



Supplementary Peer Review Report Phase 1 Legal and Regulatory Framework

QATAR



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About the Global Forum

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

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. These 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 plus 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 is a supplementary report to the Phase 1 Peer Review Report (the Phase 1 report) on the legal and regulatory framework for transparency and exchange of information in Qatar which was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in September 2010 and assessed the situation of Qatar as of May 2010. 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 (ToR), is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain 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. This supplementary report considers the changes and the statements made by Qatar since May 2010, the date at which the legal and regulatory framework was assessed, to address the recommendations in the Phase 1 report. Qatar has asked for a supplementary peer review report pursuant to paragraph 58 of the Methodology for Peer Reviews and Non Members Reviews, for the Global Forum to consider the changes made by Qatar to address the recommendations made in the Phase 1 report.

3. The Phase 1 report concluded that Qatar's regulations on the availability of information fully comply with the standards set out in the ToR A.1.-A.3. The Phase 1 report determined that element B.1 (Access to Information) was in place, but the legal implementation of the element needed improvement. Three issues were identified. First, the ability of Qatar's authorities to obtain information for exchange purposes where there was no domestic interest in the information was not unambiguous and the Phase 1 report recommended that it be clarified that the access powers are not so limited. Secondly, Qatar's laws led to some ambiguity as to whether a court order is required to obtain bank information. The Phase 1 report recommended that the Qatari authorities clarify whether a court order was required. Finally, the trust law that applies in the Qatar Financial Centre (QFC) could have been interpreted in such a way as to prevent effective exchange of information. The Phase 1 report recommended that it should be made clear that the law does not apply in a manner that would frustrate effective exchange of information.

4. Qatar's authorities have responded to the recommendations of the Phase 1 report by clarifying their access powers through a new regulation to the tax law and by providing a legal opinion from the QFC authority regarding the scope of their trust laws. Qatar's authorities continue to maintain that there is no requirement under their law to obtain a court order when requesting bank information, and so have not taken any legislative action to address this issue. The new regulation clearly addresses the ambiguity regarding the scope of Qatar's access powers. In addition, the new regulation also provides further grounds to support the view that the QFC trust law should not prevent effective exchange of information and that a court order is not necessary to obtain bank information. Finally, the legal opinion provided by the QFC authority clarifies the scope of the QFC trust laws. Consequently, the recommendations made in the Phase 1 report are considered to be addressed in their entirety.

5. As regards Qatar's exchange of information mechanisms, the only issues raised in that regard were the uncertainties identified under section B of the Phase 1 report. As these have been addressed, they have also been eliminated under section C. Qatar has continued to develop its network of exchange of information mechanisms. Since the Phase 1 report was prepared, Qatar has signed 7 double tax agreements and one exchange of information protocol to one of its existing agreements.

6. The changes rapidly introduced by Qatar since the Phase 1 report demonstrate its commitment to implementing the international standards for transparency and exchange of information. Any further developments in the legal and regulatory framework, as well as the application of the framework to the EOI practices of Qatar's competent authority will be considered in detail in the Phase 2 Peer Review which is scheduled for the second half of 2012.

Introduction

Information and methodology used for the supplementary peer review of Qatar

7. This supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum’s Methodology, pursuant to which an assessed jurisdiction that implements changes that are likely to result in an upgrade in a determination of an essential element can submit a detailed written report and ask for a supplementary report. The present report therefore considers recent changes to the legal and regulatory framework of Qatar, based on the international standards for transparency and exchange of information as described in the Global Forum’s Terms of Reference.¹ The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at January 2012, and further information supplied by Qatar (see Annex 2). It follows the Phase 1 report on Qatar which was adopted and published by the Global Forum in September 2010 and which was based on information available up to May 2010.

8. 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) exchanging information. In respect of each essential element a determination is made that (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. This supplementary report considers changes in Qatar’s legal and regulatory framework and the resulting changes in the recommendations and determinations made in the Phase 1 report.

1. The Methodology for Peer Reviews and Non Members Reviews and the Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information (ToR) are available on www.oecd.org/tax/transparency

9. The supplementary review was conducted by an assessment team, which consisted of two expert assessors and one representative of the Global Forum Secretariat: Bernadette Butler, Legal Advisor, The Bahamas Ministry of Finance; Fabio Seragusa, Guardia di Finanza, Public Finance Office, International Co-operation, Italy, and Andrew Auerbach from the Global Forum Secretariat.

10. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of References (ToR), which takes into account the conclusions of this supplementary report, is set out on pages 27-28.

Compliance with the Standards

A. Availability of Information

Overview

11. Effective exchange of information requires the availability of reliable information. In particular, it requires detailed ownership information, information on transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial and other reasons. Further, bank information must be maintained for all account-holders and must meet international standards pursuant to commercial law, tax law and anti-money laundering law requirements.

A.1. Ownership and identity information

12. The Phase 1 report concluded that Qatar’s legal framework ensures that ownership and identity information of all entities and arrangements in Qatar is available to their competent authorities due to extensive registration requirements for commercial and/or tax purposes. Companies are generally required to be registered and must maintain a shareholders’ or members’ register. In the QFC, all companies must be registered and maintain share registers.

Determination and factors underlying recommendations

Determination
The element is in place

A.2. Accounting records

13. The Phase 1 report found that the Qatari law regulates in detail the provision of reliable accounting records, accompanied by underlying documentation for a period of at least 5 years.

Determination and factors underlying recommendations

Determination
The element is in place

A.3. Banking Information

14. Banks and other financial institutions must maintain all records and documents relating to their activities. Further, to allow the identification of clients all relevant data must be on hand (ToR A.3). The Phase 1 report concluded that Qatar has a legal framework in place to ensure the availability of relevant banking information for all account holders.

Determination and factors underlying recommendations

Determination
The element is in place

B. Access to Information

Overview

15. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws, and jurisdictions should have the authority to access all such information. The Phase 1 report concluded that Qatar has powers to obtain information, whether or not it is required to be kept, and has measures to compel the production of such information. However, there were some uncertainties about the tax authorities' powers to obtain information for exchange purposes. Thus, the Phase 1 report found that element B.1 was in place, but certain aspects of the legal implementation needed improvement. The Phase 1 report noted that in respect of element B.2, the element was in place and no recommendations were made.

16. Qatar's authorities have responded to the three recommendations of the Phase 1 report by clarifying their access powers through a new regulation to the tax law and by providing a legal opinion from the QFC authority regarding the scope of their trust laws. Qatar's authorities continue to maintain that there is no requirement under their law to obtain a court order when requesting bank information, and so have not taken any direct legislative action to address this issue. The new regulation clearly addresses the ambiguity regarding the scope of Qatar's access powers. In addition, the new regulation also provides further grounds to support the view that the QFC trust law should not prevent effective exchange of information and that a court order is not necessary to obtain bank information. Finally, the legal opinion provided by the QFC authority clarifies the scope of the QFC trust laws. Consequently, the recommendations made in the Phase 1 report are considered to be addressed in their entirety – they are removed and element B.1 is now determined to be “in place”.

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).

General

17. The Phase 1 report determined that element B.1 was in place, but the legal implementation of the element needed improvement. Three issues were identified. First, the ability of Qatar's authorities to obtain information for exchange purposes where there was no domestic interest in the information was not unambiguous, and the Phase 1 report recommended that it be clarified that the access powers are not so limited. Secondly, Qatar's laws led to some ambiguity as to whether a court order is required to obtain bank information. The Phase 1 report recommended that the Qatari authorities should clarify that no such order is required, or if it is required that the procedure does not unduly delay or prevent effective exchange of information. Finally, the trust law that applies in the Qatar Financial Centre could be interpreted in such a way as to prevent effective exchange of information. The Phase 1 report recommended that it should be made clear that the law would not apply in a manner that would frustrate effective exchange of information.

Domestic Tax Interest

18. The Phase 1 report found that the Qatari authorities have the power to obtain information for tax purposes, although it was determined that there was some ambiguity as to whether this power could be used for exchange purposes absent a domestic tax interest. The Phase 1 report recommended that Qatar clarify that its access powers could be used whether or not the information sought was relevant for Qatari tax purposes.

19. Qatar has amended the Executive Regulations of the Income Tax Law to provide specifically that the Public Revenues and Taxes Department has the power to obtain any information requested under an effective tax treaty. Paragraph 3 of Article 38 of the Executive Regulations (approved and signed on 02 May 2011) reads as follows:

The Department may approach any body or entity that entered into transactions with the taxpayer to obtain information relating to tax assessment thereof. The Department also has the right to obtain any information requested under an international tax agreement.

20. This new regulation came into effect on 2 July 2011.

21. The authority to obtain information is based in Qatar’s domestic laws, its agreements for the exchange of information and its Constitution. The new regulation clarifies the scope of the Qatari tax authorities’ powers to obtain information, and specifies that their access powers can be used for exchange purposes. The regulation explains how the power to obtain information can be implemented. The finding of the Phase 1 report was that the law in this regard was ambiguous, and should be clarified. The addition of the regulation that clarifies the scope of the law in this regard. The recommendation under B.1 has therefore been removed.

Secrecy Provisions

QFC Trust law

22. The Phase 1 report identified a rule applicable in the QFC regarding secrecy that could prevent effective exchange of information for tax purposes. The QFC Trust Regulations provide (art. 49(2)) that a trustee shall not be required to disclose to any person any document which:

- discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred upon him;
- discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based; or
- relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.

23. The Phase 1 report noted that the scope of this rule is difficult to ascertain, and that its terms could be interpreted quite broadly and recommended that Qatar clarify that the scope of this rule was not such that it could prevent effective exchange of information. The Qatari authorities have provided a legal opinion from the Group Chief Legal Officer and Board Secretary of the QFC Authority (See Annex 2). The opinion provides an extensive analysis of the meaning of the regulation and its interpretation within the context of QFC rules and of Qatari law more generally. The opinion states that article 49(2) should be interpreted narrowly and that as a general matter the Qatari Constitution provides that treaties have the force of law and must be given effect. The opinion concludes that “if a request is made under a typical DTA from competent authorities of Contracting States to the Qatari competent authorities concerning trust disclosure information then such information would be ordinarily disclosable by the Trustees of a QFC trust”.

24. The Qatari authorities confirm that “ordinarily” in this context relates to the fact that there may be extraordinary circumstances where information may not be disclosable, for example where such disclosure would be a violation of *ordre public*. In the course of the Phase 1 review the assessment team did not have any guidance on how art. 49(2) should be interpreted, and so there was a concern that its scope may be very broad. The opinion is not a binding legal instrument; it is the view of the QFC senior legal adviser on how the law should be interpreted and provides the guidance that was previously lacking. The opinion clearly indicates that the scope of that provision is very narrow. The conclusion of the legal opinion is restricted to the extent to which article 49(2) would interfere with the disclosure of “trust disclosure information”, which the opinion defines generally as identity and accounting information. In this way the opinion is helpful in identifying the scope of any potential conflict between article 49(2) and effective exchange of information, particularly since identity and accounting information are the basic types of information that a jurisdiction is required to ensure the availability of under the Terms of Reference. The opinion does not state that trust information would, in all cases, be disclosed for the purposes of responding to a request for information under an international agreement, notwithstanding the fact that the information was subject to confidentiality under article 49(2).

25. The authority to support the power to obtain information in the QFC (regardless of any QFC rules on confidentiality) is contained in Qatar’s domestic law, its agreements for the exchange of information and the Constitution. The Phase 1 report noted that the QFC rules are subordinate to national laws – including treaties – and so the access powers under Qatari law should apply notwithstanding any secrecy rules in the QFC. The issues identified in the Phase 1 report were that a) the scope of article 49(2) should be clarified and that b) the supremacy of Qatari law should be clarified. The legal opinion of the QFC Authority reaffirms the supremacy of Qatari law, and also notes that the interpretation and scope to be given to article 49(2) should be narrow rather than broad. Moreover, the clarification introduced in article 38 of the Executive Regulations regarding the Qatari authorities’ ability to obtain information absent a domestic tax interest (discussed above) also has the effect of clarifying its ability to obtain information in these circumstances. The new regulation is a clear statement that the power to obtain information for exchange purposes is part of Qatari law, and will have priority over confidentiality provisions contained in QFC law, particularly given the constitutional obligation to give effect to international agreements. The recommendation under B.1 has therefore been removed.

Access to Bank Information

26. The third issue identified in the Phase 1 report related to the process by which bank information could be obtained. There was no dispute that the Qatari authorities have access to bank information under their general access powers, however the language used in the access provision suggested that, in the case of bank information, a court order would be needed. The Qatari authorities disputed this interpretation, but a recommendation that the position be clarified was included in the Phase 1 report. The Qatari authorities have reviewed their legislative framework in light of the recommendation, and have not changed their view that the law does not require a court order to obtain bank information. As a result, no specific action has been taken to address this recommendation, although in its submission Qatar indicates that, “the PRTD will continue monitoring this issue”.

27. The change introduced to the Executive Regulations of the Income Tax Law, discussed above, does clarify that the Qatari tax authorities have the power to i) approach any person and ii) obtain any information requested under an international tax agreement. Importantly, there is no indication that a court procedure is required for bank information or any other kind of information. Given the extent to which this issue has been examined, and the additional clarity given to the issue by the new regulation, the recommendation to clarify whether a court order is needed in order to access bank information is considered fulfilled. The recommendation under B.1 has therefore been removed. Should the PRTD encounter any difficulties in practice as they monitor this issue, they should report this during Qatar’s Phase 2 review.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The power of Qatar’s tax authorities to obtain information for exchange purposes is not unequivocally established and may be subject to interpretive issues that could prevent effective exchange of information.	The Income Tax Law should be clarified to remove any potential ambiguity as to whether tax authorities have the power to obtain information in response to a request for information under an international agreement.

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
There are some uncertainties as to whether a court order must be obtained in order for Qatar’s tax authorities to access bank information for exchange purposes, and if so, on what conditions such an order would be granted.	Qatar’s authorities should clarify whether access to bank information for exchange purposes requires a court order, or if a court order is required, ensure that this procedure does not unduly delay or prevent effective exchange of information.
The trust secrecy rule contained in the QFC Trust Regulations may prevent effective exchange of information.	The QFC authorities should clarify whether the secrecy requirement imposed on trustees does not apply in connection with a request for information pursuant to an international agreement.

B.2. Notification requirement 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.

28. The Phase 1 report found that the rights and safeguards available in Qatar are compatible with the effective exchange of information and element B.2 was assessed to be in place.

Determination and factors underlying recommendations

Determination
The element is in place

C. Exchanging information

Overview

29. This section of the report examines whether a jurisdiction has in place a network of agreements that would allow it to achieve effective exchange of information (EOI) in practice.

30. The Phase 1 report noted that Qatar had 33 agreements in place that provide for exchange of information in tax matters to the international standard. The only issues that were identified related to the ambiguities regarding the access to information for tax purposes under element B.1, and for that reason element C1 was determined to be in place, but certain aspects of the legal implementation of the element needed improvement. As the issues related to element B.1 have been resolved and the recommendations removed, element C.1 has been upgraded accordingly.

31. Elements C.2, C.3 and C.4 were determined to be in place. As with other Phase 1 reports, in respect of element C.5 the report noted that it involved issues of practice that would be dealt with in Qatar's' Phase 2 review.

32. The Phase 1 report assessed the legal framework of Qatar as at May 2010. Since then, Qatar has signed 7 double tax conventions (DTCs), all including the new version of Article 26 of the OECD Model Tax Convention. Further, Qatar signed an agreement with Bosnia and Herzegovina that was negotiated many years ago and contains the previous version of Article 26. Finally, Qatar signed one protocol to amend the EOI Article of its DTC with Malaysia, to bring it in line with Article 26 of the OECD Model.

C.1. Exchange of information mechanisms

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

33. The Phase 1 report noted that Qatar already had a wide network of double conventions with many OECD and G20 countries and important regional partners that provide for exchange of information to the international standards.

34. Since the publication of the Phase 1 report, Qatar has signed double tax conventions with Albania, Austria, Bulgaria, Georgia, Panama, Portugal and Slovenia, all including the up-to-date version of Article 26 of the OECD Model. In addition, a DTC with Bosnia and Herzegovina containing the previous version of Article 26 was negotiated many years ago and has recently been signed. Finally, a protocol updating the exchange of information provision to Qatar's DTC with Malaysia was also signed. These new agreements and the protocol are considered below.

Foreseeably relevant standard (ToR C.1.1)

35. The vast majority of Qatar's treaties provide for the exchange of information that is "necessary" to the administration and enforcement of the domestic laws of the contracting states. Only the new agreement with Austria uses the term "foreseeably relevant" while the new agreement with Slovenia uses the formulation "relevant". 36. The DTCs with Austria and Panama include some additional provisions regarding the information that must be provided by the requesting jurisdiction when sending a request. These provisions are generally based on article 5(5) of the OECD Model Tax Information Exchange Agreement (OECD TIEA Model), but are more specific in that they require that the name and address of any person believed to be in possession of the requested information must be provided by the applicant jurisdiction. The DTC with Panama additionally requires the name and address of the person(s) under examination or investigation and – if available – personal data such as date of birth, marital status and tax identification number. These restrictions do not conform to the standard². Qatar should ensure that all the mechanisms concluded with its partners will provide for effective exchange of information in accordance with the standard.

2. The Qatar-Panama DTC was signed prior to the adoption of the Qatar and Panama Phase 1 reports in September 2010 and before the issue of name and address was first identified by the Global Forum in May 2011. In addition, Qatar and Panama are currently discussing how to resolve issue (*i.e.* by protocol or exchange of letters).

In respect of all persons (ToR C.1.2)

36. Qatar's treaties, including the new agreements, do not limit the exchange of information to residents of one or the other contracting states or otherwise exclude any class of person.

Exchange information held by financial institutions, nominees, agents and ownership and identity information (ToR C.1.3)

37. The Phase 1 report noted that only three of Qatar's treaties expressly specify that the requested party cannot decline to provide information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. The agreements concluded after the publication of the Phase 1 report include the equivalent of paragraph 5 of the OECD Model Tax Convention and therefore meet with the standards.

38. Furthermore, the Phase 1 report identified some uncertainties with regard to Qatar's access to bank information. It was unclear whether a court order was generally required or on a case-by-case basis or is not needed in any case to provide a requesting jurisdiction with this information. As already described in this report under Part B on *Access to Bank Information*, the change introduced to the relevant Executive Regulations of the Income Tax Law does clarify now that a court procedure is not required for access to bank or any other kind of information.

Absence of domestic tax interest (ToR C.1.4)

39. The Phase 1 report noted that a majority of Qatar's tax treaties do not contain the equivalent of paragraph 4 of the OECD Model Tax Convention, which specifies that a party may not decline to supply information solely because it has no domestic interest in such information. Thus, it found that some questions regarding the application of the information-gathering measures remained, especially in cases where the requested information would not relate to the assessment of tax under Qatar's tax laws. However, as discussed under Part B.1, the amendment to article 38 in the Executive Regulations of the Income Tax Law clarifies the ability of Qatar's authorities to obtain information absent any domestic tax interest. Further, the equivalent of paragraph 4 of the OECD Model Tax Convention is included in all the new agreements of Qatar.

Absence of dual criminality principles (ToR C.1.5)

40. None of the old and new agreements applies the dual criminality principle to restrict the exchange of information.

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

41. All of Qatar’s information exchange mechanisms provide for exchange of information in all tax matters.

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

42. The Protocols of the DTCs with Austria and Slovenia provide that the competent authority of the requesting jurisdiction must communicate the form in which it wishes to receive the information from the requested party. No further agreement was made concerning the form and extent as mentioned in Article 5(3) of the OECD Model TIEA. The Phase 1 report found that there are no impediments in Qatar’s laws that would prevent the provision of information in a specific form, to the extent that such form is recognised or permitted under its laws or administrative practice.

In force (ToR C.1.8)

43. Of the 54 DTCs that Qatar has signed, only 11 are not yet in force (see Annex 3). These are the DTCs with Albania (signed in 2011), Austria (signed in 2010), Belgium (signed in 2007), Bosnia and Herzegovina (signed in 2010), Chad (signed in 1999), Mauritius (signed in 2008), Mauritania (signed in 2003), Panama (signed in 2010), Philippines (signed in 2008), Portugal (signed in 2011) and Slovenia (signed in 2010) as well as a protocol to the existing DTC with Malaysia (signed in 2011). Qatar has taken all steps necessary to bring these agreements into force and is awaiting notification of ratification from its partners. As a number of these agreements are quite old, Qatar is encouraged to follow up with these partners to see if the ratification process can be accelerated.

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

44. The issues identified in the Phase 1 report regarding Qatar’s exchange of information mechanisms related to the uncertainties raised in connection with its domestic access powers under Part B. As these issues have been addressed, the corresponding issues under section C.1 no longer apply.

Determination and factors underlying recommendations

Determination
The element is in place, but certain aspects of the legal implementation of the element need improvement.

Factors underlying recommendations	Recommendations
The power of Qatar's tax authorities to obtain information for exchange purposes is not unequivocally established and may be subject to interpretive issues that could prevent effective exchange of information.	The Income Tax Law should be clarified to remove any potential ambiguity as to whether tax authorities have the power to obtain information in response to a request for information under an international agreement.
It is unclear whether a court order is necessary to obtain bank information for exchange purposes, and if so what the conditions are for such an order to be granted.	Qatar's authorities should clarify whether access to bank information for exchange purposes requires a court order, or if a court order is required, ensure that this procedure does not unduly delay or prevent effective exchange of information.

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

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

45. Since the Phase 1 Report, Qatar has signed 7 new DTCs (Albania, Austria, Bulgaria, Georgia, Panama, Portugal and Slovenia). Further, Qatar signed an agreement with Bosnia and Herzegovina that was negotiated many years ago and contains the previous version of Article 26. Finally, Qatar signed a protocol with Malaysia to amend the EOI Article to be in line with Article 26 of the OECD Model Tax Convention). In addition, the DTCs with Bulgaria, Georgia, Greece, Italy, Monaco, Serbia, Switzerland, the United Kingdom and Vietnam as well as the Protocol with Singapore to amend the EOI Article came into force. Qatar is currently negotiating both DTCs and TIEAs with a number of partners.

46. To date, Qatar has agreements for the exchange of information with 54 jurisdictions and continues to negotiate additional agreements.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Qatar should continue to develop its EOI network to the standard 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.

47. Qatar's agreements contain confidentiality provisions in line with the standard.

Determination and factors underlying recommendations

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.

48. All of Qatar's information exchange agreements provide exceptions to the disclosure of 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 (*ordre public*).

Determination and factors underlying recommendations

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.)

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

Organisational process and resources (ToR C.5.2.)

50. A review of Qatar's organisational process and resources will be conducted in the context of its Phase 2 review.

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

51. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. There is no evidence of any such conditions being placed on the exchange of information under Qatar's information exchange mechanisms.

Determination and factors underlying recommendations

Determination

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1.)</i>		
The element is in place.		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i>		
The element is in place.		
Banking information should be available for all account-holders. <i>(ToR A.3.)</i>		
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). <i>(ToR B.1.)</i>		
The element is in place.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2.)</i>		
The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1.)</i>		
The element is in place.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2.)</i>		
The element is in place.		Qatar should continue to develop its EOI network to the standard with all relevant partners.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. (<i>ToR C.3.</i>)		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. (<i>ToR C.4.</i>)		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner. (<i>ToR C.5.</i>)		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction’s Response to the Supplementary Report*

Reviewed jurisdictions may wish to use this annex to note recent changes made to their EOI framework or EOI mechanisms or to present future plans which impact on transparency and exchange of information for tax purposes.

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

Annex 2: Request for a Supplementary Report

QATAR Request for a Supplementary Report 30 November 2011

Qatar has undergone phase 1 of the Peer Review in the first half of 2010. The report, which was approved through the written procedure, included the following recommendations:

1. *The Income Tax Law should be clarified to remove any potential ambiguity as to whether tax authorities have the power to obtain information in response to a request for information under an international agreement.*
2. *Qatar's authorities should clarify whether access to bank information for exchange purposes requires a court order, or if a court order is required, ensure that this procedure does not unduly delay or prevent effective exchange of information.*
3. *The [Qatar Financial Center] QFC authorities should clarify whether the secrecy requirement imposed on trustees does not apply in connection with a request for information pursuant to an international agreement.*

Following the adoption of the report, Qatar has taken the following actions:

1. A new paragraph has been added to the draft Executive Regulations of the Income Tax Law to provide specifically that the Public Revenues and Taxes Department has the power to obtain any information requested under an effective tax treaty. Paragraph 3 of Article 38 of the Executive Regulations (approved and signed on 02/05/2011) reads as follows:

“3. The Department may approach any body or entity that entered into transactions with the taxpayer to obtain information relating to tax assessment thereof. The Department also has the right to obtain any information requested under an international tax agreement.”

2. The Chief Legal Officer of the QFC clarified in a response to a request that Article 49 of the QFC Trust Regulations has a narrow scope and should not be interpreted as allowing the trustee to deny the provision of information requested under an international agreement. He clarified also that even if the Article was given a wide interpretation, the treaty provision on exchange of information overrides any contrary provision in the domestic law (Articles 6 and 68 of the Constitution).

As to recommendation 2 above, the PRTD still believe that no court decision is required to obtain bank information (for the reasons laid down in the report). As this interpretation has never been challenged, the PRTD considers that, at this stage, no action is required. However, the PRTD will continue monitoring this issue.

Finally, Please be informed that in 2010 and 2011 Qatar signed the following:

- (a) 6 DTAs with Slovenia (10/01/2010), Bulgaria (22/03/2010), Georgia (20/12/2010), Panama (23/09/2010), Albania (18/10/2011) and Austria (30/12/2010), all including the new version of Article 26 of the OECD Model. There was also an agreement with Bosnia and Herzegovina negotiated many years ago but signed on 21/07/2010 containing the previous version of Article 26; and
- (b) 1 protocol to amend the EoI Article to be in line with Article 26 of the OECD Model with Malaysia (16/02/2011).

Based on the above, the State of Qatar requests that actions 1 and 2 above be taken into account in a supplementary report to reassess the conformity of Qatar's legal framework with international standards on transparency and exchange of information for tax purposes (as per the revised methodology) and revise the recommendations accordingly.

Appendix 1 to Qatar’s Request for a Supplementary Report

Article 38 of the Executive Regulations of the Income Tax Law

1. Contracts that Ministries and other government bodies, public corporations and establishments and companies shall notify the Department thereof, in accordance with Article 21 of the Law, shall be as follows:
 - a. Contracts concluded with non-residents with no permanent establishment in the State regardless of their value;
 - b. Contracts concluded with residents or with non-residents who have a permanent establishment in the State if the contract value attains QAR (200 000) two hundred thousand or an equivalent amount for service contracts, and QAR (500 000) five hundred thousand or an equivalent amount for contracting, supply and supply and service contracts.
2. The notification provided for in the previous paragraph shall be through a statement containing contractors’ details, nature of contracted activities, the term of the contract and its value. The statement shall be accompanied with a copy of the contract or part thereof that contains the information included in the statement.

The statement only shall be sufficient for contracts concluded with non-residents with no permanent establishment in the State, the value of which does not exceed QAR (100 000) one hundred thousand or an equivalent amount.

In all cases, the Department may ask for a copy of the contract if it deems necessary.

3. The Department may approach any body or entity that entered into transactions with the taxpayer to obtain information relating to tax assessment thereof. **The Department also has the right to obtain any information requested under an international tax agreement.**

Appendix 2 to Qatar’s Request for a Supplementary Report



19th May 2011
Mr. Ian Anderson
Director of Tax and Chief Financial Officer
Qatar Financial Centre Authority
Level 2
QFC Tower 1
Doha
State of Qatar

Dear Ian,

Re: Exchange of Information under Double Taxation Agreements

I have been asked for my formal legal opinion concerning the question of whether the exchange of information obligations imposed upon the Qatari “competent authorities” under a typical Double Taxation Agreement (“DTA”) entered into between the State of Qatar and other sovereign countries are abrogated or otherwise fettered or limited by the provisions of Article 49 of the QFC Trust Regulations (Regulation No. 12 of 2007).

Background

The State of Qatar has entered into various DTAs with other countries and typically the form and content of the DTA entered into closely follows

the OECD Model Tax Convention on Income and on Capital. Pursuant to the provisions of the DTA, the Qatari “competent authorities” (usually defined as the Minister of Economy and Finance or his authorized representative) is obliged, amongst other things, to exchange information with the competent authorities of the other contracting State, as may be relevant, for carrying out the provisions of the DTA or in respect of the administration or enforcement of the domestic laws of the contracting States concerning taxes of every kind and description imposed on behalf of the contracting States. The DTA further provides that any information exchanged between the contracting States will be treated as secret in the same manner as information obtained under the domestic laws of the particular State and shall be disclosed only to person or authorities (including courts and administrative bodies) concerned with the assessment or collection of, or the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes. Still further, I note that under a typical DTA, although the disclosing State is not required to act at variance with its domestic laws and administrative practices, that disclosing State shall not be entitled to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person (my underling is for emphasis only).

I understand from the OFC Tax Department that there was an OECD Peer Review process involving a detailed review of Qatar’s legal and regulatory environment to test, against various specified criteria, whether the legal framework contained anything that would, in the opinion of the reviewers, constitute an impediment to transparency and/or the effective exchange of information for tax purposes. I further understand that the Peer Review only resulted in one question pertaining to QFC Law namely whether the secrecy requirements imposed on a trustee by Article 49(2)(C) of the QFC Trust Regulations 2007 would apply to prevent a trustee disclosing information to a competent authority in connection with an information request made by one of Qatar’s Double Taxation Treaty Partners. It is this specific question that I am asked to address in this formal legal opinion.

OFC Trust Regulations (“TR”)

For ease of reference I have set out, verbatim, the provisions of Article 49 of the TR below:

Article 49 – Duty to inform and report

(1) Subject to the terms of a Trust and any order of the Tribunal, a Trustee shall, on application in writing by a Beneficiary, disclose to the applicant all documents which relate to or form part of the accounts of the Trust.

- (2) *A Trustee shall not be required to disclose to any Person, any document which:*
- (A) *discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred upon him;*
 - (B) *discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based; or*
 - (C) *relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.*
- (3) *Notwithstanding the terms of the Trust:*
- (A) *the Tribunal may on application made to it declare that in particular circumstances of the Trust its terms do not render the Trustees sufficiently or appropriately accountable to the Beneficiaries or any of them; and*
 - (B) *the Tribunal may pursuant to such declaration extend or restrict the rights of all or any Beneficiaries to information regarding the Trust or may make such other order as it thinks fit.*

Again, the underlining above is for emphasis only which I shall refer to later. Also, pursuant to Law No. (2) of 2009, all references to Tribunal shall be substituted with “The Civil and Commercial Court” of the QFC.

Legal analysis and interpretation

In my view, the apparent impediment to transparency and disclosure under Article 49 (2) of the TR is a qualified impediment. I note that the duties of a Trustee, under the TR and under equity and trust laws generally, are very wide ranging and stems essentially from the principle of utmost good faith and the fiduciary duties that the Trustees owes to the beneficiaries of the Trust. The Trustees will always need to be cognizant of the fact that if they act in breach of their duties under the Trust Instrument or under the applicable trust laws then they will be liable for breach of trust and any dissipation or loss of the trust property. In circumstances where the Trustees are unclear whether they are obliged to make a disclosure or otherwise act in a particular way, they would be best advised to seek the express written consent of the beneficiaries for their intended action or otherwise refer the matter to the QFC Civil and Commercial Court for directions or determination. However, that Trustee prudence aside, I firmly believe that, upon an ordinary and natural construction of Article 49 (2), it must be narrowly

interpreted and construed. I note that if the legislative intention was that the Trustees were totally precluded from disclosing any and all documents then the wording of Article 49 (2) would have simply stated that the Trustees shall not be required to disclose any document to any third party that was not a beneficiary. However, Article 49 (2) restricts disclosure of a document only if the document would disclose the deliberations and considerations by the Trustees concerning the manner in which the Trustees have exercised a power or discretion or performance or a duty; or if the document would disclose the reasons behind such actions; or if the document relates to the exercise or intended exercise of the power, discretion or performance of the duty mentioned. Accordingly, although there is a qualification on disclosure, the qualification is very narrow and does not, in my view, operate as a fetter on overall transparency in relation to particular documents or information relating to for example, identity information or accounting records.

The Qatari Constitution

I note that Article 6 of the Qatari Constitution prescribes that the State of Qatar shall respect the international charters and conventions and strive to implement all international agreements, charters and conventions it is party to. Although as a matter of general principles and international law, it is generally accepted that international treaties do not override a country's constitution, in accordance with Article 68 of the Qatari Constitution international treaties such as DTAs are given the power and force of law, as long as the Al-Shoura Council has approved, ratified and gazetted the treaty.

Typical disclosure information requests

As I understand it, in relation to trusts, the type of disclosure and information exchange which would typically be requested by a competent authority of a contracting State, would consist of:

- “identity information” such as the identity of the settlor, trustee (which includes a trust protector, administrator or any other person acting in a similar capacity) and beneficiaries of a trust; and
- “accounting records” such as records that (i) correctly explain all transactions, (ii) enable the financial position of the trust to be determined with reasonable accuracy at any time, and (iii) allow financial statements to be prepared and include underlying documentation such as invoices, contracts, etc. and should reflect details of (a) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (b) all sales and


purchases and other transactions; and (c) the assets and liabilities of the trust;

- collectively “trust disclosure information”.

Conclusion

Based upon the fact that typical DTA exchange of information obligations do include information held by persons acting in a fiduciary capacity (such as Trustees), given that DTAs are given the force of law by the Qatari Constitution and given the very narrow interpretation and restrictions in Article 49 (2) of the TR, it is my opinion that if a request is made under a typical DTA from competent authorities of contracting States to the Qatari competent authorities concerning trust disclosure information then such information would ordinarily be disclosable by the Trustees of a QFC Trust.

If there is any further query or matter concerning the advice above then I would be happy to clarify.



David Dhanoo
LL.B LL.M Barrister
Group Chief legal Officer and Board Secretary
Qatar Financial Centre Authority

CC: Robert Kelly – QFCA Tax Manager

Annex 3: List of All Exchange-of-Information Mechanisms

	Jurisdiction	Type of Eol Arrangement	Date signed	Date entered into force
1	Albania	DTC	18.10.2011	not yet in force
2	Armenia	DTC	22.04.2002	01.01.2008
3	Austria	DTC	30.12.2010	not yet in force
4	Azerbaijan	DTC	28.08.2007	24.02.2008
5	Belarus	DTC	03.04.2007	14.11.2007
6	Belgium	DTC	06.11.2007	not yet in force
7	Bosnia and Herzegovina	DTC	21.07.2010	not yet in force
8	Bulgaria	DTC	22.03.2010	23.12.2010
9	Chad	DTC	1999	not yet in force
10	China	DTC	02.04.2001	21.10.2008
11	Croatia	DTC	24.06.2008	06.04.2009
12	Cuba	DTC	07.11.2006	01.01.2009
13	Cyprus	DTC	11.11.2008	20.03.2009
14	Former Yugoslav. Rep. of Macedonia	DTC	28.01.2008	13.10.2008
15	France	DTC	04.12.1990	01.12.1994
		Protocol	14.01.2008	23.04.2009
16	Georgia	DTC	20.12.2010	11.03.2011
17	Greece	DTC	26.10.2008	21.03.2010
18	India	DTC	07.04.1999	15.01.2000
19	Indonesia	DTC	30.04.2006	19.09.2007
20	Italy	DTC	15.10.2002	07.02.2011

	Jurisdiction	Type of EoI Arrangement	Date signed	Date entered into force
21	Jordan	DTC	12.01.2004	31.12.2008
22	Korea (Republic of)	DTC	27.03.2007	15.04.2008
23	Lebanon	DTC	23.01.2005	01.01.2010
24	Luxembourg	DTC	3.07.2009	9.04.2010
25	Malaysia	DTC	03.07.2008	28.01.2009
		Protocol	16.02.2011	not yet in force
26	Malta	DTC	26.08.2009	09.12.2009
27	Mauritius	DTC	28.07.2008	not yet in force
28	Mauritania	DTC	2003	not yet in force
29	Monaco	DTC	17.09.2009	15.06.2010
30	Morocco	DTC	17.03.2006	04.07.2009
31	Nepal	DTC	15.10.2007	05.09.2009
32	Netherlands	DTC	24.04.2008	25.12.2009
33	Norway	DTC	29.06.2009	30.11.2009
34	Pakistan	DTC	04.06.1999	28.03.2000
35	Panama	DTC	23.09.2010	not yet in force
36	Philippines	DTC	2008	not yet in force
37	Poland	DTC	18.11.2008	30.12.2009
38	Portugal	DTC	2011	not yet in force
39	Romania	DTC	04.10.1999	04.09.2003
40	Russia	DTC	20.04.1998	19.01.2000
41	Senegal	DTC	10.06.1998	11.01.2000
42	Serbia	DTC	02.10.2009	09.12.2010
43	Seychelles	DTC	01.07.2006	09.08.2009
44	Singapore	DTC	28.11.2006	05.10.2007
		Protocol	22.09.2009	01.01.2012
45	Slovenia	DTC	10.01.2010	not yet in force
46	Sri Lanka	DTC	07.11.2004	02.04.2007
47	Switzerland	DTC	24.09.2009	15.12.2010
48	Syria	DTC	23.10.2003	27.04.2006

	Jurisdiction	Type of EoI Arrangement	Date signed	Date entered into force
49	Tunisia	DTC	08.03.1997	01.01.1999
50	Turkey	DTC	25.12.2001	11.02.2008
51	United Kingdom	DTC	25.06.2009	15.10.2010
		Protocol	20.10.2010	not yet in force
52	Venezuela	DTC	28.07.2006	30.07.2007
53	Vietnam	DTC	8.03.2009	01.01.2012
54	Yemen	DTC	07.08.2000	01.01.2008

Annex 4: List of all Laws, Regulations and Other Material Received

- Income Tax Law, Executive Regulations
- Legal opinion of Group Chief Legal Officer and Board Secretary of the QFC Authority
- Text of new DTCs and protocols

