



Supplementary Peer Review Report Phase 1 Legal and Regulatory Framework

UNITED ARAB EMIRATES



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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This is a supplementary report on the legal and regulatory framework for transparency and exchange of information in the UAE. It complements the Phase 1 peer review report on the UAE which was adopted and published by the Global Forum in June 2012.

2. This supplementary report reviews the legislative amendments made by the United Arab Emirates (UAE) since April 2012 (the date at which the legal and regulatory framework was previously assessed) to address a number of the recommendations made in the Phase 1 peer review report. These amendments pertain to the determinations and recommendations made in respect of availability of ownership and identity information (element A.1); availability of accounting information (element A.2); access to information (element B.1); exchange of information mechanisms, including rights and safeguards (elements C.1 and C.4); and the UAE's exchange of information network (element C.2). In view of the legislative amendments made, the UAE asked for a supplementary peer review report pursuant to paragraph 58 of the *Methodology for Peer Reviews and Non-member Reviews* (2011 version).¹

3. With respect to the availability of ownership and accounting information, a number of recommendations were made in the 2012 Report, mainly for the Dubai International Financial Centre (DIFC) and other free zones to (better) ensure such availability. In the DIFC, legislative changes were made in December 2013 to address the recommendations affecting the DIFC legal and regulatory framework in these areas. These changes introduced obligations on foreign companies and foreign partnerships allowed to do business in the DIFC to submit ownership information to the authorities. In addition, all entities in the DIFC are now required to keep reliable accounting records, including underlying documentation, for a period of at least six years.

4. Although with respect to the DIFC the availability of ownership information is now ensured, two deficiencies remain under element A.1. It is not clear that foreign companies in the Dubai Airport Free Zone are required

1. The provision for a request for a supplementary report is now contained in paragraph 60 of the revised Methodology, adopted in November 2013.

to keep ownership information or provide it to the authorities. Furthermore, in respect of foreign trusts which have an administrator or trustee in the UAE, identity information may also not be consistently available. One other deficiency that was resolved following further analysis, is that it has become clear that enforcement provisions are in place in respect of relevant obligations to keep ownership and identity information by companies and establishments in the Dubai Airport Free Zone and the Fujairah Free Zone. The relevant recommendation made in the 2012 Report has therefore been removed.

5. The Commercial Transactions Law (CTL) contains provisions requiring relevant entities in the UAE to keep reliable accounting records, including underlying documentation, for a period of at least five years. It has been clarified that, since no rules on the keeping of accounting records are issued in the Fujairah Free Zone, all companies and establishments in that free zone are covered by the obligations of the Commercial Transactions Law.

6. In respect of entities in the other free zones, the CTL also applies. However, the legislation in most of the free zones which are reviewed contains separate obligations to keep accounting records which does not entirely satisfy the Terms of Reference. Given the variation between the CTL and the legislation in most free zones analysed, further clarification on the interaction between the CTL and the free zone legislation should be provided. Nevertheless, given the improvements identified in the UAE's legal and regulatory framework in the area of the keeping of accounting records, the determination for element A.2 has been changed to "the element is in place, but certain aspects of the legal implementation of the element need improvement".

7. The 2012 Report noted that it was unclear whether the access powers available to the relevant UAE authorities could be used for collecting information for EOI purposes. As a result, it was also found likely that the confidentiality of bank information could not be lifted for EOI purposes. The issuance of Council of Ministers Resolution No. 17 of 2012 in May 2012, in combination with the conclusion of a few MoUs between the Ministry of Finance and relevant other authorities, means that these other authorities are now required to co-operate with the Ministry of Finance. However, the process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance when requested to do so is not specified in respect of the authorities with which the Ministry of Finance has not concluded an MoU. In addition, and as already noted in the 2012 Report, access powers in the Fujairah Free Zone have not been identified.

8. In respect of bank information, the Council of Ministers Resolution No. 17 of 2012 does provide sufficient basis to lift the confidentiality of

bank information for EOI purposes. Such disclosure is allowed where this is required by law, and the Resolution is part of the UAE law. Clear guidance on the extent of co-operation under the Resolution with the two authorities which may have to collect information from banks, the Central Bank and the DIFC, is provided in the MoUs concluded with the Ministry of Finance.

9. The scope of professional privilege for lawyers who are asked to produce information by the DIFC authorities is in accordance with the international standard since a legislative amendment in December 2012, however the scope of professional privilege appears to extend beyond that provided for in the international standard where a lawyer is asked to produce information for EOI purposes by another authority.

10. The Council of Ministers Resolution No. 17 of 2012 pertaining to the access powers of the UAE also largely remove the limitations to fully comply with the terms of its exchange of information agreements, as identified under elements C.1 and C.2 in the 2012 Report. Consequently, the determinations for elements C.1 and C.2 have been upgraded to “in place, but certain aspects of the legal implementation of the element need improvement” and “in place” respectively.

11. The 2012 Report also referred to the fact that the DTCs with five jurisdictions do not contain safeguards providing for the protection of trade or business secrets. However, this issue is not mentioned in the Global Forum peer review reports of the partner jurisdictions and it does also not narrow the scope for exchange of information. The relevant recommendation under C.4 has therefore been removed. The other recommendation under C.4, pertaining to the broad scope of professional privilege in the UAE’s domestic law, remains, but the determination is changed to “in place”.

12. The changes introduced by the UAE since the 2012 Report demonstrate its commitment to implementing the international standards for transparency and exchange of information. The UAE is encouraged to continue to review and update its legal and regulatory framework to address the remaining recommendations. Considering the steps undertaken by the UAE to remedy the deficiencies highlighted in the 2012 Report, the UAE can now move to Phase 2. As the Phase 2 review was originally scheduled to be launched in the first half of 2013 and this time has already passed, it is proposed to reschedule the review to the first half of 2015. In the meantime, a follow up report on the steps undertaken by the UAE to address the remaining recommendations should be provided to the PRG within twelve months of the adoption of this report. Any further developments in the legal and regulatory framework, as well as the application of the framework to EOI practice in the UAE, will be considered in detail in the Phase 2 peer review.

Introduction

Information and methodology used for the peer review of the United Arab Emirates

13. The assessment of the UAE’s legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum’s *Methodology for Peer Reviews and Non-member Reviews*, and considers recent changes to the legal and regulatory framework of the UAE 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*. This supplementary report is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 7 February 2014, and information supplied by the UAE. It follows the Phase 1 peer review report on the UAE which was adopted and published by the Global Forum in June 2012 (“the 2012 Report”).

14. The *Terms of Reference* breaks down the standards of transparency and exchange of information into ten essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchanging information. This review assesses the UAE’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.

15. The assessment was conducted by an assessment team, which consisted of two expert assessors and a representative of the Global Forum Secretariat: Mrs. Heidi-Lynn Sutton, Financial Services Regulatory Commission, Nevis Branch, Saint Kitts and Nevis, Mr. Daniel Ruffi, Service for Exchange of Information in Tax Matters, Federal Tax Administration, Switzerland, and Mr. Mikkel Thunnissen from the Global Forum Secretariat.

The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in the UAE.

16. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found in the table at the end of this report.

Free zones

17. There are currently 39 free zones in the UAE and more are being developed. A free zone is established through a law passed by the Ruler of the respective Emirate or, in the case of a financial free zone, by the President of the UAE. A common set of incentives are offered in these free zones, including no restriction on foreign ownership, no corporate tax for a period of 15 years (renewable), unrestricted repatriation of capital and profit, no personal income tax, exemption from all import and export duties, no foreign exchange controls, and no restrictions on hiring foreign employees. Criminal and some other federal laws apply to the free zones but each free zone authority has the power to establish its own regulations, including regulations on commercial entities and matters.

18. Consistent with the approach taken in the 2012 Report, this supplementary report examines the legal and regulatory framework for five of the largest free zones: the Dubai International Financial Centre (DIFC, the only financial free zone currently in operation), the Jebel Ali Free Zone, the Dubai Airport Free Zone, the Fujairah Free Zone and the Ras Al Khaimah Free Zone. As at December 2013, there were 1 038 companies operating in the DIFC, more than 7 100 in the Jebel Ali Free Zone, 1 421 in the Dubai Airport Free Zone, over 1 500 in the Fujairah Free Zone, and approximately 7 000 in the RAK Free Zone. The UAE authorities have indicated that the regulations in place in the other free zones, most of which are significantly smaller than these five, are consistent with the regulations in place in the Jebel Ali Free Zone, the Dubai Airport Free Zone, the Fujairah Free Zone and the Ras Al Khaimah Free Zone.

Compliance with the Standards

A. Availability of Information

Overview

19. 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.

20. With respect to the availability of ownership and accounting information, a number of recommendations were made in the 2012 Report, mainly for the DIFC and other free zones to (better) ensure such availability. In the DIFC, legislative changes were made in December 2013 to address the recommendations affecting the DIFC legal and regulatory framework. Regarding the availability of ownership information, this is now ensured in respect of foreign companies and foreign partnerships allowed to do business in the DIFC. The relevant recommendations have therefore been removed.

21. In addition, following further analysis, it is clear that enforcement provisions are also in place in respect of relevant obligations to keep ownership and identity information by companies and establishments in the Dubai Airport Free Zone and the Fujairah Free Zone. The relevant recommendation made in the 2012 Report has therefore been removed.

22. It is noted that two deficiencies remain under element A.1. It is not clear that foreign companies in the Dubai Airport Free Zone are required to keep ownership information or provide it to the authorities. Furthermore, in

respect of foreign trusts which have an administrator or trustee in the UAE, identity information may also not be consistently available. The recommendations pertaining to these deficiencies remain and the determination for element A.1 remains “in place, but certain aspects of the legal implementation of the element need improvement”.

23. Regarding the availability of accounting information, the amendments to the various laws in the DIFC have also successfully addressed the recommendations to the extent they affected DIFC entities. As a result, all entities in the DIFC are now required to keep reliable accounting records, including underlying documentation, for a period of at least six years. It should be noted, however, that the type of underlying documentation to be kept is not specified in all cases. Accounts must also be provided to the Registrar on an annual basis, except in respect of foreign companies and foreign partnerships.

24. The Commercial Transactions Law (CTL) contains provisions requiring relevant entities in the UAE to keep reliable accounting records, including underlying documentation, for a period of at least five years. Further analysis also clarified that, since no rules on the keeping of accounting records exist in the Fujairah Free Zone, all companies and establishments in that free zone are covered by the obligations of the Commercial Transactions Law. In respect of entities in the other free zones, the CTL also applies. However, the legislation in most of the free zones which are reviewed contains separate obligations to keep accounting records which does not entirely satisfy the Terms of Reference. Given the variation between the CTL and the legislation in most free zones analysed, further clarification on the interaction between the CTL and the free zone legislation should be provided. Nevertheless, given the improvements identified in the UAE’s legal and regulatory framework in the area of the keeping of accounting records, the determination for element A.2 has been changed to “the element is in place, but certain aspects of the legal implementation of the element need improvement”.

25. No relevant legislative changes have been made since the 2012 Report in respect of element A.3, which therefore remains “in place” without any recommendations.

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 A.1.1)

26. The 2012 Report concluded that the availability of ownership and identity information in respect of companies was ensured, except for ownership information on foreign companies having their main office in the DIFC and other free zones. A recommendation was made in this respect.

27. One relevant legislative change has occurred since the 2012 Report. In the DIFC, changes in the registered details of foreign companies allowed to do business in the DIFC, so-called “recognised companies”, must now be submitted to the Registrar within 14 days of such change taking place (Art. 116A DIFC Companies Law). The registered details include details of the beneficial owners of the recognised company (Section X of the registration form). Where the beneficial owners are not individuals directly owning more than 10% of the shares, details of the shareholding structure must be provided. In addition, any change in the shareholders or members of the recognised company must also be filed with the Registrar (Art. 116(c)(iv) DIFC Companies Law). These requirements ensure the availability of ownership information in respect of foreign companies in the DIFC.

28. Apart from the DIFC, the 2012 Report also identified a gap in the availability of ownership information on foreign companies in the Dubai Airport Free Zone. However, further analysis has revealed that in free zones other than the financial free zones, all entities established in that free zone are subject to the federal Commercial Companies Law (CCL), as the federation has exclusive legislative jurisdiction in the area of company law following Article 121 of the Constitution. Nevertheless, Article 2 of the CCL states that:

“The provisions of this law shall not apply to the companies which are incorporated in the free zones of the state, concerning matters which have been mentioned in the rules of the concerned free zones”.

29. According to the UAE authorities, the rules issued by the free zones which relate to companies as authorised by the CCL are procedural (e.g. registration procedures with the free zone authorities) and they cannot override the substantive provisions of the CCL. However, this does not clearly follow from Article 2 of the CCL, as it specifically states that the CCL shall not apply where matters have been mentioned in the free zone rule. For example, in the case of foreign companies in the Dubai Airport Free Zone, such

companies must register with the free zone authority and in that process submit certain information but not ownership information. Under the CCL a Ministerial Decision has been issued that foreign companies must register with the federal Ministry of Economy and provide ownership information when doing so. Following the view of the UAE authorities this would mean that a foreign company setting up business in the Dubai Airport Free Zone would have to register with the free zone authority while also providing the information as required by the Ministerial Decision. The inter-connection between the free zone rules and the CCL in this case, however, is not clearly established. It is therefore recommended that the UAE clarifies that ownership information on foreign companies having their main office in the UAE is available in all instances.

Bearer shares (ToR A.1.2)

30. The 2012 Report noted that bearer shares could only be issued by international companies in the Ras Al Kaimah Free Trade Zone, and that appropriate mechanisms were in place to identify the owners of these bearer shares. No relevant legislative changes have been made since the 2012 Report.

Partnerships (ToR A.1.3)

31. In the 2012 Report it was found that the availability of identity information on the partners of partnerships in the UAE was generally ensured both at the level of the partnership and with the government. In three situations, identity information in respect of all partners was not required to be kept.

32. With respect to foreign general partnerships and foreign limited partnerships registered in the DIFC as recognised partnerships, identity information on the partners which are not operating in the DIFC was not required to be available. Amendments were made to the DIFC General Partnership Law and the DIFC Limited Partnership Regulations to address this deficiency. There is now a requirement to provide to the Registrar the details of the identity of all partners of foreign general partnerships and foreign limited partnerships which are registered as recognised partnerships (Art. 13(2)(d) DIFC General Partnership Law, Art. 5.5.1(d) DIFC General Partnership Regulations and Art. 5.1.1(d) DIFC Limited Partnership Regulations) upon registration. Any changes in ownership must be notified to the Registrar within 14 days of such change (Art. 14(a) DIFC General Partnership Law and Art. 46(1)(c)(iv) DIFC Limited Partnership Law).

33. The only remaining gap regarding the availability of identity information on partnerships is that of the participating partners of partnerships limited with shares established under UAE law. As at December 2013, no

partnerships limited with shares were registered in the UAE. Considering the limited materiality of this gap, the recommendation has been removed from the box. Nevertheless, it is recommended that the UAE ensures that identity information on the participating partners of partnerships limited with shares is available. The development of the number of partnerships limited with shares will also be reviewed during the Phase 2 review of the UAE.

Trusts (ToR A.1.4)

34. The 2012 Report noted that identity information in respect of foreign trusts which have an administrator or a trustee in the UAE or in a free zone other than the DIFC may not be consistently available, and a recommendation was made in this context. No relevant legislative changes have been made since the 2012 Report and therefore the recommendation is maintained.

Foundations (ToR A.1.5)

35. The 2012 Report noted that laws in the UAE, the DIFC and other free zones do not provide for the creation of foundations. This has not changed since.

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

36. The 2012 report concluded that enforcement provisions are in place in respect of most obligations to have ownership and identity information available. However, it was also concluded that enforcement provisions related to non-compliance with such obligations in the Dubai Airport Free Zone and the Fujairah Free Zone were not in place, and a recommendation was made in this respect. Although no legislative changes have been made to address this recommendation since the 2012 Report, some further analysis has been undertaken.

37. In respect of the Dubai Airport Free Zone, Regulations 1/1998 and 1/2000 contain a general penalty provision for failing to comply with any provision in these regulations. Domestic companies failing to keep a register of members and providing ownership information and updates to the authorities are therefore subject to a fine between AED 500 (EUR 101) and AED 5 000 (EUR 1 006) per day of non-compliance (Art. 71 Regulation 1/2000). Other establishments failing to comply with these obligations are subject to a fine of AED 10 000 (EUR 2 012) per day in default (Art. 70 Regulation 1/1998).

38. No specific rules pertaining to companies and establishments are issued in the Fujairah Free Zone. However, it follows from Article 2 of the Commercial Companies Law (CCL) that if free zone legislation does not deal

with a specific matter, the rules of the CCL in respect of that matter will apply. Although there is no definition of what is meant by “matter”, it is clear that if no rules whatsoever exist on companies in a free zone, the CCL applies. The CCL therefore requires companies and establishments in the Fujairah Free Zone to keep an up-to-date register of members. Non-compliance with this obligation is punishable with a fine between AED 10 000 (EUR 2 012) and AED 100 000 (EUR 20 122) (Art. 323 CCL).

39. Following the further analysis, it is clear that enforcement provisions are also in place in respect of relevant obligations to keep ownership and identity information by companies and establishments in the Dubai Airport Free Zone and the Fujairah Free Zone. As enforcement provisions are also in place in the other free zones analysed, the recommendation made in the 2012 Report has been deleted.

40. The amendments made in the various pieces of DIFC legislation as described under A.1.1 and A.1.3 above are mostly built on existing provisions with existing penalties as described in the 2012 Report. The only new provision in this context is Article 116A of the DIFC Companies Law, requiring recognised companies to submit changes in registered details within 14 days of such change. Non-compliance with this provision can result in a maximum fine of USD 2 000 (EUR 1 435) (Schedule 1 DIFC Companies Law).

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
It is not clear that foreign companies having their main offices, main activities or effective management in the DIFC (other than those regulated by the DFSA) or other <u>Dubai Airport Free Zones</u> are not consistently obliged to maintain ownership information or provide it to the authorities and thus such information may not be available to the competent authority.	The UAE should ensure <u>clarify</u> that ownership information is available for foreign companies having their main offices, main activities or effective management in the <u>UAE in all cases</u> DIFC or other free zones .

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The UAE law does not ensure the availability of information on the participating partners of partnerships limited with shares. Further, the information on all partners of foreign general partnerships and foreign limited partnerships that are registered as recognised partnerships in the DIFC is not available.	The UAE as well DIFC laws should ensure that information on the partners of partnerships limited with shares and foreign general partnerships and foreign limited partnerships is available to its competent authority.
Identity information may not be consistently available in respect of foreign trusts which have an administrator or trustee in the UAE or in a free zone other than the DIFC.	An obligation should be established to maintain information in all cases in relation to settlors, trustees and beneficiaries of those foreign trusts which have an administrator or trustee in the UAE or in a free zone other than the DIFC.
Not all free zones have effective enforcement provisions in place to ensure availability of ownership information.	The relevant authorities in all free zones should establish effective enforcement provisions to reinforce the availability of information on the ownership of relevant entities.

A.2. Accounting records

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

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)

41. The 2012 Report identified a number of deficiencies in the legal and regulatory framework of the UAE with respect to ensuring the availability of accounting records, resulting in four recommendations and a determination that element A.2 was not in place.

Application of the Commercial Transactions Law in the free zones

42. The (federal) Commercial Transactions Law (CTL) contains provisions requiring relevant entities in the UAE to keep reliable accounting records, including underlying documentation, for a period of at least five years. Following further analysis, it has been clarified that the CTL applies to all traders and persons carrying out commercial activities in the free zones (except financial free zones), as the federation has exclusive legislative jurisdiction in the area of commercial law following Article 121 of the Constitution. The definition of the term “trader” includes all companies which have a legal form as stipulated in the CCL, which includes all companies established in the free zones as they can only be set up in a legal form under the CCL. This would then ensure that all entities in the free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years under the CTL.

43. In the Fujairah Free Zone, no rules whatsoever are issued regarding the keeping of accounting records by entities established in that free zone. It is therefore clear that the CTL applies to companies and establishments in the Fujairah Free Zone, requiring them to keep reliable accounting records, including underlying documentation, for a period of at least five years.

44. However, the legislation in most of the free zones which are reviewed contains separate obligations to keep accounting records which does not entirely satisfy the Terms of Reference. Given the variation between the CTL and the legislation in most free zones analysed, further clarification on the interaction between the CTL and the free zone legislation should be provided. The recommendations related to the keeping of accounting records by entities in the free zones have been merged into one recommendation to clarify the obligations on these entities. In addition, given that it has now been clarified that the federation has exclusive legislative jurisdiction in the area of commercial law providing a legal basis for the application of the CTL to all entities in the free zones, the determination of element A.2 has been changed to “the element is in place, but certain aspects of the legal implementation of the element need improvement”.

Foreign companies in the DIFC

45. It was found in the 2012 Report that foreign companies in the DIFC, other than those regulated by the regulator for financial services were not required to keep accounting records.

46. Following legislative amendments in the DIFC in December 2013, foreign companies allowed to do business in the DIFC (“recognised companies”) are now under the obligation to keep accounting records including underlying documents which are sufficient to show and explain their

transactions so as to disclose with reasonable accuracy the financial position of the recognised company at any time and to enable any accounts to be prepared (Art. 116B(1) DIFC Companies Law). These records must be kept for at least six years (Art. 116B(2)(b) DIFC Companies Law). Failure to keep reliable accounting records by a recognised company may result in a maximum penalty of USD 15 000 (EUR 10 763), while non-compliance with keeping these records for at least six years may result in a maximum penalty of USD 2 000 (EUR 1 435) (Schedule 1 DIFC Companies Law).

47. The same requirements to keep accounting records including underlying documents for a period of at least six years have been introduced for foreign partnerships doing business in the DIFC. The penalties for non-compliance are also the same as for recognised companies. The new provisions can be found in Article 13A DIFC General Partnership Law, Article 46B DIFC Limited Partnership Law and Article 37B Limited Liability Partnership Law.

Underlying documentation in the DIFC

48. The 2012 Report concluded that entities in the DIFC and the other free zones were not required to maintain underlying documentation. Only in the Ras Al Khaimah Free Zone, entities were obliged to keep underlying documentation.

49. The legislation governing the different entities which may be established in the DIFC was amended in December 2013 to introduce an express obligation to keep underlying documents (Art. 101 DIFC Companies Law, Art. 19 DIFC General Partnership Law, Art. 18 DIFC Limited Partnership Law and Art. 26 Limited Liability Partnership Law). Failure to comply with this obligation may result in a maximum penalty of USD 15 000 (EUR 10 763) (Schedule 1 DIFC Companies Law, Schedule 2 DIFC General Partnership Law, Schedule 2 DIFC Limited Partnership Law and Schedule 2 DIFC Limited Liability Partnership Law).

50. The type of underlying documents to be kept is not further specified except for regulated entities (DFSA Rulebook General Module Chapter 8 and Glossary Module Chapter 2). It is noted that the accounts of companies and limited liability partnerships must be audited (Art. 103(4)(b) DIFC Companies Law and Art. 28(4)(b) DIFC Limited Liability Partnership Law) and are to be prepared in accordance with the International Financial Reporting Standards (Art. 6.2.1 DIFC Companies Regulations and Art. 6.2.1 DIFC Limited Liability Partnership Regulations). Although it may therefore be expected that complete underlying documentation will be kept, the lack of specificity may cause entities to apply the rule unevenly. It is recommended that the UAE clarifies the legal requirement in the DIFC to keep underlying documentation in respect of the non-regulated entities.

Foreign trusts

51. The 2012 Report noted that the availability of accounting records in respect of foreign trusts which have an administrator or a trustee in the UAE or in a free zone other than the DIFC is not ensured, and a recommendation was made in this context. No relevant legislative changes have been made since the 2012 Report and therefore the recommendation is maintained.

Retention period in respect of certain entities in the DIFC

52. A recommendation was made in the 2012 Report on the basis of the finding that general partnerships and limited partnerships in the DIFC (if not regulated by the regulator for financial services) as well as some entities in the other free zones are not required to keep their accounting records for a period of at least five years.

53. In December 2013, amendments were made to the legislation in the DIFC to introduce a retention period for accounting records in respect of general and limited partnerships (Art. 19(2)(b) DIFC General Partnership Law and Art. 18(2)(b) DIFC Limited Partnership Law). Failure to comply with this obligation may result in a maximum penalty of USD 2 000 (EUR 1 435) (Schedule 2 of the DIFC General Partnership Law and the DIFC Limited Partnership Law). In addition, the retention period for accounting records in respect of companies and limited liability partnerships was changed from ten years to six years (Art. 101(2)(b) DIFC Companies Law and Art. 26(3)(b) DIFC Limited Liability Partnership Law).

54. No relevant legislative changes have been made since the 2012 Report in respect of the entities in the other free zones. Statutory retention periods of at least five years were only found in respect of offshore companies in the Jebel Ali Free Zone and international companies in the Ras Al Khaimah Free Zone. It is recommended that the UAE ensures that underlying documentation is kept in respect of all entities in all free zones.

Providing accounts to the Registrar in the DIFC

55. The legislative amendments in December 2013 of the laws in the DIFC governing the various entities also introduced an obligation for general partnerships and limited partnerships to file the accounts with the Registrar annually within seven days of them being approved by the partners (Art. 19A(5) DIFC General Partnership Law and Art. 18A(5) DIFC Limited Partnership Law). A similar requirement already existed in respect of companies and limited liability partnerships.

Determination and factors underlying recommendations

Determination	
The element is not in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Foreign companies in the DIFC, other than those regulated by the DFSA, and in other free zones are not obliged to keep accounting records consistent with the standard. Further, entities in the Fujairah Free Zone are not obliged to keep accounting records.	The UAE should ensure that complete and reliable accounting records consistent with the standard are required to be kept by all entities in the free zones, including foreign companies, for at least five years.
<u>Under the federal Commercial Transactions Law (CTL) entities in the free zones other than financial free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years. However, the legislation in most free zones analysed varies from the CTL.</u>	<u>The UAE should clarify that all entities in the free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years.</u>
<u>The requirements to keep underlying documentation by DIFC entities other than entities regulated by the financial regulator are worded in a general way and do not go into detail regarding the type of underlying documentation to be kept, which could result in an uneven application of the obligation to keep underlying documentation. Entities in the DIFC and the other free zones are not obliged to maintain underlying documentation for their accounting records.</u>	<u>The UAE should elaborate its requirements that underlying documentation must be kept in respect of all relevant entities and arrangements in the DIFC. The UAE should oblige all entities in the free zones to maintain full underlying documentation in line with the international standard for at least five years.</u>
UAE and free zones legislation (with the exception of the DIFC) do not ensure that reliable accounting records or underlying documentation are kept for foreign trusts with a resident administrator or trustee.	The UAE and free zones laws should expressly provide for keeping of complete accounting records, including underlying documentation, for at least five years for foreign trusts with resident administrators or trustees.

Determination	
The element is not in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
General partnerships and limited partnerships in the DIFC, other than those regulated by the DFSA, and some entities in the other free zones are not obliged to retain their accounting records for at least five years.	The accounting record-keeping requirements should ensure that all entities in the DIFC and other free zones maintain accounting records for a minimum five year period.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

56. The 2012 Report found that the UAE has a legal framework in place to ensure the availability of relevant banking information for all account holders. No relevant legislative changes have been made since the 2012 Report.

Determination and factors underlying recommendations

Determination
The element is in place.

B. Access to Information

Overview

57. 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. This includes, but is not limited to, 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.

58. The UAE Ministry of Finance acts as the competent authority for tax information exchange, but reliance is placed on other authorities to provide and, if necessary, collect the information. The 2012 Report noted that it was unclear whether the access powers available to the relevant UAE authorities could be used for collecting information for EOI purposes. As a result, it was also found likely that the confidentiality of bank information could not be lifted for EOI purposes. In addition, the scope of legal professional privilege was found to be too broad. On this basis, the 2012 Report concluded that element B.1 was not in place.

59. The issuance of Council of Ministers Resolution No. 17 of 2012, in combination with the conclusion of a few MoUs between the Ministry of Finance and relevant other authorities, means that these other authorities are now required to co-operate with the Ministry of Finance. However, the process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance when requested to do so is not specified in respect of the authorities with which the Ministry of Finance has not concluded an MoU. In addition, and as already noted in the 2012 Report, access powers in the Fujairah Free Zone have not been identified. It is therefore recommended that the UAE further clarifies its legal and regulatory framework in this respect.

60. In respect of bank information, the Council of Ministers Resolution No. 17 of 2012 does provide sufficient basis to lift the confidentiality of bank information for EOI purposes. Such disclosure is allowed where this is

required by law, and the Resolution is part of the UAE law. Clear guidance on the extent of co-operation under the Resolution with the two authorities which may have to collect information from banks, the Central Bank and the DIFC, is provided in the MoUs concluded with the Ministry of Finance. Together the Central Bank and the DIFC (through its regulatory body for banks) can obtain information from all banks in the UAE, including all free zones.

61. The scope of professional privilege for lawyers who are asked to produce information by the DIFC authorities is now in accordance with the international standard, however the scope of professional privilege appears to extend beyond that provided for in the international standard where a lawyer is asked to produce information for EOI purposes by another authority.

62. Although it is still not entirely clear to what extent all relevant authorities in the UAE can collect information for EOI purposes, sufficient improvements have been made in the legal and regulatory framework of the UAE to change the determination of element B.1 to “in place, but certain aspects of the legal implementation of the element need improvement”.

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).

63. The 2012 Report noted that there was no explicit authorisation for the UAE to conclude Tax Information Exchange Agreements (TIEAs), and that a proposal had been made to grant the Ministry of Finance such power. However, the UAE authorities have now confirmed that the Ministerial Council for Services Circular 454/2010, under which “approval is granted to the Ministry of Finance to follow up the implementation of the G20 resolutions with respect to exchange of information for tax purposes”, is regarded as authorising the UAE to enter into TIEAs with relevant partners, and the access powers discussed below are broad enough to cover both Double Tax Conventions and TIEAs. As indicated in section C.2 below, peers have confirmed that negotiations to enter into TIEAs are ongoing and in some cases have been finalised.

Ownership and identity information (ToR B.1.1), Accounting records (ToR B.1.2) and Use of information gathering measures absent domestic tax interest (ToR B.1.3)

64. In the UAE, the Department of International Financial Relations in the Ministry of Finance acts as the competent authority for tax information exchange. However, reliance is placed on other authorities to provide and, if necessary, collect the information, as the Ministry of Finance itself generally does not hold information which may be foreseeably relevant for tax purposes and is also not responsible for supervising potential information holders. The authorities which are involved in collecting information for EOI purposes include other federal government authorities (including the Central Bank) as well as the free zone authorities. The 2012 Report concluded that, although these authorities (with the exception of the Fujairah Free Zone authority) have broad access powers, including compulsory powers, for their own supervisory and/or regulatory purposes, it was unclear whether these access powers could be used for collecting information for EOI purposes. As it was assessed that no legal provisions were in place to ensure this, it was considered a deficiency which led to a recommendation.

65. On 15 May 2012, Council of Ministers Resolution No. 17 of 2012 (“the Resolution”) was issued containing the following provisions:

“Article 1

The Ministry of Finance is authorised to collect and exchange information and data on natural persons and legal entities licensed to operate in the UAE, including the free zones, in implementation of the obligations of the State provided for in international tax agreements.

Article 2

The Ministry of Finance, when exercising the powers conferred upon it under Article 1 of this resolution, shall coordinate with federal and local authorities concerned in all matters relating to specifying the type and nature of the information and data to be collected and a mechanism to provide it, and these authorities shall cooperate with the Ministry of Finance in implementing the provisions of this decision.”

66. The Council of Ministers has the power to supervise the implementation of international agreements (Art. 60(7) of the Constitution) and on this basis has issued this Resolution which is then binding on all authorities within the UAE. The Resolution clearly provides the Ministry of Finance with the power to collect and exchange information on all persons in the UAE, including the free zones, in implementation of international tax

agreements. The term “international tax agreements” is not defined in the Resolution, but is broad enough to cover both Double Tax Conventions and TIEAs. The UAE authorities confirmed that the Resolution covers all international agreements providing for the exchange of information for tax purposes. In addition, the definition of the term “international tax agreement” in the MoUs concluded between the Ministry of Finance and other relevant authorities (see below), includes “any agreement which the UAE has entered into with another jurisdiction for the exchange of information for tax purposes”.

67. In respect of the manner in which the access powers should be used, Article 2 of the Resolution provides that the Ministry of Finance shall co-ordinate with the relevant federal and local authorities, and that these authorities are required to co-operate with the Ministry of Finance when it exercises its powers. In respect of the (non-financial) free zones, the requirement to co-operate finds its basis in Article 125 of the Constitution, which directs the governments of the Emirates (which are responsible for these free zones) to implement federal laws and international agreements under the supervision of the federal authorities, in this case the UAE Ministry of Finance.

68. It is noted that the extent of co-operation by other authorities is not fully elaborated in the Resolution, as the provision does not specify that the federal and local authorities are allowed or obliged to use their access powers for EOI purposes. Nevertheless, the Resolution provides a mandatory legal basis for all federal and local authorities to co-operate with the Ministry of Finance in implementing the provisions of international tax agreements, and the UAE authorities interpret and apply the provision as requiring any federal or local authority, including any free zone, to use their own access powers for the collection of information from persons within their jurisdiction, if information is requested by the Ministry of Finance pursuant to an EOI request.

69. This interpretation is supported by a number of Memoranda of Understanding (“MoUs”) concluded between the Ministry of Finance and relevant federal and local authorities. In these MoUs, the other authorities commit to provide any information from within their jurisdiction at the request of the Ministry of Finance pursuant to an EOI request. MoUs have so far been concluded with the Fujairah Free Zone Authority, the DIFC, the Jebel Ali Free Zone Authority and the Central Bank. The Ministry of Finance is currently working with other authorities to conclude similar MoUs.

70. The use of access powers for EOI purposes by the DIFC authorities is specifically addressed by amendments to the DIFC Companies Law in December 2013. Article 126A was introduced to provide the Registrar with the power to require by written notice any person registered under legislation administered by the Registrar, to give or produce specified information and documents as required by the Registrar in the performance of its powers and functions. In addition, Article 8(3) of the DIFC Companies Law now

specifically requires the Registrar to assist the UAE in complying with its obligations under any international agreement to which the UAE is a party through the exercise of its powers and functions. This means that the Registrar can use its own access powers for EOI purposes if requested by the Ministry of Finance.

71. The Registrar is responsible for administering the legislation for all types of entities, but not for trusts. Trusts can be created in the DIFC and the Dubai Financial Services Authority (“DFSA”) is responsible for their supervision. Under Article 73 of the DIFC Regulatory Law the DFSA may require any trust service provider to give or produce specified information and documents as required by the DFSA as considered necessary to meet the DFSA’s objectives. Article 39 DIFC Regulatory Law then authorises the DFSA to use its powers if so requested by the Registrar. Any EOI request relating to information on trusts administered in the DIFC could therefore be obtained through the DFSA as requested by the Registrar, which in turn would be requested by the Ministry of Finance to provide such information.

72. Through the different authorities, the Ministry of Finance should be able to obtain different types of information which could be requested by an EOI partner. Information in respect of entities established in one of the free zones will be collected by the authority of the respective free zone. Regarding information in respect of other companies established in the UAE or having their main office in the UAE, as well as in respect of limited partnerships, reliance is placed on the Ministry of Economy. Information in respect of individuals will be obtained through the Ministry of Interior or the Ministry of Justice, depending on the type of information. Finally, information from banks will be collected by the Central Bank, or the DFSA where it relates to a bank in the DIFC. If any information is not available through one of these authorities, other authorities may also be requested by the Ministry of Finance to collect information. Finally, the Ministry of Finance may directly request a person to provide them with information, although it is not envisaged that this will occur in many instances. Whether this system ensures that all types of information can be obtained from any person will be further examined in the Phase 2 review of the UAE.

Conclusion

73. The 2012 Report notes that the Central Bank, the DIFC and other free zones as well as other relevant authorities, have access powers to fulfil their supervisory or regulatory functions. The Resolution issued in May 2012 introduced an obligation for relevant federal and local authorities to co-operate with the UAE competent authority, and has provided a legal basis for mandating these authorities to use their own access powers to collect information for EOI purposes if requested by the Ministry of Finance. MoUs concluded between the Ministry of Finance and some of these authorities

further strengthen the legal and regulatory framework in this context, and within the DIFC specific legal provisions have been put in place in December 2013 arranging for access powers which can be used for EOI purposes.

74. However, the language of the Resolution provides a general architecture for co-operation without specifying in detail the process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance. In addition, MoUs clarifying such process and procedures have, to date, only been concluded between the Ministry of Finance and a few other authorities. Finally, the 2012 Report notes that general access powers in the Fujairah Free Zone have not been identified. It is therefore recommended that the UAE specifies the process and procedures by which all government authorities are required to provide information for EOI purposes to the Ministry of Finance when requested to do so and clarify that access powers are available in all instances. A review of the practical implementation of the UAE's access powers and the effectiveness of the process and procedures will be conducted during the Phase 2 review of the UAE.

Compulsory powers (ToR B.1.4)

75. The 2012 Report noted that the authorities in the UAE, the DIFC and the other free zones, with the exception of the Fujairah Free Zone, have compulsory powers, but that it was unclear whether these powers could be used for EOI purposes. With the introduction of the Resolution and the conclusion of a few MoUs, the legal and regulatory framework has been strengthened on this point although a recommendation still remains.

Secrecy provisions (ToR B.1.5)

Bank secrecy

76. Information from banks can be obtained through either the Central Bank or the Dubai Financial Services Authority ("DFSA", the regulatory authority for banks within the DIFC). The 2012 Report stated that in both cases the confidentiality of bank information can be lifted if disclosure is required by law, but that such requirement was not explicitly provided for where information was requested for tax purposes. The 2012 Report concluded that in the absence of express provisions enabling the relevant authorities to obtain information for the Ministry of Finance, the confidentiality provisions in the Central Bank Law (Article 29) and DIFC Law 5/2005 (Articles 37 and 155) were likely to hinder effective exchange of information.

77. With the issuance of the Resolution, an obligation was introduced on the relevant authorities, including the Central Bank and the DFSA, to co-operate with the Ministry of Finance in implementing the obligations of the UAE

provided for in international agreements. In the view of the UAE authorities, this includes a requirement to lift the confidentiality of bank information where such information is requested under an EOI agreement. This view is shared by the Central Bank and the DFSA; in the MoUs between them and the Ministry of Finance, the Central Bank and the DIFC (also representing the DFSA) agreed to provide the Ministry of Finance with details of any bank account within their jurisdiction (Articles 7(1) and 14 of the respective MoUs). The DFSA's jurisdiction comprises all banks licensed to operate within the DIFC, while the Central Bank has jurisdiction over all other banks in the UAE, including the non-financial free zones. The access powers of the Central Bank are primarily drawn from Article 105 of the Central Bank Law, while the access powers of the DFSA are laid down in Articles 73 and 80 of DIFC Law 1/2004.

78. A Council of Ministers Resolution forms part of the law of the UAE, as it is based on the Constitution (Article 60(7)). Although the Resolution does not clearly specify to what extent the other authorities are required to co-operate with the Ministry of Finance, the MoUs with the Central Bank and the DIFC provide clear guidance in the area of obtaining bank information. On this basis, the confidentiality of bank information may be lifted for EOI purposes, as its disclosure is required by law in this case, which is one of the exceptions to the confidentiality of bank information in both the Central Bank Law (Article 29(1)) and the DIFC Law 5/2005 (Article 37(5)(b)).

Professional privilege

79. The 2012 Report concluded that the scope of professional privilege is very broadly defined under Federal Law 23/1991, as it applies to all confidential information to which lawyers become privy as a result of their profession. The 2012 Report noted that this is of concern as lawyers in the UAE can act as company service providers or trustees in the domestic sector including the free zones. A recommendation was made in this respect.

80. On further analysis of Federal Law 23/1991, the profession of a lawyer in the context of professional privilege is limited to “the legal profession in view of providing judicial and legal assistance” (Article 2 Federal Law 23/1991). Information that comes to the attention of lawyers when they act in a different capacity, such as trustees, is therefore not privileged. Nevertheless, there still is a concern that any legal assistance, and not only legal advice, would be covered by professional privilege and in that respect the professional privilege appears to extend beyond that provided for in the international standard.

81. For lawyers who are asked to produce information by the DIFC authorities, a different rule applied which was also considered not to be in accordance with the international standard in the 2012 Report, as the professional privilege extended to any advice given by the lawyer to a client under

the definition of the term “privileged communication”. In December 2012, the definition of the term “privileged communication” in the DFSA Law was amended and now reads as follows (changes in underlining and strikethrough):

“a communication attracting a privilege arising from the provision of professional legal advice and any other privilege applicable at law ~~advice or from the relationship of lawyer and client or other similar relationship~~, but does not include a general duty of confidentiality.”

82. It seems that no other privileges applicable at law currently apply within the DIFC, and therefore the legal professional privilege within the DIFC is now in accordance with the international standard. Nevertheless, as explained above, the scope of the professional privilege in the rest of the UAE remains too broad, and it is recommended that the UAE ensures that its application does not limit or prevent it from responding to a request for information made pursuant to an international exchange of information request.

Determination and factors underlying recommendations

Determination	
The element is not in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
<p><u>The process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance has not been specified where no MoU has been concluded between the Ministry of Finance and the relevant authority. In addition, no access powers have been identified in the Fujairah Free Zone. The ability of the Ministry of Finance to access foreseeably relevant information for exchange of information purposes, either directly or via other agencies, is unclear and there are no provisions in law providing authorities with the power to collect information on behalf of the Ministry of Finance for the purpose of responding to EOI requests.</u></p>	<p>The UAE should <u>specify the process and procedures by which all government authorities are required to provide information for EOI purposes to the Ministry of Finance when requested to do so and clarify that access powers are available in all instances</u> introduce express statutory provisions ensuring the authorities have access to information for exchange of information purposes.</p>

Determination	
The element is not in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Confidentiality provisions in the Central Bank law and the DFSA laws are not explicitly overridden to access banking information for EOI purposes.	The UAE should ensure that the confidentiality provisions in the UAE laws are overridden to permit access to banking information for EOI purposes.
<u>Except for lawyers who are asked to produce information by the DIFC authorities</u> , the scope of legal professional privilege appears to extend beyond that provided for in the international standards.	The UAE should ensure the application of legal professional privilege does not limit or prevent it from responding to a request for information made pursuant to an international exchange of information request.

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.

83. The 2012 Report found that the rights and safeguards that apply to persons in the UAE are compatible with effective exchange of information, and no relevant legislative changes have been made since.

Determination and factors underlying recommendations

Determination
The element is in place.

C. Exchanging Information

Overview

84. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. This section of the report examines whether the UAE has a network of information exchange arrangements that allow it to achieve effective exchange of information in practice.

85. In the 2012 Report, element C.1 was determined to be “not in place” and element C.2 was determined to be “in place but certain aspects of the legal implementation of the element need improvement”. These determinations arose mainly from the assessment that the UAE’s information exchange agreements had not been given effect due to the limitations of the access powers of the UAE competent authority to obtain information that is foreseeably relevant for tax purposes. As discussed in Part B of this supplementary report, the UAE has partly addressed the deficiencies regarding its access powers resulting in an upgrade of the determination of element B.1 to “in place, but certain aspects of the legal implementation of the element need improvement”. Consequently, the determinations for elements C.1 and C.2 have also been upgraded to “in place, but certain aspects of the legal implementation of the element need improvement” and “in place” respectively.

86. The 2012 Report also concluded that element C.4 was “in place, but certain aspects of the legal implementation of the element need improvement”. This was partly based on a recommendation referring to the fact that the DTCs with five jurisdictions do not contain safeguards providing for the protection of trade or business secrets. However, this issue is not mentioned in the Global Forum peer review reports of the partner jurisdictions and it does also not narrow the scope for exchange of information. The relevant recommendation under C.4 has therefore been removed. The other recommendation under C.4, pertaining to the broad scope of professional privilege in the UAE’s domestic law, remains, but the determination is changed to “in place”.

C.1. Exchange of information mechanisms

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

Foreseeably relevant standard (ToR C.1.1), In respect of all persons (ToR C.1.2), Obligation to exchange all types of information (ToR C.1.3), Absence of domestic tax interest (ToR C.1.4), Absence of dual criminality principles (ToR C.1.5), Exchange of information in both civil and criminal tax matters (ToR C.1.6) and Provide information in specific form requested (ToR C.1.7)

87. The 2012 Report noted that the UAE had signed 60 DTCs as at November 2011. It was concluded that under 11 of these DTCs information could not be exchanged in accordance with the international standard. In eight cases (Austria, Indonesia, Malaysia, Mozambique, Poland, Romania, Thailand and Ukraine), this was due to the restriction in the DTC that information could only be exchanged where this was necessary for carrying out the provisions of the Convention. In one case (Singapore), this was due to the inability of the treaty partner to exchange information in accordance to the standard due to restrictions in the domestic law of that treaty partner. In two cases (Czech Republic and Morocco), it was considered that the lack of protection of trade or business secrets in the DTC was not in accordance with the standard (see, however, element C.4 below).

88. Since November 2011, the UAE signed a protocol with Poland amending the exchange of information provision, as well as new DTCs with Brunei Darussalam, Fiji, Hungary, Japan, Latvia, Libya, Lithuania, Mexico, Montenegro, the Palestine Authority, Panama, Serbia and Slovenia. These DTCs all contain an exchange of information provision which would allow the UAE to exchange information in accordance with the international standard.

89. The DTC with Panama contains a provision stating that exchange of information “does not include (i) measures aimed only at the simple collection of pieces of evidence, or (ii) when it is improbable that the requested information will be relevant for controlling or administering tax matters of a given taxpayer in a Contracting State (“Fishing Expeditions”)”. Although this language seems to be targeted at excluding fishing expeditions, it is unclear whether the “simple collection of pieces of evidence” would always constitute a fishing expedition. In addition, information that is “improbable ... [to] be relevant ...” could be more narrow than simply “foreseeably relevant” information as contemplated in the OECD Model Tax Convention. Therefore, the application of this language in practice should be evaluated in the Phase 2 review of the UAE.

90. As a result of the conclusion of the protocol with Poland and the deletion of the recommendation regarding the absence of safeguards providing for the protection of trade or business secrets under element C.4, there are now eight DTCs left which do not allow the UAE to exchange information in accordance with the international standard (with Austria, Indonesia, Malaysia, Mozambique, Romania, Singapore², Thailand and Ukraine). Given the reduced number and ratio of agreements under which the UAE cannot exchange information in accordance with the international standard, the recommendation has been removed. Nevertheless, it is recommended that the UAE should work with relevant partners to ensure that these agreements are brought in line with the international standard.

In force (ToR C.1.8)

91. Of the 73 DTCs currently signed, 15 are not in force. Since the 2012 Report, the DTCs with Estonia and Switzerland entered into force, as well as the newly signed DTCs with Latvia, Panama and Serbia. Of the DTCs which are not in force (with Bangladesh, Brunei Darussalam, Cyprus^{3 4}, Fiji, Greece, Guinea, Hungary, Japan, Kenya, Libya, Lithuania, Mexico, Montenegro, the Palestine Authority, Poland (protocol) and Slovenia), the UAE has completed its ratification procedure in respect of the agreements with Bangladesh, Cyprus, Greece, Guinea, Kenya, Mexico and Montenegro.

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

92. The 2012 Report concluded that the UAE’s information exchange agreements had not been given effect due to the limitations of the access powers of the UAE competent authority to obtain information that is foreseeably relevant for tax purposes. This resulted in a recommendation and a determination of

2. Singapore amended its domestic legislation in November 2013 with a view to being able to exchange information to the international standard under all of its DTCs on the basis of reciprocity. This legislation has not yet been reviewed by the Global Forum.
3. 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”.
4. 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.

element C.1 being “not in place”. As discussed in Part B of this supplementary report, the UAE has partly addressed the deficiencies regarding its access powers, resulting in an upgrade of the determination of element B.1 to “in place, but certain aspects of the legal implementation of the element need improvement”. Consequently, the recommendation under element C.1 has been amended and the determination changed to bring it in line with element B.1.

Determination and factors underlying recommendations

Determination	
The element is not in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The UAE's arrangements providing for international exchange of information have not been given <u>full effect</u> to through domestic law as <u>the extent of the authorities' access powers has not been clearly specified in all cases</u> . there are limitations in the authorities' powers to obtain necessary information for the purpose of international information exchange.	It is recommended that the UAE ensure it has complete legislation enabling it to give full effect to its EOI agreements.
41 of the 60 DTCs signed by the UAE do not meet the international standard.	The UAE should work with relevant partners to ensure that these agreements are brought in line with the international standard.

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

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

93. The 2012 Report found that the UAE has a network of information exchange arrangements with relevant partners, but those arrangements had not been given full effect through domestic law due to the deficiencies in the UAE competent authority's power to obtain information. As discussed in Part B of this supplementary report, the UAE has partly addressed the deficiency regarding its access powers, resulting in an upgrade of the determination of element B.1 to “in place, but certain aspects of the legal implementation of the element need improvement”. It is considered that the deficiencies identified in the 2012 Report under element B.1 are no longer

sufficiently serious to have an impact on element C.2, which is primarily focused on the scope of the UAE's network of EOI mechanisms.

94. In the 2012 Report, it was noted that no jurisdictions had advised that the UAE had refused to enter into negotiations or conclude an EOI agreement. However, the Nordic jurisdictions of Denmark, the Faroe Islands, Greenland, Iceland, Norway and Sweden indicated that they had approached the UAE seeking to conclude TIEAs and formal negotiations were yet to start, as the UAE authorities did at that time not have a mandate to enter into TIEAs. As mentioned in Part B of this supplementary report, the UAE Ministry of Finance has authorisation to conclude TIEAs, and input from peers confirms that negotiations to enter into TIEAs are ongoing and in some cases have been finalised. It is noted that the Nordic jurisdictions mentioned above, including Finland, initialled TIEAs with the UAE in November 2013. In addition, the UAE initialled a TIEA with Colombia on 7 February 2014. These TIEAs will be signed in the near future.

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 UAE has a comprehensive network of EOI arrangements with relevant partners but the issues identified in respect of access powers need to be addressed.	The UAE should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all relevant partners.
	The UAE should continue to develop its EOI network, regardless of its form, 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.

Information received: disclosure, use, and safeguards (ToR C.3.1) and All other information exchanged (ToR C.3.2)

95. The 2012 Report concluded that all of the UAE's DTCs require that any information received be treated as secret, and that disclosure of information received by the UAE authorities under an EOI arrangement is restricted to the circumstances covered by the arrangement.

96. The Memoranda of Understanding (MoUs) concluded between the Ministry of Finance and other authorities for the purposes of obtaining information for EOI purposes (see Part B of this supplementary report), all contain a provision requiring the authorities to keep the EOI requests and its contents confidential.

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)

97. The 2012 Report contained two recommendations. The first recommendation referred to the fact that the DTCs with five jurisdictions (Czech Republic, Indonesia, Morocco, Poland and Romania) did not contain safeguards providing for the protection of trade or business secrets. It might be argued that trade and business secrets are covered by industrial and/or commercial secrets, which are protected under the relevant DTCs. In any case, the lack of a reference to trade or business secrets does not narrow the scope for information exchange. It should also be noted that this issue is not mentioned in the peer review reports on the Czech Republic, Indonesia and Poland (the Phase 1 reviews of Morocco and Romania have not been completed). Under these circumstances, the recommendation referring to the absence of safeguards providing for the protection of trade or business secrets has been removed.

98. The other recommendation made in the 2012 Report related to the finding that the scope of professional privilege for lawyers is too wide in the UAE’s domestic legislation. This definition is not overridden by a more narrow definition in any of the UAE’s DTCs, except for the DTC with Japan, which restricts the possibility to decline to supply information to confidential communications between lawyers and their clients. As described under B.1.5 of this supplementary report, the scope of professional privilege within the DIFC is now in line with the international standard, but no relevant changes have been made in respect of lawyers covered by UAE law. The recommendation therefore remains, but the determination is changed to “in place”.

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.	
DTCs with the Czech Republic, Indonesia, Morocco, Poland and Romania are not fully consistent with the international standard due to absence of safeguards providing for protection of trade or business secrets.	The UAE should work with relevant treaty partners to ensure that these agreements are brought in line with the international standard.
The definition of information subject to legal professional privilege in the UAE’s DTCs follows that of its domestic law, which is wider than the scope accepted under the international standard.	The UAE should ensure that the scope of legal professional privilege in its EOI mechanisms is consistent with the international standard.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1), Organisational process and resources (ToR C.5.2) and Unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

99. The 2012 Report did not identify any issues relating to the UAE’s ability to respond to exchange of information requests within 90 days, organisational process and resources, or any restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	It is not clear that foreign companies having their main offices or effective management in the Dubai Airport Free Zone are obliged to maintain ownership information or provide it to the authorities and thus such information may not be available to the competent authority.	The UAE should clarify that ownership information is available for foreign companies having their main offices, or effective management in the UAE in all cases.
	Identity information may not be consistently available in respect of foreign trusts which have an administrator or trustee in the UAE or in a free zone other than the DIFC.	An obligation should be established to maintain information in all cases in relation to settlors, trustees and beneficiaries of those foreign trusts which have an administrator or trustee in the UAE or in a free zone other than the DIFC.

Determination	Factors underlying recommendations	Recommendations
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, but certain aspects of the legal implementation of the element need improvement.	Under the federal Commercial Transactions Law (CTL) entities in the free zones other than financial free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years. However, the legislation in most free zones analysed varies from the CTL.	The UAE should clarify that all entities in the free zones are required to keep reliable accounting records, including underlying documentation, for a period of at least five years.
	The requirements to keep underlying documentation by DIFC entities other than entities regulated by the financial regulator are worded in a general way and do not go into detail regarding the type of underlying documentation to be kept, which could result in an uneven application of the obligation to keep underlying documentation.	The UAE should clarify its requirements that underlying documentation must be kept in respect of all relevant entities and arrangements in the DIFC.
	UAE and free zones legislation (with the exception of the DIFC) do not ensure that reliable accounting records or underlying documentation are kept for foreign trusts with a resident administrator or trustee.	The UAE and free zones laws should expressly provide for keeping of complete accounting records, including underlying documentation, for at least five years for foreign trusts with resident administrators or trustees.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The process and procedures for the other government authorities to provide information for EOI purposes to the Ministry of Finance has not been specified where no MoU has been concluded between the Ministry of Finance and the relevant authority. In addition, no access powers have been identified in the Fujairah Free Zone.	The UAE should specify the process and procedures by which all government authorities are required to provide information for EOI purposes to the Ministry of Finance when requested to do so and clarify that access powers are available in all instances.
	Except for lawyers who are asked to produce information by the DIFC authorities, the scope of legal professional privilege appears to extend beyond that provided for in the international standards.	The UAE should ensure the application of legal professional privilege does not limit or prevent it from responding to a request for information made pursuant to an international exchange of information request.
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, but certain aspects of the legal implementation of the element need improvement.	The UAE's arrangements providing for international exchange of information have not been given full effect through domestic law as the extent of the authorities' access powers has not been clearly specified in all cases.	It is recommended that the UAE ensure it has complete legislation enabling it to give full effect to its EOI agreements.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
The element is in place.		The UAE should continue to develop its EOI network, regardless of its form, to the standard with all relevant partners.
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 definition of information subject to legal professional privilege in the UAE's DTCs follows that of its domestic law, which is wider than the scope accepted under the international standard.	The UAE should ensure that the scope of legal professional privilege in its EOI mechanisms is consistent with the international standard.
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 Report⁵

1. The UAE delegation would like to express their appreciation for the in-depth review made by the assessment team.
2. Since 2010, the UAE has supported the objectives set forth by the Global Forum for Transparency and Exchange of Information (“Global Forum”) and has been an active member of the Steering Group of the Global Forum from 2012.
3. We are pleased with the findings of the assessment team in respect of confirming the UAE’s commitment to the international standards of transparency and exchange of information for tax purposes through a further analysis of the UAE’s existing laws as well as considering the legislative amendments made by the UAE, including the DIFC, since April 2012.
4. In the supplementary report, the assessment team concluded that the UAE has sufficient legal and regulatory framework for transparency and exchange of information and that the UAE can now move to Phase 2. The UAE welcomes this conclusion reached by the assessment team in respect of availability of ownership and accounting information as well as access to information to facilitate effective exchange of information.
5. Following Article 121 of the UAE Constitution, the federal laws of the UAE, particularly the Commercial Companies Law and the Commercial Transactions Law, likewise apply to all entities in the free zones, other than the financial free zones. In the DIFC, relevant legislative changes were made in 2013. Therefore, the current laws and regulations in the UAE and the DIFC provide sufficient basis to ensure the availability of ownership and accounting information based on the obligations imposed on the entities in the free zones and

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

in the DIFC to keep and maintain such ownership and accounting information in accordance with the international standards. The UAE will further clarify these requirements in the free zones, elaborate on the requirements in the DIFC with respect to underlying documentation and clarify the issue of foreign trusts with an administrator or trustee resident in the UAE in consideration of the recommendation of the assessment team.

6. In line with Article 125 of the UAE Constitution which provides that the government of the Emirates shall undertake the appropriate steps to implement the laws promulgated by the Union and the treaties and international agreements concluded by the UAE, the UAE's Cabinet of Ministers issued Resolution No. 17 of 2012 ("Resolution No. 17") to implement the requirements under the international treaties signed by the UAE in relation to tax matters and in accordance with the Global Forum's international standards.
7. Resolution No. 17 clearly authorizes the Ministry of Finance to collect the relevant information and exchange such information with the UAE's treaty partners. It specifically grants the Ministry of Finance the authority to obtain the necessary information from individuals and legal entities licensed to operate in the UAE, including from the free zone areas, pursuant to a request under an international agreement. Moreover, Resolution No. 17 provides a mandatory legal basis for all federal ministries and departments, local departments and local authorities, including the free zones, to cooperate with the Ministry of Finance in implementing the provisions of international tax agreements by using their own access powers for the collection of information from persons within their jurisdiction, and provide such information to the Ministry of Finance based on a request from a UAE treaty partner.
8. In addition, the DIFC also made legislative amendments in 2013 to ensure the use of its access power for exchange of information purposes.
9. Based on the recommendation of the assessment team, the UAE will further clarify the access powers of the relevant government authorities as well as specify the process and procedures by which all government authorities are required to provide information to the Ministry of Finance for exchange of information purposes. Except in the DIFC, the UAE will also clarify the application of legal professional privilege in accordance with the international standards.
10. Furthermore, since April 2012, the Ministry of Finance has undertaken other measures to facilitate exchange of information in its commitment

to the international standards. These include: (i) coordination with all government departments regarding implementation of the international standards (ii) negotiations and signing of Tax Information Exchange Agreements (TIEAs) with the Nordic countries and Columbia which are now under review for processing for final signature; (iii) amendment of Article 26 of other tax treaties to bring them in line with the international standards (e.g. Singapore, Poland, India); (iv) continuous signing of new tax treaties containing Article 26 (or its equivalent) in line with the international standards; (v) enhancement of the Exchange of Information unit (EIU) with the assistance of World Bank with the main objectives of receiving technical assistance to develop and implement systems to support business process to manage the flow of information and preparing for automatic exchange of information; and (vi) execution of MOUs with the Central Bank and the major free zones to facilitate and provide the process and procedures for efficient exchange of information.

11. The UAE reiterates its commitment to comply with the international standards on transparency and exchange of information for tax purposes and the implementation thereof. We note the recommendations made by the assessment team and we will examine these further with the view to addressing such findings. We also look forward to working with the assessment team on the Phase 2 review.

Annex 2: Request for a Supplementary Report Received from the United Arab Emirates

Dear Mr. François D’Aubert
Chair
Peer Review Group

This is with reference to the United Arab Emirates’ (“UAE”) Phase 1 Peer Review Report which was published on 20 June 2012.

Introduction

In accordance with Paragraph 58 of the Global Forum on Transparency and Exchange of Information for Tax Purposes’ Revised Methodology for Peer Review, the UAE requests a supplementary report to reflect the actions it has taken to implement the recommendations in the Phase 1 Peer Review Report (“Phase 1 Report”) for the UAE as adopted by the Global Forum (“GF”) in June 2012.

The UAE has submitted its 12-month follow up report to the Peer Review Group (“PRG”) on 19 June 2013 describing the actions taken by the UAE to address the recommendation from the Phase 1 Report. This follow-up report with its annexes is attached as Appendices 1 and 2.

On the basis of the UAE Constitution, the Ministerial Council for Services Circular 454/2010 and the letter from the Ministry of Justice to the GF on December 2011, the UAE has made sufficient improvements in its legal and regulatory framework as summarized below:

Issuance of Council of Ministers Resolution No. 17 of 2012 – To fulfill the requirements of the GF on exchange of information, the UAE, through its Council of Ministers, issued Resolution No. 17 of 2012 to give full mandate and authorization to the UAE Ministry of Finance (“MoF”) to collect and exchange information with its treaty partners. It specifically grants the UAE the authority to obtain the necessary information from individuals and legal entities licensed to operate in the UAE, including from the Free Zone areas, pursuant to a request under an international agreement.

- ***Proposed amendments to Dubai International Financial Centre (“DIFC”) laws and regulations*** – The DIFC has proposed amendments to its laws and regulations to address the recommendations proposed by the GF on transparency and exchange of information for tax purposes. These proposed amendments will soon be enacted by the Ruler of Dubai.
- ***Amendment to the definition of “privileged communication” under the DFSA’s Regulatory Law*** – In response to the assessment of the GF on the scope of legal privilege in the DFSA laws, the amendment was made to more narrowly define the scope of legal privilege to comply with international standards.
- ***Execution of a Memorandum of Understanding with the largest Free Zones*** – Pursuant to Resolution No. 17 of 2012, the MoF executed a Memorandum of Understanding (“MOU”) with the DIFC, the Fujairah Free Zone Authority and the Jebel Ali Free Zone Authority, separately, to establish a formal basis for cooperation between the MoF and these Free Zones for exchange of information for tax purposes based on a request received by the MoF under an International Tax Agreement.
- ***Execution of a Memorandum of Understanding with the UAE Central Bank*** – Pursuant to Resolution No. 17 of 2012 and in recognition of the concerns raised by the GF regarding bank secrecy provisions, the MoF and the UAE Central Bank executed a MOU to establish a formal basis for cooperation for exchange of information for tax purposes based on a request received by the MoF under an International Tax Agreement or any bilateral or multilateral agreement pertaining to tax matters.
- ***On the 5th of June 2013 a meeting held between the Under Secretaries of the MoF and the Ministry of Economy (“MOE”) with the Committee for Fiscal Coordination and Economic Cooperation that represents Federal, Local Government, Agencies and Departments for the purpose of facilitating the implementation of exchange of information between the MoF and those agencies for the purpose of exchanging these information for tax purposes upon the request of UAE treaty partners under international tax agreement.***
- ***Amendments to Article 26 of other tax treaties*** – The MoF has contacted or are in discussions with relevant treaty partners, such as Singapore, to make appropriate amendments to Article 26 (or the relevant Article if different) of the DTT to bring them in line with international standards including Poland where Article 27 (exchange of information) have been amended on 10th of July 2013. The Protocol to the UAE-India Tax Treaty providing for the appropriate amendment of Article 26 of the treaty has been ratified on 16th April 2012.

- *Negotiations for Tax Information Exchange Agreements* – The UAE is in the process of negotiating Tax Information Exchange Agreements (“TIEAs”) with several jurisdictions such as Estonia, Panama, Argentina and the Nordic countries.

Update

Subsequent to the submission of the follow-up report, the UAE is also now in the process of negotiating a TIEA with Morocco. In addition, the UAE has recently launched, with the support of the World Bank expert mission headed by Mr. Raul Felix Janquera Vaerla, Senior Public finance Specialist who visited UAE on 22nd July 2013 at the request of the Ministry of Finance for a Technical Assistance to establish, an Exchange of Information Unit (“EIU”) Set-up Program to implement exchange of tax information pursuant to a tax agreement the UAE has entered into. The EIU Set-up Program will cover the following Phases: Phase 1 – Designing the organizational structure; Phase 2 – Draft the regulations to establish the EIU; Phase 3 – Drafting the procedural manual; and Phase 4 – Training for the Staff. The process shall start very soon with the International Bank for Reconstruction and Development (“IBRD”).

Accordingly MoF has arranged a meeting in Abu Dhabi on 25th June 2013 with the representatives of Federal and Local Government Agencies and Free Zone areas for a presentation that was arranged by IBRD mission regarding the importance of launching and exchange information unit (EIU) emphasizing the importance of coordination between MoF and these agencies with liaison offices or focal points for exchange of information and solving any problems that may arise in this respect.

In addition to what mentioned in our follow-up report, we also note that the first recommendation under element C.4 seems inconsistent with other peer review reports. Similar recommendations, either in the box or in the text, cannot be found in the reports on the Czech Republic, Indonesia and Poland, while these jurisdictions are mentioned in the UAE Phase 1 report as having a DTC with the UAE which is not fully consistent with the international standard. Also, the absence of safeguards providing for protection of trade of business secrets may not be inconsistent with the international standard, as paragraphs 17 and 19 of the commentary on Article 26 of the OECD Model Tax Convention mention that if a requested state provides the requested information despite the fact that such safeguards are included in the DTC, this state remain within the framework of the agreement. Given these considerations, the UAE believes that the first recommendation under element C.4 should be removed. The second recommendation under element C.4 should be considered resolved noting that UAE held negotiation with Poland on 10th of July 2013 finalizing the amendment of the DTA which was signed

between the two countries in 1993 including the amendment of Article 26 and soon negotiation will start with Singapore for the same purpose and will be followed by other countries. Following the DIFC’s amendment of the definition of “privileged communication” under the DFSA’S Regulatory Law. Accordingly, this determination should be upgraded to “in place”.

On the basis of the follow-up report and the updates subsequent thereto, the UAE is of the view that elements A.1, A.2, B.1, C.1 and C.2 should be upgraded. Amendments to the DIFC laws are ready for enactment by the Ruler of Dubai to ensure that ownership and identity information for foreign companies and partnerships would be available to the competent authorities, and to provide for effective enforcement provisions to ensure availability of such information. The amendments to the DIFC laws also include provisions to ensure that complete and reliable accounting records or underlying documentation are kept consistent with international standards.

Conclusion

Based on the foregoing, the UAE believes that elements A.1, A.2, B.1, C.1 and C.2 should be upgraded as well as element C4 noting that article 27 of DTA with Poland which was signed between the two countries in 30th January 1993 has been amended in the 10th of July 2013 whereas negotiation with Romania, Indonesia and Check Republic and Republic of Singapore to amend Article 26 will be resumed with these countries. Therefore, respectfully requests that a supplementary report be prepared for the UAE.

Whereas the UAE MoF has launched, with the support of the World Bank, an Exchange of Information Unit (EIU) Program to implement exchange of tax information. The UAE is already at an advance stage to implement exchange of information and understands that exchange of information can be based on a number of legal mechanisms and implemented through different methods including exchange of information upon request, automatic exchange of information, spontaneous exchange of information, etc. which will be applied under the supervision of the World Bank until the staff are trained.

The EIU will facilitate the exchange of information with the relevant individuals and entities within the UAE.

We thank you in advance for your kind and prompt consideration of our request. Should you have any questions, please do not hesitate to contact us.

Yours sincerely,

Khalid Ali Al Bustani
Assistant Under Secretary
for International Financial Dept.

Annex 3: List of all Exchange-of-Information Mechanisms in Force

Bilateral agreements

Exchange of information agreements signed by the UAE, in alphabetical order:

	Jurisdiction	Type of arrangement	Date signed	Date in force
1	Algeria	Double taxation convention (DTC)	24/04/2001	28/11/2001
2	Armenia	DTC	22/04/2002	29/12/2004
3	Austria	DTC	23/09/2003	27/04/2004
4	Azerbaijan	DTC	20/11/2006	30/04/2007
5	Bangladesh	DTC	17/01/2011	Not in force
6	Belarus	DTC	27/02/2000	02/01/2001
7	Belgium	DTC	30/09/1996	26/06/1997
8	Bosnia and Herzegovina	DTC	18/09/2006	30/04/2007
9	Brunei Darussalam	DTC	21/05/2013	Not in force
10	Bulgaria	DTC	26/06/2007	22/01/2008
11	Canada	DTC	09/06/2002	07/01/2004
12	China, People's Republic of	DTC	01/07/1993	05/06/1994
13	Cyprus	DTC	12/02/2011	Not in force
14	Czech Republic	DTC	30/09/1996	26/06/1997
15	Egypt	DTC	12/04/1994	26/03/1995
16	Estonia	DTC	20/04/2011	29/03/2012
17	Fiji	DTC	01/08/2012	Not in force
18	Finland	DTC	12/03/1996	24/02/1997
19	France	DTC	19/07/1989	15/11/1989

	Jurisdiction	Type of arrangement	Date signed	Date in force
20	Georgia	DTC	24/11/2010	28/04/2011
21	Germany	DTC	01/07/2010	01/02/2011
22	Greece	DTC	18/01/2010	Not in force
23	Guinea	DTC	13/11/2011	Not in force
24	Hungary	DTC	30/04/2013	Not in force
25	India	DTC	29/04/1992	21/08/1993
26	Indonesia	DTC	30/11/1995	17/06/1996
27	Ireland	DTC	01/07/2010	06/07/2011
28	Italy	DTC	22/01/1995	20/11/1995
29	Japan	DTC	02/05/2013	Not in force
30	Kazakhstan	DTC	22/12/2008	30/06/2009
31	Kenya	DTC	21/11/2011	Not in force
32	Korea, Republic of	DTC	22/09/2003	04/05/2004
33	Latvia	DTC	11/03/2012	11/06/2013
34	Lebanon	DTC	17/05/1998	25/10/1998
35	Libya	DTC	01/04/2013	Not in force
36	Lithuania	DTC	30/06/2013	Not in force
37	Luxembourg	DTC	20/11/2005	07/05/2006
38	Malaysia	DTC	28/11/1995	17/06/1996
39	Malta	DTC	13/03/2006	13/08/2006
40	Mauritius	DTC	18/09/2006	20/06/2007
41	Mexico	DTC	20/11/2012	Not in force
42	Mongolia	DTC	21/02/2001	29/11/2002
43	Montenegro	DTC	26/03/2012	Not in force
44	Morocco	DTC	09/02/1999	26/09/1999
45	Mozambique	DTC	24/09/2003	04/05/2004
46	The Netherlands	DTC	08/05/2007	29/11/2007
47	New Zealand	DTC	24/09/2003	04/05/2004
48	Pakistan	DTC	07/02/1993	29/01/1994
49	Palestine Authority	DTC	24/09/2012	Not in force
50	Panama	DTC	13/10/2012	23/10/2013
51	The Philippines	DTC	22/09/2003	29/12/2004

	Jurisdiction	Type of arrangement	Date signed	Date in force
52	Poland	DTC	31/01/1993	29/01/2004
		Protocol	11/12/2013	Not in force
53	Portugal	DTC	17/01/2011	06/07/2011
54	Romania	DTC	11/04/1993	09/01/1996
55	Serbia	DTC	13/01/2013	02/07/2013
56	The Seychelles	DTC	19/06/2006	06/02/2007
57	Singapore	DTC	01/12/1995	17/06/1996
58	Slovenia	DTC	20/10/2013	Not in force
59	Spain	DTC	05/03/2006	13/08/2006
60	Sri Lanka	DTC	07/07/1992	04/05/2004
61	Sudan	DTC	15/03/2001	28/11/2001
62	Switzerland	DTC	6/10/2011	21/10/2012
63	Syria	DTC	26/01/2000	11/06/2000
64	Tajikistan	DTC	17/12/1995	29/01/2000
65	Thailand	DTC	01/03/2000	12/11/2000
66	Tunisia	DTC	10/04/1996	24/02/1997
67	Turkey	DTC	29/01/1993	29/01/1994
68	Turkmenistan	DTC	09/06/1998	24/11/1999
69	Ukraine	DTC	22/01/2003	28/02/2004
70	Uzbekistan	DTC	26/10/2007	28/09/2008
71	Venezuela	DTC	11/12/2010	28/03/2011
72	Vietnam	DTC	16/02/2009	11/10/2009
73	Yemen	DTC	13/02/2001	25/08/2001

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

Council of Ministers Resolution No. 17 of 2012

DIFC Laws Amendment Law, No. 7 of 2012

DIFC Companies Law Amendment Law, No. 2 of 2013

DIFC General Partnership Law Amendment Law, No. 3 of 2013

DIFC Limited Partnership Law Amendment Law, No. 4 of 2013

DIFC Limited Liability Law Amendment Law, No. 5 of 2013

UAE Constitution

