



Supplementary Peer Review Report Phase 1 Legal and Regulatory Framework

ANTIGUA AND BARBUDA



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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, which has been incorporated in the UN Model Tax Convention.

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

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

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

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

Executive Summary

1. This is a supplementary report on the amendments made by Antigua and Barbuda to its legal and regulatory framework for transparency and exchange of information. It complements the original Phase 1 Peer Review report on Antigua and Barbuda, which considered the legal and regulatory framework in place as at June 2011 and was adopted and published by the Global Forum in August 2011 (August 2011 report).

2. This supplementary report considers the legislative amendments made by Antigua and Barbuda since June 2011 to address the deficiencies identified in the August 2011 report. These amendments pertain to the determinations and recommendations made in respect of availability of accounting information (element A.2); access to information (element B.1); rights and safeguards of taxpayers (element B.2) and exchange of information mechanisms (element C.1). Antigua and Barbuda is of the view that the amendments made to its legal framework were such that elements A.2, B.1, B.2 and C.1 should now be determined to be “in place”. Accordingly, Antigua and Barbuda has asked for a supplementary peer review report pursuant to paragraph 58 of the *Methodology for Peer Reviews and Non-member Reviews*.

3. Antigua and Barbuda is an independent twin-island nation located in the Eastern Caribbean Sea on the boundary with the Atlantic Ocean. Its economy is based primarily on tourism and to a lesser extent other sectors like agriculture, construction, manufacturing and financial services. It receives more than 200 000 tourists per year, mainly from the United States (US) and United Kingdom (UK).

4. Antigua and Barbuda committed to the international standards of transparency and exchange of information in tax matters in 2002. In 2009, it renewed this commitment and since then has rapidly expanded its network of EOI agreements. As of 13 April 2012, Antigua and Barbuda has signed 31 EOI agreements, of which 22 are in force. All the EOI agreements Antigua and Barbuda has signed since 2000 meet the international standard.

5. Since the adoption of the August 2011 report, Antigua and Barbuda has amended its laws to address most of the deficiencies identified in the

report. The Tax Information Exchange (Miscellaneous Amendments) Act amended provisions to the Income Tax Act, Inland Revenue Administration Act, Companies Act, Tax Information Exchange Act, International Trusts Act, International Foundations Act and the ILLC Act. These amendments became effective on 2 December 2011.

6. The laws of Antigua and Barbuda generally ensure that ownership and accounting information are available for relevant legal entities and arrangements. Relevant bank information for all account holders is available to the authorities. However, a gap exists in relation to the availability of accounting information of International Business Companies. This is a significant deficiency as International Business Companies form a significant portion of all legal entities in Antigua and Barbuda.

7. In terms of access to information, the Antigua and Barbuda Tax Information Exchange Act, as amended, expressly empowers the competent authority to obtain, for the purposes of complying with a valid EOI request, any information under the possession or control of any person under Antigua and Barbuda's territorial jurisdiction. The rights and safeguards available under Antigua and Barbuda's legal framework are compatible with effective exchange of information.

8. The changes introduced by Antigua and Barbuda since the August 2011 report demonstrate its commitment to implementing the international standards for transparency and exchange of information. Antigua and Barbuda is encouraged to continue to review and update its legal and regulatory framework in line with the remaining recommendations. Any further developments in the legal and regulatory framework, as well as the application of the framework to the EOI practices of Antigua and Barbuda's competent authority will be considered in detail in the Phase 2 Peer Review which is scheduled for the second half of 2013. In the meantime, a follow up report on the steps undertaken by Antigua and Barbuda to implement the recommendations made in this report should be provided to the PRG within six months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Antigua and Barbuda

9. This supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum’s *Methodology for Peer Reviews and Non-Member Reviews*, and considers recent changes to the legal and regulatory framework of Antigua and Barbuda based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards. Transparency and Exchange of Information for Tax Purposes*. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at April 2012, and information supplied by Antigua and Barbuda. It follows the Phase 1 peer review report on Antigua and Barbuda which was adopted and published by the Global Forum in August 2011.

10. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Antigua and Barbuda’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. This report considers changes in Antigua and Barbuda’s legal and regulatory framework which relate to the availability of accounting information, access to information and exchange of information mechanisms.

11. The supplementary review was conducted by an assessment team which comprised two expert assessors: Mr Kwangmin Kim from Republic of Korea; Mr Colin Chew from Singapore; and one representative of the Global Forum Secretariat, Mr. Guozhi Foo.

12. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the *Terms of Reference*, which takes into account the conclusions of this supplementary report, is set out at the end of this report.

Compliance with the Standards

A. Availability of information

Overview

13. Effective exchange of information requires the availability of reliable information. This part of the report reviews the legal and regulatory framework now in place in Antigua and Barbuda as regards the availability of ownership information, accounting records and bank information. In particular, the amendments to the Companies Act, Income Tax Act, International Trusts Act (ITA), International Foundations Act (IFA), International Limited Liability Companies Act (ILLCA) and the Inland Revenue Administration Act relating to the obligations of relevant entities and arrangements to keep relevant accounting records (element A.2). The Tax Information Exchange (Miscellaneous Amendments) Act 2011, which contains all the above mentioned amendments, was gazetted and brought into effect on 2 December 2011 following its passage in Parliament.

14. The August 2011 report found elements A.1 (ownership information) and A.3 (bank information) to be “in place”. Element A.2 was however found to be “not in place” as domestic trusts, international limited liability companies (ILLCs) and international business companies (IBCs) were not required to keep records that: (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Further, these entities and international trusts and international foundations were not required to keep full underlying documentation and there was not express retention period for accounting information.

15. The December 2011 legislative amendments establish an express requirement for all domestic companies, foreign companies, relevant partnerships (*i.e.* those that carry on a business in Antigua and Barbuda), international trusts, international foundations and ILLCs to keep comprehensive accounting records, including underlying documentation, for at least five years.

16. These amendments partially address the recommendations made in the August 2011 report for element A.2. The relevant recommendations have been amended. However, the determination for element A.2 remains “not in place” as a significant gap relating to the availability of accounting information of IBCs still remains.

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.

17. The August 2011 report found that Antigua and Barbuda had a legal framework in place to ensure the availability of relevant ownership information for all relevant entities and arrangements.

Determination and factors underlying recommendations

Phase 1 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), Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)

18. The August 2011 report found significant shortcomings in the accounting record keeping obligations of ordinary companies, foreign companies, IBCs, international trusts, international foundations, partnerships and ILLCs. In respect of ordinary companies, foreign companies and partnerships, the deficiencies relate to the lack of an express accounting record retention period. In respect of IBCs, ILLCs, international trusts and

international foundations, the deficiencies relate to the scope of accounting records that must be kept.

19. Antigua and Barbuda has amended the Income Tax Act, Inland Revenue Administration Act, Companies Act, International Trusts Act (ITA), International Foundations Act (IFA) and the ILLC Act (ILCA) to include an express requirement for all domestic companies, foreign companies, relevant partnerships (*i.e.* those that carry on a business in Antigua and Barbuda), international trusts, international foundations and ILLCs to keep comprehensive accounting records. An entity may be subject to record keeping requirements under more than one Act (for example, an ordinary company may be required to keep accounting records under both the Companies Act and the Income Tax Act). Each of the above entities must now keep all accounting records that include underlying documentation that¹:

- correctly explain all transactions;
- enable the financial position of the entity to be determined with reasonable accuracy at any time; and
- allow financial statements to be prepared.

20. The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of the following:

- all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
- all sales and purchases and other transactions; and
- the assets and liabilities of the entity.

21. The above records must be kept for a minimum of six years from the date of dissolution of the relevant entity, or in the case of records to be kept under the Income Tax Act, at least seven years from the date of the transaction.

22. Entities that fail to keep proper accounting records under the Income Tax Act are liable on conviction to a fine of XCD 10 000 (USD 3 700) or imprisonment for six months. The relevant entities covered under the Income Tax Act are domestic companies, foreign companies and partnerships that carry on business in Antigua and Barbuda. There are no sanctions for

1. Section 77 of the Income Tax Act, Sections 4B and 4C of the Inland Revenue Administration Act, Section 154 and 356 of the Companies Act, Section 42 of the International Trust Act, Section 46 of the International Foundations Act and Section 55A of the ILLC Act.

ILLCs, international trusts and international foundations that do not meet the accounting record keeping obligations under the ILLCA, ITA and IFA respectively.

23. New law amendments provide for proper accounting obligations with regard to almost all relevant entities. Antigua and Barbuda authorities may consider issuing guidance or regulations giving concrete rules so as to ensure consistent and uniform application of the requirements by relevant entities. The effectiveness of the accounting record keeping requirements under these acts will be further considered in Antigua and Barbuda’s Phase 2 review.

Conclusion

24. The above amendments partially address the deficiencies relating to the availability of accounting records for relevant entities in Antigua and Barbuda. A gap remains in respect of IBCs, which are still not subject to sufficient accounting record keeping requirements. This is a significant deficiency as IBCs make up more than one-third of all companies in Antigua and Barbuda.² Therefore, while the recommendations in relation to the other entities have been removed, the recommendation in relation to IBCs remains and the determination for element A.2 remains “the element is not in place”.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place	
Factors underlying recommendations	Recommendations
There is no obligation for IBCs to keep reliable accounting records.	Antigua and Barbuda should ensure that IBCs are required to keep reliable accounting records in all cases for at least five years.
Domestic trusts, ILLCs and IBCs are not required to keep records that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared.	Antigua and Barbuda should require all relevant entities and arrangements to keep records that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared.

2. The August 2011 report indicated there were 4 175 IBCs and 7 000 domestic companies in Antigua and Barbuda as at 2010.

Phase 1 determination	
The element is not in place	
Factors underlying recommendations	Recommendations
Domestic trusts, international trusts, international foundations, ILLCs and IBCs are not required to keep underlying documentation.	Antigua and Barbuda should require all relevant entities and arrangements to keep underlying documentation in respect of all transactions.
Domestic companies, foreign companies and partnerships are not explicitly required to maintain their accounting records for a minimum of five years. Domestic trusts, international trusts, international foundations, IBCs and ILLCs are not required to keep records for a minimum of five years.	Antigua and Barbuda should impose clear requirements for all relevant entities and arrangements to keep records for a minimum of five years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

25. The August 2011 report found that Antigua and Barbuda had a legal framework in place to ensure the availability of relevant banking information for all account holders.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to information

Overview

26. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access all such information. This includes, but is not limited to, 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.

27. The August 2011 report found that element B.1 was “not in place” as the confidentiality provisions under the ITA, IFA, IBCA and the ILLCA restricted the circumstances under which the Antigua and Barbuda competent authority could obtain information on these entities for EOI purposes. These restrictions, which in the case of the ITA, IFA and ILLCA included the requirement that the matter under investigation also constitutes a crime in Antigua and Barbuda, were not overridden by the competent authority’s access powers under the Tax Information Exchange (TIE) Act. In addition to the above deficiency, the TIE Act also did not authorise the competent authority to obtain for EOI purposes information held extra-territorially but controlled by a person within Antigua and Barbuda’s territorial jurisdiction.

28. The ITA, IFA, IBCA and the ILLCA were amended on 2 December 2011 to expressly permit the disclosure of confidential information to the competent authority of Antigua and Barbuda for EOI purposes. The TIE Act was amended to allow the competent authority to obtain any information under the possession, custody or control of any person under Antigua and Barbuda’s territorial jurisdiction, regardless of where the information is held.

29. As these changes fully address the gaps identified in respect of element B.1 in the August 2011 report, the determination for element B.1 has been revised to “the element is in place” and the recommendations have been removed.

30. The August 2011 report found that element B.2 was “in place, but certain aspects of the legal implementation of the element need improvement” as the rights and safeguards available under Antigua and Barbuda’s legal framework were not compatible with effective exchange of information. In particular, whenever the competent authority issues a notice for information to a holder of information pursuant to an EOI request, he was obliged in every case to send a copy of the same notice to the taxpayer concerned.

31. Antigua and Barbuda has amended the TIE Act to remove the notification requirement. Accordingly, the determination for element B.2 is changed to the “the element is in place” and the accompanying recommendation removed.

B.1. Competent authority’s ability to obtain and provide information

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

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

32. The August 2011 report found that the competent authority’s powers to obtain information for EOI purposes were restricted in instances where the requested information pertain to ILLCs, international trusts, international foundations and IBCs (in respect of international banks and trusts only). The IBCA, ILLCA, IFA, and the ITA contained confidentiality provisions that expressly limit the circumstances under which “confidential information” relating to the respective entities could be disclosed.

33. In the case of international trusts, international foundations and ILLCs, “confidential information” includes the founding documents (trust deed, foundation charter, ILLC operating agreement etc.), documents relating to the financial information of the entity (assets, income, expenses *etc.*), documents relating to the exercise of any function or duty of key personnel (trustee, protector, manager, member *etc.*) and documents relating to the rights, benefits or interests of settlors, beneficiaries, founders, and ILLC members. In the case of an IBC that is an international bank or an international trust company, “confidential information” includes any business affairs of a customer.³

3. Section 91 of the ILLCA, section 87 of the IFA, section 87 of the ITA and section 244 of the IBCA.

34. The IBCA, ILLCA, IFA and the ITA spelt out circumstances under which these confidentiality provisions could be lifted. In the IBCA this included disclosure for AML regulatory and bank supervisory purposes but did not include disclosure for EOI purposes. The IFA, ILLCA and the ITA expressly catered to situations where disclosure may be needed for EOI for tax purposes but stated that confidential information may only be disclosed “upon an order of the Court, based upon the written request of the Government of Antigua and Barbuda, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction pertaining to the exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters, if

- the request for information or legal assistance identifies with specificity the offence as well as the person or entity charged with, or under investigation for, the offence, and
- the offence is also a serious criminal offence under the laws of Antigua and Barbuda.”

35. The above conditions limited the disclosure of information to instances where a person has been charged or is under investigation for a tax offence that also constitutes a serious criminal offence in Antigua and Barbuda *i.e.* a dual criminality requirement.

36. In addition to the above deficiencies, the August 2011 report also noted that the TIE Act disallowed the exchange of information that is under the control of a person within Antigua and Barbuda’s jurisdiction but held extra-territorially. This arose from a requirement in the TIE Act for all requesting jurisdictions to provide a statement that the information being sought was held in Antigua and Barbuda.

37. Antigua and Barbuda has amended the IBCA, ILLCA, ITA and IFA to address the above deficiencies. Under the new provisions pertaining to the disclosure of confidential information, the relevant legal entities are permitted to disclose all confidential information to the Antigua and Barbuda competent authority pursuant to a written request made under any valid treaty in force between Antigua and Barbuda and any other jurisdiction pertaining to the exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal tax matters, as long as the request complies with the TIE Act.⁴ There is no longer a dual criminality requirement.

4. Section 281A of the IBCA, section 88 of the ITA, section 88 of the IFA and section 92 of the ILLCA.

38. In addition, Antigua and Barbuda has also amended the TIE Act such that requesting jurisdictions need to provide a statement that the requested information is under the possession, custody or control of a person within Antigua and Barbuda.⁵ According to this provision, the requesting party does not have to establish that the requested information is in possession, custody or control of a person within Antigua and Barbuda but just be able to connect the person to Antigua and Barbuda.

39. The above amendments came into force on 2 December 2011. As they fully address the deficiencies identified above, the determination for element B.1 has been revised to “the element is in place” and the recommendations removed.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Antigua and Barbuda’s competent authority for international tax matters is unable to access information that is held extra-territorially, even if such information is controlled by a person within its territorial jurisdiction.	Antigua and Barbuda should ensure that its competent authority has the power to obtain information under the control of persons within its territorial jurisdiction in all cases.
Confidentiality provisions in the International Trusts Act, International Foundations Act and the International Limited Liability Corporation Act limit the Antigua and Barbuda competent authority’s powers to obtain a wide range of information that may be needed to comply with an EOI request.	Antigua and Barbuda should ensure that its competent authority has the power to obtain all information that may be the subject of an EOI request.
The conditions for disclosing confidential information in relation to International Business Corporations do not include disclosure for EOI purposes, and are inconsistent with the competent authority’s powers to obtain information under the TIE Act.	Antigua and Barbuda should clarify that the Commissioner’s access powers under the TIE Act may be exercised to obtain and exchange information considered to be confidential under the IBCA, pursuant to an EOI request.

5. Section 4(2)(c) of the TIE Act.

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)

40. The August 2011 report found that the rights and safeguards available under Antigua and Barbuda’s legal framework were not compatible with effective exchange of information. In particular, whenever the competent authority issues a notice to a holder of information pursuant to an EOI request, he was obliged in every case to send a copy of the same notice to the taxpayer concerned.⁶ This is not consistent with the international standard, which requires exceptions to prior notification procedures where prior notification may unduly prevent or delay the effective exchange of information.

41. Antigua and Barbuda has amended the TIE Act to remove the mandatory notification requirement. The new section 6(2) of the TIE Act simply states that the competent authority is *permitted* to send a copy of the notice to the taxpayer concerned *unless* in his opinion the service of such a notice may lead to the obstruction of any investigation for which the information is requested or unduly delay the effective exchange of information. It follows that when the competent authority is of the view that the service of such a notice would have an impact on effective EOI, he cannot send a copy of the notice to the taxpayer concerned. Antigua and Barbuda authorities indicate that where the Requesting state is of the view that such notification would hinder or impede effective EOI, then the Commissioner will accede to such a request. This is an issue of practice that will be further considered in Antigua and Barbuda’s Phase 2 review. The amendment came into force on 2 December 2011. Accordingly, the determination for element B.2 is changed to the “the element is in place” and the accompanying recommendation removed.

6. Section 6(2) of the TIE Act as of June 2011.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place , but certain aspects of the legal implementation of the element need improvement.	
There is no exception to the requirement that the concerned taxpayer be given prior notification that a third party is being requested to provide information to respond to an international request.	Antigua and Barbuda should introduce relevant exceptions to its prior notification procedure so that it is compatible with effective EOI.

C. Exchanging Information

Overview

42. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Antigua and Barbuda, the legal authority to exchange information is derived from its EOI agreements and domestic law.

43. This section of the report examines whether Antigua and Barbuda has a network of information exchange arrangements that would allow it to achieve effective exchange of information in practice. The August 2011 report found that element C.1 was “not in place”. This arose from the assessment that the competent authority did not appear to have sufficiently broad powers to obtain all foreseeably relevant information for EOI purposes under Antigua and Barbuda’s domestic laws, therefore Antigua and Barbuda was unable to give full effect to its EOI agreements. This issue has been fully addressed by the amendments to the IBCA, ILLCA, ITA, IFA and TIE Act as described in Section B of this report. Accordingly the relevant recommendation under C.1 has been removed and the determination upgraded to “the element is in place”.

44. Antigua and Barbuda’s August 2011 report found elements C.2 (network of exchange of information mechanisms), C.3 (confidentiality) and C.4 (rights and safeguards of taxpayers and third parties) to be “In place”. Finally, as with other Phase 1 reports, in respect of element C.5 (timeliness of responses to requests for information) the report noted that it involves issues of practice that will be dealt with in Antigua and Barbuda’s Phase 2 review.

C.1. Exchange of information mechanisms

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

45. The August 2011 report found that Antigua and Barbuda’s arrangements providing for international exchange of information were not given full effect through domestic law as the Antigua and Barbuda competent authority did not have access to confidential information relating to IBCs, ILLCs,

international trusts and international foundations. As noted in Part B of this supplementary report, this issue has been fully addressed by the amendment to the ILLCA, IBCA, ITA and IFA. Accordingly the relevant recommendation under element C.1 has been removed and the determination changed to “the element is in place”.

46. The fact that some of Antigua and Barbuda’s DTCs do not meet the international standard due to restrictions on access to bank and fiduciary information and/or a domestic interest requirement in its DTC partners’ domestic laws was mentioned in the August 2011 report.⁷ Since that time, one of the mentioned DTC partners, Saint Vincent and the Grenadines, has passed new legislation to address this gap.⁸ Antigua and Barbuda’s DTC with Saint Vincent and the Grenadines therefore meets the international standard now. Further, Barbados has amended its domestic law to provide for exchange of information in line with the standard⁹ and accordingly the agreement between Antigua and Barbuda and Barbados now meets the international standard. Nevertheless, it is recommended that Antigua and Barbuda should continue to work with its relevant DTC partners to ensure that these restrictions are removed.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Antigua and Barbuda’s legal framework does not allow the terms of its agreements to be given full effect due to limitations in Antigua and Barbuda’s domestic law regarding access to information in respect of certain entities in its offshore sector	Antigua and Barbuda should amend its legislation so that it can give full effect to its EOI agreements.
Seven out of 31 of Antigua and Barbuda’s DTCs do not meet the international standard due to restrictions on access to bank and fiduciary information and/or a domestic interest requirement in its DTC partners’ domestic laws.	Antigua and Barbuda should work with the relevant DTC partners to ensure that these restrictions are removed.

7. Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Switzerland, and Trinidad and Tobago.
8. As reflected in the Phase 1 peer review report of Saint Vincent and the Grenadines, published in April 2012.
9. www.eoi-tax.org/jurisdictions/BB#peerreview.

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

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

47. The August 2011 report found that Antigua and Barbuda had a network of EOI arrangements with relevant partners.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Antigua and Barbuda should continue to develop its exchange of information network with all relevant partners and take all steps necessary to bring concluded agreements into effect as quickly as possible.

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)

48. The August 2011 report found that there were adequate provisions in Antigua and Barbuda to ensure the confidentiality of information received.

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.

49. The August 2011 report noted that Antigua and Barbuda's EOI agreement with Liechtenstein contains a provision stating that: "it is understood

that the taxpayer, unless subject to criminal investigations, is to be informed about the intention to make a request for information.”

50. This provision obliges the requesting jurisdiction to inform the taxpayer of its intention to make a request whenever the investigation does not relate to a criminal case. In the absence of an exception, there is a possibility of jeopardising the success of investigations in non-criminal cases, and to this extent this agreement is not to the standard. A recommendation was made for Antigua and Barbuda to bring its EOI agreement with Liechtenstein to the international standard. There have been no new developments in Antigua and Barbuda on the above issue.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Antigua and Barbuda's TIEA with Liechtenstein requires the requesting state to notify the taxpayer of its intent to make a request whenever the investigation does not relate to a criminal case. This can potentially prevent or delay the exchange of information by Antigua and Barbuda in non-criminal cases.	It is recommended that the TIEA with Liechtenstein be updated to allow appropriate exceptions to the requirement to notify taxpayers in non-criminal cases.

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), Organisational process and resources (ToR C.5.2) Absence of restrictive conditions on exchange of information (ToR C.5.3)

51. The August 2011 report did not identify any issues relating to Antigua and Barbuda's ability to respond to EOI requests within 90 days, organisational process and resources, or any restrictive conditions on the exchange of information. There have been no new developments in Antigua and Barbuda on the above issues.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
The element is in place.		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
The element is in place.	There is no obligation for IBCs to keep reliable accounting records.	Antigua and Barbuda should ensure that IBCs are required to keep reliable accounting records in all cases for at least five years.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
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). <i>(ToR B.1)</i>		
The element is in place.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1)		
The element is in place.	Seven out of 31 of Antigua and Barbuda's DTCs do not meet the international standard due to restrictions on access to bank and fiduciary information and/or a domestic interest requirement in its DTC partners' domestic laws.	Antigua and Barbuda should work with the relevant DTC partners to ensure that these restrictions are removed.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2)		
The element is in place.		Antigua and Barbuda should continue to develop its exchange of information network with all relevant partners and take all steps necessary to bring concluded agreements into effect as quickly as possible.
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.	Antigua and Barbuda's TIEA with Liechtenstein requires the requesting state to notify the taxpayer of its intent to make a request whenever the investigation does not relate to a criminal case. This can potentially prevent or delay the exchange of information by Antigua and Barbuda in non-criminal cases.	It is recommended that the TIEA with Liechtenstein be updated to allow appropriate exceptions to the requirement to notify taxpayers in non-criminal cases.

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner. (<i>ToR C.5</i>)		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction’s Response to the Supplementary Report*

Antigua and Barbuda is grateful that the Global Forum on Tax Transparency and the Exchange of Information Peer Review Group approved the Supplementary Report to the initial Phase One Report. Consequently, this has advanced the jurisdiction from Phase One review wherein there was an assessment of the quality of the legal and regulatory framework to a Phase Two review where effective implementation will be evaluated.

Following the consideration of its Phase One Report by the Peer Review Group meeting in July 2011, Antigua and Barbuda undertook a review of its legal and regulatory framework. The review included an assessment of its laws and regulations with a view to identifying the gaps and to bring them into full conformity with international best practices and standards as established by the OECD.

Antigua and Barbuda subsequently engaged in corrective action and therefore made necessary changes to its legal and regulatory framework to address the concerns identified by the Peer Review Group. In this regard, the Parliament in Antigua and Barbuda debated and passed the Tax Information Exchange (Miscellaneous Amendment) Act 2011. The law was published in the official Gazette on 2nd December, 2011, thereby bringing the amendments into force and gave them legal effect. The Tax Information Exchange (Miscellaneous Amendment) Act 2011 represented an omnibus law which included all the amendments to the relevant laws deemed necessary to be amended as a result of the Phase One report.

The laws so treated within the Tax Information Exchange (Miscellaneous Amendment) Acts 2011 included the following: the Tax Information Exchange Act; the Income Tax Act; the Companies Act; the Inland Revenue Administration Act; the Companies Act; the International Trust Act; the International Foundations Act; and the International Limited liability Companies Act.

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

After the official publication of the Phase One report of Antigua and Barbuda in September 2011, and as a result of the remedial action taken by the jurisdiction, Antigua and Barbuda submitted a request for the Supplementary Report which was approved in May 2012 and now the jurisdiction is able to move into the Phase Two review.

Consequently, in 2011 the determinations of the Global Forum were as follows: Five (5) Elements being in Place; Two (2) Elements being in Place but requiring further legal implementation; Two (2) Elements not being in Place; One (1) Element which will be reviewed in Phase Two. As a result of remedial action to amend the laws, in 2012 the determinations of the Global Forum are now as follows: Eight (8) Elements being in Place; One (1) Element not being in Place; One (1) Element which will be reviewed in Phase Two.

The advancement from Phase One to Phase Two now fully endorses the quality of the existing legal and regulatory framework as it relates to the accessibility, availability and effective exchange of information. We would therefore wish to thank the Global Forum Secretariat for providing technical and advisory services on the draft Bills which required amendments. We would also wish to express our thanks and appreciation to the Global Forum assessors who provided assistance and helpful guidance towards finalising our presentation to the Peer Review Group.

Antigua and Barbuda is pleased that the efforts demonstrated has been recognised by the Global Forum. Antigua and Barbuda has worked hard to maintain its international standing as a financial services sector and long embraced the need for transparency and the appropriate exchange of foreseeably relevant information.

In conclusion, the ruling of the Global Forum allows Antigua and Barbuda to proceed to the Phase Two evaluation process scheduled for the first half of 2013. We look forward to continue working with the Global Forum on Transparency and Exchange of Information for Tax Purposes and confirm our commitment thereto.

Annex 2: Request for a Supplementary Report Received from Antigua and Barbuda

1 March 2012

Mr. François d’Aubert

Chair

Global Forum on Transparency and Exchange of Information for Tax Purposes

4^e qual du Point du Jour

92100 Boulogne Billancourt

Paris

France

VIA EMAIL

Dear François,

Re: Antigua and Barbuda’s Supplementary Report to the Peer Review Group

Following consideration of its Phase One Report by the Peer Review Group (PRG) in July, 2011, and in accordance with paragraph 58 of the Revised Methodology For Peer Reviews, Antigua and Barbuda is pleased to submit a detailed written report requesting that a Supplementary Report be prepared for further consideration by the Peer Review Group at its next meeting scheduled for May, 2012. This written report is attached as Appendices 1 and 2 to this letter.

At its meeting in July of 2011 the PRG determined that essential elements A2, B1, and C1 were “not in place”, that B2 “was in place, but certain aspects of the legal implementation need improvement”. As Antigua and Barbuda has now implemented changes to its relevant legislation, this report seeks a revision of the determinations that will result in their upgrade to “in place”, together with removal of all the recommendations in respect of the said essential elements, as contained in the Phase One Report. In this regard the Tax Information Exchange (Miscellaneous Amendments Acts 2011) was gazetted on December 2, 2011, following the passage of all the amendments in Parliament, thereby bringing them into effect.

The changes made and implemented are set out at Appendix 1 and the actual amendments to the Legislation are contained in Appendix 2. Antigua and Barbuda 2 has also taken the opportunity to strengthen other pieces of

legislation to allow for the element B2 to be now determined to be “in place” without a recommendation.

Antigua and Barbuda is available to the assessment team for further consultation discussion regarding this supplementary report.

Yours sincerely

Honourable Harold E. Lovell
Minister of Finance and Economy
Antigua and Barbuda

Appendix 1: Antigua and Barbuda Follow up Report on the Recommendations of the Phase 1 Peer Review Report

Determination	Factors underlying recommendations	Recommendations	Action undertaken
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1.)</i>			
The element is in place.			
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i>			
The element is not in place	Domestic trusts, ILLCs and IBCs are not required to keep records that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared.	Antigua and Barbuda should require all relevant entities and arrangements to keep records that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared.	The relevant Legislation has been amended to now provide for the maintenance of all records that 1) correctly explain all transactions 2) enable the financial position to be determined at any time and 3) allow financial statements to be prepared as follows: <ul style="list-style-type: none"> • Section 77 (1) and (4) of the ITA (Amendment) Act 2011 • Section 4B (1) and (4) in the IRAA (Amendment) Act 2011 • Section 154A (1) and 356A (1) in CA (Amendment) Act 2011 • Section 42 (6) of the ITA (Amendment) Act 2011 • Section 46(6) of the IFA (Amendment) Act 2011 • Section 55A (1) (2) (3) (4) (5) and (6) of the ILLC (Amendment) Act 2011

Determination	Factors underlying recommendations	Recommendations	Action undertaken
	Domestic trusts, international trusts, international foundations, ILLCs and IBCs are not required to keep underlying documentation.	Antigua and Barbuda should require all relevant entities and arrangements to keep underlying documentation in respect of all transactions.	All relevant entities and arrangements are now required to keep underlying documentation in respect of all transactions by amendments to the relevant legislation as follows: <ul style="list-style-type: none"> • Section 77(2) of the ITA (Amendment) Act 2011 Section 4B(2) in the IRAA (Amendment) Act 2011 • Section 154A(2) and 356A (2) in CA (Amendment) Act 2011 • Section 42(7) of the ITA (Amendment) Act 2011 • Section 46(7) of the IFA (Amendment) Act 2011 • Section 55A(7) of the ILLC (Amendment) Act 2011
	Domestic companies, foreign companies and partnerships are not explicitly required to maintain their accounting records for a minimum of five years. Domestic trusts, international trusts, international foundations, IBCs and ILLCs are not required to keep records for a minimum of five years.	Antigua and Barbuda should require clear requirements for all relevant entities and arrangements to keep records for a minimum of five years.	Antigua has amended its laws to require all entities and arrangements to keep records for a minimum of (5) years, up to (7) years as follows: <ul style="list-style-type: none"> • Section 77(3) of the ITA (Amendment) Act 2011 • Section 4B(3) in the IRAA (Amendment) Act 2011 • Section 154A(3) and 356A (3) in CA (Amendment) Act 2011 • Section 42(8) of the ITA (Amendment) Act 2011 • Section 46(8) of the IFA (Amendment) Act 2011 • Section 55A(8) of the ILLC (Amendment) Act 2011

Determination	Factors underlying recommendations	Recommendations	Action undertaken
Banking information should be available for all account-holders. (<i>ToR A.3.</i>)			
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). (<i>ToR B.1.</i>)			
The element is not in place.	Antigua and Barbuda's competent authority for international tax matters is unable to access information that is held extra-territorially, even if such information is controlled by a person within its territorial jurisdiction.	Antigua and Barbuda should ensure that its competent authority has the power to obtain information under the control of persons within its territorial jurisdiction in all cases.	Section 4 (2) (c) of the ABTIEA (Amendment) Act 2011 has been amended to allow its competent authority to obtain information under the control of persons within its jurisdiction in all cases.
	Confidentiality provisions in the International Trusts Act, International Foundations Act and the International Limited Liability Corporation Act limit the Antigua and Barbuda competent authority's powers to obtain a wide range of information that may be needed to comply with an EOI request.	Antigua and Barbuda should ensure that its competent authority has the power to obtain all information that may be the subject of an EOI request.	Section 88(b) and (c) of the ITA (Amendment) Act 2011 Section 92(1)(b) and (c) of the ILLC(Amendment) Act 2011 and Section 88 (b) and (c) of the IFA (Amendment) Act 2011 now provide for Antigua and Barbuda's Competent Authority to obtain all information that may be the subject of an EOI request.

Determination	Factors underlying recommendations	Recommendations	Action undertaken
	The conditions for disclosing confidential information in relation to International Business Corporations do not include disclosure for EOI purposes, and are inconsistent with the competent authority's powers to obtain information under the TIE Act.	Antigua and Barbuda should clarify that the Commissioner's access powers under the TIE Act may be exercised to obtain and exchange information considered to be confidential under the IBCA, pursuant to an EOI request.	Division G – Special Taxation Provision Section 281(A) of the IBC (Amendment) Act 2011 has been amended with the insertion of a new section 281A which now allows for the disclosure of confidential information to the Competent Authority where an international TIEA exists.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. (ToR B.2.)			
The element is in place, but certain aspects of the legal implementation of the element need improvement.	There is no exception to the requirement that the concerned taxpayer be given prior notification that a third party is being requested to provide information to respond to an international request.	Antigua and Barbuda should introduce relevant exceptions to its prior notification procedure so that it is compatible with effective EOI.	Section 6(2) of the ABTIEA (Amendment) Act 2011 is amended to give the Competent Authority discretion in serving notice regarding an information request where in his opinion this notice may compromise or otherwise obstruct the conduct of investigations.

Determination	Factors underlying recommendations	Recommendations	Action undertaken
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1.)			
The element is not in place.	Antigua and Barbuda's legal framework does not allow the terms of its agreements to be given full effect due to limitations in Antigua and Barbuda's domestic law regarding access to information in respect of certain entities in its offshore sector	Antigua and Barbuda should amend its legislation so that it can give full effect to its EOI agreements.	Antigua has now amended all of its relevant domestic laws to give effect to its EOI Agreements. Antigua has also gone further and amended Section 4C IRAA – Offence and Punishment which is supervised by the Competent Authority to provide for and offence and punishment for non compliance with the record keeping requirements.
	Some of Antigua and Barbuda's DTCs do not meet the international standard due to restrictions on access to bank and fiduciary information and/or a domestic interest requirement in its DTC partners' domestic laws	Antigua and Barbuda should work with the relevant DTC partners to ensure that these restrictions are removed.	Antigua is working with its CARICOM partners to ensure that its various DTC's meet the international standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2.)			
The element is in place.		Antigua and Barbuda should continue to develop its exchange of information network with all relevant partners and take all steps necessary to bring concluded agreements into effect as quickly as possible	

Determination	Factors underlying recommendations	Recommendations	Action undertaken
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3.)</i>			
The element is in place.			
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4.)</i>			
The element is in place.	Antigua and Barbuda's TIEA with Liechtenstein requires the requesting state to notify the taxpayer of its intent to make a request whenever the investigation does not relate to a criminal case. This can potentially prevent or delay the exchange of information by Antigua and Barbuda in non-criminal cases.	It is recommended that the TIEA with Liechtenstein be updated to allow appropriate exceptions to the requirement to notify taxpayers in non-criminal cases.	
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5.)</i>			
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.			

Appendix 2: List of Laws

Tax Information Exchange (Miscellaneous Amendments) Act 2011

Annex 3: List of All Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Aruba	Tax Information Exchange Agreement (TIEA)	30-Aug-10	02-Dec-10
2	Australia	TIEA	30-Jan-07	14-Dec-09
3	Belgium	TIEA	07-Dec-09	
4	CARICOM (Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago)	Double Taxation Convention (DTC)	06-Jul-94	30-Nov-94
5	Curacao ¹	TIEA	29-Oct-09	
6	Denmark	TIEA	02-Sep-09	23-Feb-11
7	Faroe Islands	TIEA	19-May-10	

10. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curacao and Saint Maarten) with the remaining three islands (Bonaire, St. Eustatius and Saba) joining the Netherlands as special municipalities. The TIEA concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, continues to apply to Curacao, Sint Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and is administered by Curacao and Saint Maarten for their respective territories and by the Netherlands for Bonaire, St. Eustatius and Saba.

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
8	Finland	TIEA	19-May-10	24-Mar-11
9	France	TIEA	26-Mar-10	28-Dec-10
10	Germany	TIEA	19-Oct-10	02-Dec-10
11	Greenland	TIEA	19-May-10	
12	Iceland	TIEA	19-May-10	
13	Ireland	TIEA	15-Dec-09	17-Feb-11
14	Liechtenstein	TIEA	24-Nov-09	
15	Netherlands	TIEA	02-Sep-09	23-Feb-10
16	Norway	TIEA	19-May-10	15-Jan-11
17	Portugal	TIEA	13-Sep-10	
18	Sint Maarten ²	TIEA	29-Oct-09	
19	Sweden	TIEA	19-May-10	
20	Switzerland	DTC	20-Aug-64	01-Jan-61
21	UK	TIEA	19-Jan-10	28-May-10
22	United States	TIEA	06-Dec-01	10-Feb-03

11. See previous footnote.

Annex 4: List of all Laws, Regulations and Other Material Received

Tax Information Exchange (Miscellaneous Amendments) Act 2011

