



# Supplementary Peer Review Report Combined: Phase 1 + Phase 2

UNITED KINGDOM



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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 or the application of a dual criminality standard.

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

All review reports are published once approved by the Global Forum.

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](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).



## Executive Summary

1. This is a supplementary report on the amendments made by the United Kingdom to its legal and regulatory framework for transparency and exchange of information, as well as the practical implementation of that framework. It complements the Combined Phase 1-2 Review report which was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in September 2011 (the 2011 Report).

2. This supplementary report considers the changes made by the United Kingdom to address the recommendations made in the 2011 Report. It considers, in particular, the follow up report sent by the United Kingdom to the Peer Review Group – see annex 2 – concerning the legislative amendments adopted and practices in place to address the determinations and recommendations relating to element B.1 (Competent authority’s ability to obtain and provide information) which in the 2011 Report was found to be “not in place”, C.1 (network of exchange of information agreements) which was found to be “in place but certain aspects of the legal implementation of the element need improvement” in the 2011 Report and C.5 (timeliness of response to exchange of information request) which contained a recommendation in the 2011 Report as it concerned an issue of practice. The United Kingdom is of the view that the amendments made to its legal framework are such that both elements B.1 and C.1 should now be assessed to be “in place”. The United Kingdom is also asking for reconsideration of the phase 2 recommendation made under element C.5. Consequently, the United Kingdom has asked for a supplementary peer review report pursuant to paragraph 58 of the Global Forum’s Methodology for Peer Reviews and Non-member Reviews.

3. As a major world economy and with one of the leading financial centres in the world (City of London), the UK has a long history in negotiating double taxation conventions (DTCs) leading to a network of agreements covering 122 jurisdictions. Further, it has negotiated taxation information exchange agreements with 22 jurisdictions, 8 of which are also covered by a DTC. This leads to a network of exchange of information agreements with 136 jurisdictions which includes all of the UK’s main economic and diplomatic partners as well as financial centres. The large majority of these agreements allow the UK to exchange information to the standard.

Nevertheless, the UK should continue its program of updating the last of its older agreements. The UK is also able to exchange information under some multilateral mechanisms.

4. The UK legal environment ensures in most circumstances that the necessary ownership information is maintained for all relevant companies, partnerships, trusts and other entities and arrangements. This is in particular thanks to the registration requirements for companies and limited partnerships, anti-money laundering legislation requiring a range of service providers to conduct customer due diligence, and requirements to report information to HM Revenue and Customs (HMRC) for tax purposes. Nevertheless, further action should be taken to either ensure that robust mechanisms are in place to identify the owners of bearer shares or amend its legislation to eliminate such shares. Since the 2011 Report, the UK has reported that it is continuing to evaluate which measures are necessary and has not identified any changes to relevant legislation.

5. The UK legislation also contains provisions requiring accounting information and underlying documentation to be kept for a minimum of five years for all relevant entities and arrangements. Further, UK legislation ensures that bank information is available for all account-holders.

6. The 2011 Report found that the UK was able to access information for international exchange of information purposes where the taxpayer's name was known, but identified a shortcoming where the taxpayer's name was not known. By virtue of amendments made to its legal and regulatory framework through the Finance Act, 2012, the United Kingdom now has the power to obtain the taxpayer's name where the requesting party has provided sufficient information to identify the taxpayer. Once the name of the taxpayer is known, the UK's established access powers will apply. Consequently, both elements B.1 and C.1 are now assessed to be "in place" and the phase 1 recommendations previously made under B.1 as well as the first recommendation made under C.1 are removed. The UK has reported that since 2007, there were only two or three instances where they had to approach the Tribunal after the requesting jurisdiction had not provided the name and address of the taxpayer. The United Kingdom should nevertheless ensure that this new procedure does not create additional delays in providing requested information to those already stressed in the 2011 Report.

7. With its involvement in developing a very comprehensive network of tax agreements, and its key position in international trade, the UK is a very active country in the field of exchange of information in tax matters, receiving approximately 1200 (1500 for 2010) requests a year. This volume of requests and the will of the UK authorities to provide comprehensive answers to their partners show the deep involvement of the UK in exchanging information for tax purposes. However, several peers expressed their

concerns that it takes too much time to receive information in cases where a formal information notice has to be issued and approved by a Tribunal, in particular in cases regarding bank information. In its progress report, the UK has indicated some steps that have been taken to review the process for issuance of a formal notice to obtain information with a view to ensuring that it is compatible with effective exchange of information in tax matters in this regard. However, while improvements to its EOI systems have been noted it has not been possible to verify their effectiveness as yet and peers have not yet reported improvements in response times (see comments in C.5).

8. Most international exchange of information for direct tax purposes is dealt with by an EOI Team in the Centre for Exchange of Intelligence (CEI) within HMRC's Risk and Intelligence Service in London. The EOI team is sufficiently resourced to ensure it can achieve its mission, even considering the very large number of EOI matters it manages. Due to extensive information holdings, including access to many registers, about half the responses to international requests for information in tax matters are provided by the competent authority without needing to make third party enquiries.

9. The UK is encouraged to continue to make improvements to its EOI framework and system for the exchange of information in practice to address any outstanding phase 1 and phase 2 recommendations, and to provide a follow-up report one year after the present report is adopted by the Global Forum.





## Introduction

### **Information and methodology used for the supplementary review of the United Kingdom**

10. The assessment of the UK's legal and regulatory framework made through 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 the UK 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. This supplementary report is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at January 2013, and information supplied by the UK. It follows the Combined Review Report on the UK which was adopted and published by the Global Forum in September 2011

11. The Terms of Reference breaks 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 the UK's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

12. The assessment was conducted by an assessment team, which consisted of two expert assessors and two representatives of the Global Forum Secretariat: Ms. Yanga Mputa, Deputy Director, South African Revenue Service; Mr. Junya Toya, Deputy Director, International Operations Division, National Tax Agency, Japan; Mr. Remi Verneau and Mr. Bhaskar Goswami from the Global Forum Secretariat. The assessment team assessed the legal

and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in the UK.

13. 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, can be found in the annexes of this report.

## Compliance with the Standards

### A. Availability of Information

#### Overview

14. Effective exchange of information requires the availability of reliable information. This part of the report considers the legal and regulatory framework in place in the UK as of January 2013 with regards to the availability of ownership information, accounting records and banking information. The 2011 Report found that elements A.2 (accounting records) and A.3 (bank information) were “in place” and no recommendations were made. Element A.1 (availability of ownership information) was found to be “in place, but certain aspects of the legal implementation of the element need improvement” due to the absence of mechanisms in place to ensure the availability of information allowing for the identification of the owners of bearer shares.

15. In respect of the element A.2, while no specific recommendation was made, the report noted that in case of limited partnerships, it was possible that subsequent to registration, the partnership’s place of business may move outside the UK. In such a situation, no accounting information would be available within the UK. While the UK was asked to monitor and report back to the PRG its effect on EOI in practice it has not reported any further action in this respect and neither have peers reported problems. The UK is requested to continue monitoring the issue.

16. Regarding the recommendation under element A.1, the UK is evaluating which measures are necessary to ensure that mechanisms are in place to identify owners of bearer shares. This is not sufficient to remedy the gap

identified in the 2011 Report and accordingly the recommendation made under A.1 as well as the determination made under this element in the 2011 Reports are maintained.

## 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.

### *Bearer Shares (ToR<sup>1</sup> A.1.2)*

17. The 2011 Report noted that the Companies Act (s.122) allows all types of companies to issue “share warrants to bearer” or “stock warrants to bearer”, provided the company’s articles of association allow it. The names of the owners of such bearer shares are not recorded in the register of the company and they can be sold without any necessity to notify the company. No statistics were available on the number of bearer shares issued in the UK but instances where issuance of share warrants to bearer were reported to be rare. Consequently, the determination made under element A.1 in the 2011 Report was “the element is in place but certain aspects of the legal implementation of the element need improvements” and it was recommended that the UK should either take necessary measures to ensure that robust mechanisms are in place to identify the owners of such bearer shares or eliminate such shares.

18. In an intermediary report submitted by the UK to the peer Review Group in March 2012, it was stated that research conducted following the combined review revealed that there were a total of 14 companies owned entirely in the form of bearer shares. The UK also reported that the UK Department of Business, Innovation and Skills (BIS) had written to these companies and companies that offer to set up companies through bearer shares explaining that the misuse of bearer shares was a matter of international concern. Apart from this, the intermediary report also stated that s.442 of the Companies Act, 1985 provided a power to investigate company ownership and that bearer shares could also be immobilised by the provisions contained in s.445 of the same Act. However, it was further stated that these powers were exercisable by the BIS where there was “good reason” to do so but that they remain, so far, untested.

19. In its follow up report submitted in September 2012, the UK states it is continuing to evaluate which measures are necessary to ensure that robust mechanisms are in place to identify the owners of the bearer shares, in addition to the powers that have been highlighted in the UK’s intermediary report.

1. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.

20. Based on a consideration of all these facts, bearer shares have neither been eliminated in the UK, nor are robust mechanisms in place to ensure that ownership information pertaining to holders of such shares is available. Hence, the recommendation made in that report is retained.

#### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
There may be a limited number of bearer shares in circulation at present but no instances of bearer shares were found in the course of the review. Nevertheless, the mechanisms in place to ensure the availability of information allowing for identification of their owners are insufficient.	The United Kingdom should either take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares or eliminate such shares.
Phase 2 rating	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	

## 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), Five year retention standard (ToR A.2.3)***

21. The 2011Report noted that legal requirements ensure that all relevant entities that can be created or established in the UK are subject to record keeping requirements in line with the international standard except for limited partnerships formed under UK law with no UK resident partner and no business activity in the UK where it was mentioned that accounting information may not be available. Considering this limited size of this gap, the 2011 report concluded that element A.2 was “in place” and no recommendation was made.

22. The 2011Report also noted that in the case of partnerships for which there are no UK tax-resident partners and in UK-taxable business, no

accounting records would be available in the UK. It was noted that situations, though rare, may arise where subsequent to registration in the UK, the partnerships place of business may move outside the UK. In such situations, accounting information will not be available in the UK. While the UK was asked to monitor its effect on EOI in practice it has not reported any further action in this respect and neither have peers reported problems. The UK is requested to continue monitoring the issue.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place</b>

### **A.3. Banking Information**

Banking information should be available for all account-holders.

#### ***General requirements (ToR A.3.1)***

23. The 2011 Report did not identify any gap with respect to this element and it was determined to be “in place”.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place</b>

## B. Access to Information

### Overview

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

25. The 2011 Report noted that element B.1 (access to information) was “not in place” as the UK could not use its information gathering powers in cases where the name of the taxpayer was not provided and consequently it was not in a position to access information in line with standard. A Phase 2 (implementation in practice) recommendation was also made concerning the complexity and time consuming nature of the formal process for obtaining information not already in the possession of the HMRC. Element B.2 (notification requirements and rights and safeguards) was assessed as “in place”.

26. Since the adoption by the Global Forum of the 2011 Report, amendments to the UK's access to information powers have been brought about by the Finance Act, 2012. When receiving an incoming request that does not contain the name of the taxpayer but other elements of identification, the HMRC is now in a position, under s.5A of Schedule 36 of the Finance Act to ask a third party, on the basis of the identification elements, to provide the name of the taxpayer concerned by the request. Once the name of the person concerned is obtained, HMRC can then ask a third party to provide the requested information. These new provisions are in effect from 1 April 2012.

27. By virtue of these changes the UK now has necessary powers to process incoming requests not containing the name of the taxpayer concerned. The changes made by the UK to its legal framework are such that the gap that



was identified in the 2011 Report has been closed. The element B.1 is accordingly now determined to be “in place” and the phase 1 recommendation made under this element is removed.

28. The 2011 Report also referred to peer inputs received over the course of the combined review of the UK and showing that the timeframe needed by the UK to collect information under the procedure provided by Schedule 36 of the Finance Act was delayed in many instances. This led to a Phase 2 recommendation that the UK should review the entire process to make it compatible with effective exchange of information. Whilst the UK reviewed the entire process over the last 18 months, identified the common causes of delay and came up with potential improvements, any tangible change to exchange of information in practice could not be evaluated in the course of this review. In addition, the new procedure introduced by the UK to process incoming requests where names of taxpayers are not provided may cause additional delays. Therefore, the Phase 2 recommendation made under B.1 in the 2011 Report is retained.

## **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)***

29. Following the merger of the former Inland Revenue and HM Customs and Excise in 2005, HMRC’s powers to access information in specific cases, including for foreign taxes covered by an EOI agreement were gathered in Schedule 36 of Finance Act 2008. Schedule 36, in force since 1 April 2009, regulates HMRC’s powers to access information either through issuance of a formal information notice or inspection of business premises. Subject to certain conditions, Schedule 36 provides the right to make enquiries, to inspect, copy and remove documents that are produced, but not to search for or seize documents. It provides the power to access any document in a person’s possession or power, or supply any other information.

30. Schedule 36 of the Finance Act, 2008 allows HMRC to issue information notices in the process of accessing information. The extent to which a formal information notice can be issued for EOI purposes depends on whether the information is to be collected:

- from the taxpayer itself (*i.e.* the UK information holder and the taxpayer under examination by the requesting jurisdiction are the

same). In this case, paragraph 1 of Schedule 36 provides the same powers to check “the taxpayer’s tax position” (emphasis added) for both domestic and EOI purposes as the term “tax” includes foreign tax covered under an EOI arrangement unless the context otherwise requires (para.63, Schedule 36).

- or from a third party (*i.e.* where the information holder and the taxpayer under examination are not the same). In this event (third party notice), access powers for EOI purposes (Paragraph 2 of Schedule 36) depend on whether the taxpayer is named or not.

31. The 2011 Report noted that according to Paragraph 2 of Schedule 36, a third-party notice can be issued in order to check “the tax position of another person whose identity is known ...” (emphasis added). Here, the definition of the term “tax” includes foreign tax covered under an EOI arrangement. That paragraph goes on to state that “A third party notice must name the taxpayer to whom it relates, unless the First-tier Tribunal has approved the giving of the notice and disapplied this requirement under paragraph 3.” The interpretation accorded by the UK authorities to paragraph 2 is that the name of the taxpayer must be known.

32. Based on the above, the 2011 Report concluded that the HMRC did not have the power to access information for EOI purposes in cases where the name of the taxpayer was not known and accordingly that the UK was unable to access information for EOI purposes in accordance with the international standard.

33. The Schedule 36 of the Finance Act, 2008 has been amended by the Finance Act, 2012 by insertion of a new paragraph 5A in the Schedule. Under this new paragraph, the HMRC now has a statutory power to require a data holder to provide a person’s name, address and date of birth, based on the identifying information that is provided by the HMRC to the data holder.

34. This new paragraph 5A states that an authorised officer of the Revenue and Customs may by notice in writing require a person to provide “relevant information” about another person (the taxpayer). The phrase “relevant information” has been defined to mean, the name, the last known address and the date of birth (in case of an individual). Paragraph 5A also specifies that these powers can be exercised when certain prescribed conditions are met. The conditions are (i) that the information is reasonably required by the officer for checking the tax position of the taxpayer, (ii) the taxpayers identity is not known to the officer but the officer holds information from which the taxpayers identity can be ascertained, (iii) the officer has reason to believe that the person will be able to ascertain the taxpayers identity from the information held by the officer and the person obtained the relevant information about the taxpayer in the course of carrying out the business and (iv) the taxpayers identity cannot readily be ascertained by

other means from the information held by the officer. “Tax position” that is referred to in the first condition to paragraph 5A will cover situations where the information is required to answer EOI requests. Under the laws of the UK (Part 9 of schedule 36), “tax” includes “foreign taxes”. Paragraph 63(4) of Schedule 36 stipulates that a relevant foreign tax is one covered by international agreements entered into by the UK.

35. On the phrase, “information is reasonably required” that is used in paragraph 5A, the UK has clarified that a request that was “foreseeably relevant” would certainly also be “reasonably required” under the meaning attached to the phrase in paragraph 5A of Schedule 36. The UK has further stated that the requesting party should also be able to show that it has pursued all means available in its territory to obtain the information, subject of course to the particular circumstances of its investigation. On the term, “reasonably required”, the UK has stated that as per a recent court decision, the test is whether information is required for the purpose of testing the tax position and is not whether as a matter of fact it turns out to affect the tax position. As for the condition, that the third party should have obtained the relevant information about the taxpayer in the course of carrying on business, the UK has clarified that this power is restricted to third party data holders who have this information as a consequence of some sort of business activity, for example, running a bank. Other third parties such as family members are not intended to be caught by the notice.

36. In practice, when an incoming request is received by HMRC, which does not mention the name of the person who is subject of the request but contains other sufficient identification information, HMRC will be in a position, under paragraph 5A of Schedule 36 to ask a data holder to provide the name of the person concerned. The HMRC will provide the data holder the identifying information that has been provided by the requesting jurisdiction. In cases where banking information is sought, such identifying information could be the bank account number. Using this identifying information the data holder can provide the name of the person concerned. Thereafter, HMRC will be in a position to meet all requirements needed to activate its gathering of information measures provided by paragraph 2 of the same Schedule to collect information from a third party. Accordingly, the phase 1 recommendation made under B.1 in this Report is removed and this element is now assessed as “in place”. However, this procedure is recent and is likely to delay the process of gathering information. process.

37. On the issue of enforcement of these notices that are issued to third parties, it may be pointed out that these notices are schedule 36 notices. The penalties that apply to schedule 36 notices shall therefore apply here. The 2011 report had pointed out that Schedule 36 notices are compulsory. Where a Schedule 36 information notice is not complied with, HMRC can issue a penalty notice. The initial penalty for failing to comply is a fixed fine of GBP 300

(EUR 354). After such a penalty is imposed, there is liability to a penalty of up to GBP 60 (EUR 71) a day for so long as the failure continues. All penalties may be appealed to the Tribunal. In exceptional cases, where a significant amount of tax is at stake, there is provision for the Tribunal to impose a tax-related penalty. A penalty would be set aside by HMRC or on appeal by the Tribunal if the UK resident had a reasonable excuse for not complying, such as not having access to the information required by HMRC (Part 7, Schedule 36).

38. Further, a person is guilty of a criminal offence if he/she conceals, destroys or otherwise disposes of a document required by a formal notice or a document that it has been informed is likely to be the subject of a formal notice under Schedule 36. On summary conviction, the maximum fine in England, Wales and Northern Ireland is GBP 5 000 (EUR 5 900) (GBP 10 000 – EUR 11 800 in Scotland) and on conviction on indictment, the person may be subject to imprisonment for up to two years, a fine or both.

39. If a financial institution fails to make returns of interest paid under sections 17 and 18 of the TMA or under regulations made under section 199 of the FA 2003, section 98 TMA provides for an initial penalty not exceeding GBP 300 (EUR 354). After that penalty is imposed, the financial institution is liable to a penalty of up to GBP 60 (EUR 71) a day for so long as the failure continues. All penalties may be appealed to a tribunal. The 2011 report had also stated that compliance with the Schedule 36 notices is high.

### *Practical aspects relating to Schedule 36 information notices*

40. The 2011 Report pointed out that when in receipt of a request for information the HMRC can either provide that information based on data that is directly available with its EOI team or sometimes a third party enquiry is needed. In the latter case, the HMRC will usually first use an informal approach whereby the information holder provides information on a voluntary basis or based on a mandate from or a notice agreed on by the taxpayer or another person to which the information directly relates. In the relatively small number of cases where this approach is not successful or advisable, HMRC seeks notice approval from the Tribunal. The 2011 report had noted that since 2007, 70 information requests have been issued on behalf of treaty partners. This is as against a total of about 1 200 requests received every year during that period. The 2011 report also noted that in the period under review no notice was ever declined by the Tribunal. The UK has also reported that since 2007 there are only two or three instances where the identity was unclear.

41. The 2011 Report also pointed out that in situations involving requests for bank information, the HMRC will always check to ensure that the requesting authority has tried to obtain the information directly from the taxpayer or

through a customer mandate to the bank. It will also search its current information holdings to see if the request can be answered without the need to approach the bank. If information cannot be accessed in this way, HMRC will seek to issue a tribunal-approved notice. Based on an agreement with the British Banking Association (BBA) HMRC will never issue a taxpayer-approved notice in a case involving bank information. If the information requested concerns bank information and the requesting state is able to provide sufficient identification details but not the name and address of the account holder, the HMRC will first approach the bank to obtain the name and address of this person. Having obtained the name, the HMRC will then approach the Tribunal to issue the notice to seek the actual information that has been requested. It may be mentioned here that the UK confirms that where the requesting authority has not tried to obtain the information from the taxpayer or through a customer mandate to the bank, believing this would jeopardise the investigations, the HMRC would act upon such request. The UK has also clarified that the issue of the notice under paragraph 5A does not require approval of the tribunal. Apart from this, if it is clear that “there are reasonable grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of the law (including the law of a territory outside the United Kingdom) relating to tax” and “any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of tax” then the information power at paragraph 5 Schedule 36 could be used immediately without the need for a two step process.

42. The report found that where the HMRC is required to seek notice approval from the Tribunal, the HMRC has to put considerable work into preparing matters for the Tribunal’s consideration. This preparation can take several months depending on the complexity of the matter and the extent of information provided to HMRC by the requesting jurisdictions. The 2011 report outlined the steps needed to complete this procedure which involved a number of stages, such as the preparation of the application to the Tribunal, the time given to the bank or third party to make written representations, issue of summary of reasons to the taxpayer in the requesting jurisdiction and the hearing of the application by the Tribunal, each of them lasting from one week to 40 days. In practice, according to the UK, the shortest possible time was three to four months and it takes an average of 12 months to respond to a request. According to one of the UK’s peers this minimum response time has not been met in any of the cases where they have requested information. Peers also reported up to 18 months response time for bank information and in some cases more than two years. The 2011 report had therefore made a Phase 2 recommendation that entire process of issuance of a formal notice to obtain information should be reviewed with a view to ensuring that it is compatible with effective international exchange of information.

43. To address the concerns raised in the 2011 Report, the UK has reported that its EOI team has improved its monitoring of all cases requiring Schedule 36 procedures, recording timelines for key stages and is striving to achieve continuous improvement. A new information exchange database delivered in March 2012 will assist case workers and managers to monitoring the progress of these cases.

44. The steps undertaken by the UK to improve the timeliness of information gathering are welcome and are likely to produce expected results. Nevertheless, these changes are recent and while comments from UK's EOI partners have been sought, it has not been possible to assess whether in practice the situation has improved. Apart from this, the new procedure introduced with paragraph 5A of Schedule 36 is recent and its practice will have to be monitored. Given this situation, the Phase 2 recommendation that was made in respect of the element B.1 is retained.

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

45. The 2011 Report noted that in instances where the name of the taxpayer was not provided in the incoming request received, the UK's information gathering powers were limited by a domestic tax interest. In such situations, the HMRC could issues notices to third parties under paragraph 2 of Schedule 36 of the Finance Act 2008 only where the taxpayer was under examination for UK tax purposes. This gap was reflected in the peer input received at that time, which indicated that information could not exchanged since the name of the taxpayer was not known.

46. With the changes introduced by the UK with the Finance Act, 2012 by the amendments made to Schedule 36 of the Finance Act 2008 and above described, it can be concluded that the gap that was pointed out in the 2011 Report has been resolved.

**Determination and factors underlying recommendations**

Phase 1 determination	
<b>The element is not in place.</b>	
Factors underlying recommendations	Recommendations
The UK cannot currently use its statutory information gathering powers for international exchange of information purposes where the name of the taxpayer is not known.	The UK should ensure that there is a legal basis to access third party information for EOI purposes in line with the standard even in cases where the name of the taxpayer cannot be established.

Phase 2 rating	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	
Factors underlying recommendations	Recommendations
The formal process to obtain information (other than information already in the possession of HMRC or information which is voluntarily provided to HMRC) is complex and on average takes 12 months to complete before information is provided to the requesting jurisdiction. This process unduly delays effective exchange of information.	<del>The entire process for issuance of a formal notice to obtain information should be reviewed with a view to ensuring that it is compatible with effective international exchange of information in tax matters</del> <u>The UK should ensure, building on the recent changes made to internal processes and the procedures introduced through para 5A to Schedule 36, that its procedure for accessing information is compatible with effective international exchange of information in tax matters.</u>

## 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.

47. The 2011 Report did not identify any gap with respect to this element and it was determined to be “in place”.

48. With respect to the new procedures that have been introduced through paragraph 5A of Schedule 36, that have been discussed in section B.1, the UK has clarified that a notice under para 5A of Schedule 36 can be issued without the prior approval of the tribunal. An appeal could only be made against this on the basis that it would be “unduly onerous” for the third party to comply. It is stated by the UK that a notice may be unduly onerous if the burden in terms of time and costs, placed upon the third party, are disproportionately greater than the benefit expected to be gained from the information in question. It is unlikely that providing the name, address and date of birth would be considered “unduly onerous”. Appeal would therefore be highly unlikely.

### Determination and factors underlying recommendations

Phase 1 determination
<b>The element is in place</b>



## C. Exchanging Information

### Overview

49. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms 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 assesses the UK's network of EOI agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

50. The 2011 Report concluded that while the UK's information exchange agreements generally allow for exchange of information to the international standard, shortcomings identified in Part B of that report meant that the UK may not be able to comply fully with the terms of these agreements in all instances. Accordingly, the element C.1 was assessed to be "in place but certain aspects of the legal implementation need improvements" and a phase 1 recommendation was made. The 2011 Report also recommended under element C.1 that the UK should continue its program of renegotiating the last of its older treaties which are not yet to the standard. As regards the element C.5, the 2011 Report made a Phase 2 recommendation that the UK should ensure that it has necessary processes in place to provide updates of status within 90 days. All other elements relevant to this section, C.2 (exchange of information mechanisms with all relevant partners), C.3 (confidentiality) and C.4 (rights and safeguards of taxpayers and third parties) were determined to be "in place".

51. Discussions in the earlier portions of this report have demonstrated that the gap that was identified in the element B.1, revolving around situations where the name of the taxpayer was not known, has been resolved. These improvements remedy the gap identified under C.1. In relation to the second recommendation under the element C.1 regarding the renegotiation of older treaties, no concrete results have been reported and the recommendation is retained. Nevertheless, this recommendation is not considered to be



serious enough on its own to merit the determination “in place, but needs improvements” and so element C.1 is now determined to be in place. On the recommendation in respect to the element C.5, the UK has reported that it has developed a new database to ensure that status updates are provided in 90 days. However, these changes are recent and it has not been possible from comments received from UK’s partners to determine whether these improvements have produced expected results. Accordingly, the phase 2 recommendation in relation to the element C.5 is retained.

### C.1. Exchange of information mechanisms

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

***Foreseeably relevant standard (ToR C.1.1), In respect of all persons (ToR C.1.2), Obligation to exchange all types of information (ToR C.1.3), Absence of dual criminality principles (ToR C.1.5), Exchange of information in both civil and criminal matters (ToR C.1.6), Provide information in specific form requested (ToR C.1.7), In force (ToR C.1.8)***

52. The 2011 Report pointed out that the UK has EOI agreements with 136 jurisdictions. Of these, in 16 cases, the agreements were such that they did not allow the UK to exchange all types of information. The DTC with Oman did not specifically provide for exchange of bank information. The 15 other DTC’s (Barbados, Egypt, Fiji, Gambia, Israel, Jamaica, Kenya, Namibia, Nigeria, Papua New Guinea, Sri Lanka, Swaziland, Tunisia, Zambia and Zimbabwe) included language that restricted EOI to “information which at [a party’s] disposal in the normal course of administration”, wording interpreted by the UK authorities as not allowing HMRC to use its access powers to obtain any kind of information for EOI purposes. In addition there were agreements with some other jurisdictions (Brunei, Kiribati, Tuvalu, Montserrat, Sierra Leone and Solomon Island) where the EOI provision limited exchange of information to “information available under their respective taxation laws”. Accordingly, the 2011 Report recommended that the UK should continue its program of renegotiating its older treaties and some of its post-2005 arrangements with relevant partners to bring them up to the internationally accepted standard.

53. The UK reported that it is continuing to keep its older treaties under review with a view to renegotiating them to ensure that they reach the international standard but did not report any concrete results. Accordingly, the recommendation made in the 2011 Report is retained.

***Absence of domestic tax interest (ToR C.1.4), In effect (ToR C.1.9)***

54. The 2011 Report noted that an existing domestic tax interest requirement in the UK may restrict exchange of information with some of UK's 136 EOI partners. It was also assessed that no full effect had been given by the UK to its EOI agreements since some restrictions in access to information existed in the UK. A recommendation was consequently made under element C.1 which was assessed as to be "in place but certain aspect of the legal implementation of the element require improvements".

55. By virtue of amendments made to its legal framework, as reported in relation to element B.1 the UK now ensures that information is accessible in accordance with the standard. As a result, the first recommendation made under element C1 in the 2011 Report is removed and the determination made is accordingly upgraded to "the element is in place".

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of this element require improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
The United Kingdom has a very extensive network of EOI agreements. The legal framework in the UK does not however allow the terms of its agreements to be given full effect due to limitations in the UK's domestic laws which affect only one limited category of cases.	It is recommended that the UK enact necessary legislation which will enable it to comply with and give full effect to its EOI agreements.
	It is recommended that the UK continues its program of renegotiating the last of its older treaties which are not yet to the standard.
<b>Phase 2 rating</b>	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	

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

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

56. The 2011 Report did not identify any gap with respect to this element and it was determined to be “in place”.

#### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place	
Factors underlying recommendations	Recommendations
	The UK should continue to develop its EOI network to the standard 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),  
All other information exchanged (ToR C.3.2)***

57. The 2011 Report did not identify any gap with respect to this element and it was determined to be “in place”.

58. In respect of the new procedures under paragraph 5A of Schedule 36 that have been discussed in section B.1, the UK has clarified that its practice is to provide the third party with the minimum information necessary to respond to the request. Normally when the taxpayer is within its jurisdiction, the UK will approach him/her for any information. When it is unavailable or refused or a first party notice will not produce it, a third party is approached. Where the particular circumstances of the investigation require that a taxpayer does not learn of the request, the UK will not inform him/her, if the tribunal agrees. The UK has further stated that for the vast majority of third party requests where schedule 36 powers are not needed, they will not contact the taxpayer at all.

### 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),*

59. The 2011 Report did not identify any gap with respect to this element and it was determined to be “in place”.

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

60. 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.

61. The 2011 Report found that the UK was not in a position to routinely provide status updates to the requesting parties when the requested information was not provided within 90 days of receipt of request. The report had also identified the reasons for the delay. These included the need for translation, complicated facts related to the request, miscommunication with the requesting jurisdiction and the procedure related to obtaining approval from

the Tribunal. The issues related to obtaining approval from the Tribunal have been mentioned earlier in this report too. Another issue that the 2011 Report identified was the reasons for which additional information was required of the requesting jurisdiction. These were related to translation issues, no obvious nexus or explanation of how the information requested was foreseeably relevant and insufficient background information where the approval of the Tribunal was required.

62. In its 12 month follow up report, the UK stated that it now has the necessary processes in place to provide status updates within 90 days. It was stated that a new database has been developed for the EOI team, delivered in March 2012 to ensure these status updates. It has been reported that this database has the facility to provide much improved reports for caseworkers and managers, allowing closer monitoring of timelines for all aspects of exchange of information. This includes providing reports of all requests received within a certain period and for which an interim report or status update has not been provided.

63. Since the initial assessment made during the combined review, the UK appears to have taken some measures to be able to provide status updates within 90 days. In particular, the development of a new database is a means to improve its administrative practices either by a closer monitoring of the different timelines or by being in a better position to provide update of status. Over the course of this review, inputs from peers were sought, but an in-depth examination of the UK's EOI practice has not been conducted. Neither is enough data available on this, nor has the assessment team received any peer input verifying the adequacy of the new arrangements. Given this scenario and the remaining uncertainties, the Phase 2 recommendation made in the 2011 Report is amended to reflect the steps taken and the need, for the UK, to monitor the new processes it has put in place to provide status updates within 90 days.

### **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.**

<b>Phase 2 rating</b>	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Data from peers shows that the UK does not routinely provide requesting parties with status updates when requested information is not provided within 90 days of receipt of the request. No peer input was received on the new processes that the UK has put in place.	The UK should <u>monitor the new processes that it has put in place to ensure</u> <del>ensure that it has the necessary processes in place to be</del> <u>that it is</u> able to provide status updates within 90 days.



## Summary of Determinations<sup>2</sup> 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>		
<b>Phase 1 determination: In place, but certain aspects of the legal implementation of the element need improvement.</b>	There may be a limited number of bearer shares in circulation at present but no instances of bearer shares were found in the course of the review. Nevertheless, the mechanisms in place to ensure the availability of information allowing for identification of their owners are insufficient.	The United Kingdom should either take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares or eliminate such shares.
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
<b>Phase 1 determination: In place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		

2. The ratings will be finalised as soon as a representative subset of Phase 2 reviews is completed.



Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
<b>Phase 1 determination:</b> In place.		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
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>		
<b>Phase 1 determination:</b> The element is in place.		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	The formal process to obtain information (other than information already in the possession of HMRC or information which is voluntarily provided to HMRC) is complex and on average takes 12 months to complete before information is provided to the requesting jurisdiction. This process unduly delays effective exchange of information.	The UK should ensure, building on the recent changes made to internal processes and the procedures introduced through para 5A to Schedule 36, that its procedure for accessing information is compatible with effective international exchange of information in tax matters.
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>		
<b>Phase 1 determination:</b> In place.		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i>		
<b>Phase 1 determination: The element is in place</b>		It is recommended that the UK continues its program of renegotiating the last of its older treaties which are not yet to the standard.
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
<b>Phase 1 determination: In place.</b>		The UK should continue to develop its EOI network to the standard with all relevant partners.
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
<b>Phase 1 determination: In place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
<b>Phase 1 determination: In place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
<b>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.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	Data from peers shows that the UK does not routinely provide requesting parties with status updates when requested information is not provided within 90 days of receipt of the request. No peer input was received on the new processes that the UK has put in place.	The UK should monitor the new processes that it has put in place to ensure that it is able to provide status updates within 90 days.

## **Annex 1: Jurisdiction’s Response to the Supplementary Review<sup>3</sup>**

The United Kingdom has chosen not to provide any comments.

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3. 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: Request for a Supplementary Report Received from the United Kingdom**

### **United Kingdom Peer Review: 12 Month Report by the UK**

In accordance with paragraph 57 of the Methodology, the United Kingdom (UK) submits this 12 Month Report on the recommendations of the combined Phase 1 and 2 UK Peer Review Report adopted in September 2011.

The Peer Review found that the UK had six of the ten essential elements “in place”. Three elements were found to be “in place but...” and one element was found to be “not in place”. Each of the four elements found to not be in place are commented on in detail below, along with the actions taken to address the recommendations.

In accordance with paragraph 58 of the Methodology, the UK requests a Supplementary Report to be prepared, for consideration of the Peer review Group (PRG), assessing the actions the UK has taken to address the recommendations.

### **Summary**

This 12 Month Report provides an update following the submission of the UK Intermediary Report in March 2012. It outlines the action the UK has taken to address the recommendations made in the UK Peer Review Report.

The Peer Review Report found that element A.1 was “in place but...” and recommended action to address issues associated with bearer shares. The UK is continuing to evaluate which measures are necessary to ensure that robust mechanisms are in place to identify owners of bearer shares.

The report also found that B.1 was “not in place” and C.1 was “In place but...”. The issues raised have been addressed through amendments to Schedule 36 of Finance Act 2008 which now provides the legal framework for the UK to fully meet its international exchange of information obligations.

The final element found to be “in place but...” was C.5 where the Report noted that processes needed to be put in place to be able to provide status updates within 90 days. This has been addressed through a comprehensive review of the UK’s entire exchange of information process to address any shortcomings and the implementation of a new exchange of information database for caseworkers and managers. This allows for closer monitoring and the provision of progress reports to jurisdictions making requests.

The detailed action taken to address each recommendation is listed below under the relevant headings.

The UK therefore requests that a Supplementary Report in prepared on the areas where action has been taken, for consideration of the PRG.

### **A.1 – Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.**

<b>Phase 1 determination</b>	<b>Factors underlying recommendations</b>	<b>Recommendations</b>
In place, but certain legal implementation of the element need improvement.	There may be a limited number of bearer shares in circulation at the present but no instances of bearer shares were found in the course of the review. Nevertheless, the mechanisms in place to ensure the availability of information allowing for identification of their owners are insufficient.	The UK should either take necessary measures to ensure that robust mechanisms are place to identify the owners of bearer shares or eliminate such shares.

#### **Action taken:**

The UK is continuing to evaluate which measures are necessary to ensure that robust mechanisms are in place to identify owners of bearer shares, in addition to the existing powers highlighted in the UK’s Intermediary Report. We do not have any information to suggest that the issue is any more significant than reflected in the UK’s Peer Review Report or Intermediary Report.

**B.1 – 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).**

Phase 1 determination	Factors underlying recommendations	Recommendations
Not in place.	The UK cannot currently use its statutory information gathering powers for international exchange of information purposes where the name of the taxpayer is not known.	The UK should ensure that there is a legal basis to access third party information for EOI purposes in line with the standard even in cases where the name of the taxpayer cannot be established.

**Action taken:**

The UK now has a legal basis to access third party information for information exchange purposes even in cases where the name of the taxpayer cannot be established. Schedule 36 of Finance Act 2008, gives HM Revenue and Customs (HMRC) the legal basis to access third party information where the name of the taxpayer is not known and there is serious prejudice to the assessment and collection of tax. With effect from 1 April 2012, this power was extended by Section 86 and Schedule 24 of Finance Act 2011, to include relevant foreign taxes. This applies regardless of whether the tax became due before, on, or after April 2012.

The Exchequer Secretary to the Treasury announced in 2011 that the UK would introduce legislation in 2012 to allow HMRC to exchange information to the international standard, as recommended in the Peer Review Report.

Section 224 of Finance Act 2012 accordingly amends Schedule 36 of Finance Act 2008. It provides a new statutory power allowing HMRC to require a data-holder to provide a person's name, address and date of birth, based on identifying information provided to the data-holder by HMRC. There is no requirement that there must be serious prejudice to the assessment and collection of tax. Establishing the full identity in this way enables HMRC to provide such information to a requesting overseas tax authority. If further information was requested from the UK it would be obtained through the existing formal information powers in Schedule 36 of Finance Act 2008.

The new power came into effect on Royal Assent of the Finance Act 2012, on 17 July 2012. Accordingly, the UK now has the legal basis to access third party information for exchange of information purposes in line with the standard, even in cases where the name of the taxpayer cannot be established.

Phase 1 determination	Factors underlying recommendations	Recommendations
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.	The formal process to obtain information (other than information already in the possession of HMRC of information which is voluntarily provided to HMRC) is complex and takes 12 months to complete before information is provided to the requesting jurisdiction. This process is unduly delays effective exchange of information.	The entire process for issuance of a formal notice to obtain information should be reviewed with a view to ensuring that it is compatible with effective international exchange of information.

### Action taken:

The entire UK process for issuance of a formal notice to obtain information has been reviewed to ensure it is compatible with effective international exchange of information. HMRC reviewed its entire information exchange process using “Pacesetter” (a set of principles HMRC uses to improve the way it works) to ensure it is compatible with the international standard on exchange of information. To inform the review, the caseworkers and managers in the Exchange of Information Team, supported by Pacesetter experts, mapped out the process from issuance of a formal notice, following the receipt of a request from a treaty partner, to providing the information. This has helped to identify common causes of delay, obstacles and potential improvements. As a result, the team has improved its monitoring of all cases requiring Schedule 36 procedures, recording timeliness for key stages and is striving to achieve continuous improvement.

Furthermore, the development of a new exchange of information database, which was delivered in March 2012, is further assisting caseworkers and managers in monitoring the progress of these cases.

Through implementing the changes above the UK’s information exchange process is fully compatible with effective international exchange of information.



### C.1 – Exchange of information mechanisms should allow for effective exchange of information.

Phase 1 Determination	Factors underlying recommendations	Recommendations
The element is in place, but certain aspects of the legal implementation of this element require improvement.	The UK has a very extensive network of EOI agreements. The legal framework in the UK does not however allow the terms of its agreements to be given full effect due to limitations in the UK's domestic laws which affect only one limited category of cases.	It is recommended that the UK enact necessary legislation which will enable it to comply with and give full effect to its EOI agreements.

#### Action taken:

The UK has enacted necessary legislation to comply with and give full effect to its exchange of information agreements. The response to the recommendation on B.1 (above) provides the detail on how the UK has addressed this recommendation. Legislation in Finance Act 2012 now allows HMRC to comply with and give full effect to the UK's exchange of information agreements.

Phase 1 Determination	Factors underlying recommendations	Recommendations
		It is recommended that the UK continues its program of renegotiating the last of its older treaties which are not yet to the standard.

#### Action taken:

The UK is continuing to keep its older treaties under review with a view to renegotiating them to ensure that they meet the international standard.

### C.5 – The jurisdiction should provide information under its network of agreements in a timely manner.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.	Data from the peer review shows that the UK does not routinely provide requesting parties with status updates when requested information is not provided within 90 days of receipt of the request.	The UK should ensure that it has the necessary processes in place to be able to provide status updates within 90 days.

#### Action taken:

The UK has the necessary processes in place to provide status updates within 90 days. A new database for the exchange of information team was developed and was delivered in March 2012 to ensure that status updates are provided within 90 days. This database has the facility to provide much improved reports for caseworkers and managers, allowing closer monitoring of timeliness for all aspects of exchange of information. This includes providing reports of all requests received within a certain period and for which an interim report or status update has not been provided. The UK therefore has the necessary processes in place to be able to provide status updates within 90 days.

HM Treasury  
7 September 2012

## Annex 3: List of All Exchange of Information Mechanisms

### EU regulation and multilateral agreements

64. The UK exchanges information under:
- **The new *EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation. This Directive is in force since 11 March 2011. It repeals Council Directive 77/799/EEC* of 19 December 1977 and provides *inter alia* for exchange of banking information on request for taxable periods after 31 December 2010 (Article 18). All EU members are required to transpose it into national legislation by 1 January 2013. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Cyprus<sup>4</sup>, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom;**
  - *EU Council Directive 2003/48/EC* of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in

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

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

accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states; and

- *OECD Convention on Mutual Administrative Assistance in Tax Matters and Amending Protocol*. The UK has ratified the Convention and signed the Protocol. The other parties are Azerbaijan, Belgium, Canada, Denmark, Finland, France, Georgia, Germany, Iceland, Ireland, Italy, Korea, Mexico, Moldova, Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Ukraine, United Kingdom and United States of which only Azerbaijan, Canada and Germany have not yet signed the Protocol which will come into force 1 June 2011.

### *Bilateral agreements*

	<b>Jurisdiction</b>	<b>Type of Eol arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
1	Anguilla	TIEA	20-07-09	17-02-11
2	Antigua and Barbuda	DTC	19-12-47	19-12-47
		Protocol	05-03-68	19-09-68
		TIEA	18-01-10	19-05-11
3	Argentina	DTC	03-01-96	01-08-97
4	Aruba	TIEA	05-11-10	
5	Australia	DTC	21-08-03	17-12-03
6	Austria	DTC	30-04-69	N/K
		Protocol	17-11-77	N/K
		Protocol	18-05-93	N/K
		Protocol	11-09-09	19-11-10
7	Azerbaijan	DTC	23-02-94	03-10-95
8	Bahamas	TIEA	29-10-09	07-01-11
9	Bahrain	DTC	10-03-10	
10	Bangladesh	DTC	08-08-79	08-07-90
11	Barbados	DTC	26-03-70	26-11-70
		Protocol	18-09-73	12-12-73
12	Belarus	DTC	31-07-85	30-01-86
		DTC	07-03-95	
13	Belgium	DTC	01-08-87	04-10-89
		Protocol	24-06-09	
14	Belize	DTC	19-12-47	19-12-47
		Protocol	08-04-68	08-03-69
		Protocol	12-12-73	12-12-73
		TIEA	25-03-10	
15	Bermuda	TIEA	04-12-07	10-11-08

	Jurisdiction	Type of Eol arrangement	Date signed	Date in force
16	Bolivia	DTC	03-11-94	23-10-95
17	Bosnia and Herzegovina	DTC	06-11-81	18-09-82
18	Botswana	DTC	09-09-05	04-09-06
19	British Virgin Islands	DTC	29-10-09	12-04-10
		TIEA	29-10-09	12-04-10
20	Brunei Darussalam	DTC	08-12-50	08-12-50
		Protocol	04-03-68	N/K
		Protocol	12-12-73	N/K
21	Bulgaria	DTC	16-09-87	28-12-87
22	Canada	DTC	08-09-78	18-12-80
		Protocol	07-05-03	04-05-04
23	Cayman Islands	DTC	15-06-09	20-12-10
24	Chile	DTC	12-07-03	21-12-04
25	China	DTC	26-07-84	23-12-84
26	Côte D'Ivoire	DTC	26-06-85	24-01-87
27	Croatia	DTC	06-11-81	16-09-82
28	Chinese Taipei	DTC	08-04-02	23-12-02
29	Curaçao <sup>5</sup>	TIEA	10-09-10	
30	Cyprus <sup>6</sup>	DTC	20-06-74	18-03-75
		Protocol	02-04-80	15-12-80
31	Czech Republic	DTC	05-11-90	20-12-91
32	Denmark	DTC	11-11-80	17-12-80
		Protocol	01-07-91	N/K
		Protocol	15-10-98	N/K
33	Dominica	TIEA	31-03-10	
34	Egypt	DTC	25-04-77	23-08-80

5. The count of 22 TIEAs includes Curaçao and St. Maarten but not the Caribbean part of the Netherlands which is a part of the Netherlands jurisdiction.
6. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

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

	<b>Jurisdiction</b>	<b>Type of Eol arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
35	Ethiopia	DTC	10-06-11	
36	Estonia	DTC	12-05-94	N/K
37	Falkland Islands (Malvinas)	DTC	17-12-97	18-12-97
38	Faroe Islands	DTC	20-06-07	03-06-08
39	Fiji	DTC	21-11-75	27-08-78
40	Finland	DTC	17-07-69	05-02-70
		Protocol	17-05-73	07-07-74
		Protocol	16-11-79	25-04-81
		Protocol	01-10-85	N/K
		Protocol	26-09-91	N/K
41	France	DTC	19-08-08	18-12-09
		Protocol	31-07-96	N/K
42	FYROM	DTC	08-11-06	02-08-07
43	Gambia	DTC	20-05-80	05-07-82
44	Georgia	DTC	13-07-04	11-10-05
		Protocol	04-02-10	17-12-10
45	Germany	DTC	30-03-10	30-12-10
46	Ghana	DTC	20-01-93	10-08-94
47	Gibraltar	TIEA	24-08-09	15-12-10
48	Greece	DTC	25-06-53	15-01-54
		DTC	04-03-49	04-03-49
		Protocol	25-07-88	14-12-88
49	Grenada	TIEA	31-03-10	
		DTC	24-06-52	24-06-52
		Protocol	14-12-94	03-01-95
		Protocol	20-01-09	27-11-09
50	Guernsey	TIEA	20-01-09	27-11-09
		DTC	31-08-92	18-12-92
		Protocol	21-06-10	20-12-10
51	Hong Kong, China	DTC	28-11-77	27-12-78
52	Hungary	DTC	30-09-91	19-12-91
53	Iceland	DTC	25-01-93	25-10-93
54	India	DTC	05-04-93	14-04-94
55	Indonesia	DTC	02-06-76	23-12-76
		Protocol	07-11-94	21-09-95
		Protocol	04-11-98	23-12-98

	<b>Jurisdiction</b>	<b>Type of Eol arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
58	Isle of Man	DTC	29-07-55	29-07-55
		Protocol	19-12-91	19-12-91
		Protocol	14-12-94	N/K
		Protocol	29-09-08	02-04-09
		TIEA	29-09-08	02-04-09
59	Israel	DTC	28-09-62	N/K
		Protocol	20-04-70	25-03-71
60	Italy	DTC	21-10-88	31-12-90
61	Jamaica	DTC	16-06-73	31-12-73
62	Japan	DTC	02-02-06	12-10-06
63	Jersey	DTC	24-06-52	24-06-52
		Protocol	14-12-94	N/K
		Protocol	10-03-09	27-11-09
		TIEA	10-03-09	27-11-09
64	Jordan	DTC	22-07-01	24-03-02
65	Kazakhstan	DTC	21-03-94	15-12-96
		Protocol	18-09-97	02-11-98
66	Kenya	DTC	31-07-73	N/K
		Protocol/EoN	20-01-76	30-09-77
67	Kiribati	Protocol	10-05-50	10-05-50
		Protocol	04-03-68	23-10-68
		DTC	25-07-74	25-07-74
68	Korea (South)	DTC	25-10-96	30-12-96
69	Kuwait	DTC	21-07-99	01-07-00
70	Latvia	DTC	08-05-98	30-12-98
71	Lesotho	DTC	17-12-97	23-12-97
72	Liberia	TIEA	01-11-10	
73	Libya	DTC	17-11-08	08-03-10
74	Liechtenstein	TIEA	11-08-09	02-12-10
75	Lithuania	DTC	19-03-01	28-11-02
		Protocol	21-05-02	28-11-02
76	Luxembourg	DTC	24-05-67	12-07-68
		Protocol	18-07-78	N/K
		Protocol	28-01-83	N/K
		Protocol	02-07-09	28-04-10
77	Malawi	DTC	25-11-55	25-11-55
		Protocol	12-07-68	13-09-68
		Protocol	10-02-78	14-03-79

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
78	Malaysia	DTC	17-12-97	08-07-98
		Protocol	22-09-09	28-12-10
79	Malta	DTC	12-05-94	27-03-95
80	Mauritius	DTC	11-02-81	19-10-81
		Protocol	23-10-86	N/K
		Protocol	27-03-03	22-10-03
		Protocol	10-01-11	
81	Mexico	DTC	02-06-94	15-12-94
		Protocol	23-04-09	18-01-11
82	Moldova	DTC	08-11-07	30-10-08
83	Mongolia	DTC	23-04-96	04-12-96
84	Montenegro	DTC	06-11-81	16-09-82
85	Montserrat	DTC	19-12-47	19-12-47
		Protocol	06-04-68	04-12-68
		Protocol	09-12-09	
86	Myanmar	DTC	13-03-50	13-03-50
		Protocol	04-04-51	04-04-51
87	Morocco	DTC	08-09-81	29-11-90
88	Namibia	DTC	28-05-62	19-12-62
		Protocol	14-06-67	27-11-67
89	Netherlands	DTC	26-09-08	25-12-10
		TIEA <sup>7</sup>	10-09-10	
90	New Zealand	DTC	04-08-83	16-03-84
		Protocol	04-11-03	23-07-04
		Protocol	07-11-07	28-08-08
91	Nigeria	DTC	09-06-87	27-12-87
92	Norway	DTC	12-10-00	21-12-00
93	Oman	DTC	23-02-98	09-11-98
		Protocol	26-11-09	09-01-11
94	Pakistan	DTC	24-11-86	08-12-87
95	Papua New Guinea	DTC	17-09-91	20-12-91
96	Philippines	DTC	10-06-76	22-01-78
97	Poland	DTC	20-07-06	27-12-06
98	Portugal	DTC	27-03-68	17-01-69
99	Qatar	DTC	25-06-09	15-10-10
		Protocol	20-10-10	

7. See footnote 5 regarding Curaçao, Sint Maarten and the Caribbean part of the Netherlands.



	<b>Jurisdiction</b>	<b>Type of Eol arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
100	Romania	DTC	18-09-75	21-11-76
101	Russian Federation	DTC	15-02-94	18-04-97
102	Saint Kitts and Nevis	DTC	19-12-47	19-12-47
		TIEA	18-01-10	19-05-11
103	Saint Lucia	TIEA	18-01-10	19-05-11
104	Saint Vincent and the Grenadines	TIEA	18-01-10	19-05-11
105	San Marino	TIEA	16-02-10	
106	Saudi Arabia	DTC and Protocol	31-10-07	01-01-09
107	Serbia	DTC	06-11-61	16-09-82
108	Sint Maarten <sup>8</sup>	TIEA	10-09-10	
109	Sierra Leone	DTC	19-12-47	19-12-47
		Protocol	18-03-68	16-01-69
110	Singapore	DTC	12-02-97	19-12-97
		Protocol	24-08-09	08-01-10
111	Slovak Republic	DTC	05-11-90	20-12-91
112	Slovenia	DTC	13-11-07	11-09-08
113	Solomon Islands	DTC	10-05-50	10-05-50
		Protocol	08-04-68	24-01-69
		Protocol	25-07-74	25-07-74
114	South Africa	DTC	04-07-02	17-12-02
		Protocol	08-11-10	
115	Spain	DTC	21-10-75	N/K
		DTC	15-03-95	N/K
116	Sri Lanka	DTC	21-06-79	21-05-80
117	Sudan	DTC	08-03-75	08-10-77
118	Swaziland	DTC	26-11-68	18-03-69
119	Sweden	DTC	30-08-83	26-03-84
120	Switzerland	DTC	08-12-77	N/K
		Protocol	05-03-81	10-05-82
		Protocol	17-12-93	19-12-94
		Protocol	26-06-07	22-12-08
		Protocol	07-09-09	15-12-10
121	Tajikistan	DTC	31-07-85	18-04-97
122	Thailand	DTC	18-02-81	20-11-81
123	Trinidad and Tobago	DTC	31-12-82	22-12-83

8. See footnote 5 regarding Curaçao, Sint Maarten and the Caribbean part of the Netherlands.

	<b>Jurisdiction</b>	<b>Type of Eol arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
124	Tunisia	DTC	15-12-82	20-01-84
125	Turkey	DTC	19-02-86	26-10-88
126	Turkmenistan	DTC	31-07-85	30-01-86
127	Turks and Caicos Islands	TIEA	22-07-09	25-01-11
128	Tuvalu	DTC	10-05-50	10-05-50
		Protocol	04-03-68	23-10-68
		Protocol	25-07-74	25-07-74
129	Uganda	DTC	23-12-92	21-12-93
130	Ukraine	DTC	10-02-93	11-08-93
131	United States	DTC	24-07-01	19-07-02
		Protocol	19-07-02	31-03-03
132	Uzbekistan	DTC	15-10-93	10-06-94
133	Venezuela	DTC	11-03-96	31-12-96
134	Vietnam	DTC	09-04-94	15-12-94
135	Zambia	DTC	22-03-72	29-03-73
		Protocol	30-04-81	14-01-83
136	Zimbabwe	DTC	19-10-82	11-02-83

## **Annex 4: List Of All Laws, Regulations and Other Material Received**

### **Request for supplementary report**

Intermediary report of March 2012

Combined Phase 1 and 2 Peer Review – 12 month Follow-up actions  
taken on recommendations (September 2012)

### **Amended legislation**

Amendments to Schedule 36 of the Finance Act, 2008 by the Finance Act,  
2011

Amendments to Schedule 36 of the Finance Act, 2008 by the Finance Act,  
2012