GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

UKRAINE

OECD

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

PHASE 1:
LEGAL AND REGULATORY FRAMEWORK

July 2016
(reflecting the legal and regulatory framework
as at May 2016)

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Table of Contents

About the Global Forum 5

Executive summary 7

Introduction 11

Information and methodology used for the peer review of Ukraine 11
Overview of Ukraine 12
Recent developments 17

Compliance with the Standards 19

A. Availability of information 19

Overview 19
A.1. Ownership and identity information 22
A.2. Accounting records 40
A.3. Banking information 45

B. Access to information 49

Overview 49
B.1. Competent Authority's ability to obtain and provide information 50
B.2. Notification requirements and rights and safeguards 57

C. Exchanging information 61

Overview 61
C.1. Exchange of information mechanisms 62
C.2. Exchange of information mechanisms with all relevant partners 70
C.3. Confidentiality 72
C.4. Rights and safeguards of taxpayers and third parties 75
C.5. Timeliness of responses to requests for information 76

Summary of determinations and factors underlying recommendations 79

Annex 1: Jurisdiction's response to the review report 83

Annex 2: List of Ukraine's exchange of information mechanisms 85

Annex 3: List of all laws, regulations and other Relevant material 92

About the Global Forum

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

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

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

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

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

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

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Ukraine. 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 on a timely basis with its exchange of information partners.

2. Ukraine is a state located in Eastern Europe with a population of about 45 million. Ukraine's GDP is about EUR 327.8 billion with services representing about 59% of GDP. Ukraine has a large heavy industry base and is one of the largest refiners of metallurgical products in Eastern Europe. The main trading partners of Ukraine are the Russian Federation (Russia), the People's Republic of China (China) and Poland.

3. The Ukrainian legal and regulatory framework ensures that ownership information in respect of relevant entities and arrangements is required to be available in accordance with the international standard with exception of *(i)* identification of holders of the limited number of bearer shares issued prior to February 2006, *(ii)* certain foreign companies and partnerships and *(iii)* foreign trusts which have Ukrainian resident trustees or are administered in Ukraine. Domestic companies are required to be registered with the State Registrar and provide information on their shareholders upon registration and subsequently. Domestic companies are further required to identify their ultimate beneficial owners and submit this information to the State Registrar. Ownership information on foreign companies with a sufficient nexus with Ukraine is available based on tax obligations triggered by having a permanent establishment in Ukraine and based on information available with service providers engaged by the company however these obligations may not necessarily cover all foreign companies with sufficient nexus to Ukraine. Companies' shares can be issued only as registered shares in dematerialised form and all shares are required to be recorded on securities accounts. However, there is no sufficient mechanism to ensure identification of all holders of bearer shares issued prior to February 2006. Partnerships established

in Ukraine are required to submit information on all their partners and report any subsequent changes thereof to the State Registrar and the same information is also available to the tax authority. Information on partners in foreign partnerships has to be available in certain tax positions or with service providers if a service provider is engaged by the partnership in Ukraine however as in the case of companies these obligations do not necessarily apply to all foreign partnerships carrying on business in Ukraine or deriving taxable income therein. Certain information regarding the settlor and beneficiaries of a foreign trust operated by a Ukrainian trustee is required to be available under Ukrainian tax and AML legislation however there is no clear obligation in respect of all foreign trusts administered in Ukraine that would ensure availability of information in line with the international standard. Foundations and co-operatives are of limited importance for exchange of information, nevertheless, information on foundation's founders and representatives has to be provided to the State Registry and information on members and representatives of a production co-operative should be available primarily with the co-operative. Ownership information regarding private enterprises is required to be available as up to date information on owners and representatives of a private enterprise has to be contained in the Unified State Register and kept by the enterprise.

4. All relevant entities are required under the accounting and tax law to keep accounting information in line with the standard. However a gap exists in respect of the requirement to keep accounting records and underlying documentation for foreign trusts operated by Ukraine resident trustees and there are no clear rules to ensure that all accounting records are required to be kept for at least five years after the end of the period to which they relate.

5. The legal and regulatory framework in Ukraine requires the availability of banking information to the standard. Banks are prohibited from opening and keeping anonymous accounts and accounts in the name of fictitious persons or numbered accounts. Identity information on all accountholders and transaction records are made available mainly through AML/CFT obligations.

6. Ukraine's tax authority has wide access powers to obtain and provide requested information held by persons within its territorial jurisdiction which can be used also for exchange of information purposes regardless of domestic tax interest. Access to banking information which is not already at the disposal of the tax authority is ensured mainly through a court procedure which allows access to all banking information requested pursuant to a valid EOI request. There are nevertheless certain concerns in respect of the identification requirement of the person on whose bank account information is requested and in respect of the criteria under which the requested information

will be disclosed. Rules regulating professional secrecy are in line with the international standard.

7. Ukraine's domestic legislation does not require notification of the persons concerned prior or after providing the requested information to the requesting jurisdiction except where banking information is requested by the tax authority through a court order. The court is not required to notify the bank and the person on whom the information is requested when such notification would be against state interests or national security. However, it is unclear whether these exceptions allow not to notify the taxpayer in situations as described under the standard. Other rights and safeguards and in particular right to appeal tax authority's decisions appear not to unduly delay or prevent effective exchange of information.

8. Ukraine has an extensive EOI network covering 109 jurisdictions through 62 DTCs and the multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention). Out of 109 Ukraine's EOI relationships 106 provide for exchange of information in accordance with the international standard. As already pointed out, there are however certain concerns in respect of access to banking information through a court procedure. All Ukraine's EOI agreements are in force.

9. All Ukraine's EOI agreements have provisions to ensure confidentiality of the exchanged information although wording of these provisions in some of the older DTCs varies from the standard wording. The provisions of Ukraine's EOI agreements override domestic laws, meaning that the confidentiality provisions present therein have full legal effect in Ukraine. Ukraine's domestic law in combination with obligations under EOI agreements require adequate protection of information exchanged under its EOI instruments.

10. Overall, Ukraine has a legal and regulatory framework in place that ensures the availability, access and exchange of all relevant information for tax purposes in accordance with the international standard. Ukraine's response to the recommendations in this report, as well as the application of the legal framework and practices in exchange of information will be considered in detail in the next round of peer review of Ukraine which is scheduled to commence in the second half of 2018. A follow-up report on the measures taken by Ukraine to respond to the recommendations made in the present report will be provided to the Peer Review Group in June 2017 in accordance with the 2016 Methodology for the second round of peer reviews.

Introduction

Information and methodology used for the peer review of Ukraine

11. The assessment of the legal and regulatory framework of Ukraine was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 17 May 2016, Ukraine's responses to the Phase 1 questionnaire and supplementary questions, other materials supplied by Ukraine, and information supplied by partner jurisdictions.

12. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchange of information. This review assesses Ukraine's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of findings against those elements is set out at the end of this report.

13. The assessment was conducted by a team which consisted of two expert assessors: Ms. La Toya James, International Tax Authority, Ministry of Finance, British Virgin Islands and Ms.Sunga Cho, International Tax Division, Ministry of Strategy and Finance, Korea; and a representative of the Global Forum Secretariat: Mr. Radovan Zídek.

Overview of Ukraine

14. Ukraine is a state located in Eastern Europe with a population of about 45 million (July 2015 est.) making it the eighth most populous country in Europe. The capital city is Kyiv with a population of 2.9 million. Almost 70% of the population live in urban areas. The official language is Ukrainian. The official currency is Ukrainian hryvnia (UAH).[1]

15. Ukraine's GDP is about EUR 327.8 billion (2014 est.). Services represent about 59% of the GDP followed by industry with 29% and agriculture with 12%. Ukraine was the second largest economy in the Soviet Union being an important industrial and agricultural centre. After dissolution of the Soviet Union the country moved from a planned economy to a market economy. Ukraine has a large heavy industry base and is one of the largest refiners of metallurgical products in Eastern Europe. It also produces high-technological goods and transportation vehicles including aircrafts. Ukraine's main imports are oil, gas, machinery equipment and chemicals. Main exports include metals, fuel and petroleum products, machinery and transport equipment and foodstuffs. The main trading partners of Ukraine are Russia, China and Poland. In terms of exports the main partners in 2014 were Russia (18.2%), Turkey (6.6%), Egypt (5.3%), China (5%) and Poland (4.9%). Main importing partners were Russia (23.3%), China (10%), Germany (9.9%), Belarus (7.3%) and Poland (5.6%).

16. Ukraine is a member of many international organisations and bodies including the United Nations, World Trade Organization, International Monetary Fund, European Bank for Reconstruction and Development, Council of Europe and Committee of Experts on the Evaluation of Anti-Money Laundering Measures by the Council of Europe (MONEYVAL). Ukraine is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes since October 2013.

General information on the legal system and the taxation system

Governance and the legal system

17. Ukraine is a republic with separate legislative, executive, and judicial branches. The sole body of legislative power in Ukraine is a unicameral parliament, i.e. Verkhovna Rada of Ukraine. The Parliament consists of 450 representatives elected on the basis of universal, equal and direct suffrage for the term of five years. The Parliament is also responsible for the formation of the executive branch and the Cabinet of Ministers, headed by the Prime Minister. The Prime Minister is appointed by the Parliament upon

1. As of January 2016: UAH 1 = EUR 0.04.

the submission by the President of Ukraine. The Cabinet of Ministers issues resolutions and orders authorised by the Ukrainian law that are mandatory for execution. The regional executive power in oblasts, districts, and in the Cities of Kyiv and Sevastopol is exercised by local state administrations. The President is the head of state elected through universal, equal and direct suffrage for a five-year term. The President has the authority to nominate ministers of foreign affairs and of defence for parliamentary approval. The President can issue decrees and directives with legally binding power for the purposes of execution of the Constitution and the laws of Ukraine. The judicial branch consists of the court system. Judicial proceedings are performed by the Constitutional Court and courts of general jurisdiction. The system of courts of general jurisdiction is based on the territorial principle and the principle of specialisation. Based on the principle of specialisation courts are differentiated on civil, criminal, economic and administrative courts. Tax matters are under the jurisdiction of administrative courts of general jurisdiction. Decisions of local courts can be appealed to appellate courts and high courts. In case of tax matters these are appellate administrative courts which decisions can be appealed to the Supreme Administrative Court of Ukraine.

18. The legal system of Ukraine is based on civil law and relies on a single national law. The hierarchy of law consists of the Constitution, laws approved by the Parliament, regulations and decrees of the Cabinet of Ministers and of the President and binding regulations of local state administrations. International agreements (including agreements for exchange of information for tax purposes) require ratification by the Parliament and upon ratification form part of the national law with equal legal power as domestic laws (s. 9 Constitution). The rules contained in ratified international treaties however prevail over rules contained in the Tax Code as the Tax Code contains a treaty prevails rule in respect of matters covered by the Tax Code (s. 3(2) Tax Code). List of relevant legislation and regulations is set out in Annex 3.

The tax system

19. Ukraine has a fully-fledged tax system comprising direct and indirect taxes, fees and duties. The tax system is governed by the Tax Code and further regulations issued pursuant to the Tax Code by the Cabinet of Ministers or the tax authority. The Tax Code specifies the Ukrainian tax system, determines the types of taxes and regulates the tax procedure including rights of taxpayers and the appeal procedures for decisions made regarding taxes and fees.

20. There are national and local taxes and fees established in Ukraine (s. 8(1) Tax Code). National taxes include corporate and individual income tax, value added tax, property tax, excise duties, customs and environmental

tax (s. 9). The local taxes and fees are levied in accordance with the Tax Code based on the decisions of the village, town and city councils. Local taxes and fees are required to be paid in the territory of the respective local authority. Local taxes and fees include tax on real estate (other than land), fees for certain business activities, fees for parking of vehicles, tourist tax (s. 10).

21. Ukraine taxes its tax residents (companies and individuals) on their worldwide income (s. 13 Tax Code). All companies established under Ukrainian law and registered in Ukraine are considered residents in Ukraine. An individual is a Ukraine tax resident if that person has its permanent address or "a usual residence" (183 days rule) in Ukraine (s. 14(1)(213)). A permanent establishment of a foreign company is treated as Ukraine tax resident and is liable to tax from Ukraine source income and worldwide income attributable to the permanent establishment (s. 160(8)). Non-resident companies carrying on activity in Ukraine (not through a permanent establishment) and non-resident individuals working in Ukraine are subject to tax only on their Ukraine source income(s. 160(1)).

22. The corporate tax base is the profit and loss account prepared in accordance with the accounting rules adjusted for tax purposes. The general corporate income tax rate is 18%. Dividends, interests and royalties paid to a non-resident are subject to a 15% withholding tax, unless the rate is reduced or exempt under a tax treaty. Capital gains are treated as general taxable income. Ukraine tax law includes transfer pricing and thin capitalisation rules.

23. VAT is imposed on the supply of goods and provision of services in Ukraine and on the import and export of goods and auxiliary services. Certain supplies such as issue of securities, insurance services, most of banking services, securities trading services or corporate mergers and acquisitions are not subject to VAT. The standard VAT rate is 20%. Reduced rate of 7% applies to pharmaceuticals and healthcare products. Exported goods and auxiliary service are zero rated. Registration is compulsory for residents and non-residents if their turnover subject to VAT exceeds UAH 1 million (EUR 39 750) during any continuous 12 months period.

24. The administration of taxes is the responsibility of the State Fiscal Service of Ukraine (Decree of the Cabinet of Ministers of Ukraine No. 236 dated 21 May 2014). The State Fiscal Service's activity is directed and co-ordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine. The State Fiscal Service's main responsibility is the implementation of Ukraine's tax and customs policy and legislation.

Exchange of information for tax purposes

25. Ukraine's competent authority for exchange of information purposes is the State Fiscal Service of Ukraine. Most of Ukraine's exchange of information takes place with its regional economic partners and China.

26. Ukraine provides international co-operation in tax matters based on double tax conventions and the Multilateral Convention. Ukraine has in total 109 exchange of information relationships. The domestic regulation of exchange of information is contained in the Tax Code providing rules for domestic taxation.

Overview of the financial sector and relevant professions

27. Ukrainian financial sector is dominated by banks. The Ukrainian banking system is a two-tier structure consisting of the National Bank of Ukraine and commercial banks of various types and forms of ownership. As at 1 January 2016 there were 182 banks registered with the National Bank. Provision of banking services is regulated by the Law on Banks and Banking. Banks are required to take legal form of joint stock companies or limited liability companies (s. 6 Law on Banks and Banking). The total value of assets in the banking sector reached EUR 57.7 bn as of March 2016 Deposits of foreign residents amount to 3.18% of these assets. Banks with foreign equity capital account for some 34% of the banking system capital, with the foreign capital share being mainly from the Russian Federation (19.01%), Austria (3.88%), Cyprus[2] (2.83%), Hungary (1.42%) and the Netherlands (0.83%).

28. The non-banking financial sector is mostly represented by securities traders and insurance companies. Only licensed Ukrainian legal entities in the form of a joint-stock company, full partnership, limited partnership or an additional liability company may become an insurer in Ukraine. Professional stock market activities can be performed only with a prior license from the State Commission on Securities and Stock Market which needs to be

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

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

periodically renewed. As of March 2016 there were 264 licensed traders on securities market and 313 institutional investors.

29. Stock market is governed by regulatory legal acts and regulations. There are eight stock exchanges and two trading information systems in Ukraine. Only licensed stock market participants are allowed to carry out stock operations on the stock exchange. Securities accounts are opened in depository institutions that are licensed and supervised by the State Commission on Securities and Stock Market. As of March 2016 there were 180 licensed depositaries. All professional participants on securities markets are AML obligated persons under the Law on the Prevention and Counteraction to the Legalisation of the Proceeds from Crime (AML Act).

30. The sector of Designated Non-Financial Businesses and Professions (DNFBPs) comprises mainly lawyers, notaries, accountants and casinos. All these professions are covered by AML obligations. As at March 2016 there were 13 490 licensed lawyers in Ukraine and 6 302 private notaries. Lawyers are regulated under the Law on Advocacy. State or private notaries working in state notary offices, state notary archives (state notaries) or private offices operate in Ukraine in accordance with the Law on Notaries. Accountants are regulated by the Law on Business Accounting and Financial Reporting as well as the Provisions on Organisation of Business Accounting and Financial Reporting in Ukraine approved by the Cabinet of Ministers. Auditors and accountants are registered as entrepreneurs. Private notaries, lawyers and arbitration managers who are not registered as individual entrepreneurs are registered as persons engaged in independent professional activity with the tax administration and have to receive a certificate confirming their right of an individual to conduct independent professional activity from the responsible government authorities. Advocates who acquired the right to advocacy in Ukraine are entered in the Unified Register of Advocates of Ukraine which is operated by the Bar Councils.

31. The system of AML/CFT regulation and supervision of financial institutions in Ukraine is primarily based on the AML Act, the resolutions of the Cabinet of Ministers, and regulations of the State Committee for Financial Monitoring (SCFM). Legal regulation of AML issues is under the overall control of the Ministry of Justice. There are several government bodies responsible for the implementation of AML rules. The State Commission for Financial Monitoring is the Ukrainian Financial Intelligence Unit and co-ordinates the activities of all state bodies involved in AML/CFT issues. The National Bank of Ukraine has broad regulatory and supervisory functions in the banking sector including licensing and AML supervision. The State Commission on Securities and the Stock Market (SCSSM) is responsible for the operation of the securities' market as well as co-operation with the financial intelligence unit and AML supervision of stock market

participants. The State Commission on Regulation of Financial Services Market is responsible for the implementation of a unified policy on the provision of financial services and for the registration, licensing and supervision of the non-banking financial institutions.

Recent developments

32. Ukrainian tax system as well as organisation of the tax administration are under review and undergo structural changes. In 2014 the Ministry of Revenue responsible for administration of taxes and customs was transformed into State Fiscal Service. The State Fiscal Service's activity is directed and co-ordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine. In addition to administration of taxes and customs, the State Fiscal Service core responsibilities include the implementation and submission of proposals to the Ministry of Finance concerning state tax policy and customs policy as well as state policy related to law enforcement in taxation and customs control. Responsibilities of the State Fiscal Service are mainly regulated by the Decree of the Cabinet of Ministers of Ukraine No. 311 dated 6 August 2014 "On the creation of the local bodies of the State Fiscal Service and abolishment of some of the regulations of the Cabinet of Ministers of Ukraine" and the Decree of the Cabinet of Ministers of Ukraine No. 236 dated 21 May 2014 "On the State Fiscal Service of Ukraine".

33. Ukraine recently introduced an obligation on companies to identify their beneficial owners and to maintain this information updated. The obligation was introduced through the Law "On Amending Certain Laws of Ukraine Relating to the Identification of Ultimate Beneficiaries of Legal Entities and Public Figures" No. 1701 dated 14 October 2014 (see further section A.1.1).

34. Ukraine has not been specifically requested to commit to a particular timeframe for implementation of the international standard on automatic exchange of information, nevertheless, the Ukrainian representatives expressed Ukraine's readiness to join automatic exchange of tax information on a multilateral basis. It is also noted that Ukraine is a Party to the Multilateral Convention since September 2013.

Compliance with the Standards

A. Availability of information

Overview

35. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority[3] may not be able to obtain and provide it when requested. This section of the report describes and assesses Ukraine's legal and regulatory framework for availability of information.

36. The Ukrainian legal and regulatory framework ensures that ownership information in respect of relevant entities and arrangements is available with exception of ownership information required to be available under the international standard in respect of nominee shareholders, foreign companies and partnerships and foreign trusts which have Ukrainian resident trustees or are administered in Ukraine.

37. Ownership information regarding domestic companies is required to be available in line with the standard with exception of identification of

3. 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.

holders of the remaining bearer shares. Domestic companies are required to be registered with the State Registrar and provide information on its shareholders upon registration and subsequently. Domestic companies are further required to identify their ultimate beneficial owners and submit this information to the State Registrar. Information provided to the State Registrar is required to be updated. Further, ownership information should be also available with the company and pursuant to the requirements of the tax law. The AML and Business Code obligations ensure that a person represented by a nominee shareholder is required to be identified. However these requirements may not cover a limited number of such situations. The potential issue will be further analysed in the next round of Peer Review of Ukraine. Ownership information on foreign companies with a sufficient nexus with Ukraine is available based on tax obligations triggered by having a permanent establishment in Ukraine and based on information available with service providers engaged by the company. Although these obligations apply in majority of cases they are linked to certain conditions which may not necessarily cover all foreign companies with sufficient nexus to Ukraine. Ukraine is therefore recommended to ensure that ownership information on foreign companies is consistently available in accordance with the standard.

38. Companies' shares can be issued only as registered shares in dematerialised form. All shares are required to be recorded on securities accounts. However, joint stock companies could issue bearer shares prior to February 2006. The Ukrainian law provides certain mechanisms which require identification of holders of the remaining bearer shares. These mechanisms nevertheless do not ensure efficient identification of all holders of the limited number of these shares which are still in circulation (see further section B.1.2).

39. Ownership information regarding domestic partnerships is required to be available in line with the standard. Partnerships established in Ukraine are required to submit information on all their partners and report any subsequent changes thereof to the State Registrar and the same information is also available to the tax authority. Information on partners in foreign partnerships has to be available in certain tax positions or with service providers if a service provider is engaged by the partnership in Ukraine. Although these obligations ensure availability of ownership information in many cases they do not necessarily apply to all foreign partnerships carrying on business in Ukraine or deriving taxable income therein and Ukraine is therefore recommended to take measures to address this gap.

40. Ukrainian tax and AML legislation ensures that some information is available regarding the settlor and beneficiaries of a foreign trust operated by a Ukrainian trustee. Although these obligations may cover most cases where Ukrainian resident would act as a trustee there is no clear obligation to have

information available in Ukraine that identifies the settlor and all beneficiaries in respect of all foreign trusts administered in Ukraine. It is therefore recommended that Ukraine addresses this legal gap.

41. Foundations and co-operatives are of limited importance for exchange of information practice given limited purposes for which they can be established. Nevertheless, information on foundation's founders and representatives has to be provided to the State Registry and information on members and representatives of a production co-operative should be available primarily with the co-operative. Ownership information regarding private enterprises is required to be available as up to date information on owners and representatives of a private enterprise has to be contained in the Unified State Register and kept by the enterprise.

42. All relevant entities are required under the accounting and tax law to keep accounting records and underlying documentation that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared. However a gap exists in respect of the requirement to keep accounting records and underlying documentation for foreign trusts operated by Ukraine resident trustees and Ukraine is recommended to take measures to address this. Further, Ukraine should introduce clear rules to ensure that all accounting records including underlying documentation are required to be kept for at least five years after the end of the period to which they relate irrespective of lapse of the three year tax retention period or liquidation of the entity.

43. The legal and regulatory framework in Ukraine requires the availability of banking information to the standard. Banks are prohibited from opening and keeping anonymous accounts and accounts in the name of fictitious persons or numbered accounts. Identity information on all accountholders and transaction records are made available mainly through AML/CFT obligations.

44. The relevant obligations are supported by sanctions applicable in case of non-compliance. It is however noted that these enforcement mechanisms appear to be rather mild especially concerning information which is not required to be provided to the tax authority to substantiate taxpayer's tax liability in Ukraine or which is not kept by AML obliged persons. As the effectiveness of enforcement provisions is a matter of practice it will be further considered in the next round of Peer Review of Ukraine covering also practical aspects of implementation of its legal framework.

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[4] A.1.1)

Types of companies

45. The following types of companies can be established under Ukraine's law:

- **a limited liability company –** a company established by one or up to 100 persons, the charter capital of which is divided into shares of the amount specified by the company's charter. Members of a limited liability company are not liable for the company's obligations and bear risks of loss connected with the company activity only to the amount of their contribution to the company's charter capital (s. 140 Civil Code, s. 80(3) Business Code, s. 50 Business Association Act).
- **a joint stock company** – a company whose capital is divided into a definite number of shares of the same nominal value certifying corporate rights to the company. Liability of its members is limited to the unpaid amount of their shares (s. 152 Civil Code, s. 80(2) Business Code, s. 24 Business Association Act). A joint stock company can be
  - a public joint stock company – a joint stock company the shares of which are listed on at least one stock exchange (s. 24(1) Law on Joint stock Companies); or
  - a private joint stock company – a joint stock company the shares of which are distributed among its founders and cannot be listed on stock exchanges or distributed by way of public subscription (s. 25 Business Association Act).
- **a company with additional liability** – a company founded by one or more legal entities whose capital is divided into shares determined by the company's charter. Members of an additional liability company bear solidary subsidiary liability for the company's obligations in the amount equal to their contributions into the capital of the company and, in case where the capital of the company is not sufficient, to the amount determined by the constituent documents of the company (s. 151 Civil Code, s. 80(4) Business Act, s. 65 Business Association Act).

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

46. As at 1 March 2016 there were registered in Ukraine 556 187 limited liability companies, 20 674 joint stock companies and 1 488 companies with additional liability.

47. A legal entity (including companies) obtains legal personality upon registration with the state registrar (s. 87(5) Civil Code, s. 83(3) Business Code). Upon registration of the legal entity, the state registrar should hand to the founder or authorised person of the entity a duplicate of the original foundation documents with a mark of the state registrar on state registration of the entity within 24 hours after entry into the Unified State Register (s. 25 Law on State Registration of Legal Entities (Law on State Registration)).

Information kept by public authorities

Registration with the state registrar

48. All companies and other legal entities have to be registered with the state registrar. All information provided by the entity is kept by the state registrar in the entity's file and entered in the Unified State Register of Legal Entities and Individuals. Registration of legal entities is conducted by the state registrar having jurisdiction over the place where the legal entity has its address according to its foundation documents (s. 5 Law on State Registration).

49. The information which has to be entered in the Unified State Register upon registration includes the following:

- complete name of the legal entity and its legal form;
- address of the legal entity;
- list of founders of the legal entity and their shares in the legal entity including surname, patronymic name (if any), country of citizenship, passport number, residency, tax registration number (if the person is a taxpayer), if the founder is a natural person; name, country of residency, address and identification code, if the founder is a legal entity;
- ownership structure of founders of the legal entity which makes it possible to identify individuals directly or indirectly holding 10% or more of the share capital or voting rights in the legal entity;
- identification of the ultimate beneficial owner of the legal entity as defined under the AML Act (see below);
- identification of persons elected as representatives of the legal entity including date of their election and tax registration numbers; and
- foundation documents (s. 17(2) Law on State Registration).

50. A registered entity is required to report any changes in the information contained in the Unified State Register including updated information on its shareholders and their ownership structure within three working days from the date of the change (s. 7 Business Association Act). In addition, a legal entity is required to file annual declaration confirming that the information contained in the Register is accurate and up to date (s. 19 Law on State Registration).

51. The information contained in the Unified State Register is evidence of the facts stated therein and can be relied upon by courts or third parties. The information contained in the Register should serve as an identification of the legal entity in its business relations and should be consulted by banks upon opening bank accounts and used by other financial institutions upon establishing business relations with their clients (s. 18 Law on State Registration).

52. The information contained in the Unified State Register should be stored for 75 years from the date of liquidation of a legal entity (s. 16(3) Law on State Registration).

Information provided to tax administration

53. All legal entities including companies registered in the State Register are reported to the tax administration and registered for tax purposes (s. 17^1(1) Law on State Registration, s. 63(2) Tax Code). Upon registration all taxpayers receive unique tax identification number which is required to be used in communication with the tax authorities (s. 63(6) and (7) Tax Code). Information provided to the State Register upon registration and subsequently is automatically made available to the tax administration (s. 17^1 Law on State Registration).

54. Taxpayers deriving income subject to tax are required to submit an annual income tax return to the tax authority (s. 46 Tax Code). Certain tax positions require that the company discloses its ownership structure to the tax administration (e.g. transfer pricing or thin capitalisation). Although these tax reporting obligations are frequent in practice they do not ensure that information on shareholders is provided to the tax administration in all cases since they are linked to specific conditions which are not necessarily met by all taxpayers.

Information held by companies

55. A company is established and operates based on its statutes and charter which have to be approved by all its founders (s. 87 Civil Code). The statutes specify conditions of transferring members' property to the company and procedure for the company's creation. A company's charter includes the

company's address, management bodies and specifies procedure for joining and withdrawal of members from the company (s. 88 Civil Code).

56. The charter of a limited liability company and additional liability company should also include identification of each member of the company and his/her size of stake in the company (s. 82(4) Business Code and s. 52 Business Association Act). Changes in the company's statutes and charter (including changes in members of the company) have to be verified by a public notary and submitted to the state registry (s. 83(4)).

57. Joint stock companies can issue only registered shares which are required to be recorded on securities accounts kept by the Depository System of Ukraine (ss.4 and 6 Law on Securities and Stock Market). Ownership rights stemming from the registered securities are based on the entry in the security account of the owner of the security (s. 4 Law on Depository System of Ukraine). Accordingly a person becomes a shareholder in the joint stock company only upon entry of the transfer into the security account of the owner of the share (see further below in section A.1.2).

58. Companies are required to hold annually general meetings of shareholders. The shareholders (or their representatives) who attend the general meeting shall register at the general meeting's list of participants. The list of participants should also include the number of votes of each participant. The list has to be signed by the meeting chairman and the secretary. Only persons who are shareholders of the company on the day of the general meeting (or their representatives) are entitled to participate in decisions of the general meeting (ss.41 and 58 Business Association Act). Joint stock companies are further required to keep minutes of general meetings which have to include list of all shareholders entitled to participate in the general meeting (s. 46(2) Law on Joint Stock Companies).

59. Companies are required to identify their ultimate beneficial owners, keep this information updated and stored (s. 64^{1}(1) Business Code). The ultimate beneficial owner is defined as an individual who regardless of formal ownership may exercise decisive influence on management or economic activity of a legal entity either directly or through other persons or an individual who can exercise influence over the company through direct or indirect possession of 25% or more of the share capital or voting rights in the company. The ultimate beneficial owner cannot be a person who has the formal right to 25% or more of the share capital or voting rights of the company but is an agent, nominal holder or is only an intermediary in relation to such right (s. 1(20) AML Act). The data which enables to determine the ultimate beneficial owner includes the last name, first name and patronymic (if any) of the individual (individuals), the country of its (their) permanent place of residence and date of their birth (s. 1(10) AML Act).

60. Joint stock companies are required to keep the company's statutes, the charter and other documents including ownership information at the company's address during the existence of the company (s. 77 Law on Joint Stock Companies). There is no such direct obligation in respect of limited liability companies and companies with additional liability. However members of the company are entitled to be acquainted with and inspect the information relevant to the organisation and operations of the company and are required to participate in amendments of some of these documents therefore it appears that such information is required to be available with the company in Ukraine. However Ukraine should clearly stipulate where and for how long such documentation containing ownership information should be kept. It is nevertheless noted that ownership information in respect of companies is required to be filed with the State Registrar and therefore has to be available there.

Information held by service providers

61. The main regulation concerning information required to be obtained and kept by service providers is the AML Act. The requirements under the AML Act cover the following obliged persons:

- financial institutions such banks, insurers, insurance brokers and credit unions;
- payment organisations and participants in the payment systems;
- goods exchanges;
- professional participants on the securities market;
- postal operators, other institutions which conduct financial transactions with transfer of funds;
- legal entities providing real estate intermediary services, trading in precious metals and stones, conducting lotteries and gambling games including casinos;
- notaries, lawyers, auditors;
- legal entities providing accounting, legal or financial services (s. 5(2) AML Act).

62. The obliged persons are generally required to identify their clients upon establishing a business relation,[5] conducting a transaction above UAH 150 000

5. Except for certain business relations established on the basis of insurance contracts other than life insurance, agreements on participating in lotteries or transfer agreements in the value of less than UAH 5 000 (EUR 203) performed by a payment organisation, a participant in the payment system or a bank.

(EUR 6 090) or making a money transfer exceeding UAH 15 000 (EUR 609) on behalf of an individual without opening an account (s. 9(3) AML Act).

63. The identification of a client who is a legal entity includes obtaining:

- its full name and address;
- the date and number of the record in the Unified State Register;
- the information on the executive body and identification of persons authorised to act on behalf of the legal entity and who have the right to manage its bank accounts and assets;
- information allowing identification of the ultimate beneficial owner(s);
- the number of the legal entity's bank account and the details of the bank in which the bank account is opened (s. 9(9)(3) AML Act).

64. As described above the ultimate beneficial owner is defined as an individual who exercises directly or indirectly decisive influence on a legal entity or an individual who has direct or indirect possession of 25% or more of the shares or voting rights in the entity (s. 1(20) AML Act). In order to identify the ultimate beneficial owner the service provider is required to establish the ownership structure of the entity (s. 9(7)). The ownership structure is defined as a documented system of relations of legal entities and individuals which enables to determine all existing ultimate beneficial owners (s. 1(35). This means that the service providers should typically have available information identifying all legal owners of the legal entity as confirmed by the Ukrainian authorities.

65. The obliged person is required to keep the documents and information obtained during identification of a client accurate although there is no specific requirement to update them regularly (ss.2(2) and 11(2) AML Act). The identification documents and documentation of transactions performed for the client must be stored for at least for five years following the end of the business relationship or carrying out of the transaction (s. 6(15) AML Act).

Nominee identity information

66. A person acting as a nominee shareholder or member in a company is not specifically foreseen by the Ukrainian law nevertheless such an arrangement is not prohibited either. No indication needs to be given when shares or other interests in Ukrainian companies are held by nominees on behalf of a third party.

67. A person providing nominee services will in most cases be covered by AML obligations and required to keep information identifying person on whose behalf he/she acts as a nominee. As described above, AML obligations cover professional participants on the securities market, notaries,

lawyers, auditors, accounting firms and legal persons which provide legal or financial services (s. 5(2) AML Act). Providing financial services includes nominee services (s. 1(1)(5) Law on Financial Services and State Regulation of Financial Service Markets (Law on Financial Services)). The AML obligations are not specifically triggered by acting as a nominee and do not cover persons who act as nominees on a non-professional basis (i.e. without establishing business relationship based on a contract for provision of services), nevertheless, it is expected that persons acting as nominees will in above 90% of cases fall under one of the categories covered by AML obligations.

68. Further, as described above, all companies are required to identify their ultimate beneficial owners (s. 64[1](1) Business Code). The ultimate beneficial owner cannot be a person who is an agent, nominal holder or is only an intermediary in relation to such right (s. 1(20) AML Act). It can be therefore concluded that a company is required to know its ownership structure which in cases where shares are held by a nominee includes identification of a person on whose behalf the nominee acts. It is noted that this requirement does not ensure that the identification of a person holding marginal shares (i.e. less than 25% of shares in the company) through a nominee who is not a professional participant on the securities market, a notary, a lawyer, an auditor, an accounting firm or a legal person will be available in all cases, nevertheless, this gap appears to be rather limited. Ukraine is therefore encouraged to consider measures to address this concern. The issue will be further analysed in the next round of Peer Review of Ukraine covering also practical aspects of implementation of its legal framework.

Foreign companies

69. Foreign companies or other legal entities established under the laws of another jurisdiction can conduct economic activities in Ukraine through branches or permanent establishments (s. 392 Business Code, s. 14(1)(193) Tax Code). Branches of foreign entities must be registered with the State Registrar as subdivisions of legal entities however no ownership information is required to be provided to the State Registrar upon registration or subsequently (s. 28 Law on State Registration). The information which has to be contained in the Unified State Register includes:

- incorporation certificate of the foreign legal entity and certified copy of its articles of association, memorandum of association or equivalent documents;
- identification code, full name and address of the subdivision;
- full name of persons authorised to act on behalf of the legal entity on the basis of power of attorney, their registration numbers and tax identification numbers (s. 28(2) Law on State Registration).

70. A company registered under foreign law cannot become tax resident in Ukraine. However, the location of a company's head office or headquarters in Ukraine gives rise to a permanent establishment in Ukraine (s. 14(1)(193) Tax Code). In order to register as a permanent establishment the foreign person should submit an application to the tax authority (s. 64(5) Tax Code). The application must include the applicant's identification and should contain the name and address of the foreign entity, its registration certificate and identification of representative persons authorised to act on its behalf (Decree of Ministry of Finance № 1588 of 09.12.2011). The same tax rules apply in respect of the permanent establishment as for domestic companies. Certain tax positions require that the foreign company discloses its ownership structure to the tax administration (e.g. transfer pricing or thin capitalisation) however these obligations do not ensure that information on shareholders is provided to the tax administration in all cases since they are linked to specific conditions which are not necessarily met by all taxpayers.

71. A foreign company with headquarters or head office located in Ukraine will typically engage a service provider covered by the AML obligations. If the foreign company operates in Ukraine through a branch (i.e. it has a local subdivision or a representative office there) the company has to engage a public notary as documents required to be submitted to the State Registrar have to be certified by the notary. Further a foreign company with headquarters or head office in Ukraine will in majority of cases open a bank account there and will be required to provide its ownership structure to the bank. Finally, it may engage a tax advisor to handle its tax compliance in Ukraine or a corporate service provider. As described above these professionals are required to understand ownership structure of their clients and therefore ownership information on the foreign company should be available with them.

72. In view of the above obligations under the AML and tax law it appears that ownership information on foreign companies is required to be available in Ukraine in majority of cases. However obligations to identify all shareholders may not cover all foreign companies as they are linked to certain conditions. It is therefore recommended that Ukraine addresses this gap.

Conclusion

73. The Ukrainian legal and regulatory framework ensures that ownership information regarding domestic companies is available with exception of information on shares held by nominees who are not professional participants on the securities market, notaries, lawyers or auditors or do not act as nominees on professional basis. Domestic companies are required to be registered with the State Registrar and provide information on its shareholders upon registration and subsequently. Domestic companies are further required to identify their

ultimate beneficial owners and submit this information to the State Registrar. Information provided to the State Registrar is required to be updated. Further, the information contained in the Unified State Registry represents evidence of the facts stated therein and companies are required to file annually a declaration confirming accuracy of the provided information. Ownership information should be also available with the company through general meeting's minutes and other corporate documents. In addition, requirements under the tax law ensure that ownership information is directly available to the tax authority in many cases.

74. Ownership information on foreign companies with a sufficient nexus with Ukraine is available based on tax obligations triggered by having a permanent establishment in Ukraine and based on information available with service providers engaged by the company mainly in order to submit the required documents to the State Registrar, if operating in Ukraine through a branch, or when having a bank account in Ukraine. Although these obligations ensure availability of ownership information in majority of cases they are linked to certain conditions which may not necessarily apply to all foreign companies with sufficient nexus to Ukraine. Ukraine is therefore recommended to ensure that ownership information on foreign companies is consistently available in accordance with the standard.

Bearer shares *(ToR A.1.2)*

75. Only joint stock companies are allowed to issue shares. Shares can be issued only as registered shares in dematerialised form. All shares are required to be recorded on securities accounts kept by the Depository System of Ukraine (ss.4 and 6 Law on Securities and Stock Market). Ownership rights stemming from the registered securities are based on the entry in the security account of the owner of the security (s. 4 Law on Depository System of Ukraine). Transfer of shares is allowed only as record of transfer of certain amount of shares from the seller's securities account to the securities account of the buyer (s. 1(12) Law on Depository System of Ukraine).

76. Although bearer shares cannot be issued the legal amendment abolishing the possibility to issue bearer shares came into force in February 2006. In order to implement the abolishment of bearer shares the National Commission for Securities and Stock Market responsible for regulation of the stock market issued in June 2014 a legally binding decision providing rules for conversion of already issued bearer shares into registered dematerialised shares (the Commission's Decision)[6]. According to the Commission's Decision all joint stock companies which issued bearer shares that are still in

6. The decision of the National Commission on Securities and Stock Market of Ukraine dated 24.06.2014 No. 804, registered in the Ministry of Justice of Ukraine dated 15.07.2014 No. 814/25591.

circulation are required to organise a general meeting to decide on conversion of bearer shares into registered dematerialised shares as required by law (s. 2(1) Commission's Decision). Upon the decision of the general meeting all shareholders are notified of the decision and required to open a securities account and record their shares in the period prescribed by the decision (s. 2(9)). Shareholders who refused conversion of their bearer shares are required to transfer their shares back to the company at a price defined in the General Meeting's decision on conversion of bearer shares (s. 2(6)). Upon conversion all issued bearer shares should be destroyed by the issuer company (s. 2(12)). Although the Commission Decision prescribes rules for conversion of bearer shares it does not include deadlines in which the conversion should be completed and does not include enforcement mechanisms.

77. The Ukrainian law contains several obligations which limit use of bearer shares and require identification of shareholders of a company. Notably, all companies including joint stock companies which issued bearer shares are required to identify their ultimate beneficial owners (s. 64[1](1) Business Code). In order to exercise shareholder rights (including payment of dividends) a person's shares have to be transferred into his/her security account kept by the Depository System (s. 4 Law on Depository System of Ukraine). Further, shareholders who attend the general meeting shall register at the general meeting's list of participants. Only shareholders (or their representatives) who attend the general meeting are entitled to participate in decisions of the general meeting (ss.41 and 58 Business Association Act). Joint stock companies are further required to keep minutes of general meetings which have to include list of all shareholders entitled to participate in the general meeting (s. 46(2) Law on Joint Stock Companies). Under the AML Act service providers such as banks and legal entities providing accounting, legal or financial services are required to identify their customers and carry out customer due diligence measures including identification of their beneficial owners (ss.5 and 9 AML Act).

78. According to the information from the National Commission for Securities and Stock Market 59 existing joint stock companies (0.01% of all companies) have issued bearer shares which may be in circulation. During the period from January 2013 till February 2016 out of these 59 two joint stock companies held General Meetings to decide on the conversion of bearer shares into registered shares. The Ukrainian authorities indicated that bearer securities issued before the prohibition of issuing bearer shares in 2006 currently represent significantly less than 1% of the total volume of shares and do not play a role on the securities market.

79. To sum up, joint stock companies were allowed to issue bearer shares prior to February 2006. The Ukrainian law provides for certain mechanisms which require identification of holders of the remaining bearer shares. However,

the conversion mechanism of all bearer shares into registered shares does not stipulate deadlines in which this has to be performed and does not contain enforcement provisions. The conversion process therefore does not provide sufficient motivation for the timely conversion and Ukraine is recommended to address this. It is nevertheless noted that the materiality of bearer shares which are still in circulation is limited, as evidenced in the statistics above, and does not represent systemic threat to availability of ownership information in Ukraine.

Partnerships *(ToR A.1.3)*

80. Ukraine's law provides for creation of two types of partnerships:

- a general partnership – a partnership whose members according to the partnership agreement carries out the entrepreneurial activity on behalf of the partnership and incur joint subsidiary liability in respect of the partnership's obligations by all property they own. A person may be a member of only one general partnership (s. 119 Civil Code, s. 80(5) Business Code, s. 66 Business Association Act). As at 1 March 2016 there were registered in Ukraine 1 783 general partnerships.
- a limited partnership – a partnership, which along with general partners carrying out the entrepreneurial activity on behalf of the partnership and incurring joint subsidiary liability on the partnership's obligations by all their property includes one or more partners who bear liability in respect of the partnership's obligations limited to the amount of their contributions and who do not participate in the partnership's management (s. 133 Civil Code, s. 80(6) Business Code, s. 75 Business Association Act). As at 1 March 2016 there were registered in Ukraine 1 488 limited partnerships.

81. As in the case of other legal entities a partnership obtains legal personality upon registration with the State Register (s. 87(5) Civil Code, s. 83(3) Business Code). The name of a general or limited partnership must include the name of at least one of its general partners and indication of the type of the partnership (s. 119(4) Civil Code, s. 82(5) Business Code, ss.66 and 75 Business Association Act).

Information kept by public authorities

Registration with the state registrar

82. The same information as in respect of companies has to be kept in the Unified State Register in respect of all domestic partnerships. This information includes *(i)* list of all partners and their shares in the partnership, *(ii)* ownership structure of partners in the partnership which makes it possible

to identify individuals directly or indirectly holding 10% or more of the share capital or voting rights in the partnership and *(iii)* identification of the ultimate beneficial owner of the partnership as defined under the AML Act (s. 17(2) Law on State Registration). A partnership is required to keep the information contained in the Unified State Register updated including information on its partners and their ownership structure in case of domestic partnerships (s. 7 Business Association Act). In addition, all partnerships are required to file an annual declaration confirming that the information contained in the Register is accurate and up to date (s. 19 Law on State Registration).

83. Foreign partnerships having a branch in Ukraine have to be registered with the State Registrar as subdivisions of legal entities however no ownership information is required to be provided (s. 28 Law on State Registration).

Information provided to tax administration

84. All partnerships registered in the State Register are reported to the tax administration and registered for tax purposes (s. 17^1(1) Law on State Registration, s. 63(2) Tax Code). Information provided to the State Register upon registration and subsequently is automatically available to the tax administration (s. 17^1 Law on State Registration).

85. As in the case of companies partnerships are required to file ownership information with the tax authority in certain tax positions (e.g. transfer pricing or thin capitalisation). Although these tax reporting obligations are frequent in practice they do not ensure that information on partners in a partnership is provided to the tax administration in all cases as they are linked to certain conditions.

86. Foreign partnerships that carry on business in Ukraine through a permanent establishment or have a place of effective management there are required to register with the tax administration (s. 14(1)(193) Tax Code). The same registration and filing requirements as in case of domestic partnerships apply and therefore information on their partners may not be available in all cases.

Information held by the partners and service providers

87. Partners in a partnership are not specifically required to maintain a record of all partners. However, identity information on all general partners in a domestic general partnership or limited partnership is available through the partnership contract which should be available with the partnership or to the partners as parties of the contract (ss.120(1) and 134(1) Civil Code). Further, no person can become a partner in a general partnership without consent of all the existing partners (s. 127(1) Civil Code). Although limited partners in a limited partnership are not listed in the partnership contract they

receive certificate of contribution which states the name of the limited partner to confirm his/her participation in the partnership (s. 137(1) Civil Code). The certificate of participation does not constitute ownership rights to the share in the partnership. Any change in partners of a limited partnership has to be notified to the partnership (s. 137(2)(7) Civil Code).

88. To the extent that a partnership engages the services of an AML obligated person, such as a bank, the service provider will be required to understand the ownership structure of the customer (s. (s. 9(7) AML Act). This appears to ensure that if a partnership opens a bank account in Ukraine or engages other service provider obliged to conduct CDD, information on partners in a partnership should be available with the service provider.

Conclusion

89. The legal and regulatory framework in Ukraine ensures that ownership information regarding domestic partnerships is available. Partnerships established in Ukraine are required to submit information on all their partners and report any subsequent changes thereof to the State Registrar and the same information is also available to the tax authority.

90. Foreign partnerships having a branch or place of effective management in Ukraine or carry on business in Ukraine through a permanent establishment are required to register with the State Registrar or with the tax authority however information on partners in the foreign partnership does not have to be provided except for certain tax positions. Information on partners in a foreign partnership should nevertheless be available with service providers if a service provider is engaged by the partnership in Ukraine. Although these obligations ensure availability of ownership information in many cases they are linked to certain conditions which may not necessarily apply to all foreign partnerships carrying on business in Ukraine or deriving taxable income therein. Ukraine is therefore recommended to ensure that ownership information on foreign partnerships is consistently available in accordance with the standard.

Trusts *(ToR A.1.4)*

91. Ukraine law does not recognise the concept of a trust and Ukraine is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition[7]. However, there are no restrictions for a resident of Ukraine to act as trustee, protector or administrator of a trust formed under foreign law.

7. www.hcch.net/index_en.php?act=conventions.text&cid=59.

92. Ukraine law provides for creation of trust companies however these are not legal arrangements in the sense of the common law concept of a trust where legal ownership and control of specified assets is passed from the settlor to the trustee for benefit of a beneficiary. Legal requirements in respect of availability of ownership information in respect of these legal entities follows that of companies (i.e. their legal form).

Tax legislation

93. Ukrainian tax law does not contain clear rules requiring a trustee to disclose to the tax administration identity of the settlor and beneficiaries of a trust. Requirement to identify a beneficial owner of income is linked to the application of double tax conventions and taxation of royalties (ss.103(2) and 140(5)(7) Tax Code). Although it is expected that situations where a Ukrainian resident acts as a trustee would in many cases involve cross border transactions and application of a double tax convention however this is not necessary and does not cover all cases where a Ukrainian resident may act as a trustee of a trust (e.g. in cases where beneficiary of a foreign trust is Ukrainian resident).

AML legislation

94. AML obligations are not specifically linked to acting as a trustee. As described above, AML obligations cover professional participants on the securities market, notaries, lawyers, auditors, accounting firms and legal persons which provide legal or financial services (s. 5(2) AML Act). Providing financial services includes trustee services (s. 1(1)(5) Law on Financial Services). A person acting as a trustee will in most cases be covered by AML obligations and is required to identify its clients which includes the requirement to keep the trust deed and to identify beneficiaries of 25% or more of the property held under the trust deed. However this will not be the case with an individual who is not a professional participant on the securities market, a notary, a lawyer or an auditor or does not act as a trustee on professional basis.

Conclusion

95. Ukrainian tax and AML legislation ensures that some information is available regarding the settlor and beneficiaries of a foreign trust operated by a Ukrainian trustee if required for the application of a double tax convention, payment of royalties or in cases where the trustee is a professional participant on the securities market, a notary, a lawyer, an auditor or a legal person. Although these obligations may cover most cases where Ukrainian resident would act as a trustee there is no obligation to have information

available in Ukraine that identifies the settlor and all beneficiaries of foreign trusts administered in Ukraine in all cases. It is therefore recommended that Ukraine addresses this legal gap.

Foundations *(ToR A.1.5)*

96. Ukraine's law provides for creation of foundations as charitable institutions. Under the Ukrainian law certain public collective investment funds or schemes are also called foundations however they either do not have a legal personality or are established as joint stock companies.

97. Foundations can be established only for charitable purposes such as for the purpose of education, health care, environmental protection, guardianship and care, social security and overcoming poverty, culture and art, scientific research, sport, promotion of human and civil rights (s. 3(2) Law on Charity and Charitable Organisations). Foundations cannot distribute profit or any income from foundations' activities to their members or executives and in the case of winding up or dissolution of the foundation any assets or property shall not be distributed among its members (s. 85 Civil Code and ss.18(5) and 23(4) Law on Charity and Charitable Organisations).

98. As in the case of other legal entities a foundation obtains legal personality upon registration with the State Register (s. 87(5) Civil Code). Upon registration a foundation has to provide its foundation documents signed by all its members which include also information on persons authorised to represent the foundation and stipulation of its purpose (s. 87 Civil Code). Foundations are also required to file annual declaration confirming that the information contained in the Register is accurate and up to date (s. 19 Law on State Registration). Information on beneficiaries of a foundation is required to be available in accounting documentation required to be kept under the Accounting Act (s. 9(2) Accounting Act).

99. To sum up, foundations established under Ukraine's law appear to be of limited relevance to the work of the Global Forum. Nevertheless, information on their founders and representatives has to be provided to the State Registry.

Other relevant entities and arrangements

Co-operatives

100. Among other legal entities which can be established in Ukraine are co-operatives. Production co-operatives can conduct commercial activity for profit of their members (s. 163(1) Civil Code). A production co-operative is an association of individuals established for the purpose of joint production

by its members' labor participation. A co-operative assets consists of members' contributions and members of the co-operative bear liability for the co-operative's obligations in the amount established by the co-operative's charter (s. 163 Civil Code).

101. A production co-operative is a legal entity and as other legal entities it has to be registered with the State Registrar. Upon registration a co-operative has to provide its foundation documents signed by all its founding members which include also information on persons authorised to represent the co-operative (s. 87 Civil Code). Co-operatives are also required to file an annual declaration confirming that the information contained in the Register is accurate and up to date (s. 19 Law on State Registration). A co-operative member can transfer his/her share to another member of the co-operative. Transfer of a share to a person who is not a co-operative member is admissible only upon the co-operative's consent (s. 166(3) Civil Code). When a co-operative conducts financial activity involving an obliged entity (financial institution or one of the designated categories of professionals) the obliged entity is required to conduct CDD and identify the beneficial owners of the co-operative and to understand its ownership structure (s. (s. 9(7) AML Act). Co-operatives are considered taxable legal persons (s. 63(2) Tax Code). Similar tax rules as in the case of companies apply also in respect of co-operatives.

102. Consequently, information on members and representatives of a production co-operative should be available primarily with the co-operative in order to ensure its proper functioning and relations with its members. Certain information should be also available with the State Registrar and a service provider if engaged by the co-operative. Nevertheless there is no direct obligation in the law requiring the co-operative to maintain a list of all its members and keep it up to date. Ukraine should therefore take measures to address this. It is however noted that there are alternative sources of ownership information (such as the Unified State Registry or a service provider) and that co-operatives are unlikely to be of significant importance for exchange of information practice considering their purpose of joint production through labor participation.

Private enterprises

103. A private enterprise is a legal entity based on private ownership. A private enterprise can conduct economic activity for profit of its members. A private enterprise is established by its members based on the constituent documents. These documents are the constituent agreement and charter of the enterprise. Constituent documents must be in writing and signed by all members. The owner shall exercise his/her enterprise management right directly

or through duly authorised bodies pursuant to the enterprise's constituent documents. (s. 113 Business Code).

104. A private enterprise is required to register with the State Registrar in the same manner as other legal entities and provide information on its members and authorised representatives upon registration (s. 87 Civil Code). The provided information is required to be kept accurate (s. 19 Law on State Registration). Private enterprises are considered taxable legal persons (s. 63(2) Tax Code). Similar tax rules as in the case of companies apply also in respect of private enterprises.

105. To sum up, ownership information regarding private enterprises is required to be available as up to date information on owners and representatives of a private enterprise has to be contained in the Unified State Register and kept by the enterprise.

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

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

107. It is the responsibility of the executive body of a legal entity or its authorised person to ensure that information submitted to the State Registrar is accurate and kept updated (s. 28(3) Law on State Registration). In the case of breach of this obligation the responsible person is subject to a fine of up to UAH 344 500 (EUR 12 040) which can be applied repeatedly (s. 166(11) Code on Administrative Offences). Further, a person who consciously provides false information bears criminal responsibility and can be punished by a fine of up to UAH 689 000 (EUR 23 780) or by the imprisonment for up to two years. If committed repeatedly or by an organised group of persons the applicable fine can be doubled and sanctions include disqualification to hold certain positions or engage in certain activities for up to three years (s. 205(1) Criminal Code).

108. The tax law provides several sanctions for failure to report ownership information relevant to the taxpayer's tax liability. A taxpayer who fails to register with the tax authority or fails to keep the provided information accurate and updated is subject to a fine of UAH 510 (EUR 20) which can be applied repeatedly (s. 117(1) Tax Code). A failure to file complete and accurate annual tax return is subject to a fine of up to UAH 1 020 (EUR 40) (s. 120(1)). Further the taxpayer who fails to substantiate his/her tax liability is taxed based on the estimate and subject to an additional fine of 25% of the newly assessed tax liability which can be increased up to 50% if the tax is reassessed

subsequently based on a tax audit or other additionally obtained information (s. 123(1)). These sanctions are directly applicable by the tax authority.

109. An obliged person which fails to comply with the AML requirements to duly identify the client and keep the obtained information updated is subject to a fine of up to UAH 344 500 (EUR 12 035) or if the obliged person is an individual to a fine of up to UAH 68 900 (EUR 2 405) (s. 24(3) AML Act). If the failure repeats within a three year period the obliged person can be sanctioned with a fine of up to UAH 2 million (EUR 69 885) if it is a legal person or up to UAH 275 600 (EUR 9 630) if it is an individual (s. 24(4)). If the failure continues the obliged person can be temporary suspended from performing its activities or have its license revoked (ss.24(5) and s. 24(6)).

Conclusion

110. Ukraine's law provides for sanctions in respect of key obligations to maintain ownership information. However, these enforcement mechanisms appear to be rather mild especially concerning ownership information which is not required to be provided to the tax authority to substantiate taxpayer's tax liability in Ukraine or which is not kept by AML obliged persons. As the effectiveness of enforcement provisions is rather a matter of practice it will be further considered in the next round of Peer Review of Ukraine covering also practical aspects of implementation of its legal framework.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Ownership information on foreign companies having sufficient nexus with Ukraine (in particular, having their head office or headquarters in Ukraine) and on foreign partnerships carrying on business in Ukraine or deriving taxable income therein is not consistently available.	Ukraine should ensure that ownership information on foreign companies with sufficient nexus with Ukraine and on foreign partnerships carrying on business in Ukraine or deriving taxable income therein is available in all cases.

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Joint stock companies could issue bearer shares prior to February 2006. The Ukrainian law provides certain mechanisms which require identification of holders of the remaining bearer shares. However, they do not ensure efficient immobilisation or conversion of these shares so that all their holders are identified. It is nevertheless noted that the number of bearer shares is limited and cannot expand.	Ukraine should provide clear rules for efficient identification of all holders of the remaining bearer shares.
Ukrainian law does not require that information on all beneficiaries and settlors of foreign trusts which have Ukrainian resident trustees or are administered in Ukraine is available in all cases.	Ukraine should ensure that information is maintained on all beneficiaries and settlors of foreign trusts which have Ukrainian resident trustees or are administered in Ukraine.

A.2. Accounting records

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

111. The Terms of Reference set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. They provide that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: *(i)* correctly explain all transactions; *(ii)* enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and *(iii)* allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

General requirements *(ToR A.2.1)*

112. Accounting obligations of the relevant entities are contained mainly in the Law on Accounting and Financial Reporting (Law on Accounting) and the tax law.

113. The Law on Accounting covers all legal entities established in accordance with Ukrainian legislation irrespective of their legal form as well as branches of foreign business entities operating in Ukraine (s. 2(1) Law on Accounting). The obliged entities are required to keep accounting records and prepare financial statements in order to allow its users informed decision-making based on complete, reliable and unbiased information on the financial situation, business results and cash flow of the company (s. 3). The obliged entities are required to keep accounting documents, accounting registers and prepare financial reports (ss.9 and 11).

114. Accounting documents have to include the following:

- date and place of issuance of the document;
- name of the company for which the document is issued;
- content and volume of the documented business transaction;
- personal signature or other data that allow identifying the person who participated in the business transaction (s. 9(2) Law on Accounting).

115. Information contained in accounting documents should be systemised on the accounts of the synthetic and analytical accounting registers based on the double entry system. Accounting registers should be clearly organised, reflect chronological order of recorded business transactions and should include identification of persons responsible for their preparation (ss.9(3) and 9(4) Law on Accounting).

116. Obliged entities are required to prepare financial reporting based on the accounting data contained in the accounting registers. Financial reporting should include the balance sheet, the profit and loss account, the cash flow statement and the equity statement. Small businesses, non-profit enterprises, state institutions and foreign branches can use simplified financial reporting consisting of the balance sheet and the profit and loss account (s. 11 Law on Accounting).

117. Further details concerning the principles and methods for keeping accounting records and preparing financial reporting are contained in the National Accounting Regulation. Ukraine accounting standards are based on International Accounting Standards and International Financial Reporting Standards and do not contradict these. Obliged entities can choose to follow only the international standards however public joint-stock companies, banks,

insurance companies, as well as certain companies engaged in specifically listed business activities are obliged to prepare their financial reporting based on the international standards. (s. 12[1] Law on Accounting).

118. All entities are required to file their financial reports with the State Registrar annually (s. 14(3) Law on Accounting). Public joint-stock companies which issued mortgage bonds or certificates, company bonds or certificates of the real estate transaction funds, as well as professional participants on the stock market, banks, insurance companies and other financial institutions are obligated to publish their annual financial reports together with the auditor's report on their websites (s. 14(4)).

119. Accounting obligations under the accounting law are supplemented by obligations under the tax law. The corporate tax base is the profit and loss account prepared in accordance with the accounting rules adjusted for tax purposes (s. 134 Tax Code). Taxpayers are required to keep records of income, expenses, and other information substantiating their tax obligations based on source documents, accounting records, financial reporting and other documents relating to the calculation and payment of taxes. Taxpayers are prohibited to make tax declarations on the basis of data that are not supported by proper accounting documents (s. 44(1) Tax Code).

120. Accounting obligations of Ukraine resident person acting as a trustee of a foreign trust are not clearly provided. Under the Accounting Law, if the trustee is a legal person it will be required to keep proper accounting records and documents in accordance with the international accounting standards which appears to ensure that the trustee is required to keep separate accounting records and documents for all operations of the trust and not simply for his/her own income derived from the trust in a manner which allows identification of these operations as operations under the trust contract. However if the trustee is an individual he/she will be subject to simplified accounting requirements which may not ensure that such accounting records and documents are kept in all cases. Obligations under accounting law are not clearly supported by tax law since the tax law does not recognise the trust concept as relevant for taxation (see section A.1.4). Further, it is noted that a trustee will not be subject to AML obligations if the trustee is not a professional participant on the securities market, a notary, a lawyer, an auditor or a legal person. As the above requirements do not ensure that accounting records in respect of trusts operated by Ukrainian resident trustee are kept in all cases it is recommended that Ukraine takes measures to address this legal gap.

121. Although the Ukrainian law does not explicitly prescribe where accounting records should be kept these records should be available for inspection and should be provided within 10 days upon a notice by the tax authority delivered at the entity's registered address (ss.77(4) and 85 Tax Code).

122. The tax law provides several sanctions for failure to keep accounting information and to substantiate the tax liability which are directly applicable by the tax authority. A taxpayer who fails to submit within the prescribed period accounting information substantiating his/her tax declaration or the submitted documents are inaccurate or incomplete the person is subject to a fine of UAH 510 (EUR 20) which can be applied repeatedly (s. 117(1) Tax Code). Further the taxpayer who fails to substantiate his/her tax liability is taxed based on the estimate and subject to an additional fine of 25% of the newly assessed tax liability which can be increased up to 50% if the tax is reassessed subsequently based on a tax audit or other additionally obtained information (s. 123(1)). It is the responsibility of the owners of a legal entity or the authorised person to ensure that accounting records and documents are kept in accordance with accounting law requirements (s. 8 Law on Accounting). In case of breach of these requirements the responsible person is subject to a fine of up UAH 344 500 (EUR 12 040) which can be applied repeatedly (s. 166(11) Code on Administrative Offences).

Conclusion

123. All relevant entities are required under the accounting and tax law to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared. However a gap exists in respect of the requirement to keep accounting records for foreign trusts operated by Ukraine resident trustees and Ukraine is recommended to take measures to address this. Accounting obligations are supported by enforcement provisions. Although they appear rather low their effectiveness will be considered in the next round of Peer Review of Ukraine covering also practical aspects of the implementation of its legal framework.

Underlying documentation *(ToR A.2.2)*

124. In addition to the general requirement to maintain accounting records described above the tax law contains obligations to keep records of income and expenses and other documentation related to the person's tax obligations. This has to be done on the basis of source documents, accounting records, financial statements and other documents relating to the calculation and payment of taxes (s. 44(1) Tax Code). Further, Ukrainian VAT taxpayers must fulfil specific requirements regarding documentary evidence of transactions performed. Among other things, they must keep all documents from which flows of goods and services can be traced, and, more generally, all invoices (Chapter 22 – Special rules for value added tax collection, Tax Code).

125. Under the accounting law obliged entities are required to keep accounting documents evidencing entities' business transitions. As described above accounting documents should include date and place of issuance of the document, name of the company for which the document is issued, and description of the business transaction (s. 9(2) Law on Accounting). Accounting documents will typically be represented by invoices and business contracts as confirmed by the Ukrainian authorities.

126. Further, obliged persons under the AML Act are required to keep underlying documentation for transactions with their clients (s. 1(9) AML Act). However this documentation will involve only transactions involving the obliged person and may not cover all transactions carried out by the entity.

127. As described above in section A.2.1, the accounting obligations of a person residing in Ukraine and acting as a trustee of a foreign trust are not clearly provided. It appears that the Ukrainian trustee is required to keep underlying documents in respect of transactions carried out under the trust contract which involve assets of which the trustee is considered a legal owner. Nevertheless it is not clear whether this would always be the case and it is not clear whether these documents would be kept separately from other transactions not involving the trust.

Conclusion

128. The tax and accounting rules under Ukrainian law require underlying documentation to be available in line with the standard in respect of all relevant entities. However, no such clear requirements exist for trusts operated by Ukrainian resident trustees and Ukraine is recommended to address the gap.

5-year retention standard *(ToR A.2.3)*

129. The tax law requires taxpayers to keep documentation relevant for taxation for at least 1 095 days (3 years) from the date of filing the tax declaration to which they relate. In the case of liquidation of the taxpayer, the documents relevant to taxation for the period of 1 095 days preceding the date of liquidation of the taxpayer should be transferred to the archive (s. 44(3) Tax Code).

130. There is no explicit retention period under the Accounting Act. However certain retention requirements follow from the List of standard documents, created during the activities of state authorities and community bodies, other authorities, businesses and organisations, specifying the terms of storing documents, approved by the Ministry of Justice of Ukraine on 12.04.2012 (List № 578/5). In accordance with the List, underlying

accounting documentation and other accounting records should be kept for at least three years. Annual financial statements are required to be kept for at least five years (item 4.2 section 1 of the List № 578/5).

131. In view of the above, there appears to be a legal gap in respect of the retention period for accounting underlying documents after the lapse of the three year tax retention period. Further, there is no clear guidance on retention period for accounting information which is not filed with the State Registrar in respect of a legal entity which ceased to exist. Ukraine is therefore recommended to address this gap.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Ukrainian legislation does not clearly ensure that reliable accounting records and underlying documentation are kept for foreign trusts which have Ukrainian resident trustees or are administered in Ukraine in all cases.	Ukraine should ensure that reliable accounting records and underlying documentation for trusts which have Ukrainian resident trustees or are administered in Ukraine are kept in all cases.
Ukrainian law does not ensure that underlying documents are required to be kept for at least five years after the lapse of the three year tax retention period and it is not clear to which extent and for how long are accounting records required to be kept after the liquidation of the entity or arrangement.	Ukraine should introduce clear rules to ensure that all accounting records are required to be kept for at least five years after the end of the period to which they relate.

A.3. Banking information

Banking information should be available for all account-holders.

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

Record-keeping requirements (ToR A.3.1)

133. The main rules regarding availability of customer and transactional information on bank accounts are contained in the AML Act and Law on Banks and Banking. Detailed rules are further contained in regulations issued by the National Bank of Ukraine. All banks are required to be registered and licensed by the National Bank and the National Bank also carries out their monetary and AML supervision (ss.17 and 19 Law on Banks and Banking, s. 14(1) AML Act).

134. Banks are prohibited from opening and keeping anonymous accounts and accounts in the name of fictitious persons or numbered accounts (s. 64 Law on Banks and Banking).

135. Under the AML Act banks are required to conduct CDD measures

- upon establishing a business relationship,
- when conducting a transaction above UAH 150 000 (EUR 6 090); or
- when making a money transfer exceeding UAH 15 000 (EUR 609) on behalf of an individual without opening an account (s. 9(3) AML Act).

136. The identification of a client who is a legal entity includes obtaining its full name and address, the date and number of the record in the Unified State Register, the information on the executive body and identification of persons authorised to act on behalf of the legal entity and who have the right to manage its bank accounts and assets, information allowing identification of the ultimate beneficial owner(s) (s. 9(9)(3) AML Act). In case banks are not able to complete required identification measures, account shall not be opened or any service provided (s. 10). The information obtained during identification of a client is required to be verified and kept accurate (ss.2(2) and 11(2)).

137. Banks are required to monitor clients' financial transactions and keep documentation on these transactions which allows for the assessment of their risk of money laundering or terrorism financing (s. 1(9) AML Act). A financial transaction is defined as any action concerning the assets of the client which are taken with the help of the financial institution or of which the state financial monitoring entity learns in the framework of implementing the AML law (s. 1(47) AML Act).

138. The identification documents and documentation of transactions performed for the client must be stored for at least five years following the end of the business relationship or carrying out the transaction (s. 6(15) AML Act).

139. Banks are required to keep their accounting records in line with the International Accounting Standards and accounting rules stipulated in the Law on Accounting and Financial Reporting Accounting Act (see further section A.2.) (s. 68 Law on Banks and Banking). Banks' annual financial statements have to be audited each year by an independent external auditor and filed with the National Bank (ss.69 and 70).

140. Banks are also required to maintain information on accounts operated by them based on their contractual obligations with clients. Banks are obliged to provide to their clients (or their legal representatives) requested information regarding the accounts of and the transactions carried out by them (s. 56 Law on Banks and Banking).

141. Banks failing to comply with the AML requirements have criminal, administrative and civil liability under the law which includes fines, revoking a licence, taking over the management or a liquidation of the bank in the case of serious violation. (s. 24 AML Act). Further sanctions are applicable under the Law on Banks and Banking for various failures including failure to keep identity and transactional information as required by the regulations. As in the case of failure to comply with AML rules these sanctions include issuance of warning letters, application of fines, revocation of licence or liquidation (s. 73 Law on Banks and Banking). The administrative sanctions are directly applicable by the National Bank as the supervisory authority of banks.

Conclusion

142. The legal and regulatory framework in Ukraine requires the availability of banking information to the standard. Identity information on all account-holders and transaction records are made available mainly through AML/CFT obligations. The effectiveness of sanctions and measures to enforce availability of banking information will be considered in the next round of Peer Review of Ukraine covering also practical aspects of implementation of its legal framework.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place

B. Access to information

Overview

143. 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 Ukraine's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

144. Ukraine's tax authority has wide access powers to obtain and provide requested information held by persons within its territorial jurisdiction. These powers include right to request information through a written notice or to carry out on-site inspections. Ukraine has in place appropriate enforcement provisions to compel the production of information, including administrative and criminal sanctions and search and seizure power. Domestic access powers can be used also for exchange of information purposes regardless of domestic tax interest as obligations under international treaties represent one of the purposes for which access powers are granted. Access to banking information which is not already at the disposal of the tax authority is ensured mainly through a court procedure which allows access to all banking information requested for tax purposes including exchange of information. There are however concerns in respect of the identification requirement of the person on whose bank account information is requested and in respect of the criteria under which the requested information will be disclosed. It is therefore recommended that Ukraine clarifies its law to address these issues. Rules regulating professional secrecy are in line with the standard.

145. Ukraine's domestic legislation does not require notification of the persons concerned prior or after providing the requested information to the requesting jurisdiction except where banking information is requested by

the tax authority through a court order. The court is not required to notify the bank and the person on whom the information is requested when such notification would be against state interests or national security. Although Ukrainian law allows for interpretation of this exception in line with the standard it is not clear that such interpretation will be accepted especially considering lack of any further official guidance or practice. Ukraine is therefore recommended to address this unclarity. A taxpayer has a right to oppose sharing information held on him/her by the tax authority except for the cases where such disclosure is expressly provided by law. The exception apparently covers cases where information is provided pursuant to an EOI agreement nevertheless application of this right in practice will be further considered in the next round of Peer Review of Ukraine covering also practical aspects of implementation of its legal framework.

146. Decisions taken by the tax authority including decision on exercise of access powers for exchange of information purposes can be appealed within an administrative or judicial procedure. They appear not to unduly delay or prevent effective exchange of information however their practical impact will be further considered during the course of the next round of review covering also matters of practice.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

147. The competent authority in Ukraine for EOI purposes is the State Fiscal Service of Ukraine (SFS) being the authority responsible for tax administration (s. 19[1](1)(32) Tax Code). The SFS is a government body responsible for administration of fiscal policies, levy and collection of taxes, fees and customs and has a quasi-judicial function of hearing tax appeals.

148. The SFS has wide information gathering powers including the power to obtain information directly from the taxpayer, third persons and other government authorities (see below). These powers can be used also for exchange of information purposes and for the purpose of obtaining banking information.

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

Access to ownership information and accounting records

149. The Ukrainian law contains several provisions granting the tax authority access to ownership and accounting information. The Ukrainian tax authority has the power to:

- interview a taxpayer to verify information relevant to a tax assessment, payment of taxes or to verify compliance with the requirements of other legislation under the responsibility of the tax authority (s. 20(1)(1) Tax Code);
- request from a taxpayer, a legal person, an entrepreneur, public authority or a government body provision of information or documents relevant to a tax assessment, payment of taxes or to verify compliance with the requirements of other legislation under the responsibility of the tax authority (ss.20(1)(2) and 20(1)(3));
- conduct inspections of documents relevant to a tax assessment, payment of taxes or to verify compliance with the requirements of other legislation under the responsibility of the tax authority (s. 20(1)(6)).

150. Under section 73(3) of the Tax Code the tax authority is granted a power to send a taxpayer or other person a written notice requesting provision of information or documents which are necessary for the performance of the tax authority's responsibilities. The tax authority can make such a written request if at least one of the following conditions is met:

- there is evidence of the taxpayer's violation of the tax law or other law under the responsibility of the Ukrainian tax authority;
- to determine the comparables for transfer pricing purposes;
- an inaccuracy was revealed in the information provided by the taxpayer in his/her tax declaration;
- a complaint was received by the tax authority concerning the taxpayer's compliance with invoicing rules;
- to verify a transaction;
- the requested information is necessary for other purposes under the Tax Code (s. 73(3) Tax Code).

151. Under section 75 of the Tax Code the tax authority can conduct desk audits or on-site inspections. Desk audit entails review of information already available to the tax authority based on taxpayer's filing obligations (s. 75(1)(1)

Tax Code). The purpose of on-site inspection is verification of information relevant to a tax assessment, payment of taxes or to verify compliance with the requirements of other legislation under the responsibility of the tax authority (s. 76). On-site inspections are planned based on risk assessment or unplanned (s. 77). Unplanned on-site inspections can be launched if at least one of the outlined conditions is met. These conditions include conditions for requesting information through a written notice under section 73(3) and further conditions such as reorganisation of the legal entity or its branch, an order by the prosecution authority to launch a tax inspection or that one matter cannot be inspected twice (s. 78). Even if conditions for launch of on-site inspection under section 78 are not met other access powers can still be used.

152. No specific access powers are provided for exchange of information purposes or for cases where information is relevant to criminal tax investigation. The described access powers appear to cover all types of ownership and accounting information which may be relevant for exchange of information purposes.

Access to banking information

153. Under Ukrainian law the tax authority obtains banking information held by banks in three ways:

- spontaneously provided by banks – the tax authority has at its disposal information on all bank accounts opened by a legal person or an individual conducting business (entrepreneur) based on the banks reporting obligations to the tax authority (s. 69(2) Tax Code). The reported information in all cases includes identification of the bank account holder (including the name) and the bank account number.
- based on a written request – the tax authority can request the provision of bank information from a bank under section 73(3) of the Tax Code. However in response to such a request the bank is allowed to provide only information on the existence of a bank account of the identified person (s. 62(4)(a) Law on Banks and Banking). In order to request the information directly from the bank the person has to be uniquely identified by name, i.e. it is not possible to request the name of a person based on the provision of a bank account number. The provided information includes the number of the bank account however no further information can be provided.
- through a court order – further information on a bank account can be accessed by the tax authority through a court order (s. 20(1)(5) Tax Code and s. 62(2) Law on Banks and Banking). The court has to decide within five days of receipt of the application in a closed court session. The decision is notified to the tax authority, the bank and the person on whom the information is requested unless an exception

applies (see further section B.2). The application to the court has to include (s. 288 Civil Procedure Code):

- identification (e.g. the name) of the person in respect of whose bank account the information is requested;
- name and address of the bank which operates the bank account;
- justification of the request and description of the reasons why the information is requested to be disclosed including law provisions that provide authority to access such information;
- description of the requested information and its intended use.

154. In the case where the requested banking information is not already at the disposal of the tax authority or cannot be obtained through a written request under section 73(3) of the Tax Code the tax authority has to apply to the court. Application to the court can be filed without prior written request for information to a bank under section 73(3) of the Tax Code. As mentioned above the application to the court has to include the identification of the person in respect of whose bank account the information is requested. No express requirement to identify the person through a name is contained in the law but the law gives the name as an example of an identification. In the domestic practice, however, the name of the person is routinely provided as it is already in the hands of the tax authority. It is nevertheless unclear whether provision of the bank account number as a way of identification of the person will be accepted in all cases as there is no further guidance on this in the domestic or exchange of information context. The identification in the court procedure is not a concern in respect of all legal persons and entrepreneurs as banks are required to spontaneously provide to the tax authority information on all bank accounts opened by these persons including their names and account numbers. The tax authority is further required to justify the application. In several cases the court disallowed access to the banking information for civil tax purposes and required launch of a criminal investigation. All these cases were however in domestic context and there is no case where access to banking information was requested for exchange of information purposes. It is therefore not clear what criteria would be applied by the court in the exchange of information context especially in cases where information is requested under treaties which contain OECD Model Article 26(5).

155. To sum up, in cases where the requested information is not already at the disposal of the tax authority or it cannot be obtained through a written request under section 73(3) of the Tax Code the tax authority has to apply to the court. The court procedure poses concerns in respect of the identification requirement of the person on whose bank account information is requested if the person is not a legal person or an entrepreneur and in respect of the criteria under which the requested information will be disclosed. There are no court cases where the disclosure was requested for exchange of information

purposes and there is no further guidance in the law or other binding regulations which conditions should apply in such cases. It is therefore recommended that Ukraine clarifies its law to address these concerns.

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

156. The concept of "domestic tax interest" describes a situation where a contracting party can obtain and provide information to another contracting party only if it has an interest in the requested information for its own tax purposes.

157. Ukraine's law does not contain provisions specifically dealing with exercise of access powers for exchange of information purposes or in cases where there is no domestic tax interest in the requested information. Nevertheless, domestic access powers under section 20(1) of the Tax Code are granted for purposes which include verification of compliance with the requirements of other legislation under the responsibility of the tax authority and conditions of use of access powers in section 73 of the Tax Code refer to information necessary for other purposes under the Tax Code. In section 19_1(1)(32) the Tax Code clearly stipulates that the Ukrainian tax authority is responsible for administration of international treaties and therefore reference to other legislation under the responsibility of the tax authority includes ensuring compliance with obligations under Ukrainian international treaties. Information necessary for other purposes under the Tax Code referred in section 73 should also cover information which is necessary for fulfilment of obligations under international treaties as in accordance with the Tax Code ratified international treaties form part of the Ukrainian tax legislation (s. 3(1) Tax Code). Further, Ukrainian authorities interpret their international treaties as containing obligation to provide the requested information regardless of domestic tax interest even if the respective treaty does not contain a provision equivalent to Article 26(4) of the OECD Model Tax Convention.

158. In addition, the Tax Code contains a treaty prevails rule stating that if an international treaty approved by the Verkhovna Rada of Ukraine stipulates other rules than those provided for in the Tax Code the rules of the international treaty shall prevail (s. 3(2) Tax Code). This rule provides additional layer of obligation to provide the requested information regardless of domestic tax interest for treaties which contain wording akin to Article 26(4) of the OECD Model Tax Convention.

159. To sum up, Ukrainian access powers can be used for exchange of information purposes regardless of domestic tax interest as obligations under international treaties represent one of the purposes for which access powers are granted. This is based on incorporation of international treaties into the Ukrainian tax law and responsibility of the tax authority to ensure compliance with them.

Compulsory powers *(ToR B.1.4)*

160. Jurisdictions should have in place effective enforcement provisions to compel the production of information. There are administrative and criminal sanctions available to the Ukrainian tax authority in case of non-compliance with obligation to provide the requested information. In addition to application of sanctions the tax authority can exercise search and seizure powers.

161. Failure to provide information requested by the tax authority is subject to administrative and criminal sanctions depending on the severity of the failure. Failure of the taxpayer to keep and provide accounting and other documents requested in the course of tax inspection is subject to a penalty of UAH 510 (EUR 20) or UAH 1 020 (EUR 40) which can be applied repeatedly (s. 121(1) Tax Code). A taxpayer who fails to substantiate his/her tax liability is taxed based on the estimate and subject to an additional fine of 25% of the newly assessed tax liability which can be increased up to 50% if the tax is reassessed subsequently based on a tax audit or other additionally obtained information (s. 123(1)). These sanctions are directly applicable by the tax authority. In addition to administrative fines criminal sanctions apply in case of tax evasion. The responsible officials are subject to a fine of up to UAH 425 000 (EUR 14 710), forfeiture of property and prohibition to occupy certain posts for up to three years (s. 212 Criminal Code).

162. During a tax inspection the tax authority is authorised to search for the requested information in the business premises of the inspected person (s. 75(1)(2) Tax Code). If the person refuses to co-operate and obstructs the course of the tax administration, the tax authority can seizure his/her property (s. 94(2)). If failure to provide information is relevant for taxation in Ukraine it may lead to criminal investigation conducted by the tax police regulated under the Criminal Procedure Code (s. 78(3)).

Secrecy provisions *(ToR B.1.5)*

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

Bank secrecy

164. Information on the existence of bank accounts, transactions involving these accounts and information on banks' clients is covered by bank secrecy. In accordance with the Civil Code the bank shall guarantee secrecy of the bank account, transactions involving the account and information about its clients. The protected information may be supplied only to the clients themselves or to their representatives. Other persons, including state

authorities, may obtain this information only in cases stipulated by the Law on Banks and Banking (s. 1076(1) Civil Code). The Law on Banks and Banking further details the scope of banking secrecy as defined in the Civil Code and particularly mentions financial and economic position of a client and information on organisational and legal structure of clients who are legal entities, their managers and areas of activities (ss.60(3) and 60(5) Law on Banks and Banking). Breach of the protection is subject to sanctions and the bank is liable to any damage caused to its clients (ss. 1076(2) Civil Code, s. 62 Law on Banks and Banking).

165. As described in section B.1.1 of this report, the Law on Banks and Banking together with the Tax Code provides exceptions from the banking secrecy if the information is requested for tax purposes. Access to all banking information is ensured through a court procedure which however poses certain concerns. There are no court cases where the disclosure was requested for exchange of information purposes and there is no furher guidance in the law which would clarify these issues. It is therefore recommended that Ukraine addresses these concerns.

Professional secrecy

166. Ukrainian Law on Advocacy contains secrecy provisions which are not overridden by access powers stipulated under the Tax Code. The information which is protected by the advocate's secrecy is any information that became known to the advocate in connection with him/her acting in a professional capacity as an advocate and concerns information on his/her client and issues subject to the advocate's advice (s. 22(1) Law on Advocacy). The protection of information relates only to the information obtained by the advocate acting in his/her professional capacity as an advocate and appears to cover only information related to providing his/her legal advice and not purely factual information which can be obtained from third parties such as information on the identity of a director or beneficial owner of a company or accounting records. The scope of the advocate's secrecy therefore is in line with the standard.

Conclusion

167. Ukraine's tax authority has wide access powers to obtain and provide requested information held by persons within its territorial jurisdiction. These powers include the right to request information through a written notice or to carry out on-site inspections. Ukraine has in place appropriate enforcement provisions to compel the production of information, including administrative and criminal sanctions and search and seizure power. Domestic access powers can be used also for exchange of information purposes regardless of domestic tax interest as obligations under international treaties represent one of the purposes

for which access powers are granted. Access to banking information which is not already at the disposal of the tax authority is ensured mainly through a court procedure which allows access to all banking information requested for tax purposes including exchange of information. There are however concerns in respect of the identification requirement of the person on whose bank account information is requested if the person is not a legal person or an entrepreneur and in respect of the criteria under which the requested information will be disclosed. It is therefore recommended that Ukraine clarifies its law to address these issues. There are no restrictions on exercise of access powers based on professional secrecy which would be not in line with the standard.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
In order to obtain banking information which the tax authority does not already have at its disposal or cannot be obtained through a written request the tax authority has to apply to the court. The court procedure however poses concerns in respect of the identification requirement of the person on whose bank account information is requested as the name is the only example given as a means of identifying the person and in respect of the criteria under which the information will be disclosed.	Ukraine should clarify its law to clearly provide for access to banking information in accordance with the standard in all cases.

B.2. Notification requirements and rights and safeguards

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

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

168. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from notification of the taxpayer concerned prior to the exchange

of information requested (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

169. Ukraine's domestic legislation does not require notification of the persons concerned prior or after providing the requested information to the requesting jurisdiction except where banking information is requested by the tax authority through a court order. The court deciding the tax authority's application is required to notify of its decision the applicant (i.e. the tax authority), the bank and the person on whom the information is requested. The court is not required to notify the bank and the person on whom the information is requested when such notification would be against state interests or national security. State interests, as defined under the Ukrainian law, include sustainable tax and customs policy and banking services (s. 1 Law on Grounds of National Security of Ukraine). According to the Ukrainian authorities state interest should be interpreted as requiring to act in accordance with Ukrainian international obligations and therefore it should cover also situations where a requesting jurisdiction indicates not to notify a taxpayer as the notification may undermine success of the investigation or the request is of a very urgent nature. There is however no basis to confirm this and there has been also no case where banking information was requested through a court order. Although Ukrainian law allows for interpretation which provides for exceptions from the obligation in line with the standard it is not clear that this interpretation will be accepted in practice especially considering lack of any further official guidance. It is therefore recommended that Ukraine clarifies its law to ensure that there are appropriate exceptions from the obligation to notify a person on whom banking information is requested through a court order.

170. Under section 17 of the Tax Code the taxpayer has a right to oppose sharing information held on him/her by the tax authority except for the cases where such disclosure is expressly provided by law (s. 17(1)(9) Tax Code). It appears that exchange of information pursuant to an EOI agreement represents such a case and therefore exchange of information pursuant to EOI request does not require consent of the taxpayer as sharing such information is provided for by Ukrainian law based on treaty obligations or application of the treaty prevails rule contained in section 3(2) of the Tax Code. This interpretation is also supported by the Ukrainian authorities. However, as it is not clear how this rule is applied in practice and to which extent it entails informing the taxpayer about exchanging the information or about the exchanged information the issue will be further considered in the next round of Peer Review of Ukraine covering also practical aspects of implementation of its legal framework.

171. Decisions taken by the tax authority including decision on exercise of access powers for exchange of information purposes can be appealed within an administrative or judicial procedure. If the taxpayer believes that the tax authority has incorrectly determined the amount of his/her tax liability or has taken any other decision which is contrary to law or is beyond the powers of the tax authority the taxpayer can appeal such decision to the tax authority of a higher level with a request to review the decision (s. 56(2) Tax Code). Such appeal has to be filed within 10 days following receipt of the appealed decision (s. 56(3)). Subsequently, the tax authority has 20 days which can be extended, provided there are specified reasons for the extension, for up to 60 days to decide the appeal (s. 56(9)). If the appeal is fully or partially dismissed the taxpayer can within 10 days since receipt of this decision appeal to the court for judicial review (s. 56(6)). The judicial review follows generally the same deadlines as an administrative appeal. Until the appeal is decided the appealed decision is suspended (s. 56(15)). Appeal rights granted under Ukrainian tax law have potential to delay exchange of information however they appear not be excessive or designed to unduly prevent or delay exercise of access powers or exchange of information. Nevertheless as grounds for an appeal are broad and generally defined they may be misused in certain cases. As this is a matter of practice this issue will be further considered during the course of the next round of review of Ukraine covering also practical aspects of implementation of its legal framework.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
When accessing banking information through a court order the Ukrainian law requires the court to notify the person in respect of whose bank account information is requested. It is unclear whether exceptions provided by the law allow for exceptions from prior notification consistent with the standard.	Ukraine should clarify its law to ensure that there are appropriate exceptions from the obligation to notify a person on whom banking information is requested.

C. Exchanging information

Overview

172. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Ukraine the legal authority to exchange information is derived from double taxation conventions (DTCs) and the Multilateral Convention. This section of the report examines whether Ukraine has a network of information exchange that would allow it to achieve effective exchange of information in practice.

173. Ukraine has an extensive EOI network covering 109 jurisdictions through 62 DTCs and the Multilateral Convention. Out of 109 Ukraine's EOI relationships 106 provide for exchange of information in accordance with the international standard. Out of the three EOI relationships which are not in line with the standard two are based on DTCs[8] which do not meet the foreseeably relevant criteria as they provide for exchange of information relevant only for the purposes of the Convention and one is based on a DTC[9] not in line with the standard due to a limitation in respect to access to banking information in domestic law of Ukraine's treaty partner. All Ukraine's EOI agreements are in force. As discussed in section B.1, the court procedure required under the Ukrainian law in order to obtain most of banking information poses certain concerns which may limit effective exchange of banking information under Ukrainian EOI agreements.

174. Ukraine's EOI network covers all of its significant partners including its main trading partners (with exception of Belarus). During the course of the assessment, no jurisdiction has advised that Ukraine had refused to enter into negotiations or conclude an EOI agreement.

175. All Ukraine's EOI agreements have provisions to ensure confidentiality of the exchanged information although wording of these provisions in some of the older DTCs varies from the standard wording. The access of

8. DTCs with Malaysia and United Arab Emirates.
9. DTC with Lebanon.

public authorities to confidential tax information under the domestic law appears to be too broad. However, as the obligations under the international treaty prevails over the rules contained in the Tax Code the exchanged information should be required to be kept in line with the treaty under which it was received. Provisions allowing taxpayers to inspect information kept on him/her by the tax authority are in line with the standard. Information required to be included in the tax authority's notice to the information holder appears not to go beyond information necessary to obtain it. The practical application of this requirement will be further considered in the next round of review of Ukraine.

176. All but one of Ukraine's EOI agreements contain wording akin to Model Article 26(3) and Ukraine is recommended to bring the one treaty in line with the standard. As described in section B.1.5 of this report the protection of information held by advocates is in line with the standard and no issue has been identified in respect of other secrets under element C.4 which could have negative impact on effective exchange of information.

177. There appear to be no legal restrictions on the ability of Ukraine's competent authority to respond to requests in a timely manner. Nevertheless as provision of information in a timely manner is a matter of practice it will be considered in the course of its next round of review covering also practical aspects of implementation of Ukraine's legal framework.

C.1. Exchange of information mechanisms

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

178. The international treaties providing for exchange of information require ratification by the Parliament. Where rules contained in a ratified international treaty conflict with domestic tax law the treaty prevails over the domestic law (s. 3(2) Tax Code).

179. Ukraine has in total 109 EOI relationships. These relationships are based on 62 DTCs and the Multilateral Convention. Ukraine has not signed any TIEA however there is no restriction on doing so. All Ukraine's DTCs are in force. Ukraine signed the Multilateral Convention on 27 May 2010 and it entered into force in Ukraine on 1 September 2013. The Ukrainian authorities have an ongoing programme of concluding new EOI agreements and revising agreements where necessary in order to bring them up to standard.

Foreseeably relevant standard *(ToR C.1.1)*

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

> 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.

181. All but five of Ukraine's DTCs provide for exchange of information that is "foreseeably relevant", "necessary" or "relevant" to the administration and enforcement of the domestic laws of the contracting parties concerning taxes covered in the DTCs. This scope is set out in the EOI Article in the relevant agreements and is consistent with the international standard.[10]

182. Ukraine DTCs with Austria, Germany, Malaysia, Switzerland and United Arab Emirates allow for exchange of information only to the extent that it relates to the application of the treaty. That is, it does not provide for exchange of information to assist in the administration or enforcement of the domestic tax laws of the EOI partner, except to the extent that this relates to the application of the DTC. Moreover, the DTC with Switzerland only covers information which is at the contracting parties' disposal under their respective tax laws in the normal course of administration. Although these DTCs are not in line with the standard this is not a concern in practice in respect of Austria and Germany which are Parties of the Multilateral Convention and Ukraine can exchange information with them in accordance with the standard. Further, as Switzerland is a signatory to the Multilateral Convention wording of the DTC with Switzerland will no longer be a concern upon entry into force of the Multilateral Convention in Switzerland. It is also noted that the amending protocol of the DTC with Switzerland was initialled. Since Ukraine does not have any EOI instrument in line with the standard of

10. The OECD Model Tax Convention on Income and on Capital recognises in its commentary to Article 26 (Exchange of Information) that the terms "necessary" and "relevant" allow the same scope of exchange of information as does the term "foreseeably relevant".

foreseeable relevance with Malaysia and United Arab Emirates it is recommended that Ukraine brings its EOI relations with these two jurisdictions in line with the standard. It is however noted that Ukraine already initialled a new DTC with Malaysia and its signing is planned soon.

183. The majority of Ukraine's DTCs contain wording providing for exchange of information that is necessary for carrying out the provisions of the convention or of the domestic tax laws and, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The wording specifically refers to information relevant to prevent tax fraud or legal avoidance but it should not limit the scope of foreseeably relevant information as it does not exclude other cases where information is relevant for carrying out the provisions of the convention or of the domestic tax laws.

184. The Multilateral Convention provides for exchange of information in line with the foreseeable relevance criteria.

185. There is no specific provision in Ukraine's law defining information required to demonstrate the foreseeable relevance of the requested information. According to the Ukrainian authorities Ukraine interprets the criteria of foreseeable relevance to the widest possible extent. Practical application of this criterion in Ukraine's exchange of information practice will be considered in the next round of its review.

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

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

187. Twenty-three of Ukraine's DTCs do not explicitly provide that the EOI provision is not restricted by OECD Model Article 1 (Persons Covered).[11] All of these DTCs except for DTCs with Germany, Malaysia, Switzerland and United Arab Emirates apply for the purposes of administration or enforcement of domestic tax laws of the requesting party and therefore should cover also persons which do not fall within the scope of Article 1.

11. These are the DTCs with Brazil, Bulgaria, Egypt, Germany, Hungary, India, Iran, Japan, Libya, FYROM, Malaysia, Moldova, Morocco, Pakistan, Poland, Singapore, Spain, Sweden, Switzerland, Thailand, Turkey, the United Kingdom and United Arab Emirates.

Further Ukraine has advised that it interprets the EOI provision to allow exchange of information with respect to all persons.

188. Although Ukraine's DTCs with Germany, Malaysia, Switzerland and United Arab Emirates do not provide for exchange of information in respect of all persons and therefore are not in line with the standard this is not a concern in practice in respect of Germany which is a Party of the Multilateral Convention providing for exchange of information in respect of all persons. Further, as Switzerland is a signatory to the Multilateral Convention the wording of the DTC with Switzerland will no longer be a concern upon entry into force of the Multilateral Convention in Switzerland. However Ukraine does not have any EOI instrument in line with the standard with Malaysia and United Arab Emirates. It is therefore recommended that Ukraine brings its EOI relations with these two jurisdictions in line with the standard.

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

189. 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 Tax Convention and the Model TIEA, which are authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

190. Out of Ukraine's 63 EOI agreements (i.e. 62 DTCs and the Multilateral Convention) only DTCs with Cyprus, Ireland and Mexico and the Multilateral Convention contain language akin to the Article 26(5) of the OECD Model Tax Convention providing for the obligations of the contracting parties to exchange information held by financial institutions, nominees, agents and ownership and identity information.

191. Ukraine's DTC with Switzerland prohibits exchange of information subject to banking secrecy and it is therefore not in line with the standard. However, as Switzerland is a signatory to the Multilateral Convention, the wording of this DTC will no longer be a concern upon entry into force of the Multilateral Convention in Switzerland.

192. Out of the remaining 58 DTCs which do not contain language akin to Article 26(5) of the OECD Model Tax Convention 42 are with partners who are covered by the Multilateral Convention which establishes obligation to exchange all types of information (including banking information). As such, the exchange of bank information in the absence of language akin to the Article 26(5) of the OECD Model Tax Convention in respect of the 16 DTCs

will be subject to reciprocity and will depend on the domestic limitations (if any) in the laws of some of these treaty partners.[12] Out of these 16 jurisdictions, five are Global Forum members and were reviewed. The peer review of these Global Forum members concluded they have no legal restrictions under their domestic laws to access bank information even in the absence of a treaty provision akin to Article 26(5) of the OECD Model Tax Convention except for Lebanon. It is therefore recommended that Ukraine renegotiate its DTC with Lebanon to bring it in line with the standard. In respect of the other 11 jurisdictions which were not reviewed and may have domestic restrictions in respect of access to banking information it is recommended that Ukraine works with these partners to ensure that their EOI relations are to the standard.[13]

193. As discussed in section B.1, in order to obtain banking information which goes beyond the bank account number and the identification of the account holder the tax authority has to apply to the court. The court procedure however poses concerns in respect of the identification requirement of the person on whose bank account information is requested and in respect of the criteria under which the information will be disclosed. There are no court cases where the disclosure was requested for exchange of information purposes and there is no further guidance in the law which would clarify these issues. It is therefore recommended that Ukraine addresses these concerns.

Absence of domestic tax interest (ToR C.1.4)

194. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. 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.

195. Out of Ukraine's 63 EOI agreements only DTC with Cyprus, Ireland and Mexico and the Multilateral Convention contain provision similar to Article 26(4) of the OECD Model Tax Convention, which oblige the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic interest in the requested information.

12. These 16 jurisdictions are Algeria, Egypt, FYROM, Iran, Jordan, Kuwait, Lebanon, Libya, Malaysia, Mongolia, Pakistan, Serbia, Syria, Thailand, United Arab Emirates and Viet Nam.
13. These 11 jurisdictions are Algeria, Egypt, Iran, Jordan, Kuwait, Libya, Mongolia, Serbia, Syria, Thailand and Viet Nam.

196. Ukraine's DTCs with Algeria, Canada and the United States contain wording stating that the requested party shall endeavour to obtain the information in the same way as if its own tax was at stake notwithstanding the fact that it does not, at that time, need such information for its own tax purposes. Although such provision refers to the obligation to provide the requested information regardless of domestic tax interest it is not completely clear whether such information will be provided if it is covered by provision akin to Article 26(3) of the OECD Model Tax Convention contained in the treaty. Nevertheless this is not a concern in respect of Canada and the United States as no domestic restriction on use of access powers regardless of domestic tax interest has been identified during their peer review and both jurisdictions are covered by the Multilateral Convention. Ukraine should however work with Algeria to ensure that their EOI relation is in line with the standard.

197. The DTC with Switzerland only allows the exchange of information which is at a party's disposal under their respective taxation laws in the normal course of administration. As such, the competent authorities of Ukraine and Switzerland may be prevented from using their access powers to provide any information requested for EOI purposes. However, as Switzerland is a signatory to the Multilateral Convention, the wording of this DTC will no longer be a concern upon entry into force of the Multilateral Convention in Switzerland.

198. The other 55 agreements do not contain provisions obliging the contracting parties to use information-gathering measures to obtain and exchange requested information without regard to a domestic tax interest. The absence of provision similar to Article 26(4) of the OECD Model Tax Convention does not automatically create restrictions on access and provision of the requested information. Nevertheless exchange of information regardless of domestic tax interest will be subject to reciprocity and will depend on the domestic law limitations of treaty partners. As noted in section B.1 of this report, there is no restriction under Ukrainian domestic law to access information regardless of domestic tax interest.

199. Out of the 55 DTCs which do not contain language akin to Article 26(4) of the OECD Model Tax Convention 40 are with partners who are covered by the Multilateral Convention which contains explicit provision obliging the contracting parties to use information-gathering measures to obtain and exchange requested information without regard to a domestic tax interest. Therefore Ukraine does not have EOI agreement containing legal obligation to provide the requested information regardless of domestic tax interest with 15 jurisdictions.[14] Out of these five are Global Forum members and were reviewed. The

14. These 15 jurisdictions are Egypt, FYROM, Iran, Jordan, Kuwait, Lebanon, Libya, Malaysia, Mongolia, Pakistan, Serbia, Syria, Thailand, United Arab Emirates and Viet Nam.

peer review of the five Global Forum members concluded they have no domestic tax interest restrictions under their laws. Absence of provision akin to the Model Article 26(4) may therefore be a concern in respect of the remaining 10 jurisdictions.[15] It is therefore recommended that Ukraine works with these partners to ensure that their EOI relations are to the standard.

Absence of dual criminality principles (ToR C.1.5)

200. 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 jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

201. There are no such limiting provisions in any of Ukraine's EOI instruments which would indicate that there is dual criminality principle to be applied.

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

202. 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").

203. None of Ukraine's EOI instruments explicitly limits exchange of information only to criminal or civil tax matters. However Ukraine's DTC with Switzerland states that any exchanged information shall not be disclosed to any persons other than those concerned with the assessment and collection of taxes which are the subject of the Convention and therefore does not provide for sharing of the exchanged information with authorities responsible for prosecution in tax matters. This limitation is not in line with the standard, however, as Switzerland is a signatory to the Multilateral Convention, the wording of this DTC will no longer be a concern upon entry into force of the Multilateral Convention in Switzerland.

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

204. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such

15. These 10 jurisdictions are Egypt, Iran, Jordan, Kuwait, Libya, Mongolia, Serbia, Syria, Thailand and Viet Nam.

formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party 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 administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

205. All of the Ukraine's EOI instruments allow for the provision of information in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent permitted under Ukraine's domestic law and administrative practices.

206. In addition Ukraine's DTCs with Canada and the United States contain an explicit obligation to provide, if specifically requested by a treaty partner, information in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts and writings) to the extent allowed under the laws and administrative practices of the requested partner with respect to its own taxes.

In force *(ToR C.1.8)*

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

208. EOI agreements must be ratified by the Ukraine's Parliament. After signing, the agreement together with supporting documentation are submitted to the Parliament for approval. The domestic ratification process is completed after the signed agreement is approved by the Parliament and gazetted. The Ministry of Foreign Affairs subsequently informs the agreement party thereof.

209. All Ukraine's EOI agreements including the Multilateral Convention are in force. However there are more than 20 DTCs signed mainly in the 90s which came into force after 18 months since their signing and there are six DTCs which were brought into force only after three years.[16] It is nevertheless noted that recently signed DTCs were brought into force expeditiously with the exception of the DTC with Ireland which came into force after more

16. These DTCs are with Brazil (signed in January 2002), Egypt (signed in March 1997), Iran (signed in May 1996), Italy (signed in February 1997), Slovenia (signed in April 2003) and the United States (signed in March 1994).

than two years since it was signed.[17] Ukraine should therefore continue in its efforts to bring its EOI treaties into force expeditiously.

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

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

211. As discussed in section B of this report, Ukraine has the legislative and regulatory framework in place to give effect to its agreements.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Court procedure required under the Ukrainian law in order to obtain banking information which goes beyond the bank account number and the identification of the account holder poses certain concerns which may limit effective exchange of banking information.	Ukraine should clarify its law to clearly provide for access to banking information in accordance with the standard in all cases.

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

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

212. 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

17. DTCs with Saudi Arabia (signed in September 2011 and coming into force in December 2012), Cyprus (signed in November 2012 and coming into force in August 2013) and Mexico (signed in January 2012 and coming into force in December 2012).

to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

213. Ukraine has an extensive EOI network covering 109 jurisdictions through 62 DTCs and the Multilateral Convention. Ukraine's EOI network covers all of its significant partners including its main trading partners (with exception of Belarus), all OECD members and all G20 countries.

214. During the course of the assessment, no jurisdiction has advised that Ukraine had refused to enter into negotiations or conclude an EOI agreement. It is nevertheless noted that Ukraine has not signed any TIEA. There is no legal impediment in Ukraine's law to conclude a TIEA however according to Ukrainian authorities negotiation priority was concluding DTCs given broader taxation issues covered by a DTC and resources available for treaty negotiations. Ukraine is currently negotiating five TIEAs. One TIEA has been initialled and is getting ready to be signed. Ukraine is ready to conclude a TIEA with any interested partner if specifically requested however it does not consider it a priority to negotiate additional EOI instruments with jurisdictions already Parties to the Multilateral Convention or covered by it through a territorial extension.

215. Ukraine has in place an on-going negotiations programme which includes plans for renegotiation of EOI agreements that do not provide for exchange of information in line with the standard. Ukraine advises that it is currently negotiating or renegotiating EOI agreements with 13 jurisdictions.

Determination and factors underlying recommendations

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

C.3. Confidentiality

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

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

216. 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.

International treaties

217. All Ukraine's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. However as these treaties were concluded over several decades their wording varies.

218. Ukraine's DTCs with Japan, Malaysia, Switzerland state that any exchanged information shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the treaty. The DTC with Spain states that the exchanged information shall be treated as secret and shall be disclosed only to the authorities concerned with the application of the convention. Confidentiality provisions in these treaties do not specify that persons authorised to obtain the exchanged information may use it only for the specified purposes. Although such wording does not mirror the Model Article 26 it appears that such persons are expected to use the information only for the specified purposes as they are bound by their internal confidentiality rules. In the case of the DTC with Spain it is however not completely clear what is meant by authorities concerned with the application of the convention as meaning of the word "concerned" is open to various interpretations. As wording of these provisions deviates from the Model Article 26(2) and opens up interpretative issues Ukraine is recommended to renegotiate these provisions.

219. DTCs with India, Indonesia and Libya state that any exchanged information shall be treated as secret in the same manner as information obtained under the domestic laws, however, if the information is originally

regarded as secret in the transmitting jurisdiction the obligation of the Model Article 26(2) apply. Although such conditionality of application of the standard confidentiality rules is not foreseen by Article 26(2) cases where the exchanged information would not be covered by tax secrecy in the transmitting jurisdiction are expected to be very rare. In addition domestic secrecy rules of the receiving jurisdiction remain applicable even if the exchanged information is not covered by secrecy rules in the transmitting jurisdiction. Therefore this wording appears to have very limited impact on confidentiality of the received information. Nevertheless Ukraine should attempt to bring these provisions in line with the Model Article 26(2) wording.

220. The DTC with Switzerland does not provide for disclosure of information to authorities dealing with prosecution matters in respect of taxes covered by the DTC (see further section C.1.6). The DTC with the Netherlands specifically allows for provision of the exchanged information to the arbitration board to carry out the mutual agreement procedure under the DTC. These deviations from the standard wording of Model Article 26(2) however do not have a negative impact on keeping the exchanged information confidential as required under the international standard.

Ukraine's domestic law

General tax confidentiality rules

221. The tax authority is obliged to keep all information received during the process of tax administration confidential (s. 21(1)(6) Tax Code). The confidential information can be used by the tax authority only for purposes authorised by law (s. 74(2)). Other public authorities are authorised to access information kept by the tax authority in cases prescribed by law upon request or automatically (ss.19[1](1)(36) and 21(1)(7)). These authorities include Police, the State Commission for Financial Monitoring (FIU) or other law enforcement authorities which may use the obtained information also for other purposes than the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes, or the oversight of the above. The access of public authorities to confidential tax information appears to be too broad and may allow access to the confidential information which goes beyond the standard. However, as obligations under the international treaty prevail over the rules contained in the Tax Code the exchanged information should be required to be kept in line with the treaty under which it was received. Application of this rule will be followed up during the next round of Peer Review of Ukraine covering also practical aspects of implementation of its legal framework.

222. Failure to protect the confidentiality of the received information in accordance with the law is subject to sanctions under the Code on Administrative Offences (s. 21(2) Tax Code) and triggers disciplinary proceedings.

223. General confidentiality of tax information is further confirmed in the Law on Information and Law on Access to Public Information which disallows access to tax information to the public or for other purposes than these stipulated under the Tax Code (s. 21(2) Law on Information and s. 6 Law on Access to Public Information).

Inspection of files

224. Based on section 10 of the Law on Access to Public Information each person shall have the right *(i)* to know what information about him/her, for what purpose and by whom is being collected; *(ii)* to have access to information about him that is being collected and stored, *(iii)* to demand correction of inaccurate or incomplete information kept about him; or *(iv)* to demand destruction of information about him which is collected, stored or used in violation of law. Refusal to allow a person access to the information held about him may be appealed (s. 10 Law on Public Access to Information). The law allows restriction of these rights in respect of information considered confidential, secret or official. Official information is defined as information contained in documents of subjects of public authority which constitute internal official correspondence connected to control and oversight functions of the government bodies or their decision making process (ss.6(1) and 20). EOI requests and supporting documentation should therefore be classified as official information and not required to be disclosed to the taxpayer as was confirmed by the Ukrainian authorities. The practical application of this rule will be considered in the next round of Peer Review of Ukraine.

Notices to information holders

225. The tax authority's notice to provide the requested information has to contain *(i)* the reasons for requesting the information including information substantiating these reasons, *(ii)* list of the requested information and documents and *(iii)* the tax authority stamp (s. 73(3) Tax Code). According to the Ukrainian authorities the reasons for requesting the information should be interpreted as reference to provisions of the domestic Ukrainian law and to the international treaty under which the information is requested and information substantiating these reasons does not include information contained in the EOI request or its supporting documentation. The practical application of this requirement will be further considered in the next round of Peer Review of Ukraine.

All other information exchanged (ToR C.3.2)

226. The confidentiality provisions in Ukraine's exchange of information agreements and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

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

227. 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.

228. All but one of Ukraine's EOI agreements contain wording akin to Model Article 26(3) allowing the contracting parties not to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. The DTC with the Netherlands does not contain any provision covering exchange of information subject to the Model Article 26(3). Nevertheless, as the Netherlands is also a Party to the Multilateral Convention which provides for rights and safeguards of taxpayers and third parties in line with the standard, Ukraine and the Netherlands have an EOI relationship which allows practical exchange of information in accordance with the standard.

229. Ukraine's domestic law allows for exception from obligation to provide information requested for tax purposes in respect of information subject to advocate's professional secrecy. As described in section B.1.5 of this report the protection of information relates only to the information obtained by the advocate acting in his/her professional capacity as an advocate and appears to cover only information related to providing his/her legal advice and not

purely factual information which can be obtained from third parties. The protection of information held by advocates is therefore in line with the standard and no issue has been identified in respect of other secrets which could have negative impact on effective exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

230. 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.

231. None of Ukraine's DTCs require the provision of acknowledgments of receipt, status updates or the provision of the requested information within the timeframes foreshadowed in Article 5(6) of the OECD Model TIEA. There appear to be no legal restrictions on the Ukraine's competent authority's ability to respond to EOI requests in a timely manner either. Nevertheless as provision of information in a timely manner is a matter of practice it will be considered in the course of its next round of review covering also practical aspects of implementation of its legal framework.

Organisational process and resources (ToR C.5.2)

232. It is important that a jurisdiction has appropriate organisational processes and resources in place to ensure a timely response. A review of Ukraine's organisational processes and resources will be conducted in the context of its next round of review covering also practical aspects of implementation of its legal framework.

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

233. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. There are no legal or regulatory requirements in Ukraine that impose unreasonable, disproportionate or unduly restrictive conditions. Whether any unreasonable, disproportionate, or unduly restrictive conditions exist in practice will be examined in the context of its next round of review covering also practical aspects of implementation of Ukraine's legal framework.

Determination and factors underlying recommendations

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

Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1).*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Ownership information on foreign companies having sufficient nexus with Ukraine (in particular, having their head office or headquarters in Ukraine) and on foreign partnerships carrying on business in Ukraine or deriving taxable income therein is not consistently available.	Ukraine should ensure that ownership information on foreign companies with sufficient nexus with Ukraine and on foreign partnerships carrying on business in Ukraine or deriving taxable income therein is available in all cases.
	Joint stock companies could issue bearer shares prior to February 2006. The Ukrainian law provides certain mechanisms which require identification of holders of the remaining bearer shares. However, they do not ensure efficient immobilisation or conversion of these shares so that all their holders are identified. It is nevertheless noted that the number of bearer shares is limited and cannot expand.	Ukraine should provide clear rules for efficient identification of all holders of the remaining bearer shares.

	Ukrainian law does not require that information on all beneficiaries and settlors of foreign trusts which have Ukrainian resident trustees or are administered in Ukraine is available in all cases.	Ukraine should ensure that information is maintained on all beneficiaries and settlors of foreign trusts which have Ukrainian resident trustees or are administered in Ukraine.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2).*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Ukrainian legislation does not clearly ensure that reliable accounting records and underlying documentation are kept for foreign trusts which have Ukrainian resident trustees or are administered in Ukraine in all cases.	Ukraine should ensure that reliable accounting records and underlying documentation for trusts which have Ukrainian resident trustees or are administered in Ukraine are kept in all cases.
	Ukrainian law does not ensure that underlying documents are required to be kept for at least five years after the lapse of the three year tax retention period and it is not clear to which extent and for how long are accounting records required to be kept after the liquidation of the entity or arrangement.	Ukraine should introduce clear rules to ensure that all accounting records are required to be kept for at least five years after the end of the period to which they relate.
Banking information should be available for all account-holders *(ToR A.3).*		
The element is in place.		

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(Tor B.1.)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	In order to obtain banking information which the tax authority does not already have at its disposal or cannot be obtained through a written request the tax authority has to apply to the court. The court procedure however poses concerns in respect of the identification requirement of the person on whose bank account information is requested as the name is the only example given as a means of identifying the person and in respect of the criteria under which the information will be disclosed.	Ukraine should clarify its law to clearly provide for access to banking information in accordance with the standard in all cases.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2).*		
The element is in place.	When accessing banking information through a court order the Ukrainian law requires the court to notify the person in respect of whose bank account information is requested. It is unclear whether exceptions provided by the law allow for exceptions from prior notification consistent with the standard.	Ukraine should clarify its law to ensure that there are appropriate exceptions from the obligation to notify a person on whom banking information is requested.

Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1).*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Court procedure required under the Ukrainian law in order to obtain banking information which goes beyond the bank account number and the identification of the account holder poses certain concerns which may limit effective exchange of banking information.	Ukraine should clarify its law to clearly provide for access to banking information in accordance with the standard in all cases.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2).*		
The element is in place.		Ukraine should continue to develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3).*		
The element is in place		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4).*		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5).*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are not dealt with in the Phase 1 review.		

Annex 1: Jurisdiction's response to the review report[18]

Ukraine would like to express high appreciation and gratitude for the very professional and fruitful work of members of the Assessment Team, the Global Forum Secretariat and the Peer Review Group during the Phase 1 Peer Review process of Ukraine.

Being a member of the Global Forum since 2013 Ukraine actively supports and promotes current international initiatives aimed at prevention of tax evasion. In this context we see international exchange of tax information as the key element of effective cooperation between countries. Ukraine's current exchange of information network covers more than 100 jurisdictions under bilateral double tax treaties and the multilateral Convention of Mutual Administrative Assistance in Tax Matters.

As regards automatic exchange of tax information, the State Fiscal Service of Ukraine is working out all necessary measures to join the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and to implement the common reporting standard developed by the OECD.

In addition, the Agreement between the Government of the United States of America and the Government of Ukraine to Improve International Tax Compliance and to Implement FATCA will be signed soon enabling practical automatic exchange of financial information. Another important step for Ukraine is the development of strategy to join BEPS Inclusive Framework, supported by the OECD.

At the same time we realize that in order to implement all above-mentioned initiatives in practice Ukraine will need to introduce some amendments to the national legislation, in particular regarding disclosure of financial (banking) information. In this regard, recommendations included in the report on Ukrainian legal and regulatory framework during the Phase 1 Peer Review are of a very high value for us as they will support our efforts in implementing

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

the international standard. We have studied the report and would like to confirm its acceptability for our side. The follow-up report on measures taken by Ukraine to respond to recommendations made in the report will be provided in due term.

Annex 2: List of Ukraine's exchange of information mechanisms

Bilateral agreements

The table below contains the list of bilateral agreements providing for exchange of information in tax matters signed by Ukraine as of May 2016. Ukraine has signed 62 DTCs all of which are in force (see the table below).

For jurisdictions with which Ukraine has several agreements, a reference to all those EOI instruments is made.

Multilateral agreements

Ukraine is a Party to the Convention on Mutual Administrative Assistance in Tax Matters as amended (Multilateral Convention), which entered into force in Ukraine on 1 September 2013. The status of the Multilateral Convention as at May 2016 is set out in the table below. The table also includes jurisdictions to which the Multilateral Convention applies based on territorial extension declared by a state party.

Table of Ukraine's exchange of information relations

The table below summarises Ukraine's EOI relations with individual jurisdictions established through international agreements allowing for exchange of information upon request in the field of direct taxes. In case of the Multilateral Convention the date when the agreement entered into force indicates date when the Convention becomes effective between Ukraine and the respective jurisdiction.

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	Multilateral Convention	Signed	01-Dec-13
2	Algeria	DTC	14-Dec-02	01-Jul-04
3	Andorra	Multilateral Convention	Signed	Not yet in force in Andorra
4	Anguilla[a]	Multilateral Convention	Extended	01-Mar-14
5	Argentina	Multilateral Convention	Signed	01-Sep-13
6	Aruba[b]	Multilateral Convention	Extended	01-Sep-13
7	Australia	Multilateral Convention	Signed	01-Sep-13
8	Austria	DTC	16-Oct-97	20-May-99
		Multilateral Convention	Signed	01-Dec-14
9	Azerbaijan	Multilateral Convention	Signed	01-Sep-15
10	Barbados	Multilateral Convention	Signed	Not yet in force in Barbados
11	Belgium	DTC	20-May-96	25-Feb-99
		Multilateral Convention	Signed	01-Apr-15
12	Belize	Multilateral Convention	Signed	01-Sep-13
13	Bermuda[a]	Multilateral Convention	Extended	01-Mar-14
14	Brazil	DTC	16-Jan-02	26-Apr-06
		Multilateral Convention	Signed	Not yet in force in Brazil
15	British Virgin Islands[a]	Multilateral Convention	Extended	01-Mar-14
16	Bulgaria	DTC	20-Nov-95	03-Oct-97
		Multilateral Convention	Signed	01-Jul-16
17	Cameroon	Multilateral Convention	Signed	01-Oct-15
18	Canada	DTC	04-Mar-96	29-Apr-97
		Multilateral Convention	Signed	01-Mar-14
19	Cayman Islands[a]	Multilateral Convention	Extended	01-Jan-14
20	Chile	Multilateral Convention	Signed	Not yet in force in Chile
21	China (People's Republic of)	DTC	04-Dec-95	18-Oct-96
		Multilateral Convention	27-Aug-2013	01-Feb-16
22	Colombia	Multilateral Convention	Signed	01-Jul-14
23	Costa Rica	Multilateral Convention	Signed	01-Sep-13

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
24	Croatia	DTC	10-Sep-96	01-Jun-99
		Multilateral Convention	Signed	01-Jun-14
25	Curacao[b]	Multilateral Convention	Extended	01-Sep-13
26	Cyprus[c]	DTC	08-Nov-12	07-Aug-13
		Multilateral Convention	Signed	01-Apr-15
27	Czech Republic	DTC	30-Jun-97	20-Apr-99
		Multilateral Convention	Signed	01-Feb-14
28	Denmark	DTC	05-Mar-96	20-Aug-96
		Multilateral Convention	Signed	01-Sep-13
29	Egypt	DTC	29-Mar-97	27-Feb-02
30	El Salvador	Multilateral Convention	Signed	Not yet in force in El Salvador
31	Estonia	DTC	10-May-96	30-Dec-96
		Multilateral Convention	Signed	01-Nov-14
32	Faroe Islands[d]	Multilateral Convention	Extended	01-Sep-13
33	Finland	DTC	14-Oct-94	12-Dec-95
		Multilateral Convention	Signed	01-Sep-13
34	Former Yugoslav Republic of Macedonia	DTC	02-Mar-98	11-Nov-98
35	France	DTC	31-Jan-97	01-Nov-99
		Multilateral Convention	Signed	01-Sep-13
36	Gabon	Multilateral Convention	Signed	Not yet in force in Gabon
37	Georgia	DTC	14-Feb-97	01-Apr-99
		Multilateral Convention	Signed	01-Sep-13
38	Germany	DTC	03-Jul-95	03-Oct-96
		Multilateral Convention	Signed	01-Dec-15
39	Ghana	Multilateral Convention	Signed	01-Sep-13
40	Gibraltar[a]	Multilateral Convention	Extended	01-Mar-14
41	Greece	DTC	06-Nov-00	26-Sep-03
		Multilateral Convention	Signed	01-Sep-13
42	Greenland[d]	Multilateral Convention	Extended	01-Sep-13
43	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
44	Guernsey[a]	Multilateral Convention	Extended	01-Aug-14
45	Hungary	DTC	19-May-95	24-Jun-96
		Multilateral Convention	Signed	01-Mar-15
46	Iceland	DTC	08-Nov-06	09-Oct-08
		Multilateral Convention	Signed	01-Sep-13
47	India	DTC	07-Apr-99	31-Oct-01
		Multilateral Convention	Signed	01-Sep-13
48	Indonesia	DTC	11-Apr-96	09-Nov-98
		Multilateral Convention	Signed	01-May-15
49	Iran	DTC	21-May-96	21-Jul-01
50	Ireland	DTC	19-Apr-13	17-Aug-15
		Multilateral Convention	Signed	01-Sep-13
51	Isle of Man[a]	Multilateral Convention	Extended	01-Mar-14
52	Israel	DTC	26-Nov-03	20-Apr-06
		Multilateral Convention	Signed	Not yet in force in Israel
53	Italy	DTC	26-Feb-97	25-Feb-03
		Multilateral Convention	Signed	01-Sep-13
54	Japan	DTC	18-Jan-86	27-Nov-86
		Multilateral Convention	Signed	01-Oct-13
55	Jersey[a]	Multilateral Convention	Extended	01-Jun-14
56	Jordan	DTC	30-Nov-05	23-Oct-08
57	Kazakhstan	Multilateral Convention	Signed	01-Aug-15
58	Kenya	Multilateral Convention	Signed	Not yet in force in Kenya
59	Korea	DTC	29-Sep-99	19-Mar-02
		Multilateral Convention	Signed	01-Sep-13
60	Kuwait	DTC	20-Jan-03	22-Feb-04
61	Latvia	DTC	21-Nov-95	21-Nov-96
		Multilateral Convention	Signed	01-Nov-14
62	Lebanon	DTC	22-Apr-02	05-Sep-03
63	Libya	DTC	04-Nov-08	18-Nov-09
64	Liechtenstein	Multilateral Convention	Signed	Not yet in force in Liechtenstein

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
65	Lithuania	DTC	23-Sep-96	25-Dec-97
		Multilateral Convention	Signed	01-Jun-14
66	Luxembourg	Multilateral Convention	Signed	01-Nov-14
67	Malta	Multilateral Convention	Signed	01-Sep-13
68	Malaysia	DTC	31-Jul-87	01-Jul-88
69	Mauritius	Multilateral Convention	Signed	01-Dec-15
70	Mexico	DTC	23-Jan-12	06-Dec-12
		Multilateral Convention	Signed	01-Sep-13
71	Moldova	DTC	29-Aug-95	26-Oct-96
		Multilateral Convention	Signed	01-Sep-13
72	Monaco	Multilateral Convention	Signed	Not yet in force in Monaco
73	Mongolia	DTC	01-Jul-02	03-Nov-06
74	Montserrat[a]	Multilateral Convention	Extended	01-Oct-13
75	Morocco	DTC	13-Jul-07	30-Mar-09
		Multilateral Convention	Signed	Not yet in force in Morocco
76	Netherlands	DTC	24-Oct-95	02-Nov-96
		Multilateral Convention	Signed	01-Sep-13
77	New Zealand	Multilateral Convention	Signed	01-Mar-14
78	Nigeria	Multilateral Convention	Signed	01-Sep-15
79	Niue	Multilateral Convention	Signed	Not yet in force in Niue
80	Norway	DTC	07-Mar-96	18-Sep-96
		Multilateral Convention	Signed	01-Sep-13
81	Pakistan	DTC	23-Dec-08	30-Jun-11
82	Philippines	Multilateral Convention	Signed	Not yet in force in Philippines
83	Poland	DTC	12-Jan-93	11-Mar-94
		Multilateral Convention	Signed	01-Sep-13
84	Portugal	DTC	09-Feb-00	11-Mar-02
		Multilateral Convention	Signed	01-Mar-15
85	Romania	DTC	29-Mar-96	17-Nov-97
		Multilateral Convention	Signed	01-Nov-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
86	Russia	Multilateral Convention	Signed	01-Jul-15
87	San Marino	Multilateral Convention	Signed	01-Dec-15
88	Saudi Arabia	DTC	02-Sep-11	01-Dec-12
		Multilateral Convention	Signed	01-Apr-16
89	Senegal	Multilateral Convention	Signed	Not yet in force in Senegal
90	Serbia	DTC	22-Mar-01	29-Nov-01
91	Seychelles	Multilateral Convention	Signed	01-Oct-15
92	Singapore	DTC	26-Jan-07	18-Dec-09
		Multilateral Convention	Signed	01-May-16
93	Sint Maarten[b]	Multilateral Convention	Extended	01-Sep-13
94	Slovak Republic	DTC	23-Jan-96	22-Nov-96
		Multilateral Convention	Signed	01-Mar-14
95	Slovenia	DTC	23-Apr-03	25-Apr-07
		Multilateral Convention	Signed	01-Sep-13
96	South Africa	DTC	28-Aug-03	29-Dec-04
		Multilateral Convention	Signed	01-Mar-14
97	Spain	DTC	01-Mar-85	07-Aug-86
		Multilateral Convention	Signed	01-Sep-13
98	Sweden	DTC	14-Aug-95	04-Jun-96
		Multilateral Convention	Signed	01-Sep-13
99	Switzerland	DTC	30-Oct-00	22-Feb-02
		Multilateral Convention	Signed	Not yet in force in Switzerland
100	Syria	DTC	05-Jun-03	04-May-04
101	Thailand	DTC	10-Mar-04	24-Nov-04
102	Tunisia	Multilateral Convention	Signed	01-Feb-14
103	Turkey	DTC	27-Nov-96	29-Apr-98
		Multilateral Convention	Signed	Not yet in force in Turkey
104	Turks & Caicos Islands[a]	Multilateral Convention	Extended	01-Dec-13
105	Uganda	Multilateral Convention	Signed	Not yet in force in Uganda
106	United Arab Emirates	DTC	22-Jan-03	09-Mar-04

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
107	United Kingdom	DTC	10-Feb-93	11-Aug-93
		Multilateral Convention	Signed	01-Sep-13
108	United States	DTC	04-Mar-94	05-Jun-00
		Multilateral Convention	Signed	Not yet in force in the United States
109	Viet Nam	DTC	08-Apr-96	22-Nov-96

Notes: a. Extension by United Kingdom.

b. Extension by the Kingdom of the Netherlands.

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

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

d. Extension by the Kingdom of Denmark.

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

Commercial laws

Business Code

Law on Accounting and Financial Reporting

Law on Business Associations

Law on Collective Investment Institutions

Law on Depository System of Ukraine

Law on Joint Stock Companies

Law on Securities and Stock Market

Law on State Registration of Legal Entities

Law on State Regulation of Securities Market

Taxation laws

Tax Code

Banking laws

Law on Banks and Banking

Law on Financial Services and State regulation of Financial Services Markets

Law on National Bank of Ukraine

Anti-money laundering laws

Anti-Money Laundering Act

Other

Civil Code

Civil Procedure Code

Code on Administrative Offences

Constitution of Ukraine

Copies of Tax Treaties

Law on Access to Public Information

Law on Advocacy

Law on Charity and Charitable Organisations

Law on Information

Law on Notaries

Law on Grounds of National Security of Ukraine

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: UKRAINE

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

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

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

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

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

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