GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

HUNGARY

OECD

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

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

March 2015
(reflecting the legal and regulatory framework
as at December 2014)

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Hungary as well as the practical implementation of that framework.

2. Hungary is a medium-sized, structurally, politically and institutionally open economy located in central Europe. It has made the transition from a centrally planned to a market economy, and now has a diversified economy, with the services and industry sectors contributing about 95% of its GDP.

3. Hungary is actively involved in all forms of administrative co-operation for tax purposes and it is considered by its treaty partners as an important and reliable exchange of information (EOI) partner. Hungary has an extensive EOI treaty network covering 104 jurisdictions through 75 double tax conventions (DTCs), EU mechanisms for exchange of information, two Tax Information Exchange Agreements (TIEAs) and the multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention). Hungary is taking steps to renew its DTCs so as to be in line with the OECD Model Tax Convention and is also in the process of entering into additional DTCs/TIEAs.

4. The ownership information in case of private limited liability companies, public limited companies, partnerships, trusts and foundations is available to the competent authority, however, the same is not fully ensured in the cases of private limited companies, foreign companies and foreign partnerships. Since the Civil Code regulating availability of ownership information by the companies came into force only recently Hungary should monitor its implementation. Registration of companies, partnerships and foundations is carried out by Courts of Registry. There is a close co-operation between registration courts and tax administration in this process ensuring that all required information is provided and recorded. Compliance with tax filing obligations is supervised by the National Tax and Customs Administration (NTCA). Courts of Registry and the NTCA apply sanctions and take adequate enforcement measures to ensure availability of ownership information in practice. Registration and supervision of trusts is carried out by the Central Bank of Hungary. However, trust regulation was

only introduced in March 2014 and there is very limited experience with its implementation in practice. Hungary should therefore monitor its proper implementation to ensure that the relevant information is available. Hungary received 76 requests for ownership information over the period under review. There was no case reported in the EOI context where the requested information was not available. Availability of ownership information in Hungary was also confirmed by peers.

5. Accounting information in case of all relevant entities is available to the competent authority. Compliance with accounting obligations is supervised by the tax authority and by courts of registry monitoring annual filing obligations. Where deficiencies are identified sanctions and enforcement measures are always applied. Since the new rules on trusts came into force only in March 2014 Hungary should monitor their proper implementation to ensure that accounting information regarding trusts is available. Hungary received 196 requests concerning accounting information over the reviewed period. The requested accounting information was provided in all cases where the referenced transaction was actually carried out or the taxpayer was identifiable or contactable. This was also confirmed by peers.

6. In respect of banks and other financial institutions, the accounting law, AML/CFT requirements and obligations under Hungarian Civil Code ensure availability of banking information to the standards. Banks and financial institutions in Hungary are supervised by the Central Bank of Hungary. The Central Bank carries out supervisory and enforcement measures ensuring availability of the banking information in Hungary. Hungary received 31 requests for banking information over the reviewed period. There was no case where the requested banking information was not provided as was confirmed by peers.

7. Hungary's tax authorities have broad powers, including compulsory powers, to obtain information about ownership, identity and accounting during audit proceedings. All these powers can be used for exchange of information purposes as was confirmed in practice. The information available with the attorneys and lawyers is fully protected not in line with the standard and is not accessible to tax authorities. The tax administration is not required to notify the taxpayer about EOI requests received under Hungarian law with exception of providing banking information. Where information is requested from a bank the tax administration is required to notify the holder of the account of the request simultaneously with providing the requested information to the requesting jurisdiction. As this rule came into force in November 2014 and it is therefore not sufficiently tested in practice it is recommended that Hungary monitors its implementation.

8. Hungary's EOI agreements contain provisions to ensure that the information exchanged will be kept confidential. However the confidentiality

of information provided by the requesting jurisdiction is only partially ensured in practice since the taxpayer can inspect his/her file containing information obtained from the requesting jurisdiction, including the EOI request itself which is not in line with the standard.

9. Hungary has substantial experience in EOI over the last two decades. In the three year period under review (1 January 2011to 31 December 2013) Hungary received 391 requests from 34 partners. The requested information was provided within 90 days in 21% of the cases, within a period of between 91 and 180 days in 31% of the cases, within between 181 days and one year in 28% of the cases and after a year in 10% of the cases. Ten percent of requests were not responded at the date of the on-site visit. The majority of pending requests was received during the last reviewed year. Peers state that the information was generally provided in a timely manner and are overall satisfied with timeliness of Hungary's responses.

10. Hungary's competent authority for exchange of information is the Central Liaison Office (CLO) Unit situated in the Risk Management and Liaison Department of the National Tax and Customs Administration. The CLO Unit is responsible for exchange of information in the field of direct and indirect taxes. If the requested information is not in the hands of the CLO Unit the information is gathered by other tax offices. In the majority of cases the requested information is obtained by local offices directly from the taxpayer. Although processes and resources devoted to EOI are generally in place, there are certain areas where improvement is needed in order to ensure that information or status updates are provided in a timely manner in all cases.

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

12. Recommendations have been made where elements of Hungary's EOI regime have been found to be in need of improvement. Hungary's follow-up report on progress in these areas should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Hungary

13. This assessment of the legal and regulatory framework of Hungary as well as its practical implementation and effectiveness were based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference,*[1] and was prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*.[2] The assessment has been conducted in two stages: the Phase 1 review assessed Hungary's legal and regulatory framework for the exchange of information as at February 2011, while the Phase 2 review assessed the practical implementation of this framework during a three year period (January 2011 through December 2013) as well as amendments made to this framework since the Phase 1 review up to December 2014. The following analysis reflects the integrated Phase 1 and Phase 2 assessments.

14. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 15 December 2014, Hungary's responses to the Phase 1 and Phase 2 questionnaires, supplementary questions, information provided during the on-site visit in Budapest, Hungary which took place on 18-20 June 2014, other materials supplied by Hungary and information provided by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of relevant Hungary government agencies including Ministry of National Economy, National Tax and Customs Administration, Ministry of Justice and Central Bank of Hungary (see Annex 4).

1. See Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information for Tax Purposes (full text available at www.oecd.org/dataoecd/37/42/44824681.pdf).
2. See Methodology for Peer reviews and Non-Member Reviews (full text available at www.oecd.org/dataoecd/37/41/44824721.pdf).

15. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Hungary's legal and regulatory framework and its application in practice 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. In addition, to reflect the Phase 2 component, recommendations are made concerning Hungary's practical application of each of the essential elements and a rating of either: *(i)* Compliant, *(ii)* Largely Compliant, *(iii)* Partially Compliant, or *(iv)* Non-Compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the Standard (see Summary of Determinations and Factors Underlying Recommendations).

16. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum Secretariat. The 2011 Phase 1 assessment was conducted by a team of two assessors and a representative of the Global Forum Secretariat: Ms. Giovanna Corona, Tax Officer, International Relations, Department of Finance, Italy; Ms. Evelyn Lio, Tax Director (International Tax), Inland Revenue Authority of Singapore; and Mr Sanjeev Sharma from the Global Forum Secretariat. The Phase 2 assessment team consisted of Mrs. Jelena Dorohina, Head of Central Information Exchange Division, State Revenue Service, Latvia, Ms. Evelyn Lio, Tax Director (International Tax), Inland Revenue Authority of Singapore and Mr Radovan Zidek from the Global Forum Secretariat.

Overview of Hungary

17. Hungary is located in Central Europe and covers an area of 93 030 square kilometres. It is a landlocked state and share border with the Slovak Republic, Ukraine, Romania, Serbia, Croatia, Slovenia and Austria. Hungary had a population of 9.9 million in 2014[3]. Hungarian is the official language of Hungary and Hungarian Forint (HUF) is its national currency, which has been fully convertible since 1996. HUF 1 = EUR 0.003[4].

3. CIA World Factbook, accessed on 30 May 2014.
4. 1 EUR = 307.05 HUF, as on 10 December 2014, source: Central Bank of Hungary (http://english.mnb.hu/).

18. Hungary participates in a number of international organisations, including as a Member of the European Union, the Organisation for Economic Co-operation and Development (OECD), the World Trade Organisation (WTO) and International Monetary Fund (IMF).

19. Hungary has a parliamentary democracy. The four independent branches of power in Hungary are: the parliament (legislative), the government (executive), the court system (judiciary) and the office of the public accuser (i.e. attorney general). The chief of state is the President, with the Prime Minister leading the government. Hungary's Council of Ministers is elected by the National Assembly on the recommendation of the President; other Ministers are proposed by the Prime Minister and appointed and relieved of their duties by the President. The President is elected by the National Assembly for a five-year term (eligible for a second term). The Prime Minister is elected by the National Assembly on the recommendation of the President.

20. Hungary had a Gross Domestic Product (GDP) of US 130.6 billion and a GDP per capita of US 19 800 in 2013[5]. The global economic downturn, declining exports, and low domestic consumption and fixed asset accumulation, dampened by government austerity measures, resulted in an economic contraction of 6.3% in 2009. The economy rebounded in 2010 with a big boost from exports, however GDP growth remains modest with a growth of 0.2% in 2013. Unemployment remains above 10%[6]. Hungary's economy is dominated by the services industry, which contributes approximately 63% of GDP, whereas industry and agriculture contribute 32% and 5% respectively.

21. Hungary has a robust banking and financial system, which is dominated by foreign financial institutions. Hungary had 33 banks, 9 bank branches, 10 specialised credit institutions (such as Eximbank, mortgage banks) and 117 co-operative credit institutions in June 2014. It also had 443 non-bank financial institutions comprising insurers, pension funds/companies, investment funds, leasing companies and brokerage companies. The majority of the large financial institutions are subsidiaries of major foreign financial groups. The banks hold approximately 70% of the total financial system assets of EUR 98.2 billion. The Central Bank of Hungary (the Magyar Nemzeti Bank) is responsible for the conduct of the monetary policy and also oversees the appropriate functioning of the payment system.

22. The banking, insurance, securities industry and private pension funds are licensed and supervised by the Central Bank of Hungary[7]. Service

5. CIA World Factbook, accessed on 30 May 2014.
6. CIA World Fact Book, accessed on 30 May 2014.
7. In October 2013, the Central Bank of Hungary (Magyar Nemzeti Bank) took over the responsibilities of the financial supervisor, formerly known as Hungarian

providers are required to obtain licenses for formation as well as for carrying out financial activities in the money market, insurance market, mutual insurance fund market and capital market. The Central Bank of Hungary also supervises the financial services intermediaries.

Legal system

23. Hungary's legal system is based on civil law[8] with some German and Austrian influence. Hungary has a written *Constitution*, namely the Fundamental Law of Hungary CLXI of 2011 (hereinafter the Fundamental Law) which came into effect on 1 January 2012 and replaced the former Constitution from 1949. Act XXXII of 1989 created the Constitutional Court which among other things reviews the constitutionality of Hungarian laws and is not part of the ordinary judicial system. The hierarchy of legal norms comprises the Fundamental Law, acts, government decrees, and decrees of the ministers, decrees of the President of the Central Bank of Hungary and ordinances issues by local governments. The rank of international treaties in the hierarchy of legal norms is determined by the source of law promulgating them. In tax matters, derogation from the provisions of tax law is allowed on the basis of international agreements, including DTCs and TIEAs.

24. The justice system in Hungary, based on the Fundamental Law, is administered in a four-level system by the Curia, the Regional Courts of Appeals, the Regional Courts (including the Budapest Capital Regional Court) and the local courts. First instance jurisdiction in most matters rests with the local courts. Appeals against the decisions of the local courts may be submitted to the county courts (and the Budapest-Capital Regional Court), which thus function mainly as appellate courts, however, in cases specified by law (e.g. in civil cases with a minimum value of HUF 5 million (EUR 16 000) and criminal cases with a sentence up to life imprisonment) they have first instance jurisdiction. The Regional Courts of Appeals hear the appeals lodged against the decisions of the local and regional courts. The Curia ensures the uniform application of law and examines applications for the review of final judgements as extraordinary remedy.

Financial Services Authority (HFSA). The legal basis for the licensing and supervision is provided by the Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises, the Act LX of 2003 on Insurance Institutions and the Insurance Business, the Act XCVI of 1993 on Voluntary Mutual Insurance Fund, Act CXX of 2001 on the Capital Market and Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers and on the Regulations Governing their Activities.

8. Act V of 2013 on the Civil Code of Hungary.

Tax system

25. The level of taxation in Hungary is slightly above the OECD average with high proportion of indirect taxation. As of 2012, the total tax to GDP ratio was 39.2 % (including social contributions), representing ninth highest in the EU. A sharp decrease in total tax revenues between 2009 and 2011 was followed by an increase of almost two percentage points in 2012 due to a rise in indirect tax and personal income tax revenues. The total tax revenue reached EUR 38 billion in 2012.[9]

26. Residents are taxed on worldwide income, where as non-residents pay tax only on income derived from Hungarian sources. Taxable persons are treated as residents if they are incorporated under Hungarian law or have their place of management in Hungary. Business associations (including non profit business associations), groupings and European public limited liability companies, co-operative societies, trusts and foundations and other entities being resident persons are subjected to corporate tax in Hungary. A non-resident person having its principal place of business management in Hungary is treated as resident taxpayer.

27. The income of an individual is taxed with a flat rate. In 2014 the tax rate for individuals was 16%.[10] The corporate tax rate is 19% in 2014.[11] A rate of 10% can be applied to the portion of tax base below HUF 50 million (EUR 162 000) on fulfilling certain conditions. The taxable income of permanent establishments, such as branches of non-resident companies, is assessed in accordance with the rules applicable to domestic companies. Foreign legal persons not having permanent establishments in Hungary are not subject to corporate income tax on their income earned in Hungary.

28. Taxpayers, whose tax year coincides with the calendar year, are required to file their tax return not later than 31 May of the year immediately following the year to which the tax return pertains. The taxpayers whose tax year differs from the calendar year must file their tax return within 150 days following the last day of the tax year to which return pertains.

29. Dividends received by a Hungarian company are exempt from corporation tax, except for dividends distributed by a controlled foreign corporation (CFC). Capital gains realised by a shareholder resident in a non-treaty country on the sale of shares in a Hungarian real estate company are taxed at 19%. There is no withholding tax on dividends paid to non-resident

9. http://ec.europa.eu/taxtrends.
10. Taxation of income of individuals including proprietory businesses is governed by Act CXVII of 1995 on Personal Income Tax.
11. Act LXXXI of 1996 on Corporate Tax and Dividend Tax governs taxation of corporate income.

legal entity but payments to non-resident individuals attract withholding tax. With effect from 1 January 2011, no withholding tax is leviable on payment of interest or royalties to a non-resident.

30. The standard VAT rate was increased from 25 % in 2009 to the current 27 % in 2012 while a second reduced rate at 18% was introduced besides the 5% reduced rate. Since 2012 Hungary has introduced several new indirect taxes such as a tax on unhealthy food in 2011, an "accident tax" on third party liability policies, and a "cultural tax" on pornographic material in 2012. In 2013, a financial transaction duty (FTD) was introduced on all cash and bank transfer transactions at a tax rate of 0.2 % (for cash withdrawal, 0.3 %) with a cap of HUF 6 000 (EUR 20) per transaction. With the effect from August 2013, the rates were increased to 0.3 % and 0.6 %, respectively.

Overview of commercial laws and other relevant factors for exchange of information

31. The new Civil Code (Act V of 2013) is the main statute providing the legal framework for the operation of business associations in Hungary. Additional legislation is found in specific laws on registration requirements and on certain forms of doing business, e.g. the Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings, the Law on Insurance Institutions and Insurance Activities and the Law on Credit Institutions and Financial Enterprise.

32. In Hungary, representatives of legal profession (advocates, notaries, bailiffs) must work as members in a chamber, and chambers have the right to exercise professional control over their members in order to ensure that members of the profession provide services of an appropriate level.

33. Act XI of 1998 on attorneys at law governs the organisation and structure of the legal profession in Hungary. Attorneys provide services to their clients in the matter of representation and defence in criminal cases, legal consultation, the preparation and editing of legal documents and handling of money and valuables on deposit in relation to these activities. Attorneys also provide services such as tax advice, real estate agency operations and out-of-court mediation. Attorneys have a confidentiality obligation in relation to all facts and data provided to them in the course of carrying out their professional activities.

34. Notaries public perform official administration of justice as part of the State judicial system. Notaries' exclusive range of activities includes registering legal transactions, legal statements and facts in public instruments (közokirat).

35. Financial service providers and trustees are covered by AML obligations. Professionals including lawyers and accountants are often involved in providing these services. Trust services are regulated by Act V of 2013 on the Civil Code and Act XV of 2014 on Rules of trustees and their activities. Licensing of trustee services and their supervision is carried out by the Central Bank of Hungary.

36. Hungary transposed the third EU AML/CFT Directive into national law in the Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (AML/CFT Act). The act applies to the persons engaged in providing service including financial services, investment services, insurance services, as well as commodity exchange services, international postal money orders, persons operating as a voluntary mutual insurance fund, furthermore real estate agency services, auditing services, accountancy, tax consultancy services, legal counsel, notary or trustee services. They are required to undertake customer due diligence and must retain the documents specified in the law. The act provides for different supervisory bodies depending on the nature of services provided. The Central Bank of Hungary is the supervision body for the providers of financial, insurance, trustee and investment services as well as commodity exchange services, international postal money orders, and persons operating as a voluntary mutual insurance fund. The Chamber of Hungarian Auditors supervises the providers of auditing services. Competent regional bar associations are the supervisory bodies in respect of lawyers, while, for notaries public the competent branch of their association is the supervisory body. Further authorities responsible for supervision of AML obligations of other obliged entities are the financial intelligence unit, the trade licensing authority and the tax administration.

37. The fourth assessment report of MONEYVAL[12] with regard to Hungary's compliance with the Financial Action Task Force (FATF) 40 Recommendations and 9 Special Recommendations note a number of strengths in Hungary's anti-money laundering and counter-terrorist financing system, however, concerns are expressed on some important matters which relate to transparency and the international exchange of information in tax matters: Recommendation 5 (customer due diligence), Recommendation 10 (record keeping) and Recommendation 12 (designated non-financial businesses and professions). The third follow-up report adopted by MONEYVAL

12. MONEYVAL is the Council of Europe's committee of experts on the evaluation of anti-money laundering measures and financing of terrorism. The report is available on www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/HUN-MERMONEYVAL(2010)26_en.pdf.

in September 2013,[13] acknowledged positive steps taken by Hungary to remedy a number of the deficiencies identified in the fourth assessment report and, as a conclusion, Hungary was removed from the regular follow-up procedure.

Recent developments

38. On 15 March 2014, a new Civil Code (Act V of 2013 on the Civil Code) entered into force. The Civil Code regulates property and personal relations of civil persons including formation of legal entities and certain aspects of availability of ownership information (such as maintaining a register of shareholders or the establishment of a trust). The new Civil Code also incorporates provisions of Act IV of 2006 on Business Associations which was repealed by the Civil Code.

39. The AML/CFT Act has been amended several times in recent years to address, among other things, deficiencies identified by MONEYVAL and the Global Forum. The main amendments were introduced by Act LII of 2013 on the Amendment of Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing which entered into force on 1 July 2013 and by the Act XV of 2014 which entered into force on 15 March 2014. The main changes include:

- more precise definition of the beneficial owner which now covers direct and indirect ownership and is extended to senior officials in the absence of a natural person identified as a beneficial owner of a legal person;
- provision of trustee services is expressly covered by the AML/CFT Act and triggers an obligation to keep transaction records and carry out customer due diligence measures in accordance with AML obligations;
- customer due diligence measures have been slightly modified. As regards beneficial ownership, the AML/CFT Act maintains the requirement of submitting a written statement of the customer (natural person or legal person customer) if the service provider had not identified the beneficial owner on the basis of documents set out in the AML/CFT Act or on the basis of publicly available registers;
- enhanced customer due diligence measures are extended in order to provide for opening a client account, a securities account, or a securities deposit account online;

13. www.coe.int/t/dghl/monitoring/moneyval/Evaluations/follow-up%20report%204round/MONEYVAL(2013)17_HUN_4Follow-upRep.pdf.

- maximum amount of fine to be imposed has been increased concerning the financial and non-financial sector to HUF 500 million (EUR 1.6 million) and HUF 20 million (EUR 65 000) respectively.

40. The Act CXII of 1996 on Credit Institutions and Financial Enterprises was replaced by the Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises which came into effect on 1 January 2014. The new law was adopted to transpose into Hungarian law Regulation 575/2013/EU of 26 June 2013 on prudential requirements for credit institutions and investment firms and the Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV). Rules relevant for the current assessment did not change with adoption of the new law.

41. A Mutual Assistance Directive was adopted by the European Council on 15 February 2011 and came into force on 1 January 2013. The Directive was transposed into Hungarian law by Act XXXVII of 2013 on certain rules of international administrative co-operation in the field of taxes and other public burdens (EOI Act) which came into force on 21 April 2013. The act provides rules for providing administrative assistance (including exchange of information) with EU Member countries as well as with third parties pursuant to international agreements. These rules are further complemented in the field of direct taxes by Rules of Procedure 1030/2011 issued by the National Tax and Customs Administration which came into force in April 2011 (EOI Rules of Procedure). On 15 December 2014 the EOI Rules of Procedure were amended to ensure that status updates are provided in all cases where the requested information cannot be provided within 90 days.

42. In May 2014 the Hungarian Parliament adopted Act XIX of 2014 on the promulgation of the Agreement between the Government of Hungary and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA. The Act contains rules for reporting obligations of financial institutions under the Hungarian law in relation to the FATCA Agreement, rules regarding tax secrecy, sanctions and an obligation of the NTCA to report information to the US IRS on an automatic basis. The Act came into force in June 2014. Further, the Rules of Procedure 1152/2011 on the management of bank secrets and secrets concerning securities were repealed by the Rules of Procedure 1080/2014 to implement FATCA obligations and to clarify notification rules. Hungary also committed to the implementation of the Common Reporting Standard (CRS) as a member of the Early Adopters group and should start first automatic exchanges in accordance with the CRS by September 2017. For that purpose, Hungary signed the Multilateral Competent Authority Agreement on 29 October 2014 which implements the CRS.

Compliance with the Standards

A. Availability of Information

Overview

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

44. The legal and regulatory framework for the maintenance of ownership and identity information by partnerships, private limited-liability companies and public limited companies is largely in place; however, keeping of such information by the private limited companies is not sufficiently assured due to various enabling provisions in the law allowing non-maintenance of such information by companies.

45. Nominees must obtain written authorisation in order to act on behalf of a shareholder, and the fact that a nominee acts as such must be indicated in the company's share register.

46. There is no requirement for foreign companies having their place of management in Hungary to keep ownership and identity information in Hungary. The information on partners of foreign partnerships having income, deductions or credits for tax purposes or carrying on business in Hungary is not ensured by Hungarian laws.

47. Registration of all companies and partnerships is carried out by Courts of Registry. A company can start its business activity in Hungary only after registration with the Court of Registry and issuance of its tax number. There is a close co-operation between registration courts and tax administration in this process. The Court of Registry performs an automatic and manual check of the information provided. If compulsory information is missing the registration is rejected. Further, all legal entities conducting taxable activity in Hungary are required to be registered with the tax administration through the issuance of tax numbers. Compliance with tax filing obligations is supervised by the NTCA. Where a breach of legal obligation is found the Court of Registry or the NTCA applies sanctions and takes enforcement measures to ensure availability of the information. However, as the Civil Code regulating availability of ownership information by the companies and other legal entities came into force only in March 2014 Hungary should monitor its implementation.

48. Hungary allows for establishment of trusts under its domestic law. The relevant regulations came into force in March 2014. The Hungarian law ensures availability of information on trusts' settlors, trustees and beneficiaries. Professional trustees are required to be licensed and keep records of managed trusts. Non-professional trustees are required to register the trust contract with the Central Bank of Hungary. In addition, professional trustees are covered by AML obligations. Nevertheless, Hungary should monitor implementation of the new rules.

49. In Hungary, foundations can be created for public purposes only and not for the benefit of a private individual; information concerning the founders and foundation council must be maintained. A foundation enters into existence upon registration with the Court of Registry. The Court of Registry may refuse to register a foundation or initiate judicial oversight procedure which might lead to liquidation of the foundation if the information required is not provided to the Court.

50. The combination of the commercial and tax laws ensure the availability of the accounting records and the underlying documents supporting the transactions for companies, partnerships, trusts and foundations. These records are also required to be retained for at least 5 years. However, since the new rules on trusts came into force only in March 2014 Hungary should monitor their proper implementation. Compliance with accounting obligations is supervised by the tax authority and by courts of registry monitoring

annual filing obligations. The NTCA checks compliance with accounting obligations regularly during the course of tax administration and tax audits. Where deficiencies are identified sanctions and enforcement measures are always applied.

51. In respect of banks and other financial institutions, the accounting law, AML/CFT requirements and obligations under the Hungarian Civil Code ensure availability of banking information to the standards. Banks and financial institutions in Hungary are supervised by the Central Bank of Hungary and these institutions are subjected to licensing and regulatory requirements. The Central Bank carries out adequate supervisory and enforcement measures to ensure availability of the banking information. There was no case encountered during the period under review where a banking institution would not keep banking information in respect of transactions carried out through banking accounts or account balances.

52. Over the period under review, Hungary received 76 requests for ownership information, 196 requests for accounting information and 31 requests for banking information. Another 88 requests received during the reviewed period related to other types of information (such as tax residency status, taxes paid or identity information of individuals). The requested information was provided in all cases when the person in possession or control of the information was identifiable or contactable or where the referenced transaction in the case of requests for accounting and banking information actually took place (see also part C.5.1). There was no case reported in the EOI context where the requested information was not available despite legal obligation to have it available. Availability of information in Hungary was also confirmed by peers.

53. Overall, ownership, accounting and bank information is in practice available in Hungary. Effective enforcement measures and monitoring activities are taken by the supervisory bodies to ensure availability of information.

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.

54. Act V of 2013 on the new Civil Code which entered into force in March 2014 provides the legal framework for the operation of business associations in Hungary. All are entities with legal personality. The Civil Code provides for establishment of:

- general partnerships (kkt);
- limited partnerships (bt);

- private limited-liability companies (kft);
- public limited companies (nyrt); and
- private limited companies (zrt).

55. Business associations can be formed by any resident or non-resident natural persons or legal persons. These persons may join as members or acquire shares in the association.

56. Section 3:90 of the Civil Code provides restrictions on becoming members/owners of business associations. For example, a natural person can only become a member with unlimited liability in one business association at any given point of time. A general partnership or limited partnership may not be a member with unlimited liability in a business association.

57. All business associations must conclude a memorandum of association for their establishment. Also, articles of association must be adopted for public or private limited companies, whereas a charter document must be adopted for single-member business associations. The memorandum of association must be signed by all founding members or their duly authorised representative. The memorandum of association must be drawn up in an authentic instrument prepared by a notary public, or in a private document countersigned by a lawyer or the legal counsel of the founder (s. 3:95 Civil Code). Articles of association of a public limited company are required to be adopted by the general meeting.

58. In accordance with s. 3:5 of the Civil Code, the memorandum of association, in addition to other information, must contain information on:

- members of the business association, indicating their names (corporate name) and addresses (registered office), for legal persons and business associations lacking the legal status of a legal persons, their (company) registration number;
- the subscribed capital of the business association, including the contribution of each member;
- the name and address of the executive officers appointed by the members/shareholders, and of the appointed supervisory board members and auditor where applicable, and for business associations which are not legal persons, their registration number; and
- any other information required for specific business forms.

59. Standard forms of memorandum of association have been prescribed for private limited-liability companies, private limited companies, general partnerships and limited partnerships (s. 9/A CRA).

60. All business associations are obliged to be registered. The Court of Registry is the registration authority in Hungary. The foundation of a business association must be notified to the competent Court of Registry for registration and publication within 30 days after conclusion of the memorandum of association (s. 3:100 Civil Code). The business association is considered to have been established when admitted to the register of companies and terminated upon cancellation from the register of companies.

61. Any amendment to the memorandum of association must also be notified to the competent Court of Registry within 30 days from the effective date of change (s. 3:102 Civil Code).

Companies *(ToR **14** A.1.1)*

62. Hungarian law provides for the creation of two types of companies, i.e. limited companies (private limited company, zrt and public limited company, nyrt) and private limited-liability companies (kft).

Public and private limited companies

63. A Hungarian limited company has capital divided into shares and the liability of the shareholders is limited to the amount of their contributions to share capital. Accordingly, creditors of company have recourse only against the assets of company. A limited company can be established and operated as a public limited company or a private limited company. Title XIV of Book 3 of the Civil Code contains rules relating to the public and private limited companies. As of May 2014, there are 5 986 limited companies registered in Hungary. Out of these 5 883 are private limited companies (zrt).

64. A newly formed limited company can only be incorporated as a private limited company (s. 3:249 Civil Code). The private limited company cannot solicit shareholders and capital publicly. The private limited company may decide to become a public limited company and to list its shares on the stock exchange. A decision adopted by at least a three-quarters majority of the general meeting is required to change the corporate form of a limited company; such decision shall enter into effect in the case of conversion of a private limited company into a public limited company upon listing of the company's shares for trading on a stock exchange, and vice versa, upon the delisting of the company's shares in the case of conversion of a public limited company into a private limited company. The minimum share capital of a public limited company is HUF 20 million (EUR 65 000). The draft terms of formation of the company must be drawn up in an authentic instrument

14. *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information*.

and copies are certified by a notary public or a certified lawyer (s. 3:95 Civil Code). Articles of incorporation of a public limited company must be approved by the shareholders meeting before the application for entry in the Commercial Register is submitted.

65. Any limited company whose shares are listed on a stock exchange shall be recognised as a public limited company (nyrt). Any limited company whose shares are not listed on any stock exchange shall be recognised as a private limited company (zrt). A private limited company must have minimum share capital of HUF 5 million (EUR 16 000). The share capital of a public limited company cannot be less than HUF 20 million (EUR 65 000). (ss. 3:211 and 3:212 Civil Code)

Private limited liability companies

66. The provisions dealing with the private limited liability companies are contained in Chapter XIII of Book 3 of the Civil Code. These companies are also referred to as limited liability companies. As of May 2014, there are 415 565 private limited liability companies (kft) registered in Hungary.

67. Section 3:159 of the Civil Code provides that private limited liability companies are business associations founded with an initial capital consisting of capital contributions of a predetermined amount, in the case of which the liability of members to the company extends only to the provision of their initial contributions, and to other contributions set out in the memorandum of association. Unless otherwise provided, members shall not bear liability for the company's obligations. The abbreviation "kft" must be indicated in the corporate name. In the case of these companies, *inter alia*:

- the memorandum of association must contain information on the amount of capital contributed by each member and the extent of voting rights (s. 3:5(e) Civil Code);
- the capital of limited-liability company is divided into membership interest (quotas/business shares). The quota holders of a limited liability company can be individuals or any type of legal entity.
- following registration, the managing director must report, by way of electronic means to the Court of Registry, when the capital contribution of each member is paid up in full;
- one business share may be owned by several persons and these persons must be treated as a single member from the standpoint of the company; their rights may be exercised by their joint representative and the joint representative must report to the company of all changes in the person or ownership ratio of co-owners;

- the business share must only be transferred under a written contract and the memorandum of association is not required to be amended as a result of any transfer of business shares;
- the initial capital can be increased, but the existing members have preferential rights over new members;
- there can be a single member of such a company. This member can be an individual or a legal entity and there are no restrictions as to his/her residence or nationality; and
- the supreme body for the limited liability companies is the members' meeting (s. 3:188).

68. Pursuant to s. 3:168, a party acquiring business shares must notify the company within eight days in the form of a notice enclosing the sale contract, for recording the change in the register of members.

Ownership information on companies held by government authorities

69. Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (hereinafter "CRA") provides the legal framework for the foundation and registration of companies. It provides that the Regional (Budapest) Courts act as the Court of Registry and are responsible *inter alia* for the company registration proceedings and also for judicial oversight with a view to ascertain the authenticity of official company records and for the lawful operation of the company.

70. Registration proceedings are dealt with in Chapter IV of the CRA (ss. 32 to 63). According to s. 34, an application for registration must be submitted within 30 days of signature or approval of the instrument of constitution. The application must be submitted in a form appropriate to the type of company and with prescribed enclosures. Business associations must also submit an amendment notification to the Court of Registry subsequent to any amendment of the instrument of constitution and this amended instrument must also be filed (s. 51(1) CRA). The Court of Registry keeps all documents in electronic format.

71. All applications for registration and all amendment notifications must enclose various documents specified in Schedule No. 1 to the CRA. All business associations are required to file documents including the instrument of constitution, or the amendment of the instrument of constitution, and the declaration of acceptance of executive officers, supervisory board (oversight committee) members and the auditor.

72. Public limited companies must file the draft terms of formation, the prospectus approved by the Hungarian Financial Supervisory Authority, the

register of subscription of shares, minutes and the attendance sheet of the inaugural general meeting (Part II of Schedule No. 1 to the CRA).However, none of these documents contain information on the owners.

73. Private limited liability companies must file a register of members and a document containing the commitment of the person designated to subscribe the company's shares.

74. The Court of Registry, after examining the application and determining that the company has been properly founded, issues a certificate noting the corporate registration number and this number is required to be indicated on all company documents.

75. The Court of Registry keeps records related to companies in the companies register (s. 23 CRA). For all companies, the companies register *inter alia* include data: the company's registration number; the name and address of the company; the name (corporate name), home address (registered office), the company's subscribed capital, tax identification code (tax number) and the position of the persons vested with the power of representation; the statistical code of the company, information on the auditor and supervisory board, if applicable and date of publication of admission into or striking from the companies register (s. 24).

76. With respect to private limited liability companies, the companies register also has information on: the name (corporate name) and home address (registered office) of members; an indication if any member controls over 50% of the voting rights or has a qualifying holding; where applicable, the date of commencement and termination of membership of each member; an indication if there is any lien filed on a business share; and the name (corporate name), home address (registered address) and registration number of the lien holder. The ownership information kept by the companies register is required to be updated as any transfer of membership has to be reported by the company to the register (s. 3.197(3) Civil Code). Although no specific deadline is given in the Civil Code this should be done according to the Hungarian authorities in line with the principle of good governance and therefore without unnecessary delay. The companies register also has information on: the management board; an indication as to whether the transfer of shares is restricted by the company's articles of association. In case of single-member private limited companies, the name (corporate name) and home address (registered office) of the single shareholder is recorded in the companies register (s. 27 CRA).

77. For public limited companies, the companies register contains information indicating: the quantity and face value of shares broken down by share class (share category); the quantity and face value of issued convertible bonds and the quantity and face value of issued subscription bonds; and,

information about the type of management (management board or board of directors) and the method and place of publication of corporate announcements (s. 27 CRA).

78. Pursuant to s. 3:324 of the Civil Code, which implements the EU Transparency Directive[15], the acquisition of a qualifying holding in a private limited liability company or a private limited company must be reported to the competent Court of Registry within fifteen days of such acquisition. Qualifying holding means when the owner of the holding has, directly or indirectly, 75% or more of the voting rights in the controlled company. Information about persons holding a qualifying interest in or controlling over 50% of voting rights in a European limited liability company is also required to be kept in the companies register maintained by the Court of Registry.

79. All information contained in the companies register is considered public information and any member of the public has access to it (3:247 Civil Code and s. 10 CRA). The information can also be used in tax proceedings as evidencing the stated facts.

80. To summarise, the companies register contains membership (ownership) information for private limited liability companies only. Private limited companies and public limited companies are not required to file information on their ownership with the Court of Registry for the purpose of registration or later on.

In practice

81. Registration of all companies is carried out by Courts of Registry. There are 20 Courts of Registry in Hungary.[16] Each court has local jurisdiction. A company is obligated to incorporate with the Court of Registry where it will have its registered address. The registration procedure and subsequent filing with the registry is supervised by dedicated department in the Regional Court which is staffed with judges and administrative officials.

82. When setting up a business entity in Hungary, there are two means of incorporation:

- Simplified registration proceeding: a standard contract form is filled out and submitted to the Court of Registry. The completed standard

15. DIRECTIVE 2004/109/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

16. Regional Court operate as Courts of Registry. There are 19 counties in Hungary and metropolitan area of Budapest which has its own Regional Court.

contract form represents company's articles of incorporation. The use of the standard contract form ensures that all requested information is provided. The standard contract form is available for the setting up of private limited liability company, private limited company, general partnership, limited partnership, and sole entrepreneurship. The standard form in the case of private limited liability company and private limited company includes name of the company, place of incorporation, identity of members of the private limited liability company or identity of founders of private limited company, capital contribution of each member or founder and identity of authorised representative(s) of the company.

- Non-simplified registration proceeding: entities which cannot use the simplified registration proceeding are required to follow the non-simplified proceeding. The company may decide not to use the standard contract form available under the simplified registration proceeding and draft its articles of association taking into account the specific situation and individual needs of the company. This option is typically chosen by large companies whose complex structures do not fit into the standard contract form. These articles of association are subject to individual in-depth analysis and legality check by the Court of Registry. The company can be registered only if the terms of its articles of association are in conformity with the legal requirements.

83. The registration application in respect of all types of companies must include instrument of constitution containing identification of founders (in the standard contract form or company specific), appointment of executive officers and members of supervisory board. A private limited liability company must also include a register of members.

84. Since January 2008 all companies are required to file their documents with the Court of Registry electronically. The Court of Registry's registration system performs an automatic check of the information provided. If compulsory information detailed above is missing or information is obviously incorrect the registration is rejected. The Court also performs a manual check and verification of some applications using a risk based approach. In addition, the registration system is directly linked to databases of other government authorities so that the relevant data, such as the identification of company executive officers, bank account numbers or registered address are cross-checked immediately. If the registration is rejected the applicant is informed in a letter of the identified deficiencies and has 30 days to resubmit the application. About 20% of applications need to be resubmitted due to formal or substantive deficiencies such as missing signature samples, approval for licensed activities or contracts not in line with the Civil Code. In about 99% of these cases the deficiencies are remedied upon the letter from

the Court of Registry. If the required information is not provided the incorporation of the company is denied.

85. Based on Article 44 of the CRA a company can start its business activity only after its tax number has been issued. In practice, the tax number is issued after the request for registering the company is submitted to the Court of Registry. There is a close co-operation between registration courts and tax administration in this process. The Court of Registry transmits registration application to the tax authority which issues a tax number. The tax authority checks the application and if no objection is found issues the tax number which is then transmitted to the Court of Registry (please see further below). The Court of Registry subsequently informs the company about its tax number, and at the same time, enters the company data in the Companies Registry. All these steps are done electronically through shared computer system.

86. Upon approval of the registration application by the Court of Registry and by the NTCA the information provided by the company is entered by the Court of Registry into the electronic registration database usually within one day. All Courts of Registry are connected to this database which contains information regarding all companies registered in Hungary. The NTCA has a direct access to the database and its internal databases and data mining tools are linked to it.

87. Subsequent filing of changes in information contained in the companies register with the Courts of Registry is organised in similar way as submission of registration application. The provided information is automatically and manually checked for its completeness and correctness. If deficiency is identified the company is given 30 days to remedy it and sanctions apply (see section A.1.6).

88. The Court of Registry conducts desk audits of the registered entities to ensure consistency and correctness of the provided information. These audits are focused on ensuring entities' compliance with their obligations under the CRA and the new Civil Code (earlier BAA) and are mainly triggered by discrepancies in the registered information. The number of these audits performed by the Budapest Court of Registry is about 30 000 per year. Although the Courts of Registry do not perform on-site inspections of the registered entities they receive ad hoc reporting on the information contained in the registration database from government authorities such as the NTCA, licence office, citizen registry, immigration office or real estate registry and from private entities such as trading partners of the registered company, its officials or members. The Budapest Court of Registry which incorporates approximately 60% of all companies (255 000 entities) receives about 25 000 of such reports per year. Most of these reports come from government authorities. When discrepancy is identified the company is informed of it

by the Court and is required to bring the provided information in line with the factual state within 30 days. If the situation is not remedied the Court launches a judicial oversight proceeding and the company can be struck off from the register if it does not provide the requested information (see further section A.1.6).

Tax law

89. Act XCII of 2003 on the Rules of Taxation (hereinafter "ART") is the governing law for taxation in Hungary. The ART requires that all taxpayers engaged in taxable activities must have tax numbers. Provisions dealing with tax registration are contained in sections 16 to 24.

90. The law requires good co-ordination between the registration authorities and the tax authority. Pursuant to s. 17 (2) of the ART, the competent Court of Registry must transmit to the state tax authority all information about shareholders which is provided to it in applications for company registration. Similarly, the state tax authority provides tax identification numbers to the Court of Registry, and this is noted in the registration certificate. In practice, the companies' registry system is linked to the tax database and any information contained therein is continuously available to the NTCA from the tax database. Further, information required to be reported to the tax administration is automatically uploaded to the tax database itself annually by 31 January.

91. Domestic companies are obliged to file tax returns with the tax authorities; however, the tax returns do not contain any information on the ownership of the company. Ownership information is also not required to be filed with the state tax authorities to obtain the tax registration number. Certain tax positions require that the company discloses its ownership structure to the tax authority (e.g. transfer pricing, utilisation of tax losses, thin capitalisations rules and exemption of dividend payments). These tax positions deal with important aspects of domestic and international taxation and are frequent in practice. However, resulting tax reporting obligations do not ensure that information on shareholders is provided to the Hungarian tax authority in all cases since they are linked to specific conditions.

In practice

92. All legal entities are required to register with NTCA. In the case of companies this is done through the issuance of tax number by the tax authority upon the company's incorporation with the Court of Registry. Information provided to the Court of Registry upon registration or subsequently is automatically transmitted to the tax authority. In order to be incorporated, all companies must be audited by the NTCA. The NTCA will refuse

incorporation of the company where an executive officer or its member held an office or was a member of another company which has tax debt or which was involuntary liquidated by sanction or if its executive officer or member has a tax debt (s. 24/C ART). The Court of Registry rejects company's registration so long as the obstacles for its incorporation persist. Once registered all companies receive an information letter from NTCA informing the taxpayer of its obligations to NTCA which include reporting location of documents evidencing its tax liability, obligation to keep electronic receipts, to maintain cash registers (under specified conditions) or to report any activities which require licensing or approval from government authorities. The letter also informs a taxpayer about applicable sanctions in case of non-compliance.

93. Compliance with tax filing obligations is supervised by the NTCA. All returns are checked for completeness and accuracy before information contained is entered into the tax database. Further scrutiny of the provided information is carried out by the assessing officer conducting the tax assessment and investigation officers of the Intelligence department. The provided information is also automatically crosschecked with information already contained in the tax database such as information from the companies' register, information already filed with the tax administration and gathered in the process of tax assessments (e.g. identification data, ownership information contained in annual financial statements, transfer pricing documentation, bank accounts).

94. Compliance with filing obligations is also monitored by specialised software. The compliance rate of all obliged taxpayers (i.e. including companies and partnerships) with obligation to file corporate income tax return was 93% in 2011, 94% in 2012 and 94% in 2013. In the case of failure to file the tax return on time a letter containing information on the obligation to do so and the 15 day deadline is sent to the taxpayer. After lapse of the deadline sanction for non-compliance is applied (see section A.1.6).

95. The NTCA carried out 305 160 tax audits in 2011, 272 431 in 2012 and 238 605 in 2013. These tax audits are primarily focused on verification of taxpayer's compliance with tax obligations (including filing tax returns) however availability of ownership information in respect of the audited company is regularly checked (see further discussion of audits in section A.2.1 in the context of availability of accounting records). These tax audits are triggered by discrepancies in the filed information or based on the risk analysis.

96. In addition to the tax assessment audits, the NTCA performs audits focused on companies' compliance with registration and commercial law requirements. These compliance audits are carried out during the incorporation of the company, when there is a change of the chief executive or of the person having majority interest in the company, or on the initiative of the chief executive or member of the company. In 2012 the NTCA carried out

35 527 of audits during incorporation of the company and 37 194 of these audits in 2013. As a result the NTCA refused incorporation of 801 entities in 2012 and 920 in 2013. The NTCA carried out 15 359 audits upon change of chief executives or members of the company in 2012 and 26 315 of these audits in 2013. Subsequent to these audits the tax number was deleted in 687 cases in 2012 and in 1 100 cases in 2013 and sanctions under Chapter VIII ART were applied (see further section A.1.6).

97. Ownership information is available to the NTCA mainly through the tax database which is linked with the Companies' Registry. In cases where the information is not already contained there the tax administration obtains the ownership information directly from the company by using access powers under the ART. The main tax database contains information on all taxpayers registered in Hungary and includes identification of the taxpayer (such as full name, tax number, registered seat/address, date and place of registration), identification of taxpayer's representatives, identification of its members or shareholders where such information is filed with the NTCA or available to other reporting entity, records of taxpayer's business premises, bank accounts or cars. The information contained in the database includes information filed by reporting persons such as employers, insurance companies, the real estate supervisory authority, credit institutions, investment service providers, notaries, licensing authorities, car registry or registry of citizens. Ownership information can also be retrieved from tax audit reports and taxpayers' files which are also accessible to local tax auditors.

Ownership information held by companies

98. For private limited liability companies a "register of members" must be maintained by the managing directors containing the information on the name (corporate name), address (registered office) and capital contribution of each member. Any changes in shareholders and their shareholdings must be entered in the register of members by the managing director. The managing director is also obliged to submit the register of members and the updated register of members, if the data contained therein has changed, by electronic means to the Court of Registry (s. 3:197 Civil Code). No timeframe is specified within which this submission is to occur.

99. Pursuant to s. 3:245 of the Civil Code, limited companies must keep a register of shareholders including the name and the home address or registered office of shareholders, the number of shares and the percentage of control of shareholders for each series of shares. In the event of any change in the particulars of an issued share the management shall update the register of shareholders accordingly. Any data that is deleted from the register of shareholders must remain identifiable (s. 3:246(4)).

100. Shareholders can exercise their shareholders' rights only after they have been entered into the register of shareholders. However not being entered into the register of shareholders shall not affect the shareholder's right of ownership of his shares. (s. 3:246(1) Civil Code). A shareholder has to be entered in the register of shareholders upon his/her request made to the keeper of the register (s. 3:246(2)).In order to receive dividends a shareholder has to be listed in the register of shareholders at the time when the general meeting adopting the decision for the payment of dividends was held (Civil Code s. 3:262(1)). This has to be done in the case of private limited company before the beginning of the general meeting and in the case of public limited company at the latest by the second working day preceding the beginning of the general meeting (s. 3:273). The Hungarian law does not contain a requirement to report the change in ownership of shares of limited companies within a certain period to the keeper of the shareholder register. This means that a new shareholder can decide to remain unknown to the company (i.e. not being entered into the register of shareholders) till he/she decides to exercise his/her rights although legally being owner of the shares.

101. The register of shareholders must be maintained by the management board of the limited company. The management board can subcontract the keeping of the register of shareholders to a clearing house, a central depository, an investment firm, a financial institution, an attorney at law or an auditor (which are obliged persons under AML rules). In the case of public limited companies the identification of the subcontracted keeper of the register has to be published by the company on its internet homepage (s. 3:245(3) Civil Code, sl(4) Governmental Decree 67/2014. (III. 13.)). Although there is no direct requirement to physically keep the register of shareholders in Hungary the law requires that the general public shall have unlimited access to registers of shareholders and that the registers should be accessible at head office of the company or the keeper of the register continuously (s. 3:247). In the case of failure to do so the standard enforcement measures apply including the launch of the judicial oversight procedure (see further section A.1.6). This obligation gives sufficient assurance that the registers should be available in Hungary for inspection and, if requested, for exchange of information purposes.

102. Private limited companies can issue shares in dematerialised or printed form (s. 3:214(1) Civil Code). However, the shares of public limited companies can be issued in dematerialised form only (s. 3:214(2) Civil Code). Dematerialised shares are dematerialised securities whose ownership is constituted by entry in the securities account kept by the Central Depository (ss. 5(1)(29) and 140(1) CMA). The securities account can be operated only by investment firms, credit institutions and investment fund management companies operating on capital market who are covered by AML obligations (s. 140(1) CMA). Printed shares are certificates produced in a duly authorised

print-shop, which has to include (among others) the corporate name and registered office of the issuing limited company, the serial number, nominal value of the share and the name of the first holder. Printed shares can be transferred only by written contracts and the transfer has to be recorded on the share. The new shareholder can exercise shareholders' rights only after being entered into the register of shareholders, however, as mentioned above there is no deadline in which the transfer has to be reported.

103. Act CXX of 2001 on the Capital Market (CMA) is applicable to private and public limited companies irrespective of listing on stock exchange. Section 149 of this law specifies the procedure to establish the identity of holders of dematerialised securities at the request of the company issuer's or the Central Bank of Hungary, the supervisory authority. If the identification procedure is conducted by the decision of the Central Bank of Hungary, the securities intermediary is obliged to disclose to the central depository the identification data of holders of securities accounts and quantity of their shares. However, in case identification is requested by the company, disclosure of the current shareholder to the central depository cannot be made if the shareholder has not previously instructed the intermediary to report the change in ownership to the keeper of the register of shareholders.

104. The provisions of the Civil Code and the CMA ensure that information on shareholders of private limited liability companies and limited companies should be generally available to the companies. However, the law does not prescribe obligation to report changes in ownership structure of a limited company within a specified deadline to the keeper of the register of shareholders and the ownership in a company is not established by entry in the register of shareholders either. Provision of a deadline for reporting of a transfer (or mechanism to that effect such as establishment of ownership upon entry into the register) would ensure that up to date information is contained in the register of shareholders and prevent shareholders to identify themselves only upon distribution of dividends. This is not a concern in respect of public limited companies where an identification procedure can be launched and where a requirement to report any change in ownership to the keeper of the register of shareholders might lead to disproportionate difficulties or in case of private limited liability companies where change in members has to be notified to the management within eight days and entered into the register of shareholders (and subsequently reported to the Court of Registry). Nevertheless, the gap exists in respect of private limited companies. It is therefore recommended that Hungary ensures that the register of shareholders in respect of private limited companies contains updated ownership information in all cases. Hungary is aware of the issue and will initiate legislative steps to address the gap.

In practice

105. The main source of ownership information for tax purposes is the information contained in the tax database which is linked to the Companies' Registry and information obtained directly from the taxpayer. Shareholders need to be entered into the register of shareholders in order to exercise their shareholder rights. Further, the company needs to know its shareholders upon distribution of dividends and from minutes of general meetings. Identification of shareholders is also required in order to open a bank account. The company is required to provide identification of its shareholders upon request of the tax administration and the obligation to keep a shareholder register is regularly checked during tax audits. The NTCA carries out about 250 000 tax audits per year however failure to maintain shareholder register was found only in very rare cases. Subsequently, judicial oversight proceedings were launched upon report by the NTCA and the respective companies remedied their breach in all cases (see section A.1.6).

Ownership information held by service providers

106. AML obligations under the AML/CFT Act require obliged persons to maintain identity and ownership information on their clients. Obliged persons include persons who are engaged in providing financial services, investment services, insurance services, commodity exchange services, international postal money orders, operating as a voluntary mutual insurance fund, real estate services, brokering services, auditing services, accountancy (book-keeping), tax consulting services (whether or not certified), tax advisory activities under agency or service contract, or legal counsel, trustee, law or notary services (s. 1(1) AML/CFT Act). Accordingly, keepers of shareholder register (i.e. clearing house, a central depository, an investment firm, financial institution, an attorney at law or an auditor) or operators of securities accounts are obliged persons under the AML/CFT Act.

107. When a company engages a person for provision of one of the above services (e.g. in order to open a bank account or maintain a shareholder register) the obliged person (service provider) is required to conduct customer due diligence measures (s. 6 AML/CFT Act). These measures include identification of the beneficial owner of the company and obtaining its articles of association, full name and registered address (ss. 7 and 8). The beneficial owner is defined as the natural person who owns or controls at least 25% of the shares or voting rights in a legal person. In the absence of a natural person owning or controlling at least 25% of the shares, the executive officer of the legal entity is considered as beneficial owner of the company (s. 3). Service providers are required to keep customer due diligence documentation up-to-date and at least for eight years after termination of the business relationship (ss. 10(2) and 28(1)). However, effectiveness of these obligations may be

limited by absence of rules ensuring timely reporting of changes in ownership of private limited companies into the register of shareholders.

In practice

108. The AML obligations are supervised by different bodies depending on the nature of services provided. The Central Bank of Hungary is the supervisory authority for providers of financial, insurance and investment services, as well as commodity exchange services, international postal money orders, operating as a voluntary mutual insurance fund and for trustees. The Chamber of Hungarian Auditors supervises providers of auditing services. Competent regional bar associations are the supervisory bodies in respect of lawyers registered in their respective regions, while, for notaries public the supervisory body is the competent regional chambers where the respective notary is registered. The financial intelligence unit supervises persons engaged in providing real estate agency services, accountancy services, tax consultancy services and tax advisory activities. The trade licensing authority is responsible for the supervision of persons engaged in trading with precious metals, or trading in goods involving the acceptance of cash payments above HUF 3.6 million (EUR 12 000). The state tax authority fulfils the supervisory function of the persons operating a casino, a card room or engaged in organising online gambling.

109. As of July 2013, the supervised entities include 29 banks, 26 securities operators, 53 insurance providers, 10 610 lawyers, 315 notaries and about 650 tax advisors in Hungary. The supervisory authorities conducted 594 on-site visits in 2011, 1213 in 2012 and 300 from January till July 2013. During inspections of AML obligations the supervisory authorities identified 105 deficiencies in 2011, 137 in 2012 and 297 from January till July 2013. In response to identified deficiencies the supervisory authorities issued 179 warning letters in 2011, 368 in 2012 and 54 from January till July 2013 and applied financial sanction in 21 cases in 2011, in 55 cases in 2012 and in 30 cases from January till July 2013. The amount of applied sanction was HUF 10.2 million (EUR 33 000) in 2011, HUF 30 million (EUR 98 000) in 2012 and HUF 11.9 million (EUR 39 000) from January till July 2013. Several deficiencies might be addressed in one warning letter or by one application of sanction as well as one deficiency might be addressed in more than one warning letter.

Foreign companies

110. Act CXXXII of 1997 regulates branch offices and commercial representative offices of foreign registered entities in Hungary. The establishments in these forms do not have a legal personality and they acquire rights

or obligations in the name of their parent entity. Commercial representative offices are not allowed to pursue any entrepreneurial activities and in absence of sufficient nexus to Hungary, such establishments are not important for the purpose of this report. Branch offices must be recorded in the companies register maintained by the competent court of registry and they can commence business only after getting registered. They are also required to obtain an operating licence. As of May 2014, there are 678 branches of foreign entities registered in Hungary.

111. Branches of foreign companies in Hungary are obliged to obtain registration numbers from the Court of Registry. Such companies are required to file the resolution on the foundation of the branch and the details of the authorised representative along with the application. The operating capital supplied by the owner or a foreign company to the Hungarian branch is noted as subscribed capital in the companies register and any change in this subscribed capital must be reported to the competent court of registry at least once a year for the purpose of registration and publication (s. 24 CRA). The companies register maintained by the competent court registry does not contain any information with respect to the ownership of companies having branches in Hungary (s. 24).

112. According to sections 3(1)(a)(c) and 16(1) of ART, a company formed under the laws of another jurisdiction and having business premises or holding assets in Hungary or otherwise engaged in economic (production, service, manufacturing, business) operations in Hungary, must be registered with the NTCA for tax purposes if this company is engaged in activities taxable under Hungarian law. As of May 2014, there are 2 495 foreign entities registered for tax purposes in Hungary. Foreign companies must provide information *inter alia* on the date and number of the instruments of constitution (charter document, articles of incorporation, and articles of association) but there is no specific obligation to provide information on ownership of the company. Similarly, the tax returns furnished by such entities do not contain information on the ownership of the company.

113. In practice, registration of foreign companies with the Companies Registry or with the tax administration is carried out in the same way as in case of domestic companies. The same procedural steps and supervisory measures are applied.

114. A legal person is tax resident in Hungary if it is incorporated in Hungary or has its place of effective management there (s. 2(3) Act on Corporate Tax and Dividend Tax). Tax resident companies are taxed on their worldwide income. Non-resident companies are taxed on income sourced in Hungary (s. 3). The same rules as in case of domestic companies apply in respect of foreign companies having place of effective management in Hungary (and therefore being tax resident there). As stated above, tax

obligations require resident companies to provide ownership information to the tax administration in certain tax positions including transfer pricing, utilisation of tax losses and exemption of dividend payments. Although these tax positions are frequent in practice they do not ensure that ownership information is kept in all cases. Thus, companies and other bodies corporate with a sufficient nexus to Hungary, including those which are resident for tax purposes due to place of management being in Hungary, are not obliged to maintain ownership information or provide it to the authorities in all cases and thus, such information may not be available in Hungary. However, Hungary is of the view that such foreign companies need to provide data during a tax audit. Nevertheless, this obligation does not cover all foreign companies as stated above and it does not ensure that the ownership information will be actually obtained in a manner which does not restrict effective exchange of information as the foreign company is not required to maintain such information in all cases. Hungary is currently analysing the issue and will take necessary steps to address the gap.

115. The main source of ownership information for EOI purposes is the information contained in the tax database which includes information filed with the tax administration in tax returns or upon registration and is linked to the Companies' Registry. The ownership information should be available in the tax database in respect of foreign companies in certain tax positions requiring them to file ownership information (e.g. transfer pricing, utilisation of tax losses, and exemption of dividend payments). In cases where the ownership information is not available in the tax database the NTCA will approach directly the concerned company to provide the requested information using access powers under sections 48 or 87 of the ART. In addition, the NTCA conducts tax audits focused on verification of taxpayer's compliance with tax obligations (including filing tax returns) where availability of ownership information in respect of the company obliged to file such information is regularly checked. These tax audits are triggered by discrepancies in the filed information or based on the risk analysis (see further section A.1.1).

Nominees

116. A securities intermediary, a custodian or a clearing house may act as an attorney in fact on behalf a shareholder (i.e. a nominee) under written authorisation signed by the shareholder to exercise the shareholder's rights in private or public limited companies in its own name but on behalf of the shareholder (s. 151 CMA). A non-resident person is also allowed to act as a nominee if he is entitled to exercise membership rights in the company in question under the national law of his home state in his own name on behalf of the shareholder. Authorisation to act as a nominee can only be granted with respect to shares placed in a securities account that is maintained by

the nominee or which is deposited with the nominee. Securities accounts are open by the Central Depository and can be operated only by investment companies, credit institutions and brokers operating on capital market who are covered by AML obligations (s. 5(1) and 140(1) CMA). The written authorisation to act as a nominee is kept by the nominee and the person on whose behalf the nominee is acting. As of June 2014 there are 1.9 million securities accounts opened in Hungary.

117. A nominee may represent the principal shareholder of a limited company after registration in the register of shareholders in that capacity (s. 152 CMA). Pursuant to s. 153, to exercise the shareholder's rights, a nominee must expressly indicate that s/he is a representative of the actual owner of the shares. A nominee is required to reveal the identity of the shareholders he represents and must produce evidence in support of his capacity as a nominee when demanded by the limited company or the supervisory authority.

118. In practice, providing nominee services is supervised by the Central Bank of Hungary. There were 26 securities operators registered with the Central Bank in 2013. The same supervisory measures as in respect of other service providers supervised by the Central Bank apply. The Central Bank conducted 14 on-site inspections in respect of securities operators in 2011, 13 on-site inspections in 2012 and 10 on-site inspections in 2013. The Central Bank applied fine in three cases in 2011 and 2012 and in one case in 2013. The total amount of applied fine was HUF 2.7 million (EUR 8 800) in 2011, HUF 12 million (EUR 39 000) in 2012 and HUF 0.5 million (EUR 1 600) in 2013. Hungary did not receive any request over the period under review related to shares held by a nominee.

Conclusion

119. All types of domestic companies are required to keep and maintain a shareholder register. A person acquiring shares in a company is obliged by law to report the transfer of shares to the share register keeper and can exercise its shareholder rights only upon being entered into the register. However, there is no adequate mechanism ensuring that up to date information is contained in the register of shareholders which might prompt shareholders to register only when shareholder rights are to be exercised. Hungary is therefore recommended to address this issue. The shareholder register has to be accessible to the public at the registered office of the company or of the keeper of the register. Private limited liability companies are required to submit information on their members to the companies' registry with an indication if any member controls over 50% of the voting rights or has a qualifying holding. The acquisition of a qualifying holding in a private limited company must be reported to the Court of Registry within fifteen days of such acquisition. Certain tax positions (e.g. transfer pricing, utilisation of

tax losses, and exemption of dividend payments) require foreign companies to provide ownership information to the tax administration. Although these tax positions might be frequent in practice they do not ensure that ownership information regarding foreign companies having sufficient nexus with Hungary is available there in all cases.

120. The relevant legal provisions are supervised by courts of registry and the NTCA. Their implementation in practice ensures that ownership information regarding domestic companies is generally available (see further section A.1.6). As the new Civil Code came into force only recently Hungary should monitor its implementation. Over the period under review Hungary received 75 requests for ownership information regarding companies. Out of them 13 requests related to foreign companies. In 64 cases the requested information was provided in full. In one case only information already at the disposal of the tax administration was provided because the taxpayer was not contactable. In five cases the taxpayer was not identifiable in Hungary and the requesting jurisdiction was informed accordingly. Finally, five cases were pending mostly due to delays caused by the taxpayer (see further section C.5.1). No issue was indicated by peers regarding availability of ownership information in respect of companies.

Bearer shares *(ToR A.1.2)*

121. Under the Civil Code (Act V of 2013); shares can only be issued in the form of registered shares.

Partnerships *(ToR A.1.3)*

122. Under Hungarian Law partnership means a business association with legal personality. The Civil Code provides for two types of partnership; limited partnership (beteti tarsasag, bt) and general partnership (kozkereseti tarsasag, kkt). Both forms of partnership must have at least one partner with unlimited personal liability in respect of the partnership's creditors. A partner in a partnership may be a Hungarian resident or not and may be a legal or natural person. A partnership is not allowed to be an unlimited partner in another partnership, nor may it be a member with unlimited liability in a business association. As of May 2014, there are 4 595 general partnerships (kkt) and 158 490 limited partnerships (bt) registered in Hungary.

123. In a general partnership, the partners undertake to jointly engage in business operations with unlimited and joint and several liabilities and make available the capital contribution necessary for such activities (s. 3:138 Civil Code). Profits and losses are distributed among the members according to their capital contribution unless otherwise provided by the memorandum of association.

124. In a limited partnership, the members of the partnership undertake to jointly engage in business operations, where the liability of at least one member (general partner) is unlimited to the extent the obligations that are not covered by the assets of the partnership (s. 3:154 Civil Code). The general partners are jointly and severally liable for the obligations of the partnerships and at least one other member (limited partner) is only obliged to provide the capital contribution noted in the memorandum of association and is not liable for the obligations of the partnerships. Accordingly, a limited partnership must have at least one limited partner and one general partner.

125. Management of general partnerships and limited partnerships must be handled by the partner(s) entitled there unto in the capacity of executive officers.

Ownership information held by the government authorities

126. A partnership is established by drawing-up articles of association signed by all partners and certified by a notary public or a licensed lawyer. According to s. 27(1) of the CRA, for general partnerships, the companies register[17] must have information on the name (corporate name) and home address (registered office) of members (partners) and the date of commencement and termination of membership of each partner. In respect of limited partnerships, the companies register has the name (corporate name) and home address (registered office) of the general partner(s) and limited partner(s) and also the date of commencement and termination of membership of each partner (s. 27(2) CRA).

127. All partners of a general partnership must take part, in person, in the meeting of the members, which is the supreme body of the general partnership (s. 92 Act IV/2006).

128. Any change in the members of a partnership takes effect upon the amendment of the memorandum of association (ss. 3:148 and 3:102(4) Civil Code) and all amendments must be notified to the competent Court of Registry within 30 days from the effective date of change (s. 3:100(1) Civil Code).

129. Registration of general and limited partnerships is organised in the same way as for companies (see section A.1.1). The registration and subsequent filing with the registry is supervised by dedicated department in the

17. A register maintained by the courts of registry containing the records of companies and data related to companies. The information on partnerships, companies, sole proprietors, Hungarian branches of foreign companies, water management offices, court bailiffs offices and notary's offices is also available in this register (ss. 23 to 29 CRA).

Regional Court which is staffed with judges and administrative officials. There is no difference in registration procedures for general or limited partnerships. Information on general or limited partners is provided upon registration and kept updated. The Court of Registry's performs an automatic check of the information provided upon its receipt. If the provided information is incomplete or obviously incorrect the registration is rejected. The Court also performs a manual check and verification of selected applications using a risk based approach. The accuracy of information contained in the Companies Registry is further monitored by desk audits performed by the Courts of Registry and ad hoc reporting from government authorities and from private entities. The supervision of compliance with the filing obligations did not identified material deficiencies and the compliance rate is by Hungarian authorities considered high (see further section A.1.6).

Tax law

130. According to s. 2 of the Act LXXXI of 1996 on Corporate Tax and Dividend Tax, partnerships are subject to corporate tax. Further, s. 31(2) of ART oblige all taxpayers, including partnerships, to file tax returns. Partnerships engaged in taxable activities must also obtain tax numbers (s. 16 ART). They are required to submit the date and number of instrument of constitution (partnership deed) in the application seeking the number but no information on the partners need to be given.

131. Information on partners in a partnership is available to the NTCA mainly through the tax database which is linked with the Companies' Registry. In cases where the information is not already contained there the tax administration obtains the information directly from the partnership.

Foreign partnerships

132. Foreign partnerships engaged in economic activities in Hungary, if they are taxable under Hungarian law, must be registered with the NTCA for tax purposes. In order to obtain tax registration, foreign partnerships must provide information which *inter alia* includes the date and the number of the instrument of constitution (charter document, articles of incorporation). There is no specific obligation to provide information on ownership as part of this registration. Foreign partnerships earning taxable income must also file tax returns, though these do not require inclusion of ownership information.

133. There is no obligation for a foreign partnership carrying on business in Hungary to register, as companies and domestic partnerships do, with the Court of Registry. Nor are there obligations on the partnership's office/representative in Hungary to maintain information on the partners. Hungary is of the view that such foreign partnerships would require to provide information

on partners during tax audit. Therefore, Hungarian law or administrative practices do not oblige the foreign partnerships which carry business in Hungary or have income, deductions or credits for tax purposes in Hungary to provide information on their partners. The sole reliance on tax audits may not ensure availability of such information to competent authority in all cases. However, practical availability of ownership information in respect of foreign partnerships remains untested in EOI practice as Hungary did not receive any request related to foreign partnerships over the period under review.

Conclusion

134. Information on partners in a partnership established under Hungarian law is filed to the Court of Registry and is required to be updated upon change. The information is contained in the electronic Companies' Registry and publicly available.

135. The relevant legal provisions are properly implemented in Hungary to ensure that ownership information regarding partnerships is available where there is a legal obligation to maintain such information (see also section A.1.6). Over the period under review Hungary received one request for ownership information regarding partnerships and the requested information was provided. Accordingly, no peer indicated an issue in this respect.

Trusts *(ToR A.1.4)*

Domestic trusts

136. The new Civil Code introduces the concept of trust into the Hungarian law. The Civil Code stipulates general rules concerning establishment of a trust (“fiduciary asset management contract”). Further regulation is mainly contained in the Act XV of 2014 on Rules of trustees and their activities (Act on Trustees), AML/CFT Act, Act on the Rules of Taxation and Accounting Act.

137. Under a fiduciary asset management contract (a trust) the fiduciary (a trustee) undertakes to manage the assets, rights and receivables entrusted to him by the principal (a settlor) in his own name and on the beneficiary's behalf. The trust contract has to be in writing (s. 6:310 Civil Code). The right to determine the beneficiary and the conditions for the commencement and termination of the beneficiary entitlements lies with the principal. The beneficiary of the trust has to be identified in the trust contract. If the identity of the beneficiary is not yet known it may be identified also by reference to the specified range of beneficiaries however once the beneficiary is known its identification has to be available with the trustee (ss. 39 and 40 Act on

Trustees). The trustee cannot be a sole beneficiary of the trust (s. 6:311 Civil Code). The trust's assets should be kept separately from the trustee's own assets or from assets held under different trust contracts and separate ownership and accounting records shall be kept by the trustee in respect of these assets (s. 6:312). At the request of the settlor or the beneficiary the trustee is required to provide information on the managed assets, in particular, on their actual and foreseeable growth, on the individual assets managed and their value, as well as the liabilities related to these assets (s. 6:320).

Professional trustees

138. Only a private limited company or a public limited company with a registered office in Hungary, or a Hungarian branch office of a company with a registered office in another state party to the Agreement on the European Economic Area can operate as a professional trustee. Professional trustee activity is defined as a trustee activity pursued on a regular basis (i.e. a minimum two trust contracts contracted per year), or for an asset management fee or other economic benefit totalling more than 1% of the managed assets value. Professional trustees can only pursue the trust activity as its main activity and this must take place primarily in Hungary (s. 3 Act on Trustees).

139. Professional trustee services can only be provided subject to licensing and registration requirements with the Central Bank of Hungary. The license application has to be submitted in writing to the Central Bank and include articles of association of the applicant and all of its subsequent changes, the applicant's list of shareholders for private limited companies, stock register for public limited companies, identification of beneficial owners of the applicant[18], declaration of legal entities in which the applicant has a share, accounting policies and accounting procedures of the applicant, certificate of the tax authority on the no-debt taxpayer status of the applicant or official certificate on clean criminal records (with reference to bans from professions or public affairs) of persons in senior positions (s. 10 Act on Trustees). The trustee shall annually update the information provided upon licensing (s. 32(1)). As of December 2014 two professional trustee licences were issued by the Central Bank both of them in the fourth quarter of 2014.

140. The Central Bank is obliged to keep a public register of professional trustees. The register shall include the company name, address of its registered office, contact details, corporate registration number and trust license registration number (s. 13(3) Act on Trustees). The information provided to the Central Bank should be kept by it for ten years after deletion of the trustee from the register (s. 16(1)).

18. Legal person or an individual having more than 25% of share, control or voting rights, either directly or indirectly in the corporate entity trustee.

141. The professional trustee is obliged by law to keep records of trust relationships and legal statements which include:

- personal identification data of the settlor and the beneficiary;
- subject matter of the main and auxiliary services undertaken in the contract;
- eventual terms, limitation on time, place or other effects stipulated in the contract;
- place and date of the conclusion of the contract;
- legal statements, in particular the name, place and date of birth, mother's maiden name, address (hereinafter referred to as personal identification data) of the party making legal statements establishing, modifying or terminating trust contracts (ss. 39 and 40 Act on Trustees).

142. The trustee is obliged to manage the data entered into the registers of trust relationships and trust-related legal statements for ten years following the termination of the trust contract concluded with the client (s. 41(2) Act on Trustees).

143. The trustee is obliged to maintain a public website containing its articles of association, corporate registration number, tax number, organisational and operational regulations, financial report, list of its direct and indirect shareholders, corporate registration number, registered office, and the registration number under which the corporate entity trustee is incorporated in the register of trustees (s. 6 Act on Trustees).

144. The Central Bank can require the trustee to provide any information needed to verify proper conduct of trustee services and fulfilment of conditions for issuing a trustee licence (s. 32(4) Act on Trustees). If the Authority reveals breach of trustee's obligations under the Act on Trustees or other statutory instrument it may issue warning letters (including deadlines for remedial actions), suspend trustee's activities in part or in full for a definite period of time, impose a single or a repeated fine or revoke the trustee's licence (ss. 12, 34 and 35) (see further section A.1.6).

Non-professional trustees

145. A trustee not acting on a professional basis (i.e. a trustee which is not required to be licensed under the Act on Trustees) is obliged to register its trust contract with the Registry of Trust Relationships kept by the Central Bank of Hungary. The trustee is required to submit to the Registry within 30 days following the conclusion of the contract identification details of the

settlor, trustee and beneficiary as contained in the contract. This information should include in respect of a natural person name, address, place and date of birth; in respect of legal person name, registered address, registration number and contact details(ss. 19 and 20 Act on Trustees). The trustee is obliged to report changes in information provided to the Registry within eight days following the change (s. 24(1)). The provided information should be kept by the Registry for ten years after deletion of the contract from the Registry.

146. If a trustee fails to comply with his/her obligations the Central Bank can issue a warning letter setting a deadline for addressing the deficiency, obligate the trustee to terminate the trust contract or it may impose a single or repeated fine ranging from HUF 100 000 (EUR 330) to HUF 10 million (EUR 33 000) (s. 35 Act on Trustees).

147. All information submitted to the Central Bank upon licencing or registration of professional trustees, entered into the Registry of Trust Relationships or information kept by the trustee is accessible by the NTCA for the purposes of tax administration including exchange of information (ss. 29(1)(a), 42(1)(b) Act on Trustees).

AML and tax obligations

148. In addition to obligations stemming from the Act on Trustees, operating a trust triggers obligations under the AML/CFT Act and tax laws. Since March 2014 the AML obligations explicitly cover professional trustees (as defined in Act on Trustees) (s. 1(1)(n) AML/CFT Act). The AML/CFT legislation obliges service providers (including professional trustees) to undertake customer due diligence (CDD) which involves identification of their customers and the beneficial owners of their customers if the customers are acting in the name and on behalf of the beneficial owner (s. 8 AML/CFT Act). This according Hungarian authorities includes identification of the settlor and beneficiaries of the trust. Beneficial owner" in relation to a legal person (other than a legal person listed on a regulated market) means any natural person who owns or controls at least 25% of the shares or voting rights in the legal person or the natural person who has a dominant influence in the legal person (s. 3 AML/CFT Act). This definition is in accordance with the third EU AML/CFT Directive.

149. All trust contracts have to be registered with the tax administration by the trustee and receive its tax number. Upon registration of the trust the trustee is required to provide among others the following information:

- contact details of the trust including its address, address of the main place of business, the company's electronic address (website), and the place of effective management if the business association is registered in more than one jurisdiction;

- copy of the trust contract and the name (corporate name) and address (registered office) of the trustee;
- address where official documents, electronic accounting documents, records and registers are deposited, if other than the taxpayer's registered office or home address, and if accounting documents, ledgers, records and registers are stored electronically with online access, an indication thereof (s. 16 ART).

150. The trustee is the representative taxpayer of the trust and is taxed on behalf of the trust. The trust is subject to corporate income tax and in general the same rules apply as in case of taxation of companies. The trustee is required to keep records and information to substantiate its tax base and this information can be requested for EOI purposes.

Foreign trusts

151. Hungary is not a party to the *Hague Convention on the Law Applicable to Trusts and on their Recognition, 1 July 1985*. However, Hungarian residents may act as trustees or in any other roles in relation to trusts formed under foreign law.

152. Under the Hungarian registration, licensing, AML and tax obligations if a Hungarian resident manages assets under an arrangement which fulfils the general definition of a trust according to the Civil Code, obligations stipulated by Hungarian law follow. According to the Hungarian authorities these obligations are triggered by the substance of activities carried out by the resident person and not by the law under which the trust was created. However, this remains to be tested in practice since the Hungarian trust regulations came into force in March 2014.

In practice

153. The competent supervisory authority in the case of trustees is the Central Bank of Hungary which is responsible for their licensing, registration and AML obligations. The responsibility for licensing and registration of trustees is allocated to the relevant departments of the Central Bank of Hungary AML obligations are supervised by separate department within the Bank. In the short period since March 2014 two trustee licences have been issued and one request is under consideration. Accordingly there is no practical experience with trusts tax obligations yet.

154. Considering the very limited practice with the application of licensing, registration and tax obligations of trustees, which came into force only recently, it is recommended that Hungary closely monitors compliance with these obligations including the following:

- proper set up of the supervisory and enforcement authority equipped with appropriate staffing and resources adequate to its workload;
- effective application of supervisory and enforcement measures to detect and enforce compliance with record keeping and filing requirements;
- availability of information on settlors and beneficiaries of trusts operated by non-professional trustees and trusts operated by a Hungarian resident trustee of a trust created under foreign law.

Conclusion

155. Legal obligations contained in Hungarian law should ensure that information on settlors and beneficiaries of trusts administered by Hungarian resident trustees is available. Professional trustees are required to keep records of trust relationships and legal statements identifying settlor and beneficiaries in respect of each managed trust. A non-professional trustee has to register each trust contract with the Registry of Trusts Relationships and submit identification details of settlor and beneficiaries of such trust. The information has to be kept updated and available for ten years after termination of the contract.

156. Practical experience with implementation of these new obligations is very limited. Hungary also did not receive any requests for information regarding trusts during the reviewed period. In view of this it is recommended that Hungary monitors implementation of the trust regulations in practice to ensure that information on settlors and beneficiaries of trusts operated by Hungarian resident trustees is available.

Foundations *(ToR A.1.5)*

157. The Hungarian Civil Code recognises the concept of foundations and related provisions are contained in sections 74A through 74F. A foundation is a legal person under Hungarian law.

158. A foundation can be formed for serving long-term public interest[19] and cannot be formed for the principal purpose of performing economic activities. It can be formed by private persons, legal persons or unincorporated business associations. A foundation is considered established after it is registered by the Regional Court. As of May 2014, there are 27 368 foundations

19. The Civil Code does not define the term "public interest". Curia of Hungary judges the term by considering two main circumstances: *(1)* whether, or not the principal purpose of the foundation is to perform economic activities; and *(2)* whether, or not the general value judgement considers the purpose of the foundation as serving public interest.

registered in Hungary. The founder must submit the application for registration along with documents as decreed by the minister in charge of the judicial system (s. 74/A HCC). Hungarian authorities have indicated that the documents deposited with the Regional Court, amongst others, include: the charter; the certificate of each foundation council member stating that they have accepted their position as foundation council member; and a certificate stating that the foundation's property is available to the foundation in its entirety. The Regional Court updates its registry on the foundation upon the request of the foundation. As of 1 January 2011, the electronic foundation registry is open to the public.

159. The charter of a foundation must note its name, objective, assets and the manner in which they are to be used and as well as its registered seat registered address. The law does not require the charter to have information on the beneficiaries. A founder may allow any one respecting the conditions mentioned in the charter to join the foundation (open foundation). A founder is entitled to amend the charter, without causing any injury to the foundation's name, purpose and assets, however, provisions relating to the registration must be observed (s. 74B HCC).

160. The founder is entitled to designate a managing body in the charter or create a separate organisation for such purpose (s. 74C HCC). The founder is required to prescribe the composition of such a body in the charter and designate the person authorised to represent the foundation. The founder is also entitled to dismiss the managing body and appoint another body, if the activities of the managing body jeopardise the foundation's objective. However, a managing body in which the founder is entitled, directly or indirectly, to exercise a controlling influence regarding the utilisation of foundation assets may not be appointed or established. Hungarian law does not require that the founders or members of the foundation council or beneficiaries be resident in Hungary.

161. Where the foundation engages a service provider covered under the AML/CFT law, the service provider is obliged to undertake CDD which involves the identification of the customer and the beneficial owners of the customer. "Beneficial owner" in the case of a foundation means:

- where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25% or more of the property of the foundation;
- where the individuals that benefit from the foundation have yet to be determined, the class of natural person in whose main interest the foundation is set up or operates; or

- natural person(s) who exercises management control or exercise control over 25% of the property of a foundation, or who is authorised to represent the foundation.

162. Founders must be identified on the establishment of the foundation, and information concerning the members of the foundation council is provided to the registry. While information concerning the beneficiaries is not specifically provided for in all cases, foundations in Hungary may only be established for a public purpose and not for the benefit of private individuals.

In practice

163. A foundation enters into existence upon registration with the Court of Registry where it proposes to have its registered seat. The Court of Registry may refuse to register a foundation if the information required to be provided upon registration as described above is not provided. These cases are rare in practice since the applicant normally addresses the deficiencies in the prescribed deadline. The regional courts of registry are supervised by the National Judicial Authority which maintains the central foundations' registry.

164. Foundations are required to submit to the respective Court of Registry their annual financial reports and public status reports. These reports contain information on the founders, members of the foundation council and beneficiaries as well as other persons with the authority to represent the foundation. If a foundation fails to submit its annual report for one year the Court of Registry notifies the Prosecution Service for initiating judicial oversight procedure which might lead to liquidation of the foundation. There were about 300 foundations (1% of all foundations) removed from the register per year during the reviewed period, however, the statistics on how many of these foundations were involuntarily liquidated by the Court is not available. The financial report and public status report should be publicly available and are accessible on the Hungarian government portal.[20]

165. Hungary did not receive any request for information regarding foundations over the reviewed period. However, there are no indications based on information obtained from the Hungarian authorities or peers that would indicate an issue regarding availability of ownership information regarding foundations.

20. http://civil.info.hu.

Other relevant entities and arrangements

166. Under Hungarian law a number of entities in addition to companies, partnerships and foundations can be established. These include: co-operatives, associations, and European Economic Interest Groupings. All of these entities are subject to the provisions of specific legislation which allow for their establishment and other provisions dealing with the requirement of keeping information on legal ownership.

Co-operatives

167. Section 38 of the *Civil Code* defines a co-operative as an economic operator with legal personality that is established with investment fund share capital. It operates under the principle of open membership and variable capital with the objective of lending assistance to its members so as to satisfy their economic and other needs. Co-operatives are allowed to undertake business as a commodity dealer (Act CXXXVIII of 2007), insurer (Act LX of 2003) and credit institution and financial enterprises (CCXXXVII of 2013) and such co-operatives are then also subject to authorisation and supervision of the Central Bank of Hungary. The supervisory authority conducted 54 on-site inspections in 2011, 63 in 2012 and 45 from January till July 2013 in respect of co-operative credit institutions, insurers and financial enterprises. In about 15% of cases warning letters were issued to address the identified deficiencies. The amount of applied sanction in respect of credit and insurance institutions including co-operatives was HUF 1 million (EUR 3 300) in 2011, HUF 8.5 million (EUR 27 700) in 2012 and HUF 7 million (EUR 22 800) from January till July 2013.

168. The new Civil Code governs the formation, organisation structure and other issues regarding co-operatives. Co-operatives are considered established upon registration with the court of registry, which is also the judicial supervisory authority. As of May 2014, there are 4 123 co-operatives registered in Hungary. Their main activities are leasing and operating immovable property, property management and different types of activities relating to agriculture. The co-operative's members are issued share certificates containing information on the identification of the co-operative, the member and capital contributed. According to s. 46, the co-operative is required to keep a register of its members containing the member's name (corporate name) and address (registered office), the amount of capital contribution, and the date of commencement and termination of membership. It is available for inspection to any person subject to proof of concern. Investors are allowed to invest in the co-operative and are issued "investor share certificate". Hungary did not receive any request for information regarding co-operatives over the reviewed period.

European Economic Interest Groupings

169. Act XLIX of 2003 on the European Economic Interest Group (EEIG) was adopted to give effect to the European Council Regulations[21] on the EEIGs. An EEIG can be formed by companies, firms and other legal entities which have been formed in accordance with the law of a member state and which have their registered office in the EU. Companies register contain information on EEIG similar to other companies and it must contain the information on the capital subscribed by the owner of foreign company (s. 24 CRA). The information on the name (corporate name) and home address (registered office) of members and the date of enrolment of new members must also be recorded in the companies register (s. 28 CRA). As of May 2014, there are four EEIGs registered in Hungary. Hungary did not receive any request for information regarding EEIGs over the reviewed period.

Conclusion

170. Co-operatives are required to keep a register of members. The identification of the members of EEIG must be kept by the EEIG and entered in the companies' register where it is publicly available. In practice, the registration and supervision of these entities is carried out by the courts of registry in the same way is in respect of companies. The Court of Registry's performs an automatic check of the information provided. The Court also performs a manual check and verification of selected applications using a risk based approach. The courts further conducts desk audits mostly based on reporting from government authorities and private entities such as trading partners. When discrepancy is identified the company is informed of it by the Court and is required to bring the provided information in line with the factual state within 30 days. If the situation is not remedied the Court launches a judicial oversight proceeding and the company can be strike off from the register if it does not provide the requested information (see further section A.1.6). Although Hungary did not receive any request related to co-operatives or EEIGs during the period under review the practical implementation of the respective legal obligations gives sufficient assurance that the information on legal owners of these entities is available in Hungary as required under the international standard.

21. Council Regulation (EEC) No. 2137/85 of 25 July 1985 on European Economic Interest Groupings (EEIG) and European Communities (European Economic Interest Groupings) Regulations 1989 (S.I.191 of 1985).

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

171. Business associations fall within the judicial supervisory competence of the Court of Registry. Relevant enforcement provisions are contained in the CRA as well as the ART. The Court of Registry, in addition to other responsibilities, is responsible for conducting judicial oversight proceedings – ex officio or upon request – with a view to ascertain the authenticity of registers of official company records and for lawful operations of the companies (s. 1 CRA).

172. Failure to submit the application for registration of a company, a partnership, a co-operative, or an EEIG to the competent Court of Registry is punishable by a fine between HUF 50 000 (EUR 160) and HUF 500 000 (EUR 1 600) to be imposed by the Court of Registry (s. 34 CRA). Chapter V of the CRA provides for Judicial Oversight Proceedings with regard to registered entities' non-compliance with the obligations of disclosure. These proceedings, contained in sections 72 to 81 CRA, are intended to enforce the measures the Court of Registry has adopted to scrutinise registered entities with a view to ascertaining the authenticity of registers of official records. With a view to restoring lawful conditions, the competent court of registry may adopt various measures during the judicial oversight proceedings, which include, imposing fine, appoint supervising commissioners and may even terminate the entity from the records. Amongst the reasons to proceed for an official oversight are:

- the instrument of constitution or any amendment of it, or any data recorded in the companies register is found unlawful for reasons incurred before registration (s. 74(1)(a));
- the data entered in the companies register becomes unlawful for reasons incurred following registration;" (s. 74(1)(a) and (b));
- the instrument of constitution or any amendment of it, or the companies register does not contain the provisions required by the legal regulations that apply to the entity (s. 74(1)(c); and
- the entity fails to operate in compliance with legal regulations or with the provisions of the instrument of constitution pertaining to the entity's structure and operations (s. 74(1)(d)).

173. The judicial oversight procedure was launched in 70 994, 49 220 and 60 559 cases in 2011, 2012 and 2013 respectively. The oversight procedure can be launched ex officio by the Court of Registry based on desk audit or discrepancies reported to the Court by government authorities or third parties (such as ex-authorised representative or ex-member of the company). The Budapest Court of Registry which incorporates approximately 60% of all companies (255 000 entities) receives about 25 000 of such reports per year.

About 35% of the reports come from third parties. The judicial oversight procedure might be also launched on request by a prosecution office or any person with interest in correction of the information (s. 77(1) CRA).

174. According to s. 3:247 of the Civil Code, the shareholders have right to inspect the register of shareholders and may request copies of the section which pertains to them from the management board, or its representative, with which the keeper of register of shareholders must comply within five days. The inspection of register may lead to discovery of non-maintenance of updated register of shareholders. In these cases the person concerned (in most cases the former or new shareholder) files reports to the Court of Registry who sends a notice to the company to remedy the breach of its obligation and if the breach is not addressed within the deadline of 30 days the Court launches a judicial oversight procedure. As the Civil Code regulating availability of ownership information by the companies came into force only recently Hungary should monitor effective application of sanctions where failure to maintain shareholder information in accordance with the Civil Code is identified.

175. Section 81 provides measures which can be taken by the Court of Registry in case of companies' or other registered entities non-compliance (which may be imposed consecutively and may be imposed more than once):

- a notice to the entity to rectify within 30 days or be subject to sanctions;
- a fine of HUF 100 000 (EUR 330) to HUF 10 million (EUR 33 000) payable by the entity;
- overturn any entity resolution considered to be unlawful and direct that a new lawful resolution be passed;
- take over the management of the executive body of the entity and ensure lawful operation of the company is restored; or
- appoint a supervising commissioner for up to 90 days;
- liquidate the entity if deficiencies are not addressed following measures taken by the Court.

176. In practice, the courts of registry notified the registered entity to rectify breach of its obligations in 1 354 cases in 2011, 4 783 cases in 2012 and 5 610 cases in 2013. A fine was applied in 398 cases in 2011, in 1 982 cases in 2012 and in 1 591 cases in 2013. An entity was banned from further operation in 666 cases in 2011, in 1 786 cases in 2012 and in 2 019 cases in 2013. The statistics show increase in applied sanctions over the reviewed period following from increased staffing of courts of registry devoted to supervisory functions and increased co-operation with other government authorities reporting discrepancies in the filed information and actual state (see further section A.1.1).

177. The legal consequences of non-compliance with obligations under the tax law are contained in chapter VIII (ss. 165 to 174A ART). Section 172 prescribes a default penalty of up to HUF 500 000 (EUR 1 600) in respect of various defaults committed by the taxpayers. Such defaults *inter alia* are:

- late performance of compulsory notification (registration, reporting changes) or data disclosure or if the information supplied is incorrect, false or incomplete;
- not filing a tax return;
- non-compliance with obligations of notification (registration, reporting changes);
- failure to issue accounting documents or keep books and/or records prescribed by the relevant legislation or if the documents are not made out in the conformity with regulations and the books and records are incomplete or not maintained in conformity with the regulation;
- failure to comply with obligations to retain documents; and
- failure to comply with the obligation to register in due time or to file tax returns electronically.

178. Foreign companies may also be fined up to HUF 500 000 (EUR 1 600) for incorrect, incomplete or late filing or failure to file information with the tax authority (s. 172 ART).

179. The following table shows practical application of sanctions under Chapter VIII ART over the period under review.

	2011		2012		2013	
	Number of cases	Total amount of penalties (in HUF 1000)	Number of cases	Total amount of penalties (in HUF 1000)	Number of cases	Total amount of penalties (in HUF 1000)
Failure to register or report changes	1 851	158 368	1 786	64 337	2 367	76 366
Failure to file tax return	8 236	3 067 466	7 439	1 177 180	6 833	664 395
Failure to provide accounting records	6 856	598 682	8 749	616 253	5 823	443 037
Failure to provide underlying documents	37	45 303	5 950	1 344 568	3 975	954 682
Failure to retain documentation	3 919	1 223 295	3 903	3 802 088	2 919	4 856 294
Failure to file electronically	41	2 097	126	2 270	76	910

180. The Central Bank can require the trustee to provide any information needed to verify proper conduct of trustee services and fulfilment of conditions for issuing a trustee licence (s. 32(4) Act on Trustees). The Central Bank can further require the settlor or the beneficiary of the trust to make a declaration to verify trustee's compliance with its obligations (s. 33(1)). If the Authority reveals breach of trustee's obligations under the Act on Trustees or other statutory instrument it may issue warning letters (including deadlines for remedial actions), suspend trustee's activities in part or in full for a definite period of time, impose a single or a repeated fine or revoke the trustee's licence (ss. 12, 34 and 35). The fine may be imposed on the trustee or its senior officer. The maximum fine is HUF 20 million (EUR 65 000) or ten per cent of the net sales revenue of the corporate entity trustee (s. 34). As the regulation of trustees was introduced only in March 2014 there is no experience with the application of these enforcement measures in practice. Hungary is therefore encouraged to monitor their effectiveness to ensure that the information on settlors and beneficiaries of trusts operated by Hungarian resident trustees is available.

181. Hungarian law provides that a foundation is considered established only after registration with the Court. The Court can also remove the foundation from the register for various reasons mentioned in s. 74/E of the Civil Code. Statistics on how many foundations were removed from the register by the Court during the period under review are not centrally available, however, according to Hungarian authorities in total about 300 foundations (1% of foundations) were removed from the register each year during the reviewed period.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Hungarian law does not contain rules ensuring timely reporting of changes in ownership of a private limited company.	Hungary should ensure that the register of shareholders in respect of private limited companies contains updated ownership information.

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Companies incorporated out of Hungary but having place of management in Hungary, are not obliged to maintain ownership information or provide it to the authorities and thus, such information may not be available to the competent authority.	Hungary should require foreign companies with sufficient nexus to Hungary making them tax resident in Hungary, to maintain information on their ownership in Hungary.
Hungarian law and administrative practices do not ensure the availability of information that identifies the partners in a foreign partnership which carries on business in Hungary or have income, deductions or credits for tax purposes in Hungary.	Hungary should ensure that information that identifies the partners in a foreign partnership that carries on business in Hungary or has income, deductions or credits for tax purposes in Hungary, is available to its competent authority.

Phase 2 rating	
Largely compliant.	
Factors underlying recommendations	**Recommendations**
Rules governing trusts were introduced into Hungarian law in March 2014 so there is very limited experience with their application	Hungary should monitor implementation of new trust regulations in practice to ensure that the information on settlors and beneficiaries of trusts operated by Hungarian resident trustees is available.
The Civil Code containing rules on formation of legal entities and maintenance of ownership information came into force only in March 2014 and is therefore not tested in practice	Hungary should monitor maintenance of ownership information required to be kept by legal entities and effectively apply enforcement measures where such information is not kept in accordance with the Civil Code.

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)

182. The primary obligation to keep information regarding the assets and liabilities, financial position and profits and losses of businesses, non-profit organisations and other types of economic operators arises under Act C of 2000 on Accounting (the Accounting Act). This Act contains the accounting rules which are in harmony with the relevant directives of the European Communities, and with international accounting principles, and applies to all operators participating in the economy and all economic entities.

183. Chapter II (ss. 4 through 16) of the Accounting Act lays down rules relating to reporting and bookkeeping. Legal entities are obliged to prepare a financial statement on their operation and on their financial position so as to give a true and fair view of the holdings of the economic entity and contents thereof (assets and liabilities), of its financial standing and profitability. Further, s. 12 of the Accounting Act requires that legal entities keep records on a continuous basis of the events occurring in the course of their operations which pertain to their financial position and performance and must close such registers at the end of financial year in accordance with the defined rules (s. 12).

184. Legal entities must keep accounts of all economic events, the effects of which on the assets and liabilities, as well as profits are to be shown in the financial report (s. 15). The annual accounts must give a true and fair view of financial position and performance of the entity. It must contain all assets and liabilities and all revenues and expenditures for the period. Annual accounts comprise the balance sheet, the profit and loss account and the notes on the accounts (ss. 18 and 19).

185. The Accounting Act also sets out provisions relating to the contents and breakdown of the balance sheet and the profit and loss account, the annual accounts, consolidated accounts, reporting obligations, disclosure, and publication and audit. Auditing of accounting documents is required for all companies keeping double-entry books. However, auditing is not compulsory if the average net sales did not exceed HUF 300 million (EUR 977 000) on the average of the two financial years preceding the financial year under review and average number of employees in the preceding two years did not exceed 50 persons (s. 155).

186. Legal entities falling under the scope of European Union Regulation No. 1606/2002/EC[22] on the application of international accounting standards are obliged to prepare their consolidated annual accounts in accordance with such standards (s. 10 Accounting Act). Further, the Directive 2006/43/EC of the European Council requires all statutory audits of annual and consolidated accounts to be carried out in accordance with international auditing standards as adopted by the European Commission.

187. In Hungary, companies falling under the scope of Regulation 1606/2002/EC must to prepare their consolidated accounts according to International Accounting Standards as adopted by the European Commission in line with the process referred to in the same Regulation. These standards are specified in the consolidated Regulation 1126/2008/EC.

188. In Hungary, statutory audits have to be carried out in accordance with the Hungarian National Standards on Audit, which are based on International Standards on Audit (ISAs) giving some add-ons to them. Boards of directors of limited companies are responsible for the maintenance of proper books and the preparation of financial statements. The auditor appointed by the supreme body of the business association is responsible for carrying out the audit of the accounting documents as specified in the Accounting Act to determine as to whether the annual accounts are in conformity with legal requirements and whether it provides a true and fair view of the company's assets and liabilities, financial position and profit and loss.

189. The supreme body of a private limited company, the general meeting consisting of all shareholders convened at least once every year, must approve the annual accounts prepared pursuant to the Accounting Act (s. 3:109 Civil Code). Similarly, the annual report prescribed under the Accounting Act must be approved by the general meeting of a public limited company (s. 3:109 Civil Code). For a limited liability company, the financial statements must be approved by the quota holders meeting. For a partnership, the meeting of members approves the annual report prepared pursuant to the Accounting Act (s. 3:109 Civil Code).

190. Regardless of the size and type of company, the financial statements, together with auditor's report, must be deposited with the competent Court of Registry. Section 18(3) of the CRA provides that submission of the annual report to the company information service by way of electronic means constitute sufficient compliance with the obligation of deposit and publication as required under ss. 153 and 154 of the Accounting Act.

22. The regulation provides the requirements for preparing the annual and consolidated accounts by certain types of companies, banks and other financial institutions and other insurance undertakings.

191. Hungary introduced regulation of trusts into its law in March 2014. The trust's assets are required to be kept separately from the trustee's own assets or from assets held under different trust contracts and separate accounting records must be kept by the trustee in respect of these assets (s. 6:312 Civil Code). Professional trustees can operate only as companies (s. 3 Act on Trustees) and are obliged to keep accounting records in accordance with accounting rules for companies. This is confirmed by the Act on Trustees obliging trustees to comply with book-keeping and reporting obligations in respect of the managed assets (s. 8(2)). These rules should apply regardless of the law under which the trust is created. Accounting method and practice is subject to verification by the Central Bank of Hungary which is required in order to maintain a trust licence (s. 10(2)(i)). The settlor or the beneficiary have the right to require the trustee to provide records on the managed assets, in particular, on their actual and foreseeable growth, on the individual assets managed and their value, as well as the liabilities related to these assets (s. 6:320 Civil Code). Further, professional trustees have to publish their financial annual reports on their websites (although this requirement might not cover accounting records in respect of each trust contract) (s. 6(e) Act on Trustees).

In practice

192. Annual accounting records are filed with the Court of Registry and with the NTCA. Complete accounting documentation including for current year is available with the accounting entity. Compliance with accounting obligations under the Accounting Act is supervised by the tax authority (see below) and by courts of registry monitoring annual filing obligations. The tax authority carries out supervisory measures and applies sanctions as detailed below. However, there is no experience with compliance and supervision of accounting obligations of trusts as their regulation was introduced only in March 2014. According to Hungarian authorities the same supervision as in case of companies applies to trusts. In addition, proper maintenance of accounting records can be subject to inspection by the Central Bank of Hungary. Nevertheless, it is recommended that Hungary monitors implementation and effective enforcement of accounting obligations of Hungarian resident trustees of domestic and foreign trusts so that accounting records in respect of all trusts are available in practice.

Tax law

193. Taxpayers are obliged to maintain accounting documents, books and records prescribed by relevant legislation so as to contain all information regarding the tax base, the amount of tax, tax exemptions and tax allowances in such a manner that they can be used for audit and control (s. 44 ART).

According to s. 44(2) of the ART, the taxpayers are obliged to keep books and records in a manner that:

- the entries contained are substantiated by the documents prescribed in the ART, the legislation on accounting documentation system and other relevant legislation;
- all the data is included, along with relevant documentation; and
- they make it possible to control and audit the payment of taxes, the use of central subsidies and examination of underlying documents.

194. Any person managing assets under a trust contract (including non-professional trustees or Hungarian resident trustee of a trust created under foreign law) is required to register with the tax administration and is liable to tax on behalf of each of the managed trusts. The same accounting obligations as in case of other taxpayers apply including obligation to substantiate its tax base through accounting records.

195. A non-resident person with principal place of business in Hungary is treated as a resident taxpayer and subject to all the obligations arising under the Act LXXXI of 1996 on Corporate Tax and Dividend Tax (s. 2(3)). Non-resident entities whose head offices are located abroad but carry out business operations at their branches in Hungary are deemed to be taxpayers. Non-resident business associations engaged in economic activities in a place of business other than a branch and foreign registered taxpayers who are treated as resident for tax purposes are subject to the same account keeping requirements, as per the Accounting Act, as those are applicable to companies (s. 44(3) ART).

196. Failure to provide accounting documents or keep accounting books or records prescribed by the relevant tax legislation, or if these books and records are incomplete or not maintained in conformity with regulations, is subject to a fine of HUF 500 000 (EUR 1 600) or a fine of HUF 200 000 (EUR 650) in case of individuals (s. 172(1)(e) ART). In addition, any taxpayer who fails to keep records relating to the determination of fair market value or who breaches the obligation to retain accounting documentation according to specific regulations shall be subject to a penalty of up to HUF 2 million (EUR 6 500) for each failure (s. 172(16)).

197. Therefore, Hungarian law ensures that reliable accounting records are kept for relevant entities including foreign companies.

In practice

198. The NTCA is responsible for monitoring and enforcing accounting obligations under Hungarian law. The NTCA checks compliance with accounting obligations during the course of tax administration and tax audits. Tax audits adopt a risk based approach and are also carried out where there are discrepancies between information provided in the tax return and the actual facts on the ground.

199. The tax authority conducted tax audits in 305 160 cases in 2011, in 272 431 cases in 2012 and in 238 605 in 2013. As a result, sanction for failure to provide accounting documents or keep accounting books under s. 172(1)(e) of ART was applied in 6 856 cases in 2011, in 8 749 cases in 2012 and in 5 823 cases in 2013. The total amount of applied fine was HUF 598 million (EUR 1.95 million) in 2011, HUF 616 million (EUR 2 million) in 2012 and HUF 443 million (EUR 1.44 million) in 2013. Sanction under s. 172(16) of ART for failure to retain accounting documentation according to specific regulations was applied in 37 cases in 2011, in 64 cases in 2012 and in 42 cases in 2013. The total amount of applied fine was HUF 45 million (EUR 147 000) in 2011, HUF 120 million (EUR 391 000) in 2012 and HUF 119 million (EUR 388 000) in 2013.

Underlying documentation *(ToR A.2.2)*

200. Taxpayers are obliged to maintain books and records in such a way that the tax authorities can examine the underlying documents for audit and control purpose. Documents substantiating the entries in the books and records must also be kept (s. 44 ART).

201. Section 12 of the Accounting Act, obliges legal entities (including trustees) to keep records on a continuous basis for all the events occurring in the course of its operations. In addition, s. 165 requires that all economic transactions and events that result in any change in the inventories or composition of assets, or source thereof be documented. Accounting documents means all instruments drafted or issued by the entity and also all invoices, contracts, agreements, statements, credit institution certificates, bank statements, legal provisions *etc.* The data of accounting documents must be authentic, reliable and adequate, both in form and content (s. 166 Accounting Act).

202. As Hungary is an EU Member State and hence part of the intracommunity VAT system, Hungarian undertakings must further fulfil specific requirements regarding documentary evidence of transactions performed. Among other things, they must keep all documents from which intra-community flows of goods and services can be traced, and, more generally, all invoices.

203. Availability of underlying documentation in practice is supervised by the NTCA together with availability of accounting records. The same supervisory and enforcement measures apply as outlined above. Where the NTCA identified deficiencies sanctions were applied (see further section A.1.6). However no serious cases were identified by the NTCA during the reviewed period and the level of compliance with obligations to keep underlying documentation is by Hungarian authorities considered high. Nevertheless, as the legal requirement on trustees to keep accounting records including underlying documentation came into force only in March 2014 and remains untested in practice it is recommended that Hungary monitors its implementation and effective enforcement.

5-year retention standard (ToR A.2.3)

204. Accounting record retention obligations consistent with the international standard are prescribed in the commercial and tax laws.

205. All economic entities (including trustees) are obliged to retain annual account on the financial year, the annual accounts, along with the inventory, valuation, ledger statement, general ledger and other registers maintained in support of annual accounts for a period of at least ten years (s. 169 Accounting Act). The obligation to retain accounting documents underlying the accounting records is for a period of eight years. In case of organisational change, including termination without succession, measures must be taken to ensure the retention of documents at the time of the implementation of the organisational change (s. 169(4) Accounting Act).

206. For violations of the accounting rules and regulations defined in the Accounting Act, the provisions of the Civil Code concerning general liability apply. In addition, the provisions of criminal code and Act on Misdemeanour Offences also apply (s. 170 Accounting Act).

207. Taxpayers are obliged to retain all accounting documents, books and records until the term of limitation of the right of tax assessment or, in respect of deferred taxes, for five years from the last day of the calendar year in which the deferred tax is due (ss. 44 and 47 ART). The right of tax assessment lapses five years after the last day of the calendar year in which the taxes should have been declared or reported, or paid in the absence of a tax return or declaration (s. 164 ART). In specific cases set out in s. 164, the term of limitation is extended.

208. The accounting documents are required to be maintained at a place registered with the tax authority and such documents are allowed to be moved to another place for the purpose of bookkeeping and processing for the duration required, but must be presented to the tax authority within three working days on demand (s. 47 ART).

209. In the event of termination of a credit institution without succession, business documents managed by the credit institution and documents containing bank secrets may be used for archival research after 60 years of their origin (Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises 165(5)). Liquidators are required to transfer the documents of historical value to the competent archives (Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings s. 53). If the liquidator is dissolved the competent archive must take over the documents and perform the prescribed duties.

210. In practice, the NTCA has not encountered issues regarding failure to retain accounting documents for the required period. If the accounting records are not available sanctions as indicated in section A.2.1 apply.

Conclusion

211. All relevant entities in Hungary are subject to legal requirements under accounting and tax law to maintain accounting records and underlying documentation in line with the standard for a minimum of five years.

212. Hungary's legal and regulatory framework is adequately applied to ensure availability of accounting information in respect of all relevant entities with the exception of trusts, where there is a new law that has not yet been tested in practice. Availability of accounting information in Hungary has been confirmed by EOI in practice. Hungary received 196 requests concerning accounting information. The requested accounting information was provided in all cases where the referenced transaction was actually carried out or the taxpayer was identifiable or contactable. Of the 196 requests, 25 cases were pending at the date of the on-site visit. Most of these cases relate to underlying accounting information the obtaining of which requires co-operation with the taxpayer. As reported by a peer in one case Hungary failed to provide the requested accounting information. The request related to a company which already ceased to exist. Despite legal obligation to maintain the records the tax officer handling the request did not contact the liquidator or the respective archive by negligence and provided only information already at the disposal of the tax administration informing the requesting jurisdiction that the company had been liquidated (see further sections B.1.1 and C.5.1). No other peer reported an issue regarding availability of accounting information in Hungary.

213. As accounting obligations in respect of trusts are newly introduced and untested in practice it is recommended that Hungary monitors implementation and effective enforcement of accounting obligations of Hungarian resident trustees so that accounting records and underlying documentation in respect of all trusts are available in practice.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely compliant.	
Factors underlying recommendations	**Recommendations**
There is no experience with implementation of accounting obligations of trusts as regulation of trusts was introduced in March 2014.	Hungary should monitor implementation and effective enforcement of accounting obligations of Hungarian resident trustees so that accounting records and underlying documentation in respect of all trusts are available in practice.

A.3 Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

214. Section 28 of the AML/CFT Act requires all persons who are engaged in the territory of Hungary among others in the provision of financial services or in activities auxiliary to financial services, in the provision of investment services or in activities auxiliary to investment services or in insurance services to retain documents and other records obtained by them during CDD for a period of eight years from the time of entry in to the records. The obligation to undertake CDD arises in respect of any transaction for exchange of money involving a sum amounting to HUF 500 000 (EUR 1 600) or more. The obligation also applies to any series of related transactions with a combined value of HUF 500 000 or more.

215. Service providers engaged among others in providing financial services mentioned above and lawyers and notaries must keep transaction records obtained by them while carrying out CDD for at least eight years. They must also keep records of all cash transactions worth HUF 3 600 000 (EUR 12 000) or more for eight years.

216. Section 11 of Act CCXXXII of 2013 on Credit Institutions and Financial Enterprises (the Banking Act) requires that the banks and specialised credit institutions may operate in the form of limited companies or branches and the provisions of the Companies Act apply to them. Accordingly, banks

and financial institutions, including the branches of foreign banks and financial institutions are obliged to keep the records described in Section A of this report. The Banking Act also obliges the financial institutions to keep the records as per regulations. Banking Act does not explicitly provide keeping and maintenance of the transaction records of their customers. Hungary has advised that there is no special rule concerning record keeping requirements of banks; but they must comply with the rules of accounting and anti-money laundering.

217. Sections 529 and 530 of the Hungarian Civil Code provides that under a bank account contract the financial institution must assume an obligation to manage and keep records of the cash assets of the other contracting party (account holder) and among other things also furnish statements to the account holder regarding any sums debited or credited to his account as well as the account balance. This requirement would ensure the maintenance of the transaction details by the financial institutions.

218. Banks and financial institutions in Hungary are supervised by the Central Bank of Hungary and these institutions are subjected to licensing and regulatory requirements. The Central Bank conducted 90 on-site inspections in the financial sector in 2011, 99 on-site inspections in 2012 and 114 on-site inspections from January till July 2013. Deficiencies related to compliance with AML obligations were found in 29 cases in 2011, in 22 cases in 2012 and in six cases from January till July 2013. The Central Bank issued 22 warning letters in 2011, 11 in 2012 and six from January till July 2013 and applied financial sanction in nine cases in 2011, in 15 cases in 2012 and in six cases from January till July 2013. The amount of applied sanction was HUF 9.7 million (EUR 28 300) in 2011, HUF 26.7 million (EUR 87 000) in 2012 and HUF 10.5 million (EUR 34 200) from January till July 2013. Identified deficiencies related mostly to failure to update internal AML/CFT rules or their faulty application especially in respect of customer due diligence matters. However, there was no case encountered where a banking institution would not keep banking information in respect of transactions carried out through banking accounts or account balances.

219. MONEYVAL has reported that the anonymous savings passbooks issued before their prohibition in 2001 are immobilised until customer identification completed, in full conformity with EU Directive 2005/60/EC on anti-money laundering. Hungarian authorities have clarified that, in case of anonymous savings passbooks there is no account holder but a savings passbook owner and only cash transactions can be performed with these passbooks. Once the savings passbook holder wants to deposit or withdraw cash, he/she has to present in the bank, so he/she can be identified and the savings book changed to non-anonym. In March 2014, Hungary had 0.47 million anonymous savings passbooks to a total value of EUR 3.3 million. Hungary passed Law Decree No. 2 of 1989 on Savings Deposit and s. 18 of

this decree obliges the credit institution to release the money in the unrestricted bearer savings deposit to the person who first presents the passbook, but only after the holder of the passbook is identified. No new anonymous savings passbooks can be opened in Hungary[23] and for all the remaining anonymous passbooks, no transactions have been conducted since 2001, otherwise the holder of the passbook would have been identified and the account changed to non-anonym. Hungary should strengthen the measures already put in place so that information on the owners of these passbooks is available which would enable effective exchange of information should a need arise. Concerning the fact that no transactions have been conducted since 2001 with these passbooks and the low average balance of remaining anonymous deposits it is however unlikely that any exchange of information requests will be received in the future.

220. The combination of the AML/CFT laws, supervision by the Central Bank of Hungary and the Companies Law ensures the availability of bank information including all records pertaining to the accounts as well as to related financial and transactional information. Hungary received 31 requests for banking information over the reviewed period. One request was pending at the date of the on-site visit awaiting answer from the bank (see further section C.5.1). There was no case where the requested information was not provided because the requested information was not available with the bank. This was also confirmed by peers. Overall compliance with requirements to keep banking information ensures that such information is available in practice.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
Although opening of anonymous passbooks was prohibited in 2001, some pre-existing passbooks are still in existence and identity information on their holders is not available unless a transaction takes place.	Hungary should strengthen measures so that information on the holders of anonymous passbooks is available to its competent authority.

Phase 2 rating
Compliant.

23. Improving Access to Bank Information for Tax Purposes – the 2007 Progress report – available at : www.oecd.org/dataoecd/24/63/39327984.pdf.

B. Access to Information

Overview

221. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Hungary's legal and regulatory framework and its implementation in practice gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards that are in place are compatible with effective exchange of information.

222. Tax authorities have broad powers to obtain information during the control procedure, including tax audit, from taxpayers, government authorities or individuals (who are not taxpayers) in possession or control of the relevant information under the amended tax procedure rules. The tax administration can also use search and seizure powers in cases where the taxpayer obstructs the course of administration. Access to banking information is not subject to court or special administrative procedure.

223. Pursuant the EOI Act which came into force in April 2013 all these powers can be used also for EOI purposes as confirmed in practice.

224. In most cases the requested information is obtained directly from the taxpayer holding the information during tax audits. The second most frequent source of information is the tax database containing all information filed with the tax administration and gathered in the process of tax assessments (e.g. ownership information contained in annual financial statements, transfer pricing documentation). The tax database is directly linked with the Companies Register.

225. The scope of professional secrecy in the Hungarian domestic laws is absolute and the tax authorities cannot access any information available with them. Similarly, the rights available to witnesses under Hungarian domestic law are wider than contemplated under the international standards of exchange of information for tax purposes. However, there was no case during the period under review where the requested information needed to be obtained from a person who can claim protection of information and consequently there was no case when a person refused to provide the information because of its protection. Finally, the provision regulating notification of banks' customers simultaneously with providing the requested information to the requesting jurisdiction is not sufficiently tested in practice. It is therefore recommended that Hungary monitors its implementation.

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).

Hungary's competent authority

226. As of 1 January 2011 the National Tax and Customs Administration (NTCA) has been established by the integration of formerly separate Hungarian Tax and Financial Control Authority (HTFCA) and the Hungarian Customs and Finance Guard. The new organisation is intended to implement the tasks of the former authorities on a more efficient, transparent and cost efficient way using the integrated basis of the information flow.

227. The Hungarian competent authority is the Minister responsible for Tax policy (s. 2(4) EOI Act). According to s. 36(1) of the Decree[24], the Minister authorised the Head Office of the NTCA as the Central Liaison Office (CLO) for the purpose of exchange of information (s. 4(3)(8) EOI Act). According to the Internal Regulation of the NTCA (s. 17.55) the CLO is established as an organisational unit within the Risk Management and Liaison Department. The CLO Unit is responsible for administrative co-operation with competent authorities of other EU Member countries and for exchange of information with non-EU jurisdictions under EOI treaties regardless of their form. The scope of the Decree authorising the NTCA as the CLO was recently amended accordingly.

24. Decree No. 273/2010 (XII 9)- Government Regulation on the National Tax and Customs Organisation and the Designation of Certain Organs.

228. Hungary has provided a clearly defined legal regime for co-operation in tax matters with the competent authorities of the EU Member States and with non-EU jurisdiction under international treaties. Legal sources for this co-operation are available in the EOI Act and in the Act XCII of 2003 (ART). The mechanism covers the exchange of information upon request, automatic and spontaneous exchange of information and also assistance in recovery, service of documents and simultaneous controls. The competent authority treats the request received from the competent authorities of Member States of the European Union and requests under international treaties in the same way as request received from Hungarian authorities(ss. 7 and 43 EOI Act).

229. The specific rules for co-operation based on international legal instruments such as DTCs are the Acts of the Parliament transposing DTCs in the domestic law and the provisions of the EOI Act. The National Assembly adopts an Act authorising the Government of Hungary to recognise the statutory scope of DTC.

Ownership and identity information *(ToR B.1.1)*

Powers of the tax authority to gather information

230. The newly amended section 48(1) of the ART empowers the tax authorities to require the taxpayer or individuals not treated as taxpayers to disclose in a statement any data, facts or circumstances known to or shown in the records of such persons to the tax authority for the purpose of conducting the proceedings prescribed by law for the establishment and control of the tax liability, the tax base, tax allowances, the tax amount or central subsidies of a taxpayer who was or is party to a contractual relationship with such persons.

231. Notion of taxpayer is defined by sections 3(1) and 6(1) of the ART. Under these provisions, individuals or non-individuals are to be deemed taxpayers, if they pursue any kind of taxable economic activity. Section 16(1) of the ART provides that taxable economic activity can be pursued by a taxpayer having registered with the tax office. Hungarian authorities are of the view that, a person pursuing taxable economic activity without being registered by the tax office can be subject to tax audit, even if his taxable economic activity is pursued in breach of s. 16(1) of the ART. It appears that the definition of "taxpayer" is broad enough to encompass those persons that would be in possession of information in the context of a request for exchange of information. In addition, a statement of information can be requested from individuals who are not Hungarian taxpayers (s. 48(1) ART).

232. Pursuant to s. 48(2) of the ART, the tax authorities can also instruct a private individual to give testimony on any data, facts or circumstances known to or shown in records of such private individual to enable the tax

authority to establish and control the tax liability, the tax base, tax allowance, the amount of central subsidy of another taxpayer who was or is party to a contractual relationship with such private person.

233. Tax authorities are empowered to carry out control procedures (s. 71(1) ART). Jurisdiction of the state tax authorities is set out in s. 72 of the ART. It requires them to handle matters including all cases relating to tax and central subsidies. The state tax authority must conduct audits and perform posterior tax assessments.

234. Sections 86 through 119 of the ART deals with powers under control procedure. Section 86(1) note the objectives of control as:

> In order to combat attempts to evade taxes and any unlawful activity for claiming central subsidies and tax refunds, the tax authority shall conduct regular audits of taxpayers and other persons involved in the taxation system. The objective of audits is to enforce the provisions of tax laws and other relevant legislation and detect any violation or infringement of these regulations. The tax authority shall investigate the facts and circumstances of any alleged violation or infringement of tax regulations and gather data and information as evidence to support such allegations in the ensuing proceedings.

235. Control measures include, audit of tax returns (including simplified control), general audit of compliance with tax obligations, requesting data and information for verification of authenticity of economic event and re-audit of previously audited tax periods (s. 87 ART). The basis of selection of taxpayers for auditing is specified in ss. 89 and 90 of the ART and detailed rules for the selection process for the purpose of risk analysis must be laid down in instructions from the director of the state tax authority.

236. Based on sections 7 and 43 of the EOI Act the NTCA is empowered to use its information gathering measures to obtain the requested information for EOI purposes as in domestic cases (see further section B.1.3).

237. According to s. 53 of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, any facts pertaining to case can be verified by a witness testimony. But such witness testimony can be taken in the control or audit proceedings.

238. The main sources of ownership information for the purposes of tax administration are:

- the tax database – all information filed with the tax administration and gathered in the process of tax assessments (e.g. ownership information contained in annual financial statements, transfer pricing documentation);

- the Companies Register – ownership information on companies and partnerships;
- the taxpayer or third party;
- other government authorities such as the Licence Office, Register of Foundations, Register of Citizens, Register of Real Estates or Register of Cars;
- public sources.

239. Over the period under review, the requested information was obtained directly from the person holding the information in about 80% of requests. The most common way to obtain the information is tax audit under s. 87 of the ART. The other ways of gathering the requested information include accessing internal databases, requesting data from other authorities or entities (e.g. banks, address record office, office of immigration and nationality) or summoning the taxpayer to provide a statement. These other ways can be also used during a tax audit. Although the NTCA can use all its domestic information gathering powers the use of tax audit is the most frequent way as it allows the tax auditor to request the information from all sources (including third persons) and directly apply compulsory powers if necessary. Most of the requests where a response was not provided within 90 days related to requests where information was obtained directly from the taxpayer through a tax audit. The main difficulties Hungarian authorities are confronted with during tax audits are if the holder of the information is unavailable or obstructs exercise of the tax audit (e.g. avoids compulsory notification, does not co-operate, denies existence of the documents or refuses conclusions of the audit). In these cases the NTCA can use compulsory powers granted under the ART (e.g. subpoena or search and seizure) nevertheless their use cannot remedy negative impact of this behaviour on timeliness of obtaining the requested information. Given the level of complexity of a request and availability of the information the tax audit might be avoided in certain cases and used only when information cannot be obtained by less time consuming and invasive ways (such as by broader use of the tax database, public information sources or by requesting information statements). If the requested information cannot be obtained from one source the tax auditor should try to obtain the information from alternative sources (such as service providers or government bodies). Hungary is therefore recommended to monitor use of information gathering powers for EOI purposes so that the requested information is obtained in all cases in an effective way (see further C.5.1).

Accounting records (ToR B.1.2)

240. The tax authorities have powers to obtain information about banking transactions from banks. Accounting information available with the taxpayer can be accessed during the tax audits.

241. In practice, accounting information (except for annual accounting reports which are available in the tax database) is obtained from the taxpayer by the local tax authority during tax audits.

242. To summarise, state tax authorities have wide ranging powers (including the compulsory powers discussed below) for the purposes of audit of taxpayers. They can obtain the information from the banks and also ownership information on relevant entities. They also have powers to obtain accounting records for all relevant entities and arrangement. While this power can be used during the control or audit procedure only, Hungarian authorities have advised that for meeting the request of information from the foreign tax authorities, the NTCA can use all its domestic powers including a tax audit based on the EOI Act. This has been confirmed in practice.

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

243. The powers described above make reference to "tax liability", "taxpayer", "tax allowances", which are terms generally limited to Hungarian tax liability, taxpayers and tax allowances. The rules do not specifically state that these powers can be used for exchange of information purposes, and so on their face appear to require that the Hungarian tax authorities have an interest in the information for their own tax purposes. Hungary takes the view that the obligations imposed by its EOI treaties to exchange information for tax purposes are transposed to domestic law by the Acts of the Parliament giving effect to the treaties. Accordingly, all of the powers at the disposal of Hungarian competent authority for domestic purposes are also available for the purpose of exchange of information under its EOI instruments.

244. In this regard, Hungary's EOI treaties constitute international obligations, and Article Q of the Fundamental Law of Hungary provides that

> (2) Hungary shall ensure that Hungarian law is in conformity with international law in order to comply with its obligations under international law.
>
> (3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall be incorporated into Hungarian law upon their promulgation by laws.

245. In addition, the Act on the General Rules of Administrative Proceedings and Services (s. 27) provides:

> Where the Republic of Hungary has an agreement for mutual administrative assistance with any State, or if there is reciprocity existing between the States, or it is permitted under multi-lateral international agreement, the authority may contact a foreign authority to request legal assistance according to Subsection (1) of Section 26, and shall fulfil any request for legal assistance received from abroad.

246. Finally, s. 5(5) of the ART allows for derogations from the Act based on international law in the field of taxation as follows:

> Above and beyond the provisions set out in Subsection (1), any derogation from this Act shall be allowed solely on the basis of Community legislation, international treaties promulgated by an Act or government decree, or under the principle of reciprocity. Reciprocity shall be determined jointly by the minister in charge of taxation and the minister on charge of foreign policies.

247. In April 2013 the EOI Act came into force. The Act clarifies in chapter V dealing with international tax conventions[25] that the NTCA should in order to respond to EOI requests take information gathering measures as provided by Hungarian law for domestic cases:

> In the interest of obtaining all information necessary for meeting its obligation to cooperate, the competent authority shall take all possible measures within its own competence or under a domestic mutual assistance (request) that it would take in the interest of carrying out a similar domestic mutual assistance (request) (s. 43(2)).

248. Hungary has engaged in international co-operation in tax matters for many years, and no peer indicated that any problem in this regard had arisen. In light of the foregoing, it is clear that Hungary is able to exercise its domestic powers for information exchange purposes under its international agreements.

249. A tax period is considered closed generally five years after its end. Although the tax period is closed for Hungarian tax purposes (i.e. tax in

25. International tax convention is defined as any convention for the avoidance of double taxation concluded between Hungary an another State, as well as any bilateral or multilateral tax information exchange agreement and any international agreement regulating administrative assistance in tax matters, promulgated in a legislative regulation (s. 4(3) EOI Act).

Hungary cannot be levied) the NTCA can provide information which is already at its disposal. The possibility of obtaining information directly from the taxpayer or a third party after lapse of this five year period has not yet been tested in practice. According to the Hungarian authorities they can request the information from the taxpayer even when the tax period is closed as Hungary does not require domestic tax interest to exercise its information gathering powers for EOI purposes. As this is not tested in practice Hungary should monitor this issue to ensure that it can use its information gathering powers also in respect of closed tax periods if requested to do so under an EOI instrument.

250. In practice, Hungary received three requests over the period under review where the requested information related to a person which had no nexus with Hungary for tax purposes. Most of these requests related to banking information. The requested information was provided in all cases and no issue of domestic tax interest was indicated by peers.

Compulsory powers *(ToR B.1.4)*

251. Failure to file a formal statement or unlawfully refusing to testify or obstructing an inspection or failure to appear or co-operate in tax proceedings invites monetary penalties. Individual taxpayers may be fined up to HUF 200 000 (EUR 650), whereas other taxpayers can be asked to pay HUF 500 000 (EUR 1 600) (s. 172 ART). Sanction for failure to file a formal statement or for refusing to co-operate in tax proceedings was applied in 22 cases in 2011, in 40 cases in 2012 and in 27 cases from in 2013. The total amount of this sanction applied was HUF 5.9 million (EUR 19 000) in 2011, HUF 8.1 million (EUR 26 400) in 2012 and HUF 2.1 million (EUR 6 800) in 2013. Sanction for failure to appear or obstructing tax inspection was applied in1 692 cases in 2011, in 2 567 cases in 2012 and in 2 369 cases in 2013. The total amount of this sanction applied was HUF 454.3 million (EUR 1.5 million) in 2011, HUF 576.7 million (EUR 1.9 million) in 2012 and HUF 456.6 million (EUR 1.5 million) in 2013.

252. During the control procedure involving inspection at the office of taxpayers, the tax inspector is authorised to inspect and impound the documents, registers and other instruments. Tax inspector also has powers to enter any room for inspecting business operations, request information from the taxpayer, his representative or employees and interview other persons.

253. Sections 101 to 103 set out the special measures which may be employed by the tax authority in control procedures (audits of taxpayers). A taxpayer, his representative or employee can be legitimately subpoenaed to attend in person. In case of failure to attend without reasonable cause, the director (tax authority) can order arrest after obtaining approval from the

public prosecutor's office (s. 102 ART). Tax authorities can also carry out search and seizure if it is reasonably presumed that the taxpayer is concealing any physical evidence of importance pertaining to tax liability, declaration, invoicing, document storage, recording (bookkeeping) obligations or is attempting to cover up the true circumstances of his operations (s. 103 ART). These measures can be used also for exchange of information purposes where domestic powers can be used (see further above). Although there are no detailed statistics available these measures are used in extreme cases which are not frequent and serve more as a deterrent factor.

Secrecy provisions *(ToR B.1.5)*

Access to bank information

254. Provisions dealing with bank secrecy are set out in ss. 160 to 166 of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprise (the Banking Act). Bank secrets are defined as *all facts, information, know-how or data in the financial institution's possession on customers relating to the person, data, financial standing, business activities, management, ownership and business relationships as well as balance and money movements on the account of a customer carried by the financial institution as well as to his contracts entered into with the financial institution shall be construed as bank secrets* (Banking Act s. 160). Any person who receives financial services from the financial institution is considered as a customer of the financial institution.

255. Bank secrecy is not absolute and is subject to certain exceptions, including where the law grants exemption or if so requested by the customer. Section 161(2) specifies various authorities to whom the information disclosure will not be a violation of the obligations of banking secrecy. These authorities include the tax authorities when they are checking compliance with tax laws[26].

256. Financial institutions must provide information and cannot cite obligations of secrecy when the tax authority or supervisory authority makes a written request for information in order to fulfil the written requests made by non-resident authorities pursuant to an international agreement or partnership for co-operation, if the request contains a confidentiality clause signed by the non-resident authority (s. 161(3) Banking Act).

26. Section 161(2)(h) refers to "tax authorities, customs authorities, and social security agencies in their procedures to check compliance with tax, customs and social security payment obligations for the enforcement of an enforcement order issued for such debts and for the recovery of any provisions that had been claimed and received unlawfully".

257. Written requests for information from the authorities must indicate the customer or the bank account about whom or which the agencies or authorities are requesting the disclosure of banking secrets as well as the type of requested data and the purpose of the request (s. 161(4) Banking Act).

258. The entities authorised to receive information must use such information solely for the purpose indicated in advance (s. 161(6) Banking Act). In addition, the entities requesting the information (tax authorities) must inform the customer affected on any disclosure of data (s. 163(2)) (see further section B.2).

259. The provisions of the Banking Act, in particular s. 161(3), indicate that bank secrecy in Hungary can be overridden in certain circumstances, including when the tax authorities makes a written request for information in order to fulfil the written requests made by non-resident authorities pursuant to an international agreement or partnership for co-operation, if the request contains a confidentiality clause signed by the non-resident authority. Therefore, the carve out allows obtaining banking information for international information exchange purposes. In practice the EU template request contains an inbuilt confidentiality clause which needs to be confirmed by the requesting competent authority when sending the request. In case of requests from non-EU jurisdictions the Hungarian authorities indicated that a specific confidentiality clause is not required to be included in the request letter if the respective EOI agreement contains confidentiality provisions in line with Article 26(2) of the Model DTC or Article 8 of the Model TIEA and the requesting competent authority states that the request is made in accordance with the agreement. None of Hungary's EOI partners indicated that Hungary requires an additional confidentiality statement when banking information is requested in order to provide the information.

260. In practice, banking information is obtained pursuant to the internal Rules of Procedure no. 1080/2014 issued by the President of NTCA on the management of bank secrets and secrets concerning securities. The tax authority sends a written request to the bank indicating the name or the bank account of the taxpayer concerned, the requested information and the purpose of the request. There is no restriction on types of banking information which can be provided. As for the purpose of the request the tax administration must only indicate whether the information is relevant for tax assessment, tax recovery procedures or for a criminal tax investigation.

261. According to the Hungarian authorities, if the person holding the account can be identified there are no issues encountered in obtaining information from banks and there was no case during the period under review where a bank refused to provide the requested information. Hungary received 12 requests where the taxpayer was identified only by the name and four

requests where only bank account number was indicated to identify the taxpayer. In all cases the requested banking information was provided.

262. Hungary received 31 requests for banking information during the period under review. The requested banking information was provided in 22 cases and one request was awaiting response from the bank at the date of the on-site visit. In the remaining eight cases the requested information was not provided because there was no bank account opened in the name of the indicated taxpayer, the request contained mistakes and clarification has not yet been provided, the taxpayer concerned was not identified (not even by the account number) or the referenced transaction was carried out only through cash payments. In all these cases the requesting jurisdiction was informed about reasons why the banking information was not provided.

Professional privilege

263. Act XI of 1998 on Attorneys at Law governs the organisation and structure of the legal profession in Hungary and its bar association. Section 8 deals with the confidentiality and provides:

- unless otherwise prescribed by law, an attorney is bound by confidentiality with regard to all information about which he gains knowledge in the course of his professional duties;
- this obligation continues to obtain after he has ceased to function as an attorney in the given matter;
- confidentiality pertains to all of the documents prepared by an attorney and all other documents in his possession that contain any fact or datum subject to confidentiality;
- an attorney may not disclose any document or fact pertaining to his client in the course of an official inquiry conducted at the attorney's office, but he may not obstruct the proceeding of the authority; and
- confidentiality applies mutatis mutandis to law firms and their employees as well as legal bodies and their officers and employees.

264. The scope of confidentiality is very broadly defined, as it applies to "all information about which attorney gains knowledge in the course of his professional duties and all of the documents prepared by him and all other documents in his possession". This broad scope is of concern as attorneys in Hungary, in addition to providing legal advice and representing clients, prepare contracts and other documents and assist with the formation of companies and other corporate matters. They may provide consultancy in the areas of tax, finance and commerce and may also provide corporate headquarters services. Inability to access any information held by professionals

creates a potential gap in the availability of information to the competent authority. Additionally, the professional cannot be required to testify in a case, considering the provisions of s. 53(3)(b) of the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services.

265. A professional privilege also exists for auditors, who must maintain confidentiality in respect of facts, data and business information obtained in the course of their activities (s. 157 Accounting Act). Act LXXV of 2007 on the Chamber of Hungarian Auditors, the Activities of Auditors and on the Public Oversight of Auditors (Act on Audit) contains confidentiality provisions[27] similar to Attorney Act. Duty of confidentiality, though, can be overridden for purposes including for the purpose of investigating conducted under AML laws[28] but not for the purpose of exchange of information or any

27. Section 66 of the Act provides that*:* Registered statutory auditors and audit firms shall treat all data and information, professional and business secrets (hereinafter referred to collectively as "secret") obtained in the course of carrying out statutory audits under strict confidentiality and professional secrecy.

28. Section 67 of the Act on Audit provides that: The obligation of secrecy shall not apply to the cases when data or information is disclosed within the framework of the Chamber's quality assurance system, and to the extent necessary for the purposes of investigations conducted pursuant to the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, and for the purposes of disciplinary proceedings conducted by the Chamber's disciplinary committee, or within the framework of and to the extent necessary for public oversight functions for the purpose of quality control or disciplinary proceedings, nor to the transfer of audit working papers to bodies handling quality assurance review, regulatory quality control, to persons appointed to discharge the duties conferred under the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, to the parties to disciplinary proceedings, or to the authority or authorities responsible for public oversight. To this end the bodies handling quality control, the persons appointed to discharge the duties conferred under the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, and the parties to disciplinary proceedings, and the authority or authorities responsible for public oversight shall be subject to the same level of obligation of secrecy as registered statutory auditors and audit firms. The obligation of secrecy shall not apply to the cases when a registered statutory auditor or audit firm, whose appointment to carry out statutory audits is terminated, transfers data and information to the registered statutory auditor or audit firm designated or appointed by the audited entity to carry out statutory audits to the extent necessary to discharge their obligation to provide high quality audit services. The requirement of confidentiality concerning trade secrets shall not apply when the national financial intelligence unit obtains information – that is considered trade secret –, or makes a written request for such information, acting

other tax purposes. The domestic tax law does not override the professional privilege guaranteed by the Act on Audit.

266. Pursuant to paragraph 3(c) to Article 26 of the OECD Model Tax Convention, a requested State is allowed not to provide information which would disclose professional secrets. Commentary[29] on this paragraph mentions that secrets should not be taken in too wide a sense and too wide an interpretation would in many cases render ineffective the exchange of information. The scope of protection afforded to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients should be narrowly defined. Further, such protection does not attach to documents or records delivered to an attorney in an attempt to protect such documents or records from disclosures required by law. Additionally, such protection is not available if attorneys act in different capacity, such as nominee shareholders, trustees, settlors, company directors or under a power of attorney to represent a company in its business affairs. The commentary suggests that, such protection can be limited to communications between a client and attorney which are produced for the purpose of seeking or providing legal advice or produced for the purposes of use in existing or contemplated legal proceedings.

267. In view of the above, the provisions of confidentiality available in the Act on Attorneys at Law are too wide and have serious potential for ineffective exchange of information. Hungary views these limitations as not serious as information available with the attorneys can be obtained from other sources. The assessment team do not agree with Hungarian position for the detailed reasons mentioned above.

268. In practice, the tax auditor requests information from the taxpayer who is obliged to provide the requested information under section 48 or 87 of the ART. According to the Hungarian authorities professional privilege under the Act on Attorneys at Law covers only the information produced by these professionals. If the information was not produced by an attorney the information is protected only when it is in his/her possession. Therefore it is likely that the same factual information or information from third parties which is held by an attorney can be obtained from the taxpayer. Cases where the relevant information is held only by an attorney are according to Hungarian authorities rare in practice. Over the period under review there was no case when the information needed to be requested from an attorney not acting on

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within its powers conferred under the Act on the Prevention and Combating of Money Laundering and Terrorist Financing or in order to fulfill the written requests made by a foreign financial intelligence unit.

29. Paragraph 19 (19.1 to 19.4) of the commentary on paragraph 3 of Article 26 of the OECD Model Tax Convention deals with the issue of attorney-client privilege.

behalf of his/her client and consequently there was no case when a person refused to provide the information requested in an EOI request because of professional privilege. However, there were about five domestic tax cases during the reviewed period where the attorney claimed that the information is protected and in about half of them the information was not obtained.

269. Generally the same practice relates to accounting auditors. However, auditors normally hold only accounting information requested from their clients for the purpose of an accounting audit and this information can be obtained in full (including underlying documentation) directly from their clients.

Confidentiality of tax information

270. Order No. 1030/2011, issued by the President of the NTCA states that the information received and sent by NTCA is subject to tax secrecy provisions contained in s. 54(12) of the ART, the EOI Act and other provisions. Extensive provisions on the confidentiality of tax information are available in the ART. Section 53 provides that all tax-related facts, data, circumstances, resolutions, rulings, certificates and other documents are deemed confidential information. Employees of the tax authority who gain knowledge of any confidential tax information or other secrets in the course of the disclosure, registration and processing of data, auditing, tax assessment, withholding taxes and tax advances, tax collection, judicial enforcement and use of data for statistical purposes must handle such as data as strictly confidential. The confidentially provisions are not absolute and exceptions are set out in s. 54 which provides that sharing confidential tax information is justified for various stated purposes.

271. Section 54 of the ART provides for use of confidential information for tax audit or where use is prescribed or permitted by law. The DTCs/TIEAs become part of domestic law after the Acts of Parliament transposing these agreements into domestic law is passed. Therefore, the confidentiality provisions get overridden for the purpose of exchange of information authorised by such legal arrangements.

272. Section 54(12) deals with the exchange of confidential tax information of the nature of private data of private individuals and reads as:

> within the framework of the provisions of the international agreement on double taxation pertaining to exchanging information, the competent Hungarian authority – with a view to the implementation of the agreement, the enforcement of taxation laws of other countries and to avoid double taxation – may supply the personal data of private individuals to the competent authorities of other states for reasons of identification, tax assessment and

control, gathering evidence and to ascertain the relevant facts of a case from its own registers and records, or from other records to which it has access under national laws.

273. The Hungarian authorities have clarified that this specific provision is enacted to remove doubts about secrecy relating to the information in the form of personal data of private individuals and it does not in any way restrict the exchange of information of other persons or data other than personal data. Further, the Hungarian rules on personal data protection contain explicit exception for exchange of information in tax matters (s. 8(3) Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information).

274. The EOI Act also provides that the competent authority (the CLO Unit) may refuse to disclose tax information if the disclosure entails the exposure of trade, business or professional secrets or business policy or violate the law in some other way (s. 14(2)(b) EOI Act). The possibility of such a refusal is in line with the international standards. However, there was no case during the period under review where the requested information was not provided because it would be covered by exceptions from obligations to provide it. This was also confirmed by peers.

Confidentiality provisions in other legislations

275. Confidentiality requirements for the persons covered under the Act on Capital Market (CMA) are set out in Sections 368 to 373. These pertain to business secrets as well as securities secrets and these secrets are elaborately defined. A fund management company, the exchange, a body providing clearing and settlement services, the central depository or any person bidding to acquire an interest in such bodies, as well as the executive officers and employees of these bodies are obliged keep confidential any business or securities secret made known to them in connection with their operations (ss. 368(2) and 369(1) CMA). Persons obliged to keep confidential business or securities secrets under CMA are subject to the provisions of the IRA (ss. 368 and 369 CMA). According to section 117(2)(e) of the IRA protection of business secrets does not apply in respect of the tax authority. Similarly under section 118(4)(a) of the IRA protection of securities secret does not apply where the tax authority makes a request for information based on a request made by a foreign tax authority pursuant to an international agreement, provided that the requesting authority ensures confidentiality of the provided information. Although there has been no change in these provisions since the Phase 1 assessment, the cited provisions provide clear exception from securities and business secrets for tax purposes allowing access to the requested information in line with the standard. The request from the tax authority should identify the client or group of clients, or the account about whom or

which the information subject to securities secret is requested, the type of the requested information and the purpose of the request (s 118(5) IRA). Provision of securities secrets follows similar rules as in case of information covered by banking secrecy (see section on access to bank information above).

276. Section 23 of the AML/CFT Act provides the legal basis for the Hungarian Financial Intelligence Unit (HFIU) to request information and data that are considered bank secret, securities secret, insurance secret, fund employer pension secret and business secret. According to s. 26 of the same law, HFIU is authorised to use information for the purpose of tax fraud (s. 396 of the Criminal Code) and other investigating units, the public prosecutor, the national security service and foreign financial intelligence unit.

277. While the provisions relating to business secrets, banking secrets, securities secrets, and insurance secrets and funds secrets are wide in the respective laws of Hungary they are overridden for the purpose of sharing information with the tax authorities. In practice, if the requested information is not at the disposal of the tax authority the tax auditor requests information directly from the taxpayer (or bank in case of requests for banking information) who is obliged to provide the requested information. There was no case during the period under review where information subject to business or security secrets needed to be requested from an investment firm or a commodity dealer for exchange of information purposes and, accordingly, no case was reported where the requested information was claimed to be protected by secrecy provisions contained in Hungarian law. No issue in this respect was reported by peers.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The scope of professional secrecy for attorneys and auditors is very broad (not limited to giving advice or conduct of legal proceedings) which has potential for rendering the exchange of information ineffective.	It is recommended that legal provisions be put in place to reduce the scope of the professional secrecy of lawyers and auditors so this does not unduly prevent or delay the international exchange of information for tax matters as contemplated in the standards.

Phase 2 rating
Largely compliant.

B.2 Notification requirements and rights and safeguards

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

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

Notification of the taxpayer

278. The tax administration is not required to notify the taxpayer about EOI requests received (with exception of requests for banking information) under Hungarian law. In July 2013 Act XXXVII on certain rules of international administrative co-operation in the field of taxes and other public burden came into force. The new Act regulating exchange of information does not require notification of the taxpayer subject to the request upon receipt of an incoming request or at any stage thereafter. If the taxpayer is also the holder of the requested information he/she will be aware of the fact that information concerning him/her is requested by a particular EOI partner based on the notice to the information holder and reference to the EOI request might be also contained in the audit report (see further section C.3).

Appeal rights

279. Obtaining and providing the requested information for exchange of information purposes cannot be appealed unless decision regarding Hungarian tax liability has been issued. There is no special procedure for exercise of appeal rights in the process of exchange of information and therefore general rules apply. Information gathering measures can be appealed only as part of a decision of the tax authority. However obtaining and providing the requested information to a treaty partner does not involve such a decision (unless Hungarian taxes are concurrently levied) and therefore cannot be appealed. There was no case during the period under review where any step in obtaining and providing the requested information was appealed.

Bank and security information

280. Section 163(2) of the Banking Act obliges the agency seeking information (tax authorities) to compulsorily notify the customer affected regarding its receipt of information. The notification of the customer should be performed simultaneously with sending the requested information to the requesting jurisdiction in all cases (s. 18(b) Rules of Procedure 1080/2014). In practice, there was no request received during the period under review where the requesting jurisdiction indicated that the taxpayer should not be notified (or exception from prior notification should apply). The customer was therefore notified by

the CLO Unit concurrently with providing the information to the requesting jurisdiction. However, the notification may have been done earlier especially in cases where the bank information was obtained by local tax auditors as during the period under review there was no specific rule when the compulsory notification should take place. The section 18(b) of the Rules of Procedure containing such a rule was introduced only in November 2014 and therefore was not applicable during the period under review. As the rule is not sufficiently tested in practice it is recommended that Hungary monitors its implementation so that the customer is not notified of receipt of the banking information earlier than when the information is provided to the requesting jurisdiction. Hungary is also encouraged to inform its treaty partners about its new notification rules.

281. The notice to the customer contains reference to the provision of the Banking Act, based on which the information was provided (which is the same as in domestic cases) and an indication that the banking information was requested for the purpose of exchange of information in tax matters (s. 19 Rules of Procedure 1080/2014). The notice does not indicate the jurisdiction which requested the information or any dates involved.

282. Notification of the customer by the NTCA is not required where information covered by securities secrets is provided as the notification is carried out by the investment firm or commodity dealer (s. 22 Rules of Procedure 1080/2014).

Refusal of testimony by witness

283. The procedural rules are available in the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services. Section 53 of this Act provides that a person may not be required to testify if not released from the obligation of confidentiality concerning any privileged information and the testimony can be refused if the witness is a relative of any of the clients or it would implicate the witness himself or his relative in some criminal activity. Under this Act, client refers to natural or legal person and any association lacking the legal status of a legal person.

284. Paragraph 15.2 of the commentary on Article 26 of the OECD Model Convention provides that information cannot be obtained from a person to the extent that such person can claim the legal privilege against self-incrimination and privilege against self-incrimination generally does not attach to persons other than natural persons. In case of Hungary, the scope is wider as the witness can refuse testimony if he is relative of the client or testimony will implicate his relative in some criminal activity. The privilege can be claimed only by natural persons. However, directors of a company or members of its board might bear criminal consequences of activities

performed by the legal entity and therefore the protection might be claimed in respect of the legal person's conduct.

285. Hungarian tax procedure rules distinguish between witness testimony and providing a statement. The main information gathering power provided under section 48 of the ART (which is also used for EOI purposes) refers to the obligation to provide a statement. Paragraph 2 of the section 48 clarifies that providing a statement may be refused if the person can be asked to provide witness testimony and is covered by the protection against self-incrimination. The Hungarian authorities indicated that in practice the protection against self-incrimination cannot be claimed by the concerned taxpayer (unless a criminal case is at stake) or his/her contractual partners (unless being individuals in family relation).

286. There are no specific statistics kept regarding this issue. However, the Hungarian authorities indicated that such cases are rare in practice and they were not encountered in the exchange of information context during the period under review.

Protection of personal data

287. The Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest grants certain rights relating to privacy of personal data. The rights available to persons do not affect the effective exchange of information. In addition, since 2011, the Hungarian rules on personal data protection contain explicit exception for exchange of information in tax matters (s. 8(3) Act CXII of 2011on the Right of Informational Self-Determination and on Freedom of Information).

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of this element require improvement.	
Factors underlying recommendations	**Recommendations**
The rights available to witness to refuse testimony are wider than contemplated in the standards for international exchange of information.	Hungary should legally ensure that the privilege available to witnesses should not unduly prevent obtaining information from them.

Phase 2 rating	
Largely compliant.	
Factors underlying recommendations	**Recommendations**
Rules providing for notification of customers simultaneously with sending the information to the requesting jurisdiction were introduced in November 2014 and therefore are not sufficiently tested in practice.	Hungary should monitor implementation of the new notification rules so that the customer is not notified of receipt of the banking information earlier than when the information is provided to the requesting jurisdiction.

C. Exchanging Information

Overview

288. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Hungary, the legal authority to exchange information is derived from the EU law and its transposition into domestic law and international EOI agreements. This section of the report examines whether Hungary has a network of information exchange that allows it to effectively exchange of information (EOI) in practice.

289. Hungary exchanges information in tax matters with the Member States of the European Union on the basis of European law transposed in the domestic law. The legal basis for exchange of information in tax matters between Hungary and other countries is also contained in the DTCs, TIEAs and the Multilateral Convention. Procedural rules and use of access powers for exchange of information purposes are provided by Hungary's domestic law.

290. Hungary has an extensive treaty network that provides for exchange of information in tax matters with 104 partners. It has signed 75 DTCs[30], of which 72 are in force (see Annex 2). Hungary also signed the Multilateral Convention which comes into force on 1 March 2015 and two TIEAs one of which is in force.

291. Hungary's network of DTCs covers its relevant partners including OECD and EU Member States. Hungary is currently in the process of negotiating a number of other DTCs and protocols, all of which will incorporate provisions that allow Hungary to exchange information according to the international standard.

292. All of Hungary's EOI instruments contain confidentiality provisions to ensure that the information exchanged will be disclosed only to authorised

30. Hungary had a DTC with the USA and has signed a new DTC, both have been counted as one.

persons in line with the standard. Hungary has implemented measures to ensure that confidentiality of information received is ensured in practice (see section C.3). However, Hungarian law allows the taxpayer to inspect his/her file containing information obtained from the requesting jurisdiction including the EOI request without appropriate exceptions which is not in line with the standard.

293. All Hungary's EOI instruments ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets or information which is the subject of legal professional privilege or to make disclosures which would be contrary to public policy. As noted in Part B of this report, the scope of information subject to professional privilege of lawyers and auditors in Hungary goes beyond the international standard. However, for the period under review, there was no case whereby the requested information was not provided because it was covered by trade, business, industrial, commercial or professional secrets or subject of legal professional privilege.

294. Hungary's competent authority for exchange of information is the CLO Unit situated in the Risk Management and Liaison Department of the National Tax and Customs Administration. The CLO Unit is responsible for exchange of information in the field of direct and indirect taxes. Hungary received 391 requests related to direct taxes over the period 1 January 2011 to 31 December 2013. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, within 180 days and within one year in 21%, 52% and 80% of the time respectively.

295. Hungary has in place appropriate organisational processes to ensure effective exchange of information. However, there are certain areas for improvement in order to ensure that information is provided in a timely manner in all cases (see section C.5). Hungary should also monitor implementation of the new rules on provision of status updates in cases where it is not in position to provide the requested information within 90 days.

C.1 Exchange of information mechanisms

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

296. Under Article 1(2) of the Fundamental Law of Hungary[31], the Hungarian Parliament is empowered to conclude international treaties of outstanding importance to the foreign relations of Hungary.

31. The Fundamental Law of Hungary came into effect on 1 January 2012 and replaced the former Constitution of the Republic of Hungary.

297. Hungary has signed 75 DTCs which provide for the exchange of information as of 1 December 2014. The first DTC was signed with Austria on 20 February 1975 and the latest was signed with Saudi Arabia on 23 March 2014. Hungary signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters (including the 2010 Protocol) on 12 November 2013 and two TIEAs. The Multilateral Convention was ratified by Hungary and comes into force on 1 March 2015. The TIEA with Jersey signed on 28 January 2014 is not yet in force. In addition to international treaties Hungary as a member of the EU exchanges information under EU instruments for exchange of information in tax matters.

298. Hungary also participates in other forms of administrative co-operation such as spontaneous and automatic exchange of information, multilateral controls and recovery assistance. These forms of co-operation are mainly based on the EU Mutual Assistance Directive[32], EU Savings Directive[33], EU Recovery Directive[34] and EU Regulation on Administrative Cooperation in the Field of VAT[35]. Hungary shares information on an automatic basis with 65 countries. Information provided by Hungary in 2013 related to 128 832 payment records made to individuals and legal entities. Hungary provided information spontaneously to its treaty partners in 231 cases and participated in 13 simultaneous tax examinations over the period under review. Above 90% of Hungary's exchange of information requests relates to VAT.

299. Tax authorities as defined in s. 10 of the ART are required to co-operate with the tax authorities of the European Communities and the competent directorate-general of the European Commission so as to enforce the tax laws of the European Communities. A body of the state tax authority functions as the competent authority to enforce regulations of the European Communities relating to co-operation in the field of taxation with the exception of customs duties and excise taxes. As international agreements like DTCs become part of domestic law after passing of enabling acts by the Parliament, tax authorities must implement provisions of DTCs, TIEAs and any other international tax agreements also. The Minister of Finance or his/her duly authorised representative is the competent authority for the purpose of exchange of information agreements. The Minister of Finance (and its successor as of 29 May 2011, the Minister for National Economy)

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

has delegated the operative role of the competent authority to the NTCA by unilateral statements addressed to the President of the NTCA. Accordingly, the NTCA plays the role of competent authority in exchange of information under international tax agreements and in the field of co-operation between tax administrations of EU Member States.

Foreseeably relevant standard (ToR C.1.1)

300. Hungary's DTCs generally provide for the exchange of information that is "necessary" for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States. Hungary's 13 DTCs signed after 2005 use the term "foreseeably relevant".[36] Hungary also signed the Multilateral Convention and two TIEAs which provide for exchange of "foreseeably relevant" information. Hungary applies its treaties in accordance with the OECD *Model Tax Convention on Income and on Capital*, which recognises in its commentary to Article 26 (Exchange of Information) that the terms "necessary" and "relevant" allow the same scope of exchange of information as does the term "foreseeably relevant". In view of this recognition, most EOI treaties concluded by Hungary meet the "foreseeably relevant" standard.

301. The exceptions are the DTCs with Austria, Brazil, Kuwait and the Netherlands. Hungary's DTCs with these countries only allow EOI for the purposes of carrying out the provisions of the DTC, entailing a narrower scope than that of the international standard. In the case of Austria and the Netherlands, the application of provisions implementing the EU Mutual Assistance Directive does provide for the exchange of information that is "foreseeably relevant". In addition, Austria and Brazil are signatories of the Multilateral Convention and the Netherlands have ratified it. It is therefore recommended that Hungary revise its treaties with Brazil and Kuwait so that they are in line with the international standard for EOI.

302. Hungary is currently in the process of negotiating a number of other DTCs and protocols, all of which incorporate provisions that allow Hungary to exchange information according to the international standard.

303. Hungary did not decline any request for information during the period under review on the basis that the requested information was not foreseeably relevant. The Hungarian authorities require the following information to be included in the request:

- identity of the person under investigation;

36. Armenia; Bahrain; Denmark; Georgia; Germany; Hong Kong, China; Mexico; Qatar; San Marino; Switzerland; Chinese Taipei; United Arab Emirates and the United States.

- statement of the information sought;
- the tax purpose for which the information is sought;
- to the extent known, the name and address of any person believed to be in possession of the requested information;
- a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

304. If the information needed to proceed with the request is not provided the Hungarian authorities will attempt to supplement it with information from their own sources (e.g. the tax database, Companies Registry, Registry of Citizens). No underlying documentation is needed in order to demonstrate the tax purpose for which information is sought. Only if the information cannot be supplemented the Hungarian authority will ask for clarification. This was the case in 6% of received requests (22 requests). In most of these cases the information provided did not allow identification of the person concerned. Clarifications were sought in respect of individuals with a common name where no address or other identifying information was provided. In some cases the request did not identify the tax period under investigation or referred to missing attachments.

305. To sum up Hungary interprets the criteria of foreseeable relevance to the widest possible extent, as confirmed by peers.

In respect of all persons (ToR C.1.2)

306. Article 26(1) of the OECD *Model Tax Convention* indicates that "the exchange of information is not restricted by Article 1", which defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States. All of Hungary's DTCs contain this sentence, except for the DTCs with Austria, Brazil, Kuwait, Bosnia and Herzegovina, Japan, Malaysia, Singapore, Norway, the Netherlands, Pakistan, Turkey, the United Kingdom and Ukraine.

307. However, the EOI provisions in Hungary's DTCs with Bosnia and Herzegovina, Japan, Singapore, Norway, Pakistan, Turkey, Ukraine and the United Kingdom apply to "carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation there under is not contrary to the Convention". The EOI provision in Hungary's DTC with Malaysia applies to "the prevention or detection of evasion or avoidance of taxes covered by this Agreement". As domestic laws are applicable to residents and non-residents equally, it can be stated that even in absence of reference to Article 1, the contracting states are under obligations to exchange information in respect of all persons.

308. Exchange of information in respect of all persons may not be possible under Hungary's DTCs with Austria, Brazil, Kuwait and the Netherlands for the reasons that these provide for the exchange of information for carrying out the provisions of the Convention only. However, the wording of DTCs with Austriaand the Netherlands is not a concern in practice as Hungary can exchange information with these partners under the Multilateral Convention or the EU Directive. This has also been confirmed in practice in respect of Austria and the Netherlands which are among Hungary's important EOI partners. It is therefore recommended that Hungary revise its DTC with Brazil and Kuwait so as to provide for exchange of information is respect of all persons.

309. In practice no issue restricting exchange of information in this respect has been experienced by Hungarian authorities or by peers.

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

310. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD *Model Tax Convention* and the OECD *Model TIEA,* which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

311. Article 26(5) of the OECD *Model Tax Convention* states that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person[37]. The Multilateral Convention and the two TIEAs signed by Hungary contain wording akin to the model Article 26(5). However, except for the 13 DTCs signed after 2005 and the DTC with the USA none of Hungary's other 62 DTCs contain such a provision.

312. However, the absence of such a provision in Hungary's DTCs does not automatically create restrictions on exchange of bank information. In the absence of this provision any bank secrecy in either of the parties to the DTC

37. The Commentary to Article 26(5) indicates that while paragraph 5, added to the *Model Tax Convention* in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

will result in a restriction on the exchange of information which is not in line with the international standards. As mentioned in section B.1 of this report, Hungary has bank secrecy which can be overridden to fulfil the written requests made by foreign tax authorities pursuant to an international agreement. The absence of paragraph 5 in the DTCs does not inhibit providing the banking information by Hungary as banking secrecy is overridden for the purpose of EOI.

313. For 44[38] of these 62 agreements, as neither Hungary nor its partner suffers from limitations to its access to bank information, the absence of a provision in line with Article 26(5) of the OECD Model Tax Convention does not result in the agreement falling below the international standard for EOI. For some of Hungary's partners which have domestic restriction on access to bank information, the absence of a provision akin to Article 26(5) of the OECD Model Tax Convention means these agreements do not establish an obligation to exchange all types of information. This is particularly the case with Hungary's DTCs with Austria and Luxembourg. However wording of these treaties is not a concern in practice as Hungary can exchange information with these partners in line with the standard under the EU Directive and the Multilateral Convention. Nevertheless, it is recommended that Hungary continues its program of renegotiation of DTCs including to incorporate wording in line with Article 26(5) of the OECD Model Tax Convention.

314. In practice, Hungary has never declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. This has been confirmed by peers. Where the EOI instrument does not contain a provision similar to the one in Article 26(5) of the Model Tax Convention Hungary, does not require reciprocity in respect of EOI partners which do not provide such information (i.e. Hungary will provide the information regardless of whether its EOI partners would be able to exchange such similar information). The NTCA is not required to refer to a court or other authority in order to obtain banking information and the same procedure as in domestic cases applies (see further sections B.1.5 and C.5.2).

38. Australia, Azerbaijan, Belorussia, Belgium, Brazil, Canada, China, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Republic of Korea, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Malaysia, Malta, the Netherlands, Norway, Philippines, Poland, Portugal, Romania, Russian Federation, Singapore, Slovenia, Slovakia, South Africa, Spain, Sweden, Turkey, United Kingdom and Uzbekistan.

Absence of domestic tax interest (ToR C.1.4)

315. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

316. Hungary's 13 DTCs signed after 2005, DTC with the USA, the Multilateral Convention and two TIEAs contain explicit provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. Hungary's other 62 DTCs do not contain such a provision.

317. Hungary's domestic law provides for use of the tax authority's access powers regardless of domestic tax interest. The amended EOI Act states that the NTCA should in order to respond to EOI requests take information gathering measures as provided by Hungarian law for domestic cases (s. 43(2) EOI Act).

318. In the case of the Hungary-Singapore DTC, the peer review of Singapore which took place before this review indicated that information cannot be obtained from Singapore under the DTC unless there is a domestic tax interest.[39] However, as Singapore and Hungary are signatories of the Multilateral Convention this wording should not be a concern in practice once the Multilateral Convention comes into force in Singapore. A domestic tax interest requirement may exist in some of Hungary's partner jurisdictions who are not signatories of the Multilateral Convention or EU Members. In such cases, the absence of a specific provision requiring exchange of information unlimited by domestic tax interest will serve as a limitation on the exchange of information which can occur under the relevant agreement. It is recommended that Hungary continues its program of renegotiation of DTCs including to incorporate wording in line with Article 26(4) of the OECD Model Tax Convention.

319. In practice, Hungary is able to use all its domestic information gathering measures for EOI purposes regardless of a domestic tax interest (see part B.1.3). However, there was no request received under EOI agreement other than a DTC. Hungary does not require reciprocity in respect of EOI partners

39. 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.

who require a domestic tax interest for providing the requested information, i.e. the competent authority does not request its treaty partners to declare that they would be able to exchange of information in the absence of a domestic tax interest. This was also confirmed by peers as no peer indicated any issue in this respect. Hungary received three requests related to persons who were not Hungarian taxpayers and the requested information was provided in all cases.

Absence of dual criminality principles (ToR C.1.5)

320. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

321. There are no dual criminality provisions in any of Hungary's DTCs. Accordingly, there has been no case when Hungary declined a request because of dual criminality requirement as has been confirmed by peers

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

322. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes ("civil tax matters").

323. All of Hungary's DTCs provide for exchange of information in both civil and criminal tax matters.

324. Hungary does not require information from the requesting competent authority as to whether the requested information is sought for criminal or civil tax purposes and no peer input indicated any issue in this respect. If the requesting jurisdiction indicates that the information is sought for criminal tax purposes and there is an instrument between Hungary and the requesting jurisdiction specifically providing for assistance in criminal matters, Hungary will encourage the requesting jurisdiction to use the latter instrument instead. However, there was no case during the period under review where the requesting jurisdiction indicated that the requested information relates to a criminal tax matter. Hungarian authorities confirmed that Hungary is bound by international obligations stemming from its treaties and will be able to provide the requested information related to criminal tax matters in any case if requested so by the partner jurisdiction.

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

325. There are no restrictions in Hungary's EOI instruments or laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. Further, Hungary's DTC with the United States contains explicit provisions (under Article 23(3)) that reinforce the need to provide information in the form requested. Peer inputs indicate that Hungary provides the requested information in adequate form and no issue in this respect has been reported.

In force *(ToR C.1.8)*

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

327. All Hungary's EOI instruments are in force except for three recently signed DTCs[40], new DTC with the USA[41] and the TIEA with Jersey[42]. All these treaties have already been ratified by Hungary. Hungary signed the Multilateral Convention on 12 November 2013 and it was ratified on 24 September 2014. The Convention comes into force in Hungary on 1 March 2015. This indicates that Hungary has been quick in taking all the necessary steps to bring its agreements into force.

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

328. For information exchange to be effective the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. EOI treaties of Hungary are deemed as part of the international obligations to be fulfilled and to be observed. As a general legal provision, Article Q (2,3) of the Fundamental Law provides that, the legal system of Hungary accepts the generally recognised principles of international law, and shall harmonise the country's domestic law with the obligations assumed under international law.

329. Signed EOI treaties are enacted by the Parliament as provided in the Fundamental Law. These are then regarded as acts. For example, s. 5(5) of the tax law (ART) provides that *any derogation from this Act must be allowed solely on the basis of Community legislation, international treaties*

40. DTC with Bahrain signed on 24 February 2014, DTC with Saudi Arabia signed on 23 March 2014, and DTC with UAE signed on 30 May 2013.
41. Signed on 4 February 2010.
42. Signed on 28 January 2014.

promulgated by an act or government decree, or under the principles of reciprocity.

330. This report has identified various limitations in Hungary's domestic law as discussed in Part A and Part B of the report. Hungary should address these issues in order to ensure that it can provide its partners with effective exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C.2 Exchange of information mechanisms with all relevant partners

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

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

332. Hungary has an extensive EOI network covering 104 jurisdictions through signed 75 DTCs, two TIEAs, the Multilateral Convention and EU mechanisms for exchange of information allowing for exchange of information in tax matters with a wide range of jurisdictions and this covers:

- all members of the European Union;
- all of the 42 OECD/G20 countries;
- 87 out of 122 members of the Global Forum.

333. Amongst these EOI instruments, Hungary has DTCs with its main trading partners, namely China, Germany, Italy, Russia and the United Kingdom, as well as other major economies, including France and the United States.

334. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that Hungary had refused to negotiate or conclude an EOI agreement with it.

335. Hungary signed the Multilateral Convention on 12 November 2013 which comes into force on 1 March 2015. Signing of the Multilateral Convention broadened Hungary's EOI network by 27 jurisdictions.[43] Hungary has also signed a TIEA with Guernsey which came into force on 7 March 2014 and a TIEA with Jersey which is not yet in force. In addition, Hungary is currently in the process of negotiating a number of other EOI instruments including DTCs and protocols, all of which will incorporate provisions that allow Hungary to exchange information according to the international standard. Hungary has also advised that they are negotiating TIEAs with six identified jurisdictions. Hungary does not consider it a priority to negotiate additional EOI instruments with jurisdictions already Parties to the Multilateral Convention or covered by it through a territorial extension. However, if approached by a jurisdiction which is not a Party of the Multilateral Convention Hungary is ready to conclude a bilateral EOI agreement.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Hungary should continue to develop its EOI network to the standard with all relevant partners.

Phase 2 rating
Compliant.

43. These jurisdictions are Andorra, Anguilla, Argentina, Aruba, Belize, Bermuda, the British Virgin Islands, Cameroon, the Cayman Islands, Chile, Colombia, Costa Rica, Curacao, the Faroe Islands, Gabon, Ghana, Gibraltar, Greenland, Guatemala, the Isle of Man, Liechtenstein, Montserrat, New Zealand, Nigeria, Philippines, Sint Maarten and the Turks & Caicos Islands.

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)*

General confidentiality rules

336. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

337. All of Hungary's DTCs require that any information received be treated as secret, though the exact wording differs depending on the age of the agreement. The majority of these DTCs contain the language of Article 26(2) of the *OECD Model Tax Convention* i.e. *any information received by a Contracting state shall be treated as secret in the same manner as information obtained under the domestic laws of that state and shall only be disclosed to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement and prosecution in respect of, the determination of appeals in relation to the taxes referred in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information for such purposes. They may disclose the information in public court proceedings or in judicial decisions.*

338. Confidentiality of the information received by the competent authority under the regulations of the European Communities, including the Savings Directive, is assured by s. 58 of the ART, which provides that all information obtained within the framework of co-operation in the field of taxation, must be classified as tax secrets. It can only be disclosed to the persons involved in the taxation or auditing procedure or the tax investigating officer handing the case or to the person who directly participates in the court proceedings. However, such explicit provisions are not in place with respect to information received under DTCs.

339. Hungary's domestic legislation contains confidentiality provisions (s. 53 ART). There are permitted exceptions to the rules of confidentiality (s. 54) which include, but are not limited to,

- for the purposes of tax audits, control of central subsidies, or the initiation and enforcement of tax administration proceedings;
- prescribed or permitted by law;
- used with the consent of the party concerned;
- if disclosure reveals information concerning the name, corporate name, registered office or tax number of a taxpayer engaged in business operations to another taxpayer for reasons of compliance with his tax liabilities prescribed by law or to a state agency or public organ/body for performing their duties;
- for the purposes of allowing another tax authority (e.g. customs) to discover and collect any tax liability or tax arrears, or conducts tax administration proceedings. Such right of disclosure of information is also granted in specific circumstances to the Pension Insurance Fund, the Health Insurance Fund, the managers of extra-budgetary funds and the government employment agency; and
- the tax authority may also disclose confidential tax information upon request and subject to certain further condition to be met: to the court, the national security agency (intelligence service), State Audit Office, to the European Anti-Fraud Office, to the Treasury, to the Minister in charge of supervising the functioning of the tax authorities.

340. The circumstances for disclosure under which Hungary's domestic law are broader than the circumstances contemplated in Hungary's DTCs. However, derogation from the domestic law is allowed on the basis of the international treaties[44], therefore, the provisions concerning confidentiality contained in Hungary's DTCs override any the provisions of the ART. This means that the disclosure of information received by the Hungarian tax authorities under an EOI arrangement is restricted to the circumstances covered by the agreement. In practice, the information obtained from a treaty partner in response to a request is kept only in the respective taxpayer's assessment file kept by the local tax office. The information is not entered into the tax database and its source can always be tracked from the attached CLO Unit's cover letter which includes a warning about the confidentiality of

44. s. 5(5) of the tax law (ART) provides that "*any derogation from this Act must be allowed solely on the basis of Community legislation, international treaties promulgated by an act or government decree, or under the principles of reciprocity*".

the information and an obligation to use it in accordance with the EOI instrument under which it was obtained.

341. In practice, EOI requests received from treaty partners are handled only by the authorised person within the CLO Unit. Requests from EU Member countries are kept within the CLO system. Only authorised persons can access the CLO system and their access is restricted only to requests which are administered by them. Each access to the CLO system is recorded and the person accessing it is always uniquely identified by a password. Access powers to this database are granted by the director of the Risk Management and Liaison Department and are restricted to officials responsible for handling EOI requests. Requests from non-EU jurisdictions are translated by the CLO Unit staff (or by a contact person of the Priority Affairs and Large Taxpayers General Directorate or of the Central-Transdanubian Regional Directorate) and the original request including attachments is stored in the archive. The archive is kept under a lock and a key is given only to the authorised person against a signature and date and time when the key was provided. Entry to the tax authority premises is restricted, protected by an electronic code and a security guard is present at all times. All persons dealing with information obtained from treaty partners are bound by confidentiality rules detailed above and in case of breach sanctions will apply.

Notices to the holder of the information

342. In order to obtain the requested information the information holder receives a notice from the local tax office requesting the information. The notice contains a description of the requested information, legal basis of the notice (e.g. assistance under the respective EOI agreement together with reference to the relevant provision of ART) and information about appeal rights. The notice does not include direct reference to the received request or any further information from it or from supporting documentation provided by the requesting jurisdiction. This notice is not served if the information holder is a government authority. For notices served to banks please see section B.1.5.

Inspection of files

343. A taxpayer is entitled to review documents which are necessary for the enforcement of his/her rights and for the fulfilment of his/her obligations in taxation matters. The taxpayer can be in the EOI context the holder of the information or the person subject to the request. The taxpayer may not inspect parts of documents that contain personal data of other persons involved or documents meant purely for internal purposes and cannot serve

as a basis for tax assessment (ss. 12 (1), (3), 35(2), 100(3) and 97(5) ART). However, exchange of information requests and supporting documentation are not considered as such documents by Hungarian authorities and therefore can be inspected by the taxpayer. If the tax authority decides not to disclose certain information to the taxpayer he/she has a right to appeal such decision.

344. There were about five cases in the exchange of information context over the reviewed period where the taxpayer asked for inspection of his/her tax file kept by the NTCA. In all these cases access to his/her file was granted and the taxpayer inspected information gathered on him/her by the NTCA domestically as well as information provided by the requesting jurisdiction including the copy of the request letter. In none of these cases did the requesting jurisdiction indicated that the information provided should not be disclosed to the taxpayer. Nevertheless, this is not in line with the standard as disclosure of the provided information (including the EOI request) is not necessitated by the exercise of appeal rights. Further there are no safeguards that the provided information is not disclosed to the taxpayer if the requesting jurisdiction requests this.

345. Although the taxpayer may not be aware of an EOI request as he/she needs to be notified only if banking information is requested, the concern above is heightened by the fact that reference to parts of information provided by the requesting jurisdiction might be included in the audit report. Findings of each tax audit have to be summarised in the audit report (s. 104 ART). The audit report needs to be approved within 15 days by the person from which the information was obtained. The information contained in the audit report might further motivate the taxpayer (if he/she is also the information holder) to ask to inspect the file which has been confirmed in practice.

346. Hungarian EOI treaties override domestic laws. However, EOI treaties do not contain clear obligations that would prohibit such disclosure.

347. The scope of disclosure of the information provided by the requesting jurisdiction to the taxpayer is not in line with the standard since the disclosure is not linked to exercise of his/her appeal rights and cannot be prevented if the requesting jurisdiction indicates that the EOI request should not be disclosed. It is therefore recommended that Hungary ensures that the received request and accompanying documents are not disclosed to the taxpayer or his legal representative unless necessitated by exercise of his/her appeal rights and that the EOI request will not be disclosed to the taxpayer in cases when the requesting jurisdiction indicated that it should not be disclosed.

All other information exchanged (ToR C.3.2)

348. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

349. Hungary's DTCs do not draw a distinction between information received in response to requests and information forming part of the requests themselves. This means that the disclosure of information received by the Hungarian tax authorities under an EOI arrangement is restricted to the circumstances covered by the agreement. This is confirmed in practice. All types of information exchanged between the Competent Authorities are protected under the Hungarian tax secrecy rules in the same way (further see section C.3.1).

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of this element require improvement.	
Factors underlying recommendations	**Recommendations**
Disclosure of information rules do not prevent the taxpayer from inspecting the information provided by the requesting jurisdiction including the EOI request at any time.	Hungary should ensure that the received request and accompanying documents are not disclosed to the taxpayer or his legal representative unless necessitated by exercise of his/her appeal rights and that the EOI request will not be disclosed to the taxpayer in cases when the requesting jurisdiction indicated that it should not be disclosed.

Phase 2 rating
Partially compliant.

C.4 Rights and safeguards of taxpayers and third parties

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

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

350. All of Hungary's DTCs ensure that the contracting states are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy.

351. This right is reinforced in Hungary's domestic laws. Section 59 of the ART, with regard to regulations of the European Community law, states that the Hungarian tax authority may "refuse to comply with a request if it entails the exposure of trade, business or professional secrets or business policy or violate the law in some other way".

352. Hungary has advised that the attorney-client privilege is covered under the limb of "professional secrets" in the EOI treaties. It is likely that the privilege afforded to information held by auditors also falls under this banner. Considering the provisions of paragraph 2 of Article 3 of the respective tax treaties, for application of the tax treaties by Hungary, this term will derive its meaning that it has under the domestic laws of Hungary. This is also explicitly confirmed in the Protocol to the TIEA with Guernsey. The term is not defined under applicable Hungarian tax laws; therefore, meaning under the Attorney Act must be given. As noted previously in Section B.1 of the report, the scope of protection afforded to information available with the attorneys is very broad (not limited to giving advice or conduct of legal proceedings) in comparison to the scope of attorney-client privilege recognised in commentary to *Article 26(4) of OECD Model Tax Convention*. This extremely broad protection afforded to information available with the attorneys translates into similar protection under the EOI treaties. Hungarian authorities are potentially not able to obtain any information from attorneys, lawyers etc. and such information cannot be exchanged. This will potentially prevent providing any information held by attorneys to the tax treaty partners. Accordingly, as far as interpretation of the ground of refusal to supply information on account of protection available to information under "attorney-client privilege" is concerned in Hungary, the tax treaties are not to the standard.

353. In practice, there was no case during the period under review where Hungary requested information from admitted legal representatives for exchange of information purposes although there were a few cases when information was obtained from company's lawyers or accountants. Consequently, there was no case when professional privilege has been claimed to cover the requested information. Hungary also did not decline to provide the requested

information during the period under review because it is covered by legal professional privilege or any other professional secret and no peer indicated any issue in this respect.

354. Hungary's recent DTCs with Georgia, Germany, Mexico, San Marino, Hong Kong (China), and Armenia contain issues dealing with the protection of personal data transferred in an exchange of information and also rights available to data subject in the matter of such transfer and use of data. They can request information as to whether or not data relating to him are being processed and they also have right to legal remedy in case the rights related to the processing of personal data are infringed. All agreements except for DTC with Georgia provide that there is no obligation to give this information to the persons if on balance it appears that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In addition, Georgia, Germany, Mexico and San Marino are signatories of or Parties to the Multilateral Convention and exchange of information with Germany is mostly carried out under the EU directive. These provisions therefore do not have negative impact on exchange of information practice with these EOI partners. In practice, Hungary did not receive any request under these treaties during the period under review and therefore there is no experience how these provisions will be applied in practice. According to Hungarian authorities, these provisions should be applied in light of their domestic law which now contains exception from personal data protection rules in respect of exchange of information in tax matters (see section B.2). Nevertheless, Hungary does not plan to conclude any agreement including similar provision in the future.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of this element require improvement.	
Factors underlying recommendations	**Recommendations**
Tax treaties do not define the term "professional secret" and the scope of the term "professional secret" under the domestic law of Hungary does not allow exchange of any information held by all professionals covered by attorneys, lawyers and auditors.	Hungary should restrict the scope of the protection under the term "professional secret" in its domestic laws so as to be in line with the standard for the purpose of agreements for exchange of information.

Phase 2 rating
Largely compliant.

C.5 Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

355. Hungarian DTCs have no provisions pertaining to timeliness of response or the time frame within which response should be provided.

356. Hungary received 391 requests related to direct taxes over the period 1 January 2011 to 31 December 2013. Requests are counted as per number of taxpayers concerned. Therefore if a request letter relates to more than one taxpayer it is counted as more than one request according to the number of taxpayers concerned. If additional questions arise concerning details of the same case regarding the same taxpayer the request is not counted as a new request. A request is counted as one even if it requests several pieces of information related to one taxpayer. The following table shows the time needed to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked).

	2011		2012		2013		Total	
	num.	%	num.	%	num.	%	Num.	%
Total number of requests received*	95	100	146	100	150	100	391	100
Full response**: ≤90 days	30	32	30	21	23	15	83	21
≤180 days (cumulative)	62	65	78	53	62	41	202	52
≤1 year (cumulative)	83	87	119	82	112	75	314	80
>1 year	9	10	23	15	5	3	37	10
Declined for valid reasons	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	0	0	1	1	0	0	1	0
Requests still pending at date of review	3	3	3	2	33	22	39	10

* Requests are counted as per number of taxpayers to whom they relate.

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

357. As the table shows there can be identified a slight increase in the number of received requests during the period under review. Most requests were received from Germany, the Slovak Republic, Romania, Austria and Italy (in order of number of requests received) as these countries represent

Hungary's main economic partners. The biggest number of requests relates to accounting information and underlying accounting documentation. During the period under review, Hungary sent 1 150 requests related to direct taxes almost three times more than the number of requests it received.

358. Hungary provided the requested information within 90 days for 21% of requests. The response times slightly deteriorated over the last three years from 32% responded within 90 days in 2011 to 15% in 2013. Most of the requests where a response was not provided within 90 days related to requests for accounting underlying documentation and verification of transactions where information was obtained directly from the taxpayer through a tax audit. The main difficulties Hungarian authorities are confronted with when obtaining the requested information are if the holder of the information is not identifiable, unavailable or obstructs exercise of a tax audit. If a person obstructs information gathering measures (e.g. by avoiding receipt of a notice requesting the information, denying existence of the transaction, contract or documents or by not providing any response) the NTCA directly applies sanctions under section 172 ART and search and seizure power is used when there is a reason to believe that the requested information is kept at the known place. Further, the person can be subpoenaed to attend in person. In case of failure to attend the person can be arrested upon approval from the public prosecutor. These enforcement measures are according to Hungarian authorities used only in rare cases since the majority of obstructing persons who are identified and contactable provides the requested information upon application of financial sanctions. Nevertheless, taxpayers' obstructions have negative impact on timeliness of responses and, where appropriate, alternative sources of information or measures should be used.

359. Although the requested information was provided within 180 days in 52% of cases, peers state that the information was mostly provided in a timely manner and are overall satisfied with timeliness of Hungary's responses. According to Hungarian authorities this might be partly explained by complexity of some of the requests (or acknowledged difficulty to obtain the information) and by the fact that EOI instruments under which these exchanges were carried out did not provide for deadlines in which the information should be provided. Peers also noted good quality of responses provided by Hungary.

360. Hungary exchanges information with its treaty partners to the widest possible extent. Accordingly, there was no case during the period under review where Hungary declined a request based on reasons provided for in Article 7 of the Model TIEA.

361. Hungary failed to provide the requested information in one case over the period under review. The request related to accounting records of a company which already ceased to exist. Despite legal obligation ensuring that the

information should be available in Hungary the tax officer did not contact the liquidator or the respective archive where such records are to be kept and provided only information already at the disposal of the NTCA informing the requesting jurisdiction that the company had been liquidated. This response is not satisfactory as the requested jurisdiction should use alternative sources where the information cannot be obtained from the usual source or take other available measures to obtain the information. Hungary is aware of this failure and it is encouraged to prevent happening it again (see further section B.1.1).

362. Section 26.9 of the Internal Rules of Procedure for exchange of information in direct taxes provides for partial responses in cases where the complete response cannot be provided within 180 days. Hungary provided partial replies in some of these cases. In many cases where information was not provided within 180 days sending a partial response was not possible since all requested information was awaiting outcomes of the tax audit. Providing partial responses to the requesting jurisdiction significantly contributes to the effectiveness of exchange of information and Hungary is encouraged to continue providing partial replies in cases where parts of the requested information are already available.

363. Out of 391 requests received during the period under review 39 requests were pending at the date of the on-site visit. Out of these pending requests 15 requests are pending for more than one year and 33 requests were received in 2013. Partial responses have been provided in six cases. The vast majority of pending requests is awaiting the result of a tax audit. Reasons causing delays in these cases are that the person holding the information is not available or obstructs exercise of information gathering measures as described above. In two cases Hungary is awaiting clarification from the requesting jurisdiction regarding identification of the taxpayer. One request is awaiting response from the bank. Although reasons why these requests were pending are valid and Hungarian authorities were doing what was required to obtain the requested information Hungary should continue to monitor the number of pending requests and endeavour to limit it.

364. During the period under review Hungary provided status updates upon request of the requesting jurisdiction. According to the Hungarian authorities, the reason is that before the EU Directive 2011/16/EU came into force in January 2013, there was no legal obligation within the EU directive or under EOI treaties to do so. Consequently, Hungary did not provide updates on the status of requests in all cases as has been also confirmed by peers unless requested by the requesting jurisdiction. However, the EOI Rules of Procedure has been recently amended to require the CLO Unit to provide status updates to the requesting jurisdiction in all cases where the requested information cannot be provided within 90 days since receipt of the request (ss. 52 and 53 Rules of Procedure 1030/2011). The amendment came into

force on 15 December 2014. As the amendment is not sufficiently tested in practice it is recommended that Hungary monitors its implementation so that status updates are provided to the requesting jurisdiction in all cases where the response takes more than 90 days.

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

Organisation of EOI practice

365. The Minister responsible for tax policy or his authorised representative is the competent authority to process EOI requests under Hungary's exchange of information treaties. The Hungarian Central Liaison Office, working within the Risk Management and Liaison Department of the National Tax and Customs Administration, is responsible for exchanging tax information on the basis of Hungary's exchange of information treaties and the directives of the European Union. Section 56 of the ART refers CLO as the body for enforcing the regulations of the European Communities in the field of taxation. Exchange of information under EU directives and under exchange of information treaties is carried out by the same unit.

366. The Risk Management and Liaison Department of the NTCA is responsible for providing and receiving administrative assistance in respect of direct and indirect taxes. The Department is also responsible for Hungary's representation in international forums dealing with risk management, exchange of information and other forms of administrative assistance in tax matters. The Central Liaison Office represents an organisational unit within the Department. The CLO Unit is staffed with 11 persons in charge of exchange of information with EU Members (upon request, automatic, spontaneous or simultaneous tax controls), one person in charge of exchange of information with non-EU jurisdictions, two persons dealing with VAT number confirmations and a head of the unit.

367. The administration of exchange of information in practice is organised on three levels – central, regional and local. All requests for information are received or sent by the CLO Unit. The CLO Unit is responsible for communication between the competent authorities and for administration of the gathering of the requested information. This includes checking whether the responses sent by the tax offices include all the required information, that the information is provided in the requested format or if the requested information cannot be provided that the tax office provides an explanation as to why it was not able to provide all the requested information.

368. In order to gather the requested information requests are assigned by the CLO Unit to the regional contact persons. There are eight regional

directorates in Hungary.[45] Two contact persons are located in each directorate with exception of the central Hungary regional directorate responsible for most of corporate taxpayers where four contact persons are designated. The contact person is responsible for co-operation between the CLO Unit and the local level including allocation of the request to a local tax office, use of proper formats for providing or requesting information and maintaining proper communication between the CLO Unit and the tax auditor handling the request. The contact person can gather the requested information himself/herself if the information is already at the disposal of the tax administration but this is rare in practice.

369. The contact person assigns requests to tax auditors in audit departments at the local level. The local level consists of 19 county offices, three subdirectorates in Budapest and two subdirectorates under the regional directorate for large taxpayers. The requested information is normally gathered by the tax auditor responsible for the taxpayer concerned. It is the responsibility of the tax auditor to ensure that all steps necessary to obtain the requested information were taken and that the provided information is correct and well evidenced.

370. Contact details of Hungary's competent authority are available to competent authorities of EU Member states through the CIRCA database. In respect of competent authorities of non-EU jurisdictions contact details are communicated by Hungary through letters, face to face meetings or emails and are available on the Global Forum's Competent Authority database.[46]

Handling of EOI requests

371. General procedures for handling of EOI requests are the same for all jurisdictions and types of the requested information. Practical administration of each request reflects availability of information (e.g. whether the information is already at the disposal of the tax administration or needs to be obtained directly from the taxpayer or third party), number of persons or authorities involved in obtaining the information or other specific aspects of the case.

372. Requests from EU Member countries are received through the CCN network and automatically entered into the CLO system which is connected with the internal document tracking system (DOKU system). Request from

45. Eight regional directorates: Western Transdanubia, Southern Transdanubia, Central Transdanubia, Central Hungary, Southern Great Plain, Northern Great Plain, Northern Hungary and special regional directorate for large taxpayers with jurisdiction in all regions.

46. www.oecd.org/securesites/gfcompetentauthorities/.

non-EU jurisdictions are typically received through the post and are manually entered into the document tracking system (DOKU system) by the secretary of the Head of the CLO Unit. In respect of requests received from EU Member countries acknowledgment of receipt is automatically generated by the CCN network. Acknowledgment of receipt of requests from non-EU jurisdiction needs to be prepared and send in each case separately by the officer of the CLO Unit (although obligation to provide acknowledgement of receipt is not contained in the EOI Rules of Procedure). All requests are then allocated by the head of the Head of the CLO Unit to the CLO officer for review and validity check. Requests from non-EU jurisdictions are then entered by the CLO officer responsible for exchange of information with non-EU jurisdictions in the EOI database specifically tracking these requests. The CLO officer verifies whether the request contains information as indicated in paragraph 5 Article 5 of the model TIEA and whether the request is complete (e.g. signatures, attachments). If information which cannot be substituted by information already at the disposal of the NTCA is missing a clarification is requested from the applicant jurisdiction. Requests are then translated by the CLO officer (or by a contact person of the Priority Affairs and Large Taxpayers General Directorate or of the Central-Transdanubian Regional Directorate) into Hungarian.

373. With exception of rare cases where the information is already in the hands of the CLO Unit the information is gathered by local tax offices. The CLO Unit allocates requests to regional contact persons based on local jurisdiction over the taxpayer under investigation. If the taxpayer is a foreign person the request is allocated to the Directorate for large taxpayers. Allocation of requests from EU Member countries is done through the CLO system to which the respective contact person (and subsequently local tax auditor) has access. In respect of requests from non-EU jurisdictions the CLO Unit officer submits to the regional contact person an instruction letter containing reference to the respective procedures and deadlines together with a translation of the request, copy of the original request and copies of documents attached to the original request (if any).

374. The regional contact person may gather the requested information himself/herself if it is contained in the tax database. In practice, this is done only in about 2% of requests due to workload of these persons. In vast majority of cases the contact person submits the case to a local tax office which gathers the information.

375. The local tax auditor collects the data and prepares the answer to the request which is then forwarded to the regional contact person. The local tax auditor is responsible for the correctness of documents provided. The contact person checks whether the answer is complete and responsive to questions asked and forwards it to the CLO Unit which further reviews the response

before the reply is sent to the requesting jurisdiction. If the reply is not sufficient the CLO Unit sends the draft response back to the regional contact point who then sends it back to the local tax office. If the information is sufficient, the reply (including titles of supplementary documentation) is translated into English by the CLO Unit (or by the contact person in the central Hungary regional directorate) and sent to the requesting competent authority.

Requests for banking information

376. Requests for banking information are handled directly by the CLO Unit or in cases where request relates also to other types of information by the local tax offices. If only banking information is requested the CLO Unit requests the information directly from the bank. The request letter to the bank is consulted with and then submitted to the bank by the legal department of the NTCA. In cases where not only banking information is requested, the request is allocated to a local tax auditor who obtains the requested information from the bank as well as other requested information held by other persons. Since September 2014 requests to banks are submitted electronically through specialised application for sharing information between the NTCA and banks. The IT application should streamline the communication between banks and the NTCA and contribute to decrease of response times.

377. Hungary received 31 requests for banking information over the period under review. Out of these requests one was pending at the date of the on-site visit awaiting answer from the bank. The requested banking information was provided in all cases where the taxpayer concerned was identified and there was a bank account opened in Hungary in the name of the indicated person (see further section B.1.5). In all cases the requesting jurisdiction was provided with the response and the information obtained by the NTCA in pursuit of the information. Most of the time the response was not provided within 90 days and the average response time over the reviewed period was 275 days. However, no peer indicated an issue in respect of obtaining banking information from Hungary in a timely manner although a few responses were received after one year.

Internal deadlines

378. According to the EOI Rules of Procedure:

- if the requested information is available in the databases of the NTCA the information shall be forwarded to the requesting competent authority in 30 days after receipt of the request for information (e.g. identification data of the taxpayers, the data of the tax returns, and amount of the tax is available in these databases) (s. 13.4).

- if for the answering of a request for information an audit or another process of the tax authority is necessary the NTCA – if it is possible or a bilateral agreement does not contain another rule – shall give an answer within 180 days after receipt of the request for information to the requesting country, however this deadline might be extended if the case requires so (s. 14.1). Out of the 180 days, the CLO Unit has 15 days to translate and submit the request to the local tax office through the regional contact person, the tax office gathering the information has 150 days to obtain the information from the information holder and submit it to the CLO Unit and subsequently the CLO Unit has 15 days to translate the information and send response to the requesting jurisdiction (ss. 14.2, 14.5).

379. The deadlines are monitored by the regional contact persons and the CLO Unit (see below). If the deadline is not met the tax office responsible for gathering the information is reminded by the contact person or the CLO Unit (at its own discretion or if indicated by the requesting authority) to provide status update or partial response and give reasons why the information had not yet been provided (s. 14.8).

380. The deadlines contained in the EOI Rules of Procedure might provide for timely answers in some cases however provision of the requested information within 180 days might not be timely in cases where the requested information should be easily obtainable from the information holder such as basic banking information, information on the legal owners of the entity or annual accounting reports. Provision of information in a timely manner requires obtaining and providing the requested information as soon as possible and without unnecessary delays. It is therefore advisable to ensure that the deadlines applied in practice fit to a particular case and require the tax office obtaining the information to provide it as soon as possible and without delay (e.g. caused by waiting for the deadline).

Communication

381. Hungary accepts requests in English, German or French. If the request is not in one of these languages the requesting competent authority will be asked to translate the request into one of them but so far it has never happened that a request was received in any other language than these three.

382. Exchange of information among competent authorities of EU Members uses standard electronic format of requests. In respect of non-EU jurisdictions Hungary does not require any specific format of incoming requests as far as information contained in the request includes information in line with Article 5 paragraph 5 of the OECD Model TIEA.

383. For communication with competent authorities of EU Member states Hungary uses the CCN network which ensures very effective communication among competent authorities.[47] For communication with competent authorities from non-EU jurisdictions standard post is used. While it is noted that Hungary receives some requests from non-EU jurisdictions through standard post as well, use of standard post might lead to delays in providing the requested information and does not protect confidentiality of exchanged information in all cases. Hungary is therefore encouraged to use more effective communication tools with its treaty partners outside of EU such as emails with encrypted attachments or registered post.

384. Communication between the CLO Unit, regional contact persons and the local tax offices is carried out through the CLO system in case of requests received from EU Members or through ordinary post or emails where non-EU jurisdictions are involved. The CLO system allows direct sharing of information between the EOI Unit, regional contact points and local tax auditors handling the respective requests. The CLO system represents very effective communication tool between the EOI Unit and local level of the tax administration. However, communication tools in respect of requests coming from non-EU jurisdictions do not ensure confidentiality and timeliness of responses in all cases and, as in case of communication with competent authorities from non-EU jurisdictions, Hungary is encouraged to use more effective communication tools.

IT tools, monitoring, training

385. The NTCA uses several sources of information and IT tools to obtain the requested information (see also section B.1). The available tools include the following:

- database of the taxpayers registered in Hungary which contains all relevant identification data (e.g. name, tax number, seat/address/premises), bank accounts, ownership etc.;
- application monitoring tax audits;
- application for processing submitted tax returns;
- access to the database of registered companies in Hungary;
- access to the database of registered motor vehicles in Hungary;

47. CCN network means the common platform based on the common communication network (CCN), developed by the European Union for all transmissions by electronic means between competent authorities in the area of customs and taxation.

- access to the database of real estates;
- analytical systems concerning risk management;
- data mining software.

386. Exchange of information with EU Member countries is monitored by the CLO system. The CLO system produces reports, statistics and it is connected to the general record system (DOKU system). It automatically monitors each step in handling of requests including deadlines and generates reminders. Exchange of information with non-EU jurisdictions is monitored via general document tracking system (DOKU system) and the EOI database. The EOI database represents an excel spreadsheet containing name of the requesting jurisdiction, identification of the taxpayer under investigation, status of the request, date of receipt, date of final response, reference number, assigned regional contact person officer and the main subject of the request.

387. The CLO system and the EOI database is monitored daily by the head of the CLO Unit who discusses outstanding issues and pending requests with the respective CLO officer on a regular basis. Performance of the CLO Unit and exchange of information generally is subject of reporting to the director of the Risk Management and Liaison Department on a weekly basis. The CLO Unit prepares statistics covering all requests monthly which are submitted to the governing committee of the NTCA. The statistical figures for the specified period includes number of received requests, number of replies in time, number of replies after the deadline, pending replies and reason for their pending. Exchange of information is part of an annual report of the NTCA provided to the Ministry of National Economy and to the Government cabinet.

388. Each employee of the CLO Unit is individually trained in the EOI procedures and respective regulations including EOI Rules of Procedure. New employees of the CLO Unit are selected on the basis of their knowledge and their language skills. Staff education is primarily based on "on-the-job" training adapted to the specific needs of the person concerned.

389. The EOI Unit organises special training courses for tax auditors in exchange of information. This training usually takes place four times per year. Each training course is a two-day seminar with about 20 participants resulting in about 80 tax auditors trained in exchange of information annually. All training materials together with key documents (e.g. all EOI treaties in force, EOI Act or EOI Rules of Procedure) are available on the intranet site dedicated to exchange of information which is accessible to all tax officers. The EOI Unit also organises annual meetings with local contact points where practical issues as well as updates on the regulative framework are discussed. Further, all newly hired staff and colleagues returning to the tax

administration after a long period have to get a staff training which deals with confidentiality rules and other issues of professional code of conduct.

Conclusion

390. Hungary is considered by peers an important and reliable EOI partner. Although responses were provided within 90 days in only 21% of cases peers state that the information was mostly provided in a timely manner and are overall satisfied with timeliness of Hungary's responses. While Hungary explained that their response times can be partially explained by complexity of requests or by difficulty of the cases (e.g. non-contactable or obstructing persons), this does not account for the delays in all cases. In particular, the following factors contribute to delaying responses:

- The 180 day deadline contained in the EOI Rules of Procedure provides for timely answers only in some cases. Provision of information in a timely manner requires obtaining and providing the requested information as soon as possible and without unnecessary delays. It should be ensured in practice that prescribed deadlines fit to a particular case and are respected by the tax office gathering the information. The tax office should also use information gathering powers in an effective way so that the prescribed deadlines are kept.
- The CLO Unit should directly provide the requested information more frequently where simple information is already at the disposal of the tax administration (e.g. confirmation of identification data or incorporation of an entity, tax residency in Hungary or paid taxes).
- The CLO Unit and regional contact persons are handling all exchange of information in direct and indirect taxes. The CLO Unit is staffed with 13 persons handling about 130 incoming requests in direct taxes and about 3 000 incoming requests related to VAT per year. In addition to incoming requests, these persons are also handling approximately 5 500 of outgoing requests per year, spontaneous and automatic exchange of information. The number of handled requests might lead to work overload and unnecessary delays in providing the requested information.

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

391. Other than those matters identified earlier in this report, there are no aspects of Hungary's laws or practices that impose additional restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

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

Phase 2 rating	
Largely compliant.	
Factors underlying recommendations	**Recommendations**
Hungary introduced an obligation to provide status updates to the requesting jurisdiction in all cases where the requested information cannot be provided within 90 days in December 2014. The practical implementation of this obligation is not sufficiently tested in practice.	Hungary should monitor provision of status updates to ensure that the requesting authority is updated on the status of the request in all cases where Hungary is not in position to provide the information within 90 days.
Although Hungary's peers were generally satisfied with the timeliness of responses, there are a few factors in Hungary's processes and resources that appear to inhibit timely responses in all cases.	Hungary should ensure that appropriate resources and measures are put in place so that the requested information is provided in a timely manner in all cases.

Summary of Determinations and Factors Underlying Recommendations

Overall Rating
Largely Compliant

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Hungarian law does not contain obligation ensuring timely reporting of changes in ownership of a private limited company.	Hungary should ensure that the register of shareholders in respect of private limited companies contains updated ownership information.
	Companies incorporated out of Hungary but having place of management in Hungary, are not obliged to maintain ownership information or provide it to the authorities and thus, such information may not be available to the competent authority.	Hungary should require foreign companies with sufficient nexus to Hungary making them tax resident in Hungary, to maintain information on their ownership in Hungary.
	Hungarian law and administrative practices do not ensure the availability of information that identifies the partners in a foreign partnership which carries on business in Hungary or have income, deductions or credits for tax purposes in Hungary.	Hungary should ensure that information that identifies the partners in a foreign partnership that carries on business in Hungary or has income, deductions or credits for tax purposes in Hungary, is available to its competent authority.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely compliant.	Rules governing trusts were introduced into Hungarian law in March 2014 so there is very limited experience with their application	Hungary should monitor implementation of new trust regulations in practice to ensure that the information on settlors and beneficiaries of trusts operated by Hungarian resident trustees is available.
	The Civil Code containing rules on formation of legal entities and maintenance of ownership information came into force only in March 2014 and is therefore not tested in practice.	Hungary should monitor maintenance of ownership information required to be kept by legal entities and effectively apply enforcement measures where such information is not kept in accordance with the Civil Code.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely compliant.	There is no experience with implementation of accounting obligations of trusts as regulation of trusts was introduced in March 2014.	Hungary should monitor implementation and effective enforcement of accounting obligations of Hungarian resident trustees so that accounting records and underlying documentation in respect of all trusts are available in practice.
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place.	Although opening of anonymous passbooks was prohibited in 2001, some pre-existing passbooks are still in existence and identity information on their holders is not available unless a transaction takes place.	Hungary should strengthen measures so that information on the holders of anonymous passbooks is available to its competent authority.
Phase 2 rating: Compliant.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	The scope of professional secrecy for attorneys and auditors is very broad (not limited to giving advice or conduct of legal proceedings) which has potential for rendering the exchange of information ineffective.	It is recommended that legal provisions be put in place to reduce the scope of the professional secrecy of lawyers and auditors so this does not unduly prevent or delay the international exchange of information for tax matters as contemplated in the standards.
Phase 2 rating: Largely compliant.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	The rights available to witness to refuse testimony are wider than contemplated in the standards for international exchange of information.	Hungary should legally ensure that the privilege available to witnesses should not unduly prevent obtaining information from them.
Phase 2 rating: Largely compliant.	Rules providing for notification of customers simultaneously with sending the information to the requesting jurisdiction were introduced in November 2014 and therefore are not sufficiently tested in practice.	Hungary should monitor implementation of the new notification rules so that the customer is not notified of receipt of the banking information earlier than when the information is provided to the requesting jurisdiction.
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.		Hungary should continue to develop its EOI network to the standard with all relevant partners.
Phase 2 rating: Compliant.		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Disclosure of information rules do not prevent the taxpayer from inspecting the information provided by the requesting jurisdiction including the EOI request at any time.	Hungary should ensure that the received request and accompanying documents are not disclosed to the taxpayer or his legal representative unless necessitated by exercise of his/her appeal rights and that the EOI request will not be disclosed to the taxpayer in cases when the requesting jurisdiction indicated that it should not be disclosed.
Phase 2 rating: Partially compliant.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Tax treaties do not define the term "professional secret" and the scope of the term "professional secret" under the domestic law of Hungary does not allow exchange of any information held by all professionals covered by attorneys, lawyers and auditors.	Hungary should restrict the scope of the protection under the term "professional secret" in its domestic laws so as to be in line with the standard for the purpose of agreements for exchange of information.
Phase 2 rating: Largely compliant.		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Largely compliant.	Hungary introduced an obligation to provide status updates to the requesting jurisdiction in all cases where the requested information cannot be provided within 90 days in December 2014. The practical implementation of this obligation is not sufficiently tested in practice.	Hungary should monitor provision of status updates to ensure that the requesting authority is updated on the status of the request in all cases where Hungary is not in position to provide the information within 90 days.
	Although Hungary's peers were generally satisfied with the timeliness of responses, there are a few factors in Hungary's processes and resources that appear to inhibit timely responses in all cases.	Hungary should ensure that appropriate resources and measures are put in place so that the requested information is provided in a timely manner in all cases.

Annex 1: Jurisdiction's response to the review report[48]

The peer review procedure provided us a great opportunity to present and demonstrate our abilities and system through which we handle our extensive exchange of information network. Through the review procedure we managed to better understand the OECD Standard and to identify the potential weaknesses and gaps in our EOI system as well.

The main points of the review outcomes from Hungary's perspective were first of all that we are on the right path to further develop our system and we already managed to significantly improve it since the Phase 1 review. The report also mirrors that our EOI partners are generally satisfied with our cooperation which is a promising indication to us and we are ready to further facilitate our provided assistance.

Regarding the planned activities in the field of exchange of information and implementation of the Global Forum's standards we acknowledge that there are monitoring recommendations in the report which reflect the significant changes in our legal system and which we already started to monitor and examine their operation in practice. Moreover as an Early Adopter of the automatic exchange of information standard and a signatory to the Multilateral Competent Authority Agreement we also intend to broaden our EOI capabilities in the near future. During the review we also concluded our first TIEA's and we welcome the commitment of those third states that intend to sign the Multilateral Convention.

In our opinion the report represents a balanced and comprehensive analysis of the legal and practical background of Hungary's exchange of information system. We acknowledge the outcomes of the report and we will take concrete steps to improve our regulatory framework and practice in order to address the recommendations.

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

Annex 2: List of Hungary's exchange-of-information mechanisms

European Union exchange of information mechanisms

Hungary exchanges information with EU Members under:

- the new EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation. This Directive came into force on 1 January 2013. It repeals Council Directive 77/799/EEC of 19 December 1977 and provides inter alia for exchange of banking information on request for taxable periods after 31 December 2010 (Article 18). All EU Members were required to transpose it into national legislation by 1 January 2013. The current EU Members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Croatia, Cyprus[49], the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.
- EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU Member state in favour of individuals or residual

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

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

entities being resident of another EU Member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.

- Council Regulation (EU) No. 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax (recast of the Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative co-operation in the field of value added tax);
- Council Regulation (EC) No. 2073/2004 of 16 November 2004 on administrative co-operation in the field of excise duties.

Multilateral and bilateral exchange of information agreements

Hungary signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters as well as its 2010 Protocol on 12 November 2013. The Multilateral Convention was ratified by Hungary on 24 September 2014 and it comes into force on 1 March 2015. The status of the Multilateral Convention as at December 2014 is set out in the table below.[50] The table also includes territories to which the Multilateral Convention applies through a Declaration of territorial extension by a state party.

Hungary has signed 75 DTCs and two TIEAs out of which 72 are in force (see the table below).

Table of Hungary's exchange of information relations

The table below summarises Hungary's EOI relations with individual jurisdictions established through international agreements or EU Council Directive 2011/16/EU. These relations allow for exchange of information upon request in the field of direct taxes. In case of the Multilateral Convention which has been ratified by Hungary the date when the agreement entered into force indicates the date when the Convention becomes effective between Hungary and the specific jurisdiction. In case of the EU Directive the date signed indicates date when the EU Directive was adopted and the date of entry into force of the EU Directive indicates the date when implementing provisions dealing with exchange of information upon request should become effective in EU Member countries.

50. The chart of signatures and ratification of the Multilateral Convention is available at www.oecd.org/ctp/eoi/mutual.

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Albania	DTC	14.11.1992	21.12.1995
		Multilateral Convention	Signed	01.03.2015
2	Andorra	Multilateral Convention	Signed	Not in force
3	Anguilla[a]	Multilateral Convention	Extended	01.03.2015
4	Argentina	Multilateral Convention	Signed	01.03.2015
5	Aruba[b]	Multilateral Convention	Extended	01.03.2015
6	Armenia	DTC	09.11.2009	01.01.2011
7	Australia	DTC	20.11.1990	10.04.1992
		Multilateral Convention	Signed	01.03.2015
8	Austria	DTC	20.02.1975	01.01.1976
		Multilateral Convention	Signed	01.03.2015
		EU Council Directive 2011/16/EU (EU Directive)	15.02.2011	01.01.2013
9	Azerbaijan	DTC	18.02.2008	01.01.2009
		Multilateral Convention	Signed	01.03.2015 (Protocol not in force in Azerbaijan)
10	Bahrain	DTC	24.02.2014	Not in force
11	Belarus	DTC	19.02.2002	01.01.2005
12	Belgium	DTC	19.07.1982	25.04.1982
		Multilateral Convention	Signed	01.03.2015 (Protocol not in force in Belgium)
		EU Directive	15.02.2011	01.01.2013
13	Belize	Multilateral Convention	Signed	01.03.2015
14	Bermuda[a]	Multilateral Convention	Extended	01.03.2015

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
15	Bosnia and Herzegovina[c]	DTC	17.10.1985	01.01.1988
16	Brazil	DTC	20.06.1986	01.01.1991
		Multilateral Convention	Signed	Not in force
17	British Virgin Islands[a]	Multilateral Convention		01.03.2014
18	Bulgaria	DTC	08.06.1994	01.01.1996
		EU Directive	15.02.2011	01.01.2013
19	Cameroon	Multilateral Convention	Signed	Not in force
20	Canada	DTC (Protocol)	15.04.1992 03.05.1994	01.01.1995 01.01.1997
		Multilateral Convention	Signed	01.03.2015
21	Cayman Islands[a]	Multilateral Convention	Extended	01.03.2015
22	Chile	Multilateral Convention	Signed	Not yet in force in Chile
23	China	DTC	17.06.1992	31.12.1994
		Multilateral Convention	Signed	Not in force
24	Colombia	Multilateral Convention	Signed	01.03.2015
25	Costa Rica	Multilateral Convention	Signed	01.03.2015
26	Croatia	DTC	30.08.1996	07.06.1998
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
27	Curaçao[b]	Multilateral Convention	Extended	01.03.2015
28	Cyprus	DTC	31.11.1981	24.09.1982
		Multilateral Convention	Signed	Not in force
		EU Directive	15.02.2011	01.01.2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
29	Czech Republic	DTC	14.01.1993	27.12.1994
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
30	Denmark	DTC	27.04.2011	01.01.2013
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
31	Egypt	DTC	05.11.1981	01.01.1995
32	Estonia	DTC	11.09.2002	01.01.2005
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
33	Faroe Islands[d]	Multilateral Convention	Extended	01.03.2015
34	Finland	DTC	25.10.1978	24.07.1981
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
35	Former Yugoslav Republic of Macedonia	DTC	13.04.2001	01.01.2003
36	France	DTC	28.04.1980	01.12.1981
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
37	Gabon	Multilateral Convention	Signed	Not in force
38	Georgia	DTC	16.02.2012	01.01.2013
		Multilateral Convention	Signed	01.03.2015
39	Germany	DTC	28.02.2011	01.01.2012
		Multilateral Convention	Signed	Not in force
		EU Directive	15.02.2011	01.01.2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
40	Ghana	Multilateral Convention	Signed	01.03.2015
41	Gibraltar[a]	Multilateral Convention	Extended	01.03.2015
42	Greece	DTC	25.05.1983	01.07.1985
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
43	Greenland[d]	Multilateral Convention	Extended	01.03.2015
44	Guatemala	Multilateral Convention	Signed	Not in force
45	Guernsey[a]	Tax Information Exchange Agreement ("TIEA")	11.09.2013	07.03.2014
		Multilateral Convention	Extended	01.03.2015
46	Hong Kong, China	DTC	12.05.2010	01.01.2012
47	Iceland	DTC	23.11.2005	07.02.2006
		Multilateral Convention	Signed	01.03.2015
48	India	DTC	03.11.2003	01.01.2006
		Multilateral Convention	Signed	01.03.2015
49	Indonesia[e]	DTC	19.10.1989	01.01.1994
		Multilateral Convention	Signed	Not in force
50	Ireland	DTC	25.04.1995	01.01.1997
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
51	Isle of Man[a]	Multilateral Convention	Extended	01.03.2015
52	Israel	DTC	14.05.1991	13.11.1992

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
53	Italy	DTC	15.05.1977	01.01.1980
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
54	Japan	DTC	13.02.1980	01.01.1981
		Multilateral Convention	Signed	01.03.2015
55	Jersey[a]	TIEA	28.01.2014	Not in force
		Multilateral Convention	Extended	01.03.2015
56	Kazakhstan	DTC	07.12.1994	01.01.1997
		Multilateral Convention	Signed	Not in force
57	Korea	DTC	29.03.1989	01.04.1990
		Multilateral Convention	Signed	01.03.2015
58	Kuwait	DTC (Protocol)	17.01.1994 09.12.2001	01.01.1995 01.01.2003
59	Latvia	DTC	14.05.2004	01.01.2005
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
60	Liechtenstein	Multilateral Convention	Signed	Not in force
61	Lithuania	DTC	12.05.2004	01.01.2005
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
62	Luxembourg	DTC	15.01.1990	01.01.1990
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
63	Malaysia	DTC	22.05.1989	01.01.1992

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
64	Malta	DTC	06.08.1991	01.01.1993
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
65	Mexico	DTC	24.06.2011	01.01.2012
		Multilateral Convention	Signed	01.03.2015
66	Moldova	DTC	19.04.1995	01.01.1997
		Multilateral Convention	Signed	01.03.2015
67	Monaco	Multilateral Convention	Signed	Not in force
68	Mongolia	DTC	13.09.1994	01.01.1999
69	Montserrat[a]	Multilateral Convention	Extended	01.03.2015
70	Morocco	DTC	12.12.1991	20.08.2000
		Multilateral Convention	Signed	Not in force
71	Netherlands	DTC	05.06.1986	01.01.1988
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
72	New Zealand	Multilateral Convention	Signed	01.03.2015
73	Nigeria	Multilateral Convention	Signed	Not in force
74	Norway	DTC	21.10.1980	01.01.1982
		Multilateral Convention	Signed	01.03.2015
75	Pakistan	DTC	24.02.1992	06.02.1984
76	Philippines	DTC	13.06.1997	07.02.1998
		Multilateral Convention	Signed	Not in force

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
77	Poland	DTC (Protocol)	23.09.1992 27.06.2000	10.09.1995 01.01.2002
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
78	Portugal	DTC	15.05.1995	01.01.2000
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
79	Qatar	DTC	18.01.2012	01.01.2013
80	Romania	DTC	16.09.1993	01.01.1996
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
81	Russian Federation	DTC	01.01.1994	01.01.1998
		Multilateral Convention	Signed	Not in force
82	Serbia	DTC	20.06.2001	01.01.2003
83	San Marino	DTC	15.09.2010	01.01.2011
		Multilateral Convention	Signed	Not in force
84	Saudi Arabia	DTC	23.03.2014	Not in force
		Multilateral Convention	Signed	Not in force
85	Singapore	DTC	17.04.1997	18.12.1998
		Multilateral Convention	Signed	Not in force
86	Sint Maarten[b]	Multilateral Convention	Extended	01.03.2015
87	Slovak Republic	DTC	05.08.1994	01.01.1996
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
88	Slovenia	DTC	26.08.2004	23.12.2005
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
89	South Africa	DTC	01.03.1994	01.01.1997
		Multilateral Convention	Signed	01.03.2015
90	Spain	DTC	09.07.1994	01.01.1998
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
91	Sweden	DTC	12.10.1981	01.01.1983
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013
92	Switzerland	DTC	12.09.2013	09.11.2014
		Multilateral Convention	Signed	Not in force
93	Chinese Taipei	DTC	19.04.2010	01.01.2011
94	Thailand	DTC	18.05.1989	01.01.1990
95	Tunisia	DTC	22.10.1992	01.01.1990
		Multilateral Convention	Signed	01.03.2015
96	Turkey	DTC	10.03.1993	01.01.2006
		Multilateral Convention	Signed	Not in force
97	Turks & Caicos Islands[a]	Multilateral Convention	Extended	01.03.2015
98	United Arab Emirates	DTC	30.05.2013	Not in force
99	United Kingdom	DTC	07.09.2011	01.01.2012
		Multilateral Convention	Signed	01.03.2015
		EU Directive	15.02.2011	01.01.2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
100	Ukraine	DTC	19.05.1995	01.01.1997
		Multilateral Convention	Signed	01.03.2015
101	United States	DTC (New DTC)	22.02.1979 04.02.2010	12.09.1979 Not in force
		Multilateral Convention	Signed	01.03.2015 (Protocol not in force in USA)
102	Uruguay	DTC	25.10.1988	01.01.1994
103	Uzbekistan	DTC	17.04.2008	01.01.2010
104	Viet Nam	DTC	26.08.1994	01.01.1996

a. Extension by the United Kingdom

b. Extension by the Netherlands

c. DTC with Yugoslavia is applicable to Bosnia and Herzegovina.

d. Extension by Denmark

e. Indonesia has ratified the Multilateral Convention, it will enter into force in Indonesia on 1 May 2015.

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

Commercial laws

Act V of 2013 on the Civil Code

Act X of 2006 on Co-operatives

Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings

Act C of 2000 on Accounting

Act CXX of 2001 on the Capital Market

Act II of 1989 on the Right of Association

Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulation Governing their Activities

Taxation laws

Act XCII of 2003 on the Rules of Taxation

Act LXXXI of 1996 on Corporate Tax and Dividend Tax

Act CXVII of 1995 on Personal Income Tax

Act CXXVII of 2007 on Value Added Tax

Act XXXVII of 2013 on certain rules of international administrative co-operation in the field of taxes and other public burden

Banking laws

Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises

Act LX of 2003 on Insurance Institutions and the Insurance Business

Anti-Money Laundering Act/Regulations

Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing

Other

Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

Act XI of 1998 on Attorneys at Law

Fourth European Council Directive 78/660/EEC of 25 July 1978

Act LXXV of 2007 on the Chamber of Hungarian Auditors, the Activities of Auditors and on the Public Oversight of Auditors.

Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest

Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information)

Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities

Act CXX of 2001 on the Capital Market

Act C of 2012 on Criminal Code

Annex 4: People interviewed during the on-site visit

Ministry of National Economy

Department for Tax Policy and International Taxation
Department for Tax and Customs Administration
Department for Accounting and Supervision
International Finance Department
Department for Income Taxes and Duties
Department for Consumption and Turnover Taxes

National Tax and Customs Administration

Central Liaison Office
International Department
Legal and Codification Department
Risk Management and Liaison Department
Taxation Department
Controlling Department
Financial Intelligence Unit

Ministry of Justice

Department of Economic Codification
Department for Civil Law and Justice Codification
Department of Judicial Services

Department of Criminal Law Codification

Department of Regulatory Procedure

The Central Bank of Hungary

Methodology Directorate

Court of Registration of the Metropolitan Court of Justice

National Office for the Judiciary

Hungarian Financial Intelligence Unit

Bar association

Chamber of auditors

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: HUNGARY

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

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

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

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

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

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 visit ***www.oecd.org/tax/transparency*** and ***www.eoi-tax.org.***

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