GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 1 Legal and Regulatory Framework

ROMANIA

OECD

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

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

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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 Romania.

2. 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 whether that information can be effectively exchanged with its exchange of information (EOI) partners.

3. Romania is a republic located in South Eastern-Central Europe, bordering the Black Sea, between Bulgaria and Ukraine, with a population of 19.98 million inhabitants (2014). It also borders Hungary, Serbia, and Moldova. Bucharest is Romania's capital and the largest city. Romanian is the official language. Romania is part of the European Union since 1 January 2007.

4. Romania has a well-developed and robust framework for exchange of information for tax purposes. As at 1 August 2015, it has signed 86 DTCs (covering 87 EOI partners), all of which are in force and two TIEAs, one of which is in force. Most of these DTCs contain exchange of information articles that meet the international standard. In addition, Romania is a signatory of Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention, which is in effect in Romania since 1 November 2014, increasing its EOI relationships to 119 jurisdictions.

5. Comprehensive registration requirements exist for entities in Romania, which must register with the Trade Register and the tax administration. Full ownership information on limited liability companies (SRL) and partnerships is available in the Trade Register, and with the tax authorities. Failure to register the incorporation of a SRL and any transfer of SRL and partnership interests in the Trade Register is subject to a fine. In respect of joint-stock companies and partnerships limited by shares, up-to-date information on the owners of registered shares issued is available at the level of the entity. However, no effective sanctions apply for failure to maintain a register of their shareholders/partners.

6. Joint-stock companies and partnerships limited by shares can issue bearer shares. Romania does not have mechanisms in place to ensure the availability of ownership information in respect of bearer shares issued by these companies.

7. There are no specific requirements for foreign companies with their place of effective management in Romania to maintain or provide ownership information on their shareholders, respectively.

8. The Fiscal Procedure Code provides for the use of domestic powers to access information for EOI purposes with other EU member States, including for banking information. In addition, Romania introduced recently a clear legal basis for Romania to provide information in response to EOI requests from non-EU member States.

9. Recommendations have been made where elements of Romania's EOI regime have been found to be in need of improvement. Romania's progress in these areas, as well as its actual practice in exchange information with its EOI partners, will be considered in its Phase 2 review which is scheduled to commence in the fourth quarter of 2015.

Introduction

Information and methodology used for the peer review of Romania

10. The assessment of the legal and regulatory framework of Romania 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 7 August 2015, other materials supplied by Romania, and information supplied by partner jurisdictions.

11. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Romania'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.

12. The assessment was conducted by a team which comprised two expert assessors: Ms. Maria da Graça Pires, Tax Advisor, Tax and Customs Authority, Ministry of Finance of Portugal and Mrs. Rhondalee Braithwaite-Knowles, Attorney General, Attorney General's Chambers from Turks and Caicos Islands; and two representatives of the Global Forum Secretariat, Ms. Séverine Baranger and Ms. Kanae Hana.

Overview of Romania

13. Romania is a republic located in South Eastern-Central Europe, bordering the Black Sea, between Bulgaria and Ukraine, with a population of 19.98 million inhabitants (2014). It also borders Hungary, Serbia, and Moldova. Bucharest is Romania's capital and the largest city. Romanian is the official language. Romania is part of the European Union since 1 January 2007.

14. Romania has a diversified economy with one of the fastest growth rates in the European Union. In the fiscal year ending in 2013, Romania's gross domestic product was approximately USD 189.6 billion and the per capita GDP was approximately USD 9 370.[1]

15. The service sector constitutes the largest component of GDP (52%), followed by industry (35.6%) and agriculture (12.4%).[2] Romania's government has also implemented a number of fiscal and business sector reforms to make the country more attractive to foreign investments. Foreign direct investment is mainly from other European countries and is in the following sectors: industry; banking and insurance; wholesale and retail trade; production of electricity, gas and water; transport and telecommunications.

16. Romania joined the European Union in 2007. It is also a member of the United Nations, NATO, the World Trade Organisation, the Council of Europe and the Intra-European Organisation of Tax Administrations (IOTA).

Governance and legal system

17. Romania is a parliamentary democratic republic with a multi-party system. Formally, the Romanian head of state is the President, elected by direct popular vote for a five-year term. Most executive power lies with the Prime Minister, who is the head of government and is appointed by the President on the basis of the general election results. The remainder of the cabinet is appointed by the President on the recommendation of the Prime Minister; the complete Government is mandatorily approved by the Parliament within 30 days. The legislative branch of the government, collectively known as the Parliament, consists of two chambers (Senate and Chamber of Deputies) whose members are elected every four years by simple plurality.

1. The World Bank – Romania: http://blogs.worldbank.org/opendata/ retrieved on 22 July 2015.
2. CIA, The World Factbook – Romania: https://www.cia.gov/library/publications/the-world-factbook/geos/ro.html, retrieved on 16 April 2015.

18. Romania is subdivided into 41 counties. Each county is administered by a county council, responsible for local affairs, as well as a prefect responsible for the administration of national affairs at the county level. The prefect is appointed by the central government but cannot be a member of any political party. Each county is further subdivided into cities and communes, which have their own mayor and local council.

19. Romania's legal system is based on civil law. In terms of hierarchy, the Romanian Constitution and constitutional laws are on top in the hierarchy of legal norms. All other laws must be consistent with them. International agreements must be ratified by a domestic law and are then placed at the same level as other laws. However, in respect of international tax agreements, the Fiscal Code gives precedence to international tax agreements over the rules set out in the Fiscal Code. In addition, Article 1(3) of the Fiscal Code provides that in respect of tax matters, the provisions of the Fiscal Code shall prevail over any provisions from other statutory instruments; such that in case of conflict among such provisions, the provisions of the Fiscal Code shall be applied. Organic law are adopted by the Parliament by qualified majority; and ordinary laws are adopted by a simple majority. An ordinary law cannot amend or modify organic laws or the Constitution. The executive power is implemented through government ordinances and decisions.

20. The justice system is independent of the other branches of government, and is made up of a hierarchical system of courts culminating in the High Court of Cassation and Justice, which is the supreme court of Romania. There are also courts of appeal, county courts and local courts. The Romanian judicial system is strongly influenced by the French model, considering that it is based on civil law and is inquisitorial in nature. The Constitutional Court (*Curtea Constituțională*) is responsible for judging the compliance of laws and other state regulations to the Constitution, which is the fundamental law of the country and can only be amended through a public referendum.

21. International treaties are concluded by the President of Romania (Art. 91 (1) Constitution), and ratified by the Parliament (Art. 91(1) Constitution). If a treaty includes some provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution (Art. 11(3) Constitution).

22. A complete list of relevant legislation and regulations is set out in Annex 3.

Tax system

23. Taxes in Romania are set out in the Fiscal Code.[3] The tax system includes both direct taxation – corporate income tax, simplified tax regime for micro-enterprises, personal income tax – and indirect taxation – goods and service tax (VAT) and excises duties. The fiscal year is the calendar year.

24. A flat income tax rate of 16% applies to taxable income derived by individuals, regardless of the types of income (with a few exceptions for gambling and real estate income). The same 16% flat tax rate applies to business income derived by legal entities carrying out a business in Romania, with the exception of micro-enterprises which are subject to specific rules.

25. A company is considered tax resident in Romania if *(i)* it is incorporated under Romanian law, *(ii)* it is effectively managed in Romania, or *(iii)* if it is set up in accordance with European legislation with the registered head office in Romania. Most passive income (dividends, royalties and interest) are subject to a domestic withholding tax at a rate of 16%. As a general rule, foreign entities are subject to Romanian tax on Romanian-source income.

Romania's commercial laws and financial sector

26. The Romanian financial market comprises four sectors – banking (primarily represented by banks and branches of foreign banks), capital market (mainly securities dealers, asset management companies, the stock exchange and the central securities depository), insurance (mainly insurance companies and branches of foreign insurance companies) and pension savings (mainly pension fund management companies and supplementary pension companies/pension insurance companies). The banking sector is the most important component of the financial sector. The National Bank of Romania is the competent authority for the licensing and prudential supervision of credit institutions (commercial banks, credit co-operative organisations, saving banks for housing, mortgage banks). On April 30, 2015, there were 40 commercial banks, savings banks, branch offices of foreign banks and one credit co-operative network operating in Romania. The National Bank of Romania also authorises and supervises payments institutions and electronic money institutions and monitors/supervises the activity of non-banking financial institutions.

3. Law No. 571 of 22 December 2003 and Decision No. 44 of 22 January 2004 for the approval of the Methodological Norms for the application of Law No. 571/2003.

27. Romania's financial sector includes total banking net assets of about EUR 81.5 billion as of April 2015 (EUR 81.2 billion as of December 2014). It is dominated by foreign owned institutions.[4]

28. With reference to professional service providers, on October 29, 2014 there were 2 592 notaries public in Romania (according to Order of the Ministry of Justice no 3933/C/2014). According to the information available on The National Association of Romanian Bars website in July 2015, there were 31 225 lawyers authorised to practice law out of which 2 527 were trainees lawyers. Notaries, lawyers and auditors are regulated by specific laws. These entire professional are subject to the provisions/requirements of Romania's Anti-money laundering and combating the financing of terrorism (AML/CFT) laws.

29. Romania's AML/CFT legislation is included in Law no. 656/2002, republished in 2012, as amended, for the prevention and control of money laundering and the establishment of measures to prevent and combat financing of terrorism. This law established the National Office for Prevention and Combating of Money Laundering (NOPCML), whose purpose is to prevent and combat money laundering and financing of terrorism. Romanian's AML/CFT legislation is based on EU AML/CFT legislation.

30. Under Romanian's AML/CFT laws, obliged entities are required to undertake customer due diligence (Art. 11 of Law 656/2002 (r)). Obligated entities include banks and other financial and non-financial institutions, as well as auditors, accountants, tax advisers, notaries, lawyers and other professional service providers for companies and other entities or legal constructions.

31. The central authority in Romania in the area of the prevention and detection of money laundering and terrorist financing is the NOPCML. However, NOPCML is not the only authority responsible for anti-money laundering matters. The other authorities involved include the General Prosecutor's Office of Romania, the Ministry of Justice of Romania, the Ministry of Public Finance, the National Bank of Romania and the Financial Supervision Authority.

Exchange of information for tax purposes

32. Romania provides international co-operation in tax matters based on international bilateral and multilateral instruments and EU law. The relevant EU legislation includes the EU Council Directive 2011/16/EU on Administrative Co-operation in the Field of Taxation, the EU Savings Directive

4. Source: IMF www.imf.org/external/pubs/ft/scr/2011/cr11122.pdf, retrieved 7 November 2011.

2003/48/EC (EU-SD), Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, Council Regulation (EU) No. 904/2010 on administrative co-operation and combating fraud in the field of value added tax and Council Regulation (EC) 2073/2004 on administrative co-operation in the field of excise duties. These co-operation mechanisms involve spontaneous exchange of information; automatic exchange of information, multilateral controls and recovery assistance.

33. Romania has a broad EOI network, which has 87 exchange of information partners covered by 86 double tax conventions (DTCs) and two TIEAs, all of which are in force, except for one TIEA. The Multilateral Convention has expanted its EOI relationship to cover 119 jurisdictions.

Recent developments

34. Romania has endorsed the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the AEOI standard). It has joined a Multilateral Competent Authority Agreement and is an "early adopter" of the CRS with reporting in 2017. Romania is also a party to the EU actions in replacing the EU Directive on Savings Income with an amended Directive on Administrative Co-operation to implement AEOI to the CRS.

Compliance with the Standards

A. Availability of information

Overview

35. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority[5] may not be able to obtain and provide it when requested. This section of the report describes and assesses Romania's legal and regulatory framework for availability of information.

36. Companies incorporated in Romania must register with the Trade Register. Full ownership information on limited liability companies and on the founders of joint-stock companies and partnerships limited by shares is available in this register. In respect of joint-stock company and partnerships limited by shares, up-to-date information on the owners of registered shares issued is available at the level of the entity. Foreign companies and partnerships must also be registered when establishing a branch in Romania. However, no ownership information has to be provided upon registration,

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

nor is such information available otherwise. Nominee shareholders acting by way of business must identify the person for whom they act as a legal owner under AML/CFT legislation and the Act of Trading in Financial Instruments. No direct sanctions apply to joint-stock companies and partnerships limited by shares which fail to maintain a register of their shareholders/members, but the directors or managers are personally and jointly liable for any damage caused to third party for failure to comply with the maintenance obligation.

37. Joint-stock companies and partnerships limited by shares can issue bearer shares. However, Romania does not have mechanisms in place to ensure that ownership information on the holder of bearer shares is available to the authority. Romania is therefore recommended to introduce mechanisms enabling the identification of holders of bearer shares.

38. Partnerships (general and limited partnerships) formed in Romania must register with the Trade Register. Updated information on the partners of partnerships is available to the authorities as partnerships need to provide the Trade Register with updated ownership information. Furthermore, the lack of registration of any transfer of partnership interests in the Trade Register is subject to a fine. In addition, all types of domestic partnerships and foreign partnerships carrying on business in Romania need to register for tax purposes.

39. The Fiduciary agreement was introduced in Romania by Law 287/2009, which entered into force on October 1 2011. Romanian legislation regarding fiducia ensures the availability of information regarding the fiduciaries, the settlor(s), beneficiaries and assets held in the fiducia with the tax authorities, with the AML/CFT-obligated fiduciaries and with the Electronic Archive of Security Interests in Real Property. In addition, while trustees resident in Romania are not subject to specific obligations to keep identity information regarding settlors and beneficiaries of express trusts, the anti-money laundering obligations, together with the obligation to submit information to the tax authorities, permit the availability of such information.

40. Romanian accounting laws provide for accounting requirements applicable to all legal entities incorporated in Romania and legal entities which are taxable in Romania, including foreign entities. In the case of fiducial arrangements, the fiduciary keeps separate accounting records (Art. 25[1]b) of the Fiscal Code). However, no accounting requirements apply to foreign trusts which have Romanian-resident administrators or trustees.

41. The AML/CFT legislation ensures that all records pertaining to the accounts as well as to related financial and transactional information is required to be kept by all banks operating in Romania.

A.1. Ownership and identity information

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

Companies (ToR[6] A.1.1)

42. The Law on companies No 31 of 16 November 1990 (Law 31/1990) regulates entrepreneurial activities in Romania (Law 31/1990, Art. 1 (1)).

Types of Companies and Requirements to Maintain Information

43. Pursuant to Article 2 of the Law 31/1990, companies can be established under four legal forms:

- **Joint-stock company** (*societate pe actiuni*, ***SA***). A SA is a company that the capital of which is divided into equal shares in value (Law 31/1990 Art. 94). The minimum capital requirement is RON 90 000 (EUR 20 340)[7]. The shares can be registered shares or bearer shares (Law 31/1990 Art. 91). The shareholder's liability is limited to the value of the subscribed capital. A SA must be established by at least two shareholders (Law 31/1990 Art. 10), being either individuals or legal entities. As of a January 2015, there were 32 580 SAs.
- **Limited liability Company** (*societate cu raspundere limitata*, ***SRL***). The liability of SRL shareholders is limited to their subscribed registered capital (Law 31/1990, Art. 3). The capital of SRL shall be divided into equal registered shares (Law 31/1990, Art. 11). The minimum capital requirement is RON 200 (EUR 45) (Law 31/1990, Art. 11). The number of the shareholders cannot be higher than 50 (Law 31/1990, Art. 12). As of 1 January 2015, there were 1 663 712 SRLs registered in the Trade Register.
- **Partnership limited by shares** (*societate in comandita pe actiuni,* ***SCA***). A SCA is formed by one or more managing partners, who are traders and are indefinitely and jointly liable for the partnership's debts, and limited partners who are shareholders and liable for losses only up to the amount of their contributions. Most of the rules applicable to SAs, except those related to the dualist system of management in SAs, also apply to SCAs (Art. 187 of Law 31/1990). As of 1 January 2015, there were 7 SCAs registered in the Trade Register.

6. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.
7. On 7 August 2015, EUR 1= RON 4.41.

- **The European Company *(SE)*** is a company with a European dimension, and does not strictly fall under the territorial scope of the legislation relating to domestic companies in force in the country where it has been incorporated. European companies are regulated by Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) and Council Regulation No 1435/2003 of 22 July 2003 on the Statute for a European Co-operative company (SCE). Pursuant to Article 10 of the EU Regulation, the laws that apply to SEs are those that apply to public limited companies (SAs). No SE was registered in Romania as at 1 January 2015.

44. These companies are required to maintain information regarding their legal owners under both commercial and tax law requirements, except for bearer shares issues by SAs and SCAs. In addition, AML/CFT obligated service providers maybe involved in the formation of companies in Romania. If that is the case, these service providers must identify the owners of their clients.

Information held by the authorities

45. Information on the founders of SAs, SCAs and SRLs are available with the Trade Register and the tax authorities. However, updated shareholder's information is only available in the shareholder's register of SAs and SCAs, whereas it is also available in the Trade Register for SRLs.

Information with the Trade Register

46. Upon incorporation, all types of companies must register with the Trade Register before starting their economic activity pursuant to Art. 1 of the Law no. 26/1990 of November 1990 on the Trade Register (Law 26/1990). The Trade Register is kept by the National Trade Register Office (NTRO), which is a public institution organised under the authority of Ministry of Justice (Art. 2 of Law 26/1990).

47. The articles of association of SAs, SCAs and SRLs must be submitted to the Trade Register within 15 days to complete the incorporation (Law 31/1990 Art. 36). The constitutive acts with the NTRO must contain, among others: the identification details of the founders, the legal form of the company, the denomination, the number of the shares issued. With respect to SAs and SCAs, the number and nominal value of the shares issued shall be provided with a specification of whether they are in a registered or a bearer form (Art. 8 of Law 31/1990).

48. Transfer of SRL shares must be registered with the Trade Register (Art. 203 of Law no. 31-1990). Without such registration, share transfers are

not recognised legally by the third party. In order for the transfer to have effect towards third parties, the transfer must be registered in the Trade Register.

49. In contrast, information on new shareholders following the transfer of SA shares and shares held by SCA's limited partners is not registered with the Trade Register, but is recorded in the shareholder's register maintained by SAs or SCAs (see *Information held by companies*).

Information held by the tax authorities

50. In addition to the obligation to register upon incorporation with the NTRO, SAs, SCAs and SRLs must register with the Romanian tax authorities pursuant to Article 72 of the Fiscal Procedure Code (FPC). As a general principle, the registration requirement applies to any person or entity that is liable to tax. For example, SAs and SRLs are liable to tax and subject to tax registration by reason of their incorporation. Such taxpayers receive a fiscal identification code. For non-resident taxpayers that are only subject to withholding tax at source, the assignment of the tax identification code can be made by the tax authorities, at the request of the payer of income.

51. The fiscal registration statement shall be submitted within 30 days as of:

a. the date of establishment according to the law, in case of legal persons, associations and other entities without legal personality.

b. the date of issuing of the legal act of operation, the date of beginning of activity, the date of obtaining the first income or acquiring the capacity of employer, as applicable, in case of natural persons.

c. In case of non-resident taxpayers engaged in activities on the Romanian territory through one or more permanent establishment, at the same time with the submission of the tax registration statement.

52. The following information must be provided upon registration: the taxpayer's identification data, the categories of payment obligations due according to the Fiscal Code, data about the secondary offices, identification data of the empowered person, data regarding the taxpayer's legal status as well as any information necessary for the administration of taxes, duties, contributions and other amounts owed to the general consolidated budget (Art. 75(2) FPC).

53. The tax authorities have direct access to ownership information on the founders of SAs, and for SRLs, on founders and on current shareholders, which are recorded in the Trade Register by the NTRO. This direct access

stems from two Co-operation Protocols concluded in 2006 and in 2010.[8] The tax authorities have access to company's information by means of a database mirroring that of the Trade Register database through the internal portal of the National Agency for Tax Administration (NATA).

Information held by companies

54. SAs, SCAs and SRLs must maintain an updated register of shareholders (Law 31/1990, Art. 177 and Art. 198, respectively). The shareholders' register must include, as the case may be, the surname and first name, personal code number, denomination, domicile or registered office of shareholders holding registered shares, as well as amounts paid for the shares.

55. Pursuant to Article 98 of Law 31/1990, the transfer of shares in SAs is only valid through a recording in the shareholder's register with the signature of the assignor and the assignee or by their proxies. The property right over registered shares issued in a dematerialised form shall be transferred by the statement made in the shareholders' register, signed by the assignor and the assignee or by their proxies. Other modalities to transfer the property right over registered shares can also be prescribed by the constitutive act. The Company Law does not provide any requirements for the transfer of shares to be notarised; except in the case of donations.

56. The register of shareholders may be kept by an authorised independent register company, in which case it is mandatory to mention the name of that independent register company and its registered address in the Trade Register (Art. 180 of Law 31/1990). There is no restriction on the location of the independent register company.

57. It is the responsibility of the board of directors of SAs, SCAs and the managers of SRLs to keep the shareholder's register accurately and up-to-date (Arts. 177 (2) and 198 of Law 31/1990).

Foreign companies

58. Under the Terms of Reference, jurisdictions should ensure that information is available to their competent authorities that identify the owners of foreign companies, where these foreign companies have a sufficient nexus with that jurisdiction; e.g. where the foreign companies are resident there for

8. Co-operation Protocol No. 320746/15.06.2006 concluded between the Ministry of Public Finances and the Ministry of Justice (hereby acting on behalf of the Romanian Trade Register – ONRC) and Co-operation Protocol No. 149256 concluded between the General Directorate for Tax Information (Directorate within NATA) with the NTRO.

tax purposes. Romanian commercial and tax laws do not clearly prescribe for a requirement on foreign companies with a sufficient nexus with Romania to provide ownership information on their owners.

Tax law requirements

59. Article 7(29) of the Tax Code defines residents as:

- any legal person incorporated in Romania; and
- any foreign legal person with its place of effective management in Romania, any legal person with a registered head office in Romania, which has been established according to the European regulations, and
- any natural person resident in Romania.

60. Accordingly, foreign companies with their effective place of management or with a registered head office in Romania are liable to Romanian corporate income tax on their worldwide income. In contrast, foreign companies carrying on a business activity through a permanent establishment in Romania are subject to Romanian corporate income tax on the taxable profit which is attributable to that permanent establishment (Art. 15, 29 Tax Code). In both cases (companies with their effective place of management in Romania and foreign companies carrying on a business activity through a permanent establishment in Romania) have the obligation to register for tax purposes according to Article 72 (1) a) FPC. The Romanian authorities have confirmed to date that there were no reported cases of foreign companies with a place of effective management in Romania following a tax inspection, while there was a large amount of permanent establishments subject to corporate tax in Romania.

Commercial law requirements

61. Romanian commercial law allows the establishment of a branch by foreign companies (Art. 44 of Law 31/1990). However, it does not require foreign entities that are considered tax resident in Romania due to having their place of effective management there, to register with the Trade Register. Accordingly, ownership information on foreign companies, which are tax residents in Romania, is not generally available with the Trade Register.

AML/CFT requirements

62. To the extent that a foreign company engages the services of AML/CFT obligated persons (such as banks with which the foreign company maintains an account), some ownership information would be collected

with respect to the foreign company, by virtue of Customer Due Diligence (CDD) conducted by that AML/CFT obligated person. However, since not all companies must engage with AML/CFT obligated persons in Romania, the CDD requirements cannot ensure that ownership information is available in all instances.

Conclusion

63. Companies formed outside of Romania are generally not required to maintain or provide information identifying their owners if they are tax resident in Romania because they are effectively managed therein. Obligation to maintain ownership information is not clearly set out in the tax or commercial laws. Therefore, the availability of information that identifies the owners of foreign companies with sufficient nexus with Romania will generally depend on the law of the jurisdiction in which the company is formed and it may not be available to Romanian competent authorities in all cases. Hence, Romania should require foreign companies having their place of effective management in Romania to maintain information on their ownership.

Nominees

64. Romanian civil law does not recognise the concept of nominee ownership found in many common law jurisdictions, but this activity is not prohibited. Articles 2039 to 2043 of the Civil Code provides for the "mandate without representation", which is defined as the contract under which a person, called the "mandatary", carries out legal acts in its own name, but for the account of the other party, called "principal", and is liable towards third parties to the obligations pertaining to these legal acts, even if third parties would have known about the mandate. Under the mandate without representation, third parties have no legal relationship with the principal. This mandate must be recorded in the Trade Register to be opposable to third parties, in which case the identity of the principal is available in the Trade Register. In general, this legal concept is usually used for commission arrangements, shipping and consignment, rather than being used under corporate law. However, should it be used under corporate law, a mandatary would be registered as associate/shareholder of the company and not as mandatary of an individual shareholder. In any case, the information would be available in the Trade Register upon registration of the mandate contract.

65. Under corporate law, the shareholders whose names are entered into the company's records or in records sent to the company by the independent private register of the shareholders can be entitled to cash dividends or to exercise any other rights (Law 31/1990, Art. 123). To date, Romanian

authorities confirmed that they have had no experience with nominees or "mandataries" under the mandate without representative.

66. Although the concept of nominee shareholding as such is not recognised in Romanian civil and commercial law, its AML/CFT legislation establishes an obligation applicable to service providers acting as nominee to identity their customer. The definition of service providers includes any natural or legal person which by way of business, provides the service of "acting as or arranging for another person to act as a shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards" (AML/CFT Law, Art. 2k). These service providers are obliged to conduct CDD on a risk base and are thus obliged to identify the beneficial owners, that is to say any customer for whom they act as nominees (AML/CFT Law, Art. 11).

67. A beneficial owner is defined as "the natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly (AML/CFT Law, Art. 4). This definition includes, inter alia, the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. For the purpose of this definition, a percentage of 25% plus one share is deemed sufficient to meet this criterion.

68. To conclude, the common law concept of nominee does not exist under Romanian civil and commercial laws. The activities of nominee are however covered under AML/CFT laws, such that service providers acting as nominee must know the beneficial owners of their customers.

Bearer shares *(ToR A.1.2)*

69. SAs are allowed to issue bearer shares in Romania (Arts. 91 and 187 of Law 31/1990). The rules on bearer shares applicable to SAs also apply to SCAs (Art. 187 of Law 31/1990), such that SCAs are also allowed to issue bearer shares. Issuers whose shares are traded on the capital market cannot issue bearer shares. These shares must be in dematerialised form (Arts. 91 and 98 of Law 31/1990). According to the information provided by the National Office of the Trade Register, the number of bearer shares in circulation in Romania registered at the electronic Trade Register as of September 4th, 2015 amounted to 487 104 203 bearer shares held in 453 companies registered in Romania. Since the total number of shares issued by SAs and SCAs

registered in Romania is 350 473 345 427, the percentage of bearer shares is around 0.14%.

70. Upon registration with the Registrar, the articles of association must include the number and the nominal value of all registered shares (Law 31/1990, Arts. 7 and 8), and the board of directors is personally liable for maintaining an updated shareholder's register of all registered shares. However, SAs do not have to register ownership information on bearer shares in the register of shareholders. In addition, the registered shares can be converted into bearer shares by the decision of the extraordinary general assembly of shareholders (Law 31/1990, Art. 92).

71. Romania does not have mechanisms in place to identify the owners of bearer shares. However, under company law, information on the owner of the bearer shares could be available when the bearer shares holder participates in a general meeting, as well as when the owner exercises the rights to receive the dividends, but not in any other cases. Bearer shareholders may only vote at the general assembly of shareholders if they deposit their bearer shares in the places indicated in the articles of associations or by the convening notice, at least five days prior to the assemble (Law 31/1990, Art. 123). The shares shall remain deposited until after the general assembly, but not more than five days from the date of the assembly.

72. It would appear that the tax legislation provides that the capital gains from the transfer of securities creates 16% tax obligation (Law 571/2003, Art. 17 and 65). However, it is not clear that the person who has the capital gains should provide the detailed information such as names and address of the new owners of the shares to the tax administration. It is also not certain that the seller of the bearer shares would report the capital gains to the tax authorities. The relevant practice should be reviewed in the Phase 2.

Conclusion

73. There are no mechanisms in place to ensure the identification of owners of bearer shares issued by SAs and SCAs. Accordingly, Romania is recommended to amend its legislation to ensure that owners of bearer shares be identified.

Partnerships *(ToR A.1.3)*

74. A partnership is a corporate form to which each member agrees to participate taking into consideration each other member in their personal capacity (*intuitu personae*). As a result, each member's share can be transferred only with the other members' consent. The articles of association must be amended

when a transfer occurs. There are four types of commercial partnership in Romanian law.

- A general partnership (*societate in nume colectiv*, SNC) is a commercial entity with at least two members who are jointly and severally liable for the partnership's debts (Arts. 3 and 5 of Law 31/1990).
- A limited partnership (*societate in comandita simpla*, SCS) is a commercial entity that only partly fulfils the criteria for unlimited liability entities since it comprises two classes of members: managing partners, who are jointly and severally liable for the partnership's debts, and limited partners, who basically incur no liability for the partnership's debts and whose risk is limited to the amount of their contribution (they are essentially financial backers). The minimum required capital is RON 90 000 (EUR 20 340). Limited partners may be given a special power of attorney for certain or specific operations, in this case the mandate must be registered in the Trade Register; otherwise the limited partners shall be held jointly and severally liable for all the company's obligations. The rules relating to SNC apply to SCS (Art. 90 of Law 31/1990).
- Under Romanian law, the European Interest Group (EIG) is defined as "an association between two or more individuals or legal persons, constituted for a fixed period, in order to facilitate or develop the economic activity of its members and to improve their performance." The EIG is a profit-based legal person (registered with the Trade Register), which may act as a trader or not, but the group can only have just one auxiliary activity besides the economic activity of its members. There were 55 EIGs in Romania as at 1 January 2015 out of which 18 have been struck-off.
- European Economic Interest Groupings (EEIGs): The EEIG is a European form of partnership in which companies or partnerships from different European countries (the partners in the EEIG) can co-operate. It must be registered in the EU State in which it has its official address. EEIGs are regulated under Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping. EEIGs are subject to the same requirements as general partnerships (Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping). There were 8 EEIGs in Romania as at 1 January 2015.

75. Ownership information on the partners of the SNCs and SCSs are available with the Trade Register, the tax authorities and the partnerships.

Information with the Trade Register

76. As mentioned in A.1.1 *Information on Companies*, all types of legal persons, as well as sole and family partnerships, must register with the Trade Register before starting their economic activity pursuant to Article 1 of Law no. 26/1990. This information includes the ownership information of the founders.

77. The transfer of interests in a SNC (between associates/to a third party) represents a modification of the constitutive act which must be agreed by all partners and must be registered in the Trade Register (Art. 87 of Law no. 31/1990). The same applies regarding SCS, although they are subject to the provisions of the Civil Code on simple partnership (Art. 1901 and 1910 (4)) for matters which are not expressly regulated in the Company Law).

Information with the Tax authorities

78. Under Romanian tax law, partnerships, i.e. general partnerships and limited partnerships, are treated as companies for tax purposes. Pursuant to an agreement with the NTRO signed on 1 February 2012 between the Ministry of Public Finance – Romanian Tax Administration and the NTRO, the tax authorities have direct access to ownership information on the members of SCSs and SNSs, as well as any traders which are recorded in the Trade Register by the NTRO.

79. However, as it is the case for foreign companies (see A.1.1. *Companies*) identity information on partners of foreign partnerships, which would have a sufficient nexus in Romania (i.e. their tax residence therein) may not be available with the tax authorities in all cases. Foreign partnerships that have no legal personality are considered tax transparent entities for Romanian tax purposes. Accordingly, they are not considered to be tax resident in Romania. Should tax registration of the partnership be required because they carry out an activity in Romania, quarterly income tax declarations (Form 104 Statement regarding distributions of income and expenses between partners) must contain information on the name of the partners, the fiscal identification number, their address, their interests in the partnership.

Information with service providers

80. To the extent that any partnership engages the services of an AML/CFT obligated person, such as a bank, or auditor, the beneficial owners of the partnership (i.e. partners that own or control more than a 25% stake in the partnership) would be identified through CDD (see A.1.1).

Conclusion

81. The legal and regulatory framework in Romania ensures that ownership information regarding partnerships is available; except with respect to foreign partnerships with a sufficient nexus with Romania. Partnerships are required to submit information on all their partners to the Trade Registry and report any subsequent changes thereof.

Trusts and Romanian Fiducia *(ToR A.1.4)*

82. Romania does not recognise the common law concept of trust and Romania is not a Party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. However, there are no restrictions for a resident of Romania to act as trustee, protector or administrator of a trust formed under foreign law (see *Foreign Trusts* below). In addition, Romania introduced in 2009 the concept of *fiducia* (fiducie), which is a structure similar but not identical to trusts, governed by Articles 773 to 791 of the Civil Code.

Romanian Fiducia

83. Article 773 of the Civil Code defines the fiducia as "the judicial operation through which one or several settlors transfer real rights, claims, guarantees or other patrimonial rights or a group of such rights, either present or future, to one or several fiduciaries who exercise them for an established purpose to the benefit of one or several beneficiaries. These rights constitute an autonomous patrimonial mass, different from the other rights and obligations in the fiduciaries' patrimony."

84. The fiduciary contract must mention, under the sanction of absolute nullity the following information (Art. 779 of the Civil Code):

- real rights, claims rights, guarantees and other transferred patrimonial rights;
- duration of transfer, which cannot be longer than 33 years since the date of its signature;
- identity of settler/settlers;
- identity of fiduciary/fiduciaries;
- identity of beneficiary/beneficiaries or at least the rules allowing to determine it;
- purpose of fiducia and extent of the powers of administration and disposition of the fiduciary/fiduciaries.

85. The fiducia is subject to registration in the Electronic Archive of Security Interests in Real Property, which ensures opposability against third parties for the fiducia agreement (Art. 781 Civil Code). This database can be accessed by the tax administration, but also by the public. Immovable property held in fiducia must be registered with the Land Register. Any modification of beneficiaries and fiduciaries and the termination of the fiducial contract must be registered with the competent tax authorities by the fiduciary within a month since the date of their conclusion (Civil Code, Art. 780(1)).

86. Information regarding the fiducia is available with the tax authorities and with the fiduciaries.

Information held by the tax authorities

87. The fiducia agreement is subject to mandatory registration with the tax authorities in electronic form within one month from the conclusion of the agreement. The Register of fiducia agreements is managed by the General Directorate of Information Technology of the National Agency for Fiscal Administration (Order of the NAFA no. 1985/2012). The sanction for failure to register the agreement is the fiducia's absolute nullity (Art. 780 Civil Code).

88. Any modification of beneficiaries and fiduciaries and the termination of the fiducial contract must be registered by the fiduciary with the tax administration within 30 days. The fiduciary is subject to tax for the account of the fiducia. The statement and the documents submitted by the fiduciary are archived in his/her fiscal file. At the tax administration level, the registration in the Registry of fiducial contracts is effectuated in maximum five days from the date when the contracts are submitted.

89. The registration of the fiducial agreement and its subsequent modifications ensures that information regarding the fiduciary, the beneficiaries, the settlor(s) and the assets held in fiducia is available directly with the tax authorities.

Information held by the fiduciaries

90. The functions of fiduciaries can only be carried out by credit institutions, investment and investment management companies, financial investment services companies, insurance and reinsurance companies incorporated under the law and notaries public and lawyers, irrespective of the form of exercise of their profession. Accordingly, fiduciaries can only be AML/CFT-obligated persons, which are subject to CDD requirements (see A.1.1 *Information held by Service Providers*). Fiduciaries are subject to controls from the National Bank and the Financial Supervisory Authority, which mitigates the risk of performance of illicit operations through the fiducia.

Foreign trusts having a link with Romania

91. The common law concept of trust does not exist in the Romanian legal system. Romania is not a signatory of the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition. There is, however, no obstacle in Romanian domestic law that prevents a Romanian tax resident from acting as a trustee or for a foreign trust to own assets in Romania.

92. As regards the availability of information regarding settlors, trustees and beneficiaries of trusts, the Romanian law does not require the registration of foreign trusts in the Register of *Fiducies* or to disclose immediately this information. However, if real estate is concerned, the previous and new owners must be disclosed to the notary public.

Tax obligations

93. The Romanian tax administration maintains some information if the professional trustee is resident in Romania, the trust is administered in Romania or some assets are located in Romania.

94. From a general perspective, if information is considered necessary for Romanian tax assessment purposes, the taxpayer has an obligation to disclose such information to the tax authorities. Income of a foreign trust could be taxable in Romania in the hands of a Romanian resident trustee if the income would be derived by the Romanian resident trustee itself (depending of the provision of the trust statute). Furthermore, trustees resident in Romania are subject to record-keeping requirements for the determination of their own income. Thus, all records that are necessary for determining whether the trust income is taxable in the hands of the trustee must be kept. This includes the names of the settlors and named beneficiaries of the trust and the nature of the assets in the trust that have generated the income.

95. Therefore, because general tax requirements in Romania require that all taxpayers be able to provide information to the tax authorities whenever taxable income must be determined, a trustee resident in Romania should be able to provide the tax authorities with information on the settlors and beneficiaries of trusts that he/she administers.

Money laundering

96. Lawyers and accountants acting as trustee, as well as trust service providers such as financial institutions, are subject to anti-money laundering requirements. Service providers "acting as or arranging for another person to act as a trustee of an express trust activity or a similar legal operation" are expressly covered under the AML/CFT Law (Art. 2 k). They must identify

and, where relevant and taking into account the money laundering risks, verify the identity of their clients and the beneficial owner of the business relationship.

97. The situation where a trustee in Romania is not acting in a professional capacity would not be covered under anti-money laundering rules. Although providing such services could generate taxable income depending on the wording of the trust agreement and trigger an obligation to keep information substantiating the tax position of the person concerned, information on the settlor and beneficiaries of the foreign trust might not be kept by such trustee in all instances. It is considered that this situation is likely to be rare and not likely to prevent effective EOI. A practical assessment of the matter will take place in the Phase 2 Peer Review of Romania.

Conclusion

98. Romanian legislation regarding *fiducia* ensures the availability of information regarding the fiduciaries, the settlor(s), beneficiaries and assets held in the fiducia with the tax authorities, with the AML/CFT-obligated fiduciaries and with the Electronic Archive of Security Interests in Real Property.

99. In addition, while trustees resident in Romania are not subject to specific tax obligations to keep identity information regarding settlors and beneficiaries of express trusts, the anti-money laundering obligations, together with the obligation to submit information to the tax authorities, where applicable, should permit the availability of such information. The materiality of the gap will be assessed in the Phase 2 review.

Foundations *(ToR A.1.5)*

100. There is no provision for private-interest foundations in Romanian Law, which only authorises the creation of not-for-profit foundations and associations (Government Ordinance no. 26/2000 on associations and foundations). These are defined as follows:

- the association is the legal person made up of three or more persons who, based on an understanding, place together and with no right of return their contribution in money, knowledge or labour for the performance of an activity for general interest, for the interest of a collectivity or, as applicable, for their personal non-patrimonial interest.
- the foundation is the legal person made up of one or several persons who, based on a judicial act concluded *inter vivos* or *mortis causa*, create a patrimony to be used on a permanent and irrevocable basis for the achievement of a purpose of general interest or, as applicable, in the interest of certain collectivities.

101. It shall be noted that non-profit foreign legal entities are recognised in Romania, if their statutory purpose does not contravene Romanian legislation.

102. Associations and foundations acquire legal personality through their registration in the Register of associations and foundations, which is kept by the registrar's office of the district court in whose jurisdiction they are seated. The following information is to be included in the aforementioned Registers: the name or, as applicable, the denomination of the associations/foundations, as well as the nominal composition of the board of directors or management body thereof, as well as of the person or persons appointed to represent the association/foundation. In the case of foreign legal entities, the name or, as applicable, the denomination of the shareholders or founders of the foreign legal entity will be mentioned, as well as the name of the persons who represent the foreign legal entity.

103. As Romanian foundations are non-profit entities established exclusively for public-interest purposes and are strictly regulated because they may receive public subsidies, they are not considered to be relevant entities under the Terms of Reference.

Other type of entities

104. The Civil Code provides that companies can be incorporated with or without legal personality and they can be of several types: simple, joint ventures, general partnerships, limited partnerships, limited liability, limited partnerships by shares, co-operative or of any other type regulated by law. Entities without legal personality are regulated in general by the Civil Code.

105. A professional limited liability company (SPRL) is one of the specific forms of exercising a profession as a lawyer or insolvency practitioner. These companies shall obtain the legal personality on the date of their registration at the professional organisation that is required to keep a register. The articles of incorporation and statute of the professional limited liability company in case of law firms, or the articles of association in case of companies set up by insolvency practitioners are governed by civil law.

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

106. Under the Terms of Reference, Romania should have in place effective enforcement provisions to ensure the availability of ownership and identity information, one possibility among others being sufficiently strong compulsory powers to access the information. This subsection of the report assesses whether the provisions requiring the availability of information with the public

authorities or within the entities reviewed in section A.1 are enforceable and failures are punished in practice. Questions linked to access are dealt with in Part B.

107. Under Romanian laws, in some cases there are penalties to sanction non-compliance whilst in other instances there is no applicable penalty.

Registration requirements with the Trade Register

108. Upon incorporation, all types of companies must register with the Trade Register before starting their economic activities. Pursuant to Article 44 of Law 26/1990, a pecuniary fine ranging from RON 50 (EUR 11) to RON 500 (EUR 113) applies in case of lack of registration for natural persons and from RON 500 (EUR 112) to RON 2 000 (EUR 452) for legal persons. The fine applies to each of the representatives of the entities. The lack of registration also entails that the entity does not have any legal existence.

Obligation for any entity to maintain ownership information

109. SAs, SCAs and SRL must keep a shareholder register with updated ownership information (Art. 177 and 198 Law no. 31/1990). The managers and administrators are personally and jointly liable for any damage caused by the failure to observe the aforementioned provisions (Art. 73(1) (c) Law no. 31/1990). The register can be consulted by the shareholders and creditors. In addition, the SRL must register the transfer of shares to the Trade Register.

110. There are no specific sanctions for not keeping the shareholder register up to date, apart from a general liability of the managers and administrators in case of damage caused by the failure to keep that shareholder register. Article 72 of Law no. 31/1990 provides that the obligations and responsibility of administrators is governed by the provisions applicable to the mandate contract. According to the National Trade Register, in the absence of specific legal provisions, the provisions of the Civil Code in respect of the mandate contract are applicable.

111. In addition, the lack of registration of the incorporation of a SRL and any transfer of SRL and partnership interests in the Trade Register, is subject to a fine ranging from RON 50 (EUR 13) to RON 500 (EUR 113) (Art. 44 of Law 26/1990).

112. To conclude, Romania should introduce appropriate enforcement measures to address the risk of SAs and SCAs not complying with the requirement to maintain a register of their shareholders and members.

Tax requirements

113. Failure to register with the tax administration, where required, is subject to a fine ranging from RON 500 (EUR 113) to RON 1 000 (EUR 226), for natural persons, and fine between RON 1 000 (EUR 226) and RON 5 000 (EUR 1 130), for legal persons.

AML/CFT legislation

114. All requirements coming from the AML/CFT framework are supported by administrative sanctions, unless the offence constitutes a crime.

115. Failure to comply with the provisions regarding customer identification constitute an offense, provided that the acts are not committed so as to constitute a crime, and is sanctioned with a fine ranging from 15 000 (EUR 3 390) to 50 000 RON (EUR 11 300) (Art. 28(2) AML/CFT Law 656/2002). These sanctions shall also be applied to the legal persons.

116. Besides the above-mentioned pecuniary fines, one or more of the following complementary sanctions may be applied to the legal persons (Art. 28(4) AML/CFT Law 656/2002):

a. seizure of the goods intended for, used for or resulted from the contravention;

b. suspension of the notification, approval or authorisation to conduct a business or, as applicable, the suspension of the activity of the economic operator for a period ranging from one to six months;

c. revocation of the license or notification for certain operations or for foreign trade activities, for a period ranging from one to six months or irrevocably;

d. blocking of the bank account for a period ranging from 10 days to one month;

e. cancellation of the notification, approval or authorisation to conduct a business;

f. closing down the business.

117. At the same time, besides the above-mentioned sanctions, the supervisory authorities may also apply specific sanctioning measures, according to their competence.

Conclusion

118. Romanian commercial, tax, accounting and AML/CFT legislation include some enforcement provisions which are applicable in case of non-compliance with provisions that ensure availability of relevant ownership information. However, no sanctions apply to SAs and SCAs that fail to maintain a register of their shareholders/members.

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Foreign companies having their place of effective management in Romania are not obliged to maintain ownership information in all circumstances.	Romania should require foreign companies having their place of effective management in Romania to maintain information on their ownership.
Bearer shares may be issued by SAs and SCAs, and mechanisms to ensure that the owners of such shares can be identified are not in place for all bearer shares.	Romania should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
Romanian legislation does not provide for sanctions in all cases for SAs and SCAs that fail to maintain ownership information.	Romania should introduce appropriate enforcement measures to address the risk of SAs and SCAs not complying with the requirement to maintain a register of their shareholders and members.

A.2. Accounting records

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

General requirements (ToR A.2.1)

119. Romanian accounting law provides for accounting requirements applicable to all legal entities incorporated in Romania and legal entities which are taxable in Romania, including foreign entities. In the case of fiducial arrangements, the fiduciary keeps separate accounting records (Art. 25[1] b) of the Fiscal Code). However, no accounting requirements apply to foreign trusts which have Romanian-resident administrators or trustees.

Accounting obligations applicable under Commercial Law

120. The general accounting obligations are set out in Law no. 82 of December 1991 on Accountancy, republished, as subsequently amended and supplemented (Accounting Law). Romania's accounting law applies to all legal persons, including foreign entities conducting business in Romania (Accounting Law, Art. 1).

121. Under the Article 2 of the Accounting Law, accounting records must ensure the chronological and systematic recording, processing, publishing and preserving of information regarding financial activity in order to control the assets, debts and own capital as well as the results obtained from activity of entities. Assets and liabilities and the performance of economic operations must be recorded in the accounting books, and failure to do so is forbidden with a fine from RON 1 000 (EUR 226) to RON 10 000 (EUR 2 260) (Accounting Law, Art. 11). Moreover, any economic and financial operation completed shall be registered at the time when it is carried out in a document (Accounting Law, Art. 6).

122. The annual financial statements must provide a true image of the financial position and the financial performance of the entity (Accounting Law, Art. 9). A copy of the annual financial statements shall be submitted to the territorial units of the Ministry of Public Finance as follows; *(i)* particularly stipulated entities such as trading companies and national companies: within 150 days of the end of the financial year, *(ii)* the other legal persons: within 120 days of the end of the financial year (Accounting Law, Art. 36). In addition, the compulsory accounting records are the Register journal, the Inventory book and the General ledger carried out according to the norms elaborated by the Ministry of Economy and Public Finance (Art. 20).

123. In case of failure to keep accounting records as required under the Accounting Law, the contraventions shall be punished by fine ranging from RON 300 (EUR 67) to RON 10 000 (EUR 2 260) (Accounting Law, Arts. 41, 42).

Accounting obligations applicable under tax law

124. Taxpayers are obliged to keep the accounting records to determine the actual tax liabilities owed (Art. 79 FPC). Companies are also subject to transfer pricing documentation requirements. The legal provisions regarding the keeping, archiving and the language used in accounting records as set out in the Accounting Law are also be applicable to tax records (Art. 80(3) FPC). The accounting and tax records must be kept at the taxpayer's fiscal domicile or the secondary offices, as the case may be, on electronic media inclusive, or they may be entrusted for preservation to a company authorised, according to the law, to provide archiving services.

Accounting records for foreign trusts and fiducia

125. While Romanian law does not recognise foreign trusts, the Civil Code provides for the possibility to set up fiducia arrangements as described above in the A.1.4 *Trusts and Fiducia*. Accounting information is available on fiducial arrangements, but not on foreign trusts which have Romanian-resident administrators or trustees.

126. The Accounting Law does not expressly regulate fiduciary operations. However, under the Civil Code, the fiduciary managing the fiducia shall establish separate accounting records for the fiducia (Art. 807). In addition, under Article 25[1](b) of the Tax Code, the fiduciary must manage a separate accounting record for the fiduciary patrimonial amount and must submit quarterly reports to the settler, based on a return, income and expenses arising from the administration of patrimony under the contract. The Tax Code refers back to the Accounting Law, as accounting records of the fiducia for tax purposes must follow the rules set out in the Accounting Law, pursuant to the general principle set out in Art. 80(3) FPC.

127. In respect of foreign trusts having a professional trustee resident in Romania, the accounting record keeping obligations of the Accounting Act and the Tax Code do not apply to resident professionals acting as administrators or trustees of foreign trusts. However, as they are acting in a professional business capacity and are subject to record keeping requirements for the determination of their own income. Thus, all records that are necessary for determining whether the trust income is taxable in the hands of the trustee must be kept. This includes the nature of the assets in the trust that have generated the income. Therefore, because general tax requirements in Romania require that all taxpayers be able to provide information to the tax authorities whenever taxable income must be determined, a trustee resident in Romania should be able to provide the tax authorities with information on the records regarding trusts. However, Romanian trustees of foreign trusts themselves are not required to keep accounting records that fully reflect the financial position and assets/liabilities of the foreign trust. Therefore, Romania should ensure that such accounting records are maintained for a minimum of five years for any foreign trusts which have Romanian-resident administrators or trustees.

128. To conclude, Romanian entities, as well as foreign entities conducting business in Romania, are required under Romanian law to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial and tax position with reasonable accuracy at any time and allow financial statements to be prepared. There is however a narrow gap relating to the availability of accounting records that reflects the financial position and assets/liabilities of a foreign trust of which there is a Romanian

resident acting as a trustee or administrator. The materiality of this gap in practice should be reviewed during the Phase 2 review.

Underlying documentation *(ToR A.2.2)*

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

130. Romania's entities as well as foreign entities conducting business in Romania are required to keep underlying documentation which shall stand at the basis of the entries in the accounts as proof (Accounting Law, Arts. 6 and 25). The provision of point A.2 in Appendix no. 1 of the Order of the Minister of Economy and Finance no. 3512/2008 on financial-accounting documents stipulates that the supporting documents must comprise the following main elements; the name of the document; the name and address of the legal entity or individual that draws up the document; date of creation of the document; the quantitative and value details corresponding to the economic-financial operation performed; the signatures of the persons accountable for the operation and his/hers name.

131. The Tax Code requires taxpayers to keep evidence providing information regarding expenses. Expenses recorded in the accounting which do are not documented are not be deductible for tax purposes (Tax Code, Art. 21 paragraph (4) f)). Further, invoices must include mandatorily the serial number which uniquely identifies the invoice, the date of issue, the name and address of the supplier and so on (Art. 155 of the Law 571/2003).

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

132. Under Romania's accounting law, accounting records and underlying documentation must be kept for at least five years, starting from the closing date of the financial year (Accounting Law, Art. 25).

Non-observance of the regulations issued by the Ministry of Public Finance for keeping and archiving is punishable with a fine from RON 300 (EUR 67) to RON 4 000 (EUR 904) (Accounting Law, Arts. 41, 42).

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
Romanian trustees of foreign trusts are not required to keep accounting records that fully reflect the financial position and assets/liabilities of the foreign trust.	Romania should ensure that such accounting records are maintained for a minimum of five years for any foreign trusts which have Romanian-resident administrators or trustees.

A.3. Banking information

Banking information should be available for all account-holders.

133. 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.

134. Credit institutions are, amongst others, regulated by the Emergency Ordinance No. 99 of 6 December 2006 on Credit Institutions and Capital Adequacy (Credit Institutions Ordinance) and are supervised by the National Bank of Romania. Carrying on a banking activity is regulated in Romania, and requires a banking license granted by the National Bank of Romania (Credit Institutions Ordinance, Art. 4). Banks can only carry out the activities listed in Article 18 of the Credit Institutions Ordinance, which includes acceptance of deposits, consumer credit and mortgage credit, financial leasing, brokerage services on financial market, safe custody services and portfolio management and advice.

135. Credit and financial institutions are prohibited from opening and managing anonymous accounts, namely accounts for which the identity of the holder or beneficiary is not properly known and disclosed.

Record-keeping requirements (ToR A.3.1)

136. Banks must know the legal and beneficial ownership identity of their clients. AML/CFT Law also provides that credit institutions are not allowed to open and operate anonymous accounts which are not documented regarding the identity of the holder (Art. 15 (1) AML/CFT Law). Failure to comply with this prohibition is sanctioned by a fine ranging from 15 000 RON (EUR 3 390) to 50 000 RON (EUR 11 300) (Art. 28 AML/CFT Law).

137. In addition, in the case of foreign legal persons, Article 16 of the AML/CFT Law provides that additional information such as the headquarters, the type of the company, the place of registration and the power of attorney who represents the company in the transaction shall be required to open their accounts. Financial institutions shall keep a copy of the document for customer identification for at least five years starting with the date when the relationship with the clients comes to an end (Art. 19 (1) AML/CFT Law). Non-compliance with this provision should be sanctioned by a fine ranging from 15 000 RON (EUR 3 390) to 50 000 RON (EUR 11 300) (Art. 28 AML/CFT Law).

138. In addition, in the course of business relations with their customers and verification of transactions implemented by them, commercial banks are required to know the identity and activities of customers as well as the risk level of such activity with respect to illicit income legalisation and terrorism financing under Regulation No. 9/2008 on know-your customer for the purpose of money laundering and terrorism financing prevention issued by the National Bank of Romania (KYC, Art. 5).

139. All transactions must be recorded by banks. Pursuant to Article 121 of the Credit institutions Ordinance, banks shall retain the copy of the contractual documents, the internal documentation of the transactions performed and the daily records of entries for every client. Under AML/CFT Law, financial institutions must keep records and registrations of all financial operations for a minimum of five years starting with the date when the relationship with the client comes to an end, respectively from the date the occasionally transaction was concluded (Art. 19 (2) AML/CFT Law). In case of non-compliance, a fine ranging from 15 000 RON to 50 000 RON (3 390 EUR to 11 300 EUR) is applicable (AML/CFT Law, Art. 28).

140. The supervisory authority of credit institutions is the National Bank of Romania (Credit Institutions Ordinance, Art. 4). The National Bank of Romania is authorised to impose sanctions and enforcement measures with respect to credit institutions if it discovers any violations of the requirements on credit institutions imposed by the Credit Institution Ordinance, laws, regulations or administrative provisions concerning the supervision or pursuit of their activities (Art. 225 Credit Institutions Ordinance).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place

B. Access to information

Overview

141. 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 Romania's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

142. The Romanian authorities have many sources of ownership and accounting information already in their databases, including annual statements filed by taxpayers, information recorded with the Trade Register and banking information regarding opening and closing of bank accounts. The competent authority can thus respond to some information requests received without resorting to its information gathering powers.

143. The Romanian authorities make use of their access powers available for domestic taxation purposes in order to exchange information. The Romanian tax administration has broad powers of access to accounting and banking information and to data on the ownership of legal entities, pursuant to the Fiscal Procedures Code (FPC). In particular, these powers allow the authorities to request information from any taxpayer and from third parties who may have the information sought, in order to determine the amount of income in question or to confirm the information contained in declarations. Banking secrecy is lifted in tax matters.

144. Regarding the use of these powers to answers EOI requests, the FPC provides for the use of domestic powers to access information for EOI purposes with other EU member States, including for banking information.

Recently, Romania introduced a clear legal basis for Romania to provide information in response to EOI requests from non-EU member States.[9]

145. Romania has in place enforcement provisions to compel the production of information including pecuniary sanctions and search and seizure power. In addition, professional privileges cannot be opposed as a ground to refuse to provide requested information to the tax authorities.

146. Romanian's domestic legislation does not require notification to the taxpayer prior to exchanging information. There is also no post-notification.

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

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

147. Article 109[8] FPC provides that the competent authority for EOI purposes with EU member States is the National Agency of Fiscal Administration (NAFA). The Government Ordinance dated 15 July 2015 amended Article 63 of the FPC to clarify, amongst others, that NAFA, as authorised representative of the Ministry of Public Finance or, where appropriate, the Minister of Public Finance, is also the competent authority for EOI purposes with respect to jurisdictions other than EU member States.

148. Pursuant to Article 11(2) of the Constitution, international treaties ratified by Parliament are part of national law. International treaties become part of national law once they are ratified. But, according to Article 1 (4)of the Fiscal Code, the provision of an international treaty would prevail over provisions of the Fiscal Code if such provisions would be contrary to provisions of an international treaty. In addition, Article 1(3) of the Fiscal Code provides that in respect of tax matters, the provisions of the Fiscal Code shall prevail over any provisions from other statutory instruments; such that in case of conflict among such provisions, the provisions of the Fiscal Code shall be applied.

149. The tax administration relies on the domestic information gathering powers granted by the FPC to gather information. The Romanian FPC dedicates a whole section (Title VII[1], Chapter II, Section 1 Exchange of information on request) to the rules and procedures applicable to EOI on request with other EU member States. These access powers apply to all taxes and

9. Government Ordinance no.17 of 15 July 2015 regarding regulation of certain fiscal-budgetary measures and amending and supplementing certain acts, published in the Official Gazette of Romania no. 540/20 July 2015.

duties of any kind levied in Romania. The Government Ordinance No. 17 of 15 July 2015 amended Article 63 of the FPC to insert an express legal basis to provide information upon request under EOI agreements concluded with other jurisdictions than EU member States (new para. 4 of Art. 63 FPC). This Ordinance, which according to the Romanian authorities, merely clarified an existing practice, entered into force on 20 July 2015.

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

150. NAFA has a large range of information already available in its database, such as ownership, accounting and to a certain extent banking information. Nevertheless, NAFA can obtain information from taxpayers in Romania through the broad access powers granted established in the FPC. Access powers are general to all kind of information, except for banking information for which a specific access power is set out in the FPC.

General access powers for ownership and accounting information

151. Article 52(1) FPC sets out a general communication right which empowers the tax authorities to require the taxpayer and any "other persons with whom the taxpayer has or had economic and legal relationships" to provide the tax authorities with information necessary for the determination of Romanian taxable base. The term "taxpayer" is defined as any natural or legal person or any other entity without legal personality (either Romanian or foreign) that are liable to taxes, duties, contributions and other amounts to the general consolidated budget in Romania (Art. 17 (2) FPC).

152. The general communication right also applies to public authorities and institutions which are under the obligation to supply information and produce documents to the tax authorities upon their requests. In addition, the tax authorities are allowed to access the on-line database of these public authorities and institutions on a basis of co-operation agreements.

153. In addition to the communication right, the tax authorities hold various powers to ascertain the taxable base of a person; such as the verification of documents (Art. 56 FPC) and on-site investigation (Art. 57 FPC). In case of refusal, the tax authorities can ask a Court for an order, and the tax authorities can be accompanied by the police. These powers can be used to obtain information.

154. The FPC also provides the tax authorities with rights of control of the tax returns. For this purpose, the tax authorities may start a tax inspection procedure. According to Article 94 FPC, tax inspections aims "to verify the legality and the conformity of the tax returns, the accuracy and exactness

of the taxpayers' compliance with their obligations, the observance of the provisions of the accounting and fiscal legislation, to verify or establish, as applicable, the basis of taxations, to determine the differences in payment obligations". Under Article 94(2) FPC, the tax authorities may carry out inter alia request information from third parties, enforce protective measures and enforce sanctions, according to the legal provisions;

155. Prior to carrying out a tax inspection, the authorities must inform the taxpayer about the intended action by sending a tax inspection notice (Art. 101 FPC). The model and the content of the notice of inspection are provided in the secondary legislation (Order no. 1304/2004). This notice does not mention the reason behind the tax audit. This is a short process as the tax inspection cannot exceed three months in general, and six months in case of large taxpayers (Art. 104 FPC). Each inspection is completed by a report summarising findings of the tax audit (Art. 109 FPC). In the case of tax inspection without advanced notice (which take place in very limited cases), an official report shall be concluded (Art. 97(2) FPC). In the case of tax inspection to collect information requested, on site investigation is carried out without prior notification. Tax periods falling outside of the statute of limitations should not be subject to a tax inspection (Art. 98(1) FPC). The general period for tax inspection is the last three fiscal years prior to the inspection, however, the period shall begin as of the end of the period which was previously audited with regard to large taxpayers (Art. 98(2), (3) FPC). Basically, the tax audit is performed on periods that have not been controlled so that previously audited periods can no longer be subject to a new audit. However, as an exception, it may be decided to recheck previously audited period but only when the tax authority has additional evidence which were not known at the time of the initial tax audit.

Access to banking information

156. Regarding access to banking information, Article 54 FPC sets out a general obligation for banks to provide information on a periodical basis on natural persons, legal persons or any other entity without legal personality that open or close accounts, the legal status and domicile or location of such persons. The provision is bi-monthly; with reference to the accounts opened or closed during the prior month and shall be sent to the Ministry of Public Finance.

157. In addition, banks are required upon request of the tax administration to communicate all turnovers and/or balances of the bank accounts, the identification data of the persons with the right of signature, as well as whether the debtor has rented or not safety deposit boxes. The request by the tax authorities shall be made for each holder separately in case of joint accounts.

Article 54(4) of the FPC provides that the requested banking information can only be used to fulfil the specific tasks of the Romanian tax authorities.

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

158. 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.

Use of domestic access powers for EOI purposes

159. Domestic access powers involving the taxpayer or any other parties (e.g. right of communication, rights of inspection) set out in section B.1.1 shall be used to determine the Romanian taxable base. There are no specific limitations in respect of information that is provided automatically by the taxpayer to the tax administration under the requirements set out in Article 53 FPC (Periodical supply of information). Information submitted periodically by the taxpayers or other parties directly to the Romanian tax administration consists of information on deliveries/supplies and acquisitions carried out on national territory by persons registered for VAT. To the extent an EOI request only relates to information already available with the Romanian tax authorities due to the requirements set out in Article 53 FPC, the Romanian tax administration does not need to use its access powers to answer an EOI request.

160. However, if the Romanian tax administration does not have the requested information in its own database, Article 109[10] FPC obliges the Romanian competent authorities to use their domestic access powers and procedures to answer EOI requests from other EU member States (FPC, Arts. 52, 54, 60-62, and 94). The access powers can be applied in respect of all taxes and duties of any kind levied in Romania. More generally, the FPC dedicates a whole section (Title VII[1], Chapter II, Section 1 Exchange of information on request) to the rules and procedures applicable to EOI on request with other EU member States. Article 109[9] and following of the FPC provides for a clear obligation of the competent authorities of Romania to provide information on request of the requesting EU member States.

161. Until recently, there was no clear legal basis for providing information set out in the FPC regarding EOI with jurisdictions other than EU member States. Article 63 of the FPC provides for a general duty of the Romanian tax authorities to "collaborate with similar tax bodies of other countries" based on international conventions or based on reciprocity. Romanian authorities clarified that they interpreted Article 63 of the FPC

such that the same treatment had to be applied to information requests received from non-EU member States as applicable to those received from the EU member States, even for DTCs that did not contain a provision similar to Article 26(4) of the OECD Model Tax Convention. They further confirmed that internal procedures in place used by the tax administration did not make any procedural differences between the requests of information notwithstanding the source of the request. Under Article 26 (4) of the OECD Model Tax Convention, contracting parties are obliged to use information gathering measures to obtain and provide information without regard to a domestic tax interest. However, 81 out of 86 DTCs concluded by Romania do not contain provisions similar to Article 26(4) of the OECD Model Tax Convention. For these 81 DTCs, the absence of a provision similar to Article 26 (4) could be an issue only with respect to 32 jurisdictions, because Romania is a Party to the Multilateral Convention and is an EU Member State (see Section C.1.4 *Absence of domestic tax interest*) and the Multilateral Convention and the domestic provisions governing EOI with EU member States expressly provide for the use of all relevant domestic information gathering powers.

162. However, to close this uncertainty, the Government Ordinance No. 17 of 15 July 2015 introduced an express obligation under Article 63(4) FPC to provide "information at the request of the requesting authority of the jurisdictions with which Romania committed by a legal instrument of international law, other than the EU member States of the European Union". The addition of this new provision in Article 63 of the FPC inserts a clear legal basis for Romania to provide information in response to EOI requests from non-EU member States. However, in contrast to EOI with EU member States, this new Article 63 FPC is quite general and does not establish the EOI modalities, except in respect of deadlines for submission of information, for which the conditions of EOI with EU member States apply. Romania confirmed that this amendment ensures that the same domestic access powers are granted to the competent authorities with respect to EOI requests from EU member States and non-EU member States. The practical application of the use of the information gathering powers of the tax authorities for the purpose of exchange of information, especially with jurisdictions other than EU member States, will be assessed in the Phase 2 of the review.

163. Concerning the lifting of bank secrecy to answer EOI requests, Article 109[10] FPC obliges the Romanian competent authorities to use their domestic access powers and procedures to answer EOI requests from other EU member States. The access powers can be applied in respect of all taxes and duties of any kind levied in Romania. Until recently, no legal provision explicitly allowed the Romanian tax authorities to use its domestic powers to answer EOI requests received under EOI agreements concluded with jurisdictions other than EU member States. Hence, it was not completely clear

that the lifting of bank secrecy could apply to jurisdictions that are not EU member States before the amendment of July 2015 was introduced.

164. Previously, it was therefore relevant to look at the treaty provisions with these jurisdictions that are not EU member States. In respect of international tax agreements, the Fiscal Code gives precedence of international tax agreements over the rules set out in the Fiscal Code. Under Article 26(5) of the OECD Model Tax Convention, bank secrecy cannot form the basis for declining a request to provide information and 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.

165. Only five out of 86 DTCs concluded by Romania included provisions similar to Article 26(5) of the Model Tax Convention. Out of the 82 jurisdictions whose DTCs with Romania did not contain language similar to Article 26 (5) of the OECD Model Tax Convention, 50 jurisdictions are covered by the Multilateral Convention. For the remaining 32 jurisdictions, in the absence of specific provisions allowing the Romanian tax authorities to use its domestic powers to answer EOI requests received under EOI agreements concluded with jurisdictions other than EU member States, it was not clear than the Romanian tax administration had the power to access banking information to answer EOI requests under EOI agreement that do not contain Article 26(5) of the OECD Model Tax Convention (see Section C.1.3 *Obligation to exchange all types of information*). Nevertheless, as stated above Article 63 of the FPC provides for a general duty of the Romanian tax authorities to "collaborate with similar tax bodies of other countries" based on international conventions or based on reciprocity and the Romanian authorities interpret this as requiring them to use their domestic power in the same manner as they use them for requests from EU member States, even for DTCs that do not contain a provision similar to article 26(4) and (5) of the OECD Model Convention. Furthermore, their internal procedures do not distinguish between EOI requests based on the instrument of the request.

166. However, to close any uncertainty, the Government Ordinance no. 17 of 15 July 2015 introduced a general obligation under article 63(4) FPC to provide "information at the request of the requesting authority of the states with which Romania committed by a legal instrument of international law, other than the EU member States of the European Union". The addition of this new provision in Article 63 of the FPC inserts a clear legal basis for Romania to provide information in response to EOI requests from non-EU member States. However, in contrast to EOI with EU member States, this new Article 63 FPC is very general and does not establish the EOI modalities, except in respect of deadlines for submission of information, for which the conditions of EOI with EU member States apply. Romania confirmed that

this amendment grants the same domestic access powers to the competent authorities with respect to EOI requests from EU member States and non-EU member States. The practical application of the use of the information gathering powers of the tax authorities for the purpose of exchange of information, especially regarding exchange of banking information with jurisdictions that are not EU Member States, will be assessed in the Phase 2 of the review.

Compulsory powers *(ToR B.1.4)*

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

168. The Romanian tax authorities have broad compulsory and enforcement powers to compel the production of information.

Pecuniary sanctions

169. The tax authorities are allowed to impose fines in case of non-compliance. In the case of failure to provide or provision of false information in response to an information request from the tax authorities requested under Article 52 FPC, a fine ranging from RON 1 000 (EUR 226) to RON 8 000 (EUR 1 808) is applicable for natural persons, and from RON 4 000 (EUR 904) to RON 27 000 (EUR 6 102) is applicable for legal persons (Art. 219(1)(r) FPC).

170. In the case of failure to provide or provision of false information within the context of a verification of documents (Art. 56 FPC) and on-site investigation (Art. 57(2) FPC), a fine ranging from RON 6 000 (EUR 1 356) to RON 8 000 (EUR 1 808) for natural persons, and RON 25 000 (EUR 5 650) to RON 27 000 (EUR 6 102) is applicable (Art. 219(1)(c) FPC).

171. With respect to banking information, the banks' failure to observe their obligations related to the provision of information and of the settlement obligations provided by the FPC constitutes a civil offence and it is sanctioned by a fine ranging from RON 1 000 (EUR 226) to RON 5 000 (EUR 1 130) (Art. 219 (1) (j) FPC).

Search and seizure

172. As discussed in section B.1.1, the on-site inspection procedure is intended to gather proof in certain serious cases of fraud that are exclusively of a tax nature. This procedure allows the authorities to inspect all premises,

even private premises, and to seize all documents (copies of computer files, hard drives, etc.) in order to assess the taxable income (Art. 94(2) FPC). Within the tax inspection procedure, the tax authorities can carry out unannounced audit, which consists in the activity of verification of facts and documents, without previously notifying the taxpayer, and crossed tax audit, which consists in the verification of documents and taxable operations of the taxpayer in correlation to those held by other persons; the crossed audit may also be an unannounced audit (Art. 97 FPC).

Secrecy provisions *(ToR B.1.5)*

173. 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

174. Romanian law[10] provides for bank secrecy in respect of all the facts, data or information at the disposal of credit institutions which refer to the person, property, activity, business, personal or business relationships of the clients or information related to the client's accounts – balances, turnovers, operations performed, the services provided to them or the agreements concluded with them.

175. Also, any person who has administrative and/or management duties or who participates in the activity of a credit institution is bound to keep confidential any fact, data or information referred to above which he/she found out during the exercise of his/her responsibilities related to the credit institution and he/she is not entitled to use or disclose, during his/her activity or after the termination thereof, facts or data which, if they become public would damage the interests or prestige of a credit institution or of a client thereof. These provisions also apply to the persons who obtain information of the type of that mentioned above from reports or other documents of the credit institution.

176. The cases in which bank secrecy can be lifted are set out in Article 113 (2) of the Ordinance. Information subject to bank secrecy may be disclosed "at the written request of other authorities or institutions or ex officio, if such authorities or institutions are entitled by special law to require

10. Part I, Title II, Chapter II – "Banking secret in the banking field and in the relationships with the clients" in the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved as amended and supplemented through the Law no. 227/2007, as subsequently amended and supplemented (Art. 111-Art. 116).

and/or receive such information and the information which can be provided by credit institutions are explicitly stated, in order for these authorities and institutions to fulfil their specific tasks." Pursuant to article 54 of the FPC, the tax authorities are entitled to require banking information to fulfil their specific tasks.

Professional Privilege

177. Under many professions, the professional (being a lawyer, accountant or notary) must protect what his client has confided in him as a secret. A violation of the duty to protect a professional secret is defined as a severe violation of a professional's duty in practicing its advisory profession (for example, Art. 8 (5) of the Lawyer Statute (Decision no. 64/2011 of the National Bar Association of Romania), Art. 73 letter k) of Law no. 36/1995 on public notaries and notarial activity, Section 140 of National Code of Ethics for Professional Accountants).

178. Article 59(1) of the FPC lists the persons that have the right to refuse to supply information. This list includes priests, lawyers, notaries public, fiscal consultants, court executors, auditors, chartered accountants, doctors, nurses and psychotherapists. These persons may refuse to supply information regarding the data they became aware of during their activity, "except for information with regard to the carrying out of the fiscal obligations set forth by the law as their duty". These persons, except for priests, may provide information, upon the consent of the person in relation to whom the information was requested.

179. In addition, Art. 59 (4) FPC reduces further the scope of the professional privilege in the tax context, as it provides that the tax authorities may "for the purposes of clarifying and determining the fiscal situation of the taxpayer, request information and documents relevant for tax purposes or to identify the taxpayers or the taxable basis, as applicable, and the notary public, lawyers, court executors, police bodies, customs bodies, community public services for driving licenses and vehicle registration, the public community services for simple passport issuing, the community public services of public records, as well as any other entity that holds information and documents with regard to taxable or chargeable goods, as applicable, or to persons having the capacity of taxpayer, shall be obliged to supply them free of charge". The Romanian authorities have confirmed that this provision is being interpreted as being applicable for the purposes of providing information under EOI requests, such that these above-mentioned professionals may not oppose professional secrecy in these situations. This will be assessed in the Phase 2 of the review.

Conclusion

180. The Romanian competent authority has broad access powers to obtain and provide requested information held by persons within its territorial jurisdiction. Although the domestic access powers that applied to EOI with 32 jurisdictions out of 119 EOI relationships were unclear (see section B.1.3), Romania amended its law by way of Ordinance of 15 July 2015 to insert a clear legal basis for Romania to obtain and provide information in response to EOI requests from all of its EOI partners. The practical application of the use of the information gathering powers of the tax authorities for the purpose of exchange of information, especially with jurisdictions other than EU member States, will be assessed in the Phase 2 of the review. Romania has in place enforcement provisions to compel the production of information, including pecuniary sanctions and search and seizure power.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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)

181. The *Terms of Reference* provides that rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (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).

182. The Romanian Law does not require the notification to the person who is the object of an EOI request. In addition, when requesting information from a person, the Romanian tax authorities do not have to inform the person of the purpose of the request.

183. With respect to the rights and safeguards, the tax authorities must inform the taxpayer if it they intend to carry out a tax inspection by sending a tax inspection notice (Art. 101 FPC). This is a short process as the tax inspection cannot exceed three months in general, and six months in case of large taxpayers (Art. 104 FPC). The tax authorities are not required to inform the taxpayer of the reason for the tax inspection.

184. Each inspection is completed by a report summarizing findings of the tax audit (Art. 109). In the case of tax inspection without advanced notice (which take place in very limited cases), an official report shall be concluded (Art. 97(2)). Tax periods falling outside of the statute of limitations should not be subject to a tax inspection (Art. 98(1)).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging information

Overview

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

186. Romania has an extensive EOI network covering 119 jurisdictions through 86 DTCs (covering 87 jurisdictions), two TIEAs, the Multilateral Convention and EU mechanisms for exchange of information. Almost all of Romania's agreements meet the international standard. All Romania's EOI agreements are in force except for one TIEA.

187. Romania's EOI network covers all of its significant partners including its main trading partners, all OECD members and all G20 countries. Nevertheless, Romania should continue its programme of updating its older agreements and entering into new agreements with all relevant partners. During the course of the assessment, no jurisdiction advised that Romania had refused to enter into negotiations or conclude an EOI agreement.

188. The confidentiality of information exchanged with Romania is protected by obligations implemented in the information exchange agreements, complemented by domestic legislation which provides for tax officials to keep information secret and confidential. Breach of this confidentiality obligation may lead to the tax officials concerned to be fined or imprisoned.

189. The NAFA is designated as the Romanian competent authority for EOI purposes. There are no legal restrictions on the ability of Romania's competent authority to respond to requests within 90 days of receipt by providing the requested information or by providing an update on the status of the request.

C.1. Exchange of information mechanisms

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

190. Thus far, Romania has concluded 88 bilateral EOI agreements (two TIEAs and 86 DTCs covering 87 jurisdictions), of which 87 are in force. This section of the report explores whether these agreements allow Romania to effectively exchange information.

191. In addition to its bilateral agreements, the Multilateral Convention increased Romania's EOI relationships to 119 jurisdictions. This Convention entered into force for Romania on 1 November 2014.

192. As an EU member state, Romania also exchanges tax information under various other multilateral mechanisms, including:

- *Council Directive 2011/16/EU* of 15 February 2011 on administrative cooperation in the field of taxation, replacing *Council Directive 77/799/EEC* concerning mutual assistance by the competent authorities of the EU member States of the EU in the field of direct taxation and taxation of insurance premiums.
- *Council Directive 2003/48/EC* of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between EU member States.
- *Council Regulation (EU) 904/2010* of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

193. When more than one legal instrument may serve as the basis for exchange of information – for example where there is a bilateral agreement with an EU member state which also applies *Council Directive 2011/16/EU* – the problem of overlap is generally addressed within the instruments themselves. There are no domestic rules in Romania requiring it to choose between mechanisms where it has more than one agreement involving a particular partner and thus the competent authority is free for any exchange to invoke all of the available mechanisms or to choose the most appropriate one.

194. International treaties become part of national law once they are ratified. However, according to Article 1(4) of the Fiscal Code, the provision of an international treaty prevails over provisions of the Fiscal Code if such provision is contrary to the provisions of an international treaty.

Foreseeably relevant standard (ToR C.1.1)

195. 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 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.

196. Romania's DTCs generally follow the Model Tax Convention and its commentary as regards the scope of information that can be exchanged. Five DTCs use the term "foreseeably relevant". The vast majority of Romania's DTCs use the term "necessary" and one (with Czech Republic) uses the term "relevant" in lieu of "as is foreseeably relevant". The Commentary to Article 26(1) of the Model Tax Convention refers to the standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary". Romania interprets the formulations "necessary" or "relevant" as equivalent to "foreseeably relevant".

197. The DTCs with Ethiopia, Montenegro and Serbia limit the EOI to information that is "necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention". Accordingly, these DTCs meet the standard based on aforementioned interpretation.

198. The DTCs with Kuwait, Malaysia, the United Arab Emirates and the United States limit the EOI to information that is "necessary (foreseeable relevant/relevant) for carrying out the provisions of the Convention" only. However, the DTC with Kuwait does not specifically provide for the exchange of information in aid of the administration and enforcement of domestic laws. Therefore it is recommended that Romania renegotiate this agreement so that that it provides for effective exchange of information.

In respect of all persons (ToR C.1.2)

199. 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.

200. Article 26(1) of the Model Tax Convention indicates that "the exchange of information is not restricted by Article 1", which defines the personal scope of application of the Convention. There are 26 DTCs in force that do not explicitly provide that the EOI provision is not restricted by Article 1. However, in principle, the absence of this specific provision does not restrict the EOI as long as the agreement allows for exchange of information necessary for carrying out the provisions of the domestic laws of the Contracting States, to the extent that the domestic laws apply to non-residents also. This is the case in respect to 25 out of those 26 DTCs. These 25 DTCs are in line with the standard on this particular point. In the case of the DTC with Kuwait, it is not possible to exchange information in respect of all persons, and EOI is restricted to the purposes of carrying out the Convention. Therefore it is recommended that Romania renegotiate this agreement so that it provides for effective EOI.

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

201. 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 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.

202. As discussed in Section B.1.1 *Access to Bank, Ownership and Identity information*, until recently the FPC did not explicitly prescribe that Romanian domestic access powers could be used to answer EOI requests received from requesting jurisdictions under EOI agreements concluded with jurisdictions other than EU member States.

203. While Romanian tax authorities stated that they applied the same standard to their agreements without Article 26(4) on the basis of reciprocity, some uncertainty remained concerning the scope of the Romanian

information access powers in this respect. This resulted in uncertainties regarding the application of its domestic access powers to answer EOI requests with 32 jurisdictions out of 119 EOI relationships.

204. However, to close this uncertainty, the Government Ordinance no. 17 of 15 July 2015 introduced a specific obligation under Article 63(4) FPC to provide "information at the request of the requesting authority of the states with which Romania committed by a legal instrument of international law, other than the EU member States of the European Union". The addition of this new provision in Article 63 of the FPC inserts a clear legal basis for Romania to provide information in response to EOI requests from non-EU member States. However, in contrast to EOI with EU member States, this new Article 63 FPC is very general and does not establish the EOI modalities, except in respect of deadlines for submission of information, for which the conditions of EOI with EU member States apply. The practical application of the use of the information gathering powers of the tax authorities for the purpose of exchange of information, especially with jurisdictions other than EU member States, will be assessed in the Phase 2 of the review.

Absence of domestic tax interest *(ToR C.1.4)*

205. 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.

206. As discussed in Section B.1.1 *Bank, Ownership and Identity information*, until recently, the FPC did not explicitly prescribe that Romanian domestic access powers could be used to answer EOI requests received from requesting jurisdictions under EOI agreements concluded with jurisdictions other than EU member States.

207. This raised uncertainties regarding 32 EOI relationships where the absence of provision similar to Article 26(4) OECD Model Tax Convention, could create restrictions on the exchange of information. However, to close this uncertainty, the Government Ordinance dated 15 July 2015 introduced a general obligation under Article 63(4) FPC to provide "information to the requesting authority of the states with which Romania committed by a legal instrument of international law, other than the EU member States of the European Union". In contrast to EOI with EU member States, this new Article 63 FPC is very general and does not establish the EOI modalities, except in respect of deadlines for submission of information, for which the

conditions of EOI with EU member States apply. The practical application of the use of the information gathering powers of the tax authorities for the purpose of exchange of information, especially with respect to exchange of banking information with jurisdictions other than EU member States, will be assessed in the Phase 2 of the review.

Absence of dual criminality principles (ToR C.1.5)

208. 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.

209. There are no dual criminality requirements in any of Romania's DTCs and TIEAs.

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

210. 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").

211. Each of Romania's EOI relationships provides for exchange of information in both civil and criminal tax matters.

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

212. 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.

213. There are no restrictions in the exchange of information provisions in Romania's DTCs or laws that would prevent Romania from providing

information in a specific form, as long as this is consistent with its own administrative practices.

In force (ToR C.1.8)

214. 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.

215. Exchange of information agreements can be concluded by the President of Romania (Art. 91 (1) of the Constitution). Concluded treaties are presented to the parliament for ratification. Romania has 86 DTCs (covering 87 jurisdictions) and one TIEA in force. Romania has signed one TIEA with Jersey that is not yet in force.

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

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

217. Once being ratified by the Parliament, international agreements form part of Romanian legislation as a law (Constitution, Art. 11 (2)). Article 11 (3) of the Constitution regulated that if the provisions of international agreements are contrary to the Constitution, its ratification shall only take place after the revision of the Constitution.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

218. 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 properly

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

219. Romania's network of EOI relationships comprises 86 bilateral DTCs (covering 87 jurisdictions) and two TIEAs, of which all DTCs and one TIEA are in force. Romania is a Party to the Multilateral Convention, which entered into force in Romania on 1 November 2014. These bilateral and multilateral agreements create EOI relationships with 119 jurisdictions which include:

- all of its major trading partners (Germany, Italy, France, Hungary and Turkey);
- all OECD Member States.

220. As of 1 January 2015, Romania was negotiating with 11 other jurisdictions. During the course of the assessment, no jurisdiction has advised that Romania had refused to enter into negotiations or concluded an EOI agreement.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Romania 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)*

221. 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 agreements

222. All exchange of information articles in Romania's DTCs have confidentiality provisions modelled on Article 26(2) of the Model Tax Convention, which must be respected by Romania as a party to these agreements. Confidentiality of the provided information in line with the standard is also provided for in Article 22 of the Multilateral Convention. The confidentiality provisions contained in the international agreements of Romania are directly applicable in Romania pursuant to Article 11 of the Constitution which provides that "Treaties ratified by Parliament, according to the law, are part of national law."

Romanian domestic law

223. The FPC establishes that the tax authority, civil servants within the tax body including the persons that are no longer in this capacity and experts shall be obligated to keep secrecy of information they hold as a result of exercising their job duties (Art. 11(1), (3), Art. 55 FPC). This information can only be disclosed to identify authorities in Article 11(2) of the FPC, including to tax authorities of other countries under conditions of reciprocity based on the international treaties.

All other information exchanged (ToR C.3.2)

224. The confidentiality provisions in Romania's exchange of information agreements do not draw a distinction between information received in response to requests and information forming part of the requests themselves.

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)

225. 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.

226. The limits on information which must be exchanged under Romania's DTCs mirror those provided for in the international standard. That is, information which would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged.

227. It is noted that "professional secret" is not defined in the DTCs. The relevant domestic legislation would be then applicable.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

228. In order for exchange of information to be effective it needs to be provided in a timeframe that 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.

229. Thus, jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or offering an update on the status of the request. There is nothing in Romanian law that would prevent the Romanian authorities from responding to requests within 90 days of receipt, or at least providing a progress report concerning the procedure.

230. Romania has specific legal or regulatory requirements in place regarding timeliness of responses in the context of EOI with other EU member States.

231. Article 109[11] FPC provides for the timing rules in the context of EOI with EU member States. Under this article, NAFA is bound to reply to an EOI request from an EU Member State "as quickly as possible" and in any case no later than 6 months from the date of receipt of the request. If NAFA is already in possession of that information, it is bound to send the information to the requesting EU member States within two months of the date of receipt of request.

232. In addition, NAFA must notify the requesting EU Member State of any deficiencies in the request, as well as of the need for any additional

background information within one month of receipt. If NAFA is unable to respond to the request by the relevant time limit, it shall inform the requesting authority from another Member State immediately and in any event within three months of the receipt of the request, of the reasons for its failure to do so, and the date by which it considers it might be able to respond. Finally, if NAFA is not in possession of the requested information and is unable to respond to the request for information or refuses to do so on the grounds allowed under the EOI agreement, it must inform the requesting EU jurisdiction of the reasons thereof immediately and in any event within one month of receipt of the request. According to the new paragraph (4) of Art. 63 FPC introduced by the Government Ordinance no. 17 of 15 July 2015, the same deadlines for submission of information set out in Art. 109[11] FPC apply in respect of EOI with non-EU member States, unless the provision of the international treaty provides for other deadlines.

233. As regards the timeliness of responses to requests for information 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.

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

234. Administration of the exchange of information under Romania's treaty network is the responsibility of Romania's competent authority, i.e. the Minister of Finance or his/her authorised representative.

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

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

236. 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 Romania. There are no legal or regulatory requirements in Romania 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 element is in place.

Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1.)*		
The element is not in place	Foreign companies having their place of effective management in Romania are not obliged to maintain ownership information in all circumstances.	Romania should require foreign companies having their place of effective management in Romania to maintain information on their ownership.
	Bearer shares may be issued by SAs and SCAs, and mechanisms to ensure that the owners of such shares can be identified are not in place for all bearer shares.	Romania should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
	Romanian legislation does not provide for sanctions in all cases for SAs and SCAs that fail to maintain ownership information.	Romania should introduce appropriate enforcement measures to address the risk of SAs and SCAs not complying with the requirement to maintain a register of their shareholders and members.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2.)*		
The element is in place.	Romanian trustees of foreign trusts are not required to keep accounting records that fully reflect the financial position and assets/liabilities of the foreign trust.	Romania should ensure that such accounting records are maintained for a minimum of five years for any foreign trusts which have Romanian-resident administrators or trustees.

Banking information should be available for all account-holders. *(ToR A.3.)*		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(Tor B.1.)*		
The element is in place.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2.)*		
The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1.)*		
The element is in place.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2.)*		
The element is in place.		Romania should continue to develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3.)*		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4.)*		
The element is in place		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5.)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's response to the review report[11]

Romania would like to thank the assessment team for the tremendous work it has performed, as well as members of the Peer Review Group and other exchange of information partners for their numerous and valuable contributions to the review.

Romania has taken note of the positive findings of the review report.

Romania received recommendations to further clarify specific aspects regarding the dematerialisation of securities and the Romanian institutions in charge for enacting the legislation concerned shall analyse and shall take the necessary steps, using also the technical assistance of Global Forum on Transparency and Exchange of Information for Tax Purposes.

11. 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 Romania's exchange of information mechanisms

Multilateral and bilateral exchange of information mechanisms

Romania exchanges information under:

- Convention on Mutual Administrative Assistance in Tax Matters as amended by its 2010 Protocol (Multilateral Convention), which entered into force for Romania on 1 November 2014.
- EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation. This Directive came into force on 1 January 2013. It repeals Council Directive 77/799/EEC of 19 December 1977 and provides inter alia for exchange of banking information on request for taxable periods after 31 December 2010 (Art. 18). All EU members are required to transpose it into national legislation by 1 January 2013. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Croatia, Cyprus[12], the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

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

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

- EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between EU member States.
- Council Regulation (EU) No. 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax (recast of the Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative co-operation in the field of value added tax).
- Council Regulation (EC) No. 2073/2004 of 16 November 2004 on administrative co-operation in the field of excise duties.
- 87 DTCs and two TIEAs out of which all DTCs and one TIEA are in force (see the table below).

Table of Romania's exchange of information relations

The table below summarises Romania's EOI relationships with individual jurisdictions as of 7 August 2015. These relations allow for exchange of information upon request in the field of direct taxes. In case of the Multilateral Convention the date when the agreement entered into force indicates 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	11-May-94	20-Oct-95
		Multilateral Convention	Signed	01-Dec-13
2	Algeria	DTC	28-Jun-94	11-Jul-96
3	Andorra	Multilateral Convention	Signed	Not yet in force in Andorra
4	Anguilla[a]	Multilateral Convention	Extended	01-Mar-14
5	Argentina	Multilateral Convention	Signed	01-Jan-13
6	Armenia	DTC	25-Mar-96	24-Aug-97
7	Aruba[b]	Multilateral Convention	Extended	01-Sep-13
8	Australia	DTC	02-Feb-00	11-Apr-01
		Multilateral Convention	Signed	01-Dec-12
9	Austria	DTC	30-Mar-05	01-Feb-06
		Multilateral Convention	Signed	01-Dec-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
10	Azerbaijan	DTC	29-Oct-02	29-Jan-04
		Multilateral Convention	Signed	01-Sep-15
11	Bangladesh	DTC	13-Mar-87	21-Aug-88
12	Belarus	DTC	22-Jul-97	15-Jul-98
13	Belgium	DTC	04-Mar-96	17-Oct-98
		Multilateral Convention	Signed	01-Apr-15
14	Belize	Multilateral Convention	Signed	01-Sept-13
15	Bermuda[a]	Multilateral Convention	Extended	01-Mar-14
16	Bosnia and Herzegovina	DTC	29-Apr-86	21-Oct-88
17	Brazil	Multilateral Convention	Signed	Not yet in force in Brazil
18	British Virgin Islands[a]	Multilateral Convention	Extended	01-Mar-14
19	Bulgaria	DTC	01-Jun-94	12-Sep-95
20	Cameroon	Multilateral Convention	Signed	Not yet in force[d] in Cameroon
21	Canada	DTC	08-Apr-04	31-Dec-04
		Multilateral Convention	Signed	01-Mar-14
22	Cayman Islands[a]	Multilateral Convention	Extended	01-Jan-14
23	Chile	Multilateral Convention	Signed	Not yet in force in Chile
24	China (People's Republic of)	DTC	16-Jan-91	05-Mar-92
		Multilateral Convention	27-Aug-13	Not yet in force in China
25	Colombia	Multilateral Convention	Signed	01-Jul-14
26	Costa Rica	Multilateral Convention	Signed	01-Aug-13
27	Croatia	DTC	25-Jan-96	28-Nov-96
		Multilateral Convention	Signed	01-Jun-14
28	Curaçao[b]	Multilateral Convention	Extended	01-Sep-13
29	Cyprus[c]	DTC	16-Nov-81	08-Nov-82
		Multilateral Convention	Signed	01-Apr-15
30	Czech Republic	DTC	08-Nov-93	10-Aug-94
		Multilateral Convention	Signed	01-Feb-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
31	Democratic People's Republic of Korea	DTC	23-Jan-98	25-Aug-00
32	Denmark	DTC	13-Dec-76	28-Dec-77
		Multilateral Convention	Signed	01-Jun-11
33	Ecuador	DTC	24-Apr-92	22-Jan-96
34	Egypt	DTC	13-Jul-79	05-Jan-81
35	El Salvador	Multilateral Convention	01-Jun-2015	Not yet in force in El Salvador
36	Estonia	DTC	23-Oct-03	29-Nov-05
		Multilateral Convention	Signed	01-Nov-14
37	Ethiopia	DTC	06-Nov-03	09-May-09
38	Faroe Islands[e]	Multilateral Convention	Extended	01-Jun-11
39	Finland	DTC	27-Oct-98	04-Feb-00
		Multilateral Convention	Signed	01-Jun-12
40	Former Yugoslav Republic of Macedonia	DTC	12-Jul-00	16-Aug-02
41	France	DTC	27-Sep-74	27-Sep-75
		Multilateral Convention	Signed	01-Apr-12
42	Gabon	Multilateral Convention	Signed	Not yet in force in Gabon
43	Georgia	DTC	12-Dec-97	15-May-99
		Multilateral Convention	Signed	01-Jun-11
44	Germany	DTC	04-Jul-01	17-Dec-03
		Multilateral Convention	Signed	Not yet in force in Germany
45	Ghana	Multilateral Convention	Signed	01-Sept-13
46	Gibraltar[a]	Multilateral Convention	Extended	01-Mar-14
47	Greece	DTC	17-Sep-91	07-Apr-95
		Multilateral Convention	Signed	01-Sept-13
48	Greenland[e]	Multilateral Convention	Extended	01-Jun-11
49	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala
50	Guernsey[a]	TIEA	12-Jan-11 17-Jan-11	22-Jan-12
		Multilateral Convention	Extended	07-Aug-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
51	Hungary	DTC	16-Sep-93	14-Dec-95
		Multilateral Convention	Signed	01-Mar-15
52	Iceland	DTC	19-Sep-07	21-Sep-08
		Multilateral Convention	Signed	01-Jun-12
53	India	Multilateral Convention	Signed	01-Jun-12
		DTC	08-Mar-13	16-Dec-13
54	Indonesia	DTC	03-Jul-96	13-Jan-99
		Multilateral Convention	Signed	01-May-15
55	Iran	DTC	03-Oct-01	30-Oct-07
56	Ireland	DTC	21-Oct-99	29-Dec-00
		Multilateral Convention	Signed	01-Sep-13
57	Isle of Man[a]	Multilateral Convention	Extended	01-Mar-03
58	Israel	DTC	15-Jun-97	21-Jun-98
59	Italy	DTC	14-Jan-77	06-Feb-79
		Multilateral Convention	Signed	01-Jun-12
60	Japan	DTC	12-Feb-76	09-Apr-78
		Multilateral Convention	Signed	01-Oct-13
61	Jersey[a]	TIEA	01-Dec-14	
		Multilateral Convention	Extended	01-Jun-14
62	Jordan	DTC	10-Oct-83	02-Aug-84
63	Kazakhstan	DTC	21-Sep-98	21-Apr-00
		Multilateral Convention	23-Dec-13	01-Aug-15
64	Korea	DTC	11-Oct-93	06-Oct-94
		Multilateral Convention	Signed	01-Jul-13
65	Kuwait	DTC	25-Jul-92	05-Oct-94
66	Latvia	DTC	25-Mar-02	28-Nov-02
		Multilateral Convention	Signed	01-Jan-14
67	Lebanon	DTC	28-Jun-95	06-Apr-97
68	Liechtenstein	Multilateral Convention	Signed	Not yet in force in Liechtenstein
69	Lithuania	DTC	26-Nov-01	15-Jul-02
		Multilateral Convention	Signed	01-Jun-14
70	Luxembourg	DTC	14-Dec-93	08-Dec-95
		Multilateral Convention	Signed	01-Nov-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
71	Malaysia	DTC	26-Nov-82	07-Apr-84
72	Malta	DTC	30-Nov-95	16-Aug-96
		Multilateral Convention	Signed	01-Sep-13
73	Mauritius	Multilateral Convention	Signed	No yet in force in Mauritius
74	Mexico	DTC	20-Jul-00	15-Aug-01
		Multilateral Convention	Signed	01-Sep-12
75	Moldova	DTC	21-Feb-95	10-Apr-96
		Multilateral Convention	Signed	01-Mar-12
76	Monaco	Multilateral Convention	Signed	Not yet in force in Monaco
77	Montenegro[f]	DTC	16-May-96	01-Jan-98
78	Montserrat[a]	Multilateral Convention	Extended	01-Oct-13
79	Morocco	DTC	02-Jul-03	17-Aug-06
		Multilateral Convention	Signed	Not yet in force in Morocco
80	Namibia	DTC	25-Feb-98	05-Aug-99
81	Netherlands	DTC	05-Mar-98	29-Jul-99
		Multilateral Convention	Signed	01-Sep-13
82	New Zealand	Multilateral Convention	Signed	01-Mar-14
83	Nigeria	DTC	21-Jul-92	18-Apr-93
		Multilateral Convention	Signed	01-Sep-15
84	Norway	DTC	14-Nov-80	27-Sep-81
		Multilateral Convention	Signed	01-Jun-11
85	Pakistan	DTC	27-Jul-99	13-Jan-01
86	Philippines	DTC	18-May-94	27-Nov-97
		Multilateral Convention	Signed	Not yet in force in Philippines
87	Poland	DTC	23-Jun-94	15-Sep-95
		Multilateral Convention	Signed	01-Oct-11
88	Portugal	DTC	16-Sep-97	14-Jul-99
		Multilateral Convention	Signed	01-Mar-15
89	Qatar	DTC	24-Oct-99	06-Jul-03

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
90	Russian Federation	DTC	27-Sep-93	11-Aug-95
		Multilateral Convention	Signed	01-Jul-15
91	San Marino	DTC	23-May-07	11-Feb-08
		Multilateral Convention	Signed	Not yet in force in San Marino
92	Saudi Arabia	DTC	06-Apr-11	01-Jul-12
		Multilateral Convention	Signed	Not yet in force in Saudi Arabia
93	Serbia[f]	DTC	16-May-96	01-Jan-98
94	Seychelles	Multilateral Convention	Signed	Not yet in force[g] in Seychelles
95	Singapore	DTC	21-Feb-02	28-Nov-02
		Multilateral Convention	Signed	Not yet in force in Singapore
96	Sint Maarten[b]	Multilateral Convention	Extended	01-Sep-13
97	Slovenia	DTC	08-Jul-02	28-Mar-03
		Multilateral Convention	Signed	01-Jun-11
98	Slovak Republic	DTC	03-Mar-94	29-Dec-95
		Multilateral Convention	Signed	01-Mar-14
99	South Africa	DTC	12-Nov-93	29-Oct-95
		Multilateral Convention	Signed	01-Mar-14
100	Spain	DTC	24-May-79	26-Jun-80
		Multilateral Convention	Signed	01-Jan-13
101	Sri Lanka	DTC	19-Oct-84	28-Feb-86
102	Sudan	DTC	31-May-07	14-Nov-09
103	Sweden	DTC	22-Dec-76	08-Dec-78
		Multilateral Convention	Signed	01-Sep-11
104	Switzerland	DTC	25-Oct-93	27-Dec-94
		Multilateral Convention	Signed	Not yet in force in Switzerland
105	Syrian Arab Republic	DTC	24-Jun-08	04-Jun-09
106	Tajikistan	DTC	06-Dec-07	02-Mar-09
107	Thailand	DTC	26-Jun-96	03-Apr-97
108	Tunisia	DTC	23-Sep-87	19-Jan-89
		Multilateral Convention	Signed	01-Feb14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
109	Turkey	DTC	01-Jul-86	15-Sep-88
		Multilateral Convention	Signed	Not yet in force in Turkey
110	Turkmenistan	DTC	16-Jul-08	21-Aug-09
111	Turks and Caicos[a]	Multilateral Convention	Extended	01-Dec-13
112	Ukraine	DTC	39-Mar-96	17-Nov-97
		Multilateral Convention	Signed	01-Sep-13
113	United Arab Emirates	DTC	11-Apr-93	23-Jan-96
114	United Kingdom	DTC	18-Sep-75	22-Nov-76
		Multilateral Convention	Signed	01-Oct-11
115	United States	DTC	04-Dec-73	26-Feb-76
		Multilateral Convention	Signed	Not yet in force in United States
116	Uruguay	DTC	14-Sep-12	22-Oct-14
117	Uzbekistan	DTC	06-Jun-96	17-Oct-97
118	Viet Nam	DTC	08-Jul-95	24-Apr-96
119	Zambia	DTC	21-Jul-83	29-Oct-92

Notes: a. Extension by United Kingdom.

b. Extension by the Kingdom of the Netherlands.

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

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

d. Cameroon has deposited its instrument of ratification on 30 June 2015, and the Multilateral Convention will enter into force on 1 October 2015.

e. Extension by the Kingdom of Denmark.

f. Romania continues to apply the Yugoslavia treaty signed on 16 May 1996 in relations with Montenegro and Serbia.

g. .The Seychelles has deposited its instrument of ratification on 25 June 2015, and the Multilateral Convention will enter into force on 1 October 2015.

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

Civil and commercial legislation

Emergency Ordinance No. 99 of 6 December 2006 on Credit Institutions and Capital Adequacy, approved with amendments and supplements by Law no.277/2007, as subsequently amended and supplemented

Law no. 26 of November 5, 1990, republished, regarding the Trade Register, as subsequently amended and supplemented

Law No 31 of 16 November 1990, republished, Law on companies, as subsequently amended and supplemented

Law No 82 of 24 December 1991, republished, Law on accountancy, as subsequently amended and supplemented

Law No.93/2009 on Non-Bank Financial Institutions (as amended and supplemented by Government Emergency Ordinance no.42/2011, Law no.287/2011, Law no.187/2012 and Law no.255/2013)

Law no. 287 of 17 July 2009, republished, regarding the Civil Code

Ordinance No. 26 of 30 January 2000 on associations and foundations, as amended and completed

Tax legislation

Law no. 571 of 22 December 2003 regarding the Fiscal Code, as amended and completed

Ordinance No 92 of 24 December 2003, republished, on the Fiscal Procedure Code, as amended and completed

Miscellaneous

Law No. 656 of 7 December 2002, republished, on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating the financing of terrorism, as amended

Regulation No.9/2008 on know-your-customer for the purpose of money laundering and terrorism financing prevention

The Constitution of Romania, as republished.

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PEER REVIEWS, PHASE 1: ROMANIA

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