GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

FEDERATION OF SAINT KITTS AND NEVIS

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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 St. Kitts and Nevis. 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 partners. While St. Kitts and Nevis has a developed legal and regulatory framework, the report identifies a number of areas where St. Kitts and Nevis could improve its legal infrastructure to more effectively implement the international standard. The report includes recommendations to address these shortcomings.

2. St. Kitts and Nevis is a federation and consists of two islands. Since 2005, the main drivers of the economy are international financial services, real estate, construction, wholesale and retail trading, manufacturing and tourism. The Federation of St. Kitts and Nevis' Constitutional framework provides for each island to develop legislative and administrative structures and procedures to govern the financial services and domestic corporate and commercial sectors. However, federal legislation (applicable in both St. Kitts and Nevis) governs the exchange of information for tax purposes, mutual exchange of information for criminal matters, anti-money laundering and corporate tax matters.

3. In respect of the availability of ownership and identity information, there are sufficient obligations in place to ensure the availability of this information. The obligations imposed directly on entities and arrangements are complemented by the anti-money laundering rules, which apply to licensed service providers and persons carrying on financial business, including nominees and trustees. These rules impose additional record-keeping requirements for relevant information which is available for the exchange of information for tax purposes.

4. As concerns accounting records, the laws governing relevant entities established in St. Kitts and Nevis have been recently amended and brought

in line with the international standard. However, general partnerships that carry on business in the Federation are not subject to express and consistent obligations to maintain underlying documents in all circumstances. As to bank information, the combination of the anti-money laundering rules and licensing requirements generally impose appropriate obligations to ensure that all records pertaining to account holders, as well as related financial and transaction information, are available.

5. In respect of access to information, the competent authority of St. Kitts and Nevis is invested with broad powers to gather relevant information. These powers are exercised predominately by issuing notices to require the production of relevant information and are complemented by powers, which are overseen by a court, to search premises and seize information as well as to compel oral testimony. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. Secrecy provisions in domestic laws are overridden where information is required for EOI purposes, and a domestic tax interest requirement is excluded.

6. Since 2002, St. Kitts and Nevis has worked with the OECD in respect of tax information exchange, when it committed to implementing the international standards of transparency and information exchange. In 2009, St. Kitts and Nevis renewed its commitment and took necessary measures to quickly expand its EOI network.

7. St. Kitts and Nevis' network for exchange of information is multiform, comprising bilateral, multilateral and unilateral mechanisms covering a total of 33 partner jurisdictions. The agreements generally follow the OECD Model TIEA, and meet the international standard. In addition, St. Kitts and Nevis is a party to the multilateral CARICOM agreement together with ten other members of that organisation.

8. St. Kitts and Nevis' response to the recommendations in this report, as well as the application of the legal framework to the practices of its competent authority will be considered in detail in the Phase 2 Peer Review of St. Kitts and Nevis which is scheduled for the second half of 2013.

Introduction

Information and methodology used for the peer review of St. Kitts and Nevis

9. The assessment of the legal and regulatory framework of St. Kitts and Nevis 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 *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 May 2011, other materials supplied by St. Kitts and Nevis, and information supplied by partner jurisdictions.

10. The Terms of Reference break down the standards of transparency and exchange of information into ten 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 St. Kitts and Nevis' 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. A summary of the findings against those elements is set out on pages 81-83 of this report.

11. The assessment was conducted by a team which consisted of two assessors: Mr. Hasan Halil Gonul, Head of Group, Presidency of Revenue Administration, Ministry of Finance of Turkey and Mr. Robert Gray, Director of Income Tax, States of Guernsey Income Tax; and one representative of the Global Forum Secretariat: Mrs. Renata Fontana. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in St. Kitts and Nevis.

Overview of St. Kitts and Nevis

Governance, economic context and legal system

12. St. Kitts and Nevis is a federation of two islands with a combined area of about 261 km^2 and a population of 51 970 (June 2009 estimate), of which roughly 76% resides in St. Kitts. The Federation is situated about 362 km southeast of Puerto Rico in the Eastern Caribbean. Basseterre is the capital of St. Kitts and the administrative capital of the Federation. Charlestown is the capital of Nevis. English is the official language. The currency is the East Caribbean dollar (XCD) which has been pegged to the US dollar since 1976 at a rate of XCD 2.70 to USD 1.00.

13. The economy of St. Kitts and Nevis was traditionally based on the manufacturing of sugar but decreasing world prices negatively affected the industry, hence its closure in 2005. Since that time, the main drivers of the economy are international financial services, real estate, construction, wholesale and retail trading, manufacturing and tourism. Together, these activities account for approximately 63.4% of the Federation's Gross Domestic Product (GDP). In the past, St. Kitts and Nevis has had a fairly good track record of economic growth, but this has been adversely affected in recent times by the effects of the global financial and economic crisis. Consequently, in 2009 real GDP contracted by 4.5% and a further contraction of 1.2% has been estimated for 2010. The economy is expected to turnaround in 2011 when a growth rate of 2.2% is expected.

14. The main trading partners of St. Kitts and Nevis are the United States, other CARICOM countries (in particular, Trinidad and Tobago), the United Kingdom, Puerto Rico and Japan.[1] Foreign direct investments in St. Kitts and Nevis are mostly made by entities from Canada and the United States.

15. St. Kitts and Nevis is a common law jurisdiction which has a constitutional monarchy with a parliamentary system of government. It became an independent nation in 1983. The present constitution provides for the separation of powers under the Governor General, Parliament, the Executive, the Judiciary and the Public Service.

16. The head of state is the British Monarch who is represented in St. Kitts by a Governor General. The Prime Minister is appointed by the Governor General as the member of the House of Assembly best able to command the support of the majority of the members. The executive authority is vested in the

1. Based on trade information for 2009, the United States continues to be the main source of imports into St. Kitts and Nevis (63.87%), followed by Trinidad and Tobago (7.60%), the United Kingdom (4.44%), Puerto Rico (2.99%) and Japan (2.52%).

Prime Minister and Cabinet, which is usually selected from his party members in the Federal legislature. The unicameral legislature consists of 14 members, of which 11 members are popularly elected at general elections due every five years, and three are appointed.

17. St. Kitts and Nevis is a common law jurisdiction. Where the Federation's statutes follow on English law statute, the interpretation and precedent of the English Courts is of persuasive authority in the Federation's Court but will yield to decided authority of the Federation's Court. The hierarchy of laws in the Federation are as follows:

- Acts passed in the Federal Legislature (National Assembly), including international (tax) treaties, which are given effect through legislation;
- Ordinances passed by the Nevis Island Legislature (Nevis Island Assembly); and
- Subsidiary legislation: Regulations, Statutory Rules and Orders.

18. The Constitution grants significant autonomy to the island of Nevis which has a semi-autonomous Nevis Island Administration and a Deputy Governor-General who names the Premier.[2]

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

19. For the purposes of the financial services and domestic corporate and commercial sectors, the Federation of St. Kitts and Nevis' Constitutional framework provides for each island to develop legislative and administrative structures and procedures to govern those sectors. Hence, in St. Kitts there are acts governing companies, partnerships and trusts that are registered in St. Kitts, whilst in Nevis there are ordinances to govern similar entities. The various relevant laws are outlined below.

2. Schedule 5 to the Constitution enumerates those matters with respect to which the Nevis Island Legislature has exclusive powers to make laws, including economic planning and development other than national planning and development, industries, trades and businesses, and any matter that is incidental and supplementary including but not limited to offences, jurisdiction, powers, practice and procedure of courts of law, fees and charges in respect of services provided, the issue of licenses, permits and certificates. Hence the ability for the Nevis Island Administration to enact laws governing legal persons and legal arrangements to be registered and carrying on business in Nevis.

St. Kitts

20. The Companies Act (CAP 21.03) sets out the requirements necessary for bodies corporate to be formed and registered in St. Kitts. Exempt (international) or ordinary (domestic) companies may be formed under this act. Exempt companies are primarily formed to conduct business outside the Federation and are not allowed to conduct business with residents, while ordinary companies are not subject to such restrictions. Failure to adhere to this requirement would result in a loss of the company's tax exemption status. Companies may be limited by guarantee, limited by shares or limited by both shares and guarantee.

21. An external (foreign) company is defined as a body corporate which is incorporated outside the Federation and which carries on business in the Federation or which has an address in the Federation which is used regularly for the purposes of a business. External companies may be registered under the Companies Act. The Financial Services Regulations Order (Revised Seventh Schedule to the Companies Act) provides for the licensing of persons who conduct trust business (trustees, etc.) and corporate business (nominees, etc.).

22. In St. Kitts, there are currently two types of partnerships: (i) general partnerships, and (ii) limited partnerships (exempt and domestic). General partnerships have no legal personality and are not subject to registration in St. Kitts, unless they perform a financial services business. Under the Unincorporated Business Tax Act No. 5 of 2010, they are required to pay taxes and to file returns. The establishment and registration of limited partnerships (exempt and domestic) in St. Kitts is governed by the Limited Partnerships Act (CAP 21.12). The Trusts Act (CAP 5.19) provides for the requirements for the registration of trusts, while the Foundations Act No. 8 of 2003 sets out the requirements for the establishment and registration of foundations in St. Kitts.

Nevis

23. In Nevis, local (domestic) companies can be incorporated under the Companies Ordinance No. 4 of 1999, as amended. Local companies can be categorised as public, private/profit, non-profit and external companies. Corporations limited by shares (NBCs) and limited liability companies (LLCs) can be incorporated respectively under the Nevis Business Corporation Ordinance No. 3 of 1984 and the Nevis Limited Liability Company Ordinance No. 1 of 1995, as amended. They are formed primarily for the carrying on of business outside of Nevis and are exempt from tax provided that they do not do business therein.

24. The Nevis International Exempt Trust Ordinance No. 1 of 1994, as amended, provides for the registration of international trusts, spend-thrift or

protective trusts and charitable trusts. The Multiform Foundations Ordinance No. 2 of 2004 provides for the registration of multiform foundations.

Federation

25. Federal legislation (applicable in both St. Kitts and Nevis) governs the exchange of information for tax purposes, mutual exchange of information for criminal matters, anti-money laundering and corporate tax matters. The St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act No. 7 of 2009 was enacted to designate the Financial Secretary as the Tax Co-operation Authority for the purposes of facilitating exchange of information requests submitted through scheduled Tax Information Exchange Agreements (TIEAs) and Double Taxation Conventions (DTCs). The Financial Secretary is therefore the sole dedicated channel in the Federation for international co-operation on matters involving the provision of tax-related information.

26. St. Kitts and Nevis' oldest EOI arrangement was signed with Switzerland in 1963 (*i.e.* before independence) and the most recent with Germany in 2010. Its EOI network encompasses 33 jurisdictions and since April 2009 it continues to be rapidly expanded. St. Kitts and Nevis is a party to the multilateral CARICOM agreement together with ten other members of that organisation. As a member country of the Global Forum, St. Kitts and Nevis is an active participant in discussions on all new developments in areas related to EOI.

General information on the taxation system

27. The Federation derives approximately half of its tax revenue from taxes on international trade. In addition, taxes are levied on corporate income and the consumption of domestic goods and services such as hotel accommodation, the registration of motor vehicles and stamp duty on specified instruments including certificates and other legal documents. Property taxes are also payable. There is no personal income tax but a housing and social development levy is charged on wages, salaries and allowances.

28. The administration of income tax is governed by the Income Tax Act (CAP 20.22) and the Tax Administration and Procedures Act No. 12 of 2003. All resident corporations (incorporated or with the place of management and control in St. Kitts and Nevis) are taxed on their worldwide income at the rate of 35%, regardless of the amount (s. 3, Income Tax Act). External (foreign) companies which operate in the Federation must be registered with the Registrar of Companies and must pay corporation tax on locally sourced income, as well as a tax on branch profits remittance.

29. Domestic trusts, foundations, partnerships and estates are taxed at the same rate as companies. In addition to corporation tax, companies carrying on life insurance business and general insurance business must pay a tax on premium income. In the international financial sector, exempt companies, trusts, limited partnerships, foundations, multiform foundations and limited liability companies are not required to pay taxes.

Overview of the financial sector and relevant professions

30. The Federation's financial sector is comprised of the following entities: commercial banks, mutual funds, captive, international and domestic insurance companies, companies and partnerships, trusts, foundations and ship registration. As of March 2011, there were 12 licensed financial institutions operating in St. Kitts (5 domestic banks, 5 money services business, and 2 credit unions) and 8 licensed financial institutions operating in Nevis (1 offshore bank, 4 money services business, 1 credit union, 2 mutual fund administrators/managers).

31. In addition, there were 1 307 ordinary companies, 1 760 exempt companies, 140 exempt captive insurance companies, 14 limited partnerships, 48 trusts and 446 foundations registered in St. Kitts. In Nevis, there were 644 local companies, 11 538 corporations, 4 261 limited liability companies, 172 international insurance companies, 1 063 international exempt trusts and 86 multiform foundations.

32. The commercial banks are supervised by the Eastern Caribbean Central Bank, which serves as the prudential regulator. In addition, the non-bank financial sector is regulated by the Financial Services Regulatory Commission, which is also responsible for supervising all regulated businesses listed in the Proceeds of Crime Act, to determine compliance with anti-money laundering statutes (Financial Services Regulatory Commission (Amendment) Act No. 10 of 2010).

33. The Anti-Money Laundering Regulations No. 25 of 2008 (AML Regulations) and the appended Guidance Notes on the Prevention of Money Laundering and Terrorist Financing (Guidance Notes) were issued, pursuant to section 67(1) of the Proceeds of Crime Act of 2000 (CAP 4.28), to prescribe identification procedures, record-keeping procedures, internal reporting procedures which are to be maintained by any person carrying on regulated business for the purposes of forestalling and preventing money laundering.

34. Authorised persons who are licensed to conduct corporate or trust business (domestic and exempt) must be licensed under the Financial Services Regulations Order (Revised Seventh Schedule to the Companies Act) and are regulated by the Financial Services Regulatory Commission. As of March 2011, there were 95 licensed service providers in St. Kitts and Nevis.

In addition, all regulated businesses are required to adhere to the AML Regulations and the Guidance Notes where obtaining customer identification and maintaining records are concerned.

Recent developments

35. In St. Kitts, the Companies Act, the Limited Partnerships Act, the Trusts Act and the Foundations Act have been recently amended to address the record-keeping requirement concerning (i) the retention of account records for a period of at least five years, and (ii) the inclusion of underlying documentation. In Nevis, similar amendments recently took place with respect to the Companies Ordinance, the Nevis Business Corporation Ordinance, the Nevis Limited Liability Company Ordinance, the Nevis International Exempt Trust Ordinance and the Multiform Foundations Ordinance.

Compliance with the Standards

A. Availability of Information

Overview

36. Effective exchange of information (EOI) 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 St. Kitts and Nevis' legal and regulatory framework on the availability of information.

37. In respect of ownership and identity information, the obligations imposed on domestic and exempt companies, general and limited partnerships, trusts and multiform foundations are generally sufficient to meet the international standard. The obligations imposed directly on entities and arrangements are complemented by the anti-money laundering rules, which apply to licensed service providers and persons carrying on financial business, including nominees and trustees. These rules impose additional record-keeping requirements for relevant information which is available for the exchange of information for tax purposes.

38. External (foreign) companies which operate in the Federation are required to disclose ownership information regarding their shareholders as part of a mandatory registration process. However, in certain limited instances,

there appear to be some deficiencies in the availability of ownership information regarding controlling shareholders of foreign companies which do not operate in the Federation, but which are nevertheless managed and controlled therefrom. The obligations imposed on registered agents of exempt companies in St. Kitts and Nevis have the effect of immobilizing bearer shares, as well as providing for adequate mechanisms to indentify owners of bearer shares.

39. In respect of accounting information, the laws governing relevant entities established in St. Kitts and Nevis have been recently amended and brought in line with the international standard. General partnerships that carry on business in the Federation are subject to similar record-keeping obligations under the applicable tax laws.

40. As to bank information, the combination of the anti-money laundering rules and licensing requirements generally impose appropriate obligations to ensure that all records pertaining to account holders, as well as related financial and transaction information, are available.

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.

41. The relevant entities and arrangements of St. Kitts and Nevis are companies (ToR A.1.1), some of which may issue bearer shares (ToR A.1.2), partnerships (ToR A.1.3), trusts (ToR A.1.4) and foundations (ToR A.1.5).

Companies *(ToR A.1.1)*

Types of companies

42. The Federation of St. Kitts and Nevis' Constitutional framework provides for each island to develop legislative and administrative structures and procedures to govern the financial, corporate and commercial sectors. Hence, in St. Kitts there are acts governing companies, partnerships, trusts and foundations that are registered in St. Kitts, whilst in Nevis there are ordinances to govern similar entities.

43. The Companies Act (CAP 21.03) (ss. 8 and 16) allows for the following types of companies to be incorporated in St. Kitts:

- companies limited by shares; and
- companies limited by guarantee.

44. Such companies may be either private or public. In addition, they may also be classified as ordinary (domestic) or exempt (international). As of

March 2011, there were 1 307 ordinary companies (1 289 limited by shares and 18 limited by guarantee), 1 760 exempt companies and 140 exempt captive insurance companies registered in St. Kitts.

45. In Nevis, companies may be incorporated under three separate pieces of legislation, as follows:

- local (domestic) companies formed under the Companies Ordinance No. 4 of 1999, as amended;
- corporations limited by shares (NBCs) formed under the Nevis Business Corporation Ordinance No. 3 of 1984, as amended; and
- limited liability companies (LLCs) formed under the Nevis Limited Liability Companies Ordinance No. 1 of 1995, as amended.

46. Local companies may be either private or public. NBCs and LLCs are formed primarily for the carrying on of business outside of Nevis and are exempt from tax provided that they do not do business therein. As of March 2011, there were 644 local companies (597 profit and 47 non-profit), 11 538 NBCs, 4 261 LLCs and 172 international insurance companies registered in Nevis.

47. All ordinary companies registered in St. Kitts under the Companies Act and local companies (with the exception of non-profit companies) registered in Nevis under the Companies Ordinance are subject to income tax imposed under the Income Tax Act (CAP 20.22).[3] Conversely, exempt companies established in St. Kitts or in Nevis (*i.e.* NBCs and LLCs) are exempt from all income, capital gains and withholding taxes, as well as stamp duties, provided they do not conduct business with residents of St. Kitts and Nevis (ss. 207(1) and 208, Companies Act, s. 12(9), Nevis Business Corporation Ordinance and s. 3, Nevis Limited Liability Companies Ordinance).

48. In addition to the requirements described below under which ownership information must be maintained, the Registrar does not approve any transfer unless stamp duty has been paid under the Stamps Act (CAP 20.40) or exempted under any other law, as certified by the Comptroller of Inland Revenue. To this end, the Comptroller of Inland Revenue is informed when there are any changes in shareholding.

3. Domestic companies are assigned a tax identification number (s. 5, Tax Administration and Procedures Act of 2003 and s. 5, Tax Administration and Procedures Ordinance of 2007) and are required to file corporation tax returns with the Tax Comptroller, Inland Revenue Department, a division of the Ministry of Finance in St. Kitts and Nevis (s. 31(1)(b) and s. 48, Income Tax Act).

Domestic and exempt companies

St. Kitts

49. The Companies Act applies to all types of companies incorporated and/or registered in St. Kitts and, therefore, the requirements regarding maintaining ownership information would apply equally to domestic, exempt and external companies (see section on Foreign companies, below).

50. Under the Companies Act, every company is required to keep a register of members containing their particulars (*i.e.* names and addresses for an individual or name, place of incorporation and address of registered or principal office for a body corporate), the dates they became and ceased to be members, and the amount of shares or guarantee, as the case may be (ss. 25, 41(1) and 50(3)(c)). A transfer of shares may only be recorded on the register of members upon delivery to the company of a written instrument of transfer (s. 42(1)).

51. Ownership information on each member must be kept in the register of members for at least ten years from the date on which he/she ceased to be a member (s. 41(3)). In the event of liquidation, the company's records must be kept for at least ten years after the company's dissolution (s. 195(2)). The register of members must be kept at the company's registered office or elsewhere within the Federation and the company must give notice to the Registrar of Companies of the place where its register of members is kept, and of any changes of that place (s. 44(1) and (2)).

52. Furthermore, every company incorporated or registered under the Companies Act is required to be registered at the Registrar of Companies (s. 4(3)). They must disclose information on the identity of the initial legal owners (both natural and legal persons), as part of the registration process (s. 5(2)). All companies are required to maintain a registered office in the Federation and to file annual returns at the Registrar of Companies, containing current identity information on the directors, the secretary and (except for exempt companies) the members/shareholders (ss. 68(1) and 72(2)). Any changes in ownership or directorship must be reported to the Registrar of Companies within 21 days (s. 101). Ownership information concerning exempt companies must nevertheless be maintained by a licensed service provider, as further detailed under the section on *Anti-money laundering laws* below.

Nevis

53. The Companies Ordinance places an obligation on domestic companies to maintain records and registers of members showing: (i) the name and the latest known address of each person who is a member; (ii) a statement of the shares held by each member; and (iii) the date on which each person became and ceased to be a member (ss. 4(1) and 177(2)).

54. Public companies must prepare and maintain a register of substantial shareholding (ss. 177(4), 181-185), including shares held by a person or by a nominee (see below section on *Nominees*), which entitle the holder to exercise at least ten percent of the unrestricted voting rights at any general meeting of shareholders (s. 181(1)). A substantial shareholder must give notice in writing to the company stating his/her name and address and giving full particulars of the shares held by him/her or by a nominee (naming the nominee), within 14 days after becoming aware that he/she became or cease to be a substantial shareholder (ss. 182 and 183).

55. A transfer of shares may only be recorded on the register of members upon delivery to the company of a written instrument of transfer signed by the transferor and the transferee (ss. 195(1) and 199(1)). The beneficial ownership of the shares of a company passes to the transferee (i) on the delivery to him/her of the instrument of transfer signed by the transferor and approved by the Registrar or (ii) on the delivery to him/her of an instrument of transfer signed by the transferor that has been certified by or on behalf of the company, or by or on behalf of a recognised Stock Exchange (s. 195(4)).

56. Domestic companies formed under the Companies Ordinance are also required to be registered at the Registrar of Companies (Legal Department, Nevis Island Administration). All domestic companies are required to maintain a registered office in Nevis and to file annual returns (forms 28 and 28A) to the Registrar of Companies with current identity information on the members/shareholders (ss. 18(2), 175(1) and 194(1)). An allotment of shares showing the names and addresses of shareholders must be filed at the Registrar within one month of registration (s. 18(2), as amended by s. 2 of the Companies (Amendment) Ordinance, 2008). The Registrar of Companies must keep documents for six years from the date of receipt (s. 507).

57. Exempt (international) companies formed under the Nevis Business Corporation Ordinance (*i.e.* NBCs) must keep a record containing the names and addresses of all registered shareholders (s. 76(2)), including a record of the number and class of shares held by each shareholder (see section A.1.2 on bearer shares below). LLCs formed under the Nevis Limited Liability Company Ordinance are required to keep a record containing the names and address of all members (ss. 37(2)(b)).

58. Additionally, all NBCs and LLCs incorporated and organized under such ordinances must, at all times, have a registered agent in St. Kitts and Nevis (s. 17, Nevis Business Corporation Ordinance and s. 14, Nevis Limited Liability Company Ordinance). As further described below, registered agents (as well as other licensed service providers) are required to maintain identity information concerning beneficial and legal owners of such NBCs and LLCs, in compliance with the anti-money laundering statutes.

59. Moreover, NBCs and LLCs must be registered at the Nevis Financial Services Registry (Ministry of Finance, Nevis Island Administration). NBCs are required to file the articles of incorporation containing information on the identity and address of the initial legal owners and the address of the registered agent (both natural and legal persons), as part of the registration process (ss. 25(5), 25(12) and 27). Similarly, LLCs are required to file upon registration the articles of organization containing information on the identity of the registered agent in Nevis (s. 26(d)).

60. Under the Nevis International Insurance Ordinance, only NBCs with a registered office in Nevis (or in such other place outside of Nevis as approved by the Registrar) can apply to the Registrar of Insurance for a license to conduct international insurance business[4] (s. 7 and s. 12). As part of the application process, applicants must disclose information concerning the ultimate beneficial ownership of their stocks and shares (s. 6). A registered insurer must forthwith notify the Registrar of Insurance in writing of any changes in the particulars set out in the application for registration or in the documents, information, or evidence accompanying that application (s. 13(2)).

Foreign companies

61. An external company is a body corporate which is incorporated outside the Federation and which carries on business in the Federation or which has an address in the Federation which is used regularly for the purposes of its business. As of March 2011, there were 42 external companies registered in St. Kitts and 18 external companies registered in Nevis.

62. Under section 196(1) of the Companies Act, a body corporate incorporated outside the Federation must be registered at the Registrar of Companies in order to "carry on business in the Federation or to have an address in the Federation which it uses regularly for the purpose of its business". As part of the registration process, a director of the company or an agent acting on behalf of the director(s) must disclose to the Registrar current identity information

4. International insurance business is defined under the Nevis International Insurance Ordinance, No. 1 of 2004 and amended by The Nevis International Insurance (Amendment) Ordinance, No. 1 of 2006 as the carrying on or the conducting, whether within or outside Nevis, of any insurance business where each of the insured, the person to whom the policy moneys are payable and the owner of the policy or any one or more of such persons: (i) is not domiciled in St. Kitts or Nevis; (ii) is not ordinarily resident in St. Kitts or Nevis; and (iii) is not an entity incorporated or registered in St. Kitts or Nevis under any legislation other than the Nevis Business Corporation Ordinance, 1984, the Nevis Limited Liability Company Ordinance, 1995 and the Nevis International Exempt Trust Ordinance, 1996.

(including full names and addresses) with respect to each director, the secretary and the agent(s) (natural or legal person) (s. 196(3)).

63. Under section 340 of the Companies Ordinance, external companies carrying on business in Nevis must be registered at the Registrar of Companies (Legal Department, Nevis Island Administration). According to section 338: "[a]n external company carries on business within Nevis: (a) if business of the company is regularly transacted from an office in Nevis established or used for the purpose; (b) if the company establishes or uses a share transfer or share registration office in Nevis; (c) if the company owns, possesses or uses assets situated in Nevis for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in Nevis or not."

64. Upon registration, the external company must file a statement setting out particulars (*e.g.* full names, addresses and occupations) of its directors (s. 344(1)(m), Companies Ordinance and form 21). A change among its directors must be reported to the Registrar of Companies within 30 days after the change has been made (s. 355(1)(d) and form 9). With regard to the shareholders, the external company is required to file annual returns stating the extent, if any, to which the liability of the shareholders or members of the company is limited (s. 344(1)(g), s. 356 and form 24).

65. It is unclear, however, if the circumstances described under section 340 of the Companies Act and section 338 of the Companies Ordinance would capture all the cases where a foreign company has sufficient tax nexus with St. Kitts and Nevis by virtue of its central management and control therefrom, without carrying on business in the Federation. This is a limited set of circumstances and even when the company is not required to be registered under the companies laws, this ownership information would be available where a foreign company has a bank account in the Federation or engages a licensed service provider, who is subject to the anti-money laundering laws (see below, section on *Anti-money laundering laws* and section on *Banking information*). A practical assessment of the matter will take place in the Phase 2 review of St. Kitts and Nevis.

66. A foreign company may be re-domiciled to St. Kitts by providing certified copies of all incorporation documents to the Registrar of Companies and, after the company has been re-domiciled, it must submit annual returns with updated ownership information in accordance with section 72 of the Company Act. This process must be done via a registered agent in the Federation. A foreign corporation (s. 105, Nevis Business Corporation Ordinance) or a foreign LLC (s. 66, Nevis Limited Liability Company Ordinance) may transfer its domicile to Nevis by filing with the Registrar of Companies an application to transfer domicile containing, among other things, the name and address of the foreign company's registered agent in Nevis. As further described below,

registered agents (and other licensed service providers) are required to maintain identity information concerning beneficial and legal owners of such foreign companies, pursuant to the anti-money laundering statutes.

67. Under the Tax Administration and Procedures Act, a person who is not resident in the Federation, but is liable to pay tax therein, must nominate an agent who resides in the Federation for the purpose of complying with this act (s. 9(3)). Likewise, under the Nevis Tax Administration and Procedures Ordinance of 2007, a person who is not resident in the Island of Nevis, but is liable to pay tax therein, must nominate an agent who resides in Nevis for the purpose of complying with this ordinance (s. 9(3)).

Nominees

68. In St. Kitts and Nevis, any person who provides the service of acting as nominee shareholders and/or directors must be authorised as a licensed service provider under the Financial Services Regulations Order No. 5 of 1997 (Revised Seventh Schedule to the Companies Act) (s. 4). Under the anti-money laundering statutes described below, service providers acting as nominees are subject to extensive requirements as to the procedures which must be applied to identify customers, shareholders, directors and beneficial owners and other relevant persons such as agents.

Anti-money laundering laws

69. Under the Proceeds of Crime Act of 2000 (CAP 4.28) (schedule of regulated business, see list under Annex 5 below), all persons so authorised to conduct finance business (including corporate business) must adhere to the provisions of the Anti-Money Laundering Regulations No. 25 of 2008 (AML Regulations) and the appended Guidance Notes on the Prevention of Money Laundering and Terrorist Financing (Guidance Notes), which have the force of law. The provisions of the AML Regulations and Guidance Notes are equally applicable to Nevis.

70. The authorities of St. Kitts and Nevis have indicated that the Financial Services Regulatory Commission, which is responsible for supervising service providers licensed in the Federation, conducts periodic due diligence audits to ensure that they are obtaining and maintaining proper identification documents. It was further stated that information held by the service providers can be easily retrieved by the competent authority. Service providers are authorised to conduct finance business under the Financial Services Regulations Order No. 5 of 1997 (Revised Seventh Schedule to the Companies Act).

71. In this order, "finance business" is defined as any (i) deposit-taking business; (ii) investment business; (iii) insurance business; (iv) assurance

business; (v) trust business; or (vi) corporate business, carried on for profit or reward in or from within the Federation. As of March 2011, there were 12 licensed financial institutions operating in St. Kitts (5 domestic banks, 5 money services business, and 2 credit unions) and 7 licensed financial institutions operating in Nevis (1 offshore bank, 4 money services business, 1 credit union, 1 mutual fund administrator/manager).

72. In turn, "corporate business" is defined as the carrying on of, and the provision of services in relation to, the business of (a) incorporating or establishing, as may be appropriate, companies or partnerships; (b) providing nominee shareholders, directors, chief executives or managers, as may be appropriate, for companies or partnerships; (c) maintaining the registered office or the office for service, as may be appropriate, for companies or partnerships; (d) managing or administering, as may be appropriate, companies or partnerships. As of March 2011, there were 95 licensed service providers in St. Kitts and Nevis, of which 14 companies and 25 attorneys-at-law were in St. Kitts and 37 companies and 19 attorneys-at-law were in Nevis.

73. AML Regulation 4 specifically requires service providers to apply identification procedures before the establishment of a business relationship or before carrying out a one-off transaction, as well as on-going identification procedures during a business relationship. These identification procedures include procedures for identifying the customer and third parties on behalf of whom the customer is acting and establishing the true identity of that person, including that person's name and legal status, based on reliable evidence.

74. Where the customer and/or the third party is not an individual, the procedures include understanding the ownership and control of that third party, *i.e.* identifying each individual who is that third party's beneficial owner or controller (AML Regulation 4(2)(iii)). On-going identification procedures include ensuring that documents, data or information obtained under identification procedures are kept up to date and relevant by undertaking reviews of existing records.

75. In addition, the Guidance Notes appended to the AML Regulations, which also have the force of law, provide additional measures which must be employed by regulated entities with respect to identification and record-keeping procedures. Sections 80, 85 and 86 of the Guidance Notes, appended to the AML Regulations, indicate the documents which may be required in order to establish the identity of individuals and companies.

76. Pursuant to AML Regulation 8, the identification records relating to each transaction carried out in the course of any business relationship or one-off transaction must be kept for at least five years. The Financial Services Regulatory Commission may notify a relevant person to keep ownership information for a longer period of time.

Conclusion

77. Companies incorporated in St. Kitts under the Companies Act, as well as domestic companies incorporated in Nevis under the Companies Ordinance, must always keep a register of members/shareholders and are further required to disclose current identity information on members/shareholders and directors as part of the process of registration at the Registrar of Companies. External companies are subject to similar disclosure requirements as part of a mandatory registration procedure when carrying on business in the Federation or having an address in the Federation which it uses regularly for the purpose of its business.

78. NBCs and LLCs established in Nevis, or abroad which transfer domicile to Nevis, must be registered at the Nevis Financial Services Registry and are required to provide updated information concerning their registered agents. In turn, such registered agents and other licensed service providers (including nominees) are required to employ extensive identification procedures to establish the identity of shareholders (legal and beneficial owners) and directors and to maintain this identity information for at least five years, under the AML Regulations. Additional disclosure obligations are imposed on NBCs which apply to the Registrar of Insurance for a license to conduct international insurance business.

Bearer shares *(ToR A.1.2)*

79. Under the Companies Act, exempt companies are allowed to issue bearer shares (s. 51). Bearer certificates issued by a company under the Companies Act must be kept in St. Kitts at the offices of a person authorised to carry on finance business (s. 52(1)). This authorised person is required to maintain a record of each bearer certificate deposited in its custody which must contain the following information: (i) the name of the company issuing the bearer certificate; (ii) the identification number of the certificate, number of shares and the class of shares in the company contained in the bearer certificate; (iii) the identity of the bearer of the certificate, that is to say, the name, address, date of birth and details of identification; and (iv) where applicable, its beneficial owner[5] (s. 52(2)). If the custody of the bearer certificate is transferred to another custodian, the Registrar of Companies must be informed within seven days of the transfer and the notice shall include the particulars of the new custodian (s. 52(3)).

5. Where the persons on whose behalf the authorised person holds the certificates are themselves acting on behalf of other persons (*i.e.* the beneficial owners), these persons' identity information must also be recorded by the authorised person.

80. In Nevis, the Companies Ordinance specifically stipulates that no domestic company incorporated in Nevis may issue bearer shares or bearer share certificates (s. 29(2)). LLCs are not authorised to issue bearer shares. The Nevis Business Corporation Ordinance, as amended in 2001, does allow the issuance of bearer shares. All such shares must be held by a registered agent (s. 31(1)). The registered agent is required to keep and maintain a record of each bearer share certificate issued by any corporation for which it acts as agent containing information including the identity of the beneficial owner of the shares (ss. 31(1) and 129). Where the custody of the bearer share certificate is transferred to another custodian or agent, the registered agent must notify the Registrar of Companies within seven days of such transfer and inform the particulars of the new custodian or agent. Furthermore, NBCs must maintain a record of all certificates issued in bearer form including the number, class and dates of issuance of such certificates (s. 76). The information to be recorded with respect to bearer shares must include: (i) the name of the company issuing the shares; (ii) the class and number of shares contained in the certificate; and (iii) the identification of the beneficial owner of the shares contained in the bearer share certificate (*e.g.* name, address, date of birth, nationality).

81. It should also be noted that in both St. Kitts and Nevis the custodian would, in all cases, be subject to anti-money laundering rules and so be subject to customer due diligence requirements described above. Under the Guidance Notes appended to the AML Regulations, bearer shares are discouraged and a regulated business should ensure that bearer shares are retained permanently by service providers and kept on file for the company which issued such shares (s. 86).

Conclusion

82. The obligations imposed on registered agents of exempt companies in St. Kitts and NBCs in Nevis have the effect of immobilizing bearer shares, as well as providing for adequate mechanisms to identify owners of bearer shares.

Partnerships *(ToR A.1.3)*

Types of partnerships

83. The following types of partnerships may be formed in St. Kitts and Nevis: (i) general partnerships; and (ii) limited partnerships (LPs), which may be exempt or ordinary (domestic) LPs. As of March 2011, there were 318 general partnerships, nine exempt LPs and five ordinary LPs established in St. Kitts and Nevis.

General partnerships

84. General partnerships carrying on a business in St. Kitts and Nevis must obtain a business licence under the Licences on Business and Occupations Act of 1972 (CAP 18.20) (s. 2). Upon application for the licence, general partnerships are required to provide information on the names and addresses of all partners (s. 4). The business licence is valid until 31 December following the date of issuance (s. 5). The renewal application form requires the particulars of all partners to be disclosed. Therefore, updated ownership information as regards the partners of general partnerships carrying on a business in the Federation will be maintained and disclosed to the Comptroller, Inland Revenue, on an annual basis.

85. In addition, general partnerships are required to pay taxes and to file annual returns under the Unincorporated Business Tax Act No. 5 of 2010 (s. 8), the Tax Administration and Procedures Act (s. 6(1)), the Nevis Tax Administration and Procedures Ordinance (s. 6(1)) and the Value Added Tax Act No. 3 of 2010. Under the Unincorporated Business Tax Act, the partners may designate one partner to file the returns and pay the tax on their behalf (s. 6(1)). In such a case, the general partner responsible for complying with these tax obligations would have to know the identity of the other partners. Conversely, where each partner is responsible for complying with his/her own tax obligations, the Comptroller will have direct access to the identity information on each of the partners. Under the Value Added Tax Act, taxable persons (*e.g.* general partnerships) which make taxable supplies of goods or services exceeding XCD 150 000 (USD 55 555) per year (or XCD 96 000 (USD 35 555) in the case of professional services) are required to be registered and to provide updated information on partners to the Comptroller. As of March 2011, there were 58 general partnerships registered with the Comptroller.

86. Finally, anti-money laundering legislation may impose additional obligations concerning ownership information of general partnerships in a number of cases. In accordance with section 46 of the Guidance Notes, any regulated business which conducts business with a partnership is required to treat the general partner as a verification subject and apply the requirements of AML Regulation 4 where identification procedures are concerned, as well as AML Regulation 8 where record retention (for at least five years) is concerned. In addition, the authorities of St. Kitts and Nevis have indicated that general partnerships are required to maintain or disclose updated ownership information in a number of situations, *i.e.* where they conduct finance business and are so authorized under the Financial Services Regulations Order; where they are regulated businesses, authorized service providers or designated non-financial business or profession, pursuant to the provisions of the AML Regulations.

Limited partnerships

87. Under the Limited Partnerships Act (CAP 21.12), all LPs are required to maintain a registered office in the Federation (s. 21(1) and (4)) and to file annual statements with the Registrar of Companies (s. 22), containing current identity information (including name and address) of each general partner (natural or legal persons) (s. 22(2)(d)). In turn, the general partners of a LP are required to keep, at its office for service, a register showing the particulars (including name and address) of each limited partner (natural or legal person), in alphabetical order.

88. The information on the register of partners must be current and amended within 21 days of a change (s. 21(5)(b)). This information must be maintained and kept available for other partners to inspect, subject to a fine for non-compliance (s. 21(6)). Likewise, as changes in general partners or any other changes take place, LPs are required to file an amendment of the declaration with the Registrar of Companies at least 21 days after it is passed or made (s. 8(1)). The Registrar of Companies may destroy any records comprised in, or annexed to, the accounts or annual statements of a LP after 30 years (s. 60).

Conclusions

89. General partnerships that carry on business in the Federation must provide information on the names and addresses of all partners at the time of the application for a business license under the Licensing of Business and Occupations Act. Additional obligations to maintain or disclose ownership information on general partnerships arise from the tax and anti-money laundering frameworks. All ordinary and exempt LPs are required to file annual statements to the Registrar of Companies, containing current identity information on the general partners who, in turn, are required to keep, at their office for service, an updated register with identity information on the limited partners.

Trusts *(ToR A.1.4)*

Types of trusts

90. In St. Kitts, ordinary (domestic) or exempt[6] (international) trusts may be registered under the Trusts Act (CAP 5.19). As of March 2011, there were 27 exempt trusts and 21 ordinary trusts established in St. Kitts, which were registered at the Financial Services Regulatory Commission.

6. A trust the beneficiaries of which are exempt from taxes.

91. The Nevis International Exempt Trust Ordinance No. 1 of 1994 provides for the registration of an international trust, which is defined as (s. 2):

> "a trust registered under this Ordinance and in respect of which:
>
> a. at least one of the trustees is either:
>
> i. a corporation incorporated under the Nevis Business Corporation Ordinance; or
>
> ii. a trust company doing business in Nevis;
>
> b. the settlor and beneficiaries are at all times non-resident; and
>
> c. the trust property does not include any land situated in St. Christopher and Nevis".

92. As of March 2011, there were 1 063 international trusts registered in Nevis.

St. Kitts

93. All of the provisions in the Trusts Act are applicable for both ordinary and exempt trusts established in St. Kitts, regardless as to whether the settlors or beneficiaries reside outside the Federation, or whether the assets are located outside the Federation. A trust will not be recognized by law unless it is provided with a certificate of registration by the Registrar (s. 4(4)). In addition, every trust must have an office for service in the Federation (s. 59) and at least one resident trustee (s. 4(2)). As further described below, resident trustees are subject to the anti-money laundering statutes.

94. Any of the trustees of a trust (or a person acting on their behalf) may apply for the registration of the attestation of existence of the trust containing, among other things, the particulars (including name and address) of each trustee (natural or legal person) (s. 5(1) and(2)). All amendments to the attestation must be submitted to the Registrar within 21 days of the change (s. 8).

95. Additional disclosure requirements apply to unit trusts. The trustees must keep, at the office of service, the particulars (including name and address) of each beneficiary (natural or legal person) and a copy of the written terms of the trust (if any) and amendments thereto, which may identify the settlors, protector (if any) and other trustees (s. 59(4)(c)). This information must be available for inspection by a trustee or the protector (if any) (s. 59(5)). There is no mandatory requirement for such a document to be deposited with the Registrar and no stipulated time is given as to how long this information should be maintained. According to the authorities of St. Kitts and Nevis, this information should be maintained indefinitely since the information must be also kept on past beneficiaries. In addition, the trustees must file annual statements with current information on the trust (s. 60).

Nevis

96. Pursuant to the Nevis International Exempt Trust Ordinance, international trusts are exempt from taxes and duties and must be registered (s. 37(1)). The application must contain, among other things, notice of the name of the trustee and registered office of the trust, which must be the office of the trust company or corporation which is a trustee (ss. 37(6) and 42). An annual application for renewal of registration must be made no later than 90 days after the expiry of the last certificate of registration (s. 38(2) and (3)). The provisions of this ordinance cease to apply to any trust that fails to renew its registration (s. 38(6)).

Foreign trusts

97. Under the Nevis International Exempt Trust Ordinance, a trust company or a barrister or solicitor licensed as registered agents may also register a trust governed by foreign law as a "qualified foreign trust" in Nevis (s. 37(1)). As further described below, resident agents are subject to the anti-money laundering statutes. An annual application for renewal must be made no later than 90 days after the expiry of the last certificate of registration (s. 38(2) and (3)). The application must contain notice of the name of the trustee, registered office of the qualified foreign trust, and the law under which the trust was settled (s. 37(6)).

Anti-money laundering laws

98. Under the Financial Services Regulations Order, carrying on a trust business is defined as (i) undertaking or executing trusts; (ii) providing trustees or protectors for trusts; (iii) maintaining the office for service of trusts; or (iv) managing or administering trusts. It is considered to be a finance business, which may only be conducted by licensed (natural or legal) persons (s. 4(1)). Authorised persons who conduct a trust business (domestic and exempt) must be licensed under the Financial Services Regulations Order and are regulated by the Financial Services Regulatory Commission. The provisions for the AML Regulations and Guidance Notes also apply to the island of Nevis and to trustees resident therein.

99. Resident trustees in the Federation are therefore required to adhere to substantial identification procedures stated in AML Regulation 4 and to the minimum five-year record retention period stipulated in AML Regulation 8. AML Regulation 4 specifically requires service providers to apply preliminary and on-going procedures for identifying the customer and third parties on behalf of whom the customer is acting and establishing the true identity of that person, including that person's name and legal status, based on reliable evidence.

100. In addition, the Guidance Notes appended to the AML Regulations, which also have the force of law, provide that a fiduciary should treat settlors and principal beneficiaries as verification subjects when making a trust settlement, when accepting trusteeship from a previous trustee or when there are changes to principal beneficiaries (s. 173). A "fiduciary" is any person duly licensed/authorized and carrying on any such business in or from within the Federation. It should be noted that the Guidance Notes are appended to AML Regulations and AML Regulation 4 is sufficiently broad to capture all beneficiaries. The authorities of St. Kitts and Nevis will consider revising the Guidance Notes to clarify that it is consistent with AML Regulation 4.

101. Furthermore, all fiduciaries are required to maintain written procedures to ensure that the identity of each client to whom services are provided is known (s. 174). Where the client and/or the third party is not an individual, the procedures include understanding the ownership and control of that third party and identifying each individual who is that third party's beneficial owner or controller.

Conclusion

102. Trusts established in St. Kitts and Nevis and "qualified foreign trusts" must disclose current identity information on each trustee to the Registrar, as part of the process of registration. In addition, these trusts must have at least one resident trustee of the Federation, who is required to adhere to identification procedures concerning principal beneficiaries and settlors, as well as record-keeping requirements prescribed by the AML Regulations.

Foundations *(ToR A.1.5)*

St. Kitts

103. The Foundations Act No. 8 of 2003 allows for the establishment of ordinary[7] and exempt[8] foundations in St. Kitts (s. 2(1)). As of March 2011, there were 432 exempt foundations and 14 ordinary foundations established in St. Kitts.

7. Only ordinary foundations have deductions or credit for tax purposes in St. Kitts and may carry on business in St. Kitts. All ordinary foundations are required to file tax returns with the Inland Revenue Department. Under the Tax Administration and Procedures Act of 2003, an ordinary foundation subject to any tax to which this act applies must nominate a member or officer in the partnership (or body) to comply with the requirements of this act (s. 9(2)).
8. A foundation which is exempt from taxes.

104. In accordance with the Foundations Act, all foundations are required to maintain a registered office in the Federation and must file annual returns (ss. 3 and 66). The information to be provided to the Registrar in the articles of the foundation includes, among other things the particulars (including name and address) of the founder (natural or legal person) (s. 61(1)(b)), the registered address of the foundation (s. 61(1)(g)) and current identity information of the councillors (s. 66(2)(c)), but does not include beneficiaries. As changes take place, the foundations are required to file an amendment of the articles with the Registrar within 14 days of the amendment coming into effect (s. 62(4)).

105. In addition, all foundations must be formed by licensed service providers (s. 3(5)) and they must have a secretary that is a person authorized to conduct trust or corporate business under the relevant laws of St. Kitts (s. 13(1)). As mentioned above, such service providers are required to adhere to identification procedures stated in AML Regulation 4 and to the record retention requirement (at least five years) stipulated in AML Regulation 8. Foundations formed under the Foundations Act may have by-laws and the by-laws may more specifically identify any beneficiary or additional beneficiaries of the foundation (s. 63(1)(b)). In addition, the authorities of St. Kitts and Nevis have indicated that identity information on the beneficiaries must be kept by the secretary, pursuant to AML Regulations 4 and 8. A practical assessment of the matter will take place in the Phase 2 review of St. Kitts and Nevis.

Nevis

106. In Nevis, the Multiform Foundations Ordinance No. 2 of 2004 provides for the registration of multiform foundations as (s. 10):

- a company foundation, governed by the provisions of the Nevis Business Corporation Ordinance, unless otherwise specified (s. 10(9)(b)) (see section A.1.1 on companies above);
- a partnership foundation, governed by the provisions of the Nevis Limited Liability Company Ordinance, unless otherwise specified (s. 10(9)(c)) (see section A.1.1 on companies above); or
- a trust foundation, governed by the provisions of the Nevis International Exempt Trust Ordinance, unless otherwise specified (s. 10(9)(a)) (see section A.1.4 on trusts above).

107. As of March 2011, there were 113 multiform foundations (66 ordinary foundations, 16 limited company foundations, 2 LLC foundations, 1 general partnership foundation, 1 limited partnership foundation and 27 trust foundations) established in Nevis.

108. In addition to the requirements to maintain ownership and identity information under the relevant governing laws, Nevis foundations are subject

to specific obligations. Under the Multiform Foundations Ordinance, a multiform foundation must have at all times a registered agent in Nevis and a registered office therein (ss. 19(1) and 20(1)). The provisions of the AML Regulations and Guidance Notes are equally applicable for the island of Nevis. A subscriber, promoter or registered agent acting on their behalf is required to register a multiform foundation to the Registrar of Foundations (at the Financial Services Registry), by filing a memorandum of establishment and by-laws (ss. 3, 4 and 6).

109. The memorandum of establishment must state: (i) the particulars (including name and address) of the subscriber or promoter (natural or legal person); (ii) the situation of the registered office in Nevis; and (iii) whether or not the foundation is revocable or irrevocable and, if revocable, the identity of the person who holds the power of revocation (s. 7). Where there are amendments to the initial memorandum of establishment or by-laws, a copy of the amended document must be delivered to the Registrar of Foundations within 14 days of the amendment coming into effect (s. 8(4)). There is no requirement for a multiform foundation to have a beneficiary (s. 11(3)).

110. The registration must also be accompanied by a statement setting out, among other things: (i) the particulars of the registered agent; (ii) the particulars of any person in the first management board, first supervisory board and first secretary;[9] (iii) an undertaking that the management board will forthwith notify the Minister of Finance in the Nevis Island Administration if the multiform foundation ceases to be a tax resident foundation (ss. 3, 4 and 95).

111. Each multiform foundation must keep at its registered office a register open to inspection of past and present members of its management board, supervisory board (if any) and secretary, their respective particulars (including name and address) and their interests with respect to the multiform foundation, whether as subscriber or beneficiary (s. 30). Regulation 9 of the Multiform Foundations Regulations of 2005 requires a record of all subscribers and subscriptions to be made and a register of all beneficiaries[10] and their respective beneficial entitlements to be kept and maintained at its registered office

9. Section 30(3) of the Multiform Foundations Ordinance of 2004 further states that the register of past and present members of multiform foundation's management board, supervisory board and secretary together with their respective particulars and their interest with respect to the multiform foundation, whether as subscriber or beneficiary shall, during business hours, be open to inspection by the Registrar at the registered office.

10. "Beneficiary" means: (i) with respect to a multiform stated as a trust or an ordinary foundation, a beneficiary or potential beneficiary, or class of beneficiaries or potential beneficiaries, of that trust or ordinary foundation, and (ii) with respect to a multiform stated as a company, a shareholder, guarantor or member of that

in Nevis. The record of subscribers and register of beneficiaries must be kept confidential at all times[11], however, this does not impede effective exchange of information as secrecy confidentiality provisions in St. Kitts and Nevis are overridden in connection with a request for information in tax matters (see section B.1, below).

Conclusion

112. A foundation established in St. Kitts must have, at its registered office within the Federation, a register containing identity information on each councillor, guardian and secretary and must disclose to the Registrar current identity information on the founders, secretary and councillors. The AML Regulations impose an obligation on the secretary to maintain the identity of the beneficiaries.

113. In Nevis, a multiform foundation must also keep at its registered office a register of past and present members of its management board, supervisory board (if any) and secretary, as well as a register of subscribers and a register of beneficiaries. Furthermore, they are required to disclose to the Registrar current identity information on the subscribers, promoters and registered agents.

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

114. Jurisdictions should have in place effective enforcement provisions to ensure the availability of ownership and identity information, including sufficiently strong compulsory powers to access the information. This subsection of the report assesses whether the provisions requiring the availability of information with the public authorities or within the corporate entities reviewed in section A.1 are enforceable and failures are punishable. Questions linked to access are dealt with in Part B of this report.

company, and (iii) with respect to a multiform stated as a partnership, a partner, whether limited or unlimited in liability, of the partnership (s. 2(1)).

11. See paragraph 4 of the By-laws of an Ordinary Foundation, a Limited or Unlimited Company Foundation and a Limited Liability Company Foundation and paragraph 5 of the By-laws of a Trust Foundation and a General or Limited Partnership Foundation, all scheduled to the Multiform Foundations Regulations of 2005.

Companies

115. Under the Company Act, if a company fails to keep ownership information in the form of a register of members, the company and every officer of it who is in default commit an offence and is liable to a fine not exceeding XCD 2 500 (USD 926) and a further fine not exceeding XCD 250 (USD 93) for each day on which the offence so continues. A company which fails to provide the ownership information by way of submitting an annual return commits an offence and may be struck off the register of companies (ss. 72(5) and 206). If a company fails to give notice to the Registrar within 14 days of the place where its register of members is kept, or of any change of that place, it is guilty of an offence and is liable to a fine not exceeding XCD 2 500 (USD 926) and a further fine not exceeding XCD 250 (USD 93) for each day on which the offence so continues (s. 44(4)).

116. By carrying on business in the Federation or having a business address in the Federation without registration at the Registrar of Companies, a foreign company commits an offence and is liable, on conviction, to a fine not exceeding XCD 2 700 (USD 1 000) and a further daily fine not exceeding XCD 200 (USD 74) for as long as the offence continues (s. 196(15)). If the information provided to the Registrar of Companies is false, misleading or deceptive, the director commits an offence and is liable, upon conviction, to a fine not exceeding XCD 2 700 (USD 1 000) and, if the director is an individual, to imprisonment for a term not exceeding two years, or both (s. 196(16)).

117. A custodian or agent who fails or refuses to comply with the obligation to notify the Registrar of Companies within seven days where the custody of a bearer share certificate is transferred to another custodian or agent, is liable to fines ranging from XCD 20 000 (USD 7 407) to XCD 30 000 (USD 11 111), imprisonment to a term not exceeding twelve months or revocation of the registered agent's licence (s. 52(6)).

118. Under the Companies Ordinance of Nevis, failure by a company to file an annual return containing current identity information on the directors and the shareholders will result in the striking off the register of a domestic or foreign company and/or the imposition of a daily penalty of XCD 10 (USD 3.70) from 1 April to 7 August and XCD 1 (USD 0.37) for each day thereafter (s. 194(3), s. 356(3), (s. 511) and Regulation 2 of the Companies (Amendment) Regulations of 2007 and the Companies (Amendment) Regulations of 2009).

119. A person who makes or assists in making a report, return, notice or other document that is required to be sent to the Registrar by this ordinance or the regulations, and that contains an untrue statement of a material fact, or omits to state a material fact, is guilty of an offence and liable on summary conviction to a fine of XCD 5 000 (USD 1 852) and/or to imprisonment for a term of six months (s. 530(1)). When this offence is committed by a body

corporate, a director or officer who knowingly authorised, permitted or acquiesced in the commission of the offence is also guilty of the offence and liable on summary conviction to the same sanctions (s. 530(3)). A general fine of XCD 5 000 (USD 1 852), on summary conviction, is imposed on every person who is guilty of an offence under this ordinance, if no punishment is provided for that offence elsewhere in the ordinance (s. 533).

120. Pursuant to the Nevis Business Corporation Ordinance, any person, natural or corporate body, found in default of one or more provisions of this ordinance is liable, upon summary conviction, to a fine not to exceed XCD 5 000 (USD 741) (s. 126). Under the Nevis International Insurance Ordinance, failure by a registered insurer to forthwith notify the Registrar of Insurance in writing of any changes in the particulars set out in the application for registration or in the documents, information, or evidence accompanying that application, is an offence (s. 13(3)). Such a person is liable, on conviction, if the offender is an individual, to a fine not exceeding XCD 10 000 (USD 3 704) and/or to a term of imprisonment not exceeding 12 months. If the offender is not an individual, the fine should not exceed double of this amount (s. 45(1)).

Partnerships

121. According to the Limited Partnerships Act, failure to file annual statements to the Registrar of Companies, containing current identity information with regard to the general partners, is an offence (s. 22(4)). Every general partner who is in default commits an offence and liable to a fine not exceeding four times the prescribed filing fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) or one half of the prescribed filing fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) for each day the offence is permitted to continue. In addition, the registration of the declaration may be cancelled in accordance with section 61, the provisions of which will apply accordingly.

122. Failure to maintain and keep the register of limited partners available for inspection by other partners is an offence and the company is liable to a fine not exceeding XCD 2 500 (USD 926) and, in the case of a continuing offence, to a further daily fine not exceeding XCD 250 (USD 93) for as long as the offence continues (s. 21(6)).

Trusts

123. Under the Trusts Act, failure to file annual statements at the Registrar with current information on the trust is an offence and every trustee who is at fault is liable to an offence not exceeding half of the prescribed fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) for each day the offence is permitted to continue (s. 60(4)).

Foundations

124. The Foundations Act states that failure to file annual returns or to file an amendment of the articles with the Registrar within 14 days after the amendment came into effect is an offence and the councillor is liable to a fine not exceeding one half of the prescribed filing fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) for each day in respect of which the offence continues (s. 66(3)). Failure to maintain and keep identity information on each councillor, guardian and secretary available for inspection by the Registrar, founder, councillor, guardian and secretary is an offence and the foundation is liable to a fine not exceeding XCD 2 500 (USD 926) for each day in respect of which the offence continues (s. 18(4)).

125. In accordance with section 19(1) of the Multiform Foundations Ordinance, non-compliance with the obligation to maintain a registered agent in Nevis, at all time, may lead to dissolution in accordance with Part XIII of this ordinance. Failure to maintain and keep a register of past and present members of its management board, supervisory board (if any) and secretary, for inspection by the Registrar, a subscriber, a member of the management board or supervisory board (if any), a secretary and a beneficiary, is an offence and the multiform foundation is liable to a fine not exceeding XCD 500 (USD 185) for each day in respect of which the offence continues (s. 30(4)).

126. Failure to file annual returns at the Registrar of Foundations is an offence and every member of the management board and the secretary is liable to a fine not exceeding four times the prescribed filing fee or to a fine not exceeding one half of the prescribed filing fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) for each day in respect of which the offence of not filing the annual return continues. Section 96 imposes a penalty on any multiform foundation which does not take reasonable precautions to prevent loss or destruction of, to prevent falsification of entries in, and to facilitate detection and correction of inaccuracies in, the records required to be kept by this ordinance. A multiform foundation which fails to comply with this provision and any member of the management board or the secretary responsible for such failure commits an offence and shall be liable to a fine not exceeding XCD 2 500 (USD 926).

Anti-money laundering laws

127. The AML Regulations No. 25 of 2008 stipulates that any person (including resident trustees) who fails to comply with the requirements of the AML Regulations, the requirements of the Guidance Notes issued under AML Regulation 17 or any directive issued under AML Regulation 16, commits an offence and is liable, on summary conviction, to a fine not exceeding XCD 50 000 (USD 18 519). If a contravention continues after such a

conviction, the person commits a further offence and is liable to an additional fine of XCD 5 000 (USD 1 852) for each day on which the contravention continues (AML Regulation 15).

128. The effectiveness of the enforcement provisions which are in place in St. Kitts and Nevis will be considered as part of the Phase 2 Peer review.

Determination and factors underlying recommendations

Determination
The element is in place.

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)*

Companies

St. Kitts

129. In respect of St. Kitts, the laws governing accounting information is the same regardless as to whether the company is owned by residents or non-residents, or whether or not the activities are carried on in the Federation. In line with the international standard, section 103(1) of the Companies Act has been amended by the Companies (Amendment) Act No. 4 of 2011, as follows:

> "Every company shall keep accounting records which are sufficient to show and explain its transactions and are such as to:
>
> a. disclose with reasonable accuracy, at any time, the financial position of the company at that time; and
>
> b. enable the directors to ensure that any accounts prepared by the company under this Part comply with the requirements of this act;
>
> c. allow for the preparation of financial statements."

130. Section 105(2) states that the accounts shall be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the company and of the company's state of affairs for the period. The accounts of public companies must be submitted to the Registrar of Companies (s. 107).

131. In accordance with section 103(2), a company's accounting records shall be kept at such place as the directors think fit and must at all times be open to inspection by the company's officers and the secretary. If accounting records of a public company are kept at a place outside the Federation, returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept in, the Federation, and shall at all times be open to such inspection (s. 103(3)).

132. If a company fails to comply with the record-keeping requirements above, the company commits an offence and is liable to a fine not exceeding XCD 2 500 (USD 926) and to a further daily fine not exceeding XCD 250 (USD 93) for as long as the offence continues (s. 108(1)(a)). In the case of a public company, every officer of the company who is in default commits an offence and is liable to imprisonment for a term not exceeding two years or a fine or both (s. 108(1)(a)). A director or auditor of a company who signs or delivers to the Registrar a certificate which contains a statement that is false, misleading or deceptive or an opinion that he/she has no reasonable ground to believe to be accurate commits an offence and is liable to imprisonment for a term not exceeding two years or a fine or both (s. 108(2)).

Nevis

133. In Nevis, the record-keeping obligations are provided under each of the three pieces of legislation governing the companies established therein. Nevertheless, the legislation has been amended to provide for consistent and binding obligations to retain reliable accounting records applicable to all types of companies. As a result, local (domestic) companies, as well as NBCs and LLCs primarily owned by non-residents, are subject to similar requirements to keep accounting records which (i) correctly explain the company's transactions, (ii) enable the company's financial position to be determined with reasonable accuracy at any time, and (iii) allow financial statements to be prepared.

134. Local companies are under the obligation to prepare and maintain adequate accounting records and proper books of account, defined as necessary to exhibit and explain the transactions and financial position of the trade or business of the company with reasonable accuracy (s. 187(1), 468(1) and (2), Companies Ordinance). Such records must be kept at the registered office of the company or at some other place in Nevis designated by the directors. This includes books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealing in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified (s. 468(2)).

135. A company and its agents must take reasonable precautions to prevent loss or destruction of, to prevent falsification of entries in, and to facilitate detection and correction of inaccuracies in, the records required by this ordinance to be prepared and maintained in respect of the company (s. 189). A person who, without reasonable cause, contravenes these obligations is guilty of an offence and is liable on summary conviction to a fine of XCD 5 000 (USD 1 852) or to imprisonment for a term of six months, or to both (s. 531). Furthermore, every officer of the company who was knowingly a party to the default of the company, unless he/she shows that he acted honestly and that in the circumstances in which the business of the company was carried on the fault was excusable, is guilty of an offence (s. 468(1)).

136. Section 76(1) of the Nevis Business Corporation Ordinance imposes a general obligation on NBCs to keep correct and complete books and account. Section 76(3) allows such books to be in written form or in any other form capable of being converted into written form within a reasonable time. Under section 76A(2)(i), these books and accounts should "(a) correctly explain all transactions, (b) enable the financial position of the corporation to be determined with reasonable accuracy at any time, and (c) allow financial statements to be prepared". The books and records of account must be kept at the address of the registered agent of the corporation or at such other place or places as the directors think fit (s. 76A(3)).

137. Section 48 of the Nevis Limited Liability Company Ordinance requires that managers of a LLC discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions. In discharging their duties, duly authorized members, managers and officers may rely upon financial statements of the LLC represented to them to be correct and to reflect the financial condition of such LLC.

138. Pursuant to the new section 48A(2)(i), these books and accounts should "(a) correctly explain all transactions, (b) enable the financial position of the limited liability company to be determined with reasonable accuracy at any time, and (c) allow financial statements to be prepared". The books of account must be kept at the address of the registered agent of the limited liability company or at such other place or places as the members or managers, as the case may be, think fit, and shall always be open to the inspection of the members (s. 48A(3)).

139. A limited liability company that knowingly and wilfully contravenes these obligations will be subject to a penalty of XCD 5 000 (USD 1 852) (s. 48A(4)). In addition, all NBCs and LLCs incorporated and organized under the Nevis Business Corporation Ordinance and the Limited Liability Company Ordinance are deemed regulated businesses by virtue of the AML Regulations and Guidance Notes and are, therefore, subject to record-keeping

requirements and sanction for non-compliance under AML Regulation 8 (see *Anti-money laundering laws* below).

140. Under the Nevis International Insurance Ordinance, NBCs which are registered insurers are required to keep and maintain such business records[12] that correctly record and explain their transactions and financial position, in such a manner that will enable true and fair accounts[13] to be prepared from time to time (s. 14(2)(a) and (b)). They must keep and maintain its business records at its principal place of business and if the principal place of business is anywhere outside of Nevis, then a copy of the business records must be kept by the registered agent in Nevis (s. 14(2)(c)). Non-compliance with this section is an offence punishable, on conviction, with a fine not exceeding XCD 10 000 (USD 3 704) or a term of imprisonment not exceeding 12 months, if the offender is an individual, or with a fine not exceeding XCD 20 000 (USD 7 407), if the offender is not an individual (s. 14(3) and 45).

141. By virtue of section 5 of the Nevis International Insurance (Amendment) Ordinance of 2009, which amended section 15(1) of the Nevis International Insurance Ordinance of 2004, annual accounts must be prepared in accordance with the International Financial Reporting Standards. Audited annual accounts are required to be submitted to the Registrar within 21 days after the date of the meeting at which the accounts were approved by the board of directors and in any event not later than 6 months after the close of the financial year to which they relate (s. 15(2)). All auditors are to be first approved by the Minister of Finance (s. 15(4)). Any registered insurer who wilfully fails to comply with section 15 commits an offence and is liable, upon conviction, to a fine not exceeding XCD 5 000 (USD 1 852) and/or a term of imprisonment not exceeding six months, if offender is an individual, or to a fine not exceeding XCD 10 000 (USD 3 704), if the offender is not an individual (s. 15(5)).

Partnerships

142. Under section 26 of the Limited Partnerships Act, as amended by the Limited Partnerships (Amendment) Act No. 5 of 2011, the general partners of every LP must keep accounting records which (i) are sufficient to show and explain their transactions in respect of the limited partnership, (ii) are such as to disclose with reasonable accuracy, at any time, the financial position of the

12. "Business records" is defined under section14(1) as including accounting, policy and claims records of the registered insurer and such working papers and other documents as are necessary to explain the methods and calculations by which its accounts are made up.

13. "Accounts" is defined under section 14(1) as meaning profit and loss accounts and balance sheets, and includes notes (other than directors' reports) attached to, or intended to be read with, any of those profit and loss accounts or balance sheets.

limited partnership at that time, and (iii) allow for the preparation of financial statements. Every general partner who is in default commits an offence and is liable to a fine not exceeding XCD 2 500 (USD 926) (s. 26(3)).

143. For exempt LPs, there is no specific requirement for accounting records to be held in the Federation, while ordinary LPs are specifically required to keep proper records and books of account, including an annual inventory at the registered offices in the Federation (s. 21(1), Limited Partnerships Act and ss. 17(1) and 20, Income Tax Act (CAP 20.22)).

144. General partnerships are governed by the Unincorporated Business Tax Act No. 5 of 2010 (s. 8) and subject to the Tax Administration and Procedures Act, the Nevis Tax Administration and Procedures Ordinance and the Value Added Tax Act, under which they are also required to keep records and accounts that relate to their business or professional activity (see *Taw laws* below).

Trusts

145. Under Section 64(1) of the Trusts Act, every trustee must keep accounting records which are sufficient to show and explain their transactions in respect of the trust and are such as to disclose with reasonable accuracy, at any time, the financial position of the truSt. Every trustee who is in default commits an offence and is liable to a fine not exceeding XCD 2 500 (USD 926) (s. 64(3)).

146. The Nevis International Exempt Trust Ordinance imposes specific record-keeping requirements on international trusts registered in Nevis. Under the new sections 36A(1) and (2)(i), trustees of every trust must keep proper books of account in respect of the trust which should "(a) correctly explain all transactions, (b) enable the financial position of the trust to be determined with reasonable accuracy at any time, and (c) allow financial statements to be prepared". The books of account must be kept at the registered office of the trustee or at such other place or places as the trustee(s) think fit (s. 36A(3)).

147. A trustee of an international trust who knowingly and wilfully contravenes these obligations will be subject to a penalty of XCD 5 000 (USD 1 852) (s. 36A(4)). Furthermore, every trust must have at least one resident trustee, who is subject to the AML Regulations and Guidance Notes and has to adhere to record-keeping requirements under AML Regulation 8 (see *Anti-money laundering laws* below).

Foundations

148. In accordance with the new section 22 of the Foundations Act, as amended by the Foundations (Amendment) Act No. 7 of 2011, a foundation established in St. Kitts is required to keep proper books of account which are sufficient to enable the foundation's financial position to de determined with accuracy at any time and to allow financial statements to be prepared (s. 22(d) and (e)). Such accounting records must be kept at its registered office or at such other place as the councillors think fit, and must at all times be open to inspection by the councillors, the guardian and the auditor (s. 22(2)(a) and (b)). Where a councillor of a foundation fails to take all reasonable steps to secure compliance by the foundation with these requirements, or has by his own wilful act been the cause of any default thereunder by the foundation that councillor is in default (s. 22(3)).

149. Under section 44(1) of the Multiform Foundations Ordinance, multiform foundations formed in Nevis are required to keep proper books of account with respect to their business and affairs, assets and property. Such accounting records must be kept at the registered office of the multiform foundation (*i.e.* the office in Nevis of the registered agent), or at such other place as the management board determines by ordinary resolution, and must be open at all times to inspection by the management board, the supervisory board and the auditor (if any), if the constitution so permits (s. 44(3)). Where a member of the management board fails to take all reasonable steps to secure compliance by the multiform foundation with these requirements, or has by his own wilful act been the cause of any default thereunder by the multiform foundation, that member is in default (s. 44(3)).

150. A multiform foundation must take reasonable precautions to prevent loss or destruction of, prevent falsification of entries in, and facilitate detection and correction of inaccuracies in the records required to be kept by this ordinance (s. 96(2)). Such records must be in a form which is capable of reproducing the required information in intelligible written form within a reasonable time (s. 96(1)).

Anti-money laundering laws

151. Every licensed service provider (including resident agents of NBCs and LLCs and trustees), as well as regulated financial business (including NBCs and LLCs) must adhere to the record-keeping requirements under AML Regulation 8 and sections 117-130 of the Guidance Notes. Under AML Regulation 8(2)(b), all regulated businesses must ensure that a record is made containing details relating to each transaction carried out by the relevant person in the course of any business relationship or one-off transaction. These records must "in any event include sufficient information to

enable the reconstruction of individual transactions" and must be kept for at least five years (AML Regulation 8(3) and (7)). The limitations of the AML Regulations concerning accounting records are further discussed below.

152. Pursuant to section 121 of the Guidance Notes, "records relating to transactions will generally comprise: […] details of financial services product transacted including: a. the nature of such securities/investments/financial services product; b. valuation(s) and price(s); c. memoranda of purchase and sale; d. source(s) and volume of funds and bearer securities; e. destination(s) of funds and bearer securities; f. memoranda of instruction(s) and authority(ies); g. book entries; h. custody of title documentation; i. the nature of the transaction; j. the date of the transaction; k. the form (*e.g.* cash, cheque) in which funds are offered and paid out."

153. The scope of the AML Regulations in respect of accounting records is limited to records relating to "transactions", which are defined under the Proceeds of Crime Act as: "(a) opening of a joint account where the purpose of the account is to facilitate a transaction between the holders of that account; (b) a transaction between the holders of a joint account relating to the joint account; and (c) the making of a gift" (s. 2(1)). "Transaction record" is further described as including: "(a) the identification records of a person who is a party to a transaction; (b) a description of the transaction sufficient to identify its date, purpose, and method of execution; (c) the details of any account used for a transaction including the name of the financial institution, address, and sort code; (d) the total value of the transaction; (e) the name and address of the employee in the financial institution who prepared the transaction record".

154. These requirements will therefore not capture all of the relevant accounting records including underlying documentation, such as contracts. In addition, where an entity or arrangement is required to engage a licensed service provider, there is no obligation that it conducts all transactions through them. In order to address these limitations, the Government of St. Kitts and Nevis has passed several amendments to the legislation under which entities are incorporated, established or registered to ensure that adequate accounting records, as well as underlying documents, are available when necessary, as described above.

Tax laws

155. Under section 6(1) of the Tax Administration and Procedures Act and section 6(1) of the Nevis Tax Administration and Procedures Ordinance, a taxpayer (including the partners in a general partnership) who is engaged in a business or independent professional activity, and is not otherwise required by law to keep records listing all receipts and expenditures relating to that taxpayer's business or professional activity, must keep records and accounts that relate to that taxpayer's business or professional activity. Under section 9(2),

a partnership, or other body of persons, which is subject to any tax to which these acts apply, must nominate a member or officer in the partnership or body, whose duty it will be to comply with the requirements of these acts.

156. Section 37(2)(a) stipulates that if the Comptroller makes a demand in writing that a person provide any other information that is relevant to the determination of the taxpayer's tax liability (which can include accounting records) and that person fails to provide that information within the time specified in the document renders that person liable to a penalty of XCD 500 (USD 185). If a subsequent demand is made and the taxpayer fails to comply, an additional penalty of XCD 500 (USD 185) will be imposed or such other amount as may be prescribed (s. 37(2)(b)). However, this penalty only applies when there has been a request by the Comptroller under section 37 and is not equivalent to a penalty for failure to maintain accounting records.

157. In addition, under sections 79(1)(d) and (e) of the Value Added Tax Act, which is only applicable to a restricted number of (domestic) relevant entities, a taxable person is required to keep accounting records relating to taxable activities and any other related business activities carried on in St. Kitts and Nevis, as well as the accounting records relating to taxable activities and any other related business activities carried on outside of St. Kitts and Nevis, but effectively connected to the person's taxable activities in St. Kitts and Nevis. Section 79(4) imposes a penalty if accounting records are not maintained by a taxpayer, *i.e.* a fine not exceeding XCD 10 000 (USD 3 704) or imprisonment for a term not exceeding six months, or both, on summary conviction.

Underlying documentation *(ToR A.2.2)*

Companies, partnerships, trusts and foundations

158. On 25 March 2011, the Companies Act was amended by the Companies (Amendment) Act No. 4 of 2011 (s. 103(1)), the Limited Partnerships Act was amended by the Limited Partnerships (Amendment) Act No. 5 of 2011 (s. 26(1)), the Trusts Act was amended by the Trusts (Amendment) Act No. 6 of 2011 (s. 64(1)) and the Foundations Act was amended by the Foundations (Amendment) Act No. 7 of 2011 (s. 22). As a result, a new paragraph about underlying documents was added to such acts to ensure that underlying documents are kept and must reflect details of:

1. all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
2. all sales and purchases and other transactions; and
3. the assets and liabilities of the relevant entity or arrangements.

159. On 5 May 2011, in Nevis, the Companies Ordinance was amended by the Companies (Amendment) Ordinance No. 4 of 2011 (s. 187(2)), the Nevis Business Corporation Ordinance was amended by Nevis Business Corporation (Amendment) Ordinance No. 3 of 2011 (s. 76A(1)), the Nevis Limited Liability Company Ordinance was amended by Nevis Limited Company (Amendment) Ordinance No. 5 of 2011 (s. 48A(1)), the Nevis International Exempt Trust Ordinance was amended by the Nevis International Exempt Trust (Amendment) Ordinance No. 1 of 2011 (s. 36A(1)) and the Multiform Foundations Ordinance was amended by the Multiform Foundations (Amendment) Ordinance No. 2 of 2011 (s. 44(1)). New language was added to these acts to impose explicit obligations on such relevant entities and arrangements to prepare and maintain adequate accounting records which:

"include material underlying documentation including contracts and invoices and should reflect details of:

a. all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;

b. all sales and purchases and other transactions; and

c. the assets and liabilities of the company"

Tax Laws

160. Under the Income Tax Act, which is only applicable to a restricted number of (domestic) relevant entities including companies and ordinary LPs (and thus would not include partners in general partnerships), every person required to keep records and books of account under this act is required to retain underlying documentation. This includes "every account, voucher or other record" necessary to verify the record or book of account and must be kept by this person, until written permission for their disposal is obtained from the Comptroller (s. 17(3)). The authorities of St. Kitts and Nevis have indicated that this term captures all underlying documentation, such as invoices, contracts, etc., which reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement.

161. Under the Tax Administration and Procedures Act and the Nevis Tax Administration and Procedures Ordinance, a taxpayer who is engaged in a business or independent professional activity, and who is not required by other laws to keep records listing all receipts and expenditures, must keep records and accounts that relate to that taxpayer's business or professional activity (s. 6(1)). As mentioned above, these record-keeping obligations are applicable to general partnerships which carry on business in St. Kitts and

Nevis. However, no explicit reference to underlying documents is provided for under these acts.

162. Under section 79 of the Value Added Tax Act, which is only applicable to a restricted number of (domestic) relevant entities including companies, ordinary LPs and general partnerships, the following types of records must be maintained in St. Kitts and Nevis by a taxable person or any other person who is liable for value added tax under this act:

- original tax invoices, tax credit notes, and tax debit notes received by the person;
- a copy of all tax invoices, tax credit notes, and tax debit notes issued by the person;
- customs documentation relating to imports and exports by the person;
- accounting records relating to taxable activities and any other related business activities carried on in St. Kitts and Nevis; and
- accounting records relating to taxable activities and any other related business activities carried on outside of St. Kitts and Nevis but effectively connected to the person's taxable activities in St. Kitts and Nevis.

163. Therefore, general partnerships which are not covered by the Value Added Tax Act will not be subject to binding requirements to maintain underlying documentation.

Document retention *(ToR A.2.3)*

Companies

164. In accordance with Section 103(4) of the Companies Act, accounting records which a company is required to keep (including underlying documents) must be preserved for 12 years from the date on which they were made. Under section 195, a company may dispose of its records after being wound up. However, in accordance with 195(2), after ten years from the company's dissolution, no responsibility rests on the company, liquidator, or a person to whom the custody of the records has been committed. Although no minimum retention period is stipulated, the authorities of St. Kitts and Nevis interpret this provision as meaning that the company records must be kept for at least ten years after the company's dissolution.

165. Section 468(1) imposes a liability on local companies which are wound up where proper books of account are not kept by the company throughout the period of two years immediately preceding the commencement

of the winding-up, or the period between the incorporation of the company and the commencement of the winding-up, whichever is the shorter.

166. Section 477(2) of the Companies Ordinance states that, after five years from the dissolution of the company, no responsibility rests on the company, the liquidators or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein. The authorities of St. Kitts and Nevis interpret this latter provision as meaning that the company records must be kept for at least five years after the company's dissolution. Any person who acts in contravention of this section is guilty of an offence and is liable on summary conviction to a fine of XCD 5 000 (USD 1 852) (s. 477(4) and 533).

167. In Nevis, new language was introduced on the Companies Ordinance (s. 187(3)), the Nevis Business Corporation Ordinance (s. 76A(2)(ii)) and the Nevis Limited Liability Company Ordinance (s. 48A(2)(ii)) to impose on such companies consistent and binding obligations to retain accounting records, including underlying documents, for at least five years from the date on which they were prepared.

Partnerships

168. On 25 March 2011, the Limited Partnerships Act was amended by the Limited Partnerships (Amendment) Act No. 5 of 2011 (s. 26(1)) to ensure that accounting records, including underlying documents, are kept for a period of at least five years.

Trusts

169. Both the St. Kitts Trusts Act (s. 64(1)) and the Nevis International Exempt Trust Ordinance (s. 36A(2)(ii)) have been amended to explicitly provide for a requirement for all accounting documents, including underlying documents, to be maintained for at least five years.

Foundations

170. In accordance with the new section 22(c) of the Foundations Act, as amended by the Foundations (Amendment) Act No. 7 of 2011, the books of accounts and underlying documents (including invoices and contracts) of a foundation must be preserved for a period of 12 years from the date on which they were made. Section 44(2) of the Multiform Foundations Ordinance of 2004 provides that the books of account must be preserved for a period of six years from the date on which they were made.

Anti-money laundering laws

171. Under AML Regulation 8(2)(b) and (7), records must be retained for a period of at least five years commencing with the date on which the transactions were completed. In addition, AML Regulation 8(9) stipulates that the Financial Services Regulatory Commission may notify a relevant person that he/she/it is required to keep the information for a longer period of time instead of five years. However, as mentioned above, the scope of the AML Regulations in respect of accounting records does not capture all of the relevant accounting records including underlying documentation.

Tax Laws

172. In accordance with section 7 of the Tax Administration and Procedures Act and section 7 of the Nevis Tax Administration and Procedures Ordinance, a person required to prepare records (which would include the records of a general partnership) must retain the documents for a period of six years following the date on which the tax liability was first assessed. Under Section 79(2) of the Value Added Tax Act, taxpayers' records are to be maintained for a period of six years after the period to which they relate.

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**
General partnerships that carry on business in St. Kitts and Nevis are required to maintain accounting records, however there are no penalties for failure to maintain such records, and no express obligations to maintain underlying documents, in all circumstances.	St. Kitts and Nevis should introduce consistent and binding requirements on all general partnerships that carry on business therein to maintain accounting records, including underlying documentation, for a minimum five year period, as well as appropriate penalties for non-compliance.

A.3. Banking information

Banking information should be available for all account-holders.

173. A person conducting business listed on the schedule of regulated business activity of the Proceeds of Crime Act of 2000 (CAP 4.28) must adhere to

the AML Regulations and Guidance Notes. All banking activities, including offshore banking, under the Banking Act No. 4 of 2004 and the Nevis Offshore Banking Ordinance of 1996, are listed as regulated business activities.

174. Therefore, all commercial banks are required to adhere to AML Regulation 4, which specifically requires them to apply identification procedures before the establishment of a business relationship or before carrying out a one-off transaction, as well as on-going identification procedures during a business relationship. These identification procedures include procedures for identifying the customer and third parties on behalf of whom the customer is acting and establishing the true identity of that person, including that person's name and legal status, based on reliable evidence.

175. Where the customer and/or the third party is not an individual, the procedures include understanding the ownership and control of that third party and identifying each individual who is that third party's beneficial owner or controller. On-going identification procedures include ensuring that documents, data or information obtained under identification procedures are kept up to date and relevant by undertaking reviews of existing records.

176. In addition, AML Regulation 8(2)(b) stipulates that all regulated businesses must ensure that records are kept containing details relating to each transaction carried out in the course of any business relationship or one-off transaction. These records must, "in any event include sufficient information to enable the reconstruction of individual transactions" (AML Regulation 8(3)). They must be kept for at least five years commencing with the date on which all activities taking place within the course of that transaction were completed (AML Regulation 8(7)). Periodic inspections are conducted on commercial banks by the Eastern Caribbean Central Bank to determine compliance.

177. In accordance with section 8 of the Tax Administration and Procedures Act and the Nevis Tax Administration and Procedures Ordinance, a bank or financial institution that habitually makes payments of interest, is required to maintain records of the payments, including the following particulars: (a) the identity and address of the payee; (b) the amount of each payment; (c) the date of payment; and (d) the amount of any tax withheld from the payment.

Determination and factors underlying recommendations

Determination
The element is in place.

B. Access to Information

Overview

178. 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 St. Kitts and Nevis' 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 (EOI).

179. The powers of the St. Kitts and Nevis' competent authority to obtain relevant information to respond to an EOI request are consistent regardless from whom the information is sought (*e.g.* from a government authority, bank, company, trustee, or individual), whether or not the information is required to be kept pursuant to a law, or whether the requested information concerns ownership, identity, bank or accounting information.

180. In most cases, this power is exercised by issue of a notice requesting the production of the information, where non-compliance can be sanctioned with significant penalties. The competent authority also has the power to search premises and seize information and to obtain sworn testimony, with the oversight of a court.

181. Existing secrecy provisions in St. Kitts and Nevis' laws are excluded from effect where information is sought in respect of an EOI request, whilst the limited notification right which is afforded to the subject of a request, is balanced with an appropriate process to efficiently address any objection to the production of information.

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).

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

182. The St. Kitts and Nevis' competent authority is the Financial Secretary, designated as the Tax Cooperation Authority, who is vested with broad access powers for all tax matters. The St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, 2009 (MEM) applies for the purposes of giving effect to the terms of a "scheduled agreement" in order to provide information in taxation matters or for providing information in taxation matters on request to a "scheduled country" (s. 3). The reference to "scheduled countries" relates to the ability of the authorities to exchange information on a unilateral basis where certain conditions are met. Whether the Act applies in respect of a "scheduled agreement" or a "scheduled country", the access powers are identical (EOI unilateral mechanism is discussed further, under section C.1 below).

183. The Tax Cooperation Authority is granted "the power to do all things necessary or convenient to be done for or in connection with the performance of his function under" the MEM or any scheduled agreement (s. 5). The principal functions of the Tax Cooperation Authority include executing requests and ensuring compliance with scheduled agreements (s. 5(2)(a) and (b)).

184. The process for obtaining information generally requires that a notice be issued for the production of such information as may be specified in the notice (s. 8(4)(b)). The notice may require that the information be provided within a specified time, in such form as the Tax Cooperation Authority may require, and to be verified or authenticated in such manner as the Tax Cooperation Authority may require (s. 8(4)(b)). Where information must be obtained to respond to a request in connection with a "proceeding" then the Tax Cooperation Authority must apply to a judge for an order to produce such information (see discussion below, under section B.2.1).

185. The powers described above apply in respect of "information", which is broadly defined as (s. 2(1)):

a. any fact, statement, document or record in whatever form, and includes any fact, statement or document or record held by any bank or other financial institution, or any person, including any nominee and trustee, acting in an agency or fiduciary capacity; and

b. any fact, statement, document or record regarding the beneficial ownership of any company, partnership and any other person, including

   i. in the case of a collective investment fund, information on any shares, units and other interests; and

   ii. in the case of a trust, information on any settlers, trustees and beneficiaries.

186. This definition specifically includes beneficial ownership information, information held by financial institutions, agents and fiduciaries and also covers accounting records.

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

187. The powers described above apply for the express purpose of responding to requests for information from a foreign authority, without regard to whether the information is relevant for St. Kitts and Nevis' domestic tax purposes (s. 3).

Compulsory powers (ToR B.1.4)

188. Upon application to a judge for a court order, the Tax Cooperation Authority is specifically empowered to require a person to testify, to produce information required for proceedings in the territory of the requesting party or related investigations (ss. 5(2)(a), 8(1) and (4)(a)). For all other requests, the Tax Cooperation Authority will issue a notice in writing requiring the production of such information within a specific timeframe and form, and copies or extracts may be taken therefrom (ss. 8(4)(b) and 8(5)(a)).

189. In addition, the Tax Cooperation Authority is also empowered, upon application to a judge for a search warrant, to execute searches and seizures in order to obtain information for exchange purposes (s. 5(2)(a), s. 8 and s. 17(3)). In considering such an application for a search warrant, the judge must be satisfied of certain matters, including in particular whether the request will be seriously prejudiced unless immediate access to the information can be secured (s. 17(4)).

190. A person who has been required to produce any information which is in his possession or under his control and fails to do so within the time specified or alters, destroys, mutilates, defaces, hides or removes any information, commits an offence and is liable on summary conviction to a fine not exceeding XCD 10 000 (USD 3 704) or to a term of imprisonment not exceeding two years or to both such fine and imprisonment (s. 17(1)). Failure to provide testimony as required is a separate offence liable on summary conviction to a fine of XCD 5 000 (USD 1 852) and/or to imprisonment for one year (s. 17(6)).

191. The MEM sets out an "anti-tipping-off" provision by which any person who, knowing or suspecting that a request concerning criminal matters has been made, makes any disclosure which is likely to prejudice the proceedings or the investigation to which the request may relate, commits an offence and is liable, on summary conviction, to a fine not exceeding XCD 20 000 (USD 7 407) and/or to imprisonment for a term not exceeding five years (s. 8(13)). In addition, any person who violates the confidentiality duties with respect to a request, by disclosing information to a person other than an attorney-at-law, commits an offence and is liable on summary conviction to a fine not exceeding XCD 2 000 (USD 741) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment (17(2)).

192. The effectiveness of the enforcement provisions which are in place in St. Kitts and Nevis will be considered as part of the Phase 2 Peer review.

Secrecy provisions (ToR B.1.5)

193. There are a number of secrecy provisions that apply under the laws of the Federation, such as in the Confidential Relationships Act of 1985, the Banking Act and the Nevis Offshore Banking Ordinance. However, these rules are disabled where information is sought in connection with a request for information under an EOI agreement.

194. Under the Confidential Relationships Act, confidential information is defined as "information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice authorised by the principal to divulge" (s. 2). It is an offence under that act to divulge confidential information to any person not entitled to possession thereof or to attempt, offer or threaten to divulge it to any person not entitled to possession or obtaining or attempting to obtain confidential information to which he or she is not entitled (s. 4(1)).

195. The Banking Act and the Nevis Offshore Banking Ordinance also establish specific secrecy provisions that relate to information held by financial institutions in the Federation (ss. 2 and 3(1)) or by offshore banks in Nevis, respectively. Under the Banking Act, a person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee or agent of any financial institution or as its auditor or receiver or official liquidator or as director, officer, employee or agent or the Central Bank, may not disclose to any person or government authority the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution (s. 32(1)). This rule does not apply where the information is disclosed

"under the provisions of any law of the Federation or agreement among the Participating Governments" (s. 32(1)(d)).

196. A similar provision is provided under the Nevis Offshore Banking Ordinance and, in that case, the information may also be disclosed when this is done pursuant to any other enactment (s. 39). Consequently, where information is sought in connection with a request for information under an EOI agreement, and pursuant to the access powers described above, these exceptions will override the secrecy provisions in the Banking Act and the Nevis Offshore Banking Ordinance.

197. Moreover, the MEM contains specific overrides to ensure access to information. The exercise of powers to obtain information under that act "shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by the Confidential Relationships Act, any other law or the common law" (s. 8(6)(b)). The disclosure of confidential information or the giving of any testimony pursuant to that act is also deemed to not be an offence under the Confidential Relationships Act or under any law being in force in the Federation (s. 11(1)).

198. Furthermore, any disclosure or testimony given to satisfy a request is deemed not to be a breach of any confidential relationship between that person and any other person, and protects the person making the disclosure from any civil claim or action by reason of such disclosure or testimony (s. 11(2)). Finally, the MEM expressly declares that the charging provision of the Confidential Relationships Act shall not apply to confidential information given by any person in pursuance of a request under this act (s. 12).

199. Where a person is required to testify or to produce information pursuant to the order of a judge then the person is entitled to be represented by an attorney-at-law (s. 8(16)). Items subject to legal privilege are expressly excluded from the scope of the Tax Cooperation Authority's power to obtain information (s. 8(6) and (9)). Items subject to legal privilege are defined as:

a. any communication between an attorney-at-law and his client or any person representing his client made in connection with the giving of legal advice to the client;

b. any communication between an attorney-at-law and his client or any person representing his client or between such attorney-at-law or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

c. any item enclosed with or referred to in such communications and made

    i. in connection with the giving of legal advice; or

ii. in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them;

except that any item held with the intention of furthering a criminal purpose are not subject to legal privilege.

200. The scope of this definition goes beyond the exception for items subject to attorney-client privilege contained in the 2002 OECD Model TIEA. Subsections (b) and (c) of the definition include a concept of legal privilege that does not appear in Article 7(3) of the 2002 OECD Model TIEA. It is important to note that the extension of legal privilege to items made in contemplation of legal proceedings or in connection with the giving of legal advice does not mean that *any* document or piece of information provided to a legal adviser in contemplation of legal proceedings becomes an item subject to legal privilege. The document or piece of information itself must have been made in contemplation of those proceedings. The same would be the case with items enclosed with communications relating to the giving of legal advice. The effect of this rule on exchange of information in practice should be examined in the Phase 2 review of St. Kitts and Nevis.

Determination and factors underlying recommendations

Determination
The element is in place.

B.2. Notification requirements and rights and safeguards

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

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

201. As mentioned above under section B.1.4, where information must be obtained in order to respond to a request for information relating to a "proceeding in the territory of the requesting party or related investigations" then the Tax Cooperation Authority must apply to a judge for an order to produce that information (s. 8(4)(a), MEM). The term "proceeding" is understood to mean any civil or criminal legal proceeding which takes place in any civil or criminal court, and which may include a tax appeal in the requesting State.

202. Where the judge is satisfied that certain conditions are met, the judge may make an order that the person who appears to him to be in possession or control of the information to which the application relates shall produce it to

a police officer to take away or give to a police officer access to it within such period as the order may specify (s. 8(7)). The conditions that must be met are the following (s. 8(9)):

- the Tax Cooperation Authority has certified that the request is valid under the relevant agreement;
- the information to which the request relates is under the possession or control of a person in the Federation;
- the information to which the request relates does not include items subject to legal privilege or items subject to protection as secret, as defined under the relevant agreement;
- the notification requirements have been complied with[14]; and
- there are no reasonable grounds for not granting the request.

203. Where an order is granted the period for producing the information is 14 days unless the judge considers that a longer or shorter period would be appropriate in the particular circumstances of the application (s. 8(8)).

204. This procedure adds a level of judicial oversight for cases in which a proceeding is ongoing. This oversight is narrowly prescribed and the conditions that must be met appear reasonable. The timeline for producing information pursuant to an order is short (14 days) and may be accelerated in certain cases. No appeal right is granted in the MEM. Judicial review is possible, in principle, but has never been pursued.

205. Nevertheless, where the judge is satisfied that the conditions are met, the judge "may" issue such an order, but is not bound to do so. Moreover, it is not clear what "reasonable grounds for not granting the request" would consist of, particularly where the Tax Cooperation Authority has certified that the request is valid under the relevant agreement. The practical impact of these potential restrictions on the effectiveness of the Tax Cooperation Authority's access powers will be considered as part of the Phase 2 review of St. Kitts and Nevis.

206. Conversely, all other requests (*i.e.* not involving information required for proceedings in the territory of the requesting party) can be dealt with directly by the Tax Cooperation Authority, without the court's intervention (s. 8(4)(b)). In such cases, the Tax Cooperation Authority will issue a notice in writing requiring the production of such information within a specific timeframe and form, and copies or extracts may be taken therefrom (s. 8(5)(a)).

14. It is noted that there is a mistaken cross-reference in the MEM to section 17(1) instead of 10(1), but the St. Kitts authorities expressed their intention to correct this reference.

207. The MEM provides for notification rights of the person who is the subject of the request (*i.e.* the taxpayer) in limited circumstances: (i) where a request for information is made that is not in connection with a criminal matter or an alleged criminal matter, and (ii) if the person's whereabouts or address are made known to the Tax Cooperation Authority, then this person must be notified by the Tax Cooperation Authority of the existence of the request and the general nature of the information sought (s. 10(1)). The Tax Cooperation Authority is under no obligation to search for or conduct enquiries into the address or whereabouts of any person for this purpose (s. 10(5)).

208. Any person notified may, within 15 days from the date of receipt of the notice, make a written submission to the Tax Cooperation Authority specifying any grounds which he/she wishes the Tax Cooperation Authority to consider in making its determination as to whether or not the request is in compliance with the rules for the Exchange of Information on Tax Matters set out in the Schedule to the MEM or with provisions in any scheduled agreement, as the case may be, including any assertions that the information requested is subject to legal privilege. The Tax Cooperation Authority is not obliged to permit or consider any oral submission by the person (s. 10(2) and (3)).

209. Therefore, the notification requirement only applies in limited circumstances, *i.e.* in civil tax matters and where the address or whereabouts of the person who is subject of the request are made known to the Tax Cooperation Authority. The time for making a written submission by the subject of the request is short (15 days) and the fact of such submission does not trigger any prohibition on the disclosure of information to the Tax Cooperation Authority or its transmission to a requesting jurisdiction. However, it does not appear that there is any possibility to dispense with notification in a civil tax matter where, for example, the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. It may be the case that such circumstances more often arise in criminal tax matters, where no notification is required. The authorities of St. Kitts and Nevis have indicated that this provision remains untested in practice. The extent of this potential restriction will be the monitored in the Phase 2 assessment of St. Kitts and Nevis.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
The prior notification procedure in civil tax matters only allows for an exception when the whereabouts of the taxpayer are not disclosed to the Tax Cooperation Authority.	It is recommended that wider exceptions from prior notification be permitted in civil tax matters (*e.g.* in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

C. Exchanging information

Overview

210. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report examines whether the Federation of St. Kitts and Nevis has a network of information exchange that would allow it to achieve effective exchange of information in practice.

211. St. Kitts and Nevis' network for exchange of information is multiform, comprising bilateral, multilateral and unilateral mechanisms covering a total of 33 partner jurisdictions. First, St. Kitts and Nevis is a party to the multilateral CARICOM agreement together with ten other members of that organisation. In terms of bilateral agreements, St. Kitts and Nevis is party to an old DTC with Switzerland, but its EOI network has developed rapidly since April 2009, with the Federation signing 20 TIEAs and two new DTCs to the international standard. Discussions or negotiations are underway with an additional eight jurisdictions (see section C.1 below).

212. In addition, St. Kitts and Nevis has implemented a unilateral mechanism by which it has named 16 "scheduled countries" to whom it can provide relevant information for tax purposes upon requeSt. In all of these cases, some form of agreement for the exchange of information is already in place on a bilateral basis, though not necessarily one which meets the standard. Only in limited cases, in respect of some EOI agreements which do not meet the standard, the unilateral mechanism might fill the gap. However, where the requesting party is not able to obtain and provide bank information or when it has a domestic tax interest requirement, it is unclear whether the unilateral mechanism can overcome impediments to exchange of information in the scheduled country (see section C.1 below).

213. St. Kitts and Nevis has ratified EOI arrangements with 33 jurisdictions. Its treaties with some CARICOM partners and Switzerland are not to

the standard. St. Kitts and Nevis' authorities indicated that the CARICOM has started a review of its double taxation agreement, including with a view to bring it to the standard for all its parties. Comments were sought from Global Forum members in the course of the preparation of this report, and no jurisdiction advised that St. Kitts and Nevis had refused to negotiate or conclude such an arrangement (see section C.2 below).

214. All EOI articles in St. Kitts and Nevis' bilateral or multilateral arrangements have confidentiality provisions which meet the international standard and its domestic legislation also contains relevant confidentiality provisions. Regarding exchange under the unilateral mechanism, the requirements for confidentiality contained in the rules, given that they are contained in the domestic law of the Federation, cannot bind the requesting party in the same way that an international agreement might (see section C.3 below).

215. St. Kitts and Nevis' EOI arrangements ensure that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy (see section C.4 below).

216. There appear to be no legal restrictions on the ability of St. Kitts and Nevis' competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the requeSt. The present report does not address this element, as this involves issues of practice that will be dealt with in the Phase 2 review (see section C.5 below).

C.1. Exchange of information mechanisms

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

217. The EOI network of St. Kitts and Nevis is multiform, comprising tax information exchange agreements (TIEAs), double tax treaties (DTCs), a regional multilateral instrument and a unilateral mechanism, covering a total of 33 jurisdictions (see Annex 2). First, St. Kitts and Nevis is signatory to TIEAs with 20 jurisdictions.[15] Second, St. Kitts and Nevis is a signatory to three DTCs containing EOI articles. One is an old treaty dated 1963 with Switzerland that does not meet the standard. The other two are recent and contain the latest version of the standard Article 26 of the OECD Model Tax Convention but are not yet in force: the DTCs signed in 2009 with Monaco

15. Aruba, Australia, Belgium, Canada, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Liechtenstein, the Netherlands, the former Netherlands Antilles (succeeded by Curaçao and St. Maarten), New Zealand, Norway, Portugal, Sweden and the United Kingdom.

and in 2010 with San Marino. Third, St. Kitts and Nevis is a party to the CARICOM agreement (1995), the other 10 parties to which are Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago[16] (see Annex 2).

218. The DTC between St. Kitts and Nevis and Switzerland is an extension of a former DTC between the United Kingdom and Switzerland. This DTC contains a number of restrictions, of which the most important ones are as follows. The DTC limits the exchange of information to "information as is necessary for carrying out the provisions of the Convention", as opposed to for the administration of the domestic tax laws. In addition, it does not contain a provision corresponding with Article 26(5) of the OECD Model Tax Convention regarding bank information. Although St. Kitts and Nevis is able to exchange bank information on a reciprocal basis in the absence of such provision, Switzerland is not. Because of these restrictions, the DTC with Switzerland does not allow St. Kitts and Nevis to exchange information in accordance with the international standard. The current DTC with Switzerland is not further considered in this section, which will focus on whether St. Kitts and Nevis' EOI agreements allow it to effectively exchange information.

219. Finally, the St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act No. 7 of 2009 (MEM) provides for the powers to access and provide information for exchange of information purposes in respect of a "scheduled country". To be selected as a "scheduled country", a jurisdiction must be a party to (i) a bilateral agreement or arrangement with the Federation that facilitates trade and investment in the Federation by nationals or resident of that jurisdiction, or (ii) a DTC that does not cover EOI in tax matters to the OECD standard (criteria set at point 4(1)(a) of the Schedule). Currently, 16 jurisdictions are designated as scheduled countries.[17]

220. Where a jurisdiction is a scheduled country, the MEM provides rules that govern the exchange of information with the jurisdiction. The rules reproduce the terms of the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* (2002 OECD Model TIEA). St. Kitts and Nevis's

16. This agreement is a double tax convention between member states of the Caribbean Community (CARICOM); its full title is: Agreement among the Governments of the member states of the Caribbean Community for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Profits or Gains and Capital Gains and for the Encouragement of Regional Trade and Investment. The other CARICOM members are not parties to the agreement, *i.e.* The Bahamas, Haiti, Montserrat and Suriname.
17. Denmark, New Zealand, Norway, Sweden, Switzerland, United Kingdom and the parties to the CARICOM agreement.

unilateral mechanism reproduces the 2002 OECD Model TIEA and is scheduled to the MEM.

221. The Global Forum has agreed on some key points that should be part of any unilateral mechanism. A crucial element for a unilateral mechanism to be effective is that the scheduled countries be at minimum aware of their status of "scheduled country" or that they have been consulted before being listed. Second, consultations with them should take place on confidentiality issues. Finally, the Global Forum was of the view that this type of mechanism should be of a temporary nature, bridging the gap, during the period of negotiation of a bilateral or multilateral instrument to the standard.

222. In fact, a number of the scheduled countries have subsequently signed bilateral exchange of information agreements with St. Kitts and Nevis, and these agreements have been designated as "scheduled agreements". In those cases, the application of the unilateral mechanism is academic, as exchange of information to the standard is achieved under the agreement. In the case of the CARICOM signatories, that agreement does provide for exchange of information to the standard where no impediments to obtain and provide bank information exists and where no domestic tax interest is present in either jurisdiction. For St. Kitts and Nevis, Antigua and Barbuda and Barbados this is the case, thus those EOI relationships do provide for effective exchange of information. It appears that there are such impediments in Belize, Jamaica, St. Lucia, St. Vincent and the Grenadines, Grenada and Trinidad and Tobago. It is unclear what the situation is in Dominica and Guyana.

223. The unilateral mechanism might fill the gap with respect to EOI agreements which do not meet the standard. The rules which govern the exchange of information in these cases are reproduced from the bilateral version of the 2002 OECD Model TIEA, and so provide for reciprocal obligations, notably in respect of insisting that the requesting party be able to obtain and provide bank information as well as providing information regardless of whether the jurisdiction would have an interest in the information for its own tax purposes. Where the requesting jurisdiction is not a party to the terms of these rules, it is unclear whether the rules can overcome impediments to exchange of information in the scheduled country. Furthermore, the requirements for confidentiality contained in the rules, given that they are contained in the domestic law of the Federation, cannot bind the requesting party in the same way that an international agreement might. Finally, absent a bilateral international agreement, scheduled countries may be unable to provide the information necessary to form the basis of a request under the unilateral mechanism.

224. Although St. Kitts and Nevis is able to obtain and provide information to the standard pursuant to the unilateral mechanism, impediments to effective exchange of information in certain of the scheduled countries

prevent the mechanism from meeting the standard in those cases. It is noted that discussions are underway to update the content of the CARICOM agreement to bring it up to standard for all signatories. This is consistent with the precept that a unilateral mechanism be a temporary measure until bilateral or multilateral mechanisms can be put in place or upgraded to provide for effective exchange of information.

Foreseeably relevant standard *(ToR C.1.1)*

225. The international standard for exchange of information envisages information exchange upon request 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, set out below:[18]

> *The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.*

226. The TIEAs concluded by St. Kitts and Nevis meet the "foreseeably relevant" standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA. Similarly, St. Kitts and Nevis' DTCs with Monaco and San Marino provide for the exchange of information that is "foreseeably relevant" for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States.

227. The CARICOM agreement provides for the exchange of information that is "necessary" for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States. St. Kitts and Nevis' authorities adhere to the commentary to Article 26 of the OECD Model Tax Convention, paragraph 5, which states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary" or "relevant".

228. The TIEA with Liechtenstein provides specific circumstances under which the requested party may decline a request if the amount of tax or duty

18. Article 26(1) of the Model Tax Convention contains a similar provision.

in question does not exceed the threshold of EUR 25 000. Although this agreement also allows an exception to this rule when the case is "deemed to be extremely serious by the applicant party", there is no guidance as to what constitutes an "extremely serious" case nor to the discretion of the requested party to accept this determination. It is also unclear how the requested party will determine the tax amount and how this rule would be applied in a group of cases, where in each case the tax amount is less than the threshold but the overall tax effect is large. It should further be noted that often the amount of tax involved can only be determined *after* information has been exchanged. As this agreement does allow an exception to the rule however, the practical effects of this rule are a matter to be examined in St. Kitts and Nevis' Phase 2 review.

In respect of all persons (ToR C.1.2)

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

230. None of St. Kitts and Nevis' TIEAs is restricted to certain persons such as those considered resident in or nationals of one of the contracting jurisdictions, or precludes the application of EOI provisions in respect to certain types of entities.

231. The DTCs of St. Kitts and Nevis with Monaco and San Marino indicate that "[t]he exchange of information is not restricted by Article 1",[19] which defines the personal scope of application of the Convention.[20] The CARICOM agreement does not contain the sentence indicating that EOI is not restricted by Article 1. However, its EOI provision applies to "carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention". This agreement would not be limited to residents because all taxpayers, resident or not, are liable to the domestic taxes listed in Article 2 (*e.g.* domestic laws also apply taxes to the income of non-residents). Exchange of information in respect of all persons is thus possible under the terms of this agreement.

19. This sentence is identical to the one in Article 26(1) of the OECD Model Tax Convention.

20. Article 1 of DTCs defines the personal scope of the treaties and all indicate that the treaties apply to persons who are residents of one or both of the Contracting States.

232. Under the TIEAs concluded with Germany and Portugal, the requested party is under no obligation "to provide information which is neither held by the authorities nor in the possession of nor obtainable by persons who are within its territorial jurisdiction". The relevant provisions under those TIEAs use the words "*obtainable by*" instead of the expression "in control of" used in Article 2 of the OECD Model TIEA. St. Kitts and Nevis' authorities have assured that their official interpretation of the words "obtainable by" in place of "control of" does not reduce EOI and it may actually widen its effectiveness. The interpretation and implementation of these provisions will be monitored in Phase 2 of the review process.

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

233. 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 OECD Model TIEA, which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

Bank information

234. The DTCs with Monaco and San Marino explicitly forbid the requested jurisdiction to decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. The TIEAs concluded by St. Kitts and Nevis (under Article 5), indicate that parties should ensure that they have the power to obtain this information.

235. The CARICOM agreement do not contain a similar provision. The absence of this paragraph does not automatically create restrictions on exchange of bank information: The commentary on Article 26(5) indicates that whilst paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. St. Kitts and Nevis has access to bank information for tax purposes in its domestic law (see section B), and is able to exchange this type of information when requested, on a reciprocal basis, *i.e.* where there are no domestic impediments to exchange of bank information in the case of the requesting party.

236. Among St. Kitts and Nevis' treaty partners, Grenada and Switzerland are currently unable to access bank information for exchange purposes absent an explicit provision in the treaty. Similarly, the competent authorities of Belize, St. Lucia and St. Vincent and the Grenadines appear to have access to bank information in criminal tax matters only. Finally, the authorities of Trinidad and Tobago can access bank information only when there is an ongoing tax assessment and an objection to the assessment by the taxpayer. Therefore, St. Kitts and Nevis' treaties with these jurisdictions are not considered to meet the international standard.

Absence of domestic tax interest (ToR C.1.4)

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

238. All of the TIEAs concluded by St. Kitts and Nevis (usually under Article 5.2) explicitly permit the information to be exchanged, notwithstanding that it may not be required for a domestic tax purpose. Similarly, St. Kitts and Nevis' domestic powers to access relevant information are not constrained by a requirement that the information must be required for a domestic tax purpose.

239. The DTCs with Monaco and San Marino provide that the requested party "shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes". However, the absence of a similar provision in the CARICOM agreement does not create restrictions on exchange of information, provided there is no domestic tax interest impediment to exchange information in the case of either contracting party. In addition, as concerns the treaty with Jamaica, the Jamaican tax authorities can obtain information only from taxpayers under examination or being assessed. The same impediment applies in Trinidad and Tobago. This requirement is tantamount to a domestic tax interest, which is an obstacle to the effective exchange of information.[21].

21. See Peer Review Report – Phase 1: Legal and Regulatory Framework – Jamaica, 2010, and Trinidad and Tobago, 2011; published on the Global Forum website (*www.oecd.org/tax/transparency*).

Absence of dual criminality principles (ToR C.1.5)

240. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to the 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.

241. None of the EOI arrangements concluded by St. Kitts and Nevis apply the dual criminality principle to restrict the exchange of information.

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

242. 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").

243. All of the EOI agreements concluded by St. Kitts and Nevis provide for the exchange of information in both civil and criminal tax matters in all cases.[22]

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

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

245. All of the TIEAs concluded by St. Kitts and Nevis expressly allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws (Article 5(3)). In

22. In particular, the most recent DTCs of St. Kitts and Nevis contain the explicit wording of Article 26(1) of the OECD Model Tax Convention, which refers to information foreseeably relevant "for carrying out the provisions of this Convention or to the administration and enforcement of the domestic [tax] laws" (Monaco and San Marino).

addition, there are no restrictions in St. Kitts and Nevis' DTCs or laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices.

In force (ToR C.1.8)

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

247. In St. Kitts and Nevis, treaties are given effect through federal legislation, and the Mutual Exchange of Information on Taxation Matters Act gives authority to the Minister of Finance to give effect to an EOI arrangement by an order (section 3(5)(a)). Such an order has been taken for all the signed TIEAs and the partner jurisdictions are listed in a schedule to the Act, except for the TIEA with Germany. The CARICOM agreement was given effect through a federal law Avoidance of Double Taxation and Prevention of Fiscal Evasion Agreement Act. St. Kitts and Nevis signed EOI instruments with 33 jurisdictions. Of these, only 18 are in force, although the Federation has ratified all but three: one of the latest TIEAs (signed with Germany in October 2010) and the two new DTCs (signed with Monaco in September 2009 and San Marino in April 2010). The authorities of St. Kitts and Nevis indicated that the ratification process of these three instruments has been initiated and will be completed by mid-2011.

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

248. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

249. St. Kitts and Nevis has enacted all the legislation necessary to comply with the terms of its agreements. The MEM provides for the powers to access and provide information for exchange of information purposes.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
St. Kitts and Nevis' agreements with its CARICOM partners do not in all cases provide for exchange of information to the standard due to impediments to exchange of information in some of the signatories.	St. Kitts and Nevis should continue its efforts to update this agreement to ensure that it provides for effective exchange of information in all cases.

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

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

250. 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.

251. St. Kitts and Nevis has ratified EOI arrangements with 33 jurisdictions, including 30 Global Forum members, out of which 15 are simultaneously OECD member countries, encompassing four G20 economies. The oldest arrangement was signed with the Switzerland in 1963 (*i.e.* before independence) and the most recent with Germany in 2010 (see Annex 2). Its treaties with some CARICOM partners and Switzerland are not to the standard. St. Kitts and Nevis' authorities indicated that the CARICOM has started a review of its double taxation agreement, including with a view to bring it to the standard for all its parties.

252. Although it does not appear that the Federation actively seeks to enter into new EOI instruments, St. Kitts and Nevis negotiates EOI instruments, mainly TIEAs, with all jurisdictions that offered entering into an EOI arrangement. Indeed, comments were sought from Global Forum members in the course of the preparation of this report, and no jurisdiction advised that St. Kitts and Nevis had refused to negotiate or conclude such an arrangement.

As a result, negotiations should start with new jurisdictions having offered a TIEA to the Federation, meaning South Korea, Greece and Mauritius. In addition, the Federation should soon sign a TIEA initialled with India, and has commenced discussions with Guernsey, the Republic of Seychelles, and the United States, on TIEAs.[23]

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	St. Kitts and Nevis should continue to develop its EOI network with all relevant partners.

C.3. Confidentiality

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

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

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

254. The TIEAs concluded by St. Kitts and Nevis and its unilateral mechanism meet the standards for confidentiality including the limitation on disclosure of information received and use of the information exchanged, which are reflected in Article 8 of the OECD Model TIEA. These confidentiality obligations are also reflected in specific domestic provisions.

23. See Prime Minister press release dated 1 February 2011: *www.cuopm.com/news-item_new.asp?articlenumber=1887&post200803=true*.

Exchange of information instruments

255. The TIEAs of St. Kitts and Nevis include a confidentiality provision (Article 8) that conforms to the standard. Similarly, all EOI articles in St. Kitts and Nevis' DTCs have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the treaties. While each of the articles vary in wording, these provisions contain the essential aspects of Article 26(2) of the Model Tax Convention and specifically spell out to whom the information exchanged can be disclosed and the purposes for which the information can be used.

256. The TIEAs with Belgium, Denmark and the Netherlands add that: "In case of exchange of information in respect of an identified or identifiable individual, the provisions of Chapter 6, in particular the Article 199, of the Economic Partnership Agreement between the Cariforum States and the European Community and its Member States of 15 October 2008 shall be applied accordingly". Article 199 of that agreement outlines principles and general rules relating to information exchange. Importantly, these principles note that *(i)* information should only be used as authorised by the sending party; and *(ii)* persons to whom the information concerns (*e.g.* the subject of an EOI request) have a right to receive all information related to them, except where it is in the public interest not to allow this.

St. Kitts and Nevis' legislation

257. The confidentiality duty of St. Kitts and Nevis' public officials is governed by the Confidential Relationships Act 1985. The term "confidential information" includes information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice authorised by the principal to divulge. Any public official who (a) being in possession of confidential information, however obtained, divulges it to any person not entitled to possession thereof; (b) obtains or attempts to obtain confidential information to which he or she is not entitled; commits an offence and is liable, on conviction, to a fine of XCD 10 000 (USD 3 704) and/or imprisonment for 12 months.

258. The authorities of St. Kitts and Nevis explain that this confidentiality duty is lifted by section 12 of the MEM, which provides in section 4 of the Confidential Relationships Act 1985 (on sanctions) that it is deemed not to apply to confidential information given by any person in conformity with an order or notice issued pursuant of a request under this Act.

Notification of taxpayers

259. The TIEA with Liechtenstein contains a protocol which *inter alia* provides that:

> *"It is understood that the taxpayer, unless subject to criminal investigation, is to be informed about the intention to make a request for information. If the information of the taxpayer would jeopardise the purpose of the investigation, information is not necessary."*

260. As exceptions from this notification procedure are provided, it appears to conform to the standard.

All other information exchanged (ToR C.3.2)

261. 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. The TIEA with Liechtenstein expressly covers these aspects and the provisions of the other instruments are not restrictive.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

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

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

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

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

263. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions. However, communications between a client and an attorney or other 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 other legal representative.

264. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

265. The limits provided for in Article 7 of the OECD Model TIEA and Article 26 of the OECD Model Tax Convention on which information can be exchanged are included in each of the TIEAs concluded by St. Kitts and Nevis, as well as in the CARICOM agreement and in the DTCs with Monaco and San Marino. That is, information which is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or which would be contrary to public policy, is not required to be exchanged.

266. The DTC with Switzerland does not cover commercial secrets. The DTC with Switzerland includes a reservation for sovereignty and security in addition to public order. The reservation in the CARICOM treaty appears to apply when the disclosure of the information would cumulatively be contrary to public policy and disclose certain secrets such as trade secrets. As such the grounds for declining to provide information in response to a request appear to be narrower than those contemplated in the OECD Model Tax Convention.

267. The Mutual Exchange of Information on Taxation Matters Act also indicates that the competent authority will deny a request where the Attorney General has issued a certificate to the effect that the execution of the request is contrary to the public policy of the Federation (section 6(2)).

268. In respect of rights and safeguards of persons, the OECD Model TIEA provides that they remain applicable "to the extent that they do not unduly prevent or delay effective exchange of information". In contrast, the TIEA with New Zealand provide that a requested party "shall use its best endeavours" to ensure that their application does not so unduly prevent of delay effective EOI.

269. The TIEAs with Germany and Liechtenstein do not contain the model clause and therefore do not circumscribe rights and safeguards found in domestic law. Finally, the TIEA with Portugal is silent on the rights and safeguards of the persons concerned; it therefore neither guarantees that they remain applicable nor that the existing rights and safeguards should not unduly prevent or delay effective EOI. Nevertheless, it is unlikely that this variation will materially affect the exchange of information to the international standards in the case of St. Kitts and Nevis, and this feature will be reviewed in Phase 2.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

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

270. 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 importance to warrant making a request.

271. St. Kitts and Nevis' TIEAs require the provision of request confirmations, status updates and the provision of the requested information, within the timeframes foreshadowed in Article 5(6)(b) of the OECD Model TIEA:

> *"6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:* […]
>
> *b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal."*

272. As an exception, the TIEAs with Liechtenstein and Portugal provide that the requested Party shall use its best endeavours to forward the requested information to the requesting Party "with the least reasonable delay".

273. As such there appear to be no legal restrictions on the ability of St. Kitts and Nevis' competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the requeSt. A review of the practical ability of St. Kitts and Nevis' 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)

274. The TIEAs and DTCs indicate that the competent authority is the Financial Secretary or his authorised representative. The MEM, similarly designates the Financial Secretary as the Tax Co-operation Authority for the purposes of facilitating EOI requests, acting alone or through a person designated by him/her to act on his/her behalf (section 4). The Financial Secretary designated its Deputy Secretary as authorised representative. A review of St. Kitts and Nevis' 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)

275. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

276. There are no laws or regulations in St. Kitts and Nevis that impose restrictive conditions on exchange of information that would be incompatible with the international standard.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The element is in place.		
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.	General partnerships that carry on business in St. Kitts and Nevis are required to maintain accounting records, however there are no penalties for failure to maintain such records, and no express obligations to maintain underlying documents, in all circumstances.	St. Kitts and Nevis should introduce consistent and binding requirements on all general partnerships that carry on business therein to maintain accounting records, including underlying documentation, for a minimum five year period, as well as appropriate penalties for non-compliance.
Banking information should be available for all account-holders *(ToR A.3)*		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(Tor B.1)*		
The element is in place.		

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.	The prior notification procedure in civil tax matters only allows for an exception when the whereabouts of the taxpayer are not disclosed to the Tax Cooperation Authority.	It is recommended that wider exceptions from prior notification be permitted in civil tax matters (*e.g.* in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
The element is in place.	St. Kitts and Nevis' agreements with its CARICOM partners do not in all cases provide for exchange of information to the standard due to impediments to exchange of information in some of the signatories.	St. Kitts and Nevis should continue its efforts to update this agreement to ensure that it provides for effective exchange of information in all cases.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The element is in place.		St. Kitts and Nevis should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
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]

St. Kitts and Nevis is committed to the work of the Global Forum and the promotion of international standards for transparency and exchange of information for tax purposes in particular. St. Kitts and Nevis expresses its gratitude to the assessment team and the Peer Review Group for the work that was put in to the evaluation of its legal and regulatory framework.

St. Kitts and Nevis is satisfied with the discussions that took place during the review process and accepts the recommendations that were made in the report. In order to enhance the legislation that governs General Partnerships, St. Kitts and Nevis will amend its legislation to make specific reference to underlying documents in all circumstances and to stipulate penalties for the failure to maintain accounting records.

St. Kitts and Nevis will also amend its legislation to allow for wider exceptions from prior notification in the case of civil tax matters. This will enhance the country's ability to effectively exchange information, further ensuring that the process would not be unduly delayed or prevented.

With respect to recent developments in the Federation's Exchange of Information (EOI) network, the Income Tax (Double Taxation Relief) (Monaco) Order No. 36 of 2011 and the Income Tax (Double Taxation Relief) (San Marino) Order No. 37 of 2011 were published on 7 July 2011. With the publication of these Statutory Rules and Orders, the Double Taxation Conventions with these two countries are now in force.

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

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

Exchange of information mechanisms signed by St. Kitts and Nevis as of May 2011

	Jurisdiction	Type of arrangement	Signed	Ratified/in force
1	Antigua and Barbuda (CARICOM)	DTC	06-Jul-94	25-Oct-2001
2	Aruba	TIEA	11-Sep-09	Ratified on 23-Nov-10
3	Australia	TIEA	05-Mar-10	11-Jan-11
4	Barbados (CARICOM)	DTC	06-Jul-94	25-Oct-2001
5	Belgium	TIEA	18-Dec-09	Ratified on 23-Nov-10
6	Belize (CARICOM)	DTC	06-Jul-94	25-Oct-2001
7	Canada	TIEA	14-Jun-10	Ratified on 22-Nov-10
8	Curaçao[25] (former Netherlands Antilles)	TIEA	11-Sep-09	Ratified on 22-Nov-10
9	Denmark	TIEA	02-Sep-09	23-Feb-2011
10	Dominica (CARICOM)	DTC	06-Jul-94	25-Oct-2001
11	Faroe Islands	TIEA	24-Mar-10	Ratified on 22-Nov-10
12	Finland	TIEA	24-Mar-10	Ratified on 22-Nov-10

25. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curaçao and St. Maarten) with the remaining three islands (Bonaire, St. Eustatius and Saba) joining the Netherlands as special municipalities. TIEAs concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, will continue to apply to Curaçao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and will be administered by Curaçao and St. Maarten for their respective territories and by the Netherlands for Bonaire, St. Eustatius and Saba.

	Jurisdiction	Type of arrangement	Signed	Ratified/in force
13	France	TIEA	01-Apr-10	16-Dec-10
14	Germany	TIEA	13-Oct-10	Not ratified
15	Greenland	TIEA	24-Mar-10	Ratified on 22-Nov-10
16	Grenada (CARICOM)	DTC	06-Jul-94	25-Oct-2001
17	Guyana (CARICOM)	DTC	06-Jul-94	25-Oct-2001
18	Iceland	TIEA	24-Mar-10	Ratified on 22-Nov-10
19	Jamaica (CARICOM)	DTC	06-Jul-94	25-Oct-2001
20	Liechtenstein	TIEA	11-Dec-09	14-Feb-11
21	Monaco	DTC	17-Sep-09	Not ratified
22	Netherlands	TIEA	02-Sep-09	Ratified on 22-Nov-10
23	New Zealand	TIEA	24-Nov-09	Ratified on 23-Nov-10
24	Norway	TIEA	24-Mar-10	12-Jan-11
25	Portugal	TIEA	29-Jul-10	Ratified on 22-Nov-10
26	San Marino	DTC	20-Apr-10	Not ratified
27	St Maarten[26] (former Netherlands Antilles)	TIEA	11-Sep-09	Ratified on 22-Nov-10
28	St. Lucia (CARICOM)	DTC	06-Jul-94	25-Oct-2001
29	St. Vincent and the Grenadines (CARICOM)	DTC	06-Jul-94	25-Oct-2001
30	Sweden	TIEA	24-Mar-10	29-Dec-10
31	Switzerland	DTC	26-Aug-63	01-Jan-1961
32	Trinidad and Tobago (CARICOM)	DTC	06-Jul-94	25-Oct-2001
33	United Kingdom	TIEA	18-Jan-10	19-May-2011

26. See preceding footnote.

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

Constitution

Commercial laws

St. Kitts

Companies Act (CAP 21.03), as amended

Financial Services Regulations Order (Revised Seventh Schedule to the Companies Act)

Licences on Business and Occupations Act of 1972 (CAP 18.20), as amended

Limited Partnerships Act (CAP 21.12), as amended

Unincorporated Business Tax Act No. 5 of 2010

Trusts Act (CAP 5.19), as amended

Foundations Act No. 8 of 2003, as amended

Nevis

Companies Ordinance No. 4 of 1999, as amended

Nevis Business Corporation Ordinance No. 3 of 1984, as amended

Nevis Limited Liability Company Ordinance No. 1 of 1995, as amended

Nevis International Exempt Trust Ordinance No. 1 of 1994, as amended

Multiform Foundations Ordinance No. 2 of 2004, as amended

Regulated activities and AML/CFT laws

Banking Act No. 4 of 2004

Nevis Offshore Banking Ordinance of 1996

Proceeds of Crime Act of 2000 (CAP 4.28)

Financial Services Regulatory Commission (Amendment) Act No. 10 of 2010

Anti-Money Laundering Regulations No. 25 of 2008

Guidance Notes on the Prevention of Money Laundering and Terrorist Financing

Tax laws

Income Tax Act (CAP 20.22)

Tax Administration and Procedures Act No. 12 of 2003

Nevis Tax Administration and Procedures Ordinance of 2007

Value Added Tax Act No. 3 of 2010

St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act No. 7 of 2009

Annex 4: Overview of Laws and Other Relevant Factors for Exchange of Information

Primary legislation

Companies Act (CAP 21.03), as amended

Licences on Business and Occupations Act of 1972 (CAP 18.20), as amended

Limited Partnerships Act (CAP 21.12), as amended

Trusts Act (CAP 5.19), as amended

Foundations Act No. 8 of 2003, as amended

Companies Ordinance No. 4 of 1999, as amended

Nevis Business Corporation Ordinance No. 3 of 1984, as amended

Nevis Limited Liability Company Ordinance No. 1 of 1995, as amended

Nevis International Exempt Trust Ordinance No. 1 of 1994, as amended

Multiform Foundations Ordinance No. 2 of 2004, as amended

Anti-Money Laundering Regulations No. 25 of 2008

Guidance Notes on the Prevention of Money Laundering and Terrorist Financing

St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act No. 7 of, 2009

Primary government authorities

Financial Secretary, designated as the Tax Cooperation Authority

Eastern Caribbean Central Bank

Financial Services Regulatory Commission

Registrar of Companies/Registrar of Companies (Legal Department, Nevis Island Administration)

Registrar of Insurances

Registrar of Foundations (Financial Services Registry)

Annex 5: Overview of Regulated Business Activities

1. Banking business carried on under the Banking Act;
2. Offshore banking carried on under the Nevis Offshore Banking Ordinance;
3. Trust business carried on under the Trust Act, and the Nevis International Trust Ordinance;
4. Business corporations under the Nevis Business Corporation Ordinance;
5. Finance business carried on under the Financial Services Regulations Order 1997;
6. Company business carried under the Company Act, and the Nevis Limited Liability Company Ordinance;
7. Insurance business carried on under the Insurance Act;
8. Venture risk capital;
9. Money transmission services;
10. Issuing and administering means of payment (*e.g.* credit cards, travellers' cheques and bankers' drafts);
11. Guarantees and commitments;
12. Trading for own account or for account of customers in:
    a. money market instruments (*e.g.* cheques, bills, certificates of deposits, commercial paper, etc.);
    b. foreign exchange;
    c. financial and commodity-based derivative instruments (*e.g.* futures, options, interests rate and foreign exchange instruments, etc.);
    d. transferable or negotiable instruments;
13. Money brokering;
14. Money lending and pawning;

15. Money exchange (*e.g.* casa de cambio);
16. Real property business;
17. Credit unions;
18. Building societies;
19. an activity in which money belonging to a client is held or managed by
    i. a Barrister or a Solicitor;
    ii. an accountant or a person who, in the course of business, provides accounting services;
20. the business of acting as company secretary of bodies corporate; and
21. any other commercial activity in which there is a likelihood of an unusual or suspicious transaction being conducted.

The Schedule to the Proceeds of Crime Act is amended by Amendment No. 10 of 2007 by re-numbering the Schedule as "Schedule 1" and adding charities and other non-profit organizations and jewellers and dealers in precious stones and metal to the said Schedule.

The Schedule was further amended by No. 19 of 2008 to widen the scope of the regulated businesses or business activity which must adhere to AML/CFT legislation.

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: FEDERATION OF SAINT KITTS AND NEVIS

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.

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