GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

URUGUAY

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Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Uruguay 2011

PHASE 1

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 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.

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 adopted by the Global Forum.

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*.

Executive Summary

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

2. After signing its first double tax convention (DTC) in 1987, Uruguay has, in the two years since its 2009 commitment to implement the international standard, begun to further develop its network of information exchange mechanisms, recently signing its 10th agreement. At the same time it has begun to update its domestic laws, in particular with regards to accessing bank information and is now moving to clarify the competent authority's process for handling EOI requests. The report gives due recognition to these important developments, but also recommends that Uruguay move quickly to implement a broader network of agreements particularly with its key trading partners. The report also notes shortcomings with respect to the availability of ownership information and a lack of requirements to keep underlying accounting documentation. Whilst Uruguay's ability to access relevant information is generally sound, a few concerns have been noted.

3. The obligations requiring the retention of relevant ownership and accounting information in Uruguay are found predominantly in the Commercial Code, Business Partnerships Law (which covers companies and partnerships) and Trusts Law. These are supplemented by the regulatory system covering financial intermediaries, the anti-money laundering regime, as well as the Tax Code. In most cases, these laws create sufficient requirements to ensure the availability of ownership and identity information. However, bearer shares may still be issued by corporations and joint-stock companies, and there are no regulations in respect of nominees. Further, the existence of effective enforcement measures to support some of the ownership and identity obligations is not clear. Concerning accounting records,

most entities and arrangements are subject to clear requirements to retain all relevant accounting records, including underlying documents for a 5 year minimum period. A concern arises however when an entity is not subject to tax in Uruguay, in which case the requirement to keep underlying documents for a minimum 5 year period is not clearly established. The requirements to keep all relevant banking information is established by the obligations imposed on all financial intermediaries. In sum, whilst element A1 concerning ownership and identity information is not in place, element A2 regarding accounting information is found to be in place but in need of improvement, whilst element A3 (banking information) is in place.

4. Accessing information to respond to an EOI request relies upon the broad powers available to Uruguay's tax authority for domestic tax purposes. For accessing bank information, a special regime is in place which requires approval from a Court. This special regime appears to be generally effective, but raises an issue regarding an obligation to notify the taxpayer which does not appear to be consistent with the standard. Further, a confidentiality duty applying to trustees may limit access to trust information where the trust is not subject to tax in Uruguay. Both elements B1 (access to information) and B2 (rights and safeguards) are therefore found to be in place but in need of some improvements.

5. Uruguay's exchange of information (EOI) network is based on agreements which generally follow either the OECD Model Tax Convention or the OECD Model Tax Information Exchange Agreement (Model TIEA). There are some limitations regarding trustee confidentiality and Uruguay has not taken all steps necessary to bring all of its signed agreements into force. Accordingly, element C1 is found to be in place, but needing some improvement. Uruguay has been active upgrading its EOI agreement network, with nine new agreements negotiated and signed since 2009. However, only 5 of Uruguay's agreements are in force and it has not negotiated agreements with key trading partners including Argentina and Brazil. Element C2 is found to be not in place and Uruguay is encouraged to rapidly sign and bring into force EOI agreements, with a focus on its relevant partners. Confidentiality requirements in Uruguay's EOI agreements are supported by domestic law requirements applicable to tax officials, and element C3 is in place. Rights and safeguards are generally in line with the standard although some uncertainty remains about the scope of professional secrecy applicable to legal professionals and on that ground element C4 is found to be in place, but needing some improvement.

6. Whilst Uruguay has made clear progress in the course of the last two years towards implementing its commitment to the internationally agreed standard for EOI, there remains work to be done. In particular, its legislative framework to ensure the availability of ownership and identity information is

not in place, there is some uncertainty about the interaction of bank and trust secrecy provisions with effective access to information, and there is a need to further develop its relevant network of EOI agreements.

7. Therefore, as elements which are crucial to achieving effective exchange of information are not yet in place in Uruguay, it is recommended that it does not move to a Phase 2 Review until it has acted on the recommendations contained in the Summary of Factors and Recommendations to improve its legal and regulatory framework. Uruguay's position will be reviewed when it provides a detailed written report to the Peer Review Group within 12 months of the adoption of this report. It should also provide an intermediary report within 6 months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Uruguay

8. The assessment of the legal and regulatory framework of Uruguay was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference, and was prepared using the Global Forum's Revised Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at July 2011, other materials supplied by Uruguay, and information supplied by partner jurisdictions.

9. 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 Uruguay's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened (see pages 67-71).

10. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Cleve Lisecki, Attorney in the Office of Associate Chief Counsel (International) of the United States Internal Revenue Service; Alexandra Storckmeijer Sansonetti, international tax expert of the International Affairs division of the Swiss Federal Tax Authority; and Caroline Malcolm of the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Uruguay.

Overview of Uruguay

General information on the economy, the legal system and the taxation system

11. The Republic of Uruguay (Uruguay; *República Oriental del Uruguay*) is located in South America, bordered by the Republic of Argentina, Brazil and the Atlantic Ocean. It has a population of just fewer than 3.4 million people, with 85% living in urban areas including the approximately 1.3 million people living in the capital, Montevideo. The national currency is the Uruguayan peso, which at 9 May 2011 was valued at USD 0.053. Uruguay is one of the most economically developed countries in South America, with a relatively high and steadily increasing GDP per capita. In 2010, the total GDP equalled USD 40 283million, which was approximately USD 12 000 per capita.

12. The Uruguayan Constitution (1967) establishes a democratic republic with a presidential system. State power is divided between the legislature, executive and judiciary. Parliament is divided into the Chamber of Senators and the Chamber of Deputies. Representatives of both Chambers and the President of Uruguay are each elected by direct universal suffrage for 5 year terms.

13. The executive branch of government is led by the President, and 13 cabinet ministers (who make up the Council of Ministers). For governance purposes, Uruguay is divided into 19 administrative departments which each have a government led by the "Intendente" (elected by direct popular vote), and a council (formed by the mayors of each of the cities in the department). The third tier of government is the municipalities, which are organized with a Mayor and council.

14. The judiciary is headed by the Supreme Court of Justice, with 5 judges appointed by the government for 10 year terms. Legal challenges to a decision of an officer of the Tax Administration Authority (TAA) are made first to the authority who issued the decision (an appeal for reconsideration) and in the same document as a subsidiary petition, to their superior within the Public Administration (a hierarchy appeal). If the original decision is upheld by those appeals, the person may appeal to the Administrative Appeals Tribunal (Tribunal de lo Contencioso Administrativo) to determine whether the decision from the Public Administration is incorrect or unlawful. This Court can only confirm or reject (but not modify) the original decision. When the claim is made on constitutional grounds, the appeal is to be made to the Supreme Court.[1]

1. Section XVII Uruguayan Constitution

15. Uruguay has a civil law legal system, with a hierarchy of laws as follows: the Constitution; laws (including "decree-laws"[2]); and decrees, regulations and resolutions. Laws must be passed by the parliament, whilst decrees, regulations and resolutions are prepared and enacted by the Council of Ministers, and promulgated by the President. In addition, the regional governments can issue decrees, and municipalities may issue resolutions. The jurisdiction of those decrees and resolutions is confined to the corresponding department or municipality and they cannot override a law, decree, regulation or resolution of the national government. International treaties, including double tax conventions (DTCs) and tax information exchange agreements (TIEAs) have the same status as laws made by the national government. Uruguay has advised that there is an implied principle derived from articles 9 and 10 of the Civil Code that where there is a conflict between laws, the most recent will prevail.

16. The key economic sectors in Uruguay, understood in terms of their contribution to gross domestic product (GDP, being USD 40 283million in 2010), include services (other than financial services, 39%), commerce (including restaurants and hotels, 16%), manufacturing (15%), and agriculture (9%). The tourism sector has recently experienced significant growth, with an increase of 3.75% in 2010. Financial intermediation contributed only 2% to the total GDP in 2010. Uruguay's main export partners are Brazil 18.6%, Argentina 16.7%, China 13.5%, Venezuela 9.1%, US 8.3%, Russia 4.2%; whilst it predominantly sources imports from Brazil 21%, Nueva Palmira Free Zone (one of Uruguay's free trade zones – see further paragraph 21 below) 10.2%, Argentina 7.5%, Chile 5.5%, Russia 5.3%.

17. The national tax system in Uruguay is administered by the TAA. The principal national taxes are:

- Company tax (IRAE) – imposed on companies and individuals, either resident or with permanent establishment, on Uruguayan source income (including capital gains) originating from industrial, commercial and agricultural activities.[3] Standard rate is 25%.

2. Under Uruguayan law, "decree-law" refers to the regulation issued during the last civil and military dictatorship which ruled from 1973-1985, and which were the only form of regulation available, since there was no parliament in operation. Upon the return of the democratically elected government, some of these laws were validated by the parliament (Law 15,738), and they are now known as decrees with the force of law. Those decree-laws which have not been so validated, are no longer legally binding.

3. In the case of income derived from agricultural activities, certain entities may elect to be subject to either the usual company tax, or to the tax on disposal of agricultural goods.

- Non-Resident Income Tax (IRNR) – imposed on Uruguayan source income obtained by non-resident individuals.
- Personal tax (IRPF) – imposed on Uruguayan source income including income from capital gains. The rate is imposed based on whether it is category I (income from capital and capital gains) or category II (income from dependent or independent personal services and pensions). Tax rates on different types of category I income vary, but are flat; whilst the rate for category II income is progressive.
- Wealth tax (IP) – payable by corporations and individuals, with an exemption for agricultural activities. Where the entity also pays the company tax, net worth tax is imposed at the standard rate of 1.5% of net worth.
- VAT – is imposed on goods and services at the basic rate of 22%. Certain exemptions exist, either in entirety, or to apply a reduced rate of 10%.

18. At the provincial level, the main taxes are a real property tax, vehicle registration fee and a food analysis tax.

19. A person is considered to be a Uruguayan resident for tax purposes if they are present in Uruguay for more than 183 days in a calendar year; or if directly or indirectly the economic activities or individual interests (*e.g.* family) of the person are located in Uruguay. Companies are considered resident when they are incorporated under Uruguayan law or have a permanent establishment in Uruguay (which is defined in article 10 of the Company Tax Law). Partnerships and trusts are taxed on an entity basis (except for guarantee trusts) under Uruguayan law.

20. In general, foreign-source income is not taxable under Uruguayan law. However, in 2011 new legislation was introduced which will tax individuals on income realised from foreign passive investments.

21. Uruguay also operates twelve free trade zones (FTZs), which are areas within the national territory which confer certain tax exemptions and other benefits for commercial activities carried out therein. A specific type of company (SAZF, Sociedad Anónima de Zona Franca) may be incorporated (article 17, Law 15 921) which are permitted to operate only in these zones, and overseas. Users of the FTZs benefit not only from an exemption from customs duty, but also from an exemption from national taxation including income tax, present or future, with regard to the activities carried out in the FTZ. SAZFs are required to be registered in the National Registry of Commerce.

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

22. Under Uruguayan law, the list of entities recognised as separate legal entities include trading companies (corporations, limited liability companies, joint stock companies, limited partnerships), economic interest groups (similar to a corporate group, with separate legal personality), cooperative corporations, mutual guarantee corporations and foundations. Some other legal structures, such as trusts, do not have legal personality.

23. Entities with separate legal personality may be formed in two main ways: upon execution of an agreement (*e.g.* for trading companies, economic interest groups); or, upon the authorisation of, or registration with, a relevant government authority (*e.g.* for cooperative corporations and associations).

Overview of the financial sector and relevant professions

24. The financial sector in Uruguay consists of "financial" and "non-financial" institutions. The financial institutions include 14 commercial banks (2 state-owned and 12 private, foreign-owned banks), 1 cooperative financial institution, 5 finance houses ("casas financieras"), 4 offshore financial institutions ("instituciones financieras externas" or "IFEs"), and 4 pension funds managing companies. In addition, non-financial institutions are the institutions managing credit (14), exchange houses (75) and companies providing financial services (7). The last group, companies providing financial services, may carry out funds transfers, payments and collections, and rent safe deposit boxes, as well as provide currency exchange services and other activities.

25. Each type of institution is restricted to carrying out certain activities according to its type. The three key types of "financial institutions" are the commercial banks, the financial houses and the IFEs, and the scope of their activities is described here. Commercial banks may:

- Receive current account deposits and authorise drawings thereupon by means of cheques;
- Receive at-call deposits from residents and receive at-call deposits in local currency from non-residents; and
- Receive term deposits from residents.

26. Financial houses are defined as those companies authorized to carry out any kind of financial intermediation activities, except those reserved to commercial banks. Hence, financial houses are allowed to:

- accept term deposits (over 30 days) from non-residents, either in foreign or local currency; and

- accept at-call deposits (less than 30 days) from non-residents, in foreign currency.

27. Finally, IFEs are created under Article 4 of Decree Law 15,322 and are defined as those entities whose only corporate purpose consists in carrying out intermediation activities with non-residents only, or within Uruguayan free trade zones, regarding the offer and demand of securities, money or precious metals located abroad (or in the free-trade zones).

28. At the end of 2010, commercial banks held 92% of total assets in the financial system, with 46% held by the two state-owned banks. Other financial institutions such as the IFEs and finance houses held the remainder. At the end of 2010, total deposits held in the financial and non-financial institutions reached USD 25 074 million, of which non-resident deposits accounted for 18%. Although in 2002 a banking crisis in Uruguay saw the loss of 40% of banking deposits and the closure of a number of banks, since then the financial sector has recovered steadily.

29. All professional trustees, investment funds and pension funds are regulated by the Central Bank of Uruguay (UCB). Investment funds are formed by contributions of individuals or legal persons, administered by a corporation with registered shares who has similar obligations to those of a trustee. Pension funds (Retirement Funds Savings Managing Companies, AFAPs) are a specific type of investment fund, which have as their objective the placement of social security savings of their shareholders.

30. Anti-money laundering measures were introduced in 2000, with the introduction of regulations by the Central Bank of Uruguay which *inter alia* created the Financial Research and Analysis Unit (IUAF) within the UCB to report on suspicious transactions. In 2004, parliament sanctioned the regulatory measures introduced by the bank in 2000, passing Law 17,835 which included obligations on the financial sector as well as designated professions and persons carrying out certain activities, to report suspicious activities. In 2007, the National Anti-Money Laundering Agency and the Coordination Committee against money laundering were created.

Recent developments

31. In 2006, the incorporation of financial investment corporations (SAFIs), a popular form of vehicle for non-Uruguayan residents with limited tax and registration requirements, were banned under Law 18,083 dated 27 December 2006. That Law also introduced a phase-out period for existing SAFIs, with that period ending on 1 January 2011. SAFIs that complied with certain requirements including carrying out only minimal activities in Uruguay, had limited disclosure and record keeping requirements and

benefited from a special tax regime. As a result of the 2006 law however, no SAFIs established under Uruguayan law remain in existence.

32. In December 2010, Uruguay introduced Law 18 718, passed in December 2010 and entering into force from 2 January 2011 which permits the lifting of bank secrecy for domestic tax law purposes in the case of tax evasion, and for foreign tax purposes as required by an EOI agreement (article 15, Law 18 718). However, it applies only to transactions occurring after 1 January 2011. The legislation is discussed further in Part B of the report.

33. In August 2011, Uruguay passed a decree concerning the procedure applicable to the tax authority for handling EOI requests. This decree has not been considered in this report. It will be closely reviewed in the intermediary report which should be provided by Uruguay within six months from the adoption of this report.

34. Uruguay has also advised that a draft law has been proposed to establish a mechanism to properly identify the bearer shareholders of corporations and joint stock companies which may issue such shares. At this stage the draft law has not yet been passed.

Compliance with the Standards

A. Availability of information

Overview

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

36. Uruguayan law permits the creation of a number of different types of companies and partnerships (which fall within a broader grouping known as "business partnerships") under the Business Partnerships Law. However, foreign companies carrying on business in Uruguay are not expressly required to keep identity information concerning their owners and a recommendation is made in this respect. With the exception of entities permitted to issue bearer shares, there are effective requirements in place to ensure the availability of ownership and identity information in respect of these entities. Bearer shares may be issued by most corporations (including free-trade zone corporations) and joint-stock companies, and Uruguay does not have in place measures to ensure the owners of such shares can be identified.

37. For trusts, there are clear requirements to keep identity information in respect of settlors, trustees and beneficiaries. Whilst foundations may be created under Uruguayan law, they are limited to non-profit activities, and thus their significance is limited. In addition, there are a number of entities and arrangements which may be formed such as economic interest groups, informal partnerships and consortiums; in each of these cases they are subject to requirements to maintain relevant ownership and identity information in line with the standard. The measures to ensure the effective enforcement of these obligations to maintain ownership and identity information are generally in place, except as concerns "business partnerships". Overall, noting recommendations relating to ownership and identity information concerning foreign companies, nominees, bearer shares, and enforcement measures, element A.1 is found not to be in place.

38. In respect of accounting records, broad obligations which cover most relevant entities and arrangements stem from the Tax Code, and ensure in most instances that reliable accounting records, including underlying documentation are required to be kept for a minimum of five years. These obligations are supplemented by additional obligations in the Commercial Code, the Business Partnerships Law and through the regulation of financial intermediaries. However, to the extent that an entity may not be subject to tax in Uruguay, the application of the Tax Code obligations is uncertain and a recommendation is made to ensure that all relevant entities are subject to keep underlying documentation. This element (A.2) is found to be in place, but with certain aspects in need of improvement.

39. Banks, as well as other persons carrying out financial intermediation activities, are subject to regulation by the Uruguayan Central Bank (UCB). This regulation establishes comprehensive client identity information requirements, as well as transaction record requirements with the result that element A.3 is found to be in place.

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 Companies

40. Companies are types of "business partnerships" under Uruguayan Law, and may take one of the forms described in article 3 of the Law 16 060 (the Business Partnerships Law). These include:

i. Limited Liability Companies (Ch II, Sect. IV): capital divided into shares, which may not be represented by negotiable instruments. Liability of members is limited to their contribution, and the number of members shall not exceed 50 (upon exceeding this number, it shall change into a Corporation within 2 years). They may not issue bearer shares.

ii. Corporations (Ch II, Sect. V): capital is divided into shares, which may be represented by negotiable instruments and be in nominative, bearer[4] or book-entry form (article 304; on bearer shares, see further paragraph 48). Liability of shareholders is limited to the share value. Corporations may be open [5] and therefore regulated by the state control body, or closed (being all other corporations which are not "open": article 248, Business Partnerships Law). Coupons may be issued which relate to earnings or other rights, and these may be bearer coupons even in the case of nominative shares (article 302). Free Trade Zone Corporations (SAZFs, governed largely pursuant to Law 15 921) are a sub-type of corporation and subject to the same relevant requirements in respect of ownership and identity information.

iii. Joint Stock Companies (Ch II, Sect. VI): capital is divided into shares, which may be represented by negotiable instruments (article 474, Business Partnerships Law). Active partners (socios comanditados o gestores) have unlimited liability, whilst special partners (socios comanditarios) are only liable to the extent of their contributions. The obligations relevant to limited partnership apply, except in respect of special partners and their share capital, where the provisions regarding corporations apply (including that they may issue bearer shares).

41. In addition, "business partnerships" may also include General Partnerships, Limited Partnerships, Capital and Labour Partnerships, and Informal Partnerships or joint ventures which are described in the Partnership section of this report commencing at paragraph 52. Also, non-commercial entities which take one of the above forms are also deemed to be "business partnerships" and subject to the provisions of the Business Partnerships Law.

4. Neither bearer shares nor bearer coupons maybe issued by "open" (for public subscription) corporations.

5. A corporation which resorts to public savings to constitute their original capital or to increase it and who quote their shares in the stock market or obtain loans through the public issuance of negotiable obligations (article 247, Business Partnerships Law).

42. Article 6 of the Business Partnerships Law provides that a deed constituting a business partnership will be made, and it must contain information including:

- the name and address of the business partnership; and
- accurate identification of those entering into the contract [*i.e.* the founding members] and their capital contributions.

43. All companies (including foreign companies, as well as cooperatives, economic interest groups and consortiums) are required to register the deed constituting their business partnership (for example, contract of incorporation) in the National Register of Commerce (NRC) pursuant to article 49(2) of the NRC Law 16 871 (NRC Law). All modifications to the initial incorporation deed, which Uruguay has advised includes any subsequent transfers of shares in a company, are also required to be registered in the NRC (article 49(6), NRC Law)[6] and this should be confirmed in the Phase 2 review of Uruguay. The NRC is controlled by the General Registries Office within the Ministry of Education and Culture. These provisions regarding identification of shareholders will not apply in respect of any bearer shares which may be issued (see further paragraph 49).

44. The Business Partnerships Law also establishes obligations on the companies themselves to maintain records of share ownership as follows:

- Limited Liability Companies (articles 231 and 232, Business Partnerships Law): assignments of shares to existing owners may be freely undertaken (except where it affects the majority holdings). Assignment to third parties may not be undertaken unless shareholders holding 75% of the share capital agree (prior-notification of the intent to transfer must be given, and no response within 15 days indicates consent). There is no express requirement for the company itself to notify this transfer to existing members, or keep a record.
- Corporations: closed corporations are subject to an obligation to keep a share register for nominative shares, as well as a register for any book-entry shares that are issued (articles 333 and 334, Business Partnerships Law). Transfers of nominative or book-entry shares are not valid until they are registered in the register that is required to be kept by closed corporations (article 305, Business Partnerships Law). Corporations are not under any obligation to keep a register containing ownership information regarding bearer shares, or coupons including bearer coupons (which may be issued in respect of

6. However, it is not clear that this results in a complete share register being prepared and maintained by the NRC, or whether alternatively, each of the transfers is merely filed in the company file.

all types of shares, and which can confer certain rights, including to collect some dividends). Corporations which are carrying out financial intermediation activities[7] are required to include in their statute a provision that only nominative shares shall be issued (article 43, Law 15 322).

- Joint Stock Companies: the transfer of a share holding of an active partner (article 482, Business Partnerships Law) must be approved by an absolute majority. The transfer of a share holding of a special partner follows the rules applicable to corporations.

45. Foreign companies which carry on a business in Uruguay through a permanent establishment are required to register in the NRC including providing their contract of incorporation, and meet the obligations relating to ownership information described in paragraph 43 (article 193, Business Partnerships Law). However, these foreign companies are not expressly required to provide identity information concerning their owners as a part of registration requirements. Instead, the availability of ownership information will depend on the law of the jurisdiction in which the company is formed and it may not be available to the Uruguayan authorities in all cases. It is therefore recommended that Uruguay takes steps to ensure the availability of ownership information on relevant foreign companies in all cases.

46. All entities, including companies incorporated under Uruguayan law, as well as foreign companies subject to tax in Uruguay (those carrying on business through a permanent establishment in Uruguay) are required to register with the TAA at the time of starting or restarting taxable activity providing to the TAA the "information and documents that are required" (article 9, Decree 597/988). Uruguay has advised that this required information will include the provision of certain information, which must be kept up to date, including the company's full name and business address, although not complete ownership information.

47. In sum therefore, all types of companies formed under the Business Partnerships Law are subject to requirements under that law and the NRC Law which ensure records are kept identifying nominative owners. Ownership information for foreign-incorporated companies with a sufficient nexus to Uruguay may not however be available in all cases, and Uruguay should ensure that such information is required to be maintained. Also, where a company may issue bearer shares, that ownership information will not be known in most cases (see further paragraph 49).

7. See paragraph 112.

Nominees

48. There are no specific regulations regarding the establishment of nominee shareholdings. Obligations to identify the owner or partners in respect of "business partnerships" for example, in registering such details in the NRC (as described in paragraph 43), appear to require only that the nominal owner is listed, regardless of whether that person is acting as a nominee. Except where the person is otherwise providing "financial intermediation" activities in respect of the entity (in which case the obligations described in paragraph 112 will apply), there appears to be no requirement for nominees to have, or make available, information about the person on whose behalf shares are registered.

Bearer shares (ToR A.1.2)

49. Closed corporations (*i.e.* corporations which are not open for public subscription) and joint stock corporations, as well as free trade zone companies, may issue bearer shares, as well as bearer coupons (the latter in respect of nominative, book-entry and bearer shares). In a very limited number of situations, the issue of bearer shares has been prohibited in Uruguay or the bearer shareholder may need to provide identity information.

50. In some cases, a requirement to provide identity information for a bearer shareholder may be triggered. If a bearer shareholder wishes to attend a company meeting, they must sign the registered book of attendance which includes their name (or the name of their agent – see below), as well as the class, number and value of their shareholding (article 335, Business Partnerships Law). Further, in order to attend meetings, bearer shareholders shall deposit their shares or a certificate of deposit with the company (article 350). Shareholders, including bearer shareholders, may be represented at a meeting by an agent where a certified (by notary) power of attorney is presented. However, in that case and where the agency is applicable for only one meeting, a power of attorney may be issued without certification by a notary (article 351). As a result, even when a bearer shareholder does wish to exercise his rights as a shareholder at a company meeting, it appears that this will not necessarily entail providing identity information that must be retained by the company, notary or agent.

51. Since 31 August 2007 bearer shares are prohibited from being issued by some types of companies, being corporations or joint stock companies which hold property rights over rural estates or carry out agricultural activities (Law 18 172). These entities were given a 2-year period from August 2007 in which to convert the bearer shares into parts or nominative shares, whose owners must be individuals. Failure to do resulted in the termination of the corporation by operation of law (article 349, Law 18 172).

52. Therefore, bearer shares may be issued by closed corporations and joint stock corporations, and there is no mechanism in place to ensure that the owners of bearer shares or coupons can be identified in all instances. Uruguay has advised that it has prepared draft legislation which would prohibit the issue of bearer shares by corporations and joint-stock companies (see paragraph 34), however that legislation has not yet been considered by parliament.

Partnerships (ToR A.1.3)

53. As noted in paragraph 40, all commercial entities in Uruguay are "business partnerships" which in addition to the forms described in the Companies section of the report, may take one of the other forms described in the Business Partnerships Law (article 3) including the following types of partnerships:

i. General Partnership (Ch II, Sect. I, article 194): the members are jointly and severally liable without limit (that is, this type of entity is similar to a common law partnership, rather than a company with a separate legal identity).

ii. Limited Partnerships (Ch II Sect. II, article 212): partnership shares divided between the active partner(s), who has unlimited liability; and special partner(s), who is liable only to the extent of their contribution. Subject to the express provisions of chapter II, section II of the Business Partnerships Law, the regulations regarding general partnerships are applicable to limited partnerships.

iii. Capital and Labour Partnerships (Ch II, Sect. III, article 218): partnership shares are divided between funding partners, who have unlimited liability; and working partners, who only contribute their labour and are liable only up to the amount of profits due to them which they have not received. Subject to the express provisions of chapter II, section III of the Business Partnerships Law, the regulations applying to general partnerships are applicable to Capital and Labour Partnerships.

54. Article 6 of the Business Partnerships Law provides that a deed constituting all types of business partnerships will be made and must contain certain information including the name and address of the business partnership and accurate identification of those entering into the contract (*i.e.* the founding members) and their capital contributions. As with companies, a partnership's founding document must be registered in the NRC within 30 days (article 7). Article 49 of the Public Register Law 16 871 also provides for registration in the NCR of all deeds of incorporation for commercial partnerships.

55. With respect to the registration in the NRC of the transfer of ownership parts, Uruguay has advised that as this is considered a modification of the incorporation contract, such transfers must also be notified to the NRC pursuant to article 10 of the Business Partnerships Law[8], and this should be confirmed in the Phase 2 review of Uruguay. Similarly, article 49(10) of the Public Register Law requires the notification of the NRC of any modifications to the incorporation contract, which includes identity information on the partners (whether limited or otherwise).

56. In addition for general partnerships, the partnership itself is subject to an implied obligation to keep a record of transfers of ownership parts. Article 211 of the Business Partnerships Law provides that an assignment of a part to another partner or a third party shall only occur by unanimous consent (although though there is no express requirement for the general partnership itself to keep a record of such consent or the subsequent transfer).

57. Partnerships are taxed at the partnership level in Uruguay, and all partnerships formed under the Business Partnerships Law are subject to tax in Uruguay. All entities, including partnerships are required to register with the TAA at the time of starting or restarting taxable activity, providing to the TAA the "information and documents that are required" (article 9, Decree 597/988). Uruguay has advised that this will include the provision of certain information, which must be kept up to date, including the partnership's full name and business address, although not complete ownership information. Article 63 of the Tax Code requires that in a tax return, a taxpayer must provide "all elements and background information" required by laws and regulations which are necessary for a tax determination, and Uruguay has advised that on this basis, the partnership will provide identity information regarding the partners. However, noting that partnerships are taxed at the partnership level, it does not appear that this is clearly established by article 63 of the Tax Code. Nevertheless, the Business Partnerships Law and NRC Law impose sufficient disclosure obligations concerning the identity of the partners, as described in paragraphs 53 and 54.

58. In sum therefore, all types of partnerships formed under the Business Partnerships Law are subject to requirements under that law and the NRC Law that will ensure that the identity of the partners is known. All the observations and conclusions applicable to foreign companies (see paragraphs 45-47) are equally applicable to foreign partnerships.

8. As mentioned in respect of companies, it is not clear that notification of transfers to the NRC results in the maintenance of a complete share register by the NRC, or whether alternatively, each of the transfers is merely filed in the entity's file maintained by the NRC.

Trusts (ToR A.1.4)

59. The statutory provisions relating to the creation and governance of trusts ("fideicomisos") in Uruguay are contained in Law 17 703 published on 4 November 2003 (Trusts Law) and Decree No. 516/003 (Trusts Decree), as amended by Decrees Nos. 46/004 and 52/004.

60. Article 1 of the Trusts Law defines a trust as a juridical act whereby the fiduciary ownership of a group of property rights or other rights is created and transferred by the settlor ("fideicomitente") to the trustee ("fiduciario"). In some cases, the confidentiality duty binding the trustee (article 19(c), Trusts Law) may hinder access for EOI purposes to information held by a trustee about the trust. This is considered further in Part B of this report

61. Pursuant to Article 2 of the Trusts Law, a trust can be created *inter vivos* or by an open or closed will. Express trusts must be established in writing. An express trust may be either:

- *non-financial trust*: established through the creation of a trust agreement between the settlor and the trustee. A *guarantee trust* is a sub-type of non-financial trust which is created for the purpose of allowing a debtor to transfer immovable or movable property into the trust, to guarantee the payment of their debt which is outstanding.; or
- *financial trust*: akin to a unit trust,[9] and which may be established by the unilateral act of a financial intermediary or an entity managing investment funds. Subject to the specific provisions of chapter IV of the Trusts Law.

Non-financial trusts (including guarantee trusts)

62. The trust instrument as a contract must be authorised by a public notary. Under article 130 of the Supreme Court of Justice's regulations governing public notaries (Acordada no.7 533), all deeds must contain certain identity information including the full name and nationality and address of the parties involved. The beneficiary must be designated in the trust deed (article 23, Trusts Law). Where the trust deed names a class of beneficiaries some of whom are not yet in existence, the law requires that the means allowing for their future identification are described in the trust instrument (article 23, Trusts Law).Therefore, the identity of the settlor, trustee and beneficiary will be known in respect of all trusts created under Uruguay's law.

9. Article 25, Trusts Law, defines a financial trust as a "trust whose beneficiaries are holders of beneficial ownership certificates or debt securities guaranteed by assets held in trust or of mixed securities granting credit rights over and interests in the remainder.

63. Further, the trust instrument, and any modification or cancellation thereof, must be registered in the Private Acts Registry within the Properties Section of the Ministry of Education and Culture (art 6, Trusts Law; s.1, Trusts Decree), and only becomes enforceable against third parties upon registration (art. 17, Trusts Law). For the registration to be admitted the trust instrument must indicate identity information for trustees (s2, Trusts Decree). This identity information includes:

- for individuals, full name, address and identity card number; or
- for legal entities, name, type, registered office address and registration number.

64. Foreign-administered trusts created under Uruguayan law, will also be subject to the requirements described above.

Financial Trusts

65. A financial trust, governed by articles 25 to 32 of the Trusts Law, may be established by a financial intermediary or an entity managing investment funds. As for non-financial trusts, the trust must be registered in the Private Acts Registry and in order to be registered a financial trust instrument must indicate identity information for trustees and for settlors (s2, Trusts Decree). Where the settlor and the trustee are the same person, the trust may be established through a unilateral act (articles 25 and 26, Trusts Law). Financial trusts may make public or private offerings of securities, with the latter being required to register with the UCB (art 3, Law 16 749; and s.13, Trusts Decree).

66. All trust deeds created under Uruguayan law must be notarised by a public notary and must include the full name, nationality and address of the parties to the deed (see further, paragraph 62). Therefore, the identity of the settlor, trustee and beneficiary will be known in respect of all trusts, including financial trusts, created under Uruguay's law.

Trustees

67. For tax purposes, a trust (except for guarantee trusts) is a taxable entity (article 36, Trusts Law) however it is the trustee who is the "tax responsible" party (article 44, Trusts Law, with articles 16 and 19 of the Tax Code). Accordingly, the trustee is responsible for ensuring that the trust meets its obligations under the tax laws, such as registration of the trust with the TAA, the filing of tax returns and the payment of any taxes due. The trustee shall be personally responsible for meeting those obligations (article 44, Trusts

Law), that is, he may be required to pay outstanding taxes from the trustee's own assets if there are insufficient assets held in the trust.[10]

68. Under article 11 of the Trusts Law, any natural person with the legal capacity required to perform commercial activities or any legal person may be a trustee. Uruguay has advised that regulations issued by the UCB distinguish between the following types of trustees (Trusts Law, article 11; and Trusts Decree, section 11):

- *general trustee*: establishes non-financial trusts on a non-regular basis;
- *professional trustee*: acts on a regular basis, in a professional capacity, where regular basis means establishing five or more non-financial trusts in a given calendar year; and
- *financial trustee*: a sub-type of professional trustee, being a financial intermediary or entity managing investment funds which establishes financial trusts (regardless of the number of financial trusts established in a given year).

Professional Trustees

69. Professional (including financial) trustees are subject to a requirement to register in the Public Registry of Professional Trustees kept by the UCB (Trusts Law, article 12 and Trusts Decree, section 6). Such trustees who are not individuals must disclose their own ownership information (shareholders, partners, managers and directors) and accounting information (last three business years) to the UCB, as part of the registration process (Trusts Law, article 12 and Trusts Decree, sections 7 and 8). Further, if a corporation is appointed to act as a trustee, it may issue only issue nominative or book-entry shares (Trusts Law, article 12). Further, all professional trustees are carrying out "financial intermediation" activities and therefore will be subject to the regulations described in paragraph 112 and the AML regime. Those obligations mean that where the trust is managed by a professional trustee, the identity of the settlor will be known, and at the time of the distribution of funds from the trust, the professional trustee will also need to identify the beneficiary.

70. In addition, financial trustees must submit the articles of incorporation of their financial trusts and expressly indicate whether they will issue public or private offerings of securities (Trusts Decree, sections 11 and 12). This information is publicly available and must be updated at least on a half-yearly basis (Trusts Law, article 12 and Trusts Decree, section 15).

10. In the case of a guarantee trust, for tax purposes the assets of the trust are still considered assets of the settlor (article 58, Law 18 083).

71. Therefore, for trusts managed by professional trustees (but not created under Uruguayan law) the identity information relating to the trustee and settlor will be available, as well as the beneficiaries at the time of distribution of funds. A very narrow gap potentially remains in relation to those trusts administered in Uruguay, but not created under Uruguayan law, which have a non-professional trustee and whether this gap prevents effective EOI in practice will be examined in the course of the Phase 2 review of Uruguay.

72. Non-resident trustees of trusts with Uruguayan assets are required to register with the UCB and to submit a proof of their registration, if any, with a relevant trust authority in their country of residence (Trusts Decree, section 9). Nevertheless, it is conceivable that a trust could be created which has no connection with Uruguay other than that the settlor chooses that the trust will be governed by the Uruguayan laws. In that event there may be no information about the trust available in Uruguay.

73. For trusts created under Uruguayan law, whether non-financial trusts (including guarantee trusts) or financial, the trustee settlor and beneficiaries will be identified (see further paragraph 62).

Foundations (ToR A.1.5)

74. Uruguay has advised that foundations can be created under Uruguayan law, pursuant to the Foundation Law17 163 but they must be not for-profit. Therefore and to that extent, they are of limited pertinence to the exchange of information for tax purposes; however a brief overview of their legal structure, and ownership and identity information requirements is given here.

75. Under Uruguayan, law, a foundation will have both a managing council and an administrative council, and the degree of control over the assets of the foundation by each body is not known. The foundation's articles of incorporation must contain the identity of its founding members. The foundation must be registered with the Civil Association Agency (part of the Ministry of Culture and Education.) including the articles of incorporation, and information including the foundation name and address, its purpose, initial capital, and the names of the members of the managing council. Members of the managing council, and any managers of the foundation, are required to reside in Uruguay. After liquidation, any assets remaining may only be donated to another not for profit organisation with similar activities or aim; or the assets become the property of the Minister of Culture and Education.

76. A Uruguayan foundation is exempt from tax to the extent of its non-profit activities, and therefore is not generally required to either file a tax return. However, to the extent that it undertakes activities which are not strictly linked to their non-profit purpose to which their tax-exempt status is linked, they are liable to pay tax.

Other types of legal entities and arrangements

77. In addition to companies and partnerships, certain other types of "business partnerships" may be created under the Commerce Law, namely:

i. Informal Partnership or Joint Ventures (Ch II, Sect. VII, article 483): A contract amongst two or more people whose aim is to perform certain temporary business, where the contract is executed under the name of one or more managers. It does not create a legal personality, and are not subject to any formal or registration requirements. Any third parties shall only acquire rights and assume obligations in relation to the manager, whose liability is limited.

ii. Economic Interest Groups (Ch III, Sect I, article 489) A contract arranged between two or more persons or entities in order to develop or facilitate the economic activity of its members. It is not allowed to collect or distribute profits. The contract should contain the management and representation rules otherwise the rules applying to corporations will be applied. In other matters General Partnerships regulations will apply. Partners may have a jointly and several, or subsidiary liability depending on the terms of the contract. It is a legal entity, and recognised as taxpayer by Article 9 of Law 18.083. Its contract of incorporation, which includes ownership information, and any modifications to it, must be registered in the NRC. Its shares cannot be transferred.

iii. iii. Consortium or Association (Ch III, Sect II, article 501): A contract arranged between two or more persons or entities in order to develop temporarily some labour, services or goods supplement. Its purpose is not to collect and distribute profits, but to regulate the activity to be carried out. It will be managed by one or more administrator. The rules applying to general partnership will be applicable. It does not create a separate legal personality, but its constitutional contract, which includes ownership information, and any modifications must be registered and published in the NRC.

78. Each of the above types of "business partnerships" are subject to the same requirements as companies and partnerships to register their deeds of incorporation with the NRC, and to notify the NRC of any modifications of those documents, including relevantly, any change to the involved parties (articles 6, 7 and 10 of the NRC Law). These provisions ensure that ownership and identity information will be available for each of these types of "business partnership".

79. In addition, there are some other types of arrangements which can be formed under Uruguayan law, relevantly investment funds and offshore financial institutions.

Investment Funds

80. In Uruguay, investment funds are not considered as companies or other type of separate legal entities. The assets are owned by the investors and managed by a corporation with shareholders, directors, managers and high executives staff who are identified and have the obligation to inform UCB of all changes or transferences. Whilst they are not legal entities, certain types of investment funds (closed investment funds) are deemed to be taxpayers in their own right (article 9, Law 18 083).

81. Investment funds may be open funds, closed funds,[11] or pension funds. Open and closed investment funds are regulated by Laws 16 774, 17 202, whilst pension funds are regulated under Law16 713. All investment funds (including pension funds) are subject to supervision by the Central Bank of Uruguay (UCB). Funds must be managed by a corporation[12] who will be considereed to be carrying out "financial intermediation" and subject to the regulations described in paragraph 112 under the supervision of the UCB. Investments in a fund are represented by securities called "cuotapartes" (shares) which may be issued as nominative, bearer or book-entry shares (article 4, Law 16 774).

82. In respect of bearer shares issued by investment funds, a new Stock Market Law 18 726 passed in 2009 provides that all values listed in the market must be electronic and nominative. While this law does not expressly provide that investment funds may not issue bearer shares, Uruguay has advised that under the "latter in time" principle of hierarchy of laws, it will abrograte Laws 16 674 and 17 713 to the extent they permitted the issuance of bearer shares by investment funds. The Stock Market Law does not appear to address closed investment funds which are not required to be listed on the stock market, or otherwise provide a mechanism to identify any bearer shares that it may have been issued.

83. For all types of funds, the managing corporation must keep an up to date register of shares in the fund (open and closed funds: articles 10, 14, and 25, Law 16 774; pension funds: article 86, Law 16 713), and in the case of nominative and book-entry shares this will include identity information of the investors. The managing corporation may appoint another person to keep the register of shares (section 4, Law16 774) although that person will also be considered to be carrying out financial intermediation activities and be subject to regulation.

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11. Closed investment funds are established for the purpose relating to assigned credit rights. Investors assign credit rights to the managing corporation (such credit rights must stem from the investor's ordinary business) and the managing company acts effectively as a broker to third parties to factor those rights
12. Shares in the managing corporation itself may only be issued in nominative or book-entry form.

Offshore Financial Institutions

84. Offshore Financial Institutions (IFEs) are not a separate type of legal form, but a classification for entities whose only purpose consists of carrying out intermediation activities regarding the offer and demand of securities, money or precious metals located abroad. They may take various legal forms, including being a branch of a public or private foreign bank, a corporation (where that corporation has issued only nominative shares that must be owned by a bank), or a physical person with experience in the international financial field and approved by the UCB. The IFE must follow the registration requirements applicable to their particular legal form. This includes, where they operate as a branch of a foreign bank and carry out activities in Uruguay, they must satisfy the requirements for foreign companies described in paragraph 45. They will also be subject to regulation by the UCB and the Financial Intermediary Institution Commission (SIIF) and subject to the obligations for all persons carrying out financial intermediation activities as described in paragraph 112.

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

85. For all types of business partnerships created under the Business Partnerships Law as well foreign entities carrying on a business in Uruguay through a permanent establishment, there are no administrative penalties (except in the case of corporations) for a failure to file the necessary records in the NRC or meet the record-keeping obligations of the Business Partnerships Law.

86. However a company will be liable for any damages caused to third parties as a result of such a failure, for example stemming from the unenforceability of a contract (article 54, Business Partnerships Law). Personal liability is imposed severally on directors of the company in respect of such damages (article 39, Business Partnerships Law). Also, neither the company nor its members may rely on the documents incorporating the company as against third parties (article 37, Business Partnerships Law) and third parties may file proceedings for damages jointly or severally against the company, its partners or managers (article 39, Business Partnerships Law). Only companies carrying on certain activities (media and public carrier companies) are subject to an express requirement to have company directors either reside in Uruguay or be Uruguayan citizens.

87. Specific sanctions are provided in respect of corporations when they violate any applicable law, statute or regulation. Article 412 of the Business Partnerships Law provides that the supervisory body may impose measures on the corporation itself, or its officers, directors or managers, in the form of a written warning (which will be published), or a fine of up to UYU 1 000.

88. Professional trustees who fail to comply with the registration and information obligations by the Trusts Law are subject to the same sanctions imposed on financial intermediaries (article 12, Trusts Law).

89. Under s27 of the Foundation Law, the Civil Association Agency has the power to demand all necessary information to ensure that the foundation is in compliance with the Foundations Law. In the event of non-compliance, sanctions may be imposed by the Agency, including fines.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Foreign-incorporated companies carrying on business in Uruguay are not subject to an express requirement to keep ownership information. Availability of such information will generally depend on the law of the jurisdiction in which the company is formed, and therefore may not be available in all relevant cases.	Uruguay should ensure that ownership and identity information is required to be maintained in respect of all foreign companies with a sufficient nexus with Uruguay.
There is no requirement for nominees to have, or make available, information about the person on whose behalf shares are registered.	Where shares or securities are registered in the name of a person, Uruguay should ensure that person is required to keep a record of the person on whose behalf the shares are registered.
Bearer shares may be issued by corporations and joint-stock companies and there are no mechanisms to ensure that the owners of such shares can be identified.	Uruguay should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares.
While there are effective enforcement provisions in support of the relevant ownership and identity information requirements for corporations, the enforcement measures available with respect to other types of companies and partnerships are not clear.	Uruguay should establish effective enforcement provisions to support the requirements to keep relevant ownership and identity information for all types of companies and partnerships.

A.2. Accounting records

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

General requirements (ToR A.2.1)

Commerce Code

90. Chapter III of the Commercial Code sets out the requirements on every "trader" in respect of accounting records. The definition of "trader" is provided by article 1 of the Commercial Code:

> *A person who acting in his legal capacity who trades for his own benefit, making it a habitual occupation and who is registered in the NRC.*

91. This definition will encompass all "business partnerships" formed under the provisions of the Business Partnerships Law.

92. Traders must keep a journal, inventory book and letter copy book (section 55, Commercial Code). The precise requirements for each book are set out in Title II, Chapter III, of the Commercial Code, relevantly:

> **Section 56.** *In the Journal there will be registered day by day, chronologically all the operations performed by the trader, either bills of exchange or any other credit bills he might give, of his own or of someone else, by virtue of any title, so that each entry shows who is the creditor and who is the debtor in the corresponding operation.*

As to the entries corresponding to domestic expenses, these can be registered globally, with the date they went out of petty cash. …

> **Section 59**. *The inventory book shall be opened with the exact description of the money, chattels, real property, credits, and any other kind of valuables making up the trader's capital at the time he begins his course of business.*
>
> *Afterwards, and during the first three months of each year, every trader shall register in that same book, the balance sheet of his course of business, including in it all his properties, credits and shares, as well as all his outstanding debts and obligations at the date of the balance sheet, with no reserve or omission whatsoever.*

Inventories and balance sheets shall be signed by all those who have a stake in the business, and who are present at the time of its constitution. …

> **Section 61.** *In the companies' inventories and balance sheets it shall be enough to state the common property and obligations of the association, without including the private ones of each associate. …*
>
> **Section 63.** *In the letter copybook, traders shall copy entirely the text of all the letters written relating to their business.*

They are likewise obliged to keep in files and in good order all the letters they receive regarding their negotiations, writing down overleaf the date on which they answered them, or specifying, in the same way, that they did not answer them.

93. All three books (journal, inventory book, letter copybook) must be authorized and sealed by a Civil Court (Article 65 Commercial Code) and submitted to the National Registry of Commerce for approval on an annual basis (article 51, NRC Law).

94. These requirements are sufficient to correctly explain all transactions, the financial position of the trader, and to allow financial statements to be prepared. All traders must keep their books for 20 years from the termination of the business or trade (article 80). The Commerce Code does not however specify any express requirements to retain underlying documentation. Traders will also be subject to the tax law obligations described below, to the extent of their taxable operations.

95. Uruguay has advised that the Commercial Code is intended to regulate matters of private law. Therefore, sanctions for failure to keep the required accounting records relate to presumptions to be made against the relevant person in the event of a dispute. For instance, accounting records that do not meet the requirements of the Code "are of no value in any legal proceeding to benefit the person whose records are being examined" (article 67, Commercial Code) and these are described further in paragraph 86.

Business Partnerships Law

96. In addition to the Commercial Code requirements which are imposed on all traders, the Business Partnerships Law which governs all "business partnerships" (which includes companies and partnerships) also imposes some accounting record requirements. The obligations under this law are intended to facilitate the control of partners and shareholders over the management of the entity by administrators. The Business Partnerships Law (article 87 ff) sets out accounting record obligations which includes the maintenance of an inventory of assets and debts, balance sheet and a profit proposal if is applicable. The Business Partnerships Law does not however specify any express requirements to retain underlying documentation. Business partnerships will also be subject to the tax law obligations described below to the extent of their taxable operations.

97. For corporations, article 332 and following of the Business Partnerships Law also requires the maintenance of accounting books, in addition to the mandatory books required for every trader. Article 1 of Decree 266/007 provides that corporations must keep such accounting books in accordance with the International Financial Reporting Standards adopted by the Council of International Accounting Standards (International Accounting Standards Board-IASB). Compliance with these ensures that the accounting books are comprehensive and allow the preparation of financial statements. At minimum, the accounting books must include a balance sheet; statement; statement of origin and application of funds; statement of changes in equity, and notes to financial statements.

98. Business partnerships with total assets exceeding USD 300 000 or annual revenue greater than USD 10million are required to register financial statements which comply with IFRS. Failure to register financial statements means that that the business partnership may not distribute profits and is liable to a fine of up to USD 270 000 (article 97bis, Business Partnerships Law).

Trusts

99. In respect of trusts created under Uruguayan law, all trustees (general and professional) are required to (Article 19, Trusts Law):

> *a) keep an inventory and a separate accounting of the assets, rights and debts that form the trust property... in all cases, the accounting shall be based on proper rules.*

100. There is no express obligation to keep these records for any minimum period of time, or to keep the underlying documentation. The accounting record requirements for financial intermediaries and under the AML regime will also be applicable where the trust is managed by a professional (including financial) trustee. Most trusts created under Uruguayan law (and the trustee as the "tax responsible" for the trust) will however be subject to the record-keeping obligations established by tax law (as described below).

101. Therefore, where a trust is not subject to tax in Uruguay or is not a "taxpayer" (*i.e.* a guarantee trust), there are no applicable obligations to keep underlying documentation, or to keep accounting records for a minimum period of time. Where a trust is subject to tax or is a "taxpayer", then there is still some uncertainty about the obligation to keep underlying documentation for all transactions, in particular in respect of non-taxable operations (see paragraph 108 below). It is therefore recommended that Uruguay take necessary measures to ensure that all trusts, regardless of their liability to tax in Uruguay, maintain reliable accounting records, including underlying documentation for at least 5 years.

Foundations

102. Foundations must only be created for not for profit purposes under Uruguayan law and are closely regulated by the Ministry of Culture and Education. They are subject to obligations to keep accounting records under article 25 of the Foundations Law which provides that accounting records should be based on reports as set out in the regulations; however such regulations were not provided and so could not be evaluated.

Tax Code

103. Tax Code obligations are applicable to all tax payers who must determine their taxable basis. A definition of taxpayers was inserted by article 9 of the Tax Reform Law 18 083 (Tax Reform Law), and includes:

> *a) business partnerships (including Free Trade Zone companies), with or without legal status, residing in Uruguay, even those undergoing liquidation;*
>
> *b) permanent establishment of entities not residing in Uruguay;*
> *...*
>
> *c) Closed credit investment funds;*
>
> *d) trusts except for guarantee trusts;*
>
> *e) individuals and condominiums, whenever they receive any covered income;*
>
> *f) associations and foundations in respect of their taxable operations mentioned in article 5, Title III herein.*

104. Taxpayers must determine their taxable income according to rules described in Decree Law 150/2007 (the Company Tax Law) as modified by Decree Law 208/2007. These rules include requirements relating to the determination of costs, expenditures, adjustments, and asset valuation amongst other matters. According to the Company Tax Law, taxpayers must generally determine their taxable income based on "adequate accounting" records.

105. The Tax Code requires the taxpayer, and "responsible persons" (for example trustees in respect of trusts) to keep records relating to their "taxable operations". Article 70 of the Tax Code provides that they must:

- keep the books and the special registers, and document the taxable operations according to the provisions set forth by law, regulations or the resolutions of tax-collecting institutions;
- maintain orderly accounting records and other documents and records until the expiry of the statute of limitation for imposing tax liabilities;

- submit or exhibit before the fiscal offices or before the authorized officials the returns, reports, vouchers of the legitimate source of goods, and any other documentation related to facts that might generate tax obligations, and provide them with the addenda or explanations they might request.

Financial intermediaries

106. All persons carrying out "financial intermediation" activities are regulated in Uruguay by the UCB pursuant to Decree Law 15 322. Article 14 of that Law authorizes the UCB to regulate the record keeping requirements and the information they should send to UCB. Book V of the UCB regulation refers to the comprehensive transaction (and client identity) records that must be kept by financial intermeediaries (being persons subject to the supervision of the UCB) and these are described in paragraph 112.

Anti-money laundering regime

107. Regulation under the AML regime covers a broad class of persons including financial intermediaries and the UCB has issued specific regulations relating to record-keeping in respect of money exchange institutions, credit management companies, securities exchange users, investment fund managers, and money transfer companies amongst others. Those requirements depend on the structure of each particular institution; however in all cases the information required to be kept is limited to that which is relevant to suspicious transaction reports.

Underlying Documentation (ToR A.2.2)

108. To the extent that a taxpayer undertakes taxable operations, the Tax Code requires that all relevant accounting information, including underlying documents, be kept for a minimum period of 5 years. While this should generally be sufficient to ensure that underlying documentation is available in most cases, there is some doubt regarding those relevant taxpayers that do not undertake "taxable operations", for example, those operating in the Free Trade Zone or those persons with only non-Uruguayan source income. Uruguayan authorities consider that regardless of the source or nature of income (as taxable or not), documentation must be maintained in order to prove that in fact the income is not taxable. In order to avoid any doubt in this regard Uruguay should include a specific requirement for all relevant entities and arrangements, regardless of their tax liability, to maintain underlying documentation for at least 5 years.

109. Where a transaction is carried out by a financial intermediary, all underlying documentation will also be kept. Book V of the UCB Regulations requires all financial intermediaries (being all entities subject to supervision by the UCB) are required to keep all client identity and transaction information Further, in some cases, this information will be required to be sent to the UCB, for example in the case of unusual transactions or those above particular monetary thresholds. These requirements imposed on financial intermediaries are described further in section A.3 below.

110. In addition, under the AML regime, where financial transactions exceed certain thresholds financial intermediaries must keep all records and business correspondence necessary to reconstruct those financial transactions (article 73, Decree Law 14 294, as modified by Law 17 016).

Document retention (ToR A.2.3)

111. According to the Commercial Code all traders must keep their books for 20 years from the termination of the business or trade (article 80, Commercial Code and article 307.4 UCB Regulation). The Tax Code requires that records be maintained for a minimum of 5 years (articles 38 and 70 C) Tax Code) and although there is no direct penalty for non-compliance, the main consequence relies on the TAA's power to make an imputed determination of taxes where records are insufficient (article 66 Tax Code). In certain cases the failure to keep accounting books and underlying documentation will, with other circumstances, permit a presumption of the intention to commit fraud (article 96, Tax Code). The UCB Regulations (article 307.4) requires the financial intermediary to keep all relevant records which may be required by the UCB for a minimum period of 10 years. In case of non compliance, penalties range from a written admonition to the revocation of the authorization to operate, and in serious cases where fraud is established, criminal sanctions may be applied.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The requirement to maintain underlying documentation is not clearly established for relevant companies and partnerships to the extent they are not liable to tax under Uruguayan law	Uruguay should include a specific requirement for all relevant companies and partnerships, regardless of their liability to tax in Uruguay, to maintain underlying documentation for at least 5 years.
There is no express obligation under the Trust Law to keep reliable accounting records, including underlying documents, for any minimum period of time. Where a trust is not subject to tax in Uruguay or is not a "taxpayer" (*i.e.* a guarantee trust), there are no applicable obligations to keep reliable accounting records, including underlying documents, for any minimum period of time.	Uruguay should include a specific requirement for all trusts, regardless of their liability to tax in Uruguay, to maintain reliable accounting records, including underlying documentation for at least 5 years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

Anti-money laundering regime

112. Banks, as well as all other persons carrying out "financial intermediation" activities are regulated in Uruguay by the UCB (Law Decree 15 322), which is a key component of Uruguay's anti-money laundering regime. Financial intermediation is defined as (article 1):

> *the habitual and professional trading operations or mediation between supply and demand for securities, cash and precious metals.*

113. The UCB is authorised to regulate the record keeping requirements and the information that financial intermediaries should send to UCB

(article 14, Decree Law 15 322). According to Circular 1 978/2008, financial intermediaries cannot maintain accounts or manage transactions for clients whom they have not properly identified. This requirement is applicable not only for habitual clients but also to clients who perform one-off or occasional transactions.

114. To meet those client identity requierments, financial intermediaries must obtain identity information in order to be able to verify it and record it, as well as information in respect of the purpose and nature of the business relationship. The precise nature of the identity information requested and the verification procedures will depend on the type of account or transaction involved, the amount volume of funds and the risk assessment carried out by the financial intermediary.

115. Circular 1 978/2008 states that financial intermediaries should define systematic procedures for identifying new customers, and not establish a "definite" commercial relationship until it has successfully verified their identity. In addition, they must establish procedures that allow regular updating of information on existing customers, especially in the case of higher risk customers. In addition, there are also provisions to identify the ultimate controler of the accounts, and to establish "reasonable measures" in order to know the clients property structure and control.

116. The Circular provides that the minimum client identity information that financial intemediaries should require is:

- For individuals: completed name, place and date of birth, identity documentation, marital status (incuding spouse information), address and phone number, occupation, and income. It must be stated whether the client is acting on behalf of someone else, abd in which case that other person should be identified. The same information should be obtained in respect of agents or representatives of the client.
- For legal entities: name, incorporation date, address and phone number, taxpayer registration number, and other documentation, such as an authorized copy of the entity's incorporation contract, registration in the NRC and documents proving the power of agents or representative to act on their behalf. Other information to be collected should include the entity's main activity, average income, and ownership structure, including its ultimate controlling entity. Provision of the ownership structure should include persons holding 10% or mores of shares.

117. In respect of occasional clients who in one calendar year do not perform transactions which total more than USD 30 000 or its equivalent in other currency, financial intermediaries should require them to provide: their full name, identity documentation, address and phone number in case of individuals; and in the case of legal entities, their name, address, phone number,

tax registration number (if applicable) and identification of the individual who is acting on the entity's behalf.

118. Book V of the UCB Regulation sets out information requirements and penalties. Pursuant to article 305, the UCB has the right to ask any financial intermediary to produce any documents relating to their clients and the transactions carried out for those clients. Further, article 307.1 specifies that a financial intermediary must keep all documents which the UCB may ask you to produce, and they must be retained for a minimum 10 year period (article 307.4). In addition to these comprehensive requirements, for certain transactions which for example are unusual or above a certain monetary threshold, financial intermediaries must communicate all information relating to the transaction to the UCB (article 374.1).

Determination and factors underlying recommendations

Determination
The element is in place.

B. Access to information

Overview

119. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Uruguay'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.

120. Uruguay's ability to obtain information for exchange of information (EOI) purposes is based on the broad powers granted to the Tax Administration Agency (TAA) which are found in its Tax Code. Generally, those powers provide for access to all types of information, notwithstanding from whom such information was obtained. A special court-based regime is in place for accessing information otherwise subject to bank secrecy. For information held by trustees, in some cases where access is sought to information where the trust is not subject to tax in Uruguay, a duty of confidentiality may impede access. On that basis, a recommendation is made for Uruguay should ensure that it can access information held by trustees in all instances, and element (B.1) is found to be in place but needing improvement.

121. In respect of the rights and safeguards allowed to persons concerned by an EOI request, Uruguay's law generally ensures that there are no impediments to effective access to relevant information. However, as the judicial process for accessing bank information lacks any exceptions to the obligation of prior notification this means that effective access and exchange of information may be impeded and a recommendation is made for Uruguay to address this issue. This element (B.2) is found to be in place, but needing improvement.

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

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

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

122. Under Uruguayan law, the tax authority has general access powers, and there is also a specific regime to access information held by financial intermediaries which would otherwise be subject to bank secrecy (see paragraph 131).

123. The TAA has full powers of investigation and inspection to carry out all steps necessary for the achievement of "tax purposes". Uruguay has advised that tax purposes should be interpreted broadly and includes when the information is requested to comply with information exchange requests. Article 68 of the Tax Code sets out a non-exhaustive list of possible measures that could be taken by the TAA:

- inspect or take possession of books, documents held by taxpayers and other responsible persons [that is, persons who under the tax law have a legal responsibility for the taxpayer's tax obligations. For example trustees in respect of trusts], and require such to appear before the TAA to provide information (article 68A).
- carry out inspections of personal or real property held by taxpayers. Private residences may only be searched after a warrant has been obtained (article 68C).
- require information from third parties when it considers it necessary (article 68E).

124. Uruguay has advised that it is not necessary for a notice to be issued to the person concerned in order to exercise the powers under article 68. Likewise, it is not necessary to commence an audit in order to exercise those powers. The exercise of all administrative powers must however be recorded in writing, in detailed records signed by the relevant officials, with a copy furnished to interested parties upon request (articles 44 and 45, Tax Code).

125. The TAA's powers to access information are broad, and generally allow it to obtain all relevant information regardless of its type (for example, ownership, accounting or bank information) or from whom it is to be obtained (for example, taxpayers or third parties). However, in some cases, a few possible

impediments to accessing information which may not be consistent with the standard are identified below, in respect of access to bank information and information held by trustees.

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

126. The concept of "domestic tax interest" describes a situation where a contracting party can only access information for EOI purposes, if it also has an interest in the requested information for its own tax purposes. Uruguay has advised that the access powers available to the Tax Administration Agency under domestic law are not curtailed by a domestic tax interest and may be used to access information sought in an EOI request.

Compulsory powers (ToR B.1.4)

127. For information that is not already held by the Tax Administration Agency or publicly available, the TAA may use its access powers to obtain ownership, identity and accounting information that is under the custody or control of an individual or entity for the purposes of satisfying a specific exchange of information request. The powers include, but are not limited to, making inquiries, carrying out inspections, and the search and seizure of documents.

128. Non-compliance with access powers carries significant penalties: for refusing to provide information or hindering the actions of a tax official, the TAA may impose administrative penalties of between UYU 2 000 (EUR 76) and UYU 200 000 (EUR 7 662) (article 95, Tax Code). Where a person is in contempt (including open disobedience with an official's orders), penal sanctions of 3-18months imprisonment may apply (article 173, Criminal Code).

129. With respect to obtaining bank information under the process described below in paragraph 131, a financial institution that fails to comply with a request from the Central Bank is punishable by the Central Bank. The sanctions imposed under article 20 of Decree Law 15 322 can include a written warning, fines, management intervention, an order to suspend activities, or revocation of their authorisation from the UCB to carry out financial intermediation activities. In the case of the revocation of the authorisation to operate, this is imposed by the Superintendent of Financial Services (FSB), an office that is linked to the Central Bank.

Secrecy provisions (ToR B.1.5)

130. Professional secrecy, which includes bank secrecy, is protected by the Uruguayan Constitution (Article 7)[13], which allows exceptions where a specific law so provides and it is "established for reasons of public interest". The secrecy of bank information (article 25, Decree Law 15 322) and information held by trustees (article 19(c), Trusts Law) is underscored by specific domestic legislation.

Bank Secrecy

131. Decree Law 15 322 imposes an obligation of secrecy to certain activities carried out by any person performing financial intermediation activities (articles 1 and 2, with article 25). In particular, article 25 states that banks cannot reveal any "confidential" information which has been received from their clients or in respect of them while article 1 and 2 of Decree Law 15 322 describe the scope of the article 25 secrecy obligation. That is, bank secrecy applies to persons carrying out financial intermediation in respect of any confidential information received from the customer-related operations, including where the account holder is a creditor of the financial intermediary.

132. Further, Decree Law 15 322 specifically states that "no other exception than those set forth in this act will be admitted". Failure to observe the requirements of bank secrecy under article 25 carries a penalty of a minimum 3 months and maximum of 3 years imprisonment.

133. There are some cases where bank secrecy can be lifted to access bank information for the purposes of an EOI request. Law 18 718 passed in December 2010 and entering into force from 2 January 2011 amends article 54 of the Tax Reform Law 18 083 and permits the lifting of bank secrecy as required by an EOI agreement (article 15(2), Law 18 718) [14]:

13. Article 7 of the Constitution provides the following: "The inhabitants of the Republic have a right to be protected regarding their entitlement to life, honor, freedom, security work and property. No one can be denied these rights but for the laws established for reasons of general interest". The Constitution does not expressly mention professional secrecy and in particular bank secrecy. However, in Uruguay professional secrecy, including bank secrecy, are deemed to be covered by these constitutional rights pursuant to article 72 of the Constitution: "The express provision for rights, duties and guarantees made under this Constitution does not exclude the other fundamental rights inherent to human nature or derived from the republican way of government".
14. Article 15(1) also provides for the lifting of professional secrecy for domestic purposes when it is necessary for the determination of tax debts or concerning the breach of tax obligations, if there are objective pieces of evidence creating

> *15(2) It [bank secrecy] may also be lifted anytime there is a request from the Tax Administration Agency, asking for access to information in order to respond to a foreign tax Administration Agency with which there is an agreement in place for information exchange or to avoid double taxation.*

134. This exception for banking information in the case of EOI requests applies to account information from 2 January 2011. As concerns this scope, none of Uruguay's EOI agreements (with the exception of its DTCs with Germany, Hungary, and Mexico and its TIEA with France) enter into force prior to 2 January 2011. However, a transaction may occur prior to 2 January 2011, but relate to a tax period relevant under an EOI agreement, and that bank information would not be accessible. Therefore, in a limited number of requests, this limitation will pose an impediment to accessing bank information and a recommendation is made in this respect.

135. The Tax Reform Law clearly provides an exception to the bank secrecy established by article 25 of Decree Law 15 322, but that article also states that only the exceptions stated "therein" shall apply. Therefore in creating the exception it may have been advisable to directly amend Decree Law 15 322, or at least include a reference to the exceptions contained in the Tax Reform Law. However the intent to allow access to bank information in the case of an EOI requests is clear.[15] In terms of overriding the constitutional protection for professional secrecy, it is clear that Tax Reform Law is a "specific law" and that the purpose of giving effect to Uruguay's information exchange provisions is a "reason of public interest".

136. In addition to the exception to bank secrecy for EOI purposes, there are also several exceptions for access for domestic law purposes, for example where the consent of the person concerned is given or it is required by a court order for use in proceedings (Decree Law 15 322), as well as in respect of proceedings relating to rental discounts concerning the financial situation of the tenant (Law 15 799) and in respect of reports of suspicious transactions under the anti-money laundering regime (Laws 17 835 and 18 494).

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a reasonable doubt about a tax evasion purpose of the taxpayer. However, that provision only permits the use of the information by the judge to determine the tax evasion charges.

15. Similar exceptions have existed for criminal proceedings and family law matters for some time (see below). Further, article 28 of the Criminal Code provides an exemption from liability where an act is sanctioned by the law: "A person who executes an act ordered or allowed by law, because of his public functions, profession or his authority or the provision of assistance to a judicial authority, is exempt from responsibility."

Secrecy of information held by trustees

137. Uruguayan law also protects the confidentiality of information held by trustees. Article 19(c) of the Trusts Law provides that:

> *19(c). In addition to the obligations established in the trust instrument and the articles above, the trustee shall…*
>
> *Not disclose any transaction, act, contract, document and information relating to the trust*

138. However, where the trust is subject to tax in Uruguay (see paragraphs 19-20), the trustee is responsible for the trust's tax obligations (articles 36 and 44, Trust Law). Therefore, the TAA's access powers will apply to allow it to access the information held by trustee in those instances.

139. On the other hand, where the trustee is located in Uruguay but the trust is not subject to tax there (noting its largely territorial tax system), there does not appear to be a mechanism to lift trustee confidentiality where the information is sought for EOI purposes. In Uruguay's view, access to such information will be possible in such cases under article 68E of the Tax Code, in order to establish that the trust is not subject to tax. However, the information required to establish that there is no Uruguayan source income, would not appear to require a disclosure of all relevant information relating to the trust.

140. Further, eight[16] of Uruguay's signed EOI agreements include a provision equivalent to Article 26(5) of the OECD Model Tax Convention. Uruguay has advised there is an implied legal principle derived from articles 9 and 10 of the Civil Code that the most recent law will prevail where there is a conflict, and that treaties are equivalent to laws in the hierarchy of laws. However, it is not clear how the "latter in time" rule will apply where there is a conflict between treaty and domestic law. Therefore there appears to be a conflict between the treaty provision and the trustee duty of confidentiality which is unresolved.

141. Uruguay has advised that where a trustee acts for a financial trust, they are a financial intermediary and the bank secrecy imposed by Decree Law 15 322 may be lifted for EOI purposes under the process described above. However, there also exists the secrecy obligation imposed on trustees by Article 19(c) of the Trusts Law, and it is not clear how the mechanism for lifting bank secrecy, even for trustees of financial trusts, could also lift the separate duty of confidentiality on trustees.

16. The 8 EOI agreements counted here do not include Uruguay's recently updated DTC with Germany which is signed but which has not yet entered into force. This new DTC includes a provision equivalent to Article 26(5). Uruguay's earlier DTC with Germany which is currently in force does not contain such provision,

142. Therefore, in cases where a trust is not subject to Uruguayan tax and is managed by a Uruguayan trustee, access to information regarding that trust when sought for EOI purposes does not appear to be possible. This is not consistent with the international standard, and may pose a significant impediment to the access to such information. Uruguay should ensure that the confidentiality duty on trustees can be lifted for EOI purposes in all instances.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of its legal implementation need improvement.	
Factors underlying recommendations	**Recommendations**
Information held by a trustee which relates to a trust is protected by a confidentiality provision. Where the trust is not subject to tax in Uruguay but the trustee is located in Uruguay, there is no clear mechanism by which the confidentiality duty can be lifted to access the information for EOI purposes.	Uruguay should take steps to ensure that it can access trust information held by a trustee, regardless whether the trust is subject to tax in Uruguay.
Uruguay's ability to access bank information prior to 2 January 2011 is limited under its domestic legislation.	Uruguay should ensure that all relevant bank information may be accessed for EOI purposes, regardless of the period to which the information relates, to ensure they can give full effect to their EOI agreements.

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)

143. Uruguay has advised that it is not necessary for a notice to be issued to the person concerned in order to exercise the above powers, or for example to commence an audit in order to exercise its powers generally. In the case of accessing information subject to bank secrecy however, a written request to a court is required, guided by the provisions of the Tax Reform Law and the General Code of Proceedings which applies for non-penal proceedings in

Uruguay. The proceedings are confidential to persons with an interest in the proceedings.

144. Under Law 18 083, modified by Law 18 718, (Article 15) the TAA first makes a written request to the Court to issue a writ, which should be done (article 54, Tax Reform Law):

> *pursuant to express and well-grounded requests by the competent authority of a foreign state… and it must be indicated in such case the requiring entity and all the records and grounds that justify the relevance of the requested information.*

145. The request and the writ issued by the Court to access the information shall be advised to the account-holder (often, being the taxpayer the subject of the request, or their proxy) within 3 working days of its issue. The account-holder has 6 business days to respond, including by way of providing the requested information. The matter should be listed for hearing within 30 calendar days from the response.[17]

146. The judge will make an order determining whether to lift bank secrecy, taking into consideration "the collected evidence and all the circumstances of the case". Uruguay has advised that the purpose of the judicial review is to consider the legality of the request (that is, that the condition set out in the TIEA have been met), rather than for example to make any determination of the relevance of the information requested or the merits of the investigation. To the extent that this consideration does not appear to extend to a determination of the "foreseeable relevance" of the request, it is consistent with the standard.

147. After a judgement is passed, the decision is appealable with suspensive effect, to the Civil Court of Appeals. This process involves 18 business days between the appellation and response. The Court must rule within 30 days of receiving the court file. There is no further appeal beyond the Civil Court of Appeals. Once the order has been made and appeals exhausted, a notice is issued to the Central Bank of Uruguay as the supervisory entity for all financial institutions. Within 5 business days, the Central Bank must submit the request to all entities subject to its supervision. Those entities then have 15 business days to send relevant information in their possession to the Central Bank, and the Central Bank has another 5 business days to send the information to the TAA.

148. Noting the possibility of appeal, the Uruguayan authorities have advised that the timeline for access to bank information may be up to

17. Whether a hearing is necessary shall depend on the extent of the information which may have been provided, or where the judge seeks clarification of any issues.

180 days. Whether in practice this legal process impedes effective access to the information, will be considered in the Phase 2 review of Uruguay.

149. Two issues which may be inconsistent with the standard arise from this court process. First, there are no exceptions to the obligation of prior notification of the account-holder. The legislation requires that "all the records and grounds" must be disclosed to the court and the relevant account-holder as party to those proceedings will be privy to all of that information. Whilst the standard provides that the fact that information is being exchange may be disclosed to the taxpayer (or their proxy), exceptions to limit that notification prior to the information being exchanged should be in place, to apply for example in situations where the request was of a very urgent nature or such disclosure would compromise the investigation being concluded in the requesting State.

150. Uruguay has advised that in its view, the general provisions of the General Procedural Code will apply to create an appropriate exception, because they permit an ex-parte application to the Court in appropriate cases. However, it is not clear that this Code will overrule the clear and specific provisions for the judicial process to access bank information due to the "latter in time" rule. Further, even if the General Procedural Code does apply to create an exception, its provisions do not appear to apply to prevent notification prior to the information being exchanged, only in respect of preventing notification prior to the information being accessed, and thus in any event would still not be consistent with the standard.

151. Second, the court process to access bank information raises an issue of consistency with Uruguay's confidentiality obligations under each of its EOI agreements that may arise where the account-holder is not the taxpayer or their proxy. This is considered further in section C.3 of the report.

152. At present, Uruguayan law does not contain any other rights or safeguards which would prevent or delay the exchange of information.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Under the court process for accessing bank information, certain information must be provided to the Uruguayan court to which the relevant account-holder (often the taxpayer) will have access. There are no exceptions to this notification of the account-holder prior to exchange of information, for example for cases where the information requested is of a very urgent nature, or where prior notification is likely to undermined the chance of success of the investigation in the requesting jurisdiction.	Uruguay should ensure that disclosure of information relating to an EOI request in the course of the court process to access bank information includes appropriate exceptions to notification prior to exchange of the information.

C. Exchanging information

Overview

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

154. The ten EOI agreements concluded by Uruguay to date generally follow the OECD Model Tax Convention or Model Tax Information Exchange Agreement (Model TIEA) respectively. However, provisions in domestic law concerning information held by trustees may impede Uruguay's ability to give full effect to those agreements, and a recommendation has been made for Uruguay in that regard. Further, whilst Uruguay has since 2009 begun to sign an increasing number of EOI agreements, it has not yet taken all steps necessary for its part to bring those agreements into force. In these regards, recommendations are made and element C.1 is found to be in place, but needing improvement. Further, the network of EOI agreements concluded by Uruguay does not cover its major trading partners and it is still considering requests for EOI agreements made two of its major trading partners at the beginning of 2011. Further, only five agreements signed with EOI partners are presently in force with a further six agreements (including a new DTC with an existing EOI partner, Germany) not yet ratified by Uruguay. Accordingly, element (C2) is found not to be in place, and it is recommended that Uruguay quickly conclude and bring into force EOI agreements, particularly with its relevant partners.

155. The confidentiality provisions in Uruguay's domestic laws and EOI agreements generally support the confidentiality of information in line with the requirements of the international standard and element C.3 is found to be in place. Rights and safeguards for taxpayers and third parties (element C.4) are protected under Uruguay's agreements consistently with the international

standard. The parameters of legal privilege under Uruguay's law cannot be clearly determined at this stage and a recommendation is made with element (C.4) found to be in place but needing improvement.

C.1. Exchange-of-information mechanisms

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

Foreseeably relevant standard (ToR C.1.1)

156. The international standard for exchange of information envisages information exchange to the widest possible extent. Nevertheless it does not allow "fishing expeditions" *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in article 1 of the OECD Model TIEA, as well as paragraph 1 of Article 26 of the OECD Model Taxation Convention which is set out below:

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

157. Uruguay has advised that it now seeks to include this paragraph or words to its effect (or its equivalent found in Article 1 of the OECD Model TIEA) in all of its EOI agreements. It is presently included in each of its 10 signed EOI agreements.[18]

In respect of all persons (ToR C.1.2)

158. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the

18. In Uruguay's DTC with Hungary (entering into force in 1993), the EOI provision requires exchange of information as is "*necessary* to the carrying out…". Uruguay has confirmed that it interprets "necessary" consistently with the concept of foreseeable relevance.

information requested. For this reason the international standard envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

159. None of Uruguay's EOI agreements are restricted for EOI purposes by the "persons covered" article in the DTC (equivalent to Article 1 of the OECD Model Convention).

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

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

161. Eight of Uruguay's EOI agreements contain a provision equivalent to Article 26(5) of the OECD Model Convention.[19] However, Uruguay's DTCs with Germany[20] and Hungary (signed 1987 and 1988 respectively) do not include such a provision.

162. Uruguay has advised it interprets its DTCs with Germany and Hungary so as not to limit the exchange of information held by financial institutions, nominees or persons acting in a fiduciary capacity. However, the limitations of its domestic law would appear to remain. In particular, the exchange of information which is subject to bank secrecy to the extent it relates to transactions occurring prior to 2 January 2011 will still be limited under those two DTCs to instances where the person concerned gives written permission to disclose the information.[21]

163. Further, all ten EOI agreements concluded by Uruguay will be subject to the apparent restriction on access to information held by trustees in respect of certain trusts (paragraph 141). This restriction is inconsistent with the standard.

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19. The eight EOI agreements counted here do not include Uruguay's recently updated DTC with Germany which has not yet entered into force. This agreement includes a provision equivalent to Article 26(5). Uruguay's earlier DTC with Germany which is currently in force does not contain such provision,
20. On 9 March 2010, Uruguay signed a new DTC with Germany including a provision equivalent to article 26(5).
21. This "written permission" exception is found in Decree Law 15 322.

Absence of domestic tax interest (ToR C.1.4)

164. 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.

165. Uruguay's DTCs with Hungary and Germany do not include a provision equivalent to Article 26(4) of the OECD Model Convention which expressly precludes the application of a domestic tax interest. However, as with its other EOI agreements, as noted in paragraph 123 this does not impede Uruguay's use of domestic access powers in respect of requests made under those DTCs.

166. However under all of Uruguay's EOI agreements, access to information held by a trustee where the trust is not subject to tax in Uruguay (*e.g.* guarantee trusts or other types of trust with no Uruguayan source income) may be limited by the duty of confidentiality described in paragraph 141 (and notwithstanding the existence of a provision equivalent to Article 26(4) due to conflict of laws).

Absence of dual criminality principles (ToR C.1.5)

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

168. There are no dual criminality provisions in Uruguay's EOI agreements. Uruguay's policy in this regard is to exchange information under its agreements irrespective of whether the conduct being investigated would constitute a crime in Uruguay.

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

169. 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"). Each of Uruguay's EOI agreements provides for exchange of information in both civil and criminal tax matters.

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

170. There are no restrictions in Uruguay's exchange of information agreements that would prevent it from providing information in a specific form so long as this is consistent with its own administrative provisions.

In force (ToR C.1.8)

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

172. Uruguay presently has ten EOI agreements to the standard, of which five agreements to the standard which are in force (DTCs with Germany, Hungary, Mexico and Spain; and a TIEA with France). The two older agreements, with Germany and Hungary, do not include articles 26(4) and 26(5) but are interpreted by Uruguay consistently with the standard. has also recently signed a revised DTC with Germany (which has not yet entered into force) which does include articles 26(4) and (5).

173. However the remaining six signed DTCs (including one signed in November 2009, three signed in 2010 and 2 signed in 2011)[22] have not yet been ratified by Uruguay. Uruguay should quickly take all steps necessary for its part, to bring all signed EOI agreements into force. Annex 2 sets out the dates of signature, and entry into force where relevant, of each of Uruguay's EOI agreements.

In effect (ToR C.1.9)

174. For information exchange to be effective the parties to an exchange of information arrangements need to enact any legislation necessary to comply with the terms of the arrangement. No specific legislation is required to bring the treaties into effect. Once ratified, treaties have the same effect as laws under the Uruguayan hierarchy of laws. The right of the Tax Administration Agency to access tax information to give effect to the EOI provisions in those agreements is found in Uruguayan domestic law, principally article 68 of the Tax Code. The Tax Reform Law 18 083 provides a specific exception to bank secrecy but a confidentiality duty may impede access to information held by trustees in some cases. Uruguay should ensure that it can give full effect to the obligations created by the EOI agreements that it has entered into.

22. Ecuador (2011), new DTC with Germany (2010), Liechtenstein (2010), Malta (2011). Portugal (2009) and Switzerland (2010).

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Confidentiality duties in Uruguay's domestic law limits access to information held by trustees in some instances. This inhibits Uruguay's ability to give full effect to its EOI agreements, notwithstanding the inclusion in 9 of its signed EOI agreements of a provision requiring it not to decline to supply such information.	Uruguay should take all necessary steps to ensure that it can give full effect to the terms of its EOI agreements with regard to accessing information held by trustees in all instances.
Uruguay has signed six DTCs (one signed in 2009, three signed in 2010 and two signed in 2011) which it has not yet taken all steps necessary, for its part, to bring into force.	Uruguay should take all steps necessary for its part, to bring each of its signed EOI agreements into force as quickly as possible.

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

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

175. 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.

176. Uruguay signed its first DTC with Germany in 1987 followed by a DTC with Hungary in 1988. In 2009, it commenced a programme of expanding its EOI network, signing double tax conventions with Mexico, Spain and Portugal in 2009; with Switzerland and Liechtenstein, as well as an update to its DTC with Germany and a TIEA with France in 2010, and most recently a DTC with Malta. It has now signed a total 10 EOI agreements, which are to

the standard, although only five of these agreements (with Germany, Hungary, Mexico, Spain and France) are currently in force.

177. Uruguay has also completed negotiations for EOI agreements with Belgium, Korea, Finland and India, and Uruguay has advised that negotiations with a further 10 jurisdictions have already commenced.

178. In respect of arrangements for mutual legal assistance for criminal matters which includes the exchange of information for criminal tax matters, Uruguay is a signatory to the Mercosur San Luis Treaty 1996 (with Argentina, Brazil, and Paraguay), which entered into force in 2001.

179. As noted in the introduction to the report Uruguay's main trade partners are Brazil, and Argentina, and to a lesser extent, China the US and Russia. At present, Uruguay does not have an EOI agreement with any of these jurisdictions. In the beginning of 2011, Uruguay received requests for exchange of information agreements from Brazil and Argentina and is currently considering those requests. Negotiations have not yet commenced with any of those jurisdictions. Because of their importance as trading partners, it may reasonably be anticipated that each of these jurisdictions would require information from Uruguay in order to properly administer their tax laws. In addition to being limited to having only 5 EOI agreements in force, Uruguay's network of exchange of information arrangements does not therefore cover its major trading partners and cannot be considered to be in line with the standard.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
To date Uruguay has no EOI agreements with its major trading partners. Further, whilst Uruguay has signed agreements to the standard with its 10 EOI partners, it has not yet taken all necessary steps to bring six of its signed agreements into force.	Uruguay should rapidly expand its network of EOI arrangements, and ensure that priority is given to concluding and bringing into force agreements with its major trading partners, in particular Argentina and Brazil.

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)

180. 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 mechanisms 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 of EOI arrangements, countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

181. Each of the EOI agreements concluded by Uruguay meet the standard for confidentiality reflected in Article 26(2) of the OECD Model Taxation Convention and Article 8 of the OECD Model TIEA respectively.

182. These confidentiality requirements are supported by Uruguay's domestic law which includes significant sanctions for breach. Article 47 of the Tax Code requires the Tax Administration Agency and its officers to keep all information which they have as a result of their administrative or judicial functions confidential, and it shall only be disclosed when it is essential for the due performance of their functions and based on a well-founded request. Failure to comply will be cause for dismissal from employment for the officer.

183. However, Uruguay's special regime for accessing bank information may not be consistent with the confidentiality provisions of its EOI agreements in all instances. The judicial process for accessing bank information requires the disclosure of certain information to the court, and also the relevant account-holder. Whilst disclosure to the taxpayer of information concerning an EOI request is foreseen by the international standard, the account holder will not in all cases be the taxpayer (or their proxy). In those cases, the release of information to that person is inconsistent with the standard. Whether in practice such disclosure is conducted in a manner inconsistent with the confidentiality obligations will be considered in the Phase 2 review of Uruguay.

All other information exchanged (ToR C.3.2)

184. The confidentiality provisions in Uruguay's domestic law, notably Article 47 of the Tax Code, applies equally to protect the request for information itself and includes background documents provided by an applicant State, as well as any other information relating to the request such as communications between the EOI partners in respect of the requests. The issue of disclosure of information to a person who is not the taxpayer, in the course of court proceedings to access bank information which is described in section B.1.5 of the report, applies to all the information exchanged in the course of an EOI requested.

Determination and factors underlying recommendations

Determination
The element is in place.

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

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

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

185. The international standard permits requested parties to not supply information in response to a request in certain identified situations. Among other reasons, information is not required to be provided where it would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries. However, communications between a client and an attorney or another admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or legal representative. Where attorney-client privilege is more broadly defined, it does not provide valid grounds on which information can be declined to be provided in response to a request.

186. Each of Uruguay's EOI agreements includes provisions allowing for the requesting jurisdiction to decline to provide information which would disclose any trade, business, industrial, commercial or professional secrets (which would include legal privilege). They also provide discretion on disclosing information which would be contrary to public policy. These provisions are consistent with Article 26(3)(c) of the OECD Model Tax Convention and Article 7(3) of the Model TIEA. Whilst article 302 of the Criminal Code makes it a crime for professionals (including legal professionals) to disclose information obtained from clients. Uruguay has advised that legal privilege

is restricted to matters relating to the criminal defence of a client, however this scope, as well as the persons to whom it will apply, could not be clearly confirmed. It is recommended that Uruguay clarify the scope of professional secrecy as it applies to legal professionals, and further, that in the course of the Phase 2 Review of Uruguay consideration is given to ensure that in practice it is not applied more broadly than foreseen by the international standard.

187. It is however clear that when a notary carrying out transactions for their clients, concerning certain activities[23] information relating to these activities will not be covered by professional secrecy. Further, such activities would be subject to financial intermediary regulation and the AML regime and full records must be kept as described in section A.3 of the report.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The scope of professional secrecy as it applies to legal professionals in Uruguay is unclear.	Uruguay should clarify the scope of legal privilege under its law and ensure that it is compatible with the international standard.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

188. 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 cooperation as cases in this area must be of sufficient important to warrant making a request.

23. These activities are: Real estate transactions; management of money, securities or other assets; management of banking accounts or securities; creation and management of corporate entities and other legal entities.

189. With respect to information protected by bank secrecy, Uruguay has in place a court-based system to lift the application of bank secrecy where the information is sought for EOI purposes. Uruguay has advised that at most, this process could take up to 180 days to be completed.

190. It is also noted that in the protocol to the Uruguay – Ecuador DTC, a requested party is only required to provide the information within 180 days. In the event the information cannot be provided within that time, the requested jurisdiction is to indicate the reason for the delay. No reference is made to providing a status update to the requesting party.

191. However, none of the above-mentioned provisions would prevent Uruguay from providing an update on the status of the request to the ElOI partner within 90 days. A review of the practical ability of Uruguay's tax authorities to respond to requests in a timely manner will be conducted in the course of its Phase 2 review.

Organisational process and resources (ToR C.5.2)

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

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

193. Uruguay's procedures for handling EOI requests are still being developed, and whether in practice they impose restrictive conditions on the exchange of information will be considered as part of its Phase 2 review.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (ToR A.1.)		
The element is not in place.	Foreign-incorporated companies carrying on business in Uruguay are not subject to an express requirement to keep ownership information. Availability of such information will generally depend on the law of the jurisdiction in which the company is formed, and therefore may not be available in all relevant cases.	Uruguay should ensure that ownership and identity information is required to be maintained in respect of all foreign companies with a sufficient nexus with Uruguay.
	There is no requirement for nominees to have, or make available, information about the person on whose behalf shares are registered.	Where shares or securities are registered in the name of a person, Uruguay should ensure that person is required to keep a record of the person on whose behalf the shares are registered.
	Bearer shares may be issued by corporations and joint-stock companies and there are no mechanisms to ensure that the owners of such shares can be identified.	Uruguay should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares.
	While there are effective enforcement provisions in support of the relevant ownership and identity information requirements for corporations, the enforcement measures available with respect to other types of companies and partnerships are not clear.	Uruguay should establish effective enforcement provisions to support the requirements to keep relevant ownership and identity information for all types of companies and partnerships.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (ToR A.2.)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The requirement to maintain underlying documentation is not clearly established for relevant companies and partnerships to the extent they are not liable to tax under Uruguayan law	Uruguay should include a specific requirement for all relevant companies and partnerships, regardless of their liability to tax in Uruguay, to maintain underlying documentation for at least 5 years.
	There is no express obligation under the Trust Law to keep reliable accounting records, including underlying documents, for any minimum period of time. Where a trust is not subject to tax in Uruguay or is not a "taxpayer" (*i.e.* a guarantee trust), there are no applicable obligations to keep reliable accounting records, including underlying documents, for any minimum period of time.	Uruguay should include a specific requirement for all trusts, regardless of their liability to tax in Uruguay, to maintain reliable accounting records, including underlying documentation for at least 5 years.
Banking information should be available for all account-holders (ToR A.3.)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (ToR B.1.)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Information held by a trustee which relates to a trust is protected by a confidentiality provision. Where the trust is not subject to tax in Uruguay but the trustee is located in Uruguay, there is no clear mechanism by which the confidentiality duty can be lifted to access the information for EOI purposes.	Uruguay should take steps to ensure that it can access trust information held by a trustee, regardless whether the trust is subject to tax in Uruguay.
	Uruguay's ability to access bank information prior to 2 January 2011 is limited under its domestic legislation.	Uruguay should ensure that all relevant bank information may be accessed for EOI purposes, regardless of the period to which the information relates, to ensure they can give full effect to their EOI agreements.

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (ToR B.2.)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Under the court process for accessing bank information, certain information must be provided to the Uruguayan court to which the relevant account-holder (often the taxpayer) will have access. There are no exceptions to this notification of the account-holder prior to exchange of information, for example for cases where the information requested is of a very urgent nature, or where prior notification is likely to undermined the chance of success of the investigation in the requesting jurisdiction.	Uruguay should ensure that disclosure of information relating to an EOI request in the course of the court process to access bank information includes appropriate exceptions to notification prior to exchange of the information.
Exchange of information mechanisms should allow for effective exchange of information (ToR C.1.)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Confidentiality duties in Uruguay's domestic law limits access to information held by trustees in some instances. This inhibits Uruguay's ability to give full effect to its EOI agreements, notwithstanding the inclusion in 9 of its signed EOI agreements of a provision requiring it not to decline to supply such information.	Uruguay should take all necessary steps to ensure that it can give full effect to the terms of its EOI agreements with regard to accessing information held by trustees in all instances.
	Uruguay has signed six DTCs (one signed in 2009, three signed in 2010 and two signed in 2011) which it has not yet taken all steps necessary, for its part, to bring into force.	Uruguay should take all steps necessary for its part, to bring each of its signed EOI agreements into force as quickly as possible.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (ToR C.2.)		
The element is not in place.	To date Uruguay has no EOI agreements with its major trading partners. Further, whilst Uruguay has signed agreements to the standard with its 10 EOI partners, it has not yet taken all necessary steps to bring six of its signed agreements into force.	Uruguay should rapidly expand its network of EOI arrangements, and ensure that priority is given to concluding and bringing into force agreements with its major trading partners, in particular Argentina and Brazil.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (ToR C.3.)		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (ToR C.4.)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The scope of professional secrecy as it applies to legal professionals in Uruguay is unclear.	Uruguay should clarify the scope of legal privilege under its law and ensure that it is compatible with the international standard.
The jurisdiction should provide information under its network of agreements in a timely manner (ToR C.5.)		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's Response to the Review Report[24]

Uruguay is very grateful to the Peer Review Group (PRG) and especially to the Assessment Team (AT) in charge who allowed a full review of our legal system, during the Phase 1 of our review process, aimed to review compliance with transparency and exchange of information standards on tax matters.

However, in order to be certain about the improvements we have to make to our legal system, we want to clarify some points of the Report that we believe were not properly understood by the Assessment Team and the PRG Members during discussions. That has as well a great influence on the Factors Underlying and the Recommendations adopted by the Global Forum.

The following is a summary of the aforementioned points.

PART A AVAILABILITY OF INFORMATION

A1 – I. Availability of information of foreign companies carrying on business in Uruguay, paragraphs 35, 44 and 46

In those paragraphs, the Report says that foreign companies carrying on business in Uruguay are not expressly required to keep identity information concerning their owners and a recommendation is made in this respect. Although, the report notes that the availability of ownership information will depend on the law of the jurisdiction in which the company is formed, it insists on Uruguay taking steps to ensure the availability of ownership information on relevant foreign companies in all cases.

Foreign companies once carrying on business in Uruguay have the same obligations as Uruguayan companies; articles 193 and 194, Business Partnerships Law Nº 16.060 state that they must comply with the following requirements:

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

1. To register their contract in the NRC. If the company type is a partnership or other type whose partners or shareholders are originally identified, this identity information must be filed in the NCR;
2. To publish the main provisions of the incorporation deed;
3. The same requirements must be complied when the deed is amended;
4. Articles 11 and 418 shall be complied with.

Article 11 states: "Once the registration is made in the NRC, a folder will be formed with a copy of the company's contract, its amendments and all other documents ordered by law. This folder can be publicly consulted". Article 418 provides that the National Internal Audit will keep the same information required by article 11.

So, we do have information available on foreign companies' ownership if the documents they must register contain that information.

Therefore, in the future, when the draft law related to bearer shareholder identification of corporations and join stock companies enters into force, the consequence for foreign companies will be the same as for domestic companies: the law will demand they identify their shareholders for doing business in the Republic of Uruguay.

II. Nominees, paragraphs 47and 49

First, we want to clarify that we presume that the person that the Report is calling a "nominee" is a legitimate representative, not a person acting to hide the beneficial owner, like directors or other shareholders whose purpose is to protect or hide the beneficial owner. Our Business Partnerships Law regulates the case where a person cannot attend a meeting because of personal reasons, not because of a manoeuvre or scheme. Article 9, AML/FT Decree Nº 355/010 strongly states that notaries must identify the beneficial owner in any document they authorize according to the "know your customer" standard.

In our legal system, nominees are not allowed.

We want to clarify also, that we do have specific regulations regarding the establishment of representatives of shareholders:

i. **Person acting as a representative of a shareholder on a regular basis,** has to file a power of attorney with the company, in order that the owner of the shares be registered as an attendant to the shareholders meeting and deposit the shares before the meeting will take place (article 350 and 351 Business Partnerships Law). As the document is authorized by a notary, in its text both parties are clearly identified: the principal's or constituent's, as well as the representative's

complete names, addresses, ID numbers, and nationalities (please see Public Notaries Regulation).

ii. **Person acting as a representative for only one meeting though a letter,** has to file it with the company, in order to be registered as an attendant to the shareholders meeting on behalf of his principal, and deposit the shares before the meeting will take place (article 350 and 351 Business Partnerships Law).

In any case, the power of attorney and the letter must contain the complete names of both parties (principal and representative) as well as addresses, ID numbers and nationalities.

The shareholder representative has to register and sign on behalf of his principal the Book Registry of Shareholders Attendance to Shareholders Meetings, giving his principal's identity and his own. Otherwise, according to article 335 Business Partnerships Law, in the Book Registry of Shareholders Attendance to Shareholders Meetings, the company shall take down: names of persons entitled to attend the meeting, class, number and value of the shares registered and how many votes they represent.

The report says (paragraph 47) that this "appear to require only that the nominal owner is listed, regardless of whether that person is acting as a nominee". That is not accurate, because article 351 has a provision on this issue, already analyzed in the previous paragraphs.

As a conclusion: the record in the Book Registry of Shareholders Attendance to Shareholders Meetings is made in the name of the legal owner of the shares and all shareholder's representatives must identify his principal to be entitled to attend the meeting. Besides, according to Commercial Code, article 322, all representatives must keep the documents, in order to account for his assignment.

So, finally, representatives in Uruguay have 3 sources of document and data keeping: the notary, the company, and the representative.

III. Shareholders´ identification

The third "factor underlining recommendations" for Part A1, says that: **"**there are no mechanisms to ensure that the owners of such shares can be identified".

This is not totally accurate as the owners of bearer shares are identified when the shareholder attends a shareholder meeting. So, at least once a year, at the annual shareholders meeting that approves financial statements, the shareholders are identified. Notwithstanding other extraordinary meetings that would take place. Please see Business Partnerships Law, articles 97, 342 and 343.

IV. Enforcement measures available with respect to other type of companies and partnerships

On paragraphs 84 and 85, the report states that there are no administrative penalties for not filing records in the NRC or meet the record-keeping obligation, except for corporations. The "Factors underlined recommendations" also states "the enforcement measures available for with respect to other types of companies and partnerships are not clear".

Legal penalties for not registering in the NRC are far more severe that an administrative penalty because they mean that the company or partnership is considered "irregular", with all the consequences set out in the report on paragraph 85. What is more discouraging for a company: paying a fine or that the company is terminated?

Furthermore, according to Decree 597/1988, article 31, all business entities shall report all the contract amendments of any kind within 30 days, even if the entity has not complied with the requirement to communicate this information to the NCR.

The penalty for non-compliance is stated: the conduct is considered a formal fault ("contravención") and is punishable with a fine from USD 12 to USD 75, approximately, as fixed in Resolution of TAA No. 2426/010.

V. Trustees, paragraphs 59 and 71.

Paragraph 59 says that "In some cases the confidentiality duty binding the trustee (article 19 (c), Trust Law) may hinder access for EOI purposes to information held by a trustee about the trust".

Regarding the confidentiality duty stated on article 19 (c) of the Trust Law, we disagree with the report on the abrogation of article 68 Tax Code by article 19 (c). The fact that Law 17.703 is posterior in time to the Tax Code does not have the automatic consequence of abrogating article 68 of the Tax Code. A general law doesn't abrogate a specific one; this is a general legal principle and its application is stated in article 16 of our Civil Code and article 23 of law 15.524 (Administrative Appeals Tribunal Law).

The Tax Administration Authority's clear explanation already submitted, clarifies with no doubt that:

- Trustee's duty of confidentiality cannot be used to oppose the TAA's access power;
- Over eight years (2003-2011), no trustee has challenged a TAA inspection or request for information on that matter.

Besides, under Law 18.083, as from 2007 (Tax Reform) article 62 states: "Article 68, (sub article A) shall be construed as the Tax Administration can demand from taxpayers and tax responsibles the exhibition of their own account information or that belonging to other person and also electronic data bases, programs, registries and information files, as needed to supervise tax payment". So, this law is posterior to the Trust Law, and clearly sets out the Tax Authority's ability to demand accounting information from taxpayers and the "tax responsible" and the trustee is a "tax responsible" (article 44 Trust Law). Furthermore, Civil Code, article 12 states that "Only the legislator can explain or construe the law with mandatory effect", therefore the legislator through the law 18.083 is expressly construing Tax Code, article 68, in the sense that the TAA can demand the exhibition of taxpayers' accounts or belongings to another person, and this includes the information held by a trustee.

A2. ACCOUNTING RECORDS

Underlying documentation, paragraph 37

All financial intermediaries and financial and professional trustees are subject to the obligation to keep records for 5 years, according to AML/FT, Decree 355/010, article 10.

PART B – ACCESS TO INFORMATION

B1 – Secrecy Provision: For the reasons expressed before on Part A, we object to paragraphs 136 to 141, because trustees have no duty of confidentiality before the TAA that can prevent exchange of information.

B2. On paragraph 149 and the "Factors underlying recommendations" the court process related to exchange of information is questioned, because there are no exceptions to the notifications to the accountholder prior to exchange information,

We explained that the General Procedure Code (GPC) applies to urgent information requested or where prior notification could harm the investigation, and could be provided to the requesting party before the accountholder was notified. Notwithstanding this, in the near future, we are going to modify the decree Nº 282/010 adding similar provisions as contained in the GPC.

PART C – EXCHANGE OF INFORMATION

C1 – We repeat that trustees confidentiality doesn't prevent EOI.

C2 – Exchange of information mechanism with all relevant partners:

Relating to the meaning of "relevant partners" we understand that this is not necessarily the "majors *trading* partners". In the case of Uruguay, relevant partners also include investment partners, like Spain, Finland, and Sweden with which we do have agreements or are negotiating them. Furthermore, we sent an invitation to negotiate to USA, and they responded that in late December 2011 they will be ready to exchange draft agreements. In respect of the statement: "it has not yet taken all steps necessary, for its parts, to bring into force", we want to point out that no counterparty has brought into force any EOI agreement that has not yet been brought into force by Uruguay.

Nowadays, DTC's agreements with Portugal, Switzerland, Liechtenstein and Malta have been approved by the Chamber of Senators of Uruguay, whilst the ones with India, Germany and Ecuador had been sent to the Parliament for consideration. DTCs with Canada, Australia, Sweden, Norway, the Faeroe Islands, Denmark, Iceland and Greenland are already negotiated and ready to be signed, when the diplomatic opportunity permits. In the same position are DTCs with Korea, and Finland. Agreements with the UK, Italy and the Netherlands are in the process of negotiation.

C 4 – The Report says: **"**The scope of professional secrecy as it applies to legal professionals in Uruguay is unclear"

The violation of professional secrecy is a crime stated in article 302 Criminal Code, this article allows the professional to plead "fair cause" and to give the information required. Besides, he can also plead the "complying with the law" grounds set out in article 28, Criminal Code as an exemption: in this case, the obligation to comply with article 68 and 70 of the Tax Code. This last article states the obligation to comply with the TAA. So, we understand that the scope of professional secrecy is clearly stated.

As a result of our explanations, we suggest that some qualifications must be changed:

A1 – the element must be in place, but subject to recommendations related to the bearer share system improvements.

B1 – the element must be in place

C1 – concern regarding trustee confidentiality duty must be removed.

C2 – the Global Forum must review the concept of relevant partners set out in the Report and the efforts made by Uruguay to improve the number of agreements, noting that 8 TIEAs and 2 DTCs will be signed next month.

C4 – the element must be in place

Annex 2: List of all Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of EoI Arrangement	Date Signed	Date Entered Into Force
1	Ecuador	DTC	26 May 2011	
2	France	TIEA	28 Jan 2010	31 December 2010
3	Germany	DTC	5 May 1987	1 Jan 1991
		DTC	9 Mar 2010	
4	Hungary	DTC	25 Oct 1988	13 Aug 1993
5	Liechtenstein	DTC	18 Oct 2010	
6	Malta	DTC	11 Mar 2011	
7	Mexico	DTC	14 Aug 2009	1 Jan 2011
8	Portugal	DTC	30 Nov 2009	
9	Spain	DTC	9 Oct 2009	24 Apr 2011
10	Switzerland	DTC	18 Oct 2010	

Annex 3: List of all Laws, Regulations and Other Relevant Material

Legislation pertaining to exchange of information on tax matters

Law 18 083 modified by Law 18 718 of 03.01.2011

Fiscal Legislation and Regulations

Tax Code

Organized Text of 1996 Title 4 (Business Activity Tax Law)

UCB Regulations on reporting obligations

UCB Circulars 1 878 (02.10.2003), 1 978 (27.11.2007), 1 993 (17.06.2008), 1 995 (14.07.2008)

Law 18 803 of 27/12/2006 (Tax Reform)

Decree 150/2007 modified by Decree law 208/2007 (Company Tax Law)

Decree 597/1988 (Information required on tax registration by the TAA)

DGI (TAA) Resolution 1 859/2008 (FTZ Tax Return Requirements)

Primary government authorities

Uruguayan Constitution

Law 15 982 of 18.10.1988 (General Procedural Code)

Commercial laws

Law 16 060 of 01.11.1989 (Business Partnerships)

Decree 103 of 14.03.1991 (Accounting Statements of Business Partnerships)

Law 18 172 of 31.08.2007(Forbiddance of bearer shares in certain partnerships and business)

Decree 266/2007 (Corporation's Accounting Books)

Law 17 703 of 04.11.2003(Trusts)

Decree 516 of 2003 (Trusts)

Law 17 163 of 10.09.1999 (Foundations)

The financial sector

Law 16 327 of 19.11.1992 (Central Bank Law)

Decree Law 15 322 of 17.09.1982 (Financial Intermediation)

Law 16 749 modified by Law 18 627 of 16.12.2009 (Securities Market)

Law 16 774 of 7.10.1996 (Investment Funds) modified by Law 17 702 of 01.10.1999

Law 16 713 of 11.09.1995 (Social Security)

Law 17 835 of 29.09.2004 (AML)

Law 17 948 of 13.01.2006 (UCB Registry information)

Law 16 131 of 03.10.1990 (Investment Banks)

Other legislation

Law 16 871 of 10.10.1997 (National Registry of Commerce, NRC)

Acordada 7 533 (Public Notaries Regulation)

Criminal Code Article 302 (Professional Secrecy)

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: URUGUAY

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 100 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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