry into force/Status |
|---|---|---|---|---|
| 74 | Mexico | DTC | 30-11-1998 | 01-01-2003 |
| | | Multilateral Convention | Signed | 01-09-2012 |
| 75 | Moldova | DTC | 16-11-1994 | 01-01-1996 |
| | | Multilateral Convention | Signed | 01-03-2012 |
| 76 | Monaco | Multilateral Convention | Signed | Not in force |
| 77 | Mongolia | DTC | 18-04-1997 | 01-01-2002 |
| 78 | Montenegro | DTC | 12-06-1997 | 01-01-1999 |
| 79 | Montserrat[b] | Multilateral Convention | Extended | 01-10-2013 |
| 80 | Morocco | DTC | 24-10-1994 | 01-01-1997 |
| 81 | Netherlands | DTC | 13-02-2002 | 01-01-2004 |
| | | Multilateral Convention | Signed | 01-09-2013 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 82 | New Zealand | DTC | 21-04-2005 | 01-01-2007 |
| | | Multilateral Convention | Signed | 01-03-2014 |
| 83 | Nigeria | DTC | 12-02-1999 | |
| | | Multilateral Convention | Signed | Not in force |
| 84 | Norway | DTC | 09-09-2009 | 01-01-2011 |
| | | Multilateral Convention | Signed | 01-02-2012 |
| 85 | Qatar | DTC | 18-11-2008 | 01-01-2010 |
| 86 | Pakistan | DTC | 25-10-1974 | 01-01-1973 |
| 87 | Philippines | DTC | 09-09-1992 | 01-01-1998 |
| | | Multilateral Convention | Signed | Not in force |
| 88 | Portugal | DTC | 09-05-1995 | 01-01-1999 |
| | | Multilateral Convention | Signed | 01-03-2015 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 89 | Romania | DTC | 23-06-1994 | 01-01-1996 |
| | | Multilateral Convention | Signed | 01-11-2014 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 90 | Russia | DTC | 22-05-1992 | 01-01-1994 |
| | | Multilateral Convention | Signed | Not in force |

| No. | Jurisdiction | Type of EOI agreement | Signature[a]/ Territorial scope | Date of entry into force/Status |
|---|---|---|---|---|
| 91 | San Marino | TIEA | 31-03-2012 | 28-2-2013 |
| | | Multilateral Convention | Signed | Not in force |
| 92 | Saudi Arabia | DTC | 22-02-2011 | 1-1-2013 |
| | | Multilateral Convention | Signed | Not in force |
| 93 | Serbia | DTC | 12-06-1997 | 01-01-1999 |
| 94 | Singapore | DTC | 23-04-1993 | 01-01-1993 |
| | | DTC | 04-11-2012 | 1-1-2015 |
| | | Multilateral Convention | Signed | Not in force |
| 95 | Sint Maarten[c] | Multilateral Convention | Extended | 01-09-2013 |
| 96 | Slovak Republic | DTC | 18-08-1994 | 01-01-1996 |
| | | Protocol | 1-8-2013 | 1-1-2015 |
| | | Multilateral Convention | Signed | 01-03-2014 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 97 | Slovenia | DTC | 28-06-1996 | 01-01-1999 |
| | | Multilateral Convention | Signed | 01-02-2012 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 98 | South Africa | DTC | 10-11-1993 | 01-01-1996 |
| | | Multilateral Convention | Signed | 01-03-2014 |
| 99 | Spain | DTC | 15-11-1979 | 01-01-1983 |
| | | Multilateral Convention | Signed | 01-01-2013 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 100 | Sri Lanka | DTC | 25-04-1980 | 01-01-1983 |
| 101 | Sweden | DTC | 19-11-2004 | 01-01-2006 |
| | | Multilateral Convention | Signed | 1-02-2012 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 102 | Switzerland | DTC | 02-09-1991 | 01-01-1993 |
| | | PROTOCOL | 20-04-2010 | 17-10-2011 |
| | | Mutual Agreement | 29-12-2011 | 01-01-2012 (eff.) |
| | | Multilateral Convention | Signed | Not in force |
| 103 | Syrian Arab Republic | DTC | 15-08-2001 | 01-01-2004 |
| 104 | Tajikistan | DTC | 27-05-2003 | 01-09-2004 |
| 105 | Thailand | DTC | 08-12-1978 | 01-01-1983 |

| No. | Jurisdiction | Type of EOI agreement | Signature[a]/ Territorial scope | Date of entry into force/Status |
|---|---|---|---|---|
| 106 | Tunisia | DTC | 29-03-1993 | 01-01-1994 |
| | | Multilateral Convention | Signed | 01-02-2014 |
| 107 | Turkey | DTC | 03-11-1993 | 01-01-1998 |
| | | Multilateral Convention | Signed | Not in force |
| 108 | Turks & Caicos Islands[b] | Multilateral Convention | Extended | 01-12-2013 |
| 109 | Ukraine | DTC | 12-01-1993 | 01-01-1995 |
| | | Multilateral Convention | Signed | 01-09-2013 |
| 110 | United Arab Emirates | DTC | 31-01-1993 | 01-01-1995 |
| | | Protocol | 11-12-2013 | |
| 111 | United Kingdom | DTC | 20-07-2006 | 01-01-2007 |
| | | Multilateral Convention | Signed | 01-02-2012 |
| | | EU Directive | 15.02.2011 | 01.01.2013 |
| 112 | United States | DTC | 08-10-1974 | 01-01-1974 |
| | | DTC | 13-2-2013 | |
| | | Multilateral Convention | Signed | Not in force |
| 113 | Uruguay | DTC | 02-08-1991 | |
| 114 | Uzbekistan | DTC | 11-01-1995 | 01-01-1996 |
| 115 | Viet Nam | DTC | 31-08-1994 | 01-01-1996 |
| 116 | Zambia | DTC | 19-05-1995 | |
| 117 | Zimbabwe | DTC | 09-07-1993 | 01-01-1995 |

a. For signature dates of the Multilateral Convention, see: www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf.

b. Extension by the United Kingdom.

c. Extension by the Kingdom of the Netherlands.

d. Extension by the Kingdom of Denmark.

e. See footnotes 18 and 19.

# 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 2001

National 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 Tax 1992

Act on Natural Persons' Income Tax 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

# Annex 4: People interviewed during the on-site visit

## Ministry of Finance

Tax Administration Department
Tax Policy Department
Income Tax Department
Accounting and Financial Revision Department
Financial Information Department
Customs Control, Tax Inspections and Gambling Control Department
Tax Chamber in Poznan, Tax Information Exchange Office in Konin
Tax Chamber in Warsaw
Third Tax Office Warsawa-Srodmiescie
Tax Office Warsawa-Bemowo
Second Mazovian Tax Office in Warsaw

## Ministry of Justice

## Ministry of Economy

Electronic Economy Department
Trade and Services Department
Central Statistical Office of Poland
Polish Financial Supervision Authority

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**Global Forum on Transparency and Exchange of Information for Tax Purposes**

# PEER REVIEWS, PHASE 2: POLAND

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

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

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

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

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

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