GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

MAURITANIA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Mauritania 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

March 2016
(reflecting the legal and regulatory framework
as at December 2015)

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Table of Contents

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 130 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. The present report summarises Mauritania's legal and regulatory framework for transparency and exchange of information for tax purposes as well as its practical implementation and effectiveness. 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 on Request, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain access to that information, and in turn, whether that information can be effectively and timely exchanged with its exchange of information partners.

2. Mauritania is a West African country with a surface area of 1 030 700 km² and a population of a little under four million. Its economy is dominated by fishing, farming and the extraction of natural resources, the most important of which are iron ore, oil and gas. Mauritania taxes the income of private individuals and businesses. It has committed to implementing the international standard on transparency by joining the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2011.

3. Information about the identity and ownership of companies and other entities is available under Mauritania's legal and regulatory framework. Companies and other legal entities are required to register with the public authorities, including the tax authorities. The Commercial Code allows for the creation of bearer shares in companies with share capital but it does not institute any general obligation to identify the owners of such shares. The tax law now provides for the obligation for companies issuing or having issued bearer shares and transferors of such shares to disclose the identity of the owners to the tax authorities. Failure to do so is subject to punishment. However, while this new reporting obligation improves the identification of holders of bearer share, the obligation remains insufficient in particular with respect to non-residents. Mauritania is recommended to take steps to ensure the identification of the owners of bearer shares in public companies in all circumstances and to monitor the practical implementation of this new reporting requirement.

4. The availability of banking information is guaranteed under Mauritanian banking and anti-money laundering regulations. Under accounting and tax law, accounting records and the underlying documentation must be kept for a minimum period of ten years. During the review period, Mauritania did not have occasion to respond to a request for banking or accounting information. However, the powers of supervision and sanction available to the tax authorities and other authorities were sufficiently exercised for domestic purposes to ensure that such information is available in practice.

5. Mauritania's tax code gives the tax administration, which is the competent authority, extensive powers to gather information, including banking information, which may be used for information exchange purposes without any restriction in relation to domestic tax interest. There is no right of notification in Mauritania, and tax litigation may neither prevent nor restrain the authorities from responding to an information request made under a treaty signed by Mauritania. Mauritania did not have occasion to exercise its powers of access for exchange of information purposes during the review period. However, those powers, which are also used for domestic tax purposes, were used satisfactorily in practice.

6. During the review period, Mauritania did not have an appropriate organisation in place to handle requests for information. This caused difficulties of communication with its main EOI partner, which reported that none of the four requests it had sent to Mauritania during the review period had been responded. At the time of the on-site visit, however, a dedicated exchange of information unit was already operational, with appropriate resources. Mauritania has also taken appropriate steps to forestall communication difficulties with its EOI partners in the future. Mauritania is recommended, in the framework of the new organisation introduced for exchange of information purposes, to ensure that requests from its partners are processed in accordance with the standard.

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

8. A follow up report on the steps undertaken by Mauritania to answer the recommendations made in this report should be provided to the PRG by June 2017 and thereafter in accordance with the process set out under the Methodology for the second round of reviews.

Introduction

Information and methodology used for the Peer Review of Mauritania

9. The assessment of Mauritania's legal and regulatory framework as well as its practical implementation and effectiveness was based on the international standards for transparency and exchange of information on request as described in the Global Forum's terms of reference 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 in December 2015, Mauritania's responses to the phase 1 and phase 2 questionnaires and supplementary questions, other materials supplied by Mauritania, including during the on-site visit to Nouakchott from 15 to 17 September 2015, and information supplied by partner jurisdictions.

10. This analysis incorporates the phase 1 assessment of Mauritania's legal framework, published in March 2015, and the phase 2 assessment of the practical implementation and effectiveness of this framework during the three-year review period between January 2012 and December 2014.

11. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information and (C) exchanging information. This review assesses Mauritania'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 its legal implementation need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, in order to reflect the phase 2 assessment, recommendations are made on Mauritania's practical implementation of each of these essential elements and a rating which may be (i) compliant, (ii) largely compliant, (iii) partially compliant or (iv) non-compliant is assigned to each element. As indicated in the note on assessment

criteria, an overall rating is assigned on completion of the phase 2 review in order to render account of the jurisdiction's overall situation. A summary of findings against those elements is set out at the end of this report.

12. The assessment was conducted by a team consisting of two expert assessors and a representative of the Global Forum Secretariat: Mr. Zeddoun Sidi-Mohamed from the French tax administration, Mr. Mustupha Mosafeer from the Mauritian tax administration, Mr. Ervice Tchouata and Mr. Hakim Hamadi from the Global Forum Secretariat.

13. Mauritania is a country of 1 030 700 km² in the north-west of Africa. The country has an estimated population of 3.9 million.[1] The fact that the Sahara Desert occupies two-thirds of its territory explains Mauritania's very low average population density of around three inhabitants per square kilometre.

14. Arabic is Mauritania's official language, though French is used as an administrative language. Its currency is the ouguiya, abbreviated as "MRO" (EUR 1 ≈ MRO 357.64; USD 1 ≈ MRO 337.08).

15. The mainstays of the Mauritanian economy are farming, fishing and extractive industries (iron ore, oil and gas). In 2014, it had gross domestic product (GDP) of USD 5.061 billion and a GDP growth rate of 6.4%.[2]

16. Mauritania acquired its independence from France on 28 November 1960. The separation of powers (executive, legislative, judicial) is a constitutional principle. It has a presidential system with a President of the Republic, who is the head of the executive and the head of state elected by universal suffrage, and a government headed by a Prime minister. The country is divided into 12 regions called *wilayas*, plus the Nouakchott capital district. Mauritania is a member of the United Nations, the African Union, the Arab Maghreb Union and the Arab League.

General information on the legal and tax system

Legal system

17. Mauritania has a single national legislation based on written law in the civil law tradition. There is a legislature responsible for drafting and passing laws, an executive responsible for implementing them and a judiciary responsible for judging infringements and hearing disputes according to law. The constitution draws a distinction between legislative matters requiring statutes and regulatory matters governed by instruments of lower rank (decrees and orders). The two-tier judicial system is based on courts of first instance

1. World Bank: www.worldbank.org/en/country/mauritania.
2. World Bank, ibid.

(at *moughataa* and *wilaya* level) and appellate courts (three appeal courts, at Nouakchott, Nouadhibou and Kiffa) and a supreme court. International treaties and conventions can be ratified only by statute. If international treaties are contrary to the constitution, it must be amended before they can be ratified. Ratified international treaties take precedence over statutes.

Tax system

18. Mauritania's tax system is based on the legality principle. Under Article 20 of the Mauritanian constitution, no tax may be instituted except by statute. The constitution also states that citizens shall be taxed equally and that all must share the burden of public expenditure according to their ability to contribute. Tax rules apply to all taxpayers on the basis of legal provisions of general scope. Under Mauritanian laws, a taxpayer is any natural or legal person carrying on an industrial, commercial, craft or agricultural activity in Mauritania or any person carrying on a non-commercial profession i.e. which does not involve the purchase, processing or sale of goods or services.

19. Tax provisions are contained in a tax code. However, certain provisions are contained in a number of other legal instruments with tax aspects, such as the investment code, the mining and hydrocarbons code and the Nouadhibou Free Zone Act. The tax code is regularly updated, especially when annual Budget Acts modify certain provisions. Act 2015-003 of 22 January 2015 (the 2015 Budget Act) introduced a tax procedures book into the Mauritanian tax code. Existing articles on procedures contained in the tax code are brought together in the new book which, inter alia, (i) institutes a general obligation for all taxpayers to register with the tax authorities, (ii) better organises the (existing) right to information which enables the tax authorities to obtain information about a taxpayer's situation from third parties, (iii) institutes a right of investigation which allows the tax authorities to obtain information in certain specific circumstances, including in relation to VAT, and (iv) increases the length of time for which the tax authorities require documents to be kept, including accounting documents, from six to ten years.

20. The Mauritanian tax authority responsible for tax assessment, collection, audit and litigation is the General Tax Directorate (*Direction Générale des Impôts*, DGI), one of the Finance Ministry's six general directorates. The General Tax Directorate is headed by a Director General assisted by a deputy. With a private office and a technical adviser at his disposal, the Director General oversees a principal inspectorate, five central directorates and four operational directorates. The operational directorates are the tax audit and investigation directorate, the large business directorate, the public entities directorate and the Nouakchott medium-sized business directorate, plus three regional tax directorates (north zone, south zone and east zone). The

large business directorate deals with the largest taxpayers in terms of sales, especially the affiliates of multinationals.

21. The Mauritanian tax system draws a distinction between direct and indirect taxes. The main direct taxes are on income (tax on business and farm profits at a 25% rate; tax on professional income at a 30% rate; tax on property income at a 10% rate; tax on wages, salaries, pensions and annuities at a progressive rate, and tax on investment income at a 10% rate). Income tax accounted for 32.34% of the 2014 tax take of MRO 285.03 billion (USD 845.6 million). Indirect taxes comprise value added tax (VAT), sales tax and consumption taxes (taxes on oil products, alcoholic beverages, tobacco and various foodstuffs, meat trading tax, special tax on cinematographic projections). VAT is levied at a 16% rate, rising to 18% for oil products and telephony. It accounted for 35.38% of Mauritania's tax take in 2014.

22. Natural or legal persons are liable to tax on income deriving from the exercise in Mauritania of an industrial, commercial, craft or agricultural activity, whether they have their registered office or domicile there or not. All natural persons carrying on a salaried activity in Mauritania are liable to tax on the income from their wages, salaries and related allowances, whether the employer or beneficiary is domiciled there or not.

23. Mauritania has an exchange of information network covering nine jurisdictions, based solely on conventions designed to eliminate double taxation. The country joined the Global Forum in 2011 and committed to implementing international standards for transparency. The competent authority in Mauritania is the Finance Minister. However, under the terms of an internal memorandum of 15 September 2015, he delegated his authority in relation to exchange of information to the Director General of Taxes and, if he is indisposed, to the Director of Tax Audit and Investigations at the General Tax Directorate.

Overview of the financial sector and the relevant professions

24. Mauritania's financial sector comprises the Central Bank of Mauritania (BCM), 16 commercial banks, six of which are subsidiaries of foreign banks, and 17 insurance companies. There are two specialised financial institutions for farming and fishing. One financial institution specialises in leasing with the aim of providing the financing products best suited to the needs of Mauritania's small business sector. Alongside conventional commercial banks, Mauritania has a network of 103 microfinance institutions (MFIs) which help to finance small economic structures. As of 31 December 2014, Mauritania's commercial banks held total assets of MRO 651.1 billion (USD 1.93 billion), including deposits of MRO 396.89 billion (USD 1.2 billion). Microfinance institutions held total assets of MRO 6.99 billion (USD 20 million) at the same date.

25. Other financial professions are dominated by three money transfer companies and 30 foreign exchange institutions. Mauritania does not have a stock market and there are no regulations in that area.

26. The Central Bank of Mauritania regulates banking and supervises financial institutions. It also ensures the protection of savers, the smooth operation of markets in financial instruments and the enforcement of anti-money laundering regulations. Non-financial professions and enterprises with a duty of care towards customers are officers of justice, attorneys (320), chartered accountants and company auditors (120), notaries (22), tax advisers (272) and estate agents (86).

Compliance with the Standards

A. Availability of information

Overview

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

28. Mauritania has a sound legal and regulatory framework as regards the obligation to ensure that information concerning the identity of shareholders in partnerships and registered shareholders in companies is available.

29. All companies are required to register in the commercial register, kept by the registry of the locally competent court, within three months of formation or incorporation by filing a copy of their articles of association. Information on the identity of all persons with indefinite and joint liability for a partnership's debts is available and kept up to date in the commercial register. For companies with share capital, information on the ownership of limited liability companies are available in the commercial register. With respect to Limited companies, only information about the shareholders that participate at the company's management (board of directors) is disclosed in

the commercial register. However information about the other shareholders is available in the share register which should be kept by the company, and from the tax authorities through the annual returns which must be accompanied by a form containing a list of shareholders and the number of shares they hold.

30. Mauritanian law permits the creation of bearer shares in public limited companies. During the review period tax rules existed under which it was possible in the event of transfer, to know the identity of the owners of bearer shares. However, these measures are not sufficiently implemented to make such information available in practice. However, Mauritania has recently introduced a reporting obligation with appropriate sanction, for companies issuing (or having issued) and transferors of bearer shares. This new requirement will significantly improve the availability of information on the identity of owners of bearer shares.

31. Mauritanian law does not permit the constitution of Mauritanian trusts. However, a trust may be administered from Mauritania, and assets located in Mauritania may be owned by a trust constituted in another country. Under Act 2005-048 of 27 July 2005 on the prevention of money laundering and the financing of terrorism in Mauritania (the AML/CFT Act), trustees, as professionals, are required to keep all information about their clients, including information on the settlors and beneficiaries of foreign trusts. In practice, these persons are subject to the same registration requirements as any other person carrying on economic activities in Mauritania. They must apply to register in the commercial register and with the tax authority, which provides the authorities with information about trusts in Mauritania. During the review period, however, the authorities did not register any declaration of a foreign trust administered in Mauritania.

32. Information on the ownership of other relevant entities, such as economic interest groupings and foundations, is available in Mauritania.

33. Under the commercial code, all businesses must keep the accounting records and the underlying documentation for a minimum period of ten years. Under tax law, all natural or legal persons liable to tax on business or farm profits are required to keep accounting records and the underlying documentation for at least six years. Foundations and other entities governed by anti-money laundering legislation are also required to keep accounting records and the underlying documentation. In practice, the tax authorities ensure that companies registered in Mauritania comply with accounting requirements through the general audits of accounts which empower them to control the existence, regularity and accuracy of all the accounting documents which businesses are required to keep. This ensures the availability of such information.

34. Banks and financial institutions are required to know their customers and to keep information on transactions carried out by their customers for the same length of time as any other accounting records (ten years). The Central Bank of Mauritania exercises banking supervision through documentary and on-site audits, one of the key priorities of which is compliance with AML/CFT regulations.

35. During the review period, Mauritania did not have occasion to respond to a request for information which would have tested the availability of information in practice. However, apart from the case of bearer shares, the powers of supervision and sanction available to the tax authorities and other authorities were sufficiently exercised for domestic purposes to guarantee the availability of information. Mauritania is recommended to take appropriate steps, including practical measures, to ensure that the identity of the owners of bearer shares can be known at any time for as long their issuance is authorised by law.

A.1. Ownership and identity information

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

Companies *(ToR A.1.1)*

Types of company

36. In Mauritian law, the Commercial Code provides for two types of business: companies and partnerships. Companies comprise limited liability companies (*sociétés à responsabilité limitée*, SARL) and companies limited by shares, which include public limited companies (*sociétés anonymes*, SA), simplified public limited companies (*sociétés anonymes simplifiées*, SAS) and partnerships limited by shares (*sociétés en commandite par actions*, SCA). The different forms of partnership will be considered in the part of this section devoted to them.

- A **SARL** (*société à responsabilité limitée*, limited liability company) (Article 339 et seq. of the Commercial Code) is formed by one or more persons (members), who are liable for the company's debts and losses only up to the amount of their contribution. Pharmaceutical companies, banks, credit institutions, investment companies, insurance companies, accumulating companies and savings companies may not be SARLs. Where the company has only a single member, he or she is called the sole shareholder. The capital of the company must be at least MRO 1 million (USD 2 967). It is divided into shares,

the par value of which may not be less than MRO 5 000 (USD 15). An SARL may not have more than 50 members. Should the company have more than 50 members, it must be transformed into a public limited company within two years, failing which it is dissolved. There were 3 291 SARLs in Mauritania at 30 November 2015.

37. Companies limited by shares (Article 393 et seq. of the Commercial Code) are designated by a company name, which must be preceded or followed by mention of the company's form and the amount of its share capital. The name of one or more members may be included in the company name. The share capital must be at least MRO 20 million (USD 59 347) in the case of a public company and MRO 5 million (USD 14 835) in other cases. There are three types of company limited by shares in Mauritanian law, namely public limited companies, simplified public limited companies and partnerships limited by shares.

- A **SA** (*société anonyme*, public limited company) (Article 400 et seq. of the Commercial Code) is a company formed between at least five shareholders who are liable for the company's debts only up to the amount of their contribution. The capital is divided into transferable shares representing contributions in cash or kind but not contributions of labour. SAs may not divide their capital into shares or fractions of shares with a par value of less than MRO 5 000 (USD 15). There were 547 SAs in Mauritania at 30 November 2015.
- A **SAS** (*société anonyme simplifiée*, simplified public limited company) (Article 575 et seq. of the Commercial Code) is formed between two or more companies in order to manage a joint subsidiary or create a company which will become their common parent. It is formed in consideration of the person of its members, who freely agree on the company's organisation and operation subject to the provisions of law. Only companies with share capital of at least MRO 20 million (USD 59 347) or the equivalent of that amount in a foreign currency may be members of an SAS. There were six SASs in Mauritania at 30 November 2015.
- A **SCA** (*société en commandite par actions*, partnership limited by shares) (Article 591 et seq. of the Commercial Code) is a company whose capital is divided into shares and which is formed between one or more managing partners, who are traders and 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 contribution. There may not be fewer than three limited partners. There were three SCAs in Mauritania at 30 November 2015.

Information held by the public authorities

Publication and registration formalities

38. With the exception of joint ventures (discussed below under partnerships), the instrument of incorporation must be drawn up in a private or notarial deed.

39. Article 39 of the Commercial Code requires incorporated entities to register in the commercial register. Article 41 states that the registration application must be filed with the registry of the competent court of the place where the registered office is located. The commercial register comprises local registers and a central register. The local register is kept by the locally competent commercial court registry. The central register is kept at a national level by the competent administrative authorities and centralises the information held in all the registries within the national territory of Mauritania. The working methods of the administrative authorities concerned are defined in a decree. Entries in the commercial register comprise registrations, amendments and deletions. Under Article 39 of the Commercial Code, all natural or legal persons carrying on a commercial activity in Mauritania are required to register in the commercial register. This requirement also applies to:

- all branches or agencies of a Mauritanian or foreign enterprise;
- all commercial delegations or agencies of foreign states, local authorities or public establishments;
- Mauritanian public establishments of an industrial or commercial nature required by their governing laws to register in the commercial registry;
- all economic interest groupings;
- in general, all private-law legal entities engaged in an economic activity.

40. Public- or private-law legal entities must request registration in the commercial register within three months of their formation or incorporation. The request is made by the managers or by the members of the management bodies or, in the case of a public establishment, branch, agency or commercial delegation, by the director. Under Article 47 of the Commercial Code, commercial companies must include the following information in their registration application:

- the first names and surnames of members, other than shareholders and limited partners, their date and place of birth and nationality and the number of their national identity card or, for non-resident foreigners, the number of their passport or any other equivalent identity document;

- the company name and the date of the negative certificate issued by the central commercial registry (the negative certificate is a document issued by the central registry, giving evidence of the availability of a business name);
- the corporate purpose;
- the business carried on;
- the address of the registered office and, where relevant, the places where the company has branches in Mauritania or elsewhere and the registration number on the business tax roll; it must be possible to precisely locate the registered office in the place where it is situated, failing which it is deemed not to exist;
- the names of the members or third parties authorised to administrate, manage and give commitments for the company, their date and place of birth and nationality and the number of their national identity card or, for non-resident foreigners, the number of their passport or any other equivalent identity document;
- the company's legal form;
- the amount of its share capital;
- if the share capital is variable, the amount below which it may not be reduced;
- the date at which the company began and the date at which it must end;
- the date on which the articles of association are filed at the registry and the filing number.

41. Under Article 48, the following information must also be provided for inclusion in the commercial register: the first names and surnames, date and place of birth of the company's managers and members of its management bodies appointed during its lifetime, their nationality and the number of their national identity card or, for non-resident foreigners, the number of their passport or any other equivalent identity document. Public establishments of an industrial and commercial nature (public companies) are bound by the same registration requirements as commercial companies.

42. Pursuant to Article 206 of the Commercial Code, the articles of association, a copy of which must be filed with the registry, must be written, and dated and state:

- the first names, surname and domicile of each member (or shareholder) or, in the case of a legal entity, its name, form and the address of its registered office;

- the company's form;
- its purpose;
- its name;
- the address of its registered office;
- the amount of its share capital;
- each member's contribution and, if in kind, the valuation placed upon it;
- the number and par value of the shares allocated to each member;
- the term for which the company has been constituted;
- the first names, surname and domicile of the members or third parties who can commit the company, where relevant;
- the signature of all the members or their agents;
- the registry of the competent court where the articles of association will be filed.

43. The company will be null and void if these requirements are not met. Under Article 52, an amending entry must be requested for any change to or amendment of information which must be entered in the commercial registry in accordance with the Commercial Code.

44. To better understand the meaning of the above provisions in relation to the availability of information on the identity, it would be good to discuss the situation of each type of companies (SARLs and SAs).

SARLs

45. In accordance with Article 47 of the Commercial Code, the registration application in the commercial register must "mention the first names and surnames of partners, other than shareholders and limited partners". The owners of SARLs are called "associés" (partners) as it is the case for partnerships. Therefore, the registration application must contain the names of all partners ("associés") of SARLs. Moreover, the articles of association a copy of which must be filed with the registry, must include "full name, address of each partner." Any further change in the ownership of the company must be reported to the registry. The shares of SARLs are transferrable. But the company must be informed prior to any transfer of shares (Article 358). This allows the company to update the registry regarding the ownership information. Therefore, the ownership information of SARL is available in the commercial register.

SAs

46. The owners of SAs are called "actionnaires" (shareholders). Under Article 47 of the Commercial Code, the SAs are not required to include the name of their shareholders ("actionnaires") in the registration application, except for those who participate in the company's management (board of directors). The articles of association a copy of which must be filed with the registry includes the identity of all shareholders at the formation of the company. However, companies are not required to report subsequent changes in the ownership of the company to the registry unless when there is a change on the articles of association. Thus, transfers of shares are not registered in the commercial register. The ownership information regarding SAs is not available at the companies' registry. However, this information would be available in the companies (see below section on share *register*). The situation for SASs is identical to that of SAs.

SCAs

47. The SCAs have two types of shareholders: the managing partners who are indefinitely and jointly liable for the partnership's debts, and the limited partners who are liable up to the amount of their contributions. Pursuant to article 47 of the commercial law, the identity of the managing partners must be mentioned in the registration application, kept and updated in the commercial register. In the contrary, the identity of the limited partners is not disclosed to the commercial register. However, it must be mentioned in the share register held by the company.

In practice

48. The procedure for creating a business in Mauritania is the same for all types of company or partnership. It has been streamlined recently by the introduction of a one-stop shop for business creation at Nouakchott, in operation since 12 July 2012. According to the one-stop shop's representatives, about 80% of new businesses in Mauritania are created at Nouakchott. Outside the capital, businesses continue to be created in the country's secondary cities, and approximately 10% of new businesses are created at the Commercial Court in Nouadhibou, the second city. Business creation concerns legal persons (companies), natural persons, known as "establishments", and branches of Mauritanian or foreign enterprises.

49. At Nouakchott, the one-stop shop centralises all the formalities required to create a business, including registration in the commercial register. As such, it brings together representatives of the three main administrative authorities involved in the process: the Commercial Court, for allocation of the number in the commercial register; the tax authorities, for allocation of the tax identification number (TIN), and the National Social Security Fund for social security registration. The one-stop shop also includes a reception department,

which receives applications to create a business, a revenue department, which collects the fees, and a registration department, which registers notarised instruments, mostly articles of association.

50. Applications to create a business are submitted on a single form called a "business creation declaration". It comprises a declaration of registration in the commercial register, a tax existence declaration and an application for affiliation to the National Social Security Fund. It contains sections to fill in with various types of information, the most important of which are:

- information about the type of application: formation of a company, opening of a branch or agency, constitution of a subsidiary, takeover of a business;
- information about the senior managers: identity, nationality, domicile;
- information about the business: identification, type of company, number and value of shares, address;
- information about branches and subsidiaries having their registered office in another country;
- information about the members or shareholders:
- for natural persons: first names and surname, capacity, date and place of birth, nationality;
- for legal persons: company name, legal form, activity, standing representative, number in the commercial register and address of registered office.

51. The business creation declaration is filed with the reception department at the one-stop shop together with the following supporting documents:

- declaration of subscription and proof of payment of the share capital;
- four copies of the articles of association;
- a copy of the manager's and members' identity documents;
- a copy of the lease agreement or title deed for the registered office;
- the minutes of the constituent shareholders' meeting and a list of the members or shareholders (for SAs);
- legal representative's power of attorney, for branches or subsidiaries;
- proof of a bank domiciliation in Mauritania on behalf of the company (a crossed cheque or bank account number), which is necessary to obtain the tax identification number (TIN);
- a certificate of visit and proof of address, for tax registration purposes.

52. Applications are filed with the reception department, which ensures that they are compliant before forwarding them to the commercial register representative. He or she ensures that the elements required for registration have been provided, together with the supporting documents, and allocates a number in the commercial register in chronological order. The following information is recorded in the database: the company name, legal form, corporate purpose, share capital, senior managers' names, registration number and address of the registered office.

53. Once the number in the commercial register has been allocated, the file is forwarded to the tax authorities' representative together with the declaration of existence, the certificate of visit, the proof of address, the number in the commercial register, the articles of association and the list of members or shareholders. The tax authorities' representative checks the application and, if it is complete, records it in the tax authorities' information system, known as JIBAYA, and allocates the tax identification number, which is then validated by the General Tax Directorate registration department within 24 hours at most. The information recorded in JIBAYA includes the number in the commercial register, the identity of each senior manager and the identity of each member or shareholder.

54. On completion of the registration process, the original of the physical application containing all the supporting documents, including the articles of association and list of members or shareholders, is promptly filed at the one-stop shop. A copy containing the tax elements is forwarded to the tax department responsible for managing the taxpayer's affairs according to the projected sales announced on creation of the business. Since January 2015, business creation at the one-stop shop has been automated and the entire process is managed by a computer application. Between 12 December 2012 (the date at which the one-stop shop started to operate) and 31 December 2014, 2 365 SARLs and 207 SAs were registered at the one-stop shop.

55. Outside of Nouakchott, the business creation process is carried out with the territorially competent commercial court registry which is responsible for maintaining the commercial register. The same documents are required and the same controls are operated for the registration procedure in the commercial court registry, as for the creation of a business in the one-stop shop. All the information held by the local commercial courts in their local registers are centralised in a central register which is computerised and kept at a national level by the commercial court of Nouakchott. Outside of Nouakchott, tax registration must be sought from the Regional Directorate of Taxes territorially competent. The tax requirements are the same as those required in the one-stop shop. When the Regional Tax Directorate receives the taxpayer's request, it cross-checks the documents, carries out the on-site visit and once the file is completed, forwards it to the tax registration

department at the Directorate General of Taxes in Nouakchott where the tax identification number (TIN) is issued and the required information are entered into JIBAYA.

56. Changes after the creation of a business are notified to the commercial register, especially changes relating to the company name, activity, registered office, share capital, senior managers and transfers of shares in partnerships. Unlike other types of company, the law does not require transfers of shares in SAs to be reported to the commercial register. In practice, however, some SAs do so spontaneously. Changes reported to the commercial register are also forwarded to the tax authorities' representative, who enters them into the JIBAYA database.

57. The commercial register's power of control over businesses is limited to the time of their creation. The registration number can be allocated to a new business only if the application contains all the documents required by law. In addition, the various documents provided must contain the mandatory information required by the Commercial Code. For example, if the articles of association do not contain the first names and surname of the members or shareholders, the company will not be registered because Article 206 of the Commercial Code states that such information (and much other information besides) must be provided otherwise the company will be null and void. Likewise, any false declaration made to the commercial register in order to obtain registration is an offence liable to prosecution at the request of the commercial register, which may use all the means permitted by law to verify the accuracy of a document submitted to it for the purposes of registering a new business. After a business has been created, the tax authorities have extensive powers to ensure that it complies with its tax and accounting obligations, starting with the requirement to declare the existence of a new business. How these powers are used in practice is analysed in Tax requirements below.

58. In conclusion, the business creation procedure in Mauritania and the requirement to notify subsequent changes provide the authorities represented at the one-stop shop for business creation with information on the identity of company owners. For partnerships, up-to-date information on the identity of partners is kept in the physical files of the commercial register and in JIBAYA, the tax authorities' database. For companies limited by shares (SAs, SASs and SCAs), information on the identity of shareholders is available at the commercial register on their creation. There is no obligation to notify share transfers to the commercial register, but the tax authorities are aware of them from annual tax returns (see below).

Tax requirements

59. In Mauritania, any natural or legal person carrying on an industrial, commercial, craft or agricultural activity in Mauritania or any person carrying on a non-commercial profession (i.e. which does not involve the purchase, processing or sale of goods or services) is a taxpayer and should comply with the tax registration requirements (Articles 17, 29 and 32 of the Tax Code). Article 78 of the Commercial Code states that "applications for the registration of a trader or commercial company in the commercial register shall be received by the registrar only on production of a certificate of registration on the business tax roll". Thus, registration in the commercial register is conditional on registration with the tax authorities. Consequently, Article 17 of the Mauritanian Tax Code states that "The natural or legal persons mentioned in Article 7 are required to send a declaration of existence to the Director General of Taxes within twenty days of their final constitution or of starting their activities in Mauritania". The persons mentioned in Article 7 of the Tax Code are natural or legal persons liable to tax on business and farm profits, whatever their sales. These persons must send the Director General of Taxes, within twenty days of their final constitution or of starting their activities in Mauritania, a declaration of existence using the regulation form, stating:

- the company's name, legal form, main purpose and term, the address of its registered office and the place of its principal establishment;
- the date of the instrument of incorporation, a duly certified copy of which, on unstamped paper, must be attached to the declaration;
- the first names, surname and domicile of the managers and, for companies whose capital is not divided into shares, the first names, surname and domicile of each member;
- the nature and value of real and movable property constituting the contributions;
- the number, form and amount of:
    - transferable securities issued, distinguishing between equity and debt securities and stating, for the former, the amount for which each security is paid-up and, for the latter, the term and the interest rate;
    - shares not represented by transferable securities;
    - other rights of any kind giving members entitlement to a share of the profits or corporate assets, whether in the form of securities or not.

60. Order 2736/MF on the tax identification of taxpayers requires companies to register with the General Tax Directorate in order to obtain a single tax identification number used by all the financial authorities. Article 18 of the Mauritanian Tax Code requires the legal entities concerned to provide the General Tax Directorate with information on changes relating to identification of the company or the composition of its capital. This covers the company name, legal form, purpose, term, registered office or place of principal establishment, capital increase, decrease or redemption, paying up of shares in full or in part, issuance, redemption or amortisation of debt represented by transferable securities, replacement of one or more senior managers or, for legal entities whose capital is not divided into shares, of one or more members. The companies concerned must make the corresponding declaration within one month and at the same time file a duly certified copy of the amending deed on unstamped paper.

61. Companies liable to tax on industrial, commercial and agricultural profits must file an annual return within the first three months of each year using the regulation form (Article 14 of the tax code). The annual return must be accompanied with a balance sheet and notes. Article 14 stipulates that the annual return must be established using a regulatory form provided by the tax authorities. This form includes a section on the breakdown of the Company's share capital which must be filled in with the identity information of each shareholder and the shares held both at the beginning and end of year. Under Article 82, companies which pay dividends and any natural or legal person habitually receiving transferable securities on deposit is required to send the Director General of Taxes, before 1 April each year, a statement indicating, for each beneficiary of income liable to the tax on investment income their first names, name or company name, profession or business, address or registered office and number in the national register of taxpayers, as well as the nature and amount of income received in the previous year. These provisions enable the tax authorities to maintain the updated information on the shareholders, including when there are no payments of dividends.

62. Article 36 of the Mauritanian Tax Code states that "All persons liable to tax on professional income are required:

- to send the Director General of Taxes a declaration of existence within twenty days of starting their activity in Mauritania using a regulation form for registration purposes;
- to file an annual return within the first three months of each year using the regulation form".

63. Tax on professional income is payable by natural or legal persons carrying on a profession which does not involve the purchase, processing or sale of goods or services. Such professions include, for example, accountants,

attorneys, officers of justice, auctioneers, notaries, tax advisers, medical practitioners and other medical professionals in private practice. The requirement to register and submit an annual return thus provides the tax authorities with information on the identity of the persons concerned.

64. It is apparent from the foregoing that information on the identity of the owners of partnerships and of companies with share capital (SAs, SARLs) is available from the tax authorities. This information is updated on the occasion of the annual return, including in the absence of dividend payment. Nonetheless, there are other provisions in Mauritanian law which ensure the availability of shareholders identity information, notably in the share register.

In practice

65. In Nouakchott, new businesses make their declaration of existence at the one-stop shop for business creation, as described above. After the tax authorities' representative at the one-stop shop has allocated the tax identification number, the General Tax Directorate registration department validates the number within 24 hours at most in JIBAYA, the tax authorities' database. The physical file is then forwarded to the department responsible for managing the new taxpayer's tax obligations.

66. The tax registration procedure for new businesses gives the tax authorities information on the identity of the owners of companies in the JIBAYA database when the companies are created (see the description of the business creation process above). This information is subsequently updated for all forms of company.

67. For partnerships, the information in the JIBAYA database is updated on the mandatory notification of share transfers to the one-stop shop for business creation (commercial register and tax authorities). The identity of the new partners is thus recorded in the tax authorities' database and is also available from the department responsible for managing the tax affairs of the partnership concerned.

68. For companies limited by shares, the information is updated from annual tax returns. The form provided by the tax authorities (pursuant to Article 14 of the Tax Code) contains a section on ownership of the share capital. The section contains boxes for identifying shareholders (first names and surname, address of tax domicile, number in the commercial register, number of shares at the beginning and end of the tax year, positions held in the company where relevant). According to the Mauritanian authorities, the proportion of companies submitting their tax return on time was generally around 90% during the review period. All those which fail to do so always file their returns after the first reminder issued by the large business directorate, especially as penalties for late filing are systematically imposed on all

defaulters. In addition, the prospect of discretionary assessment is sufficiently dissuasive to encourage defaulters to fulfil their declaration requirement. The tables below shows:

- the situation with regard to tax returns of the largest Mauritanian businesses (in terms of sales) during the review period. They are taxpayers managed by the large business directorate (DGE).

	2012	2013	2014	2015
Total number of taxpayers	216	228	275	309
Taxpayers which filed their returns on time	176	210	255	282
Compliance rate before a reminder	81%	92%	93%	91%
Taxpayers which filed their returns after a reminder	40	18	20	27
Compliance rate after a reminder	100%	100%	100%	100%

- the situation with regard to tax returns of the whole Mauritanian businesses during the review period.

	2012	2013	2014	2015
Total number of taxpayers	1 592	2 118	2 236	2 638
Taxpayers which filed their returns on time	1 428	1 928	2 085	2 468
Compliance rate before a reminder	90%	91%	93%	94%
Taxpayers which filed their returns after a reminder	164	190	151	170
Compliance rate after a reminder	100%	100%	100%	100%

69. The tax authorities therefore dispose in practice of up-to-date information on the identity of the owners of partnerships and companies limited by shares, even if Mauritania had no experience of exchanging information on the ownership of companies during the review period.

Share register

70. The transferable securities issued by companies limited by shares (SA, SAS and SCA) are the shares forming the share capital and bonds. Under Article 606 of the Commercial Code, shares and bonds may be in registered or bearer form. The owner of a transferable security may choose between registered and bearer form except where otherwise provided by law.

71. Under Article 606 of the Commercial Code, all companies limited by shares (SA, SAS and SCA) are required to keep a register of transfers at their registered office in which subscriptions and transfers of each class of registered transferable securities are entered in chronological order. The register is numbered and initialled by the president of the court. The right of holders

of transferable securities results from registration in the register of transfers, which is also valid with regard to third parties. Holders of registered securities issued by the company are entitled to obtain a certificate duly certified by the chairman of the board of directors or the manager.

72. The new article 20 of the Tax Code as amended in the 2016 Finance Act adopted in December 2015 also requires all companies limited by share (SA, SAS and SCA) keep in their registered office a share register, where subscriptions and transfers of each class of registered securities are included in a chronological order.

73. The keeping of the share register means that it is possible at any time to know the identity of persons holding registered shares in SA, SAS and SCA

74. The obligation to keep a share register does not exist for SARLs. However, these companies maintain all the information on their ownership since the company must be informed before any transfer of share is done (Article 358 of the Commercial Code). In addition, the number of partners in SARLs is limited to 50.

75. In practice, the Mauritanian tax authorities indicate that the share register is systematically made available to tax auditors during on-site tax audits, in the same way as any other accounting register. It may also be consulted during unannounced audits and during exercise of the right to information or the right of investigation with regard to the company. More than 265 taxpayers were audited during the review period. The authorities did not find any SA which failed to keep a share register. In addition, the tax authorities are always able to obtain information on the identity of shareholders of companies limited by shares from the annual tax returns, which necessarily contain the identity of the shareholders at the beginning and end of the tax year.

Foreign companies

76. Under Articles 39 and 43 of the Commercial Code, foreign companies are subject to the same registration requirements as Mauritanian companies if they have a permanent establishment in Mauritania. Any branch or agency of a commercial company or a trader having their registered office or principal establishment in a foreign country must be registered in the local commercial register of the place where it carries on its business in Mauritania. The registration procedure is the same as for Mauritanian companies. The same documents and information provided for at Article 47 of the Commercial Code and mentioned above must be produced.

77. Section 200 of the Commercial Code states that companies that operate in Mauritania or "those whose headquarters are located on the Mauritanian territory" are subject to the Mauritanian law and are therefore bound by the registration requirement in the commercial register. The same provision states that "the headquarter cannot be merely made of a PO Box where it is possible to locate the place of effective management somewhere else". Thus, a foreign company that has its place of effective management in Mauritania is regarded as having its headquarter in Mauritania and is therefore obliged to register with the Mauritanian commercial registry. The company should also maintain an updated ownership information in the share register kept at its office in Mauritania (article 606 of the commercial code).

78. In tax matters, foreign companies must also declare their existence in the same way as Mauritanian companies (Article 17 of the Tax Code). They must send the Director General of Taxes, within twenty days of starting their activities in Mauritania, a declaration of existence using the regulation form, stating:

- the company's name, legal form, main purpose and term, the address of its registered office and the place of its principal establishment;
- the date of the instrument of incorporation, a duly certified copy of which, on unstamped paper, must be attached to the declaration;
- the first names, surname and domicile of the managers and, for companies whose capital is not divided into shares, the first names, surname and domicile of each member;
- the nature and value of real and movable property constituting the contributions.

79. The declaration must also state in detail the nature of their activities in Mauritania and the first names, surname, number in the national register of taxpayers and address of their representative in Mauritania. Under Article 19 of the Tax Code, companies which, without having their registered office in Mauritania, carry on an activity there which renders them liable to tax on business profits must state in their annual return the place of their principal establishment and the first names, surname, number in the national register of taxpayers and address of their representative in Mauritania.

80. The provisions of Article 28 et seq. of the Tax Code institute a specific tax regime for foreign companies not resident in Mauritania, introduced by the 2013 Budget Act. These are companies which do not have a permanent establishment in Mauritania, are operating temporarily in the country for six months or less and exclusively provide services of all kinds to natural or legal persons liable to taxation on real profits and resident in Mauritania. This simplified taxation regime consists in a 15% withholding to be deducted from the income of non-resident foreign companies by the debtor established in Mauritania. This withholding discharges the taxpayer from all other taxes.

81. In practice, the registration procedure for the Mauritanian branches of foreign companies, whether commercial (allocation of the number in the commercial register) or fiscal (allocation of the tax identification number), is the same as for Mauritanian companies. The same information is therefore available in Mauritania, including information on the owners of the branch.

Information held by nominees

82. Mauritanian law makes no particular provision for nominees. Regarding proxies, the Commercial Code and the anti-money laundering legislation allow to know the identity of people using proxies.

Commercial law

83. Registered securities issued by companies with share capital are held by beneficial owners whose identities are known by the company. In the absence of a stock exchange in Mauritania, any transfer of shares of public limited companies (SAs) is registered in the share register maintained by the company. Therefore, the involvement of intermediaries is very limited, especially during the formation of the company. Article 206 states that the articles of association must, inter alia, bear the signature of all the members or their nominees, failing which they are null and void. Article 345 states that all the members of an SARL must be party to the instrument of incorporation, either in person or via a proxy on production of a special authorisation. Likewise, Article 406 states that on the formation of a *société anonyme*, the articles of association must be signed by the shareholders either in person or by a proxy with special authorisation. According to the Mauritanian authorities, the special authorisation is to be understood in relation to the general power of representation which the members of certain professions, such as attorneys, have in relation to their clients. Thus, a special authorisation is one which entitles the proxy to accomplish only the act for which it has been granted, in this case signing the articles of association, to the exclusion of any other act. The power of attorney will thus include the identity of the principal and the proxy as well as the special authorisation. As the identity of the members must be given in the articles of association, the proxy will necessarily have to enter the name of the person on whose behalf he or she signs them.

Anti-money laundering legislation

84. Act 2005-048 of 27 July 2005 (the AML/CTF Act) sets out the provisions relating to the prevention of money laundering and terrorist financing in Mauritania. Under Article 6, all natural or legal persons are required to identify their customers if, even in the course of their professional activity, they carry out, supervise or give advice on transactions entailing deposits,

exchanges, investments, conversions or any other movements of funds or assets. They include:

- the central bank of Mauritania;
- the post office;
- financial organisations;
- members of the legal professions, including attorneys, notaries, statutory auditors, chartered accountants and other auditors where they prepare or carry out transactions for their clients or assist them, outside any legal proceedings, in the context of the following activities:
- buying or selling all assets, including all real property of commercial enterprises or businesses;
- handling money belonging to third parties or other assets belonging to the client;
- opening or managing bank, savings or securities accounts;
- creating, operating or managing legal entities or legal arrangements.

85. Other persons governed by anti-money laundering legislation in Mauritania include dealers in precious metals and stones whose customers carry out financial transactions equal to or greater than a threshold set by the central bank, estate agents who buy or sell real property for their clients, travel agents, for which the supervisory authorities must draw up guidelines for vulnerable transactions, non-governmental organisations, non-profit associations and co-operatives.

86. Article 7 of the anti-money laundering law stipulates that "the State shall organise the legal framework in such a way as to guarantee the transparency of economic relations, inter alia by ensuring that company law and legal arrangements for the protection of property do not permit the constitution of fictitious or shell entities". Financial organisations must satisfy themselves of their customers' identity and address before opening an account, taking custody of securities, notes or other effects, allocating them a safe deposit box or entering into any business relations with them.

87. A company or branch is identified by the production of the original copy of the articles of association or any document proving that it has been legally registered in the commercial register and that it has a genuine existence. Under Article 9, financial organisations must satisfy themselves under the same conditions of the real identity and address of the managers, employees and nominees acting for others. The latter must produce original documents certifying the delegation of power or power of attorney granted to them and of the identity and address of the beneficial owner. The beneficial

owner is deemed to be the person(s) who effectively benefit(s) from the transaction or amounts concerned, including the principal on whose behalf the nominee acts. No customer may invoke professional secrecy as grounds for refusing to communicate the identity of the beneficial owner.

88. Non-financial professions are required, under the responsibility of their supervisory authorities, to take appropriate measures enabling them to know their customers and detect suspicious transactions.

89. In conclusion, the commercial law allows to know the identity of shareholders in cases where they are represented in the signing of the memorandum of association by agents. Additional requirement are made by the AML/CTF law for some professionals who might act on behalf of their clients. In practice, the representatives of the one-stop shop for business creation confirmed that the articles of association submitted on creation of the business always contain the identity of the members or shareholders in person and never that of a nominee. That information is verified in particular against the list of members or shareholders that must be included in the supporting documents provided with the application to create a business.

Bearer shares *(ToR A.1.2)*

90. Mauritanian companies issue shares in return for their members' contributions. They represent the members' rights and are called *actions* in companies limited by shares and *parts sociales* in other companies (Article 221 of the Commercial Code).

91. Mauritanian law allows companies limited by shares (SA, SAS and SCA) to issue bearer shares. Article 606 of the Commercial Code states that shares and bonds may be in registered or bearer form. The owner of a transferable security may choose between registered or bearer form except where otherwise provided by law.

92. At the time of the creation of the company, information on the identity of the initial owners of registered or bearer shares is available from both the commercial register and the tax authorities.

93. During the lifetime of the business, transfers of registered shares are known to the company. As registered shares are not issued in material form, the owner's right deriving merely from the corresponding entry in the share register. Registered shares are transferred with regard to third parties by their registration in the register kept for that purpose.

94. However, bearer shares are transferred by simple delivery, the bearer of the share being deemed to be its owner. In case of transfer of bearer shares, ownership information is available in most cases through the annual tax return system and the registration duty of the transfer instrument. In

addition, a new tax reporting obligation requires the transferor to report the transfer of bearer shares to the tax administration. However, the enforcement of these obligations by the Mauritanian tax authorities raises concerns where the transferor is not within the jurisdiction of Mauritania. In such situation, the holder of bearer shares would only be identified when he exercises his shareholder's rights, unless he voluntarily decides to declare the transfer in Mauritania. Law applicable during the evaluation period

95. The Mauritanian law applicable during the evaluation period should ensure the identification of the owners of bearer shares in the event of transfer. First, all instruments transferring shares, including bearer shares, are liable to registration duty. Secondly, the company should include in its annual return the identity of all shareholders both at the beginning and end of year. However, these two requirements may not ensure the availability of the information in all cases. It may be difficult to enforce the registration duty obligation with respect to shareholders who are not located in Mauritania, especially in situations where the holder of bearer shares doesn't exercise his shareholder's rights. Regarding the annual return system, since there is no obligation for shareholders to notify the transfer of share to the company, the latter may not know who the transferor of bearer share is in order to include his identity in the annual return filed with the tax administration.

Commercial law

96. Under Article 410 of the Commercial Code, it is possible to obtain information on the identity of persons who have subscribed the share capital (including the holders of bearer shares). The identity of persons who have subscribed the share capital could be obtained from the notarial declaration of subscription and payment held by notaries on the creation of SAs or on a capital increase or from the statutory auditor's report (for contributions in kind). The list of subscribers is kept by the notary. The subscribers may consult and they may obtain a copy at the notary's office. However, this provision remains very inadequate. The subscription forms or the subscription declaration concern only shares subscribed on formation of the company or on a change in its share capital. It is still impossible to obtain information on the ownership of bearer shares that have been transferred.

97. Article 509 of the Commercial Code states that an attendance sheet must be kept at each shareholders' meeting, containing the first names, surname and domicile of the shareholders and, where relevant, their nominees, and the number of shares and votes they hold. The attendance sheet, to which are attached the proxy forms received by shareholders or sent to the company, must be initialled by the shareholders present and by the nominees of shareholders represented and certified by the officers of the meeting. The attendance sheet is kept by the company and can provide information on the

identity of shareholders, including those holding bearer shares. However, this obligation does not provide information on the owners of all bearer shares, insofar as they are not required to attend or be represented at shareholders' meetings, which are quorate once a certain quorum is reached. A shareholder holding bearer shares who does not attend and is not represented would not appear on the attendance sheet and would be unknown to the company.

98. Furthermore, article 505 of the Commercial Code states that the articles of association may make the right to attend shareholders' meetings conditional either on the shareholder's registration in the company's share register or on the deposit of bearer shares at the place stated in the notice of meeting or on presentation of a certificate of deposit issued by the institution where the shares are deposited. Use of this prerogative could provide information on the ownership of bearer shares, but only if their owners wish to take part in meetings. In addition, use of the verb "may" indicates that it is merely an option left to the company's discretion, not an obligation.

Tax law

99. Article 14 of the tax code stipulates that the annual return must be established using a regulatory form provided by the tax authorities. This form includes a section on the breakdown of the Company's share capital which must be filled in with the identity information of each shareholder and the shares held both at the beginning and end of year. These information are included in the annual tax return of each company regardless the form of the shares (registered or bearer). Therefore, in the case of a company that had issued bearer shares, the ownership information would be available in the annual return filed with the tax administration. However, in the event of a transfer of bearer shares, it would be difficult for a company to know who the owner is, if the company is not notified by the transferor as there is no obligation for the transferor to do so, unless the transferee wants to exercise his shareholder's rights.

100. Under Article 281 of the Tax Code, instruments transferring shares are liable to registration duty at a 2.5% rate. Article 308 states that notaries and other public officers and the administrative authorities may not issue or draw up an instrument by virtue or as a consequence of an instrument subject to the registration formality, annex it to their records, receive it on deposit or issue a duplicate, excerpt or certified copy before the initial instrument has been registered, provided that the time limit for registration has not expired. Any delay in filing an instrument for registration or in paying the duty is sanctioned by the payment of an additional duty or a fine equal to 100% of the amount of duty payable. Where default is attributable to the notary or any other person responsible for presenting the instrument for registration, he or she is personally required to pay the fine. "Instrument" means any written

document expressing the will of one or more persons, whether notarised or a private deed. Registration of transfer instruments applies to all forms of share, including bearer shares. It also applies to all companies registered in Mauritania, even if the owner of the share is a non-resident, and whatever the place of transfer.

101. The registration formality should mean that the authority responsible for registration has information on transfers of shares, including bearer shares, and on the identity of the owners. However, as bearer shares may be transferred by simple delivery, it cannot be ruled out that their transfer is not materialised in writing, whence the risk of avoiding the registration requirement. Therefore, it may be difficult for the tax authorities to enforce this obligation with respect to shareholders who are not located in Mauritania.

102. Dividends are taxed in Mauritania as investment income (Article 73 et seq. of the Tax Code) at a 10% rate. The tax is levied by a withholding in favour of the Treasury made on each dividend payment by the natural or legal person making the payment. Companies which pay proceeds referred to Article 73 such as dividends are required to send the Director General of Taxes, before 1 April each year, the minutes and excerpts from the discussions of the board of directors' or shareholders' meetings or, if no discussion has taken place, a certificate stating the profits or proceeds actually distributed during the previous year (Article 82 of the Tax Code).

103. Under Article 82, companies which pay dividends, bankers, public officers and any natural or legal person habitually receiving transferable securities on deposit is required to send the Director General of Taxes, before 1 April each year, a statement on a regulation form indicating, for each beneficiary of income liable to the tax on investment income:

- their first names, name or company name, profession or business, address or registered office and number in the national register of taxpayers;
- the nature and amount of proceeds or income received in the previous year.

104. Books, records and documents that allow for verification and audit of the tax must be retained and provided to tax officials on request until the end of the third year following the year in which the payments were made.

105. The provisions of Article 82 enable the tax authorities to identify all the shareholders who have received dividends, including those who hold bearer shares. In this case, however, there has to have been a dividend payment. In other words, there are two instances where such information is not provided to the tax authorities: first, where the company has not made a profit giving entitlement to dividends; second, where the company decides not to pay a dividend even if it has made a profit. In either case, the company is

under no obligation to provide the identity of the beneficiaries of dividends to the tax authorities because no dividend has been paid.

106. Furthermore, the term beneficiary as mentioned in Article 82 is not defined. It is unclear whether the nominee of a holder of bearer shares could be deemed the beneficiary of the dividends paid by the company, in which case the authorities will have information on the identity of the nominee but not of the real owner. Thus, the provisions of the Tax Code relating to the taxation of dividends provide very limited information on the identity of the owners of bearer shares.

New tax obligation applicable as from 1 January 2016

107. The new article 20 of the Tax Code as amended in the 2016 Finance Act adopted in December 2015 requires all companies that issue bearer shares to report to the Tax authorities and disclose the identity of their owners indicating their full name and address, within 30 days from the date of issue. In case of transfer of bearer shares, the seller must also, within 30 days after the transfer, notify the tax authorities indicating the full name and address of the transferee and the date from which the transfer is effective. Finally, companies that have already issued bearer shares before 1 January 2016 are required to identify their holders and disclose their identity with the tax authorities before 30 June 2016.

108. This new tax requirement is likely to ensure the availability of the identity information of holders of bearer shares in Mauritania. However, the holder of such shares might not be known if the transferor fails to report the transfer to the tax authorities. This obligation is based on the tax administration's ability to ensure the effectiveness of the declarations. However, there are concerns regarding the enforcement of this tax requirement where the transferor is not located in Mauritania.

Conclusion

109. Mauritanian laws ensure that the owners of bearer shares are identified in most of circumstances. At the time of the creation of the company, the ownership information on the initial owner of bearer shares is always available through the commercial register and the tax authority. In case of transfer, this information is also available in most of the cases through i) the annual tax return filed with the tax authorities ii) the registration duty of the instruments transferring bearer shares and iii) the new tax reporting requirements binding the transferor. However, where the transferor of bearer shares is not within the jurisdiction of Mauritania and does not notified the company with the name of the new owner, these obligations are unlikely to be effectively enforced. But, even in these cases, the ownership information would still be

available where the holder of bearer shares exercises his shareholder's rights in the company. The holder of bearer shares would therefore be identified where i) dividends are paid, ii) an increase in its capital occurs or iii) the holder attends a shareholder meeting.

110. In conclusion, Mauritanian laws may not sufficiently ensure that the owner of bearer shares can be identified where the transferor is outside of the jurisdiction of Mauritania or where the company is not notified with the name of the new owner, except if the owner exercises his shareholder's rights. It is therefore recommended to Mauritania to ensure the availability of the identity information of the owner of bearer shares in all circumstances.

In practice

111. The Mauritanian authorities are of the view that there are no bearer shares in Mauritania because only SAs and SCAs may issue such securities. The large business directorate, which oversees most SAs (Mauritania had 487 SAs at 31 December 2014, of which 180 were managed by the large business directorate) was unaware of any companies that had issued bearer shares. No peer has requested information related to bearer shares. However, the law still allows for them to be created.

112. During the review period, the relevant provision of the commercial and tax laws ensured the identification of the owner of bearer shares at the time of the formation of the company, in case of an increase of its capital, in case of attendance to the shareholder meetings, or when dividends are paid. In addition, the annual returns filed with the tax authorities by each company always contain the identity information of each shareholder and the shares held both at the beginning and end of year. As shown above under the section *Publication and registration formalities/tax requirements,* the compliance rate with the annual returns obligation was high during the review period: 90% in 2012, 91% in 2013, 93% in 2014 and 94% in 2015. After a reminder, the remaining taxpayers always file their return. Thus, unless a company does not know the name of the owner of bearer share in case of transfer, the ownership information would be available through the annual return.

113. The registration formality that could have ensured the identification of owners of bearer shares in the event of transfer was not effective in practice. Registration duty is collected not by the General Tax Directorate but by the General Directorate of Estates, Registration and Stamps. Also part of the Finance Ministry, it is the authority responsible for managing registration duty. For years, however, including during the review period, its action in that area was ineffective. A registration department had been created in 2008 with an office in the law courts complex in order to register judicial instruments.

The department was turned into a registration directorate in 2014 as part of the ongoing reform of the registration of instruments in Mauritania, but the directorate does not yet perform its duties effectively due to the lack of an organisation and resources truly dedicated to registration. To give an example, the registration directorate does not carry out any inspection of notaries' offices in order to see whether all instruments drawn up before them and liable to registration duty, such as share transfers, are indeed presented for registration. Consequently, no information is available in the directorate concerning, for example, the number of shares transferred in Mauritania during the review period. The authorities in charge of the directorate acknowledged that in the absence of any effective binding power over the persons required to register transfer instruments, registration was in practice virtually voluntary. That does not ensure the effectiveness of the registration of transfers of bearer shares and hence the availability of information on the identity of the owners of bearer shares in the event of transfer.

114. The implementation of the new Article 20 of the Tax code from 1 January 2016 is expected to significantly improve the availability of information on the identity of holders of bearer shares. However, this new provision has not been tested in practice.

115. In conclusion, the identification of owners of bearer shares should be possible in most cases thanks to the enforcement of the commercial and tax provisions. Therefore, it is recommended to Mauritania to ensure the effective enforcement of the registration formality in case of transfer of shares regardless of their form and to monitor the effective implementation of the new obligation for the issuing company and the transferor to disclose the identity of the owner of bearer shares.

Partnerships *(ToR A.1.3)*

116. Articles 303 et seq. of the Commercial Code provide for different classes of partnerships, namely *sociétés en nom collectif* (general partnership, SNC), *sociétés en commandite simple* (limited partnerships, SCS) and *sociétés en participation* (joint ventures, SP).

- A **SNC** is one in which all the partners are traders with indefinite and joint liability for the partnership's debts (Article 304 et seq. of the Commercial Code). The capital is divided into shares having the same par value. All the partners are managers unless provided otherwise in the articles of association, which may appoint one or more managers, who may be partners or not, or provide for such appointment by a subsequent deed. In relations with third parties, the manager commits the company by acts falling within the corporate purpose. If a legal entity is a manager, its managers are subject to the same conditions and obligations and incur the same civil and

criminal liability as if they were managers in their own right, without prejudice to the joint liability of the legal entity they manage. There were no SNC in Mauritania at 31 December 2015.

- A **SCS** (Article 319 et seq. of the Commercial Code) is one in which one or more partners indefinitely and jointly liable for the partnership's debts, called managing partners, coexist with one or more partners liable for the partnership's debts only up to the amount of their contribution, called limited partners. The capital is divided into shares. An SCS is managed by all the managing partners unless provided otherwise in the articles of association, which may appoint one or more managers from among the managing partners or provide for such appointment by a subsequent deed under the same conditions and with the same powers as in an SNC. There were five SCSs in Mauritania at 31 December 2015.
- A partnership is said to be a **joint venture** where the partners agree that it will not be registered (Article 333 of the Commercial Code). It does not have legal personality and is not subject to a notification requirement. It may be proved by all means. The partners freely agree as to the purpose, operation and conditions of the joint venture provided they are not against the law. Unless a different arrangement has been made, relations between partners are governed by the provisions applicable to SNCs. Because they are not subject to registration, the number of joint ventures is unknown.

117. Mauritanian law makes no distinction between companies with share capital and partnerships with regard to registration, declaration and payment of tax obligations.

118. The registration of partnerships is governed by the Commercial Code, especially Articles 29 to 80, which lay down common rules applicable to all companies created under Mauritanian law. The registration formalities for partnerships are the same as for SARL, SCA and SA as described in Section A.1.1 above.

119. Article 39 of the Commercial Code requires all incorporated enterprises to register in the commercial register within three months of their formation, while Article 41 states that the registration application must be filed with the registry of the competent court of the place where the registered office is located. Under Article 47, the application must include, for commercial companies, the first names and surnames of the members other than the shareholders and limited partners, their date and place of birth and nationality and the number of their national identity card or, for non-resident foreigners, the number of their passport or any other equivalent identity document. Under Article 52, in the same way as for companies with share capital, an amending entry must be requested for any change to or amendment of such information.

120. SNCs and SCSs are not required to maintain a register stating the identity of partners and the number of shares held by each one. Under the Commercial Code, however, shares in partnerships may not be represented by transferable securities. They may be transferred only with the consent of all the partners and any provision to the contrary is deemed inoperative (Article 315). The transfer of shares must be in writing and can only bind on the company after the filing a copy of the deed at the registered office. The manager must issue a certificate of deposit to the depositor (Article 316). Thus, the identity of all partners in an SNC or SCS is always known, whatever their function. The tax authorities can obtain the information at any time by using their powers of access to information, discussed in Section B below.

121. Tax registration formalities are identical to those described above for companies with share capital. Partnerships must register with the General Tax Directorate in order to obtain a common tax identification number. More specifically, under Article 17 of the Tax Code, partnerships liable to tax on business and farm profits must send the Director General of Taxes, within twenty days of their final constitution or of starting their activities in Mauritania, a declaration of existence using the regulation form, stating:

- the partnership's name, legal form, main purpose and term, the address of its registered office and the place of its principal establishment;
- the date of the instrument of incorporation, a duly certified copy of which, on unstamped paper, must be attached to the declaration;
- the first names, surname and domicile of each partner;
- the nature and value of real and movable property constituting the contributions;
- the number, form and amount of the shares.

122. Partnerships are required, under the same conditions as companies with share capital, to inform the tax authorities within one month of any changes affecting the information provided on their creation, especially changes of partner.

123. The documents, statements and information which must be provided according to the declaration form are an integral part of the declaration and must be appended to it. They include the following:

- annual financial statements (balance sheet, income statement and any notes),
- reports to the shareholders' meeting and its discussions (including the attendance sheet).

124. The information kept in the commercial register is also held by partnerships and the tax authorities. Consequently, the identity of the partners of SNCs and SCSs is available and up-to-date.

125. In practice, the procedure for creating and registering businesses in Mauritania is the same whatever the form of the business (see above for companies with share capital). The procedure ensures the availability of information on the identity of partners of partnerships in practice and the information is updated not only in the commercial register but also in the tax authorities' database and in taxpayers' files.

Trusts *(ToR A.1.4)*

126. There is no provision for the constitution of trusts in Mauritanian law and Mauritania is not a signatory of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. The notion of *fiducie* is not recognised either. It is therefore impossible to create a trust or similar structure in Mauritanian law. However, there is nothing in Mauritanian law to prevent a trust created in a foreign country from being administered in Mauritania or to prevent assets located in Mauritania from forming part of a foreign trust.

127. Where a trust governed by the law of a foreign country is administered in Mauritania, there is no specific requirement to register with the public authorities. However, the registration requirement in the prevailing legislation (Article 39 of the Commercial Code) applicable to all natural or legal persons, whether Mauritanian or foreign, carrying on a commercial activity in Mauritania applies to foreign trusts. Thus, a person acting as a trustee in Mauritania who carries on a commercial activity must register in the commercial register. In this case, the same information as required from any company seeking registration will be transmitted to the registry, including the identity of the settlor, the beneficiary and the protector, as well as the assets of the trust.

128. From a tax standpoint, Article 17 of the Tax Code requires natural or legal persons liable to tax on business and farm profits to send the Director General of Taxes a declaration of existence within twenty days of their final constitution or of starting their activities in Mauritania. This must state their company name, legal form, main purpose, term, the address of their registered office and the place of their principal establishment, the date of the articles of association, a duly certified copy of which, on unstamped paper, must be attached to the declaration, the first names, surname and domicile of the managers and, for companies whose capital is not divided into shares, the name, first names and domicile of the members and the nature and value of real and movable property contributed. This provision could apply to trusts. Thus, trustees residing in Mauritania who carry on a commercial activity there are required to register for tax purposes.

129. Under Article 36 of the Tax Code, the registration requirement applies in full where a trustee residing in Mauritania practises a legal profession (attorney, notary, tax adviser, chartered accountant, etc.). It states that any person liable to tax on professional income is required for registration purposes to send the Director General of Taxes a declaration of existence within twenty days of starting their activity in Mauritania and to produce a declaration of income within the first three months of each year, in both cases using the regulation form.

130. Consequently, information on the ownership of trusts created in a foreign country but administered in Mauritania should in the majority of cases be available in Mauritania under its company and tax law.

131. In practice, any person acting as a trustee in Mauritania is required to register with the commercial register and the tax authorities insofar as their activity, even if it consists solely in managing the assets of a trust created in a foreign country, is liable to be of a commercial nature and to generate taxable income. The trustee must therefore follow the same registration procedure as any other natural or legal person, which culminates in the allocation of a number in the commercial register and a tax identification number. In particular, the procedure enables the commercial register and the tax authorities to obtain information about the other people involved in a trust administered in Mauritania, because if the trustee resident in Mauritania does not disclose the identity of the settlor or beneficiary, the tax authorities will consider the income generated by the trust to be the trustee's and will tax it accordingly. That information will be updated when annual tax returns are filed. At the time of the on-site visit, however, the Mauritanian authorities said that they had not been aware of any foreign trust administered in Mauritania to date.

Anti-money laundering legislation

132. Under Article 6 of the AML/CFT Act, members of the legal professions, including attorneys, notaries, statutory auditors, chartered accountants and other auditors are required to identify their clients where they prepare or carry out transactions for them or assist them, outside any legal proceedings, in the context of the following activities:

- buying or selling all assets, including all real property of commercial enterprises or businesses;
- handling money belonging to third parties or other assets belonging to the client;
- opening or managing bank, savings or securities accounts;
- creating, operating or managing legal entities or legal arrangements.

133. Legal professions are also included in the list of non-financial professions within the meaning of Article 1 of the Act, which defines them as "estate agents, dealers in precious metals, dealers in precious stones, attorneys, notaries, other independent legal and accounting professions, company service providers and trusts (providing services on a commercial basis)". Trusts are thus among the structures or "legal arrangements" which may involve members of the legal professions in Mauritania. Consequently the professionals concerned are required, under the responsibility of their supervisory authority, to take appropriate measures enabling them to know their customers and detect suspicious transactions. They are likewise required to keep information on the identity of their customers and the beneficial owners of any foreign trusts they administer in Mauritania.

134. Article 2 of joint order no. 137/MJ/BCM introducing provisions for the implementation of Act 2005-048 by attorneys and notaries states that they "must satisfy themselves of the identity and address of their customers before entering into any business relations". They are also required to "verify the identity and address of the real persons responsible or nominees on the basis of the production of original documents certifying the delegation of powers and those of the beneficial owner". Documents relating to the identity of customers must be kept for ten years. Consequently, professionals acting as trustees in Mauritania are required to identify their customers (settlors or beneficiaries). This requirement does not apply to non-professional private individuals who act as trustees in Mauritania. According to the Mauritanian authorities, however, the likelihood of having non-professional trustees in Mauritania is virtually non-existent.

135. In practice, even if trustees resident in Mauritania do not exercise a legal profession such as attorney, notary, chartered accountant or tax adviser, it is almost impossible for them not to perform commercial acts in connection with the management of the trust's assets. Any person whose activity habitually involves commercial acts is a trader and is required to register in the commercial register as described above. In addition, non-professionals who manage assets in Mauritania that form part of a trust constituted in another country are still bound by the same tax obligations as anyone else if they draw income from the activity. Compliance with those obligations should make it possible for information on the participants in a trust to be disclosed to the tax authorities.

136. Thus, although Mauritanian law does not permit the creation of trusts in Mauritania, it does not prevent a trust created under the laws of a foreign country from being administered in Mauritania. In such cases, commercial, tax and anti-money laundering laws ensure to a considerable extent that information on the identity of the members of the trust (trustee, settlors or beneficiaries) is available.

Foundations *(ToR A.1.5)*

137. Mauritania does not have a specific law governing foundations, though their existence is recognised since Article 15 of the Constitution states that "*Waqf* assets and foundations are recognised: their allocation is protected by law".

138. According to the Mauritanian authorities, Act 64-098 of 9 June 1964 on associations as amended by Act 73-007 of 23 January 1973 and Act 73-157 of 2 July 1973 applies to foundations. Article 1 of the Act defines an association as "the agreement by which several persons permanently pool their knowledge or their activity for a purpose other than to share the profits". Associations therefore pursue a common interest goal and not purposes of a private nature.

139. Under Article 3, associations cannot be formed or carry on their activities without prior authorisation issued by the Interior Minister. Applications for authorisation must be sent to the head of the administrative district where the association operates and to the Interior Ministry. To be admissible, they must state:

- the association's name and purpose and the place where it operates or where it has its establishments,
- the name, profession, domicile and nationality of those who, in any way whatsoever, are responsible for the association's administration or management.

140. Article 12 states that duly authorised associations may not enjoy legal capacity until notification formalities have been completed. Within one month after the Interior Minister has granted authorisation, the declaration of association is made public by the insertion in the Official Journal of a notice stating the association's name and purpose, its registered office, the persons responsible for its administration and the number and date of the ministerial authorisation. Any person is entitled to request the articles of association and declarations of authorised associations from the administrative district secretariat or the Interior Ministry.

141. Under Article 14, associations are required to report any change occurring in their administration or management and any amendments to their articles of association within three months. The amendments must be declared to the administrative district secretariat or the Interior Ministry and state:

- the first names, surname, profession, domicile and nationality of the persons newly responsible for the association's administration or management (Article 18 of the AML/CFT Act states that these are the president, vice-president, secretary general, members of the board of directors and treasurer, as applicable);

- changes made to the articles of association;
- newly founded establishments;
- change of address in the place where the registered office is located;
- acquisitions or disposals of the premises and buildings specified in Article 11, with a description and indication of the purchase or sale price. A receipt for the declaration is issued.

142. Under Articles 19 and 20 of the AML/CFT Act, any donation made to a non-profit association or organisation must be entered in a register kept by the association or organisation, including the donor's full contact details. The register must be kept for ten years and provided on request to any authority responsible for the supervision of non-profit organisations.

143. Under Article 15, amendments to the articles of association and changes occurring in the administration or management of the association must be entered in a register kept at the association's registered office, which must be presented on request to the administrative and judicial authorities. They are subject to the same notification formality as the authorisation of the association, and within the same time limit.

144. Foreign associations are governed by the same rules as Mauritanian associations. Groupings displaying the characteristics of an association which have their registered office in a foreign country or have foreign directors or of which at least a quarter of the members are foreigners are deemed to be foreign associations, whatever the form behind which they may conceal themselves.

145. As associations are not allowed to make a profit, their activities are by definition not liable to income tax. They are therefore not required to register with the tax authorities as provided by the Tax Code. However, associations with salaried employees are bound by tax obligations relating to the tax on wages and salaries. They are thus required to declare their existence and obtain a tax identification number and submit regular tax returns in respect of the tax on wages and salaries.

146. The specific legal arrangements applicable to development associations are set out in Act 2000-043 of 26 July 2000. They are also governed by the provisions of the 1964 Act as amended but benefit in addition, subject to prior approval, from tax advantages affecting indirect taxes in particular.

147. Under the prevailing legislation, information on the identity of the managers of associations and foundations, including foreign foundations carrying on activities in Mauritania, are available and kept up-to-date both on the premises of the association or foundation and in the locally competent offices of the Interior Ministry. Under Mauritanian law, the members of a

foundation are not permitted to designate the beneficiaries in advance. The non-profit and general-interest nature of foundations prohibit them from sharing the fruits of their activities between members and from knowing in advance the persons who will benefit from them.

In practice

148. Two ministries are involved in the life of associations in Mauritania, namely the Interior Ministry and the Ministry for relations with parliament and civil society. The Interior Ministry ensures that associations are lawful on creation and in the performance of their activities. The physical files of associations are kept at the ministry, which has a database of associations which legally exist in Mauritania. Associations file annual reports with the Interior Ministry rendering account of their activities during the year and indicating any major change in the life of the association such as a change of registered office or managers. According to the ministry, associations generally comply with the requirement to file an annual report.

149. The Ministry for relations with parliament and civil society is the contact partner for civil society organisations, which generally take the form of an association. It registers all associations which spontaneously apply to the ministry for recognition as a civil society organisation. Although an association's legal existence is effective as of its authorisation by the Interior Ministry, recognition of civil society organisation status and the benefit of various advantages attached to such status, such as financial support, are conditional on their declaration to the Ministry for relations with parliament and civil society, which issues a certificate of regularity after registering the association. To that end, the association must produce a copy of its articles of association and a list of its members and managers. Among the associations registered at the date of the on-site visit, the Ministry for civil society listed five foundations, all of which have a charitable purpose and pursue public interest goals. Draft legislation on associations is being discussed, defining a status and specific rules for foundations.

150. From a tax standpoint, associations with salaried employees must apply for registration under the same conditions and according to the same procedure as all other taxpayers. Consequently, information about the founders and managers of the association is contained in the tax authorities' JIBAYA database and in the tax files held by the public entities directorate, which is the tax department responsible for managing the tax affairs of non-profit organisations. During the on-site visit, the public entities directorate had 194 non-profit organisations in its database. Mauritania did not have any occasion during the review period to exchange information on the ownership of foundations.

Waqfs

151. Mauritania's constitution recognises "*waqf* assets" without giving any more details. A *waqf* is an institution in Islamic law which has its origin in charity. As a general rule, a *waqf* is a donation in perpetuity made by a private individual to a work of public, pious or charitable interest (a foundation). The asset given in usufruct becomes inalienable, though it remains the donor's property. A *waqf* is managed by an administrator who uses the profits in accordance with the donor's wishes.

152. In Mauritania, *waqf* assets are donations made by natural or legal persons to serve a charitable purpose. Donations may be in cash or kind (a house, a mosque, etc.), and donations in kind may be temporary or final. In all events, donations are intended for specific persons or groups of persons recognised as being in need. *Waqf* assets are managed by a public agency called the *Établissement National des Awghafs*, created by Decree no. 97-057 of 8 January 1997. Placed under the aegis of the Ministry of Culture and Islamic Orientation, the agency is responsible for accepting, administering and guaranteeing the proper use of *waqf* assets. According to the Mauritanian authorities, adducing the above-mentioned decree, there are no private *waqfs* in Mauritania, since all *waqf* assets must be made available to the public agency. From this standpoint, *waqfs* in Mauritanian practice appear to be of limited interest with regard to information exchange for tax purposes.

153. In practice, assets may be donated to a *waqf* by notarised deed, before a mosque imam or before two witnesses. *Waqfs* may be constituted privately or for a general interest purpose. A private *waqf* aims to protect close relatives in a family context, such as the most underprivileged family members or those who, for example, are not entitled to inherit. Private *waqfs* are very often constituted by private deed, especially before witnesses or an imam and are in principle not declared to the *Établissement National des Awghafs*. Unlike a public *waqf,* however, the assets donated to a private *waqf* are not exempt from tax. In other words, they are fully taxable in the hands of their owner, i.e. the person who constitutes the *waqf.* Thus, the tax authorities have information on the ownership of *waqf* assets.

154. Unlike a private *waqf* constituted in a family context, a public or general *waqf* is constituted with a view to performing a work of a public or educational nature, building a mosque or helping the poor. Public *waqfs* are almost always constituted by notarised deed and registered with the *Établissement National des Awghafs*. The assets of a public *waqf*, generally buildings, are exempt from tax provided that they have been donated to the *Établissement National des Awghafs*. In order to register the assets donated to the *waqf*, the *Établissement National des Awghafs* requires a written document, a photocopy of the donor's identity document, a declaration from the notary and proof of ownership of the asset. Information about the identity of

the owners is therefore kept at the *Établissement National des Awghafs*. The authorities of that institution explained that people wanting to constitute a *waqf* increasingly prefer the public *waqf*, which guarantees respect of their will even after death because the assets are managed by a public body. In addition, the certificate delivered by the *Établissement National des Awghafs* can be useful in raising funds that will enhance the *waqf*'s assets. At the time of the on-site visit, the *Établissement National des Awghafs* counted 176 registered *waqfs*. Draft legislation on the *waqf* in Mauritania is being discussed. In particular, it would give general competence in the matter to the *Établissement National des Awghafs*.

Other entities

Economic interest groupings

155. Under Article 761 of the Commercial Code, an economic interest grouping is an entity formed between two or more natural or legal persons for a fixed term with a view to using all means likely to facilitate or develop its members' economic activity and to improve or increase the results of that activity. The grouping's activity is linked essentially to the economic activity of its members and may not be additional to it. It does not in itself generate or distribute profits, especially as the grouping may be formed with or without capital.

156. Under Article 50 of the Commercial Code, economic interest groupings are required to request registration with the registrar of the locally competent court of the place where they have their registered office. Their registration declaration must state:

- the grouping's name;
- the address of its registered office;
- a brief description of its purpose;
- its term;
- for each individual who is a member, the information required for the registration of individual traders and, where relevant, the registration number in the commercial register;
- for each legal-entity member, the company name, legal form, address of the registered office, corporate purpose and, where relevant, the registration number in the commercial register;
- the first names, surname and address of the members of the management bodies and the persons responsible for management control and audit, together with the information set forth at Article 44, paragraph 3 and 4 and, where relevant, paragraph 6;

- the date on which the agreement creating the grouping is filed at the registry and the filing number.

157. Under Article 52, amending entries must also be made in the event of any change of or amendment to information which must be registered in the commercial register.

158. Economic interest groupings which carry on a commercial activity must also register with the tax authorities like any other company, in accordance with the provisions of the Tax Code analysed above.

159. Registration of economic interest groupings in the commercial register provides information on the members, whose identity is kept in the same register.

160. In practice, the commercial and tax registration procedure for economic interest groupings is the same as for any other legal person. The identity of owners is available from the commercial register and the tax authorities. No economic interest grouping had been created in Mauritania at the date of the on-site visit.

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

Penalties for failure to register

161. There are various penalties in Mauritanian law intended to ensure compliance with the provisions of the Commercial Code on company registration, whatever the form of company. As a general rule, an unregistered company is deprived of legal capacity and therefore has no legal existence. That is the case in particular for joint ventures which, as they are not required to register, are governed only by the general principles of law applicable to contracts and obligations.

162. Under Article 64 of the Commercial Code, any trader, any manager or member of the management bodies of a commercial company, any director of a branch or agency of an establishment or commercial company, or any natural or legal person required by the provisions of the Commercial Code to register in the commercial register who does not apply for the mandatory registrations within the given time limits is served official notice to do so by the authorities. If the person has failed to rectify the situation within one month after service of notice, they are liable to a fine of MRO 10 000 to 50 000 (USD 29 to 148). Article 65 states that the fine is ordered by the competent court of the place where the party concerned is located on an application from the member of the judiciary responsible for overseeing the commercial register. The competent court orders that registration must be

made within two months, failing which a further fine may be imposed. If the case involves the opening of a branch or agency of an establishment located outside Mauritania, the competent court may order the closure of the branch or agency until the registration formality has been completed.

163. Under Article 689 of the Commercial Code, founders and managers who fail to file any of the necessary documents or deeds with the registry of the competent court within the statutory time limits or who fail to fulfil any of the notification formalities provided for in the Commercial Code are liable to a fine of MRO 100 000 to 500 000 (USD 290 to 1 450).

164. Under Article 66, if erroneous information has been deliberately provided for the purposes of registration in the commercial register, the person required to make such registration is liable to imprisonment for a term of one month to one year and a fine of MRO 10 000 to 50 000 (USD 29 to 148) or to one only of those penalties. In its conviction judgment, the court also orders the erroneous information to be corrected on such terms as it may decide.

165. There is no sanction in Mauritanian company law for failing to keep the share register in companies limited by shares as provided for at Article 606 of the Commercial Code. The register, normally kept at the registered office, must list in chronological order subscriptions and transfers of each class of registered transferable securities. The lack of coercive measures could result in information on the owners of public limited companies (SAs) being unavailable, especially as it is not possible in Mauritanian law to know the identity of the owners of bearer shares in the company itself. However, Article 606 of the Commercial Code provides that "the right of the holder of registered securities results from registration in the transfer register". Registration is also valid with regard to third parties. Only the holders of registered shares are therefore entitled to vote, receive dividends and exercise other rights or powers attached to shares. In contrast, a shareholder whose identity is not registered in the share register shall not claim such rights. It is therefore in the utmost interest of all holders of registered shares to ensure that information about them is registered in the share register. However, besides this commercial obligation, a tax requirement of the same nature was recently introduced and it is subject to a penalty (see below).

166. In practice, the commercial register has no duty to control or sanction non-compliance with the registration requirements applicable to natural or legal persons carrying on a commercial activity in Mauritania. However, where false information is provided in order to fraudulently obtain registration, it can refer such cases to the courts. The commercial register authorities said that no such offence had occurred during the review period and no penalty had been imposed. Generally speaking, the tax authorities' supervisory and disciplinary powers are more stringent and sufficiently effective to ensure the availability of information on the ownership of entities.

167. Under Article 7 of the law on associations, the authorisation formality which provides the public authorities with information on their ownership is essential in order for them to operate. Unauthorised associations and foundations are therefore automatically null and void. In addition, persons who, in any capacity whatsoever, assume or continue to assume the administration of associations operating without authorisation are liable to imprisonment for one to three years and a fine of MRO 3 000 to 540 000 (USD 9 to 1 602). In practice, the Interior Ministry is competent to control the regularity of associations. It does not have a predetermined programme for the supervision of associations but from time to time makes unscheduled visits to associations' headquarters if necessary. According to ministry authorities, a warning is sufficient to make a defaulting association fulfil its obligations. The ministry has never withdrawn an association's authorisation. Associations with salaried employees are monitored by the tax authorities because they are required to comply with their tax obligations, especially the declaration of existence and regular tax returns.

Tax legislation

168. Under Article 478 of the Tax Code, failure to register a company with the tax authorities and failure to declare changes occurring during the company's lifetime incur a fine of MRO 3 000 000 to 5 million (USD 8 90 to 14 833). In addition, a taxpayer who fails to provide a declaration of existence is liable to discretionary assessment, with reversal of the burden of proof and stringent penalties (a 20% penalty). The 2016 Finance Act has introduced a tax requirement for companies limited by shares to keep a share register at their registered office (Article 20 of the Tax code). Failure to keep the share register is punishable by a fine of MRO 3 million to 5 million (USD 8 901 to 14 833). The same punishment applies for breach of the obligation to disclose the identity of holders of bearer share to the tax authorities within the deadline. As these provisions introduced by the 2016 Finance Act are recent and have not been tested in practice, it is recommended that Mauritania monitor their implementation.

169. In practice, highly deterrent penalties are available to the tax authorities if businesses carry on an activity without registering, registration leading to issuance of a tax identification number. Under Article 51 *bis* of the Tax Code, any expense incurred in a transaction with a company that does not have a tax identification number is non-deductible. The tax identification number may also be blocked if a taxpayer fails to file financial statements for the year of a tax return despite a reminder and without prejudice to other penalties. Thus, taxpayers ensure in their commercial relations that their suppliers have a tax identification number so that they do not have to bear non-deductible expenses.

170. In addition, the verification and investigation department of the General Tax Directorate, which receives the list of businesses which have to

file their financial statements (for transactions in excess of MRO 5 million (USD 14 833), carries out checks to ensure that each business in question has a valid tax identification number. If any inconsistency is found, a tax audit is scheduled in order to ensure that the business is real and complies with its tax obligations, including the declaration of existence and annual tax returns.

171. All departments which manage taxpayers' affairs carry out regular documentary audits to ensure that taxpayers comply with their tax obligations on the basis of the information contained in their tax file. Such audits reveal any inconsistency in the taxpayer's file, such as lack of a tax identification number or failure to file a tax return for a given period. According to the tax authorities, all tax management departments carry out regular documentary audits of all taxpayers. The tables below shows the number of documentary audits carried out during the review period:

- taxpayers managed by the large business directorate (DGE)

	2012	2013	2014
Total number of taxpayers	216	228	275
Number of audits	43	42	50
Amount of tax bills issued (in MRO)	11 473 312 967	6 738 238 856	6 155 436 623
Average amount of reminders (in MRO)		273 174 118	123 108 732

- All of the taxpayers

	2012	2013	2014
Total number of taxpayers	1 592	2 118	2 236
Number of audits	265	166	221
Amount of tax bills issued (in MRO)	21 308 833 496	21 529 756 411	22 645 864 856

Anti-money laundering legislation

172. Infringements of the AML/CFT Act, especially those relating to the registration of non-profit associations and organisations, are punishable by a fine of up to MRO 1 million (USD 2 700 2 967) or a temporary ban on exercising the activities of the association or organisation for a period of up to 12 months.

173. If, through lack of care or shortcomings in the organisation of internal AML/CTF procedures, a liable person is unaware of their obligations under the AML/CTF Act, the supervisory or regulatory or disciplinary authority, as of right or on a referral from the *Commission d'Analyse des Informations Financières* (CANIF, the Mauritanian FIU), must take appropriate steps to end the situation, including by imposing administrative and disciplinary sanctions.

The Central Bank may impose penalties on banks and their managers: warning or a caution, reprimand, injunction, formal notice, fines, the suspension of certain operations for up to three months, the appointment of an interim administrator, a temporary or final ban on certain operations, the suspension of a senior manager and the withdrawal of the license.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place but certain aspects of the legal implementation of the element need improvement.	
Factors underlying the recommendations	**Recommendations**
Mauritanian law permits the creation of bearer shares in companies limited by shares. However, Mauritanian laws may not sufficiently ensure the availability of ownership information in the event of transfer of bearer shares where the transferor is outside of Mauritania and the transferee doesn't exercise his shareholder's rights.	The Mauritanian authorities should ensure the identification of the owners of bearer shares in companies limited by shares in all circumstances.

Phase 2 rating	
Largely compliant	
Factors underlying the recommendations	**Recommendations**
During the review period, the registration formality was the only mechanism that could always ensure the identification of bearer shares owners in case of transfer. However, this mechanism was not effectively implemented. An additional tax requirement recently introduced imposes on companies issuing or having issued bearer shares and on the transferors of such shares to disclose the identity of their owners to the tax authorities. However, its implementation has not been tested in practice	The Mauritanian authorities should ensure the effective enforcement of the registration formality for the transfer of shares regardless of their form. The Mauritanian authorities should also monitor the effective implementation of the new requirement to disclose the identity of bearer shares owners to the tax authorities.

Phase 2 rating	
Largely compliant	
Factors underlying the recommendations	**Recommendations**
Mauritania has recently introduced a tax provision requiring companies limited by shares (SA, SAS, SCA) to maintain a share register at their registered offices, breach of which is subject to penalty. However, the implementation of this provision has not been tested in practice.	The Mauritanian authorities should monitor the implementation of the obligation to maintain a share register at the registered office by companies limited by shares (SA, SAS, SCA) as well as the applicable sanction.

A.2. Accounting records

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

Analysis and assessment

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

175. With regard to the keeping of accounting records, Mauritanian law requires legal entities and other entities to respect transparency requirements that comply with international standards with respect to the level of formalism imposed on accounting systems, the records to be kept and the length of time for which they must be retained.

General requirements (ToR A.2.1)

176. Under Articles 22 to 25 of the Commercial Code and Article 14 of the Tax Code, companies incorporated in Mauritania are required to keep accounting records. These provisions are supplemented by the Mauritanian chart of accounts (*plan comptable*) instituted by Ordinance no. 82-180 of 24 December 1982.

177. Article 22 of the Commercial Code states that "any natural or legal person having trader status is required to keep accounts in accordance with customary business practice and the provisions of the Commercial Code". People having the status of traders in Mauritania are person who perform commercial acts personally and independently as their permanent occupation (Article 9 of the Commercial Code). The obligation to keep accounting records applies to:

- individuals who have trader status;
- commercial companies or companies in commercial form, a company's business purpose being set out in its articles of association;
- Mauritanian public establishments or bodies of an industrial or commercial nature;
- economic interest groupings;
- any other private-law legal entity carrying on an economic activity.

178. Individuals carrying on an activity whose sales are less than an amount which should be set from time to time by a joint order of the ministers responsible for finance and trade are exempt from the requirement to keep accounts. However, the Mauritanian authorities indicate that such an order has never been signed. Therefore, every natural person carrying on business in Mauritania is subject to accounting retention obligation. The very small businesses may merely use a highly simplified accounting system explained below.

179. Under Article 23 of the Commercial Code, natural or legal persons required to keep accounts must:

- keep a daily record of all their transactions in a journal or a monthly total of such transactions; where such totals are obtained as a result of keeping sub-ledgers, such sub-ledgers are subject to the same bookkeeping requirements as the journal itself;
- draw up an inventory of the assets and liabilities of their business at least once a year, entering the details in an inventory ledger.

180. Under Article 24 of the Commercial Code, the journal and inventory ledger are numbered and initialled either by the competent judge or by the mayor or a deputy mayor of the municipality in the ordinary form and free of charge. Ledgers are kept in chronological order without blanks or alterations of any kind and may therefore be produced as evidence before the courts in business disputes between traders.

181. According to the Mauritanian chart of accounts, businesses must draw up an inventory at least once a year. "In addition to the journal, inventory

ledger and pay ledger, businesses are recommended to keep a main ledger and as many journals, ledgers or documents in its stead as the size and needs of the business require. Such ledgers and documents may be kept by all appropriate means and techniques, businesses being free to adopt the accounting system of their choice, provided that the process used ensures that the accounting records are sufficiently authentic and allows for verification of the truth, accuracy and reliability of the accounts." In all events, double-entry book-keeping must be used. So that the accounting system may serve as an instrument for measuring the rights of the business's partners, an instrument of proof and a source of information for third parties, "the organisation of the accounts must at least ensure a comprehensive record of basic information and the production of the requisite documents within the statutory time limits set for their delivery".

182. The accounting system culminates in the production of three summary documents called financial statements. They comprise:

- the balance sheet;
- the income statement;
- the cash flow statement;
- the notes to the financial statements.

183. These documents form an indissociable whole and must objectively describe the events, transactions and situations of the period in order to give a fair view of the assets and liabilities, financial situation and results of the business. They must be prepared and presented in such a way that they can be compared over time, period by period, and with the annual financial statements prepared by other businesses under the same conditions of objectivity, reliability and comparability. The financial statements are subject to review and approval by the shareholders' meeting, called for the purpose within six months of the end of each accounting period. Under Article 232 of the Commercial Code, two copies of the financial statements together with a copy of the report of the statutory auditor(s) where relevant must be filed with the registry of the competent court within thirty days following such approval.

184. Under the Mauritanian chart of accounts (pages 12 and 233), very small businesses may use a highly simplified accounting system, based mainly on cash accounting. The system, called the minimum cash system (*système minimal de trésorerie*), is available only to individual businesses whose sales in the previous year did not exceed a threshold set by a committee. The Mauritanian authorities confirmed that the committee has never met to date and the thresholds are those set at Articles 7 and 29 of the Tax Code. Very small businesses are thus deemed to be those eligible for the flat-rate

tax scheme, i.e. taxpayers whose annual sales inclusive of tax are less than MRO 30 million (USD 89 010). However, the use of sales as the single criterion in tax law makes no distinction between commercial, service and craft businesses, even though one is made in the chart of accounts (page 233).

185. The probative value of cash accounting presupposes the regular keeping of cash ledgers (receipts and expenditures) in chronological order of transactions, such that a situation can be drawn up at year-end comprising an elementary balance sheet and an income statement that is meaningful in economic terms. The main supporting documents (invoices received or issued, written receipts, cash register tape, bank statements, cash book, copies of letters, etc.) must be kept and methodically classified and numbered.

186. As regards tax obligations related to accounting, Article 14 of the Tax Code states that "taxpayers must keep a complete set of accounts in compliance with the requirements of the Mauritanian chart of accounts".

187. At the end of the period, taxpayers must file a declaration of profit or loss to the tax office of the place where they have their principal establishment. This must be done within three months of the end of each period or, if no period is closed during a year, before 1 April of the following year. Where businesses have sales greater than or equal to MRO 300 million (USD 890 208), the declaration must be accompanied by a balance sheet and notes, stating in particular the annual amount of transactions with suppliers for amounts in excess of MRO 5 million (USD 14 835) and including the tax identification number in accordance with the model provided by the General Tax Directorate, certified by an approved chartered accountant, failing which they are liable to penalties. Commercial companies may deduct purchases and services provided by suppliers from the business profits assessment base only if they are accounted for and/or declared to the Mauritanian tax authorities. Taxpayers are required to declare details of financial expenses using a regulation form issued by the General Tax Directorate. In case a taxpayer fails to do so, 25% of the expenses would not be deductible.

188. Under Article 21 of the AML/CTF Act, non-profit associations and organisations (such as foundations) are required to keep accounts in compliance with the prevailing standards and to provide their financial statements for the previous year to the authorities designated for the purpose within four months of the end of their accounting period.

Penalties

189. Under Article 26 of the Commercial Code, persons who fail to keep mandatory accounting ledgers in compliance with the legal requirement may not produce them as evidence in court. Under Article 609 of the Commercial Code, managers who, for each accounting period, fail to draw up an inventory

or prepare financial statements and a management report are liable to a fine of MRO 20 000 to 400 000 (USD 59 to 1 187). Likewise, managers and members of management bodies who, with a view to concealing the company's true situation, knowingly present financial statements to company members or shareholders which do not give a fair view of the profit or loss of the period, the financial situation and the assets and liabilities at the end of the period, even if no dividends are paid, are liable to imprisonment for one to six months and a fine of MRO 200 000 to 2 million (USD 593 to 5 934) or one only of those two penalties.

190. If a business is placed in rehabilitation, the managers are also liable to penalties if they have infringed accounting regulations by, for example, "keeping fictitious accounts or causing the company's accounting documents to disappear or failing to keep accounts in compliance with the legal rules".

191. Under Articles 14 and 478, failure to maintain complete accounting records in accordance with the prescription of the Mauritanian chart of accounts is punishable by a tax penalty of MRO 3 000 000 to 5 000 000 (USD 8 901 to 14 833). Under Article 50 of the Tax Code, failure to keep accounting documents properly is punishable by a tax penalty of MRO 120 000 (USD 374) per document. Likewise, omissions or inaccuracies found either in documents which must be kept or in written information provided in support of the declaration are punishable by a tax penalty of MRO 10 000 (USD 29) per omission or inaccuracy.

192. Under Article 22 of the AML/CTF Act, non-profit organisations such as associations and foundations which fail to keep accounting documents are liable to a fine of up to MRO 1 million (USD 2 967) or a temporary ban on exercising the activities of the association or organisation for a period of up to 12 months.

In practice

193. The tax authorities ensure that all taxpayers comply with their accounting obligations, whether they are natural or legal persons and whatever the size of their business. They do so by monitoring annual declarations of financial statements and through audits.

194. Registered companies must file a declaration of income at the end of each accounting period and at the latest by 31 March of the following period. The financial statements (balance sheet, income statement, cash flow statement and notes to the accounts) are included with the declaration. According to the tax authorities, in general well over 90% of annual declarations including financial statements are filed by 31 March. For businesses managed by the large business directorate, the default rate at 31 March was 19% in 2012, 8% in 2013 and 7% in 2014. In general, businesses in default at 31 March file their financial statements after a reminder, though the tax authorities

nonetheless apply the penalties for late filing provided in the Tax Code. During the review period, 505 businesses paid penalties of MRO 414 303 976 (USD 1 229 389) for late filing of their financial statements.

195. The tax authorities conduct on-site audits on taxpayers' premises. These may be a general audit of accounts for the three most recent periods not time-barred or a specific audit of a single period. During audits, the tax authorities ensure that all accounting records required by the Commercial Code and Tax Code are kept and verify compliance with the accounting principles laid down in the Mauritanian chart of accounts. The audit notices sent by the tax authorities to taxpayers in advance state that they must make "accounting records and supporting documents" available to the tax auditors. The tax authorities may ask the taxpayer to provide accounting information in electronic form. They may also now carry out unscheduled audits whereby they can visit the taxpayer's premises without prior notice in order to make findings that are written down in a report with a view to a future tax audit. The procedure may serve to verify that accounting records are kept before proceeding with the tax audit proper. Not all businesses are audited every year but a programme is drawn up on the basis of risk analysis.

196. Failure to produce some accounting records during an audit is treated as partial obstruction of a tax audit and is liable to a fine of MRO 400 000 (USD 1 186). Likewise, failure to produce all accounting records during an audit is treated as total obstruction of a tax audit and is liable to a fine of MRO 1 million (USD 2 966). During the review period, 265 taxpayers were audited, representing 17% of taxpayers. Fines of MRO 112 405 210 (USD 333 547) were imposed to 81 taxpayers for failure to keep or to properly keep accounting records, representing 31% of the audited taxpayers.

197. A discretionary assessment is made of taxpayers who have not kept accounts or not kept proper accounts, with reversal of the burden of proof and the imposition of strict penalties (20%). During the review period, 12 taxpayers were subject to discretionary assessment in Mauritania.

198. Thus, in view of both its accounting and its tax legislation, Mauritania ensures the availability of accounting information from which it is possible to accurately trace all transactions, assess the financial position of all entities and prepare financial statements. However, the prevailing chart of accounts in Mauritania derives from the 1996 revision of the previous chart of accounts instituted by Ordinance no. 82-180 of 24 December 1982. The new chart of accounts, known as PCM 96, was not instituted by new legislation. The Mauritanian authorities consider that the 1982 ordinance remains in effect, insofar as it institutes a chart of accounts which was merely amended in 1996. This is understandable, but in view of the scale of the changes made to the chart of accounts and the legal principle of congruent forms, it would have been judicious to amend the instrument which instituted the 1982 chart

of accounts. Mauritania is recommended to tighten up accounting regulations by introducing an appropriate legal instrument instituting the 1996 Mauritanian chart of accounts.

Underlying documentation (ToR A.2.2)

199. According to Mauritania's chart of accounts, the origin, content and application of each accounting record must be supported by a voucher in the form of a written document. Vouchers must be classified in such a way as to allow the use of all searches and guarantee all possibilities of audit. Article 14 of the Tax Code gives as examples of vouchers "currency transfer authorisations, customs declarations, purchase and sale invoices, receipt and expense vouchers". The chart of accounts adds bank statements, written receipts, cash register tapes, cash books, etc.

200. Very small businesses using a cash accounting system are also required to keep supporting documents. According to the chart of accounts, vouchers supporting the accounting records of these small businesses must be kept and methodically classified and numbered.

201. In practice, during audits the tax authorities ensure not only that taxpayers keep accounting records but also that they are based on probative supporting documents. Such documents are part of accounting records and failure to keep them is penalised in the same way as failure to keep accounting records (see above). In addition, any expense not justified by a voucher is non-deductible.

202. In addition to audits, the tax authorities now have a new power which enables them to ensure the availability and regularity of accounting vouchers. It is the right of investigation instituted by the Budget Act for 2015 (new Article 588 of the Tax Code). The official responsible for verifying tax returns may, under the right of investigation, ask the taxpayer for justifications or clarifications relating to tax returns, including bank statements, invoices, stock records and business registers and documents that may relate to transactions giving rise to the charging of VAT. Under the right of investigation, the tax authorities may also make findings relating to material elements of operation.

203. These requirements ensure that mandatory accounting records in Mauritania are sufficiently supported by the necessary documents to evidence the transactions performed.

Document retention (ToR A.2.3)

204. Under Article 23 of the Commercial Code, companies are required to retain all documents and supporting documentation for transactions entered in their accounting records for ten years.

205. According to the chart of accounts, accounting records and documents and the supporting documentation for accounting entries must be retained for the same period of at least ten years from the end of the period concerned.

206. Article 210 of the Tax Code states that "accounting documents and supporting documentation must be retained for at least six years following the year in which the services were entered in the accounting records." Article 587 of the Tax Code states that the documents referred to Article 585 (ledgers which must be kept in compliance with the Commercial Code and all accounting documents and receipt and expense vouchers which must be drawn up in compliance with the prevailing regulations) must be kept for ten years as of the date on which they were drawn up. Failure to retain such documents for the time set at Article 587 is punishable by a tax penalty of MRO 25 000 (USD 74).

207. Under Article 14 of the Tax Code, accounting documents and supporting documentation, especially currency transfer authorisations, customs declarations, purchase and sale invoices and receipt and expense vouchers, must be kept for at least ten years following the year in which the import, purchase, sale or service provided was entered in the accounting records. Under Article 478 of the Tax Code, failure to meet this retention obligation is punishable by a tax penalty of 3 to 5 million MRO (USD 8 901 à 14 833)

208. In practice, the tax authorities stated that tax auditors have not found any failure to comply with the requirement to keep accounting documents for ten years. Although the tax authorities' right of clawback is limited to three years, taxpayers are still required to keep their accounting documents beyond that time, especially as the tax authorities are entitled to exercise their right of inspection with regard to periods out of time where they have tax consequences on periods not out of time. That may be the case when a loss in an out-of-time period is carried over to a period not out of time.

209. Having regard to the tax and accounting requirements set out in the various laws in force in Mauritania, the requirement to retain accounting records for at least five years is ensured.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

A.3. Banking information

Banking information should be available for all account-holders.

210. Access to banking information is of interest to the tax authorities only if the bank has useful and reliable information on its customers' identity and the nature and amount of financial transactions.

Record-keeping requirements (ToR A.3.1)

211. Under Articles 22 to 25 of the Commercial Code and Article 14 of the Tax Code, banks are required to keep accounting records in the same way as other companies. All the accounting requirements examined in Section A.2 of this report apply to them.

212. In addition, Ordinance no. 2007-020 of 13 March 2007 on banking activity sets out the terms and conditions under which credit institutions must keep their accounting records. Under Article 43, credit institutions must keep their accounting records in accordance with the rules laid down by the Central Bank. Each year they must publish a balance sheet, an income statement and a cash flow statement certified by two auditors appointed in accordance with the prevailing regulations. These accounting documents are prepared in compliance with the requirements of the Mauritanian chart of accounts and the specific chart of accounts defined by the Central Bank for each category of institution.

213. The Central Bank ensures permanent documentary and on-site supervision of credit institutions and their affiliates. It ensures that credit institutions comply with the laws and regulations and the rules of good conduct in the profession (Article 47 of the 2007 Ordinance). For that purpose, credit institutions are required to provide the Central Bank, within the time limits it sets, with interim and final accounting documents relating to the previous year and with the minutes of discussions at their shareholders' meeting relating to the annual financial statements within fifteen days of the meeting. The Central Bank's supervision extends to all aspects of the activity, management and organisation of credit institutions, including in particular their compliance with the provisions of laws and regulations and their articles of association, the reliability of their accounting operations, the validity of the assets and liabilities posted on and off the balance sheet, their financial equilibrium and their profitability.

Anti-money laundering legislation

214. Under the provisions of the AML/CTF Act, credit institutions are required to comply with a duty of care and a requirement to identify their

customers. They must satisfy themselves of their customers' identity and address before opening an account, taking custody of securities, notes or other effects, allocating them a safe deposit box or entering into any business relations with them.

215. Credit institutions are required to keep documents relating to their customers' identity for at least ten years after the closure of accounts or the cessation of relations with them. They must also keep documents relating to transactions for the same length of time, as of the end of the period during which the transactions were performed.

216. Under Ordinance no. 2007-020 of 13 March 2007 on banking activity, credit institutions are those which habitually perform as their business at least one of the following transactions: (i) the receipt of funds from the public for whatever length of time and in whatever form; (ii) the granting of credit in whatever form, and (iii) the provision to customers and the management of all means of payment. Transactions performed by banks in Mauritania include, inter alia, opening accounts, receiving funds from their customers and making funds available to them, including the payment of investment income (dividends or interest) into accounts. All these transactions are recorded in banks' accounting systems and are accessible at any time to the tax authorities, which have a right of discovery with regard to banking information. Money transfer businesses are also covered by the AML law.

Sanctions

217. Without prejudice to any criminal or other penalties that may apply, if credit institutions fail to comply with the prevailing laws and regulations the Central Bank may impose penalties on them and their managers ranging from a warning or a caution to a reprimand, injunction, formal notice, fines, the suspension of certain operations for up to three months, the appointment of an interim administrator, a temporary or final ban on certain operations and the suspension of a senior manager with or without the appointment of an interim administrator, the withdrawal of the license (Articles 55 to 61 of the Ordinance no. 2007-020 of 13 March 2007 on banking activity). The failure to respect the statutory obligations of vigilance and identification covered by the AML law is punished by a fine of MRO 1 million (USD 2 967) to MRO 5 million (USD 14 835).

218. From a criminal point of view, managers of banks who do not respect the banking regulations is liable to imprisonment for a term of 1 month to 2 years or a fine of MRO 1 million (USD 2 967) to MRO 5 million (USD 14 835), or to both fine and imprisonment.

219. The prevailing laws ensure the availability of information on bank accounts (account holder's identity and transactions performed) in Mauritania.

The availability of banking information in practice

220. Within the Central Bank, the General Directorate for Banking and Financial Supervision (*Direction Générale de la Supervision Bancaire et Financière*, DGSBF) is responsible for supervising the financial sector as a whole. In order to carry out its mission, the DGSBF has a total staff of 50. The DGSBF is organised into the three following departments which ensure compliance with the requirements to keep banking information and with AML rules:

- the banks and financial institutions supervision department (13 officials) which carries out off-site audits of banks and financial institutions;
- the micro-finance institutions department (10 officials) which carries out off-site audits of micro-finance institutions; and
- the inspection department (23 officials) which carries out on-site audits of banks, financial and micro-finance institutions, and exchange offices.

221. In the context of its off-site audits, the DGSBF systematically analyses the weekly, monthly, quarterly and annual statements that credit institutions are required to provide. The statements are all completed in accordance with models predefined by the Central Bank and attached to the instructions or circulars sent to credit institutions. When it does so, it verifies their compliance not only with the laws and regulations in force but also with the rules for accounting for transactions laid down by the Central Bank.

222. It also ensures compliance with AML/CFT rules by examining the comprehensive questionnaire that credit institutions are required to complete annually. Thus, each year credit institutions must provide detailed answers to the questionnaire as part of the internal control requirements imposed on them. Within each credit institution, the compliance officer and the CANIF correspondent jointly fill in the questionnaire, the purpose of which is to ensure that due diligence rules with regard to customers are properly implemented. The answers are validated by the standing internal audit committee, then examined and approved by the competent bodies of each credit institution before 30 April. They are sent to the DGBSF before 31 May, bearing the signature of the credit institution's CEO.

223. In the framework of on-site audits, the DGBSF can carry out three types of inspection:

- a general inspection of all aspects of the activities of credit institutions (credit analysis, accounting of transactions, etc.). It is based on an annual inspection schedule which is generally prepared between November and December of each year;
- thematic inspections of a specific aspect of those activities; and

- spontaneous inspections, which are initiated by the DGSBF following an off-site audit.

For on-site audits, inspectors have a methodology for auditing credit institutions. They must ensure that they properly apply due diligence and KYC rules when they open, manage and close customer accounts. Inspectors ensure, for example, that credit institutions have verified the customer's status, powers of attorney, identity and location, that they keep existing powers of attorney on the account and that all such information is correctly entered in its information system. They must also ensure that regulatory declaration requirements are respected and that banking information is retained for a minimum period of ten years. Reports of on-site audits systematically contain a chapter on the application of AML/CFT regulations. Over the review period, the number of on-site audits carried out by the Central Bank was as follows:

Number of on-site audits of credit institutions			
	2012	2013	2014
General inspections	4	5	6
Thematic inspections	12	8	10
Spontaneous inspections	4	8	6

224. In the context of its mission to supervise credit institutions, the Central Bank had cause in 2014 to withdraw the authorisation of one bank and one specialist financial institution and place them in judicial liquidation and to withdraw the authorisation of eight micro-finance institutions. In 2015, it sanctioned one bank for failing to comply with banking regulations. However, the failings did not relate to compliance with AML/CFT obligations.

225. Thus, Mauritanian law, especially AML law and its application by credit institutions and the audits carried out by the Mauritanian Central Bank ensure that credit institutions keep banking information on all account-holders. One request for banking information was sent to Mauritania during the review period. However, the request was not processed by Mauritania, which stated that it had not received it. This matter will be examined under element C.5 of this report.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B. Access to information

Overview

226. 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 identity of interest holders in other persons or entities, such as partnerships or trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Mauritania's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

227. Mauritania's tax authorities have extensive powers under the Tax Code to access information relating to tax assessment, audit and collection. In particular, these powers allow the authorities to request information from any taxpayer or third party likely to be in possession of the information sought to assess income or collect tax.

228. Under the same provisions, banks, financial institutions, insurance companies and any natural or legal person taking on deposit or holding funds or assets for third parties are also required to provide the tax authorities on request with all information necessary for tax assessment, audit and collection.

229. There is no legislation in Mauritania which grants the tax authorities specific powers to collect information to be exchanged in the context of an international exchange of information. However, the fact that there is no reference to a domestic interest means that the Mauritanian tax authorities can use the domestic information-gathering powers granted by the Tax Code to tax officials for administrative co-operation purposes. The Mauritanian authorities use the same powers for the international exchange of information.

230. Professional secrecy is not an obstacle to information exchange in Mauritania, except in cases admitted by the standard.

231. The rights and safeguards applicable to persons in Mauritania are compatible with effective information exchange. There is no requirement under Mauritanian law for the tax authorities to inform the taxpayers concerned of requests for information received from foreign authorities.

232. The penalties for failing to provide information or documents appear sufficiently dissuasive to ensure that the Mauritanian tax authorities can obtain the relevant information. Therefore, the Mauritanian authorities can access all types of information to be kept by persons located in Mauritania.

233. The Mauritanian authorities therefore have extensive powers at their disposal that enable them to obtain the necessary information to respond to requests for information. However, those powers have not been used in practice for information exchange purposes insofar as the Mauritanian authorities did not process any request for information during the review period. Nevertheless, the Mauritanian authorities have experience of collecting information for domestic purposes, for which they use the same powers satisfactorily.

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).

234. Under the tax treaties of which Mauritania is a signatory, the competent authority for the exchange of information is the Finance Minister or his duly appointed representative. Since 15 September 2015, the Finance Minister has delegated all that power to the Director General of Taxes (who is the head of the tax administration and reports to the finance minister) and, if he is indisposed, to the Director of Tax Audit and Investigations, who reports to the Director General of Taxes. When requests for information are received from a treaty partner, the Director General of Taxes passes them on to the Director of Tax Audit and Investigations, who instructs the international information exchange unit (part of the Verification and Tax Investigations Department) to collect the requested information, using the legal means available to the tax authorities in law. The international information exchange unit, recently created, has just one member at present, namely the head of the Verification and Tax Investigations Department.

235. The Mauritanian tax authorities' power to obtain information derives mainly from Article 585 of the Tax Code, which gives them a right to information *(droit de communication)*. Consequently, taxpayers, banks, financial institutions, insurance companies and in general any natural or legal person

taking on deposit or holding funds or assets for third parties are required to provide the tax authorities on request with the records that must be kept under the Commercial Code and with all accounting documents and receipt and expense vouchers that must be drawn up in accordance with the prevailing regulations.

236. The Mauritanian tax authorities can also obtain information by using their audit powers under Articles 474 to 477 Bis of the Tax Code.

Ownership and identity information *(ToR B.1.1)/****Accounting records*** *(ToR B.1.2)*

237. The requirement to make various documents available to the Mauritanian tax authorities applies to both taxpayers and third parties.

Taxpayers

238. The Mauritanian tax authorities may require any natural or legal-person taxpayer to provide all the records (*livres*) that must be kept under the provisions of the Commercial Code. For information, all persons carrying on an industrial, commercial, craft or agricultural activity in Mauritania are required to register with the tax authorities and hence become taxpayers. According to the Mauritanian authorities, the word *livres* (translated here as "records") used in Article 585 of the Tax Code is interpreted broadly to include any document that must be kept by law. For legal entities, they include the articles of association and the registered share register. These documents include, inter alia, information about the identity of persons holding registered shares in companies, though not of persons holding bearer shares. The disclosure requirement means that the competent authority has access to information on the ownership of companies with share capital where all of their shares are in registered form.

239. The Tax Code also refers to "all accounting documents and receipt and expense vouchers which must be drawn up under the prevailing regulations." This covers all accounting records which must be kept under the provisions of the Commercial Code and the Mauritanian chart of accounts, including the journal, main ledger, inventory ledger, pay ledger and financial statements (balance sheet, income statement, cash flow statement, notes). For very small businesses using a highly simplified accounting system, the accounting documents to be provided to the tax authorities on request are the cash ledgers (receipts and expenditures).

240. Under Article 585 of the Tax Code, the documentation underlying accounting records must also be provided to the tax authorities on request.

This concerns all supporting documentation for accounting records, such as invoices received or issued, receipts, delivery notes and bank statements.

241. The Budget Act for 2015 instituted a right of investigation at Article 588 of the Tax Code whereby the official responsible for verifying tax returns can ask the taxpayer for any information, justifications and clarifications relating to those returns. The procedure is designed to obtain information or make material findings and does not give rise per se to a tax adjustment notice. The tax authorities may thus ask for bank statements, invoices, stock records and any books, registers and business documents which may relate to operations that have given rise or will give rise to the charging of VAT and make findings relating to material elements of business operations. The tax authorities may also ask to see all customs documents justifying the charging of VAT on imports or the reality of an export. Under this procedure, a report recording any failings (or absence of failings) is drawn up within eight days of the last audit or interview. A list of documents on which the finding of infringements was based is attached to the report, a copy of which is provided to the taxpayer or his representative.

Third parties

242. Article 585 of the Tax Code states that in order to assess, audit and collect taxes, tax officers have the right to obtain any record prescribed by the Commercial Code as well as all accounting documents and receipts which should be kept under the regulations. Similarly, "banks, financial institutions, insurance companies and in general any natural or legal person taking on deposit or holding funds or assets for third parties are required to provide, on-site or by correspondence, at the request of a tax or treasury official having at least the rank of inspector, all information relating to taxpayers' accounts, the granting of credit and allocations of foreign currency made to them". This provision extends the scope of the tax authorities' right to information to any Mauritanian taxpayer and any person who may hold information by virtue of a business relationship with a customer. It applies to banks and other financial institutions holding information about banking transactions, to employers, to notaries who hold information about the formation of companies and to attorneys and other members of the professions who may hold information on the identity of their clients and on other transactions performed in their stead (as nominee, for example) or for their benefit. It also applies to trusts and similar arrangements which, even though not specifically recognised in Mauritanian law, may nonetheless produce their effects in Mauritania (see Section A.1 on the availability of information on identity).

243. The right to information also applies to government agencies. Under Article 582 of the Tax Code, "central and local government agencies and enterprises conceded or controlled by local authorities and all establishments or organisations whatsoever subject to the supervision of the administrative

authorities may not invoke professional secrecy against tax officials having at least the rank of controller who ask them to provide official documents in their possession in order to assess the taxes instituted by this code". Under Article 583, those who keep civil status registers and tax rolls and those responsible for keeping public records and filings of public instruments are also required to provide them to tax officials on request. These provisions apply to notaries, officers of justice, court registrars and the secretaries of central and local government agencies, for those instruments they keep on file, such as companies' articles of association. Thus, information on company ownership held by the authorities responsible for the commercial register must be provided to the tax authorities on request. Under Article 584, the judicial authorities are also required to spontaneously report to the tax authorities any evidence which may come to their attention and generate a presumption of tax fraud or some other scheme resulting in the evasion or compromise of a tax, whether in a civil or commercial case or a criminal investigation, even if the case is dismissed.

Ability to gather information from all persons

244. The tax authorities' right to information is used for the purposes of international information exchange only where the requested information is not already in their possession. It may be exercised on-site or by correspondence. On-site, tax officials with at least the rank of inspector consult the documentation necessary to assess, audit or collect the tax on the premises of the taxpayer or third party concerned. By correspondence, the tax authorities write to the person concerned, asking them to send the requested information or documents by the same means within a given time limit. The Tax Code does not impose any time limit on taxpayers and third parties within which they must provide information when the right to information is exercised by correspondence. However, Article 586 states that if a person refuses to provide information by correspondence, they are served official notice to do so within 15 days by registered letter with acknowledgment of receipt, failing which they are liable to a daily fine. In practice, the tax administration sends the letter of notice where the requested information are not provided by the person concerned within five days following the receipt of the first request.

245. There is no time limit on the right to information, whether the taxpayer concerned has been audited or whether the taxes concerned are out of time or not. The tax authorities are not required to give the requested person any information about the taxes concerned or the validity of the operation (assessment, audit or collection) justifying exercise of the right to information. At most, Article 587 of the Tax Code states that the documents referred to Article 585 must be retained for six years as of the date on which they were drawn up. Thus, apart from accounting records which must be retained

for ten years under the provisions of the Commercial Code, other documents which must be kept by law must be retained for at least six years. The tax authorities can access information and documents for as long as they are retained by exercising their right to information.

246. In addition to the right to information, the Mauritanian tax authorities may access information by performing tax audits. Under Article 474 of the Tax Code, where they find a deficiency, inaccuracy, omission or concealment in the elements used to assess a tax liability, they are authorised to perform a tax audit with a view to making the necessary adjustments. The tax audit consists in either a documentary audit conducted from the office or an on-site audit. The latter may take the form of a general audit of accounts (Article 474 *bis*) or a spot check of one or more taxes or a specific element of the accounts (Article 474 *ter*). In principle, the taxpayer is informed of an on-site audit 15 days before the first inspection by means of an audit notice. However, the tax authorities may also carry out an unscheduled audit, the audit notice being handed to the taxpayer on the day of the first visit (Article 474 *quater*). Finally, while in principle a tax audit can only be conducted in respect of periods that are not time-barred, a time-barred period may nevertheless be subject of an audit where it would have tax consequences for a period that is not time-barred (for example, the audit of a loss in the situation where the loss is carried forward to a tax year that is not time-barred, or the audit of a VAT credit claimed in a period that is time-barred, where the credit is carried forward to a period that is not time-barred) (Article 474 *quinquies*).

247. A tax audit is not a procedure instituted for the disinterested gathering of information for the tax authorities' use or in response to a request for information. Its primary purpose is to verify that taxpayers' tax returns are true and accurate and to make adjustments where appropriate. However, the tax authorities may use a tax audit for information-gathering purposes in at least two instances. First, where a current tax audit concerns a taxpayer in connection with whom a request for information has been made, the request will be referred to the officials performing the audit, who will then seek the requested information, whether by inspecting accounting records or by conducting a spot check. Second, information requests can sometimes be particularly complex, requiring the performance of a tax audit in Mauritania (Mauritania may realise that the request may reveal tax evasion to the detriment of the Mauritanian Treasury) in order to be met fully and effectively. In either case, the tax audit will obtain the information and documents requested by the requesting party, especially as under Article 476 quater of the Tax Code taxpayers are required to provide the auditor with all the documents, records and items provided by law.

248. As in several countries, the only restriction on the right of audit arises from the prohibition on auditing the same taxpayer more than once in

respect of the same tax period and the same tax. Under Article 474 *sexiès* of the Tax Code, a general on-site audit discharges the audited periods unless a new element appears relating to determination of the base or rate of the tax. In contrast, a spot check cannot rule out a general audit at a later date.

Information-gathering in practice

Information available to the tax authorities

249. The information exchange unit has direct access to all the information in the JIBAYA database, which centralises at national level all information relating to the activities of taxpayers carrying on business in Mauritania. The system was developed in 2013 and gradually came into general use. Data is entered by the General Tax Directorate's representative at the one-stop shop for business creation or by its registration unit when the taxpayer registers or when changes are made to the information collected at that time. The JIBAYA system contains the following information about taxpayers:

- information concerning the management of tax obligations and procedures: the tax identification number (TIN), the legal form, the first names, surname and nationality of natural persons, the business name for entities, the tax regime, the date and place of creation, the main business and any secondary businesses carried on, the registration number in the commercial register, the identity of the manager (first names, surname, address, phone number, e-mail address);
- information related to shareholders: the identity of shareholders (TIN, surname of natural persons or company name for entities, date of entry and date of termination), the number of shares and the holding percentage;
- banking information: list of bank accounts, bank agency, nature of the accounts, bank account number, opening and closing dates;
- accompanying documents: declaration of existence, certificate of visit, address proof, commercial register receipt, etc.

The articles of association are not scanned and entered into the JIBAYA system but are kept indefinitely by the one-stop shop in the taxpayer's physical file. However, the information exchange unit can obtain all the information contained in the physical files kept at the one-stop shop or at the General Tax Directorate's registration unit. It merely has to make an internal request and the requested file is handed over without delay. In practice, information is obtained within one to five days.

250. Data is also entered into the JIBAYA system by the General Tax Directorate department responsible for managing the taxpayer's affairs.

Thus, declarations of income and lists of suppliers are systematically entered: under Article 14 of the Tax Code, businesses and industrial and commercial establishments with annual sales greater than or equal to MRO 300 million (USD 890 208) must declare the annual amount of transactions with suppliers with a value in excess of MRO 5 million (USD 14 835), stating the tax identification number. Financial statements (balance sheet, tables of fixed assets, depreciations, provisions and financing) and annexes (financial expenses, fees paid, etc.) are not recorded in JIBAYA but are kept for at least six years in the taxpayer's physical file. The information exchange unit can obtain the physical file of any taxpayer without delay by means of an abstraction form sent to the relevant department. In practice, information is obtained within one to five days.

251. Finally, the JIBAYA system is also fed by the verification and tax investigations department which sends information requests to:

- the various tax management departments, especially the large business directorate, the public entities directorate and the north zone regional tax directorate. The transmission of information is internal within the General Tax Directorate;
- administrative public establishments (EPAs) and all taxpayers, including industrial and commercial public establishments (EPICs), with annual sales greater than or equal to MRO 300 million (USD 890 208) which did not provide a list of suppliers with which they engaged in transactions worth more than MRO 5 million (USD 14 835).

Before the implementation of the system JIBAYA, information collected by the verification and tax investigations department were entered into an ad hoc database for internal use. This database remains accessible for information prior to the 2013 tax year. The table below recapitulates the information requests sent during the review period. The number of requests made to EPICs has fallen since the entry into force in 2013 of the obligation to spontaneously provide the list of suppliers mentioned above.

Information requests sent by the verification and tax investigations department

Recipients of the requests	2012	2013	2014	2015
Tax management departments (tax authorities)	21	46	61	86
EPAs and EPICs	102	88	62	40
Taxpayers	0	0	1	4

252. In the period from January to September 2015, the verification and tax investigations department processed and recorded 6 084 items of information in JIBAYA, received spontaneously or on request or following an on-site audit. The sources of the information are shown in the table below.

Source of information processed by the verification and tax investigations department	Number of items of information recorded
Customs	1046
Treasury	663
Large Business Directorate	2 398
Public Entities Directorate	1 648
North Zone Regional Tax Directorate	329
Government procurement	319
Total	**6 403**

Information held by the taxpayer or a third party

253. Where the requested information is not available to the General Tax Directorate, the information exchange unit can use the same information-gathering powers provided for by Mauritanian law as are used for domestic purposes. It can thus exercise the right to information with regard to the taxpayer or third parties (private businesses, public agencies, public service enterprises, etc.) in order to obtain information such as contracts, invoices, delivery notes, bank transfer orders, etc. It can either ask auditors to obtain the requested information on-site or exercise the right to information directly vis-à-vis the holder of the information by correspondence. In the latter case, it can send the holder of the information a letter asking him to provide the requested information within a time determined by the department according to the nature and amount of the information concerned. In practice, the time generally varies between 7 and 30 days. The Mauritanian authorities indicated that in most cases an answer was given within 5 to 15 days on average. In all events, the requested information was always obtained at the latest within 15 days following receipt of a formal notice. In the specific case of information held by a bank or microfinance institution, the request may be sent either directly to the bank or indirectly via the Central Bank (see the section below on banking secrecy).

254. The Mauritanian authorities also indicated that if the holder of the information were to refuse to respond to a request for information, the tax authorities could obtain the information either by exercising a right to information from third parties or by carrying out an on-site tax audit. However, the Mauritanian authorities cannot perform a general audit on the same taxpayer more than once in respect of the same tax period and the same tax, unless a new element appears relating to determination of the base or rate of the tax.

255. The number of right of information and on-site audits performed during the review period are shown in the table below.

	2012	2013	2014
Rights to information	102	90	71
General audits	34	42	57
Spot check audits	20	27	54
Unscheduled audits	2	3	6

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

256. 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 gathering such information for its own tax purposes.

257. Under Articles 582 and 585 of the Tax Code, the purpose of the right to information is to "assess the tax" or "permit the assessment, audit and collection of taxes provided for by the Tax Code". This covers all the taxes and duties contained in the Tax Code, including income and sales taxes. However, although the information requested by Mauritania's partners is not intended for the assessment of tax in Mauritania, the tax authorities may use the right to communication solely for information exchange purposes.

258. Pursuant to Article 80 of the Constitution of Mauritania "treaties or agreements duly ratified or approved shall, upon publication, take precedence over the laws." This provision covers the tax treaties and tax information exchange agreements (although Mauritania has not signed any TIEA). Because of the precedence of the conventions over Mauritanian law, the provisions of Mauritanian tax treaties prevail on the provisions of the tax code on the right to information and the right to audit. Once a tax treaty entered into force, the tax authorities are required to enforce its provisions including those regarding exchange of information. Some DTCs signed by Mauritania even use the expression "The taxation authorities of each of the Contracting States shall communicate to the taxation authorities of the other Contracting State any information…" To do so, the Mauritanian tax authorities should use all their powers under the tax code, including the right to information and the right to carry out tax audits. Furthermore, there is no provision in Mauritanian law which prevent the tax administration from using its domestic information-gathering powers for the purpose of exchange of information.

259. According to the Mauritanian authorities, the provisions allowing information-gathering for tax assessment and audit purposes are interpreted as valid when such information is intended only for a foreign tax authority,

provided that it is justified by an international treaty concluded between Mauritania and the other country. The right to information, the right of investigation and the right to carry out tax audits are the most used and the most effective information gathering powers of the Mauritanian tax administration.

260. There is nothing to limit the possibility of using the right to information or right of investigation in order to respond to an exchange of information request. In both cases, the purpose is not to make an adjustment as such but to obtain information or make material findings.

261. The right of audit, the purpose of which is to verify the accuracy of tax returns submitted by Mauritanian taxpayers, may also be used solely for information exchange purposes. Article 476 of the Tax Code provides that "officers of the Tax Services have the power to ensure control of all taxes owed by a taxpayer." According to the Mauritanian tax administration, "taxes owed by a taxpayer" also apply to foreign taxpayers. A tax audit can be carried out in Mauritania when the tax administration has received a request for information from a partner country regarding the taxes owed by a taxpayer of that country. Only the Mauritanian tax authorities decide from their own criteria whether a tax audit is needed. A tax audit may therefore be performed in order to obtain information to be exchanged with a treaty partner.

262. In order to respond to exchange of information requests, the Mauritanian authorities have wide powers which enable them to obtain the requested information. However, those powers have not been used in practice for exchange of information purposes insofar as the Mauritanian authorities did not process any information requests during the review period. Nonetheless, the Mauritanian authorities have experience of gathering information for domestic purposes, for which they use the same powers.

Compulsory powers *(ToR B.1.4)*

263. Failure to provide the information and documents requested by the tax authorities is penalised by Articles 585 and 588 of the Tax Code. The penalty differs according to whether the right to information is exercised by correspondence or on-site.

264. Refusal to provide documents or information on-site is recorded in an official report and punished by a tax penalty of MRO 100 000 to 1 million (USD 297 to 2 967) and by the closure for one to three days of the bank, financial institution or insurance company or any establishment belonging to a natural or legal person which has refused to provide information.

265. Refusal to provide information by correspondence is followed by service of official notice to do so by registered letter with acknowledgment

of receipt. If the requested information has not been provided within 15 days following receipt of the letter, a tax penalty of MRO 100 000 to 1 million (USD 297 to 2 967) is applied. This penalty is increased by MRO 50 000 (USD 148) per month or fraction of a month of non-compliance.

266. Failure to retain documents for the period set forth at Article 587 is punished by a tax penalty of MRO 25 000 (USD 74).

267. Under Article 477 of the Tax Code, partial obstruction of a tax audit (failure to produce certain documents) is punished by a fine of MRO 40 000 (USD 1 187). Likewise, total obstruction of a tax audit (failure to produce any documents at all or refusal to be audited) is punished by a fine of MRO 1 million (USD 2 967).

In practice

268. During the review period, the Mauritanian authorities did not find any case of a taxpayer refusing to comply with a right to information request or opposing a tax audit. Consequently, no sanctions were applied.

Secrecy provisions *(ToR B.1.5)*

269. Jurisdictions should not invoke secrecy (e.g. banking or business secrets) as a reason for not responding to a request for information made under an exchange of information mechanism. There are several provisions on secrecy and confidentiality in Mauritanian law.

Banking secrecy

270. Banking secrecy in Mauritania is instituted by Ordinance no. 2007/020 of 13 March 2007 regulating credit institutions. Article 74 of the Ordinance states that "All persons who, in any capacity whatsoever, take part in the administration, direction or management of a credit institution or who are employed by a credit institution, persons given assignments, even of an exceptional nature, relating to the supervision of credit institutions, and in general all persons who, in any capacity whatsoever, know or use information relating to credit institutions are strictly bound by a professional secrecy obligation, subject to the penalties provided by the prevailing regulations, with regard to all information which comes to their attention in that context, except in cases where the law provides otherwise." Thus, the managers, employees and agents of credit institutions and persons who, in the performance of their duties, have access to banking information are required to keep such information secret. These rules apply *mutatis mutandis* to microfinance institutions under Ordinance no. 2007/005 of 12 January 2007 regulating microfinance institutions.

271. However, the 2007 Ordinance allows for exceptions to the banking secrecy requirement by specifying persons against whom it may not be invoked. Under Articles 44, 45 and 74, these are internal auditors, statutory auditors, the central bank and the judicial authorities in the discharge of their official duties. The Ordinance leaves other exceptions to the banking secrecy requirement to the law. In this regard, under Article 585 of the Tax Code, "banks and financial institutions are required to provide, on-site or by correspondence, at the request of a tax official, all information relating to taxpayers' accounts, the granting of credit and allocations of foreign currency made to them". The wording of this provision makes it clear that banking secrecy may not be invoked against Mauritanian tax officials. The banking information available to the tax authorities includes information of all kinds relating to bank accounts, such as the identity of account holders, transactions performed on accounts and account balances.

In practice

272. Banking secrecy may not be invoked against the Mauritanian tax authorities, which can exercise their right to information directly with credit institutions in order to obtain any banking information (existence of an account, bank statements, etc.). A protocol on the matter was agreed on 12 August 2010 between the General Tax Directorate, the Central Bank and the Mauritanian banking industry association. Under the terms of the agreement, credit institutions undertake to promptly process any correspondence from the General Tax Directorate and to comply with the tax and regulatory provisions relating to financial statements and tax audits. However, the tax authorities generally exercise their right to information with the Central Bank rather than sending an information request to all credit institutions. In this case, they merely ask the Central Bank to provide the requested information without giving any information about the reasons for the request. The Central Bank can more easily deal with all credit institutions in order to obtain the requested information because it has computer links with commercial banks. The Central Bank forwards responses to the tax authorities within a period of 15 to 30 days. The table below shows the actual use made by the tax authorities of their right to information with the Central Bank, which responded without reserve or opposition.

Number of information requests answered by the Central Bank

2012	2013	2014	November 2015
0	2	8	37

Other professional secrecy requirements

273. Article 350 of the Mauritanian Penal Code protects professional secrecy. "Medical practitioners, surgeons and other healthcare officials, pharmacists, midwives and all persons who, by virtue of their condition or profession, in the discharge of temporary or permanent duties, receive secrets entrusted to them and who reveal secrets, except in cases where they are required or authorised to do so by law, shall be liable to imprisonment for one to six months and a fine of MRO 5 000 to 60 000" (USD 15 to 178). This provision applies to the members of all professions, such as chartered accountants, auditors, tax advisers, notaries and attorneys. Persons practising these professions are bound by a secrecy obligation in the exercise of their professional activities and may refuse to disclose confidential client information except where they are required to do so by law. The tax authorities' right to communication arises from a law (the Tax Code) which requires all natural or legal persons to provide the tax authorities on request with any document that must be drawn up and/or kept under the prevailing regulations. Plainly, the professional secrecy requirement protected by Article 350 of the Penal Code may not be invoked against the Mauritanian tax authorities.

274. Under Article 10 of Decree no. 97-018 repealing and replacing Decree no. 83-026 of 17 January 1983 instituting the *Ordre National des Experts Comptables* (National Order of Chartered Accountants), chartered accountants and statutory auditors are bound by a professional secrecy obligation from which they are expressly released in the event of an investigation into their affairs or a prosecution brought against them by the public authorities or in actions brought before the Order's disciplinary body. Although the decree does not specifically cite the need to assess tax among the cases where chartered accountants are released from their professional secrecy obligation, the Mauritanian authorities assert on the grounds of Article 585 of the Tax Code that professional secrecy may not be invoked against the tax authorities. As the Tax Code is a statute, it prevails over regulatory instruments such as decrees. However, the tax authorities make very little use of the right to information with regard to chartered accountants and statutory auditors, insofar as the accounting information which comes to their attention in the performance of their assignment is almost always kept by their clients themselves (taxpayers) as required by law (the Commercial and Tax Codes).

275. For attorney-client privilege, Act 95-24 of 19 July 1995 repealing and replacing Ordinance no. 86-112 of 12 July 1986 instituting the *Ordre National des Avocats* (National Order of Attorneys) sets out the rules applicable to the legal profession in Mauritania. Article 5 of the Act states that attorneys "are bound by a professional secrecy obligation". Although the Act does not give any further details on the extent of this obligation, the Mauritanian authorities consider that it has the meaning generally accepted in several civil law

legislations. Attorney-client privilege thus covers an attorney's relations as counsel and defence. This applies to exchanges with the client and all procedural documents. The tax administration may not require disclosure of such information. In contrast, information held by an attorney acting as proxy for legal instruments outside any jurisdictional forum or counsel is not protected by attorney-client privilege. In other words, such information must be provided to the tax authorities on request under Article 585 of the Tax Code.

276. Under Article 589 of the Tax Code, tax officials are also bound by a professional secrecy obligation. They are therefore required to keep secret information which comes to their attention in the performance of their duties with regard to tax assessment or collection or tax disputes referred to in the Tax Code. Should they breach their obligation, they are liable to the corresponding penalties set forth in the Penal Code. However, Article 589 of the Tax Code states that these provisions do not prevent the exchange of information with the tax authorities of countries which have concluded a convention with Mauritania on mutual assistance in tax matters.

277. In conclusion, rules relating to professional secrecy are not therefore an obstacle in practice to the exchange of information by Mauritania. In practice, during the review period, the professional secrecy was not opposed to the tax administration in the exercise of its information access powers, including for domestic purposes, beyond the limit defined by the standard.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B.2. Notification requirements and rights and safeguards

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

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

278. Mauritanian law guarantees taxpayers respect of their rights in their relations with the tax authorities, especially in tax audit and tax collection procedures.

279. When a tax audit begins, the tax authorities are required to inform the taxpayer concerned at least 15 days beforehand, except in the case of an unannounced audit where the audit notice is handed to the taxpayer on the day of the first visit. In all events, the taxpayer's charter, which informs taxpayers that they may be attended by a counsel of their choice during the inspection, is provided together with the notice of audit.

280. Apart from the service of notice procedure for refusal to provide information by correspondence, Mauritania has no particular rules governing exercise of the right to information. The tax authorities are under no obligation to justify or give reasons for requesting information from a person. Thus, when the right to information is exercised in response to a request for information from a foreign administration, the Mauritanian tax authorities do not inform the person holding the information in Mauritania (the person in respect of whom the right to information is exercised). Likewise, the authorities do not have to justify using the right of investigation.

281. In addition, the tax authorities are not obliged under Mauritanian law to inform the person in Mauritania who is the subject of a request from a foreign administration under an international convention. There is thus no provision in Mauritanian law for notification before or after the event.

282. Under Article 558 et seq. of the Tax Code, taxpayers are entitled to challenge the amount of taxes, contributions, duties and penalties of all kinds assessed or collected by tax officials before the administration and the competent courts. However, as responses to requests for information do not have the effect of levying taxes on Mauritanian taxpayers, they should not give rise to a tax dispute. In all events, even if that were to happen, the dispute could not prevent or delay transmission of the information to the foreign authority, since under Article 560 et seq. of the Tax Code, tax claims in Mauritania do not have any suspensive effect.

283. In practice, the Mauritanian tax authorities, which are the competent authority, did not exercise their powers of access for information exchange purposes during the review period. However, the same powers were exercised for domestic purposes, with no obstacle due to the application of personal rights and safeguards.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C. Exchanging information

Overview

284. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. In Mauritania, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions) as well as domestic law. This section of the report examines whether Mauritania has a network of information exchange that would allow it to achieve effective exchange of information in practice.

285. Mauritania has a small network of eight tax conventions which include provisions relating to the exchange of information for tax purposes, enabling it to exchange information with nine jurisdictions. Seven of the conventions are bilateral and one is regional (the Arab Maghreb Union tax convention). All these conventions comply with international standards for the exchange of information on request but two of them have not been ratified yet. Mauritania was not in a position to respond to information requests during the review period but the tax authorities indicated that their practical understanding of the notion of foreseeable relevance is broad.

286. Mauritania has not to date declined any request for the conclusion of an EOI agreement. The Mauritanian authorities recently requested to be invited to sign and ratify the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention). This request is currently under consideration by the Parties to the Multilateral Convention through its Coordinating Body.

287. All mechanisms for exchanging information include provisions relating to confidentiality, and Mauritanian domestic legislation also contains provisions on this subject. They apply equally to the information and documents concerned by the request received by the Mauritanian competent authority and to the responses provided to the treaty partner.

288. Each of the treaties entered into by Mauritania guarantees that the parties involved will not be obliged to reveal information regarding an industrial,

business or professional secret, or information subject to attorney-client privilege, or to disclose information that would be contrary to public policy.

289. Lastly, there is no restriction in Mauritanian domestic law that would limit Mauritania's capacity to exchange information within the 90-day deadline laid down by international standards, or that would prevent the Mauritanian competent authority from providing an update on the status of the request to its partners. During the review period one of Mauritania's treaty partners sent it four information requests. According to the comments made by the partner in question, however, the requests were not responded. The Mauritanian competent authority said that it did not receive the requests.

290. During the review period, Mauritania did not have an appropriate organisation in place to handle requests for information. At the date of the on-site visit, however, a dedicated exchange of information unit was already operational, with adequate resources. Mauritania has also taken steps to remedy communication difficulties with its partners, by including contact information for its competent authority in the database of the competent authorities of the Global Forum. Mauritania is recommended to ensure that requests from its partners are processed in accordance with the standard in the framework of the new organisation set up for information exchange purposes.

C.1. Exchange-of-information mechanisms

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

291. Under Article 36 of Mauritania's constitution, the President of the Republic signs and ratifies treaties. Under Article 30, this power may be delegated to the Prime minister or to ministers.

292. Mauritania has a small network of conventions which include provisions relating to the exchange of information for tax purposes. All of them are double tax conventions. Mauritania has concluded eight conventions to date, seven of which are bilateral and one regional, the Arab Maghreb Union (AMU) tax convention covering Algeria, Libya, Morocco and Tunisia as well as Mauritania. Algeria and Tunisia are partners under both bilateral conventions and the AMU regional convention. All the conventions concluded by Mauritania comply with the standard. Two conventions, with Kuwait and Sudan, are not in force.

293. Mauritania has not concluded any tax information exchange agreements (TIEA) to date and is not in the process of extending its EOI network. Likewise, no jurisdiction to date has said that it has contacted Mauritania with a view to negotiating an EOI mechanism. However, the country is in the process of strengthening its EOI network, in particular through the Multilateral Convention, which it intends to sign.

Standard of foreseeable relevance (ToR C.1.1)

294. The international standard in information exchange assumes that information should be exchanged upon request to the widest possible extent. However, it does not allow "fishing expeditions", meaning speculative requests for information which appear to have no clear link with an ongoing audit or investigation. The balance between these two competing aspects is expressed in the concept of "foreseeable relevance" contained in Article 26, paragraph 1 of the OECD Model Tax Convention, which states:

> The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for 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 of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

295. The four conventions in force in Mauritania contain the terms "necessary" or "useful". The term "necessary" found in the AMU convention between Mauritania, Algeria, Libya, Morocco and Tunisia is considered in the commentary on Article 26 of the OECD Model Convention as being equivalent in effect to "foreseeably relevant" with regard to the exchange of information. The conventions with Senegal and France mention information relating to tax "which they [the tax authorities] have at their disposal and which are useful."

296. According to Mauritania, "information at the disposal of the tax authorities" is interpreted broadly, covering both information in their possession and information to which they may have access by exercising the powers conferred on them by law. Mauritania adds that the term "useful" is interpreted in the same way as "foreseeably relevant". France confirmed in its peer review[3] that it supported this interpretation.

297. In practice, Mauritania did not have occasion during the review period to test its interpretation of foreseeable relevance by processing requests for information. The only requests sent by one of its partners did not reach the competent authority for reasons explained in Section C.5 of this report. However, the competent authority asserted during the on-site visit to have an unrestrictive application of the notion of foreseeable relevance. The administrative practice is rather to send clarification requests when the request received is insufficient.

3. Paragraph 214, Peer Review Report – Combined Phase 1 and Phase 2 Report – France © OECD 2011.

In respect of all persons (ToR C.1.2)

298. Effective information exchange presupposes that the obligation of a jurisdiction to provide information should not be limited by the residence or nationality of either the person to whom the requested information relates, or the person who possesses or holds the information requested. For this reason, the international standard in information exchange states that the mechanisms for exchange can permit an exchange of information concerning all persons.

299. None of the treaties in force in Mauritania contains a provision expressly extending the scope of information exchange to persons who are not residents of the contracting states. However, they all permit the exchange of information necessary or useful for the application of their provisions or those of the domestic laws of the contracting states. As each state's domestic tax law applies equally to both residents and non-residents, Mauritania confirms that the information covered by the conventions also concerns non-residents. Thus, none of the EOI mechanisms concluded by Mauritania restricts the scope of information exchange to one category of persons, to the exclusion of others, such as those who are not considered residents of one of the states.

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

300. Jurisdictions cannot undertake effective information exchange if they are unable to exchange information which is held by financial institutions, nominees or persons acting in an agency or fiduciary capacity. According to the OECD Model Convention and Model Tax Information Exchange Agreement (TIEA), which are the main sources of authority where the standard is concerned, banking secrecy may not be invoked as a ground for refusing to provide information, nor may a request for information be declined solely because the information is held by a nominee or a person acting in an agency or fiduciary capacity or because the information relates to ownership interests in a person.

301. Article 26 (5) of the OECD Model Convention provides that a contracting state may not decline to supply information solely because it is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. No convention concluded by Mauritania contains any such provision.

302. All the conventions concluded by Mauritania were signed before the amendment to Article 26 of the OECD Model Tax Convention. However, the absence of a clause in the conventions does not systematically create a restriction on information exchange. The commentaries on the Model Convention state that, while paragraph 5 represents a change in the structure of Article 26, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of information held

by banks, other financial institutions, nominees, agents and fiduciaries. Although Mauritania is not a member of the OECD, the authorities of this country state that they adhere to the interpretation of the OECD Model Convention's commentaries.

303. There is no restriction on information exchange in Mauritanian domestic law and the powers attributed to the tax authorities by law – in this case the Tax Code – enable them to access and exchange all kinds of information, including information held by banks and by nominees, agents and fiduciaries.

304. In practice, Mauritania did not exchange information under its mechanisms in force during the review period. However, the tax authorities, which are the competent authority, normally exercised their access powers in order to obtain all types of information for domestic purposes, including banking information and information held by financial institutions.

Absence of domestic tax interest (ToR C.1.4)

305. 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.

306. None of the tax conventions concluded by Mauritania contains Article 26 (4) of the OECD Model Tax Convention, which requires contracting states to use their information-gathering measures to obtain the requested information even though they may not need it for their own tax purposes. However, the absence of such a clause does not mean that the conventions permit a domestic tax interest. In this case, reference should be made to contracting states' domestic legislation to see whether it prevents the competent authority from using its information-gathering powers solely for information exchange purposes.

307. There is no provision in Mauritanian domestic law which creates a domestic tax interest (cf. Section B.1.3 above). Because ratified conventions take precedence over statutes (Article 80 of the constitution), the Mauritanian tax authorities use the same powers for the assessment and audit of taxes attributed to them by law to gather and exchange information with foreign partners. Thus, Mauritania exchanges information with its partners even if it has no interest therein, without the need for any explicit allusion to domestic tax interest in its EOI mechanisms.

Absence of dual criminality principles (ToR C.1.5)

308. 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.

309. None of the information exchange mechanisms established by Mauritania provide for the application of the dual criminality principle.

310. Practical application of the dual criminality principle to the exchange of information by the Mauritanian tax authorities was not tested during the review period. The Mauritanian competent authority asserted that it had not received the four requests sent by a partner (see Section C.5) and that the absence of response was not due to application of the dual criminality principle.

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

311. 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").

312. All information exchange mechanisms concluded by Mauritania provide for the exchange of information for both criminal and civil matters.

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

313. 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.

314. The tax conventions concluded by Mauritania do not contain any clause relating to the provision of information in a form specifically requested by a contracting party in order to meet its evidentiary standards or other legal

requirements insofar as the law of the requested party permits. However, there is no restriction that would prevent the Mauritanian authorities from providing the information in the requested form as long as it complies with their administrative practice.

315. Notwithstanding the absence of effective exchange of information during the review period, the Mauritanian authorities confirmed that they would provide information in the form requested without problem if it can be obtained under their law or administrative practice.

In force *(ToR C.1.8)*

316. 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.

317. Article 78 of the Mauritanian constitution states that treaties must be ratified by a law. Ratified international treaties take precedence over statutes.

318. In order for international conventions concluded by Mauritania to be ratified, the signed instrument must first be approved by the government and then presented to Parliament (a bicameral institution comprising the National Assembly and the Senate). Under Article 79 of the Constitution, if the Constitutional Council, consulted by the President of the Republic or the President of the National Assembly or the President of the Senate or one-third of deputies or senators, finds that an international agreement includes a clause contrary to the Constitution, authorisation to ratify or approve it may be forthcoming only after revision of the Constitution.

319. Once parliamentary authorisation has been obtained, the ratification act is promulgated by the President of the Republic. Then a date of entry into force is decided jointly with the signatory country by exchange of ratification instruments, a procedure overseen by the two countries' Ministries of Foreign Affairs. The convention finally enters into force at the agreed date. According to the Mauritanian authorities, it is difficult to give an average length of time for the ratification of conventions insofar as the procedure varies from one country to another and also depends on how determined the other party is and the state of its relations with Mauritania (strong, medium or weak co-operation).

320. Mauritania has concluded eight tax conventions to date. Six of them (the Arab Maghreb Union convention and the conventions with Algeria France, Senegal, Tunisia and Qatar) are ratified. Among them, only four are in force (Arab Maghreb Union, France, Senegal, and Tunisia). Regarding the conventions with Algeria and Qatar, Mauritania has received the ratification

instrument from its partners and has recently sent its own instruments of ratification to them. Finally, the conventions with Kuwait and Sudan are not in force. These two conventions were signed on the following dates:

- convention with Kuwait: 27/12/2009
- convention with Sudan: 22/12/2009

321. According to the Mauritanian authorities, this delay in entry into force of certain agreements is the result of an absence of request for exchange of information from partners. They are on the view that this situation is due to the poor economic relationship between Mauritania and these countries, and that the increasing volume of trade and the need to tackle multinational companies' tax planning would result to the reduction of the time required for the entry into force of the agreements. However, only an agreement into force can allow for exchange of information between two partners. Regardless the size of the economic relations with its EOI partners, Mauritania cannot exchange information under two of its eights agreements because they have not yet been ratified. The delay in entry into force is partly attributable to Mauritania, since it has not completed its internal procedures to ratify all these conventions, even though they have been signed for several years.

322. During the on-site visit, the Mauritanian tax authorities showed the ratification instruments for two conventions which had been deemed not ratified during phase 1 of the review. They are the convention with Algeria, signed on 11/12/2011 and ratified on 05/05/2014, and the convention with Qatar, signed on 25/12/2003 and ratified on 20/11/2014. These two conventions had indeed been ratified before phase 1 of the peer review. Nonetheless, a lack of co-ordination was noted between the tax authorities and the Ministry of Foreign Affairs with regard to ratification of conventions and EOI agreements. That could be the cause of the lack of information and the often lengthy ratification and entry into force times seen in Mauritania. Finally, the Mauritanian authorities also stated that they had recently sent their ratification instruments to the respective embassies of Algeria and Qatar. These two conventions should enter into force quite soon.

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

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

324. Article 78 of the Mauritanian Constitution states that treaties cannot take effect until they have been ratified. Article 80 adds that once they have been ratified, they take precedence over statutes. A convention in force and which is directly applicable as is the case for tax treaties needs no other law or additional measure to be effective. In particular, the provisions of tax

treaties Mauritania on exchange of information are directly applicable in Mauritania as from the date of effect of the convention. The Mauritanian tax authorities therefore use the same powers for information exchange as they use for information-gathering for the purposes of assessing and auditing tax in Mauritania. These powers enable to obtain the information, including banking information.

325. Notwithstanding the absence of any effective exchange of information during the review period, the Mauritanian tax authorities exercised their information-gathering powers for domestic purposes during the period.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying the recommendations	**Recommendations**
Mauritania has concluded eight tax conventions providing for information exchange. Six of these conventions are ratified but only four of them are in force, meaning that the jurisdiction can exchange information with only some of its partners. The delay in entry into force of the tax convention signed is partly due to the fact that Mauritania does not always complete the necessary domestic formalities in reasonable time.	The Mauritanian authorities should accelerate the entry into force of agreements already concluded so that they can effectively exchange information with their treaty partners.

Phase 2 rating	
Largely compliant.	
Factors underlying the recommendations	**Recommendations**
Communications difficulties between the different Mauritanian authorities responsible for the ratification of conventions (Ministry of Foreign Affairs and Finance Ministry) have led to confusion in the ratification and entry into force of the tax conventions signed by Mauritania.	The Mauritanian authorities are recommended to take the necessary steps to effectively monitor the ratification process for signed conventions in order to ensure that the process is completed within a reasonable time.

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

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

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

327. Articles 78 to 80 of the Mauritanian constitution allow the conclusion of treaties or international agreements. These provisions are the legal base for the conclusion of tax treaties or tax information exchange agreements (TIEA). Mauritania has signed eight tax conventions, all of which include EOI provisions, covering nine jurisdictions: Algeria, France, Kuwait, Libya, Morocco, Qatar, Senegal, Sudan and Tunisia. Five of Mauritania's partners are members of the Global Forum.

328. European countries, especially France, Belgium, Spain, Switzerland, Germany and Italy, are Mauritania's main economic partners, as both customers and suppliers, accounting for 84% of trade (nearly 44% of exports and 40% of imports). France is the largest economic partner to have an EOI mechanism with Mauritania. At regional level, Mauritania trades with the other member countries of the Arab Maghreb Union and with Senegal. These countries have EOI mechanisms with Mauritania.

329. Mauritania has not concluded any TIEAs to date and is not a signatory to the Convention on Mutual Administrative Assistance in Tax Matters. Likewise, no jurisdiction has said to date that it has contacted Mauritania in order to negotiate an EOI mechanism. Furthermore, two of the eight conventions concluded by Mauritania are not yet ratified and therefore not in force (Kuwait and Sudan) and two others should enter into force quite soon (Algeria and Qatar), though none of these countries is an important economic partner. The fact that the convention with Algeria is not if force does not prevent the two countries from exchanging information for tax purposes since they are both signatories of the AMU convention, which is in force.

330. No jurisdiction has advised that Mauritania had refused to enter into negotiations or conclude an EOI agreement. In September 2015, Mauritania initiated the procedure leading to signature of the Multilateral Convention on Mutual Administrative Assistance for Tax Purposes, to which over

80 jurisdictions around the world are party. A request to that effect has been sent to the depositary of the Convention. The co-ordinating body has advised the States Party in accordance with the procedure in order to obtain their opinion on Mauritania's application before it is invited to sign the Convention. In addition to the request to be invited to sign the Convention, Mauritania is negotiating a double taxation treaty with a partner which includes an article on exchange of information. Discussions are also being held with a view to entering into negotiations with another potential partner.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying the recommendations	**Recommendations**
	Mauritania should continue to develop its exchange of information network with all relevant partners.

Phase 2 rating
Compliant.

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)*

331. 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 mechanisms

332. All the conventions concluded by Mauritania contain provisions relating to confidentiality, even though not all of them follow the wording of Article 26 (2) of the OECD Convention.

333. Broadly speaking, the Mauritanian conventions use one of two wordings for their confidentiality provisions. The conventions with France and Senegal state that "information exchanged in this way, which remains secret, may not be disclosed to persons other than those responsible for the assessment and collection of the taxes covered by the present convention." According to Mauritania, persons responsible for the assessment and collection of tax include not only tax officials but also the judicial authorities (prosecutor's offices and court registries), since these two conventions state that information exchange also concerns "enforcement of legal provisions relating to the prosecution of tax fraud". The AMU convention states that the information exchanged "may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the taxes covered by the Convention, with proceedings or prosecutions relating to such taxes or with decisions on internal administrative appeals relating to such taxes". This wording is even more precise and effectively guarantees the confidentiality of information as required by the standard.

Mauritania's domestic legislation

334. Article 10 of Act 93-09 of 18 January 1993 on the status of civil servants and contracted public employees states: "Irrespective of the rules instituted by criminal legislation with regard to professional secrecy, all civil servants are subject to a professional secrecy obligation for all matters relating to facts or information which come to their attention in the performance of their duties. Any disclosure of official documents to a third party for which no provision is made in the prevailing regulations is prohibited. Except in cases expressly provided for by the prevailing regulations, civil servants may be released from the professional secrecy obligation or the prohibition laid down in the preceding paragraph only by an express decision of the authority on which they depend."

335. With particular regard to tax officials, under Article 589 of the Tax Code any person who, in the performance of their duties, is involved in the assessment or collection of tax or in tax disputes is bound by a professional secrecy obligation. However, it is stipulated that this secrecy obligation does not preclude the exchange of information with the financial authorities of states that have concluded conventions on mutual assistance in tax matters with Mauritania.

336. Under Articles 592 and 593 of the Tax Code, tax officials are released from the professional secrecy obligation with respect to an investigating

magistrate who questions them about facts relating to a complaint brought by the administration against a taxpayer and with respect to any jurisdiction in relation to tax documents whose production may help to settle a dispute. These provisions are consistent with the conventions concluded by Mauritania insofar as they enable exchanged information to be made available to the judicial authorities.

337. Breach of the professional secrecy obligation incumbent on tax officials constitutes misconduct subject to administrative and criminal penalties. From an administrative standpoint, under Act 93-09 of 18 January 1993 aforesaid, any official who has disclosed secret information other than in the cases provided by law is liable to disciplinary sanctions ranging from a warning to dismissal. From a criminal standpoint, such disclosure is punishable by imprisonment for one to six months and a fine of MRO 5 000 to 60 000 (USD 15 to 178). Article 12 of the Act states that in the event of misconduct through breach of the professional secrecy obligation, the authority on which the civil servant depends must promptly refer the matter to the public prosecutor's office.

All other information exchanged *(ToR C.3.2)*

338. The provisions concerning confidentiality which are included both in the relevant agreements and in Mauritanian domestic legislation do not distinguish between information received in reply to a request or information that forms part of the request. These provisions apply in the same manner to requests, attached documents, and all communications between the jurisdictions involved in the exchange.

In practice

339. In terms of professional ethics, officials of the General Tax Directorate are bound by a strict rule of professional secrecy. After recruitment they attend staff college, where specific training modules focus on the overall status of the civil service, especially the rights and duties of civil servants, with a special emphasis on professional secrecy. After leaving staff college, new officials at the General Tax Directorate attend induction meetings during which they are systematically made aware of their obligations as tax officials. In particular, they are reminded that information which comes to their attention in the course of their work must remain confidential and is for professional use only. The tax services inspectorate carries out annual staff inspection programmes to ensure compliance with professional rules, including those on confidentiality. It also carries out spot checks whenever a risk of malfunction is brought to its attention. Those checks have a definite deterrent effect, since they entail serious consequences whenever serious failures are found. To give an example, in 2014 two tax officials at managerial level (inspectors) were relieved of

their duties and disciplinary proceedings were brought against them for having disclosed information relating to ongoing tax audits.

340. In organisational terms, Mauritania did not have an appropriate information exchange organisation during the review period. Communication difficulties were found with Mauritania's exchange of information partners (see Section C.5.2). That could explain why the competent authority did not receive correspondence sent by one of Mauritania's partners, which may raise confidentiality issues insofar as correspondence not received may be in the hands of unauthorised persons. However, the issue of breach of confidentiality due to non-receipt of the missing requests is not clear in Mauritania. Following the investigations carried out by the Mauritanian authorities, there is no evidence that the requests were received. This issue has been attributed to deficiencies in the communication of the contact detail of the competent authority to its EOI partners as discussed further in the report (C5.2). The Mauritanian tax authorities have taken significant steps to reorganise the management of information exchange in order to guarantee confidentiality in the processing of requests. Thus, a postal address has been created for the competent authority as well as a dedicated government email address. These information have been included in the competent authority database of the Global Forum.

341. An information exchange unit has been set up within the verification and tax investigations department, which is part of the tax audit and investigations directorate. An office has been equipped and set aside for the unit, with a secure cupboard and a safe for keeping information exchange files. The office has a password-protected computer. The head of the information exchange unit and the director of tax audits are the only officials to have the keys to the office and the codes for the unit's safes. No other official from the General Tax Directorate is permitted to enter the office, even with the unit head in attendance. The procedure for processing information requests received from Mauritania's partners was defined in the memorandum which created the information exchange unit.

342. Requests for information are received at the Director's secretariat and forwarded directly to the tax audit and investigations directorate, of which the verification and tax investigations department is a part. The head of the verification and tax investigations department then takes charge of them in the office set aside for the information exchange unit. If the requested information is not in the tax authorities' database, the verification and tax investigations department exercises one of the access powers available to the tax authorities, especially the right to information (and now the right of investigation). Notices sent to third parties in order to exercise the right to information or the right of audit merely state the provision under which the information is requested, without reference to the purpose of the request. There is therefore no risk of the person holding the information, even if it

is a tax department or public authority, being informed of the contents of an information request received from a treaty partner.

343. The organisation and procedures put in place, which were in force during the on-site visit to Mauritania, ensure confidentiality in the processing of information exchange requests. However, these measures have not yet been tested in practice, since no request for information has been received since they were introduced. Mauritania is recommended to ensure that the new measures for the processing of information requests are implemented in such a way as to ensure confidentiality in practice.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

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

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

344. 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.

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

345. Most information exchange mechanisms concluded by Mauritania ensure that the parties concerned are not required to supply information that would reveal an industrial, business or professional secret or the disclosure of which would be contrary to public policy.

346. The conventions with France and Senegal, which date from 1967 and 1971 respectively, also protect business, industrial or professional secrets, adding that "assistance may be withheld where the requested state considers that it is likely to endanger its sovereignty or security or prejudice its general interests." Mauritania, like France, considers that this expression has the same content as the notion of public policy contained in other conventions, especially Article 26 (3) (c) of the OECD Model Tax Convention.

347. Article 582 of the Tax Code states that "individual items of information of an economic or financial nature gathered during surveys conducted by the Statistical Service may not under any circumstances be used for tax audit purposes. Agencies holding information of this nature are not bound by the obligation arising from the preceding paragraph [disclosure to the tax authorities]." Far from being contrary to the tax authorities' right to information, this provision ensures that economic or business data likely to reveal an industrial or business secret are not made available to the tax authorities for either tax assessment or tax audit purposes in Mauritania or for the purposes of exchanging information with a foreign partner.

348. Mauritania did not use its powers of access to information during the review period for information exchange purposes with its partners. However, as the powers are the same as those used for domestic purposes, disproportionate protection of the rights and safeguards of taxpayers and third parties would have the same effect at domestic level. The Mauritanian authorities indicated that in practice the rights and safeguards of taxpayers and third parties are compatible with effective information exchange insofar as they cannot hinder access to and transmission of information except in the cases provided by exchange mechanisms relating to public policy and industrial, business or professional secrets. Professional secrecy, especially attorney-client privilege and the secrecy obligation of other professions, has never been invoked as a ground for refusing to provide the tax authorities with requested information under tax law.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C.5. Timeliness of responses to requests for information

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

Response within 90 days *(ToR C.5.1)*

349. In order for exchange of information to be effective, it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international

co-operation as cases in this area must be of sufficient importance to warrant making a request.

350. There is no provision in Mauritanian legislation or in its EOI mechanisms concerning responses or time limits within which replies must be provided. There is no restriction as such concerning the ability of the Mauritanian competent authorities to respond to requests within 90 days of receiving them, either by supplying the information requested, or indicating what stage the processing of the request has reached. However, as part of the new EOI process, the Mauritanian authorities have taken step to provide an update on the status of the request to their partners within 90 days of receipt of the request (see below).

In practice

351. Over the review period (1 January 2012 to 31 December 2014), the Mauritanian authorities stated that they had not received any exchange of information request. However, a peer indicated that it had sent four exchange of information requests to the Mauritanian competent authority during the same period. Under the circumstances, it was not possible to test the Mauritanian authorities' capacity to respond promptly to exchange of information requests from its partners in practice.

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

The Mauritanian competent authority

352. The competent authority under the terms of the tax conventions concluded by Mauritania is the Finance Minister or his authorised representative. Since 15 September 2015, the Director General of Taxes has received full delegation of power to receive, process and respond to all exchange of information requests for tax purposes issued by Mauritania's treaty partners, to receive responses to them and to make use of the contents within the limit of the terms set forth in the prevailing treaties or agreements. If the Director General of Taxes is indisposed, these powers are delegated to the Director of Tax Audit and Investigations, who reports to the Director General of Taxes.

353. During the review period, four exchange of information requests were sent to Mauritania, all from the same treaty partner. The period for responding to an exchange of information request runs from the time the request is received to the time the response is sent to the requesting jurisdiction. In Mauritania, a request involving several entities for which information is requested would be deemed to constitute a single exchange of information request.

354. No response was forthcoming to any of the four requests sent to Mauritania during the review period. The requests were brought to the knowledge of the Mauritanian authorities during phase 2 of the peer review. The peer concerned stated that it had not received any acknowledgment of receipt and could not say whether the Mauritanian competent authority had actually received the requests. It also stated that reminders had been sent for three of the requests, equally without effect. The Mauritanian authorities stated that the Director General of Taxes had written to all its EOI partners to find out whether any requests were awaiting an answer. The peer concerned confirmed that it had received the letter and stated that it had replied, enclosing a copy of the above-mentioned four requests. However, it had received neither an acknowledgment of receipt of the new letter nor a response to its four requests. The peer also stated that it had experienced difficulties finding the precise contact details of the Mauritanian competent authority, including in the letter from the Mauritanian Director General of Taxes.

355. It is difficult to determine the exact reasons why the Mauritanian competent authority did not receive the four information requests. One reason could be the lack of a clearly defined organisation and procedure for processing exchange of information requests at the time of the incident. Another reason could be inadequate communication between the Mauritanian authorities and EOI partners concerning the identity of the competent authority and the most appropriate way of contacting it. The Mauritanian authorities stated that they regularly kept their partners informed of any change to the contact address of their contact partners in the Mauritanian General Tax Directorate on the occasion of bilateral meetings or seminars. That does not seem to be the most appropriate way of ensuring that all Mauritania's EOI partners are in possession of the right information regarding the identity and precise contact details of the Mauritanian competent authority. It is even likely to create a certain degree of confusion, especially as during the review period the competent authority was officially the Finance Minister, no delegation of power having been made to the Director General of Taxes.

356. Furthermore, no information on the competent authority is available on the Mauritanian Finance Ministry website, and the General Tax Directorate does not have a website. The Mauritanian competent authority had not entered its identity and contact details into the database of competent authorities which the Global Forum on Transparency and Exchange of Information for Tax Purposes makes available to its members. However, Mauritania has recently taken a measure to forestall communication difficulties with its partners in the future by including information on its competent authority's contact details in the Global Forum's database of competent authorities. Nonetheless, Mauritania should supplement this measure by providing information on its competent authority's contact details to all its information exchange partners. Mauritania is recommended to ensure that all its EOI partners are indeed

provided with its competent authority's contact details in order to ensure that information requests are sent to the right address in future.

The exchange of information procedure

357. A memorandum from the Director General of Taxes dated 15 September 2015 gives a general description of the procedure to be followed when an information request is received from a partner. Nonetheless, the Mauritanian tax authorities have not yet drawn up a guide setting out the entire procedure in detail, the time limits to be complied with at each stage, the role of each stakeholders or the risks associated with the exchange of information, nor do they have a specific indicator to track exchange of information activity. The Mauritanian authorities indicated that the exchange of information unit's low level of activity did not justify the creation of a tracking indicator of that sort at this stage, since merely checking the responses to requests received gave a very accurate picture of the time taken to process requests and the quality of the procedure. In contrast, requests were tracked individually by means of an Excel file. The Mauritanian authorities added that a detailed practical handbook would be introduced following the recent memorandum in order to clarify the procedures for processing exchange of information requests and the roles of the various stakeholders involved.

358. When the Director General of Taxes receives an information request, it is recorded and registered by the Director General's secretariat in an Excel file which enables the request to be tracked until the Director General sends the response. An acknowledgement of receipt is immediately sent by email when the EOI request is received in the email box dedicated to EOI. In all cases, the EOI request being sent by email or otherwise, a sealed and dated acknowledgement of receipt is sent by mail to the requesting competent authority. The request is then handed to the Director of Tax Audit and Investigations, who acknowledges receipt. A committee whose only members are the Director of Tax Audit and Investigations and the head of the verification and tax investigations department then examine the admissibility of the request. If the request is admissible, it is automatically assigned to the head of the international information exchange unit for processing.

359. The international information exchange unit was created in 2015 within the verification and tax investigations department. Its assignment is to process all requests for information received from Mauritania's treaty partners. The unit has a single staff member, who is none other than the head of the verification and tax investigations department. However, the other three members of the verification and tax investigations department, who are qualified in tax audit, investigation and intelligence, can help the unit to process requests as necessary. The unit has a locked office within the General Tax Directorate as well as material resources (computer, printer, scanner, telephone, safe, etc.). The

Mauritanian authorities stated that additional human and material resources could be allocated according to developments in information exchange activity. In view of the small number of exchange of information requests received by Mauritania, the allocated human and material resources seem adequate.

360. When a request is assigned, the unit processes it as soon as possible. For that purpose, it can obtain the requested information rapidly and directly from its own files either in the JIBAYA system or its local database. It can use its right to information by correspondence, a response to which is received on average within 5 to 15 days. It can also instruct auditors to obtain the information by using their powers of audit under Mauritanian law. As part of its activity, the unit ensures that the confidentiality of the information processed is respected, in particularly by not advising auditors or taxpayers or third parties of the reasons why the information is requested.

361. After gathering the requested information, the unit prepares the response to the information request, which is then examined by the committee whose only members are the Director of Tax Audit and Investigations and the head of the verification and tax investigations department (who is also the unit head) in order to determine whether it is comprehensive and likely to answer the requesting authority's request. The committee may meet swiftly at any time, given that its members are part of the same Directorate. After being validated by the committee, the response is submitted to the Director General of Taxes for signature without passing via his secretariat.

362. Where a complete answer cannot be provided within 90 days of receipt of the request, the Mauritanian competent authority intends to provide a status update of the request to the requesting competent authority. This is tracked through the Excel file dedicated to the handling of EOI requests.

363. After the review period, Mauritania introduced a delegation of the Finance Minister's powers in information exchange matters to the Director General of Taxes and set up a unit to process information requests. Consequently, it was not possible to evaluate the operation and effectiveness of the new organisation and the new information exchange procedures in practice. Mauritania is recommended to monitor the operation of the new organisation set up to process exchange of information requests and the information exchange unit in order to ensure that requests are processed swiftly and efficiently.

364. Although the resources and organisational process introduced to process exchange of information requests seem adequate in light of the few requests sent to it during the review period, Mauritania did not respond to any request for information. Mauritania is therefore recommended to monitor practical implementation of the competent authority's organisational process and the level of resources allocated to information exchange, in particular

taking account of developments in the number of requests, in order to ensure that both the process and the allocated resources remain appropriate for the effective exchange of information.

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

365. There is no provision in Mauritanian legislation or in its EOI agreements which contains specific conditions governing the exchange of information, other than those included in Article 26 of the OECD Model Convention or the OECD Model TIEA. No condition likely to restrict the exchange of information was found in practice.

Determination and factors underlying recommendations

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

Phase 2 rating	
Partially compliant	
Factors underlying recommendations	**Recommendations**
During the review period, Mauritania did not effectively inform its exchange of information partners of the competent authority's identity and precise contact details or the most appropriate way of ensuring that requests actually reach the Mauritanian competent authority. As a result, the four requests sent to Mauritania during this period cannot be traced.	Mauritania should ensure that all its exchange of information partners are able to identify the Mauritanian competent authority at any time.
After the review period, Mauritania introduced a delegation of the Finance Minister's powers in information exchange matters to the Director General of Taxes and set up a unit to process information requests. It was not possible to evaluate the operation and effectiveness of the new organisation in practice.	Mauritania should monitor the operation of the new organisation set up to process exchange of information requests, including the information exchange unit, in order to ensure that requests are processed swiftly and efficiently.

Summary of determinations and factors underlying recommendations

Conclusion	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
Phase 1 determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	Mauritanian law permits the creation of bearer shares in companies limited by shares. However, Mauritanian laws may not sufficiently ensure the availability of ownership information in the event of transfer of bearer shares where the transferor is outside of Mauritania and the transferee doesn't exercise his shareholder's rights.	The Mauritanian authorities should ensure the identification of the owners of bearer shares in companies limited by shares in all circumstances.
Phase 2 rating: Largely compliant	During the review period, the registration formality was the only mechanism that could always ensure the identification of bearer shares owners in case of transfer. However, this mechanism was not effectively implemented. An additional tax requirement recently introduced imposes on companies issuing or having issued bearer shares and on the transferors of such shares to disclose the identity of their owners to the tax authorities. However, its implementation has not been tested in practice	The Mauritanian authorities should ensure the effective enforcement of the registration formality for the transfer of shares regardless of their form. The Mauritanian authorities should also monitor the effective implementation of the new requirement to disclose the identity of bearer shares owners to the tax authorities.

Conclusion	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely compliant *(continued)*	Mauritania has recently introduced a tax provision requiring companies limited by shares (SA, SAS, SCA) to maintain a share register at their registered offices, breach of which is subject to penalty. However, the implementation of this provision has not been tested in practice.	The Mauritanian authorities should monitor the implementation of the obligation to maintain a share register at the registered office by companies limited by shares (SA, SAS, SCA) as well as the applicable sanction.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Conclusion	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Mauritania has concluded eight tax conventions providing for information exchange. Six of these conventions are ratified but only four of them are in force, meaning that the jurisdiction can exchange information with only some of its partners. The delay in entry into force of the tax convention signed is partly due to the fact that Mauritania does not always complete the necessary domestic formalities in reasonable time.	The Mauritanian authorities should accelerate the entry into force of agreements already concluded so that they can effectively exchange information with their treaty partners.
Phase 2 rating: Largely compliant	Communications difficulties between the different Mauritanian authorities responsible for the ratification of conventions (Ministry of Foreign Affairs and Finance Ministry) have led to confusion in the ratification and entry into force of the tax conventions signed by Mauritania.	The Mauritanian authorities are recommended to take the necessary steps to effectively monitor the ratification process for signed conventions in order to ensure that the process is completed within a reasonable time.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.		Mauritania should continue to develop its exchange of information network with all relevant partners.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Conclusion	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
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.		
Phase 2 rating: Partially compliant	During the review period, Mauritania did not effectively inform its exchange of information partners of the competent authority's identity and precise contact details or the most appropriate way of ensuring that requests actually reach the Mauritanian competent authority. As a result, the four requests sent to Mauritania during this period cannot be traced.	Mauritania should ensure that all its exchange of information partners are able to identify the Mauritanian competent authority at any time.
	After the review period, Mauritania introduced a delegation of the Finance Minister's powers in information exchange matters to the Director General of Taxes and set up a unit to process information requests. It was not possible to evaluate the operation and effectiveness of the new organisation in practice.	Mauritania should monitor the operation of the new organisation set up to process exchange of information requests, including the information exchange unit, in order to ensure that requests are processed swiftly and efficiently.

Annex 1: Jurisdiction's response to the review report[4]

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

Mauritania has taken good note of the positive outcomes of the review as well as the recommendations made.

Such an assessment is important for Mauritania as it constitutes both a practical outcome and a positive appreciation by the key body internationally recognised for its work in promoting tax transparency, in line with Mauritania's commitment to meet the international standards of transparency and exchange of information for tax purposes.

Fully aware of the challenges ahead in the fight against international tax evasion, Mauritania will continue its efforts to improve its legal and regulatory framework as well as the implementation of the international standards in practice.

In the perspective of the new round of reviews, Mauritania is committed to the new terms of reference for exchange of information for tax purposes, with the support of the Global Forum Secretariat.

4. 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. Mauritania's exchange of information mechanisms

Mauritania is party to eight double taxation conventions, including seven bilateral and one regional convention, the Arab Maghreb Union convention currently in force in five jurisdictions, namely Algeria, Libya, Morocco, Mauritania and Tunisia.

	Jurisdiction	Type of EOI agreement	Date of signature	Date of entry into force
1	Algeria	Tax convention (regional)	23-07-1990	01-01-1994
		Tax convention	11-12-2011	Not in force Ratified the 05-05-2014
2	France	Tax convention	15-11-1967	01-03-1969
3	Kuwait	Tax convention	27-12-2009	Not in force
4	Libya	Tax convention (regional)	23-07-1990	01-01-1994
5	Morocco	Tax convention (regional)	23-07-1990	01-01-1994
6	Qatar	Tax convention	25-12-2003	Not in force Ratified the 20-11-2014
7	Sudan	Tax convention	22-12-2009	Not in force
8	Tunisia	Tax convention (regional)	23-07-1990	01-01-1994
		Tax convention	12-03-1986	15-06-1999
9	Senegal	Tax convention	09-01-1971	01-01-1973

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

Constitution of the Islamic Republic of Mauritania

Penal Code

Commercial legislation

Commercial Code

Tax legislation

Tax Code (as at 1 January 2014)

Anti-money laundering legislation

Act 2005-048 of 27 July 2005 on the prevention of money-laundering and the financing of terrorism in Mauritania

Financial legislation

Ordinance no. 2007/020 of 13 March 2007 regulating credit institutions

Ordinance no. 2007/005 of 12 January 2007 regulating microfinance institutions

Act 93-40 of 20 July 1993 instituting an Insurance Code

Other legislation

Penal Code

Ordinance no. 82-180 of 24 December 1982 instituting a Mauritanian chart of accounts, revised in 1996 (PCM 96)

Act 93-09 of 18 January 1993 on the status of civil servants and contracted public employees

Act 64-098 of 9 June 1964 on associations

Act 2000-043 of 26 July 2000 on the specific legal regime for development associations

Act 95-24 of 19 July 1995 repealing and replacing ordinance 86-112 instituting the *Ordre National des Avocats*

Joint order no. 137/MJ/BCM/2009 of 18 January 2010 on the implementation by attorneys and notaries of certain provisions of Act 2005-048 relating to the duty of care, the retention of documents and the detection of money-laundering and the financing of terrorism.

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: MAURITANIA

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

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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

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

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