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OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

KAZAKHSTAN



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

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

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

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Kazakhstan. The international standard, which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners.

2. Kazakhstan is the ninth largest country in the world. It is a land-locked country located in Central Asia with a population of 17.9 million. Kazakhstan is an upper-middle-income country with GDP of approximately EUR 194 billion (2013 estimate). 57% of the GDP is produced in the service sector, followed by industry with 37.9% and agriculture 5.2%. Almost half of the GDP represents exports mainly of oil, oil products and natural gas. Kazakhstan is a member of several international organisations including the United Nations, Organization for Security and Co-operation in Europe or International Monetary Fund. Kazakhstan became member of the Global Forum on Transparency and Exchange of Information for Tax Purposes in July 2012.

3. Kazakhstan’s legal and regulatory framework requires that ownership information regarding all relevant entities is available in Kazakhstan in line with the international standard with the exception of foreign companies and foreign partnerships. Domestic companies and foreign companies having a branch or representative office in Kazakhstan are required to register in the Registry of Legal Entities and provide their statutory documents. Domestic companies are required to maintain a register of shareholders constituting shareholder rights. Companies’ shares can only be issued in dematerialised form, i.e. as a set of electronic records on securities accounts which are operated by companies’ registrars. Persons providing nominee services are covered by AML obligations and required to identify their clients. The partners in a partnership established under Kazakhstan’s law are required to be identified in the foundation agreement of the partnership. Kazakhstan’s law does not recognise the concept of a trust, however, information on settlors,

trustees and beneficiaries of trusts operated by Kazakhstan resident trustees should be available in Kazakhstan based on tax law obligations. Cooperatives are required to keep a register of members.

4. All relevant entities and arrangements are required under the accounting law to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared. Requirements under the accounting law are further supplemented by obligations imposed by the tax law. Accounting records and underlying documents including contracts and invoices must be kept by the accounting entity and available in Kazakhstan for at least five years from the end of the relevant accounting period.

5. The legal and regulatory framework in Kazakhstan requires availability of banking information in line with the standard. Identity information of all account-holders and transactional information is required to be available through AML, accounting and banking law obligations.

6. Kazakhstan's competent authority has access powers to obtain and provide information held by persons within its territorial jurisdiction, however, there are several deficiencies in Kazakhstan's regulatory framework which might have a negative impact on effective exchange of information. First, it is not clear how Kazakhstan's access powers can be legally applied for exchange of information purposes especially in cases where there is no domestic tax at stake. Further, Kazakhstan's access to banking information for domestic tax purposes is restricted in scope and it is questionable whether Kazakhstan's competent authority would be able to provide all the requested banking information for exchange of information purposes. In addition there appear to be no effective sanctions applicable in cases where a taxpayer fails to provide information requested by the tax authority and no domestic tax is at stake. Finally, Kazakhstan's law provides for protection of information held by lawyers and notaries without exceptions which is too broad and goes beyond the international standard.

7. Although a taxpayer can appeal against notice on the results of a tax audit or against acts of the official person Kazakhstan's legislation does not require notification of the person subject to the exchange of information (EOI) request.

8. Kazakhstan has an extensive EOI network covering 99 jurisdictions through 59 double tax conventions (DTCs) and the multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention (the Multilateral Convention)). All agreements except for two DTCs and the Multilateral Convention are in force. Kazakhstan's domestic law contains restrictions on access to banking information which might limit

effective exchange of information under its agreements. Further, it is not clear how Kazakhstan's competent authority's access powers are legally applied in cases where information is requested for exchange of information purposes especially in cases where the information is requested under the treaty which does not contain language similar to Article 26(4) of the OECD Model Tax Convention. It is therefore recommended that Kazakhstan addresses these domestic law issues to bring all its EOI relationships in line with the standard.

9. All of Kazakhstan's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. Kazakhstan's domestic law permits disclosure of information which goes beyond the use of information permitted under the international standard. However, the provisions of Kazakhstan's EOI agreements ratified by the Parliament override domestic laws and therefore confidentiality of the exchanged information should be preserved in line with the standard. Kazakhstan's law does not require the competent authority to provide to the information holder identification of the requesting competent authority or any information from the EOI request which goes beyond description of the requested information. There is no provision in Kazakhstan's law requesting the tax authority to allow a taxpayer to inspect information provided by the requesting jurisdiction including the EOI request.

10. As elements which are crucial to achieving effective exchange of information are not yet in place in Kazakhstan, it is recommended that Kazakhstan does not move to a Phase 2 Review until it has acted on the recommendations contained in the Summary of Factors and Recommendations to improve its legal and regulatory framework. In the meantime, a follow up report on the steps undertaken by Kazakhstan to answer the recommendations made in this report should be provided to the PRG within six months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Kazakhstan

11. The assessment of the legal and regulatory framework of the Republic of Kazakhstan (hereafter Kazakhstan) was based on the international standards for transparency and exchange of information as described in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes, and was prepared using the Global Forum’s Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 4 March 2015, Kazakhstan’s responses to the Phase 1 questionnaire and supplementary questions, other materials supplied by Kazakhstan, and information supplied by partner jurisdictions.

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

13. The assessment was conducted by a team which consisted of two expert assessors: Mrs. Ann Andréasson, International Tax Office, Swedish Tax Agency, Sweden and Mr. Manav Bansal, Department of Revenue, Ministry of Finance, India; and a representative of the Global Forum Secretariat, Mr. Radovan Zidek.

Overview of Kazakhstan

14. Kazakhstan is located in Central Asia. It is the ninth largest country in the world and the world's largest landlocked country by land area. It has territory of 2 7 million square kilometres and borders with the Russian Federation (Russia), the People's Republic of China (China), Kyrgyzstan, Uzbekistan, and Turkmenistan. Its population is 17.9 million (July 2014 estimate) making it one of the countries with the lowest population density. About half of the population lives in urban areas. The main cities are the capital city Astana with population of 0.6 million and Almaty with population of 1.5 million. The national language is Kazakh, however Russian is also an official language of the state administration. The official currency is the Tenge (KZT).

15. Kazakhstan's economy is the largest in the Central Asian region thanks mostly to exploration of vast natural resources. Kazakhstan is an upper-middle-income country with GDP about EUR 194 billion (2013 estimate). 57% of the GDP is produced in the services sector, followed by industry with 37.9% and agriculture 5.2%. Almost half of the GDP represents exports mainly of oil, oil products and natural gas. Kazakhstan possesses vast fossil fuel reserves and sources of other minerals and metals, such as uranium, copper, and zinc. It also has a large agricultural sector featuring livestock and grain. As a landlocked country it relies on its neighbours to export its products. At the end of 2007, global financial markets caused a credit crunch and the fall of oil and commodity prices in 2008 lead Kazakhstan's economy into recession. Strong domestic demand, coupled with increased oil output and recovered crop production, boosted economic growth from 5% in 2012 to 6% in 2013. The public sector is heavily involved in Kazakhstan's economy. In 2010 Kazakhstan joined the Belarus-Kazakhstan-Russia Customs Union enabling free flow of goods, services and capital between the three countries.

16. Foreign direct investment plays a more significant role in the national economy than in most central Asia economies. Kazakhstan law does not prohibit foreign investments into any sector of the economy however there are restrictions in certain areas. These restrictions include limits on equity participation in companies in the oil and gas sector, subsoil users, communication and media companies or providers of international transportation services. Foreign individuals may only obtain 10-year leases of land used for agriculture or forestry.

17. The main trading partners of Kazakhstan are China and the European Union (EU). In terms of exports the main partners in 2012 were China (19.3%) followed by Italy (18.1%), Netherlands (8.8%), France (6.6%),

Switzerland (5.8%) and Austria (5.8%). Main importing partners are China (28%), Ukraine (10.9%), Germany (8.5%) and the United States (US) (7.9%).

18. Kazakhstan is a member of several international organisations including the United Nations, Organization for Security and Co-operation in Europe (which it chaired in 2010), North Atlantic Cooperation Council, International Monetary Fund, Commonwealth of Independent States, and Euroasian Group (EAG) for monitoring of AML/CFT obligations, the Shanghai Cooperation Organisation and NATO's Partnership for Peace program. Kazakhstan is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes since July 2012.

General information on the legal system and the taxation system

Governance and the legal system

19. Kazakhstan is a republic with a presidential system. The head of state is the President, elected by popular vote for a five-year term. The President appoints the Cabinet of Ministers. The Prime Minister and the Deputy Prime Minister are appointed upon approval by the lower chamber of the Parliament. The Parliament is bicameral and consists of the Senate and the Mazhilis (the lower chamber). The Senate has 47 seats of which 12 are appointed by the President and 32 are elected by local assemblies. The Mazhilis has 107 seats of which seven are appointed by presidentially appointed bodies and 100 seats are elected by popular vote for a term of five years.

20. The country consists of 14 regions (oblast) and three cities¹ which can issue regulations and decisions if authorised by the relevant law. Each region is governed by a governor (akim) appointed by the president.

21. The legal system of Kazakhstan is based on civil law with strong influence from the Russian legal tradition. Kazakhstan's law consists of the Constitution, the laws approved by the Parliament, sub-law regulatory legal acts, international treaties as well as regulatory resolutions of the Constitutional Council and the Supreme Court. International agreements (including agreements for exchange of information for tax purposes) require ratification by the Parliament. Where a ratified international treaty conflicts

1. Almaty Oblysy, Almaty Qalasy, Aqmola Oblysy (Astana), Aqtobe Oblysy, Astana Qalasy, Atyrau Oblysy, Batys Qazaqstan Oblysy (West Kazakhstan), Bayqongyr Qalasy (Baykonur), Mangghystau Oblysy (Aqtau), Ongtustik Qazaqstan Oblysy (South Kazakhstan), Pavlodar Oblysy, Qaraghandy Oblysy, Qostanay Oblysy, Qyzylorda Oblysy, Shyghys Qazaqstan Oblysy (East Kazakhstan), Soltustik Qazaqstan Oblysy (North Kazakhstan), Zhambyl Oblysy (Taraz).

with domestic law the treaty prevails over domestic law (s.4(3) Constitution). A list of relevant legislation and regulations is set out in Annex 3.

22. Kazakhstan's court system consists of local and regional courts, the Supreme Court and the the Constitutional Council. The local court is the court of first instance for civil, criminal and administrative cases. The regional courts are the courts of appeal in cases already heard in local courts and serve as courts of first instance for cases falling specifically under their jurisdiction, such as tax matters. The Supreme Court amongst other appellate functions is the court of appeal in tax matters. In addition, the Constitutional Council reviews cases concerning the conformity of laws with the Constitution, as well as other cases where breach of the Constitution might have arisen.

The tax system

23. Kazakhstan's tax system includes direct and indirect taxes, fees and duties. The tax system is governed by the Law on Taxes and Other Obligatory Payments to Revenue (Tax Code) and specific regulating Acts and Cabinet Regulations issued pursuant to this Act. The Tax Code determines the types of taxes payable in Kazakhstan and regulates the tax procedure including rights of taxpayers and the appeal procedures for decisions made regarding taxes and fees.

24. The tax system includes:

- corporate and individual income taxes;
- value added tax (VAT);
- excise tax;
- subsoil use taxes;
- social security tax;
- real property and land taxes;
- vehicles tax;
- fees (e.g. business registration fees, license fees for the conduct of certain businesses)

25. Corporate income tax rate and personal income tax rate is 20% and 10% respectively in 2014. Tax residents are taxed on their worldwide income. Non-residents are taxed only on Kazakhstan source income. A company is considered to be a Kazakh tax resident if it is established under the laws of Kazakhstan or if its place of effective management is located there. An entity is subject to corporate income tax on trading profits and other taxable

income. Expenses that are incurred for business purposes and properly documented may be deducted against this income. A withholding tax of 15% is levied on dividends, interest and royalties paid to non-residents without a permanent establishment (PE) in Kazakhstan. A 20% tax rate applies to these types of income if paid to non-residents registered in non-transparent jurisdiction. The Tax Code provides for certain tax exemptions in relation to cross-border transactions. First, withholding tax will not apply to dividends paid to foreign shareholders (participants) where: (i) the shares (interest) are owned for more than 3 years, and (ii) not more than 50% of the value of such shares (interest) or share capital is derived from the property of local mining or oil and gas companies. Second, a non-resident without a PE in Kazakhstan is generally not taxed on the capital gain on a sale of shares (interest) in either local or offshore companies. As an exception to the above rule, capital gains tax does apply to the sale of shares (interest) in a Kazakhstani mining or oil and gas company. Kazakhstan's anti-avoidance rules include transfer pricing, thin capitalisation and controlled foreign companies (CFC) rules. The transfer pricing law applies to international business transactions and to certain types of domestic transactions, regardless of whether or not the parties are related. The deduction of interest is limited either by the market rate or specific debt-to-equity formula. CFC rules apply to residents with at least a 10% shareholding in an entity established in non-transparent jurisdiction.

26. VAT is charged on the sale of most goods and services in Kazakhstan and on the importation of goods into the customs territory of Kazakhstan. The current rate of VAT is 12%. VAT is chargeable on turnovers that take place in Kazakhstan, based on the place of turnover rules. A reverse charge applies in certain cases.

27. Specific subsoil use taxes in Kazakhstan include:

- signature bonus – a one-time payment to the state for the right to use the subsurface;
- commercial discovery bonus – a fixed payment that is payable by subsurface users when a commercial discovery is made in the contract territory;
- minerals extraction tax – for mining companies the tax is payable on the average exchange price of extracted minerals (as quoted by specified publications);
- excess profits tax – the tax is payable annually once the ratio of aggregate annual income of a subsoil user to cumulative deductions (for corporate income tax purposes) under a subsoil contract exceeds 1.25:1;

- rent export tax – the tax is payable by exporters of crude oil, gas condensate and coal with certain exceptions.

28. Legal entities annually pay a property tax in Kazakhstan at the rate of 1.5% of average annual balance sheet value of real property (e.g. buildings) for business accounting purposes. Owners of land pay a land tax in Kazakhstan on an annual basis. The rates of the land tax depend on the category of a particular land plot, its location and quality.

29. There are currently nine special economic zones in Kazakhstan.² A special economic zone is established by a Decree of the President of Kazakhstan with the aim of accelerating the development of Kazakhstani regions and attracting investment and technology into those regions. The special economic zone regime generally provides for the tax benefits to companies operating in the zone which gross annual income consists of not less than 90% from certain types of activity including the installation of computer software, the creation of information technologies and the production of textile and knitted products. The benefits consist of exemption from the corporate income tax, exemption from land and property taxes and exemption from customs duties and levies (except excise duties) for goods imported into the special economic zone. Certain entities including subsoil users and entities producing excisable goods are not eligible for the tax benefits. Nevertheless, all entities operating in special economic zones are required to register for tax purposes and file their income tax returns. They are also required to provide information requested by the tax administration as in case of other taxpayers.

Exchange of information for tax purposes

30. Kazakhstan has been involved in exchange of information for tax purposes since gaining independence in 1991. Most of exchange of information takes place with its regional economic partners but also investor jurisdictions from the EU and the United States. Kazakhstan's competent authority for exchange of information purposes is the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan. The State Revenue Committee is government authority under supervision of the Ministry of Finance responsible for tax and customs administration and investigation of economic crimes including tax crimes.

2. These are: Astana – New City (construction), Sea Port Aktau (logistics and transport), Innovation Technology Park (IT industry), Ontustik (textiles), National Industrial Petrochemical Technopark (oil and gas engineering, petrochemicals), Burabay (tourism), Khorgos – Eastern gates (trade and logistics), Pavlodar (chemical and petrochemical), Sary-Arka (metallurgy and metalworking).

31. Kazakhstan provides international co-operation in tax matters based on international bilateral and multilateral agreements. Kazakhstan has in total 99 exchange of information relationships. These relationships are based on DTCs and the Multilateral Convention. The domestic regulation of exchange of information is contained in the Tax Code providing rules for domestic taxation.

Overview of the financial sector and relevant professions

32. The National Bank is Kazakhstan's central bank and the upper (first) tier in the national banking system. All other banks form the lower (second) tier of the banking system, with the exception of the Kazakhstan Development Bank, which has a special legal status.

33. The Kazakhstan Stock Exchange (KASE) was created in 1993 and is the largest multifunctional and organised financial market in Central Asia. It is divided into five major sectors: a foreign currency market, a government securities market, shares and corporate bonds market, repo operations, and a derivatives market.

34. The financial sector comprises the following types of entities which require authorisation from the National Bank of Kazakhstan³: banks (38), insurance companies (35), professionals participating on securities market such as investment firms, collective investment funds, unit trusts or brokers (42) and pension funds (7). The foreign currency exchange services may be provided by banks and exchange offices. Kazakhstan's law does not provide rules for creation of an offshore banking sector. The money transfer services may be rendered only through banks or by post offices. The total value of assets in the Kazakhstan's banking sector is EUR 67.62 billion. The assets of the five largest banks, including KazKommertsBank, HalykBank, BTA bank, Bank CenterCredit and ATF-UniCredit bank represent about 60% of all banking assets. In response to the 2008 financial crisis the government nationalised three of the largest banks and restructured their external obligations. Non-resident deposits do not play a significant role in Kazakhstan's banking sector. The AML supervisory authority in respect of the financial sector is the Agency of the Republic of Kazakhstan for Regulation and Supervision of Financial Market and Financial Institutions (FSA) and the National Bank of Kazakhstan. Banks and pensions funds are allowed to operate only in the legal form of joint stock companies.

35. Kazakhstan's law provides regulation for Islamic banking. In addition to prohibiting certain kinds of transactions, such as interest bearing

3. Numbers in square brackets indicate the number of each type of registered entity as at January 2015.

loans, Islamic banking law also prohibits certain types of business activities related to activities forbidden by Islamic law. The AML, accounting and banking obligations regarding availability of ownership and accounting information however remain applicable also in respect of Islamic banks.

36. Licenses for notaries and lawyers are issued by the Ministry of Justice of the Republic of Kazakhstan. The Ministry also makes decisions on suspension and cancellation of licenses that grant the right to be engaged in notarial activities and legal practice and also initiates notary license withdrawal proceedings. Local justice authorities are responsible for exercising control over compliance by notaries with the AML/CFT legislation of the Republic of Kazakhstan.

37. The system of AML/CFT regulation and supervision of financial institutions in Kazakhstan is primarily based on anti-money laundering/combating financing of terrorism Law (AML/CFT Law) and partially on the industry laws and regulations that govern the activities of financial institutions. The monitoring of compliance with the AML/CFT legislation is assigned to the respective government agencies within their terms of reference. Regulation of AML issues is under the overall control of the Ministry of Finance. The Financial Monitoring Committee of the Ministry of Finance represents Kazakhstan's financial intelligence unit (FIU). The FIU does not have AML supervisory responsibilities. FIU's functions include collection, requesting, processing and analysis of information as well as dissemination to the national competent authorities of materials of financial investigations carried out based on the analysis of suspicious transaction reports and information supplied from other sources.

Recent developments

38. On 23 December 2013 Kazakhstan signed the Convention on Mutual Administrative Assistance in Tax Matters. The Convention was ratified by Kazakhstan on 26 December 2014. However the instrument of ratification has not yet been deposited with the Convention depositary and therefore if and when the Convention comes into force is not yet known.

39. Kazakhstan is in the process of amending its domestic legislation to implement obligations under the FATCA. Kazakhstan's Competent Authority has also recently developed internal EOI Manual as guidance for handling incoming and outgoing exchange of information requests.

Compliance with the Standards

A. Availability of information

Overview

40. 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 authority⁴ may not be able to obtain and provide it when requested. This section of the report describes and assesses Kazakhstan's legal and regulatory framework for availability of information.

41. Kazakhstan's legal and regulatory framework requires that ownership information regarding all relevant entities is available in Kazakhstan in line with the international standard with the exception of foreign companies and foreign partnerships. Domestic companies and foreign companies having a branch or representative office in Kazakhstan are required to register in the Registry of Legal Entities. Companies obtain legal personality upon registration. Information on founders of a domestic company must be provided upon registration. Domestic companies are required to maintain a register of shareholders. A person cannot legally become a shareholder without being entered in the

4. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention (DTC) or tax information exchange.

register. Registers of shareholders are operated by companies' registrars who are subject to AML customer due diligence rules. Further, companies' shares can be issued only in dematerialised, i.e. as a set of electronic records on securities accounts which are operated by companies' registrars. Any transfer of a share has to be reported by the transferee to the registrar within ten days after the transfer contract is concluded. Persons providing nominee services are covered by AML obligations and required to identify their clients.

42. Companies that are not formed under Kazakhstan's law but have their place of effective management there are not required to maintain ownership information available in Kazakhstan. Information on their owners is not required to be provided to the Registry of Legal Entities upon registration or subsequently. Further, tax obligations require that ownership information is provided to the tax authority only in certain circumstances. If a foreign company engages an AML obligated person the service provider is required to perform customer due diligence, however, this will not ensure the availability of full ownership information with respect to all relevant foreign companies. Therefore, Kazakhstan is recommended to ensure that ownership information on foreign companies having their place of effective management in Kazakhstan is available in all cases.

43. Kazakhstan's law does not allow for the issuance of bearer shares. Shares can be issued only in dematerialised form.

44. Identification of partners in a partnership established under Kazakhstan's law is required to be included in the foundation agreement of the partnership and kept updated. The statutory documents (including the foundation agreement) must be available for inspection at any time at the registered address of the partnership. Foreign partnerships that carry on business in Kazakhstan or have income, deductions or credits for tax purposes therein are not required to keep information identifying their partners in Kazakhstan in all cases. Availability of such information in Kazakhstan will depend on the law of jurisdiction where the partnership was established. It is therefore recommended that Kazakhstan ensures that information identifying the partners in a foreign partnership is available to its competent authority in accordance with the international standard.

45. Kazakhstan's law does not recognise the concept of a trust and Kazakhstan is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. However, information on settlors, trustees and beneficiaries of foreign trusts operated by Kazakhstan resident trustees should be available in Kazakhstan mainly based on tax law obligations. Kazakhstan's tax law contains rules regarding taxation of income received under trust management agreements which appear applicable to all types of express trusts. The scope of practical application of these rules will be further considered in the course of the Phase 2 peer review of Kazakhstan.

46. Kazakhstan’s law does not provide for establishment of foundations for private or business purposes. Other entities which can be established under Kazakhstan’s law include co-operatives and non-commercial organisations (an institution, a public association, a public foundation, a consumer co-operative and a religious association). Non-commercial organisation cannot be established for the purpose of gaining income or profit and its profits (if any) cannot be distributed among its members. As in case of other legal entities co-operatives and non-commercial organisations obtain legal personality upon entry on the Register of Legal Entities. A notarised copy of their statutory documents, i.e. the foundation agreement and the co-operative’s charter is required to be provided upon registration. Each co-operative is further required to keep a register of its members containing the member’s name and address, the amount of capital contribution, and the date of commencement and termination of membership.

47. Kazakhstan’s law provides for sanctions in respect of the main obligations to maintain ownership information. Nevertheless, as effectiveness of the available sanctions is a matter of practice this concern will be further considered in course of the Phase 2 peer review.

48. Relevant Kazakhstan’s entities as well as foreign entities conducting business in Kazakhstan are required under the accounting law to keep accounting records that correctly explain the entity’s transactions, enable it to determine the entity’s financial position with reasonable accuracy at any time and allow financial statements to be prepared. The requirements under the accounting law are further supplemented by obligations imposed by the tax law. A trust manager is obliged to maintain separate tax accounting for items relating to taxation of proceeds from the trust management agreement and in relation to any other business in order to assess tax liability of the parties to the trust agreement. The practical application of this rule will be considered during the Phase 2 peer review. All accounting entries must be substantiated by underlying documentation which includes contracts and invoices. Accounting records and underlying documents must be kept by the accounting entity and available in Kazakhstan for at least five years after the end of the accounting period to which they relate.

49. The legal and regulatory framework in Kazakhstan requires the availability of banking information to the standard. Identity information of all account-holders and transactional information is required to be available through AML, accounting and banking law obligations. Banks are required to perform customer due diligence prior to opening a bank account and to keep accounting records and all documents pertaining to transactions carried out through it. The practical availability of all types of updated banking information will be considered during the Phase 2 review of Kazakhstan.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Companies (ToR⁵ A.1.1)

50. Kazakhstan's law provides for the establishment of companies only in the form of joint stock companies. A joint stock company is a legal entity which issues shares for the purposes of raising funds for the performance of its activities. The shareholders of a joint-stock company are not be liable for its obligations, and they bear the risk of losses associated with the company's business only within the limits of the value of the shares they hold. A joint-stock company may have only one founder or shareholder who can be an individual or a legal person (s. 85 Civil Code). The minimum registered capital of a company⁶ is EUR 428 000 (s. 10 Law on Joint Stock Companies).

51. A legal entity (including a joint stock company) obtains its legal personality at the moment it is registered with the Register of Legal Entities (s. 42(3) Civil Code). Activities performed by an entity which failed to register are legally void and income from such activities should be appropriated by the state (s. 18 Law on State Registration of Legal Entities and Branches (LSR)). In order to set up a company the founders must, among other requirements, prepare and sign the Memorandum of Association and the Company's Charter, set up administrative bodies of the company, pay up the equity capital and submit an application to the respective office of the Register of Legal Entities (ss.37 and 85 Civil Code, s. 6 Law on Joint Stock Companies). The Memorandum of Association must include identification of each founder and their signatures and it has to be authorised by a notary (s. 8 Law on Joint Stock Companies).

Information kept by public authorities

Register of Legal Entities

52. The Register of Legal Entities is a central state register maintained by the Ministry of Justice. Registration of legal entities is performed by judicial authorities (local courts) who upon registration enter the information provided by the legal entity into the register's database (ss.4 and 5 LSR).

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5. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.
 6. The minimum registered capital is defined as 50 000 times the monthly calculation indices as established by the law of the Republic of Kazakhstan concerning the state budget for the relevant financial year.

53. Companies are required to provide upon registration a certified copy of its statutory documents, i.e. the Memorandum of Association and the Company's Charter (s.6 LSR). Both statutory documents have to be in writing and authorised by a notary (ss.8 and 9 Law on Joint Stock Companies). The Memorandum of association must among other information contain:

- information about the founders (sole founder) of the company, in particular:
 - with regard to an individual: name, nationality, place of residence and details of the identification document;
 - with regard to a legal entity: its business name, address, details of registration;
- full and abbreviated business names of the company, as well as the procedure for its establishment;
- number, types and par values of the company's shares, which will be allocated to its founders or acquired by the sole founder;
- the rights and obligations of its founders and distribution of the costs associated with the company's establishment, as well as other terms of the founders' activities associated with establishment of the company;
- the procedure for convening general meetings of the company;
- record of approval of the company's charter (s.7 Law on Joint Stock Companies).

54. The company's Charter defines the legal status of the company. The charter has to be signed by each founder. In addition to information contained in the Memorandum of Associations the charter has to include:

- address of the company's executive body;
- information on shareholders' rights including the scope of the rights certified by the company's preference shares;
- the procedure for formation and competence of the company's bodies;
- the procedure for disclosure of the information on affiliates by shareholders and officers of the company;
- where a company is a non-profit organisation, the mention of this fact (s.8 Law on Joint Stock Companies).

55. The registration authority can refuse the registration application if (among other reasons) the statutory documents are not provided or do not comply with legal requirements, invalid identity documents are provided, a founder of the legal entity is an inactive legal entity, a natural person who is

a founder or manager of the legal entity is the sole founder or manager of an inactive legal entity or is recognised by a court as incapable or convicted of a crime (s. 11 LSR).

56. Upon registration the registration authority issues a registration certificate which includes the date of issuance, name of registering authority, business identification number, date of state registration and name and location of the registered legal entity (s. 12 LSR). Banking institutions are prohibited to open a bank account for a legal entity without being provided with the registration certificate (s. 12).

57. The authorised representative of the registered entity (i.e. in case of a company board of directors) must within one month submit to the registration authority any changes or additions made to the statutory documents (s. 14-1 LSR).

58. Entries in the Register of Legal Entities shall be stored in electronic or paper form. There is no provision that limits the time period for which the stored information should be kept.

Information provided to tax authorities

59. Any legal entity established under Kazakhstan law, having its place of effective management or conducting business in Kazakhstan through a permanent establishment must be registered with the tax authority (s. 26 Tax Code). The tax authority maintains the governmental database of taxpayers which is an information system containing information relevant for administration and enforcement of taxpayers' obligations under the tax law (s. 560). The governmental database contains information submitted by taxpayers, governmental authorities (such as commercial registration authorities, National Register of Citizens, Register of Real Estates, National Trade License Office or Register of Motorised Vehicles) and banking institutions (s. 560). The provided information should be kept in the database for at least five years after the end of the taxable period to which it relates (s. 46). Taxpayers are identified based on unique identification number which in the case of legal persons, is issued upon its incorporation by the commercial registration authority (i.e. the business identification number). Information required to be provided upon registration includes full name of the business entity, its address and identification of persons authorised to act on its behalf. However, no ownership information is required to be provided. Changes in the provided registration details must be filed with the taxpayer's local tax authority not later than ten working days after the change occurred (s. 563(5)).

60. Taxpayers are required to submit an annual tax reports to the tax authority (s. 14 Tax Code). These reports should contain information relevant for computation of their tax liability in Kazakhstan. The information should include among other things information on income (losses) from capital gains, on

write-offs of liabilities, claims relating to creditors and debtors, on income and costs relating to interest, on income (losses) on derivative financial instruments or on income from foreign sources (s. 65). Nevertheless, ownership information is not required to be filed in the annual tax report unless necessitated by certain tax positions (e.g. transfer pricing, utilisation of tax losses or thin capitalisation rules). Although these tax positions might be frequent in practice resulting reporting obligations do not ensure that information on shareholders is provided to the tax authority in all cases as they are linked to these specific conditions.

Information held by companies

61. Companies are required to maintain a register of shareholders. A shareholder is a person who has been entered in the register of shareholders. Until the person is entered into the register of shareholders it cannot exercise its shareholder rights (ss.22 and 39 Law on Joint Stock Companies).

62. The register of shareholders includes:

- sequence numbers and par value of shares;
- information regarding shareholders:
 - for a natural person – the full name, the individual identification number and address where the person may be reached;
 - for a legal person – the full business name, business identification number and legal address;
- the number of shares of each shareholder ;
- documents evidencing information contained in the register (e.g. transaction instructions or shares issuance documents) (s. 65(4) Law on Securities Market, Resolution No. 62, Rules for maintaining the system of register of securities holders).

63. The register of shareholders should reflect all historical changes in shareholders. Deletion and exclusion of entries is not permitted.

64. The register of shareholders has to be maintained by the company's registrar (19(1) Law on Joint Stock Companies). Company's registrar is an independent corporation carrying out as its professional activity the maintenance of companies' registers of shareholders (s. 1(15)). Each company must conclude an agreement with the company's registrar for the services of keeping of its register of shareholders prior to issuance of shares. Companies' registrars are obliged persons under the AML rules (s. 3(7) Law on Counteracting Legalisation of Ill-gotten Proceeds and Terrorist Financing (AML Law)) (see further below). A company registrar is required to be approved by the Central Depository. In vast majority of cases the company's

register is maintained by professional participants on the securities market such as brokers or banks.

65. Companies can issue shares only in non-documentary (dematerialised) form, i.e. as a set of electronic records in securities accounts operated by companies' registrars (s. 129(1) Civil Code and s. 12(1) Law on Joint Stock Companies). Issuance of shares has to be registered with the National Bank (s. 18 LSR). Any transfer of a share or a change in the information required to be recorded in the shareholder register has to be reported by the transferee or person concerned with the change to the company's registrar within ten days after the transfer contract is concluded or the change occurred (s. 15(2) Law on Joint Stock Companies).

66. Entries in the register of shareholders shall be stored in electronic form. There is no provision that limits the time period for which the information entered in the register should be kept.

67. In addition to the register of shareholders, a company is required to keep at its registered address (among other documents) minutes of annual general meetings of shareholders, voting protocols and lists of shareholders present at the general meetings (s. 80 Law on Joint Stock Companies). The list of shareholders entitled to take part in the general meeting has to be compiled by the company's registrar on the basis of information contained in the company's register of shareholders (s. 39(1)). The list of shareholders (as well as other documents required to be kept by the company) has to be kept by the company during its entire existence (s. 80).

Nominee identity information

68. The business of providing nominee shareholding is regulated under the AML rules (s. 3 AML Law). As obliged persons nominees are required to identify their customers, i.e. the person on whose behalf they hold these shares, and perform CDD at the moment of establishing the business relationship (s. 5). In respect of the client who is a natural person, the nominee must copy the identity card and keep the individual identification number. If the client is a legal person the nominees are required to keep copy of statutory documents, the business identification number and registered address (s. 5(3)). The nominee is further required to conduct ongoing monitoring, to ensure that the information held on the customer is up-to-date and to keep information for at least five years following the termination of the business relationship (ss.5(4) and 11(4)). Non-professional nominees are not regulated under AML laws however nominees are normally legal professionals or participants on the securities market acting on professional basis. The Kazakhstan's authorities have advised that such nominees are expected to be rare and that they have not been encountered in any instances. The reasons for that can be seen in the legal uncertainty of these arrangements without enforceable business contracts.

69. If a person holds shares on behalf of another person as a nominee, the nominee would be subject to tax obligations as a legal owner of these shares unless the nominee provides proof through written agreement or otherwise that he/she is not the beneficial owner of the assets. The Kazakhstan's authorities advise that the tax authorities have the power to require any type of nominee to provide information for purposes of the exchange of information. Any person acting as a nominee would have to disclose the identity of the person for whose account the shares are held in order to avoid taxation. However this does not ensure that identity of the person on whose behalf shares are hold is disclosed in all cases as the nominee might prefer to be taxed on behalf of such a person rather than to disclose the nominee arrangement. Nevertheless, the AML obligations mentioned above appear adequate to ensure availability of information in relation to professional nominees in line with the standard. The scope of the issue of non-professional nominees will be further examined in the course of Kazakhstan's Phase 2 peer review.

Foreign companies

70. Foreign companies or other legal entities established under laws of another jurisdiction can conduct commercial activities in Kazakhstan as branches, representative offices or permanent establishments. Branches and representative offices of foreign entities must be registered in the Register of Legal Entities. An application for entering a branch or representative office in the register must be signed by an authorised person authorised of the legal entity establishing the branch or representative office and sealed with its stamp. The application must include:

- legalised extract from the Commercial Register of the jurisdiction where the legal entity is incorporated;
- statutory documents of the foreign legal entity;
- proof of tax registration of the foreign legal entity in the jurisdiction of incorporation including its tax identification number (or its equivalent);
- documents establishing the branch or representative office in a notarised translation into Kazakh and Russian languages (s. 6-2 LSR).

71. A company registered under foreign law is considered tax resident in Kazakhstan if it has its place of effective management there (s. 225 Tax Code). The same registration and taxation rules apply to all tax residents regardless whether they are domestic or foreign companies. Information required to be provided upon registration and in annual tax returns includes full name of the business entity, its address and identification of persons authorised to act on its behalf, however, no ownership information is required

to be provided. Ownership information must be reported in certain tax positions (e.g. transfer pricing, utilisation of tax losses or thin capitalisation rules). However, these tax reporting obligations do not ensure that information on shareholders is provided to the Kazakhstan's tax authority in all cases as they are linked to specific conditions of the foreign company.

72. To the extent that a foreign company engages the services of AML obligated persons (such as banks with which the foreign company maintains an account), identity information would be collected with respect to the foreign company by virtue of CDD conducted by that AML obligated person. However, since the CDD requirements do not ensure availability of complete ownership information (see below) and not all companies must engage with AML obligated persons in Kazakhstan this does not ensure that ownership information on foreign companies is available in Kazakhstan.

73. Companies formed outside of Kazakhstan are generally not required to maintain or provide information identifying their owners if they are effectively managed therein. Obligation to maintain ownership information under the tax law is linked to specific conditions which do not ensure that such information will be available in all cases. Therefore, the availability of information that identifies the owners of foreign companies with sufficient nexus with Kazakhstan will generally depend on the law of the jurisdiction in which the company is formed and it may not be available to Kazakhstan's competent authorities in all cases.

Information held by service providers and other persons

74. Obligations of services providers and other persons to obtain and maintain identity or ownership information is regulated by the AML Law. The AML Law requires obliged entities to identify their clients. The obliged entities under the AML Law include banks; banking institutions; stock exchanges; insurance companies and brokers; pension funds; professional participants on the securities market; the central depository of securities; notaries, attorneys and other independent specialists on legal issues in the cases when they are involved in transactions related to management or establishment of a legal entity or arrangement, real estate purchase and sale, management of securities or bank accounts; auditors or organisers of gambling and lotteries (s. 3 AML Law).

75. The obliged person is required to identify a customer prior to establishing a business relationship or prior to performing an individual transaction above specified thresholds based on nature of the transaction (s. 5(2) AML Law). A natural person is identified through copy of the identity card and the personal identification number. Identification of a legal person is based on copy of the statutory documents, the business identification number and the registered address (s. 5(3)). No further ownership information than contained

the Memorandum of Association (i.e. identity of founders of the joint stock company) is required to be obtained.⁷

76. The obliged person should regularly update identification information obtained in the process of the customer due diligence and this documentation must be stored for at least for five years following the end of the business relationship (ss.5(5) and 11(4) AML Law).

Conclusion

77. Kazakhstan's legal and regulatory framework ensures that ownership information regarding domestic companies should be available. Companies are required to maintain a register of shareholders kept by the company's registrar. A person becomes a shareholder in the company upon entry in the register of shareholders. Shares can be issued only in dematerialised form, i.e. as a set of electronic records on securities accounts which are operated by companies' registrars. Any transfer of a share has to be reported by the transferee to the registrar within ten days after the transfer contract is concluded. Further, companies obtain legal personality upon registration in the Registry of Legal Entities and information on founders of the company has to be provided upon registration. Persons providing nominee services are covered by AML obligations and required to identify their clients.

78. Companies that are not formed under Kazakhstan's law are not required to provide ownership information to the registration authority in order to conduct activities in Kazakhstan. Further, tax obligations do not ensure that ownership information is be available in all circumstances. AML obligated person could be engaged by a foreign company and might therefore conduct CDD with respect to the company. However, these obligations do not ensure the availability of full ownership information with respect to all relevant foreign companies. Therefore, Kazakhstan is recommended to ensure that ownership information on foreign companies having place of effective management in Kazakhstan is available in all cases.

Bearer shares (ToR A.1.2)

79. Kazakhstan's law does not allow for issuance of bearer shares. Shares can be issued only in dematerialised form, i.e. as a set of electronic records in securities accounts (s. 129(1) Civil Code and s. 12(1) Law on Joint Stock Companies).

7. See further Eurasian Group's on Combating Money Laundering and Financing of Terrorism Mutual Evaluation Report on the Republic of Kazakhstan (5.1. Legal Entities – Access to information on beneficial owners and control (R.33)), June 2011.

Partnerships (ToR A.1.3)

80. Kazakhstan's law recognises four types of partnerships:

- **limited liability partnerships:** A limited liability partnership can be established by one or more persons. Limited liability partnership's assets are divided into stakes. Partners of a limited liability partnership are not to be held liable with regard to its obligations and bear the risk of losses associated with the partnership's operations within the size of their contributions (s. 2(1) Law on Limited Liability Partnerships and Additional Liability Partnerships (LLP Act));
- **additional liability partnerships:** An additional liability partnership means a partnership whose partners are held liable for its obligations by their contributions. In instances where assets of the partnership are insufficient, the partners are held liable by additional assets they own on a pro rata basis to their contributions (s. 3(1) LLP Act);
- **general partnerships:** A general partnership has two or more partners undertaking business activities under a common business name based on a foundation agreement. All partners are entitled to act on behalf of the partnership and are jointly and severally liable for the debts/obligations of the partnership (s. 63 Civil Code);
- **limited partnerships:** A limited partnership has one or more partners with limited liability for the obligations of the partnership (limited partners) and one or more partners with full liability for the obligations of the partnership (general partners). Relations between limited and general partners are specified in the partnership charter (s. 72 Civil Code).

Information kept by public authorities

Enterprise Registry

81. A partnership obtains legal personality upon entry in the Register of Legal Entities (s. 42(3) Civil Code).

82. Partnerships are required to provide upon registration a certified copy of their statutory documents, i.e. the foundation agreement and the partnership's charter (s. 6 LSR). Limited liability and additional liability partnerships are not required to submit to the registration authority their foundation agreements. Both statutory documents have to be in writing and authorised by a notary (s. 58(5) Civil Code). Identification of all partners in the partnership and amount of shares (stake) of each partner must be contained in the foundation agreement as well as in the partnership's charter (s. 58(6) Civil Code).

83. The statutory documents contain similar information as in the case of companies. The foundation agreement includes

- partnership’s business name and registered address;
- a list of the partnership’s founders indicating their name, address, bank details their personal or business identification numbers and stakes in the partnership;
- a decision on the establishment of the partnership signed by all founders;
- determination of persons authorized to represent the partnership;
- the amount of subscribed assets;
- the procedure of transferring stakes within the partnership (s. 14 LLP Law).

84. The partnership’s charter regulates its legal status, aims and internal organisation (s. 17(1) LLP Law). The Charter contains among other information identification of founding partners and amount of their stake in partnership as the foundation agreement (s. 17(2)).

85. Changes in the statutory documents have to be reported by the partnership to the registration authority within one month after the change took place (s. 18(2) LLP Act). Change in partners of a partnership has to be carried out through take-over agreement authorised by a notary which forms part of the foundation agreement (s. 22 LLP Act). However change in partners does not need to be reflected in the Partnership’s charter and therefore is not required to be reported to the registration authority by limited liability partnerships and additional liability partnerships as they are not required to submit their foundation agreements to the registration authority.

Information provided to tax administration

86. Limited liability and additional liability partnerships are taxed in their own right following the same rules as for companies. No ownership information is required to be filed with the tax authority upon registration. Information on partners in a partnership is required to be provided in certain tax positions (e.g. transfer pricing, utilisation of tax losses or thin capitalisation rules). Nevertheless, these obligations do not ensure that information on partners in limited liability and additional liability partnership is provided to the tax authority in all cases as they are linked to partnership’s specific conditions.

87. General and limited partnerships are tax transparent and therefore not required to register specifically for tax purposes. However, each partner

of such partnership (including a limited partner) is liable to income tax according for the share of taxable income of the partnership due to him or her and must be registered with the tax administration. A partner of a partnership is obliged to include in his/her tax return an income declaration in respect of the partnership, the partnership's annual accounting records and a statement of his/her share in the partnership (e.g. excerpt from the register of partners or foundation agreement).

Information held by the partners and service providers

88. Information on all partners in any partnership has to be contained in the foundation agreement (s. 58(6) Civil Code). A person becomes partner of a partnership upon signing the foundation agreement (s. 15(6) LLP Law). In case of a transfer of partnership share the foundation agreement must be amended and the take over agreement will form part of the foundation agreement (s. 22). Although partners (or the executive body of the partnership) are not specifically required to keep the foundation agreement each partner has a right to inspect it at any time at the address of the partnership (s. 61 Civil Code).

89. A partnership may decide to keep the register of partners. Information contained in the register of partners establishes ownership of the partnership, i.e. entry into the register legally confirms partner's share in the partnership. The register of partners can be maintained only by a professional participant of the securities market covered by AML obligations. Where a partnership establishes a register of partners listing of the partners in the foundation agreement should cease. (s. 58(9) Civil Code).

Foreign partnerships

90. Partnerships established under foreign law operating in Kazakhstan through a branch or representative office are required to register with the Register of Legal Entities. The same rules apply as in case of foreign companies' registration. An application for entering a branch or representative office in the register must be signed by an authorised person of the legal entity. The application must include a legalised extract from the Commercial Register of the jurisdiction where the partnership is registered and its statutory documents (s. 6-2 LSR). However Kazakhstan's law does not require that this documentation has to include identification of partners of the partnership.

91. Obligations of foreign partnerships under the tax law are similar to those in respect of foreign companies. Foreign partnerships are obliged to register for tax purposes if they have a place of effective management in Kazakhstan or permanent establishment therein. Identity information on a

partner who acts as the tax representative of the partnership in Kazakhstan must be provided upon partnership's registration. However, there is no requirement to provide identity information on all the partners of the partnership. Partnerships are not required to provide information on their partners to the tax authority unless necessitated by certain tax positions (e.g. transfer pricing, utilisation of tax losses or thin capitalisation rules). Although these tax positions might be frequent in practice following reporting obligations do not ensure that information on shareholders is available in all cases as they are linked to specific conditions of the partnership.

92. To the extent that a foreign partnership engages the services of AML obligated persons (such as a bank with which the foreign partnership maintains an account), some identity information would be collected with respect to the foreign partnership through CDD requirements. However, as noted above, since AML obligated persons are required only to identify the customer without disclosing its ownership structure (e.g. based on statutory documents) this would not ensure that full identity information is collected with respect to all current partners of the partnership.

93. Availability of ownership information regarding partnerships established under foreign law depends on law obligations of the jurisdiction where the partnership is established as Kazakhstan's law does not require that identification of partners in a foreign partnership is provided to government authorities or kept by the partnership or its representatives in Kazakhstan. It is therefore recommended that Kazakhstan ensures that identification of partners in a foreign partnership that carries on business in Kazakhstan or has income, deductions or credits for tax purposes therein is available to its competent authority.

Conclusion

94. The legal and regulatory framework in Kazakhstan requires that ownership information regarding partnerships established under Kazakhstan's law is available. Identification of partners is required to be included in the foundation agreement of the partnership and kept updated. Although limited liability and additional liability partnerships are not required to provide the foundation agreement to the registration authority the statutory documents (including the foundation agreement) should be available for an inspection at any time at the registered address of the partnership.

95. Foreign partnerships that carry on business in Kazakhstan or have income, deductions or credits for tax purposes therein are not required to keep information identifying their partners in Kazakhstan in all cases. Availability of such information in Kazakhstan will depend on the law of jurisdiction where the partnership was established. This is not in line with

the international standard and it is therefore recommended that Kazakhstan ensures that information identifying the partners in a foreign partnership is available to its competent authority in accordance with the international standard.

Trusts (ToR A.1.4)

96. Kazakhstan's law does not recognise the concept of a trust and Kazakhstan is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition⁸. However, there are no restrictions for a resident of Kazakhstan to act as trustee, protector or administrator of a trust formed under foreign law.

Tax legislation

97. Although Kazakhstan's law does not provide for creation of trusts Kazakhstan's tax law contains rules stipulating how income from transactions carried out under trust management agreements should be declared and taxed in Kazakhstan. Income and expenses of the trust manager incurred in the process of performance of duties entrusted to him/her under the trust management contract should be attributed to the beneficiary unless the income and expenses were incurred under the trust property management agreement. In that case income and expenses are attributable to the founder of the trust agreement. Remuneration of the trust manager represents an expense of the founder of the trust property management agreement, or of the beneficiary in other types of trust management agreements (s. 35(1) Tax Code). The transfer of assets to the trust manager by the founder of the trust agreement should not be considered as a sale of such property, and it shall not be recognised as income of the trust manager (s. 35(6)). The founder or the beneficiaries of the trust agreement are obliged to register with the tax authority as individual entrepreneurs if they are taxed on behalf of the trust. The founder of the property management contract is not required to register if the trust manager is appointed by the trust agreement as the tax representative of the trust (s. 36).

98. In order to substantiate their tax position (i.e. to whom income and expenses incurred under the trust agreement should be attributed for tax purposes in Kazakhstan), the trust manager, the founder or the beneficiary have to be able to provide the trust agreement as well as other relevant information such as bank accounts, accounting records and underlying documentation. Thus, the identity of the founder, the trust manager and the beneficiary would be provided to the tax authority as the aforementioned documents would

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

include this information. This is the case also where beneficiaries or founders are not taxable from the trust income in Kazakhstan as the Kazakhstan resident trustee has to substantiate his/her tax obligations in respect of the trust nevertheless.

AML legislation

99. Attorneys and other independent legal specialists providing services under trust management agreements are obliged to identify their clients prior to establishing business relation or if cash transactions carried under such agreements equals or exceeds KZT 7 million (EUR 31 200) (ss.3(7) and 4 AML Law). It is not clear what identification of a client means in the context of a trust agreement as the AML law does not require the obliged person to identify the beneficial owner. However it seems clear that if the above condition is met the service provider (trustee) should be required to keep the trust management agreement which should contain identification of parties of the agreement, i.e. the settlor, trustee and the beneficiary (if known at that date). Nevertheless this rule does not ensure that the information on settlors, trustees and beneficiaries of a trust will be available in Kazakhstan in all cases as it covers only professional trustees who are independent legal specialists. It is also noted that information held by lawyers or notaries may not be accessible by the tax authority due to the professional legal privilege protection (see further section B.1.5). Where a trust engages a service provider (such as a bank or a broker) the service provider will be required to identify its clients which in this case should entail obtaining a trust agreement.

Conclusion

100. Information on settlors, trustees and beneficiaries of trusts operated by trustees resident in Kazakhstan should be available mainly based on tax law obligations. Kazakhstan's tax law contains rules regarding taxation of income received under trust management agreements which appear applicable to all types of express trusts. Accordingly, the trust manager, the founder or the beneficiary have to be able to provide to the tax authority the trust agreement as well as other relevant information in order to substantiate their tax position. This documentation should include identification of the settlor, trustee and the beneficiary of the trust arrangement. The scope of practical application of these rules will be further considered in the course of the Phase 2 peer review of Kazakhstan.

Foundations (ToR A.1.5)

101. Kazakhstan's law does not provide for establishment of foundations (see further below section on other entities or arrangements).

Other entities or arrangements

Cooperatives

102. A co-operative is a voluntary association of individuals or legal persons for the purpose of joint entrepreneurial activities which are based on property contributions or labour participation by members of the co-operative. Each co-operative must have at least two members. Members of the co-operative bear subsidiary liability on the obligations of the co-operative (s. 96 Civil Code).

103. A co-operative obtains legal personality upon entry in the Register of Legal Entities (s. 42(3) Civil Code). As in case of other legal entities co-operatives are required to provide upon registration a notarised copy of statutory documents, i.e. the foundation agreement and the co-operative's charter (s. 6 LSR). The co-operative's charter should include the name of the co-operative, its address, procedure for the formation and the competence of its bodies, provisions concerning the size of unit shares of the co-operative's members, the composition and the procedure for making contributions by the co-operative members and their liability for violating these obligations (s. 97 Civil Code). Changes in the information provided to the registration authority should be reported by the co-operative within one month after the change took place (s. 14-1 Civil Code).

104. Cooperatives are not tax transparent. Their tax obligations follow the same rules as in case of other legal entities conducting business. Information on members of the co-operative might be filed to the tax authority in certain circumstances however these obligations do not ensure that the ownership information is provided to the tax authority in all cases.

105. The co-operative is required to keep a register of its members containing the member's name and address, the amount of capital contribution, and the date of commencement and termination of membership. The register of members has to be available for inspection by members of the co-operative and authorised government authorities (including the tax authority) at the address of the co-operative.

106. Any change in membership of the co-operative (i.e. acceptance and retirement of its members) is subject to approval by the general meeting of the members of the co-operative. The general meeting has to also approve any alteration of the co-operative's charter; formation of the executive, audit and supervisory bodies of the co-operative; annual financial statements of the co-operative and distribution of profits to its members (s. 99(3) Civil Code).

Non-commercial organisations

107. Kazakhstan’s law provides for establishment of non-commercial organisations. Non-commercial organisation cannot be established for the purpose of gaining income or profit and its funds cannot be distributed among its members (s. 33(1) Civil Code). These non-commercial organisations are an institution, a public association, a public foundation, a consumer co-operative and a religious association. Assets of public associations, public foundations and religious associations cannot be distributed back to their founders upon their liquidation (s. 36(4) Civil Code). Consequently, non-commercial organisations established under Kazakhstan’s law are not within the scope of the Terms of Reference.

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

108. Kazakhstan should have in place effective enforcement provisions to ensure the availability of ownership and identity information. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information.

109. An entity obtains its legal status upon registration in the Register of Legal Entities. (s. 42(3) Civil Code). Activities performed by an entity which failed to register are legally void and income from such activities should be appropriated by the state (s. 18 Law on State Registration of Legal Entities and Branches (LSR)). The registration authority has right to refuse to register an entity if

- the procedure for establishment of the legal entity is breached;
- the statutory documents are not provided or do not comply with legal requirements;
- invalid identity documents are provided;
- a founder of the legal entity is an inactive legal entity;
- a natural person who is a founder or manager of the legal entity is the sole founder or manager of an inactive legal entity or is recognised by a court as incapable or convicted of a crime;
- law enforcement agencies or courts issued decisions (bans, arrests) prohibiting or conditioning such registration (s. 11 LSR).

110. A company can be liquidated if it fails to conclude an agreement with the company’s registrar for the services of maintenance of the register of shareholders or fails to register the issuance of shares with the National Bank (s. 18 LSR).

111. If a taxpayer fails to comply with tax obligations in time the tax authority can apply several measures including assessment of additional tax, suspension of bank transactions or restrain property disposal of the taxpayer (s. 609 Tax Code).

112. If the company's or partnership's registrar fails to maintain the register of shareholders (or partners) in accordance with the law the National Bank can:

- issue a binding written determination to eliminate the identified deficiencies within the prescribed deadline;
- demand dismissal of representative persons of the registrar;
- impose and collect fines; or
- suspend the registrar's license to operate on the securities market (s. 3-1 Law on Securities Market).

113. In addition to enforcement measures mentioned above members of the executive body of a partnership are jointly liable to losses caused by their failure to fulfil their statutory duties including failure to maintain appropriate ownership and accounting information (s. 52(4) LLP Law). It is also noted that a person becomes a partner of a partnership only upon being included in the foundation agreement or upon entry into the register of partners (if kept).

114. AML obliged persons who fail to comply with the requirements of the AML/CFT legislation commit punishable offence (s. 168-3 Code on Administrative Offences). A legal entity may be liquidated by a court ruling for operating without appropriate authorisation (license), or for carrying out activities prohibited by the legislative acts, or with multiple or gross violation of the Kazakhstan legislation (including AML regulation) (s. 49 Civil Code). Article 193 of the Criminal Code of the Republic of Kazakhstan provides for a wide range of sanctions for money laundering or contributing to it which includes fines, detention under arrest, imprisonment and confiscation.

115. A co-operative which fails to maintain register of its members at its registered address for a period longer than one year may be liquidated based on a court decision (s. 49(2) (Civil Code).

Conclusion

116. Kazakhstan's law provides for sanctions in respect of the main obligations to maintain ownership information. While certain adverse consequences flow from the failure to comply with the rules, there are no specific penalties in the form of fines or imprisonment that can be imposed. This is especially a concern in respect of obligations to keep ownership information

by the entities themselves and by the registrars maintaining registers of shareholders as these obligations appear to be the crucial source of the relevant information. The lack of direct monetary sanctions applicable in respect of the relevant entities and their representatives might have negative impact on availability of ownership information in Kazakhstan. Nevertheless, as effectiveness of the available sanctions is a matter of practice this issue will be further considered in course of the Phase 2 peer review.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Ownership information on foreign companies having their place of effective management in Kazakhstan is not consistently available.	Kazakhstan should ensure that ownership information on all foreign companies with sufficient nexus with Kazakhstan is available.
Kazakhstan's law does not require that identification of partners in a foreign partnership that carries on business in Kazakhstan or has income, deductions or credits for tax purposes in Kazakhstan is in all cases available in Kazakhstan.	Kazakhstan should ensure that information identifying the partners in a foreign partnership that carries on business in Kazakhstan or has income, deductions or credits for tax purposes in Kazakhstan, is available to its competent authority.

A.2. Accounting records

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

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

General requirements (ToR A.2.1)

118. The general accounting obligations are stipulated by the Law on Financial Accounting and Financial Reporting (LFA). Kazakhstan's accounting law applies to all relevant entities including foreign entities conducting business in Kazakhstan (s. 2(1) LFA).

119. Accounting records should represent an ordered system of collection, registration and systemisation of information on transactions and events of accounting entities. Transactions and events should be reflected in accounting records through the system of synthetic and analytic account registers providing a chronological and accurate view of an accounting entity's transactions and financial position (s. 6 LFA). Accounting records should be organised based on double entry system as captured in the international accounting standards (IAS, IFRS) and the national accounting standards (s. 6(4)). Small business entities can keep accounting records based on a single entry system in accordance with the national accounting standard for small businesses (s. 2(3)).

120. An accounting entity's financial reports should give a true view of its financial position and results of its activities (s. 15(1) LFA). The financial reporting must include:

- balance sheet;
- profit and loss statement;
- cash flow statement;
- statement of changes in equity; and
- explanatory note (s. 15(2)).

121. It is the responsibility of the management of the accounting entity to ensure that accounting records are kept in line with Kazakhstan's laws and regulations. In case of failure to keep accounting records as required under the law sanctions and criminal penalties including arrest for up to 90 days or prohibition to become member of accounting entity's management apply (s. 8 LFA, s. 241 Criminal Code).

122. Taxpayers are obliged to substantiate their tax base through accounting records kept in accordance with Kazakhstan's general accounting rules (s. 56(2) Tax Code). The taxpayer is obliged to use the accrual method of accounting and organise tax accounting in a way which provides:

- information relevant for taxation of all transactions performed by the taxpayer during the tax period;
- explanation of each reported figure in the annual tax report and supporting documentation;

- basis for supervision of the taxpayer’s tax obligations at any time (ss.56(3) and 57(1)).

123. Accounting documentation required to be kept for tax purposes should comprise accounting records and underlying documentation as required under the LFA, taxpayer’s tax reports, tax accounting policy and any other documents which form the basis for determining taxpayer’s tax liability. If the accounting documentation is not kept as required financial and criminal sanctions apply (s.56 Tax Code, s.245 Criminal Code).

124. While Kazakhstan’s law does not allow for the creation of trusts, the Kazakhstan’s resident trustees of foreign trusts are required to maintained records in accordance with Kazakhstan’s tax law. A trust manager is obliged to maintain separate tax accounting for items relating to taxation of proceeds from the trust management agreement and in relation to any other business in order to assess tax liability of the parties to the trust agreement (i.e. the founder, the trust manager or the beneficiary) (s.58(5) Tax Code). Separate tax accounting shall be maintained by the trust manager in compliance with general tax accounting obligations described above (s.58(6)). Further, the general accounting obligations under the LFA apply also to trustees who act in a business capacity. It follows from the accounting principles embodied within the international standards that a person must keep segregated accounts in respect of assets managed on behalf of third parties and his/her own assets. Scope of application of these rules will be considered further in the Phase 2 review of Kazakhstan.

Conclusion

125. Relevant Kazakhstan’s entities as well as foreign entities conducting business in Kazakhstan are required under the accounting law to keep accounting records that correctly explain the entity’s transactions, enable it to determine the entity’s financial position with reasonable accuracy at any time and allow financial statements to be prepared. The requirements under the accounting law are further supplemented by obligations imposed by the tax law.

Underlying documentation (ToR A.2.2)

126. Relevant Kazakhstan’s entities as well as foreign entities conducting business in Kazakhstan are required to keep underlying documentation, including contracts, invoices and other documents which must be reflected in the entity’s accounting records. Accounting records are based on accounting entries. Each accounting entry must be supported by a source document (s.7(1) LFA). Source documents should contain the following obligatory information:

- title of the document (form);
- identification number of the document;
- date of creation of the document;
- the name of the organisation or the surname and the initials of the individual entrepreneur on behalf of which the document is constituted;
- content of transaction or event;
- units of measure of transaction or the event in quantitative and value term (e.g. price per unit and the total expenditure); and
- positions, surnames, initials and signatures of the persons responsible for the transaction (confirmation of the event) and correctness of its accounting registration (s. 7(3)).

127. The tax law requires taxpayers to keep evidence providing information regarding income and expenses as well as assets and liabilities (s. 7(6) Tax Code). The Kazakhstan's authorities advise that this includes keeping copies of original underlying documents, including invoices and contracts. Further, VAT taxpayers must issue invoices containing an invoice number; date of issue; surname, name or full business name, address and business identification number of the supplier and of the recipient; description of the supply; amount of the taxable turnover; applied VAT rate and final price of the supply including VAT (s. 263(5) Tax Code).

Conclusion

128. Accounting and tax requirements under Kazakhstan's law require underlying documentation to be available in accordance with the international standard for effective exchange of information.

5-year retention standard (ToR A.2.3)

129. Under Kazakhstan's accounting law accounting records and underlying documentation must be kept for at least five years. All accounting records including underlying documentation must be systematically arranged and stored in the archives of the undertaking (s. 11 LFA). Accounting records and underlying documents must be kept by the accounting entity in a way which allows their inspection at any time by the members (shareholders) of the entity or by government authorities authorised by law (including the tax authority) (s. 19(1)).

130. Taxpayers are required to keep accounting records and underlying documents to substantiate their tax liability for at least five years after the end of the respective tax period (ss.59(4) and 46(2) Tax Code). Accounting documentation shall be compiled on paper and (or) electronic media and it has to be available to the tax authorities when conducting tax audits (s. 59(1)).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

A.3. Banking information

Banking information should be available for all account-holders.

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

Record-keeping requirements (ToR A.3.1)

132. Banks and institutions conducting banking operations are required to perform customer due diligence prior to establishing a business relationship with the client (s. 5(2) AML Law). A natural person is identified through copy of the identity card and the personal identification number. Identification of a legal person is based on copy of the statutory documents, the business identification number and the registered address (s. 5(3)). If the identity of the client is not established according to the law the bank should not conclude the business relation (s. 7(2)). Therefore although Kazakhstan's law does not expressly prohibit opening anonymous bank accounts banks are obliged to identify their clients prior to opening the bank account.

133. Banks are further obliged to conduct continuous examination of their business relations and to scrutinise transactions performed by the client through his/her bank account (s. 5(5) AML Law). If there are grounds for doubt about authenticity of the previously obtained data on the natural person the bank is required to address these doubts and verify the person's identity (s. 5(2) (3)). However, this rule does not seem to apply in respect of legal persons. It might be argued that the AML rules do not ensure that the updated identity information on bank's clients is kept at all times since they do not prescribe specific frequency of these updates. As this is rather a matter of practical application of the obligation to continuously monitor the business relationship this will be further considered in course of the Phase 2 peer review.

134. Customer due diligence documentation (including copies of the provided identification documents) must be stored by the bank at least for five years following the end of the business relationship (s. 11(4) AML Law). Breach of the AML obligations leads to monetary sanctions (s. 20).

135. Banks are required to keep account of transactions performed through the bank account and the supporting documentation mainly based on accounting law and the Law on Banks and Banking Activity. Banks' accounting records should be organised based on double entry system as captured in the international accounting standards (IAS, IFRS) and the national accounting standards for banks (s. 6(4) LFA). Accounting records are based on accounting entries. Each accounting entry must be supported by a source document which includes identification of the transaction's parties, subject of the transaction and the date of the transaction (s. 7 LFA). These rules are confirmed and further elaborated in the Law on Banks and Banking Activity. Banks are obliged to keep accounting records in respect of each bank account and store all documents pertaining to transactions carried out through it (s. 56 Law on Banks and Banking Activity). Detailed rules on accounting registers and documentation required to be kept in respect of each transaction are specified by the National Bank's binding orders. Banks are also required to maintain information on accounts operated by them based on their contractual obligations with clients.

136. Banks are required to store transactional and CDD documentation for at least five years. In the case of breach of obligations to keep information on bank accounts as required by the banking law the National Bank can apply measures including application of a fine, suspension or withdrawal of a banking license in respect of all or specific banking operations or removal of executives of the bank (s. 47 Law on Banks and Banking Activity).

Conclusion

137. The legal and regulatory framework in Kazakhstan requires the availability of banking information to the standard. Identity information on all account-holders is required to be available through AML obligations and the availability of transaction records is primarily ensured by accounting rules and banking law obligations. The practical availability of all types of updated banking information (including of opening account contracts, signature cards or documents evidencing particular transactions) will be considered in the Phase 2 peer review of Kazakhstan.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to information

Overview

138. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Kazakhstan’s legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

139. Kazakhstan’s competent authority has adequate access powers to obtain and provide information held by persons within its territorial jurisdiction. However, it is not clear how these powers can be legally applied for exchange of information purposes especially in cases where there is no domestic tax at stake and the treaty prevails rule may not be applied as the respective treaty does not contain language similar to Article 26(4) of the OECD Model Tax Convention. Further, even when treaties prevail it is difficult to identify what specific penalties will apply if information is not provided on this basis. It is therefore recommended that Kazakhstan addresses these issues. Kazakhstan’s domestic access to banking information is restricted regarding the persons whose bank accounts information can be requested by the tax authority. It is questionable whether the treaty prevails rule will be applied in a way which allows Kazakhstan’s competent authority to provide information which is not accessible even in domestic cases. Therefore it is recommended that Kazakhstan ensures that its competent authority has access powers in respect of all requested banking information. Kazakhstan’s law provides for protection of information held by lawyers and notaries without exceptions which is too broad and goes beyond the international standard.

140. Kazakhstan’s legislation does not require notification of the person subject to the EOI request. A taxpayer can appeal against notice of the results

of a tax audit or against acts of the official person. Filing a complaint to the tax authority or to the court suspends the implementation of the notice on the results of the tax audit which might delay provision of the requested information to the requesting competent authority. The practical impact of these rules on effective exchange of information will be further considered in the course of the Phase 2 peer review.

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).

141. Kazakhstan’s competent authority for EOI purposes is the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan (s. 1 Statute on the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan). The State Revenue Committee is government authority under supervision of the Ministry of Finance. The State Revenue Committee is responsible for tax and customs administration and investigation of economic crimes including tax crimes (s. 1).

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

142. The State Revenue Committee’s supervisory measures include the following:

- tax audits;
- tax inspections;
- in-house supervision;
- monitoring of major taxpayers;
- registration of taxpayers;
- acceptance of tax forms (s. 556 Tax Code).

143. During a tax audit the State Revenue Committee should verify compliance with the rules of the tax legislation through

- inspection of assets which are subject to tax and of items relating to taxation, regardless of the place of their location;
- inspection of documents and other information kept by the taxpayer and taking copies thereof;

- inspection of persons who have documents or other information concerning activities of a taxpayer under audit (s. 627(1,2) Tax Code).

144. The State Revenue Committee has the right to begin a tax audit without sending a notice to the audited taxpayer in cases where reasonable risk exists that the taxpayer may conceal or destroy documents which are needed for conducting the audit (s. 631(5) Tax Code). The tax audit is opened based on issuance of an injunction letter by the State Revenue Committee (s. 632). The length of the tax audit should be specified in the injunction letter and should not exceed 30 days. However it can be extended in specified circumstances (s. 629). Each audit is completed by a report summarising findings of the audit (s. 637(1)). Tax periods falling outside of the statute of limitations cannot be subject to a tax audit (s. 627(11)). The general statute of limitations period is five years after the end of the respective tax period (s. 46(2)). If the taxpayer submits additional tax report or files an appeal the period can be extended for one year or till the appealed case is settled (s. 46(5,7)). There is no law provision prohibiting opening a tax audit in respect of already audited tax period.

145. The purpose of a tax inspection is to verify actual presence of the taxpayer at the registered address or to deliver a tax audit report (s. 558(1) Tax Code). In-house supervision entails examining and comparing information at the disposal of the tax administration based on taxpayer's filing obligations, filing obligations of third parties including government authorities and information obtained from public sources (s. 585,586).

146. Monitoring of major taxpayers is carried out through analysis of financial and operational activities of major taxpayers for the purpose of determining their tax base and supervising compliance with the tax obligations (s. 623(1) Tax Code). Major taxpayers are defined as a group of 300 taxpayers with the largest annual income before tax adjustments (s. 623(2)). These taxpayers are obliged to submit quarterly to the tax administration in electronic form accounting information including balance sheet and register of sales and purchases (s. 624(1,2)).

147. Banks are required to notify tax authorities of any new bank account opened for a legal entity, an individual carrying on business (entrepreneurship activity), private notary for the purpose of notarial practice or to an advocate for the purpose of an advocate practice. The notification should be done by electronic means within one working day after opening the account. The notification should include identification number of the account holder and the number of the new bank account (s. 581 Tax Code).

148. There is no specific information gathering powers intended solely for EOI. There are also no specific procedures or conditions for use of information gathering powers in respect of different types of information except for banking information (see further B.1.5).

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

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

150. Kazakhstan’s domestic law does not contain specific rules for use of access powers for exchange of information purposes or in cases where the requested information is not relevant for Kazakhstan’s tax compliance. Provisions granting access powers to the tax authority refer to “compliance with the rules of the tax legislation of the Republic of Kazakhstan” and “a taxpayer under audit” (ss. 556 and 627 Tax Code). The tax legislation of the Republic of Kazakhstan is defined as the Tax Code and regulatory legal acts the adoption of which is specified by the Tax Code (s. 2(1)). A taxpayer is defined as person who is the payer of taxes and other obligatory payments to the budget (s. 12(35)).

151. The same section of the Tax Code which contains the definition of Kazakhstan’s tax legislation includes a treaty prevails rule stating that where an international treaty ratified by the Republic of Kazakhstan establishes other rules than those which are provided in the Tax Code, the rules of the said treaty shall apply (s. 2(5)). It appears possible to argue that international treaties form part of the Kazakhstan’s tax legislation and therefore domestic access powers can be also used for obtaining information for exchange of information under an international treaty. However this argumentation is not very conclusive as the referred legal acts seem to be domestic rules which adoption is foreseen by the Tax Code to further detail general rules contained therein such as the Budget Code of the Republic of Kazakhstan and the annual budget law defining rules for receiving budget revenue (s. 55(2)). This view is supported by the Constitution which differs between laws, other regulatory legal acts and international treaties (s. 4(1) Constitution). It is also noted that the Tax Code does not specify the concept of international treaty and the only further reference to international treaties is in the context of avoiding double taxation. It also remains unclear whether and to which extent such interpretation is applicable in practice and would be accepted by the court.

152. Where an international treaty contains explicit obligation to provide the requested information regardless of domestic tax interest (i.e. the treaty contains language akin to Article 26(4) of the OECD Model Tax Convention) Kazakhstan’s tax authority may base use of its access powers on the treaty prevails rule. Kazakhstan’s law contains two formulations of this rule. The Constitution states that international treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a

law (s.4(3) Constitution). It is not further specified in which situations promulgation of a law is required in order to apply a treaty and therefore it might be questionable whether direct application of a treaty in respect of provision of information which cannot be obtained in accordance with the domestic law (e.g. in situations where there is no domestic tax interest in the requested information) would not require amendment of the domestic law. This is supported by the fact that DTCs do not provide any procedural rules specifying how the obligation under the agreement should be implemented. In addition to the treaty prevails rule contained in the Constitution the Tax Code includes specific treaty prevails rule quoted above in the preceding paragraph (s.2(5) Tax Code). The treaty prevails rule refers specifically to rules contained in the international treaty. However as noted above these rules are related to rules for avoidance of double taxation as further referred to in Part VII of the Tax Code on international taxation. Therefore it can be concluded that the treaty prevails rule was not foreseen to be applied for exchange of information purposes and direct application of such obligations contained in the treaty remains unclear.

153. According to the Kazakhstan’s authorities access powers under the Tax Code can be used for exchange of information purposes and regardless of domestic tax interest. According to their view the competent authority would request the information from a taxpayer during a tax audit. Reportedly tax relevant information has been exchanged in several occasions mainly with Kazakhstan’s neighbouring countries and there were also a few cases reported by peers where the requested information has been provided.

154. To sum up, Kazakhstan’s access powers are not granted with exchange of information in mind, and their application for exchange of information purposes can be based only on interpretation of the interaction of obligations under international treaties and the Tax Code without explicit basis in the Kazakhstan’s domestic law. It is not clear how Kazakhstan’s tax authority access powers are legally applied in cases where information is requested for exchange of information purposes and especially in cases where there is no domestic tax at stake and the treaty prevails rule might not be applied as the respective treaty does not contain language similar to Article 26(4) of the OECD Model Tax Convention. It is therefore recommended that Kazakhstan clarifies its law to ensure that its competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements.

Compulsory powers (ToR B.1.4)

155. Jurisdictions should have in place effective enforcement provisions to compel the production of information. There are administrative and criminal sanctions available to the tax administration in case of non-compliance with obligation to provide the requested information (s.288 Law on Administrative Offences).

156. The State Revenue Committee can directly apply the following sanctions if a taxpayer fails to comply with its tax obligations in time:

- assessment of penalty on unpaid amount of tax;
- prohibition of payments or withdrawals from bank accounts of legal persons, non-residents carrying on business in Kazakhstan through a permanent establishment, individual entrepreneurs, private notaries and advocates;
- suspension of cash transactions of legal persons, non-residents carrying on business in Kazakhstan through a permanent establishment, individual entrepreneurs, private notaries and advocates;
- restraint on property disposal by legal persons, non-residents which carry on business in Kazakhstan through a permanent establishment, individual entrepreneurs, private notaries and advocates (s. 609 Tax Code).

157. There appear to be no effective sanctions applicable in cases where a taxpayer fails to provide information requested by the tax authority and no domestic tax is at stake. This is especially the case in respect of individuals not conducting business where only penalty on unpaid amount of tax is applicable. Further, the applicable sanctions do not allow the tax authority to verify availability of the requested information (e.g. by use of search and seizure power or by summoning the taxpayer) if the taxpayer obstructs the course of the investigation by denying existence of the information or by avoiding contact with the tax administration especially in cases where domestic tax is not at stake. The concern is even heightened in the exchange of information context as the requested information might in many cases not lead to an additional tax assessment in Kazakhstan and might be available only with third parties. It is therefore recommended that Kazakhstan ensures that its law provides for effective enforcement measures and sanctions applicable in cases where the requested information is not provided.

Secrecy provisions (ToR B.1.5)

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

Bank secrecy

159. Kazakhstan's law provides for bank secrecy which includes the identity of account holders, bank account numbers, balances of bank accounts and transactional and identity information related to operations involving bank

accounts (s. 50(1) Law on Banks and Banking Activity). The protected information can be disclosed only to the holder of the account, any third person on the basis of a written consent of the holder of the account or to persons authorised by law (s. 50(4)). Persons who received such information by virtue of their official duties bear criminal responsibility if the protected information is unlawfully disclosed (s. 50(3)).

160. The Law on Banks and Banking Activity provides such authorisation to the tax authorities but only in respect of certain banking information. The tax authorities are allowed to request account numbers and balances of bank accounts held by a legal entity and the same information can be requested in respect of current accounts of an individual entrepreneur (s. 50(6)(e) Law on Banks and Banking Activity). No banking information can be requested by the tax authorities in respect of accounts opened by individuals for non-business purposes unless criminal investigation is launched (s. 50(7)). If a criminal investigation is launched the investigation authority (e.g. Criminal Investigation Department of the State Revenue Committee) can request account numbers and balances of bank accounts opened by all persons including those opened by individuals for non-business purposes (s. 50(7)(b)).

161. Under the Tax Code institutions carrying out banking transactions are obliged to provide within 10 working days from the date of receiving a request from the tax authority information on bank account numbers, their balances and transactions performed through these accounts if the account is opened by a legal person, an individual entrepreneur, a private notary with regard to accounts which have been used in notarial business, an advocate with regard to accounts which have been used in business activity, a person candidating to be elected for public office or a person conditionally released from serving a sentence (s. 581(12) Tax Code). There is no specific reference in the Tax Code to criminal tax investigations however it appears that if a criminal tax investigation is launched the Criminal Investigation Department of the State Revenue Committee can request account numbers and balances of bank accounts opened by all persons as provided for under the Law on Banks and Banking Activity (s. 50(7)(b) Law on Banks and Banking Activity).

162. There is no specific information required by law to be provided to the bank in order to obtain the requested information in addition to information necessary to gather it (such as the account number or other identification of the account holder).

163. Kazakhstan's law restricts access to banking information regarding the persons whose bank accounts information can be requested by the tax authority. It also appears that banking institutions are not obliged to provide all types of banking information such as opening account contracts, signature cards, copies of cancelled cheques or deposit slips. Although Kazakhstan's

authorities indicated that the source of banking information is primarily the taxpayer who is obliged to provide the information to the tax authority this does not ensure that all types of banking information (especially banking underlying or CDD documentation) can be obtained in all cases as the taxpayer might not be within Kazakhstan's territorial jurisdiction and is not legally required to keep such information. The competent authority should have the power to obtain all information held by banks or other banking institutions which is foreseeably relevant for carrying out the provisions of the international treaty or to the administration or enforcement of the domestic tax laws of the requesting jurisdiction irrespective of the person who opened the bank account or the type of the requested information.

164. It can be argued that Kazakhstan's domestic law restrictions do not apply if banking information is requested under a treaty containing explicit obligation to provide banking information regardless of domestic banking secrecy rules (i.e. under a treaty with language akin to Article 26(5) of the OECD Model Tax Convention) as according to Kazakhstan's law a ratified international treaty prevails over the domestic law (s.4(3) Constitution and s.2(5) Tax Code). However it seems to be not clear whether the treaty prevails rule will be applied in a way which allows Kazakhstan's competent authority to provide information which is not accessible under the Law on Banks even in domestic cases. In order to obtain the requested banking information which is not obtainable under the domestic law it appears that three linked conditions should be met. Firstly, the treaty prevails rule contained in Kazakhstan's law needs to be robust enough to prevail over the domestic law restriction. As discussed above regarding domestic tax interest this condition is not unambiguously met and the treaty prevails rule may not ensure that the obligations contained in the treaty will be fully applied in practice. Secondly, the obligation under the treaty needs to be interpreted in a way that it prevails over the Kazakhstan's bank secrecy stipulated in the Law on Banks and Banking Activity which does not allow for providing of the banking information for exchange of information purposes (in contrast to exception for domestic tax cases). Thirdly, if the information can be provided for exchange of information purposes it may not go beyond information which can be disclosed to the tax authorities upon their request.

165. Further, Kazakhstan's law does not ensure that the requested information is provided where the information is requested under a treaty which does not explicitly oblige to provide banking information.

166. According to the Kazakhstan authorities banking information will be requested from the taxpayer and, if not obtained from the taxpayer, the treaty prevails rule should be applicable. However as described above not all banking information can be obtained from the taxpayer and it is questionable how the competent authority can legally obtain banking information from banks

based on its treaties. Therefore it is recommended that Kazakhstan ensures that its competent authority has access powers in respect of all banking information, as requested by its EOI partners under all its treaties.

Legal professional privilege

167. Kazakhstan’s law provides for the protection of information held by lawyers in connection with providing legal services. Legal services consist of giving consultations and advice on legal issues orally or in writing; drafting documents of legal nature; representing a client in civil legal proceedings and in administrative or criminal court proceedings; participating on behalf of a client in mediation, arbitration or in other forms of legal dispute resolutions; representing the client in front of the government bodies (s. 4(1) Law on Lawyers’ Activities). However lawyers may also render other legal services which are not in breach of law (s. 4(2)). Information covered by the secrecy protection includes information regarding content of oral or written communication with the client or other persons concerning the nature and outcomes of legal services rendered to the client and any other information related to providing legal services (s. 18(1)). The lawyer who discloses information covered by the secrecy protection without consent of the client is liable to administrative or criminal sanctions (s. 18(3)). The protected information can be disclosed to the FSA for AML purposes however the Law on Lawyers’ Activities does not contain a similar exception for information requested by the tax authority (s. 18(4)). The legal professional privilege contained in Kazakhstan’s law goes beyond the limits of the international standard as (i) it covers also information obtained by the lawyer acting in different capacity than as an admitted legal representative (e.g. such as a company director, a trustee or a nominee shareholder), (ii) communications with third persons and (iii) purely factual information such as on the identity of a director or beneficial owner of a company.

168. Information received by notaries in connection with performance of their activities is covered by the secrecy protection similar to the protection of information held by lawyers. Notaries are allowed to draft legal documents (e.g. contracts), produce authorised copies of documents and statements, give consultations concerning notarial actions, request documents and information necessary for carrying out notarial actions, engage in scientific, pedagogical and creative activities (s. 17 Law on Notaries). Notaries are required to keep secret information which became known to them in connection with their professional activity (s. 18(1)). The Law on Notaries provides for exception from this rule in respect of the FSA for AML purposes (s. 18(2)). However, as in case of the Law on Lawyers’ Activities, no exception is provided for information requested by the tax authority. Such protection of information is not in line with the international standard as it covers all information

obtained by notaries in connection with their professional activities regardless whether the information is related to providing legal advice, litigation or its disclosure would seriously harm legitimate interests of the person concerned. It is also noted that foundation documents of legal entities and their subsequent changes need to be notarised and therefore should be available with the notary. Wide protection of information held by notaries under the Kazakhstan's law might therefore have negative impact on effective EOI.

169. Kazakhstan's law provides also for protection of information obtained by auditors. The protection however is narrow and relates only to the trade secret (s.21 Law on Auditors' Activities). The trade secret is defined as the information which has actual or potential commercial value if it remains unknown to third persons and its disclosure is not required by law (s.126(1) Civil Code).

170. Considering the above it is recommended that Kazakhstan takes measures to ensure that the protection of information held by lawyers and notaries is consistent with the standard.

Securities secrecy

171. Kazakhstan's law provides for trade and official secrecy in respect of information obtained on the securities market (security secrecy). Security secrecy covers existence of registers of shareholders, information contained in these registers and transactional information on shares on the security market which is obtainable only by professionals operating there (ss.41 and 42 Law on Securities Market). The security secrecy does not apply in respect of information requested by the tax authority on matters relating to taxation of the audited entity (s.43(2)(5)). Nevertheless, as noted above, it is not clear whether the referred exception also covers cases where the information is requested only for exchange of information purposes and especially if the respective treaty does not include wording akin to post-2005 Article 26 of the OECD Model Tax Convention. Kazakhstan is therefore recommended to clarify this issue.

Conclusion

172. Although the Kazakhstan's competent authority has access powers to obtain and provide requested information held by persons within its territorial jurisdiction there are deficiencies which inhibit effective exchange of information. Kazakhstan's law provides for access powers which are drafted for domestic purposes and there is no specific provision regulating their use for exchange of information purposes. Use of access powers for EOI is therefore based on a general treaty prevails rule contained in the Constitution and the Tax Code. However, it is not clear to what extent and how the treaty prevails rules provide for direct application of obligations contained in the treaty especially in cases where there is no domestic tax at stake. Further, the treaty

prevails rule might not be applied if the respective treaty does not contain language similar to Article 26(4) of the OECD Model Tax Convention. There appear to be no effective sanctions applicable in cases where a taxpayer fails to provide information requested by the tax authority and no domestic tax is at stake. It is therefore recommended that Kazakhstan addresses these issues.

173. Kazakhstan’s law restricts domestic access to banking information regarding the persons whose bank accounts information can be requested by the tax authority and the type of the information which may be requested. It is questionable whether the treaty prevails rule will be applied in a way which allows Kazakhstan’s competent authority to provide information which is not accessible even in domestic cases. Therefore it is recommended that Kazakhstan ensures that its competent authority has access powers in respect of all banking information, as requested by its EOI partners under all its treaties.

174. Kazakhstan’s law provides for protection of information held by lawyers and notaries which is too broad and goes beyond the international standard. The professional privilege covers all information obtained by these professionals without exceptions. As this wide privilege might limit effective exchange of information it is recommended that Kazakhstan brings its law in line with the international standard.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
It is not clear how Kazakhstan’s tax authority access powers are legally applied in cases where information is requested for exchange of information purposes, especially in cases where there is no domestic tax at stake and the treaty prevails rule cannot be applied for exchange of information under the respective treaty.	Kazakhstan should clarify its law to ensure that its competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements.
Access to banking information under Kazakhstan’s domestic law is restricted regarding the persons whose bank accounts information can be requested by the tax authority and the type of the information which may be requested.	Kazakhstan should ensure that its competent authority has access powers in respect of all banking information requested by its EOI partners.

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
There are no effective enforcement measures and sanctions applicable in cases where a taxpayer fails to provide information requested by the tax authority and no domestic tax is at stake.	Kazakhstan should ensure that its law provides for effective enforcement measures and sanctions applicable in cases where the requested information is not provided.
Protection of information held by lawyers and notaries provided under Kazakhstan's law is too wide as it covers all information received by them in connection with their professional activities.	Kazakhstan should take measures to ensure that the protection of information held by lawyers and notaries is consistent with the standard.

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)

175. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from notification of the taxpayer concerned prior to the exchange of information requested (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

176. Kazakhstan's domestic legislation does not require notification of the person subject to the EOI request. However certain information is required to be provided by the tax authority to the information holder when obtaining the requested information (see further section C.3).

177. A taxpayer can appeal against the notice of the results of a tax audit or against acts of an official person (s. 666 and 686 Tax Code). A taxpayer's complaint has to be filed with the superior of the tax authority, of which act or decision is appealed, within 30 working days from the date of delivery of the notice to the taxpayer (s. 667). The complaint has to be made in writing and has to include identification of the taxpayer, reasons why the complaint is filed and evidence supporting these reasons (s. 668 Tax Code). The superior

of the tax office is obliged to decide within 30 days from the receipt of the complaint (s. 669). If the complaint against the notice on results of a tax audit is declined the taxpayer can further appeal to the Court within 15 days since receipt of the decision (s. 666(3)). Filing a complaint to the tax authority or to the court suspends the implementation of the notice with regard to the appealed items (s. 674). It appears that filing a complaint will therefore also suspend provision of the requested information to the requesting competent authority.

178. Kazakhstan’s law provides for appeal rights of taxpayers and information holders in the context of obtaining information for EOI purposes. Although the practical impact of use of appeal rights on timeliness of exchange of information remains to be assessed during the Phase 2 review, these appeal rights appear to be compatible with effective exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging information

Overview

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

180. Kazakhstan has an extensive EOI network covering 99 jurisdictions through 59 DTCs and the Multilateral Convention. As detailed in section B.1 of this report Kazakhstan's domestic law contains restrictions on access to banking information in terms of the persons regarding whose bank accounts information can be requested by the tax authority and the type of the information which may be requested. Further, it is not clear how Kazakhstan's competent authority's access powers are legally applied in cases where information is requested for exchange of information purposes especially in cases where the information is requested under the treaty which does not contain language similar to Article 26(4) of the OECD Model Tax Convention and therefore the treaty prevails rule might not be applied. It is therefore recommended that Kazakhstan addresses these domestic law issues to bring all its EOI relationships in line with the standard.

181. The vast majority of Kazakhstan's EOI agreements are in force. Out of Kazakhstan's 60 EOI agreements three are not in force. These are the DTCs with Qatar and Saudi Arabia and the Multilateral Convention. The Multilateral Convention was ratified by Kazakhstan on 26 December 2014.

182. Kazakhstan's extensive EOI network covers all of its significant partners including its main trading partners, all OECD members except for Israel and all G20 countries. During the course of the assessment, no jurisdiction has advised that Kazakhstan had refused to enter into negotiations or conclude an EOI agreement. Nevertheless due to domestic law restrictions detailed in section B.1 and C.1 Kazakhstan's law does not give full effect to the terms of its EOI arrangements and therefore Kazakhstan does not have

exchange of information relations in line with the standard with its relevant partners.

183. All Kazakhstan's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. Kazakhstan's domestic law permits disclosure of information which goes beyond the use of information permitted under the international standard. However, the provisions of Kazakhstan's EOI agreements ratified by the Parliament override domestic laws and therefore confidentiality of the exchanged information should be preserved in line with the standard. Kazakhstan's law does not require providing to the information holder the identity of the requesting competent authority or any information from the EOI request which goes beyond description of the requested information. The law regulation therefore appears to be in line with the international standard. However, as there is also no prohibition on disclosure of more information than it is necessary to obtain the requested information the practical application of the relevant provisions will be further considered in the course of the Phase 2 peer review. There is no provision in Kazakhstan's law allowing taxpayer to inspect his/her file containing information kept on him/her by the tax authority.

184. As noted in Part B of this report, the scope of information subject to professional privilege in Kazakhstan is broad as it protects all information obtained by lawyers and notaries in connection with their profession without exceptions. Such broad protection of information might limit effective exchange of information, since the provisions of Kazakhstan's EOI agreements allow it to decline to provide information protected by professional secrecy. Kazakhstan is therefore recommended to address this issue.

185. The State Revenue Committee of the Ministry of Finance is designated as the Kazakhstan's competent authority for EOI purposes. There appear to be no legal restrictions other than those identified above which would limit Kazakhstan's ability to respond to EOI requests within 90 days of receipt by providing the requested information or by providing an update on the status of the request. Kazakhstan's practical ability to respond to requests in a timely manner will be considered in the course of its Phase 2 peer review.

C.1. Exchange of information mechanisms

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

186. The international treaties providing for EOI require ratification by the Parliament and publication in the official gazette. Where a ratified international treaty conflicts with domestic law the treaty prevails over domestic law (s.4(3) Constitution).

187. Kazakhstan has in total 99 EOI relationships. These relationships are based on DTCs and the Multilateral Convention. Kazakhstan has signed 59 DTCs out of which two are not in force. The DTC with Saudi Arabia was signed in June 2011. The DTC with Qatar was signed in January 2014. Kazakhstan signed the Multilateral Convention on 23 December 2013 and this is also not yet in force in Kazakhstan. Kazakhstan has also signed Competent Authority Agreements with four partners to provide detailed rules for EOI under the respective EOI agreements. The Kazakhstan’s authorities have an ongoing programme of concluding new EOI agreements and revising agreements where necessary in order to bring them up to standard.

Foreseeably relevant standard (ToR C.1.1)

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

The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

189. All Kazakhstan’s DTCs provide for exchange of information that is “foreseeably relevant”, “necessary” or “relevant” to the administration and enforcement of the domestic laws of the contracting parties concerning taxes covered in the DTCs. This scope is set out in the EOI Article in the relevant DTCs and is consistent with the international standard.⁹ The Multilateral Convention provides for exchange of information that is “foreseeably relevant” to the administration and enforcement of the domestic laws of the contracting parties and it is therefore also in line with the foreseeable relevance criterion.

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

190. Kazakhstan’s DTC with Austria signed in 2004 allows exchange of information only to the extent that it relates to the application of the treaty. That is, it does not provide for EOI to assist in the administration or enforcement of the domestic tax laws of the EOI partner, except to the extent that this relates to the application of the DTC. Therefore, this agreement does not meet the “foreseeably relevant” standard. However, as Austria is a signatory to the Multilateral Convention the wording of this DTC is not a concern in practice once the Multilateral Convention enters into force.

191. Kazakhstan’s DTC with Switzerland (including the provisions of the 2010 Protocol) includes the full wording of Article 26 of the OECD Model Tax Convention. The standard wording was however supplemented in the 2010 Protocol by additional identification requirements of the person subject to the request and of the holder of the information which went beyond the standard. In September 2010 Kazakhstan and Switzerland concluded a Mutual Agreement which clarifies that the provisions of the 2010 Protocol should be interpreted as meaning that the person under investigation may be identified by other means than the name and address and that the name and address of the holder of the information should be indicated only to the extent known. The Mutual Agreement came into force on 26 February 2014. Consequently, the Switzerland-Kazakhstan DTC allows for EOI in line with the standard.

In respect of all persons (ToR C.1.2)

192. For exchange of information to be effective it is necessary that a jurisdiction’s obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

193. Four of Kazakhstan’s DTCs do not explicitly provide that the EOI provision is not restricted by Article 1 (Persons Covered).¹⁰ However, in principle, the absence of this specific provision does not restrict the exchange of information as long as the agreement allows for the exchange of information for carrying out the provisions of the domestic laws of the Contracting States, as the domestic laws apply to non-residents also. This is the case in respect to all four treaties which therefore provide for exchange of information in line with the standard. In addition, Kazakhstan has confirmed that it interprets these DTCs as allowing exchange of information with respect to all persons.

10. These are the DTCs with Malaysia, Luxembourg, Turkey and Uzbekistan.

194. The Multilateral Convention provides for exchange of information in respect of all persons.

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

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

196. Out of Kazakhstan’s 59 DTCs:

- Nine DTCs¹¹ contain language akin to the Article 26(5) of the OECD Model Tax Convention providing for the obligations of the contracting parties to exchange information held by financial institutions, nominees, agents and ownership and identity information;
- Kazakhstan’s other 50 DTCs do not contain language akin to Article 26(5) of the OECD Model Tax Convention.
- There is no DTC signed by Kazakhstan which prohibits exchange of information held by banks, nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

197. The Multilateral Convention signed by Kazakhstan contains a provision similar to Article 5(4) of the OECD Model TIEA, which ensures that the requested jurisdiction shall not decline to supply the requested information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

198. As detailed in section B.1.5 of this report Kazakhstan’s law contains restrictions on access to banking information in terms of the persons regarding whose bank accounts information can be requested by the tax authority. It also appears that banking institutions might refuse to provide detailed banking information such as opening account contracts, signature cards, and copies of cancelled cheques or deposit slips. It can be argued that these domestic restrictions do not apply if banking information is requested under

11. The DTCs with Armenia, Finland, FYROM, United Arab Emirates, Japan, Qatar, Singapore, Spain and Switzerland.

a treaty containing Article 26(5) of the OECD Model Tax Convention as according to Kazakhstan’s law a ratified international treaty prevails over the domestic law (s.4(3) Constitution). Out of the 50 jurisdictions whose DTCs with Kazakhstan do not contain language akin to Article 26(5) of the OECD Model Tax Convention 39 jurisdictions are signatories of the Multilateral Convention which provides for exchange of all types of information. Therefore there are 11 jurisdictions where the treaty prevails rule is not applicable and banking information in line with the standard cannot be provided.¹² Nevertheless it remains questionable whether the treaty prevails rule will be applied in a way which allows Kazakhstan’s competent authority access to banking information which is not accessible even in domestic cases, i.e. in respect of all persons and all types of banking information. As the international standard requires that provision of the requested information cannot be declined solely because the information is held by a bank or other financial institution it is recommended that Kazakhstan ensures that all types of the requested information can be provided under its EOI agreements.

Absence of domestic tax interest (ToR C.I.4)

199. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

200. Out of Kazakhstan’s 59 DTCs:

- 12 DTCs¹³ contain provisions similar to Article 26(4) of the OECD Model Tax Convention, which oblige the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic interest in the requested information;
- the remaining other 47 DTCs do not contain explicit provisions obliging the contracting parties to use information-gathering measures to obtain and exchange requested information without regard to a domestic tax interest; and

12. These jurisdictions are Belarus, Bulgaria, Iran, Kyrgyzstan, Malaysia, Mongolia, Montenegro, Pakistan, Tajikistan, Turkmenistan and Uzbekistan.

13. These DTCs are with Armenia, Canada, Finland, FYROM, Japan, Luxembourg, Qatar, Singapore, Spain, Switzerland, United Arab Emirates and the United States.

- there is no DTC signed by Kazakhstan which prohibits exchange of information without a domestic tax interest or only allows the exchange of information which is at a party's disposal under their respective taxation laws in the normal course of administration.

201. The Multilateral Convention signed by Kazakhstan contains a provision similar to Article 26(4) of the OECD Model Tax Convention which ensures that the requested jurisdiction shall be provided even if the requested jurisdiction does not have an interest in the requested information for its own tax purposes.

202. As discussed in section B.1.3 Kazakhstan's law does not contain explicit rules on use of access powers for exchange of information purposes. It is therefore not clear how Kazakhstan's competent authority's access powers are legally applied in cases where information is requested for exchange of information purposes. This is especially a concern where the information is requested under the treaty which does not contain language similar to Article 26(4) of the OECD Model Tax Convention and therefore the treaty prevails rule in the Tax Code and in the Constitution might not be applied. Out of the 47 jurisdictions whose DTCs with Kazakhstan do not contain language akin to Article 26(4) of the OECD Model Tax Convention 36 jurisdictions are signatories of the Multilateral Convention which provides for obligation to exchange information regardless of the domestic tax interest. Therefore there are 11 jurisdictions where the treaty prevails rule might not be applicable once the Multilateral Convention enters into force.¹⁴

203. Considering the above it is recommended that Kazakhstan clarifies its law to ensure that its competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements.

Absence of dual criminality principles (ToR C.1.5)

204. 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.

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

14. These jurisdictions are Belarus, Bulgaria, Iran, Kyrgyzstan, Malaysia, Mongolia, Montenegro, Pakistan, Tajikistan, Turkmenistan and Uzbekistan.

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

206. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

207. All of Kazakhstan’s EOI instruments provide for exchange of information in both civil and criminal tax matters.

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

208. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

209. Kazakhstan’s EOI instruments allow for the provision of information in specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent permitted under Kazakhstan’s domestic law and administrative practices. Only Kazakhstan’s DTC with the United States contains specific reference to the form of information, providing that if specifically requested the competent authority shall provide information in the form of depositions of witnesses and authenticated copies of complete original documents, to the same extent as such depositions and documents can be obtained under the laws and administrative practices of the requested party with respect to its own taxes.

In force (ToR C.1.8)

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

211. EOI agreements must be ratified by the Kazakhstan Parliament. The draft agreement is signed upon authorisation by the Council of the Prime Minister and consultation with the Ministry of Foreign Affairs and other involved ministries. Upon signing the agreement together with supporting

documentation is submitted to the Parliament for approval. The domestic ratification process is completed after the agreement approved by the Parliament is signed by the President and gazetted. The Ministry of Foreign Affairs subsequently informs the agreement party thereof.

212. The vast majority of Kazakhstan's EOI agreements are currently in force. Out of Kazakhstan's 60 EOI agreements three are not in force. These are the DTC with Saudi Arabia, signed in June 2011, the DTC with Qatar, signed in January 2014, and the Multilateral Convention signed in December 2013. Considering that the DTC with Saudi Arabia was signed more than 18 months ago Kazakhstan is encouraged to speed up the process of its ratification. Coming into force of the Multilateral Convention will significantly broaden Kazakhstan's EOI relations in line with the standard by an additional 40 jurisdictions. Kazakhstan ratified the Multilateral Convention on 26 December 2014 however the instrument of ratification has not yet been deposited with the depositary. Kazakhstan is therefore encouraged to do so expeditiously.

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

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

214. As discussed in section B.1, Kazakhstan's domestic law restricts access to banking information in terms of the persons regarding whose bank accounts information can be requested and the type of the information which may be requested. Kazakhstan's law should also be clarified to ensure that Kazakhstan's tax authority access powers and enforcement measures can be applied in all cases especially including those where there is no domestic tax at stake.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Kazakhstan's competent authority's access powers and enforcement measures for exchange of information purposes are not explicitly provided by law especially in cases where there is no domestic tax interest in the requested information.	Kazakhstan should clarify its law to ensure that its competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements.

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
As a result of domestic law limitations with respect to access to banking information, Kazakhstan does not have EOI relationships in line with the standard with its EOI partners.	Kazakhstan should ensure that all its EOI relationships provide for exchange of banking information to the standard.

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

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

215. 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.

216. Kazakhstan has an extensive EOI network covering 99 jurisdictions through 59 DTCs and the Multilateral Convention. Kazakhstan's EOI network covers all of its significant partners including its main trading partners, all OECD members except for Israel and all G20 countries. Kazakhstan's main trading partners are China and the EU countries.

217. Ultimately, the international standard requires jurisdictions to exchange information with their relevant partners, meaning those partners who are interested in entering into an exchange of information agreement. During the course of the assessment, no jurisdiction has advised that Kazakhstan had refused to enter into negotiations or conclude an EOI agreement.

218. Kazakhstan has in place an on-going negotiations programme which includes plans for renegotiation of EOI agreements that do not provide for exchange of information in line with the standard. Kazakhstan advises that it is currently negotiating or renegotiating EOI agreements with about ten jurisdictions. Kazakhstan 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 Kazakhstan is ready to conclude a bilateral EOI agreement.

219. As described in sections B.1 and C.1 Kazakhstan’s law does not explicitly provide for competent authority’s access powers and enforcement measures to obtain information requested under its treaties. Further, access to banking information is restricted regarding the persons whose bank accounts information can be requested by the tax authority and the type of the information which may be requested. It is therefore recommended that Kazakhstan ensures that it gives full effect to the terms of its EOI arrangements in order to allow for exchange of information to the standard.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Kazakhstan has a comprehensive network of EOI arrangements with relevant partners but the issues identified in respect of element B.1 need to be addressed.	Kazakhstan should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all its relevant partners.
	Kazakhstan should continue to develop its exchange of information network with all relevant partners.

C.3. Confidentiality

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

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

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

International treaties

221. All Kazakhstan's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. While a few of the articles in the Kazakhstan's DTCs might vary slightly in wording, these provisions contain all of the essential aspects of Article 26(2) of the OECD Model Tax Convention. The DTC with the Netherlands specifically allows for provision of the exchanged information to the arbitration board to carry out the mutual agreement procedure under the DTC. Confidentiality of the provided information in line with the standard is also provided for in Article 22 of the Multilateral Convention. As the confidentiality provisions in Kazakhstan's EOI agreements override any contradicting domestic legislation, Kazakhstan's authorities are required to keep confidential all information received as part of a request or as part of a response to a request regardless of any provisions in other laws.

Kazakhstan's domestic law

222. Under the Kazakhstan's law information concerning a taxpayer received by the tax authority constitutes tax secret (s. 557(1) Tax Code). There are exceptions stipulated by law where information received by the tax authority does not constitute a tax secret:

- registration details of taxpayers (identification number, name, identification of persons authorised to act on behalf of the entity, dates of registration and deregistration, date of the beginning and termination of business;
- residence of taxpayers
- amounts of taxes and other obligatory payments to the budget, paid (transferred) by the taxpayer, except for natural persons;
- amounts of additional fines paid by the taxpayer to the budget;
- amounts of refunds from the budget to taxpayers;
- amounts of tax arrears of taxpayers;
- identity of taxpayers sentenced by a court for tax fraudulent activities;
- identity of taxpayers who failed to file their tax returns;
- identity of taxpayers in liquidation;
- whether a non-resident taxpayer is registered in Kazakhstan for tax purposes.

223. Tax secrets should not be disclosed by the official persons of the tax service as well as by official persons of other state bodies who receive such information unless with written permission of the taxpayer. These persons should not disseminate such information neither during their work for said authorities, nor after their dismissal (s. 557(4,5) Tax Code). Unlawful disclosure of information protected by the tax secrecy triggers application of sanctions and is punishable under the law (s. 557(6) Tax Code).

224. The tax authority is allowed to disclose information protected by tax secrecy to the following authorities:

- the law-enforcement authorities investigating or prosecuting violations of tax laws;
- the court of law determining civil and criminal tax cases;
- the central authorised body for the state planning;
- the authorised state body for financial monitoring;
- tax authorities or law-enforcement authorities of other states or international organisations in accordance with international agreements providing for tax co-operation ratified by Kazakhstan;
- the authorised state body in the sphere of the environmental protection (s. 557(3) Tax Code).

225. The Tax Code permits disclosure of information obtained during the course of tax administration to parties (such as the body for the state planning or the state body in the sphere of the environmental protection) which are not involved in the tax administration, prosecution in respect of taxes or the oversight of the above which goes beyond the use of information permitted under the international standard. However, as indicated above, the confidentiality provisions of Kazakhstan's EOI agreements ratified by the Parliament override domestic laws, meaning that the confidentiality provisions present therein have full legal effect in Kazakhstan.

226. Tax secrecy is not overridden by the right to access public information. Information protected by the tax secrecy in accordance with the Tax Code is classified as information with limited access which cannot be disclosed (ss.1(3), 24(1)(4) Law on Access to Public Information). Further, internal correspondence, instructions by officials and any other information intended for internal administrative use should not be subject to the disclosure (s. 24(2)). The Kazakhstan's authorities confirmed that the EOI request and supporting documentation represent such official internal communication and therefore should not be disclosed. Finally, the Law on Access to Public Information contains an explicit treaty prevails rule stating that if an international treaty that has been ratified by the Republic of Kazakhstan stipulates other rules than those contained in the law, the rules of the international treaty shall be applied (s. 2(2)).

227. Prior to opening a tax audit the tax authority should notify the information holder. The notification should be done 30 days prior to the beginning of a tax audit. The tax audit may be launched without notifying the information holder if there is reasonable risk that the notification may harm the purpose of the tax audit. A notice shall specify the type of a tax audit, the list of issues to be audited, the preliminary list of required documents, the rights and obligations of the taxpayer in the course of the audit and other information which is required for the performance of a tax audit (s. 631 Tax Code). The basis for opening a tax audit is an injunction letter which has to be signed by (or at least delivered to) the audited information holder (s. 633). The information required to be contained in the injunction letter includes the identification of the information holder, the name of the tax authority performing the audit, the type of audit (e.g. planned, topical, chronologic), the tax period under investigation, the timeframe for conducting the audit and an indication of the information sought (if already available) (s. 632). There is no legal requirement to disclose to the information holder the identity of the requesting competent authority or any information from the EOI request which goes beyond the description of the requested information. The law requirements therefore appear to be in line with the international standard. On the other hand the law does not rule out disclosure of further information which might not be necessary for obtaining the requested information. As this is rather a matter of practice it will be further considered in the course of the Phase 2 peer review.

228. Kazakhstan's tax law does not contain provision regarding inspection of the taxpayer's file. Each tax audit is closed by the audit report which has to include copies of materials received in the course of the tax audit except for information covered by tax secrecy related to other taxpayers (s. 637 Tax Code). If as a result of the tax audit Kazakhstan's tax is levied the tax authority is required to issue a notice on the results of the tax audit. The notice contains, in addition to information already included in the report, computation of the Kazakhstani tax (s. 638). Considering that the taxpayer can appeal against the notice of the results of a tax audit or against acts of the official person disclosure of the information contained in the EOI request or the EOI request itself might be necessary in some instances. In these cases there is no provision in Kazakhstan's law which would prohibit Kazakhstan's authorities not to disclose the EOI request if the requesting competent authority so requires. Although such refusal to disclose the request might lead to losing the appeal and not providing the requested information. This appears to be in line with the standard as disclosure of the information is necessitated by the appeal procedure and Kazakhstan is not required to disclose the EOI request if the requesting jurisdiction requires that it should not be disclosed.

All other information exchanged (ToR C.3.2)

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

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

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

230. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise.

231. All Kazakhstan’s EOI agreements contain provisions allowing the contracting parties not to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

232. The term “professional secret” is not defined in Kazakhstan’s EOI agreements and therefore it derives its meaning from Kazakhstan’s domestic law.

233. As described in section B.1.5 of this report, the protection of information held by lawyers and notaries contained in Kazakhstan’s law is too broad and goes beyond the international standard as it protects all information obtained by them in connection with their professional activities (i.e. regardless whether the information is related to providing legal advice, litigation or its disclosure would seriously harm legitimate interests of the person concerned). This might limit effective exchange of information since the Kazakhstan’s competent authority can according to the respective EOI agreements decline to provide the requested information on the grounds that

the information is subject to professional privilege as defined in Kazakhstan’s law. It is therefore recommended that Kazakhstan restricts the scope of the protection under the term “professional secret” in its domestic law so as to be in line with the standard for the purpose of EOI agreements.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Kazakhstan’s EOI agreements do not define the term “professional secret” and the scope of the term under its domestic law is wider than permitted by the international standard.	It is recommended that Kazakhstan limits the scope of “professional secret” in its domestic law so as to be in line with the standard for exchange of information.

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)

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

235. None of Kazakhstan’s DTCs require the provision of request confirmations, status updates or the provision of the requested information within the timeframes foreshadowed in Article 5(6) of the OECD Model TIEA. Such an explicit deadline is not contained in the Multilateral Convention either nevertheless parties to the Convention are required to provide the requested information as soon as possible.

236. There appear to be no legal restrictions stemming from Kazakhstan’s domestic law or international treaties that would limit the Kazakhstan’s ability to respond to EOI requests in a timely manner. Kazakhstan’s practical ability to respond to requests in a timely manner will be considered in the course of its Phase 2 review.

Organisational process and resources (ToR C.5.2)

237. It is important that a jurisdiction has appropriate organisational processes and resources in place to ensure a timely response. A review of Kazakhstan's organisational processes and resources will be conducted in the context of its Phase 2 review.

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

238. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no further conditions that appear to restrict effective exchange of information in Kazakhstan. There are no legal or regulatory requirements in Kazakhstan that impose unreasonable, disproportionate or unduly restrictive conditions. Whether any such conditions exist in practice will be examined in the context of the Phase 2 review

Determination and factors underlying recommendations**Phase 1 determination**

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Ownership information on foreign companies having place of effective management in Kazakhstan is not consistently available.	Kazakhstan should ensure that ownership information on foreign companies with sufficient nexus with Kazakhstan is available in all cases.
	Kazakhstan's law does not require that identification of partners in a foreign partnership that carries on business in Kazakhstan or has income, deductions or credits for tax purposes in Kazakhstan is in all cases available in Kazakhstan.	Kazakhstan should ensure that information identifying the partners in a foreign partnership that carries on business in Kazakhstan or has income, deductions or credits for tax purposes in Kazakhstan, is available to its competent authority.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
The element is in place.		
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(Tor B.1)</i>		
The element is not in place.	It is not clear how Kazakhstan's tax authority access powers are legally applied in cases where information is requested for exchange of information purposes, especially in cases where there is no domestic tax at stake and the treaty prevails rule cannot be applied for exchange of information under the respective treaty.	Kazakhstan should clarify its law to ensure that its competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements.
	Access to banking information under Kazakhstan's domestic law is restricted regarding the persons whose bank accounts information can be requested by the tax authority and the type of the information which may be requested.	Kazakhstan should ensure that its competent authority has access powers in respect of all banking information requested by its EOI partners.
	There are no effective enforcement measures and sanctions applicable in cases where a taxpayer fails to provide information requested by the tax authority and no domestic tax is at stake.	Kazakhstan should ensure that its law provides for effective enforcement measures and sanctions applicable in cases where the requested information is not provided.
	Protection of information held by lawyers and notaries provided under Kazakhstan's law is too wide as it covers all information received by them in connection with their professional activities.	Kazakhstan should take measures to ensure that the protection of information held by lawyers and notaries is consistent with the standard.

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i>		
The element is not in place.	Kazakhstan's competent authority's access powers and enforcement measures for exchange of information purposes are not explicitly provided by law especially in cases where there is no domestic tax interest in the requested information.	Kazakhstan should clarify its law to ensure that its competent authority has the power to obtain the relevant information pursuant to requests under all exchange of information agreements.
	As a result of domestic law limitations with respect to access to banking information, Kazakhstan does not have EOI relationships in line with the standard with its EOI partners.	Kazakhstan should ensure that all its EOI relationships provide for exchange of banking information to the standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Kazakhstan has a comprehensive network of EOI arrangements with relevant partners but the issues identified in respect of element B.1 need to be addressed.	Kazakhstan should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all its relevant partners.
		Kazakhstan should continue to develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Kazakhstan's EOI agreements do not define the term "professional secret" and the scope of the term under its domestic law is wider than permitted by the international standard.	It is recommended that Kazakhstan limits the scope of "professional secret" in its domestic law so as to be in line with the standard for exchange of information.
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction’s response to the review report¹⁵

Kazakhstan thanks the Assessment team and the Peer Review Group for the great work done in preparation of fair and comprehensive report on Kazakhstan’s legal and regulatory framework for transparency and exchange of information in tax matters.

We would also like to take this opportunity and inform about reorganization of the Tax Committee of the Ministry of Finance. The State Revenue Committee of the Ministry of Finance was created through merger of the tax and customs committees and transferring functions of financial and economic crimes investigation into it. The newly formed Committee is a single service provider for domestic entrepreneurs and foreign investors which are responsible for creating the conditions of fair and efficient tax administration.

By all the steps that were already done, are in the process of being done or are planned, Kazakhstan shows its strong support to strengthening administrative cooperation and fighting against tax evasion in order to ensure tax compliance.

Kazakhstan strongly believes that all necessary measures will be taken to address the recommendations made on implementation of the standards on transparency and exchange of information for tax purposes.

15. 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 Kazakhstan’s exchange of information mechanisms

Multilateral and bilateral exchange of information agreements

Kazakhstan signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters as amended by its 2010 Protocol (Multilateral Convention) on 23 December 2013. The Multilateral Convention has not yet entered into force in Kazakhstan. The status of the Multilateral Convention as at March 2015 is set out in the table below.¹⁶ The table also includes territories to which the Multilateral Convention applies based on territorial extension declared by a state party.

Kazakhstan has signed 59 DTCs out of which 57 are in force (see the table below).

Table of Kazakhstan’s exchange of information relations

The table below summarises Kazakhstan’s EOI relations with individual jurisdictions established through international instruments. These relations allow for exchange of information upon request in the field of direct taxes. In case of the Multilateral Convention which has not yet come into force in Kazakhstan the date when the agreement entered into force indicates the date when the Convention becomes effective in relation to the other jurisdiction.

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	DTC	21-Feb-08	10-Dec-08
		Multilateral Convention	Signed	01-Dec-13
2	Andorra	Multilateral Convention	Signed	Not yet in force in Andorra
3	Anguilla ^a	Multilateral Convention	Extended	01-Mar-14

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

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
4	Argentina	Multilateral Convention	Signed	01-Jan-13
5	Armenia	DTC	06-Nov-06	01-Jan-12
6	Aruba ^b	Multilateral Convention	Extended	01-Sep-13
7	Australia	Multilateral Convention	Signed	01-Dec-12
8	Austria	DTC	14-Dec-05	16-May-07
		Multilateral Convention	Signed	01-Dec-14
9	Azerbaijan	DTC	03-Oct-2005	19-Apr-06
		Multilateral Convention	Signed	01-Jun-11 (Protocol not yet in force in Azerbaijan)
10	Belarus	DTC	07-Sep-95	31-Oct-96
11	Belgium	DTC	21-Apr-99	07-May-03
		Multilateral Convention	Signed	01-Jun-12 (Protocol not yet in force in Belgium)
12	Belize	Multilateral Convention	Signed	01-Sept-13
13	Bermuda ^a	Multilateral Convention	Extended	01-Mar-14
14	Brazil	Multilateral Convention	Signed	Not yet in force in Brazil
15	British Virgin Islands ^a	Multilateral Convention	Extended	01-Mar-14
16	Bulgaria	DTC	04-Dec-03	18-Aug-04
17	Cameroon	Multilateral Convention	Signed	Not yet in force in Cameroon
18	Canada	DTC	26-Apr-95	12-Dec-95
		Multilateral Convention	Signed	01-Mar-14
19	Cayman Islands ^a	Multilateral Convention	Extended	01-Jan-14
20	Chile	Multilateral Convention	Signed	Not yet in force in Chile
21	China (People's Republic of)	DTC	07-Jun-96	27-Jan-97
		Multilateral Convention	27-Aug-13	Not yet in force in China
22	Colombia	Multilateral Convention	Signed	01-Jul-14
23	Costa Rica	Multilateral Convention	Signed	01-Aug-13
24	Croatia	DTC	19-May-00	27-Feb-01
		Multilateral Convention	Signed	01-Jun-14
25	Curacao ^b	Multilateral Convention	Extended	01-Sep-13
26	Cyprus ^d	Multilateral Convention	Signed	Not yet in force in Cyprus

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
27	Czech Republic	DTC	25-Oct-94	22-May-95
		Multilateral Convention	Signed	01-Feb-14
28	Denmark	DTC	10-Dec-93	27-Dec-93
		Multilateral Convention	Signed	01-Jun-11
29	Estonia	DTC	11-Feb-02	21-Nov-02
		Multilateral Convention	Signed	01-Nov-14
30	Faroe Islands ^c	Multilateral Convention	Extended	01-Jun-11
31	Finland	DTC	23-Mar-09	05-Aug-10
		Multilateral Convention	Signed	01-Jun-12
32	FYROM	DTC	02-Jul-12	12-Aug-2013
33	France	DTC	02-Feb-98	01-Jul-00
		Multilateral Convention	Signed	01-Apr-12
34	Gabon	Multilateral Convention	Signed	Not yet in force in Gabon
35	Georgia	DTC	11-Nov-97	05-Jul-00
		Multilateral Convention	Signed	01-Jun-11
36	Germany	DTC	21-Feb-97	26-Sep-98
		Multilateral Convention	Signed	Not yet in force in Germany
37	Gibraltar ^a	Multilateral Convention	Extended	01-Mar-14
38	Ghana	Multilateral Convention	Signed	01-Sept-13
39	Greece	DTC	27-Mar-02	07-Mar-05
		Multilateral Convention	Signed	01-Sept-13
40	Greenland ^c	Multilateral Convention	Extended	01-Jun-11
41	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala
42	Guernsey ^a	Multilateral Convention	Extended	07-Aug-14
43	Hungary	DTC	14-May-04	01-Jan-05
		Multilateral Convention	Signed	01-Mar-15
44	Iceland	DTC	19-Oct-94	01-Jan-96
		Multilateral Convention	Signed	01-Jun-12
45	India	Multilateral Convention	Signed	01-Jun-12
		DTC	09-Dec-96	02-Oct-97
46	Indonesia	Multilateral Convention	Signed	01-May-15
47	Iran	DTC	15-Jan-96	1-Jan-00

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
48	Ireland	DTC	13-Nov-97	28-Jan-98
		Multilateral Convention	Signed	01-Sep-13
49	Isle of Man ^a	Multilateral Convention	Extended	01-Mar-03
50	Italy	DTC	22-Sep-94	26-Feb-97
		Multilateral Convention	Signed	01-Jun-12
51	Japan	DTC	19-Dec-08	01-Jan-10
		Multilateral Convention	Signed	01-Oct-13
52	Jersey ^a	Multilateral Convention	Extended	01-Jun-14
53	Korea	DTC	18-Oct-97	09-Apr-99
		Multilateral Convention	Signed	01-Jul-13
54	Kyrgyzstan	DTC	07-Dec-06	04-Mar-08
55	Latvia	DTC	06-Sep-01	02-Dec-02
		Multilateral Convention	Signed	01-Jan-14
56	Liechtenstein	Multilateral Convention	Signed	Not yet in force in Liechtenstein
57	Lithuania	DTC	17-Dec-93	30-Dec-94
		Multilateral Convention	Signed	01-Jun-14
58	Luxembourg	DTC	14-Jun-04	14-Apr-06
		Multilateral Convention	Signed	01-Nov-14
59	Malaysia	DTC	26-Jun-06	1-Jan-12
60	Malta	Multilateral Convention	Signed	01-Sep-13
61	Mexico	Multilateral Convention	Signed	01-Sep-12
62	Monaco	Multilateral Convention	Signed	Not yet in force in Monaco
63	Moldova	DTC	25-Feb-98	24-Jun-98
		Multilateral Convention	Signed	01-Mar-12
64	Mongolia	DTC	12-Mar-98	1-Jan-99
65	Montenegro	DTC	22-Nov-05	19-May-06
66	Montserrat	Multilateral Convention ^a	Extended	01-Oct-13
67	Morocco	DTC	24-Jul-08	25-Sep-12
		Multilateral Convention	Signed	Not yet in force in Morocco
68	Netherlands	DTC	14-Mar-94	29-Jan-95
		Multilateral Convention	Signed	01-Sep-13

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
69	New Zealand	Multilateral Convention	Signed	01-Mar-14
70	Nigeria	Multilateral Convention	Signed	Not yet in force in Nigeria
71	Norway	DTC	03-Apr-01	24-Jan-06
		Multilateral Convention	Signed	01-Jun-11
72	Pakistan	DTC	23-Aug-95	1-Jan-96
73	Philippines	Multilateral Convention	Signed	Not yet in force in Philippines
74	Poland	DTC	17-Nov-93	1-Jan-95
		Multilateral Convention	Signed	01-Oct-11
75	Portugal	DTC	19-Jun-01	03-Jul-03
		Multilateral Convention	Signed	01-Mar-15
76	Qatar	DTC	19-Jan-14	
77	Romania	DTC	25-May-02	28-Nov-02
		Multilateral Convention	Signed	01-Nov-14
78	Russia	DTC	20-Dec-10	08-Nov-12
		Multilateral Convention	Signed	Not yet in force in Russia
79	San Marino	Multilateral Convention	Signed	Not yet in force in San Marino
80	Saudi Arabia	DTC	07-Jun-11	
		Multilateral Convention	Signed	Not yet in force in Saudi Arabia
81	Seychelles	Multilateral Convention	Signed	Not yet in force in Seychelles
82	Singapore	DTC	19-Sep-06	14-Aug-07
		Multilateral Convention	Signed	Not yet in force in Singapore
83	Sint Maarten ^b	Multilateral Convention	Extended	01-Sep-13
84	Slovak Republic	DTC	11-Mar-99	12-Jun-00
		Multilateral Convention	Signed	01-Mar-14
85	Slovenia	DTC	17-Apr-02	22-Nov-02
		Multilateral Convention	Signed	01-Jun-11
86	South Africa	Multilateral Convention	Signed	01-Mar-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
87	Spain	DTC	02-Jul-09	18-Aug-11
		Multilateral Convention	Signed	01-Jan-13
88	Sweden	DTC	19-Mar-97	02-Oct-98
		Multilateral Convention	Signed	01-Sep-11
89	Switzerland	DTC	21-Oct-99	24-Nov-00
		Multilateral Convention	Signed	Not yet in force in Switzerland
90	Tajikistan	DTC	09-Feb-09	29-Oct-09
91	Tunisia	Multilateral Convention	Signed	01-Feb14
92	Turkey	DTC	03-Jun-99	23-Dec-03
		Multilateral Convention	Signed	Not yet in force in Turkey
93	Turkmenistan	DTC	11-Sep-12	04-Dec-12
94	Tuks & Caicos ^a	Multilateral Convention	Extended	01-Dec-13
95	Ukraine	DTC	21-Nov-95	21-Nov-96
		Multilateral Convention	Signed	01-Sep-13
96	United Arab Emirates	DTC	22-Dec-08	27-Nov-13
97	United Kingdom	DTC	21-Mar-94	15-Dec-96
		Multilateral Convention	Signed	01-Oct-11
98	United States	DTC	24-Oct-93	01-Jan-96
		Multilateral Convention	Signed	01-Apr-95 (Protocol not yet in force in the United States)
99	Uzbekistan	DTC	03-Jul-98	23-Oct-98

- a. Extension by United Kingdom
- b. Extension by the Kingdom of the Netherlands
- c. Extension by Denmark
- d. 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 recognizes 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 recognized 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.

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

Commercial laws

- The Law on Financial Accounting and Financial Reporting
- The Law on Joint Stock Companies
- The Law on Limited Liability Partnerships and Additional Liability Partnerships
- The Law on State Registration of Legal Entities, Branches and Representations
- The Law on Securities Market

Taxation laws

- The Tax Code

Banking laws

- The Law on Banks and Banking Activity in the Republic of Kazakhstan

Anti-money laundering laws

- The Law on Counteracting Legalisation (Laundering) of Ill-gotten Proceeds and Terrorist Financing

Other

- The Constitution of the Republic of Kazakhstan
- The Civil Code

The Civil Procedure Code
The Criminal Code
The Law on Access to Public Information
The Law on Auditors' Activities
The Law on Administrative Offences
The Law on Lawyers' Activities
The Law on Notaries
Copies of tax treaties

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: KAZAKHSTAN

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

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

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

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

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