

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

FEDERATION OF SAINT KITTS AND NEVIS

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Federation of Saint Kitts and Nevis 2014

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

August 2014
(reflecting the legal and regulatory framework
as at May 2014)

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Please cite this publication as:

OECD (2014), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Federation of Saint Kitts and Nevis 2014: Phase 2: Implementation of the Standard in Practice*, OECD Publishing.
<http://dx.doi.org/10.1787/9789264217799-en>

ISBN 978-92-64-21778-2 (print)
ISBN 978-92-64-21779-9 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: www.oecd.org/publishing/corrigenda.

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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 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in St. Kitts and Nevis together with the practical implementation of that framework.
2. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners. The assessment of effectiveness in practice has been performed in relation to a three year period (1 July 2010 to 30 June 2013).
3. St. Kitts and Nevis is a federation and consists of two islands. Since 2005, the main drivers of the economy are real estate, renting and business; construction; financial services; wholesale and retail trading; manufacturing and tourism. The Federation of St. Kitts and Nevis' Constitutional framework provides for each island to develop legislative and administrative structures and procedures to govern the financial services and domestic corporate and commercial sectors. However, federal legislation (applicable in both St. Kitts and Nevis) governs the exchange of information for tax purposes, mutual exchange of information for criminal matters, anti-money laundering and corporate tax matters.
4. In respect of the availability of ownership and identity information, there are sufficient obligations in place to ensure the availability of this information. The obligations imposed directly on entities and arrangements are complemented by the anti-money laundering rules, which apply to licensed service providers and persons carrying on financial services business, including nominees and professional trustees. These rules impose additional record-keeping requirements for relevant information which is available for the exchange of information for tax purposes. Monitoring of compliance with AML obligations is conducted by the Financial Services Regulatory Commission (FSRC), which has an operative branch on both islands. Supervision and monitoring of licensees' compliance with AML

requirements is conducted on a risk-based approach and in accordance with an on-site inspection plan in both islands. During the three-year review period the regulator only conducted on-site inspections of a limited portion of the licensees. For entities conducting business in the Federation, monitoring of the obligation to maintain ownership information is conducted by the Inland Revenue Department in relation to licensing and during tax audits.

5. As concerns accounting records, the laws governing relevant entities established in St. Kitts and Nevis have been recently amended and brought in line with the international standard. As to bank information, the combination of the anti-money laundering rules and licensing requirements generally impose appropriate obligations to ensure that all records pertaining to account holders, as well as related financial and transaction information, are available. The Inland Revenue Department monitors compliance with obligations to maintain accounting records imposed on entities that conduct business in the Federation during tax audits. Tax audits are conducted on a risk-based approach and in accordance with the National Audit Plan. The FSRC also has powers to supervise and monitor compliance with these obligations. However, there are no oversight programmes in place to efficiently monitor compliance with the obligation to maintain accounting records for exempt companies, NBCs, LLCs, exempt LPs or trusts in St. Kitts and Nevis.

6. In respect of access to information, the competent authority of St. Kitts and Nevis has broad powers to gather relevant information. These powers are exercised predominately by issuing notices to require the production of relevant information and are complemented by powers, which are overseen by a court, to search premises and seize information as well as to compel oral testimony. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. Secrecy provisions in domestic laws are overridden where information is required for EOI purposes, and a domestic tax interest requirement is excluded. St. Kitts and Nevis' practical experience with obtaining information for EOI purposes is limited. During the three-year review period, the competent authority of St. Kitts and Nevis only received four requests (one of which was processed by the Financial Intelligence Unit (FIU), upon the request of the competent authority). A final response has been provided in all four cases and are now considered closed.

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

8. St. Kitts and Nevis' network for exchange of information is multi-form, comprising bilateral, multilateral and unilateral mechanisms covering

a total of 34 partner jurisdictions. The agreements generally follow the OECD Model TIEA, and meet the international standard. In addition, St. Kitts and Nevis is a party to the multilateral CARICOM agreement together with ten other members of that organisation.

9. Over the three-year review period, ending 30 June 2013, St. Kitts and Nevis received four requests for information from two partners. Three of the requests related to criminal tax matters occurring before the entry into force date of the applicable TIEA. One of these cases was handled by the FIU due to the urgency of the request. In the three other cases, a final response has been provided by the competent authority.

10. St. Kitts and Nevis has committed resources and introduced organisational processes for handling exchange of information. To ensure adequate processing of incoming requests, the competent authority of St. Kitts and Nevis has prepared an EOI manual outlining the procedures for handling such requests. The EOI Unit is adequately staffed and trained for handling incoming requests, based on the number of requests received to date, and measures are taken to ensure that confidentiality is maintained when handling an EOI request. St. Kitts and Nevis has limited experience in EOI on request, and in two of the four requests received during the review period, some delays occurred when processing the requests primarily on account of a difference in interpretation of the TIEAs between it and the requesting jurisdiction. St. Kitts and Nevis is therefore recommended to continue to monitor the handling of incoming requests to ensure that comprehensive replies are provided in a timely manner to its partners.

11. St. Kitts and Nevis has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 2 determinations and any recommendations made in respect of St. Kitts and Nevis' legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, St. Kitts and Nevis has been assigned the following ratings: Compliant for elements A.3, B.1, B.2, C.1, C.2, C.3 and C.4 and Largely Compliant for elements A.1, A.2 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for St. Kitts and Nevis is Largely Compliant.

12. A follow up report on the steps undertaken by St. Kitts and Nevis to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

Introduction

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

13. The assessment of the legal and regulatory framework of St. Kitts and Nevis as well as its practical implementation and effectiveness were based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and were prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment has been conducted in two stages: Phase 1, performed in 2011, assessed St. Kitts and Nevis' legal and regulatory framework for the exchange of information, while Phase 2, performed in 2013/2014, looked at the practical implementation of that framework over a three year period (1 July 2010 to 30 June 2013), as well as any amendments made to the legal and regulatory framework since the Phase 1 review (a list of relevant laws and regulations is set out in Annex 3). The assessment was, therefore based on the laws, regulations, and exchange of information mechanisms in force or effect as of 23 May 2014. It reflects St. Kitts and Nevis' response to the Phase 1 and Phase 2 questionnaires, supplementary questions and other materials supplied by St. Kitts and Nevis, information supplied by exchange of information partner jurisdictions and explanations provided by St. Kitts and Nevis during the on-site visit that took place in December 2013. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance (including the EOI Unit), the Financial Services Regulatory Commission, the Eastern Caribbean Central Bank, the Ministry of Justice and Legal Affairs and the Inland Revenue Department. A list of all those interviewed during the on-site visits is attached to this report at Annex 6.

14. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses St. Kitts and Nevis' legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a

determination is made that either (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened. In addition, to reflect the Phase 2 component, recommendations are made concerning St. Kitts and Nevis' practical application of each of the essential elements and a rating of either (i) Compliant, (ii) Largely Compliant, (iii) Partially Compliant, or (iv) Non-Compliant is assigned to each element. As outlined in the Note of Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the Standard (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

15. The Phase 1 assessment was conducted by an assessment team which consisted of two expert assessors: Mr Hasan Halil Gonul, Head of Group, Presidency of Revenue Administration, Ministry of Finance of Turkey and Mr Robert Gray, Director of Income Tax, States of Guernsey Income Tax; and one representative of the Global Forum Secretariat: Mrs Renata Fontana. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in St. Kitts and Nevis.

16. The Phase 2 assessment was conducted by an assessment team which consisted of two expert assessors: Mr Robert Gray, Director of Income Tax, States of Guernsey Income Tax and Mr Cumhuri Inan Bilen, Tax Inspector, Turkish Tax Inspection Board; and one representative of the Global Forum Secretariat: Ms Ingebjørg Brekka. During the process Mr Cumhuri Inan Bilen left his position at the Turkish Tax Inspection Board and was replaced by Mr Halil Cagdas Baran, Chief Tax Inspector, Turkish Tax Inspection Board. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in St. Kitts and Nevis.

Overview of St. Kitts and Nevis

Governance, economic context and legal system

17. St. Kitts and Nevis is a federation of two islands with a combined area of about 269 km² and a population of 46 398 (2011 census), of which roughly 75% resides in St. Kitts. The Federation is situated about 362 km southeast of Puerto Rico in the Eastern Caribbean. Basseterre is the capital of St. Kitts and the administrative capital of the Federation. Charlestown is the capital of Nevis. English is the official language. The currency is the East Caribbean dollar (XCD) which has been pegged to the US dollar since 1976 at a rate of XCD 2.70 to USD 1.00.

18. The economy of St. Kitts and Nevis was traditionally based on the manufacturing of sugar but decreasing world prices negatively affected the industry, hence its closure in 2005. Since that time, the main drivers of the economy are real estate, renting and business; construction; financial services; wholesale and retail trading; manufacturing and tourism. Together, these activities account for approximately 78% of the Federation's Gross Domestic Product (GDP) over the five year period 2008-12. In the past, St. Kitts and Nevis had a fairly good track record of economic growth, but this was adversely affected by the global financial and economic crisis. Consequently, during the period 2009 to 2012, real GDP contracted by an annual average of 2.6%. The economy turned around in 2013 with an estimated growth rate of 3.8%. In the fiscal year ending in 2013, St. Kitts and Nevis' GDP was approximately XCD 2.064 million (USD 764.44 million). Net foreign direct investment was approximately XCD 423.3 million (USD 156.7 million). Total assets held by the Eastern Caribbean Central Bank (ECCB) was approximately XCD 3 717.6 million (USD 1 376.8 million) and total assets held by commercial banks in St. Kitts and Nevis by the end of the fiscal year 2013 was approximately XCD 6 005.1 million (USD 2 224.1 million).¹

19. The main trading partners of St. Kitts and Nevis are the United States, other CARICOM countries (in particular, Trinidad and Tobago) and the United Kingdom.² Foreign direct investments in St. Kitts and Nevis are mostly made by entities from Canada and the United States.

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

21. The head of state is the British Monarch who is represented in St. Kitts by a Governor General. The Prime Minister is appointed by the Governor General as the member of the House of Assembly best able to command the support of the majority of the members. The executive authority is vested in the Prime Minister and Cabinet, which is usually selected from his party members in the Federal legislature. The unicameral legislature consists of 15 members, of which 11 members are popularly elected at general elections due every five years, and four are appointed.

-
1. The ECCB serves the eight countries in the Eastern Caribbean Currency Union.
 2. Based on trade information for 2012, the United States continues to be the main source of imports into St. Kitts and Nevis (63.5%), followed by Trinidad and Tobago (6.2%) and the United Kingdom (4.4%). The United States is also the main market for exports from St. Kitts and Nevis (85.1%), followed by Trinidad and Tobago (1.7%) and the United Kingdom (0.1%).

22. As a common law jurisdiction where the Federation’s statutes follow on English law statute, the interpretation and precedent of the English Courts is of persuasive authority in the Federation’s Court but will yield to decided authority of the Federation’s Court. The hierarchy of laws in the Federation are as follows:

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

23. The Constitution grants significant autonomy to the island of Nevis which has a semi-autonomous Nevis Island Administration and a Deputy Governor-General who names the Premier.³

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

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

St. Kitts

25. The Companies Act (CAP 21.03) sets out the requirements necessary for bodies corporate to be formed and registered in St. Kitts. Exempt (international) or ordinary (domestic) companies may be formed under this

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

act. Exempt companies are primarily formed to conduct business outside the Federation and are not allowed to conduct business with residents, while ordinary companies are not subject to such restrictions. Failure to adhere to this requirement would result in a loss of the company's tax exemption status. Companies may be limited by guarantee, limited by shares or limited by both shares and guarantee.

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

27. In St. Kitts, there are currently two types of partnerships: (i) general partnerships, and (ii) limited partnerships (exempt and domestic). General partnerships have no legal personality and are not subject to registration in St. Kitts. However, if a general partnership performs a financial services business it is required to obtain a corporate service provider licence and will be regulated by the FSRC. Under the Unincorporated Business Tax Act No. 5 of 2010, they are required to pay taxes and to file returns. The establishment and registration of limited partnerships (exempt and domestic) in St. Kitts is governed by the Limited Partnerships Act (CAP 21.12). The Trusts Act (CAP 5.19) provides for the requirements for the registration of trusts, while the Foundations Act (CAP 21.19) sets out the requirements for the establishment and registration of foundations in St. Kitts.

Nevis

28. In Nevis, local (domestic) companies can be incorporated under the Companies Ordinance (CAP 7.06). Local companies can be categorised as public, private/profit, non-profit and external companies. Corporations limited by shares (NBCs) and limited liability companies (LLCs) can be incorporated respectively under the Nevis Business Corporation Ordinance (CAP 7.01) and the Nevis Limited Liability Company Ordinance (CAP 7.04). They are formed primarily for the carrying on of business outside of Nevis and are exempt from tax provided that they do not do business therein.

29. The Nevis International Exempt Trust Ordinance (CAP 7.03) provides for the registration of international trusts, spend-thrift or protective trusts and charitable trusts. The Multiform Foundations Ordinance (CAP 7.08) provides for the registration of multiform foundations.

Federation

30. Federal legislation (applicable in both St. Kitts and Nevis) governs the exchange of information for tax purposes, mutual exchange of information for criminal matters, anti-money laundering and corporate tax matters. The St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act (CAP 20.60) was enacted to designate the Financial Secretary as the Tax Co-operation Authority for the purposes of facilitating exchange of information requests submitted through scheduled Tax Information Exchange Agreements (TIEAs) and Double Taxation Conventions (DTCs). The Financial Secretary is therefore the sole dedicated channel in the Federation for international co-operation on matters involving the provision of tax-related information.

31. A treaty negotiation team has been put together, in charge of DTC and TIEA negotiations, and an EOI Unit is set up within the Ministry of Finance to handle incoming EOI requests. To ensure adequate processing of incoming requests, an EOI manual setting out the procedures for handling requests in practice has been prepared and is being used when processing incoming requests.

32. St. Kitts and Nevis' oldest EOI arrangement was signed with Switzerland in 1963 (i.e. before independence) and the most recent with Guernsey in January 2012. Its EOI network now encompasses 34 jurisdictions. St. Kitts and Nevis is a party to the multilateral CARICOM agreement together with ten other members of that organisation. As a member country of the Global Forum, St. Kitts and Nevis is an active participant in discussions on all new developments in areas related to EOI.

General information on the taxation system

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

34. The administration of income tax is governed by the Income Tax Act (CAP 20.22), the Tax Administration and Procedures Act (CAP 20.52) and the Nevis Tax Administration and Procedures Ordinance (CAP 6.11(N)). All resident corporations (incorporated or with the place of management and control in St. Kitts and Nevis) are taxed on their worldwide income at the rate of 33% regardless of the amount (s. 3, Income Tax Act). External (foreign) companies which operate in the Federation must be registered with the Registrar of

Companies and must pay corporation tax on locally sourced income, as well as a tax on branch profits remittance.

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

Overview of the financial sector and relevant professions

36. The Federation's financial sector is comprised of the following entities: commercial banks, mutual funds, captive, international and domestic insurance companies, companies and partnerships, trusts, foundations and ship registration. As of November 2013, there were 28 licensed financial institutions operating in St. Kitts (5 domestic banks, 1 of which is a branch of one of the Nevis domestic banks, 13 domestic insurance companies, 1 development bank, 6 money services business, and 3 credit unions) and 20 licensed financial institutions operating in Nevis (5 domestic banks, 3 of which are branches of the St. Kitts domestic banks, 1 offshore bank, 4 money services business, 2 credit unions of which 1 is a branch of a credit union in St. Kitts, 2 mutual fund administrators/managers and 6 agencies of the domestic insurance companies in St. Kitts).

37. In addition, there were 1 457 ordinary companies, 1 977 exempt companies, 178 exempt captive insurance companies, 13 limited partnerships, 54 trusts and 487 foundations registered in St. Kitts. In Nevis, there were 614 local companies, 11 661 corporations, 5 134 limited liability companies, 271 international insurance companies, 908 international exempt trusts and 94 multiform foundations.

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

39. The Anti-Money Laundering Regulations No. 46 of 2011 (AML Regulations), the Anti-Terrorism (Prevention of Terrorist Financing) Regulations No. 47 of 2011 (ATR Regulations) and the Financial Services (Implementation of Industry Standards) Regulations No. 51 of 2011 (Guidance Notes) were issued, pursuant to section 67(1) of the Proceeds of Crime Act

of 2000 (CAP 4.28), to prescribe identification procedures, record-keeping procedures and internal reporting procedures, which are to be maintained by any person carrying on regulated business for the purposes of forestalling and preventing money laundering.

40. Authorised persons who are licensed to conduct corporate or trust business (domestic and exempt) must be licensed under the Financial Services Regulations Order (Revised Seventh Schedule to the Companies Act) and are regulated by the Financial Services Regulatory Commission. As of November 2013, there were 118 licensed service providers in the Federation; 72 licensed to operate in St. Kitts and 46 in Nevis. In addition, all regulated businesses are required to adhere to the AML Regulations and the Guidance Notes where obtaining customer identification and maintaining records are concerned.

Recent developments

41. In 2012, the Tax Administration and Procedures Act was amended to explicitly require partnerships carrying on business in the Federation to maintain underlying documents for a period of at least five years. Section 9 of the Act was also amended so that partnerships, along with other legal entities, that do not comply with the requirement to maintain adequate accounting records commit an offence and would be liable to a fine not exceeding XCD 25 000 in the case of an individual or XCD 50 000 in the case of a legal entity, partnership or other body.

42. In May 2012, amendments were made to the St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act introducing exemptions from prior notification obligations. A waiver of the requirement for notification is now allowed in cases where the request is urgent or where prior notification would seriously undermine the investigation of the requesting jurisdiction. In any event, it should be noted that the requirement to notify the taxpayer of an incoming request only applies in civil tax matters, and not if the request is made in respect of a criminal tax matter.

43. Additional amendments to the St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act were passed by the National Assembly in September 2013 in relation to retroactivity in criminal tax matters.

44. All these amendments are further discussed in the body of the report.

Compliance with the Standards

A. Availability of Information

Overview

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

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

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

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

48. In respect of accounting information, the laws governing relevant entities established in St. Kitts and Nevis were amended in March 2011 and brought in line with the international standard. General partnerships that carry on business in the Federation are subject to similar record-keeping obligations under the applicable tax laws.

49. The monitoring of compliance with obligations to keep ownership information and accounting records in St. Kitts and Nevis is mainly conducted by the Financial Services Regulatory Commission (FSRC) which has branches in St. Kitts and in Nevis. Monitoring is carried out through a system of supervision of registered agents or licensed service providers. Off-site and on-site inspections of service providers/registered agents are conducted on a risk-based approach and in accordance with the on-site inspection plan in both islands. During the three-year period under review, the FSRC conducted 30 on-site inspections of which 17 were of licensed service providers or registered agents, covering approximately 14.4 % of the licensed service providers/registered agents operating in the Federation. St. Kitts and Nevis has reported that compliance with customer due diligence requirements is generally found to be high, giving assurance that ownership information is available in most cases. Nonetheless, taking into account the limited portion of licensed service providers/registered agents monitored during the period under review, St. Kitts and Nevis should take measures to ensure the availability of ownership information in all cases.

50. In addition to the monitoring of financial services and anti-money laundering requirements conducted by the FSRC, the obligation to keep ownership information is to some extent monitored by the various registrars (see A.1.1, A.1.3, A.1.4 and A.1.5). The monitoring conducted by the Registrars is generally desktop monitoring through systems of annual returns and forms sent to the Registrar when changes occur. In some cases, the Inland Revenue Department will also monitor compliance with the obligations to keep ownership information and accounting records if the entity is subject to tax within the Federation (e.g. during a tax audit). This is conducted by way of audits and through the system of licensing of entities conducting business in the Federation.

51. There are no oversight programmes in place to efficiently monitor compliance with the obligation to maintain accounting records for exempt

companies, NBCs, LLCs and exempt LPs in St. Kitts and Nevis. St. Kitts and Nevis should ensure that there is effective oversight of the legal obligations on exempt companies, NBCs, LLCs and exempt LPs to ensure the availability of accounting records in all cases.

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

53. All commercial banks in the Federation are closely monitored by the Eastern Caribbean Central Bank (ECCB). Off-site and on-site inspections are conducted based on a risk-based approach. On-site inspections are conducted to evaluate the overall financial condition of a financial institution which includes checking whether the proper system and reporting mechanisms are in place with regards to customer due diligence requirements. In practice, compliance with customer due diligence requirements is found to be high.

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.

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

55. The monitoring and supervision of the obligations imposed on these entities and their service providers (where applicable) is mainly conducted by the FSRC. The FSRC is the ultimate regulatory body for non-bank financial services and for anti-money laundering and countering the financing of terrorism in the Federation. The FSRC is divided into two branches one operating on each island. In addition to general monitoring of relevant entities, the FSRC also hosts the Registrar of Companies (St. Kitts), the Registrar of Trusts (St. Kitts), the Registrar of Foundations (St. Kitts), the Registrar of Limited Partnerships (St. Kitts), the Registrar of Non-Governmental Organizations (St. Kitts), the Registrar of Insurance (St. Kitts), the Registrar of Captive Insurance (St. Kitts), the Registrar of Offshore Companies and Trusts (Nevis), the Registrar of Foundations (Nevis), and the Registrar of International Insurance (Nevis). Additionally, the Companies Registry, Legal Department (Nevis) hosts the Registrar of Companies who is responsible for the registration of domestic companies in Nevis.

Companies (ToR A.1.1)

Types of companies

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

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

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

58. Such companies may be either private or public. In addition, they may also be classified as ordinary (domestic) or exempt (international). As of November 2013, there were 1 457 ordinary companies (1 433 limited by shares and 24 limited by guarantee), 1 977 exempt companies and 178 captive insurance companies registered in St. Kitts.

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

- local (domestic) companies formed under the Companies Ordinance (CAP 7.06);
- corporations limited by shares (NBCs) formed under the Nevis Business Corporation Ordinance (CAP 7.01); and
- limited liability companies (LLCs) formed under the Nevis Limited Liability Companies Ordinance (CAP 7.04).

60. Local companies may be either private or public. NBCs and LLCs are formed primarily for the carrying on of business outside of Nevis and are exempt from tax provided that they do not do business therein. As of November 2013, there were 614 local companies (558 profit and 56 non-profit), 11 661 NBCs, 5 134 LLCs and 271 international insurance companies registered in Nevis.

61. All ordinary companies registered in St. Kitts under the Companies Act and local companies (with the exception of non-profit companies) registered in Nevis under the Companies Ordinance are subject to income tax imposed under the Income Tax Act (CAP 20.22).⁴ Conversely, exempt companies established in

4. Domestic companies are assigned a tax identification number (s.5, Tax Administration and Procedures Act of 2003 and s.5, Tax Administration and

St. Kitts or in Nevis (i.e. exempt (international) companies, NBCs and LLCs) are exempt from all income, capital gains and withholding taxes, as well as stamp duties, provided they do not conduct business with residents of St. Kitts and Nevis (ss.207(1) and 208, Companies Act, s. 12(9), Nevis Business Corporation Ordinance and s. 3, Nevis Limited Liability Companies Ordinance).

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

Domestic and exempt companies

St. Kitts

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

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

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

66. Furthermore, every company incorporated or registered under the Companies Act is required to be registered at the Registrar of Companies

(Procedures Ordinance of 2007) and are required to file corporation tax returns with the Tax Comptroller, Inland Revenue Department, a department of the Ministry of Finance in St. Kitts and Nevis (s. 31(1)(b) and s. 48, Income Tax Act).

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

67. The majority of companies registered in St Kitts are registered by licensed service providers. As stated above, all exempt companies must be represented by a licensed service provider. For ordinary companies there are no such requirements, however, in practice most of them are (as of June 2013 only 96 companies (approximately 6.59 % of all domestic companies) registered in the register of companies were not registered by a service provider). The FSRC as part of the monitoring of the registered service providers (see section on *Anti-Money Laundering laws* below) will examine compliance with the service providers' obligations to maintain ownership information of its customer.

68. In practice, when the owners of a private ordinary company register such companies without using the services of a licensed service provider to register the company, the Registrar checks the identity of the initial owner presented in the registration form. To register a company, the applicant has to go to the office of the Registry in person. If the company is being registered by a licensed service provider, copies of the initial owner's identification documents should be maintained at the office of the licensed service provider. Compliance with this obligation is monitored by the FSRC as part of an on-site inspection of the licensed service provider (see section on *Anti-Money Laundering laws* below). The Registrar also checks that all information required to be filed upon incorporation is received before issuing a unique identification number to the company and finishing the registration process. The files maintained on the company by the Registrar are available to members of the public.

69. Once a year, about one month before the annual statement has to be filed, the Registrar of Companies sends out a reminder to all registered companies to ensure that they file the annual return on time. Statistics show that, during the period 2011-13 only approximately 23.4% of all exempt companies and 39.7% of all domestic companies on average complied with the obligation to file annual returns with the Registrar of Companies. The authorities of St. Kitts and Nevis have explained that sanctions for not complying with the obligation to file annual returns on time are imposed on all companies

in the form of a late filing fee. In addition to late filing fees, the authorities of St. Kitts and Nevis have indicated that during the review period, 206 companies (of which 61 were registered as ordinary companies and 145 as exempt companies) were struck from the register of companies as a result of non-compliance with the obligation to file annual returns (see section A.1.6 below). If the annual returns reflect any changes in directorship or secretaries, and in the case of ordinary companies, changes in shareholders, the Registrar checks that these changes also are reflected in the form required to be filed with the Registrar when the change occurred and that this was filed on time. The accuracy of the information provided in the annual return on shareholders is checked by the FSRC during an on-site inspection of the licensed service provider, if any, and by the Inland Revenue Department when conducting a tax audit (see below).

70. Registration and filing of annual returns are paper based but the information is copied into the computer files by the Registrar. The files kept by the Registrar on the company are available for search by the public. As of March 2013 a new computer system that allows the Registrar and the Inland Revenue Department to communicate with each other has been put in place. From March 2013, this system automatically alerts the Inland Revenue Department when a new company is registered with the Registrar of Companies. Companies that were registered before March 2013 are registered in the old system but details of these companies are currently being entered in the new system. Domestic companies doing business within the Federation also have to obtain a business licence. Application to do business in the Federation is granted by the Ministry of Finance and issued by the Inland Revenue Department. This process ensured that the Inland Revenue Department was, in practice, informed about all companies licensed to do business in the Federation even before the new computer system was in place. The authorities of St. Kitts and Nevis have explained that the Inland Revenue Department requires all companies to disclose ownership information before issuing such licence. Such ownership information is kept on the companies taxpayer files by the Inland Revenue Department and is updated once a year upon renewal of the business license.

71. When the Inland Revenue Department is alerted that a new company has been registered by the Registrar, the computer system automatically assigns the company a Tax Identification Number (“TIN”). Once the company has been assigned such a TIN, and is registered in the Inland Revenue Department’s tax records, the Inland Revenue Department will contact the company to obtain a copy of relevant documents required for tax purposes and to initiate contact between the taxpayer and the tax authorities. The Inland Revenue Department’s Tax Service Team strives to contact and visit all new companies to inform them about the tax obligations and filing requirements under domestic law.

72. In addition to the desk top monitoring conducted by the Registrar of Companies described above, the authorities in St. Kitts and Nevis have confirmed that when an ordinary company is selected for a tax audit, the ownership information is verified as part of the profile of the legal entity by the tax auditor. Inland Revenue Department St. Kitts branch conducted 240 tax audits in 2011, 213 in 2012 and 213 audits in 2013. For exempt companies, monitoring of compliance with the obligation to maintain an updated register of owners in St. Kitts is conducted by the FSRC as part of the monitoring of the licensed service providers' compliance with AML obligations (see section on *Anti-Money Laundering laws* below).

73. Under the Companies Act, the Registrar of Companies also has the power to inspect and investigate any company if it is suspected of not complying with the obligations imposed on it under the Companies Act. In practice, this power would only be used if the Registrar were alerted that the company did not comply with its obligations or was found to have provided false information to the Registrar. The whistle-blower system allows the Registrar to investigate the company, but a whistle-blower that wishes for the company to be investigated would have to pay for such investigation to be conducted (s. 129(3)).

74. During the period under review, St. Kitts and Nevis did not receive any EOI requests asking for ownership information of ordinary or exempt companies.

Nevis

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

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

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

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

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

80. Additionally, all NBCs and LLCs incorporated and organised under such ordinances must, at all times, have a registered agent in St. Kitts and Nevis (s. 17, Nevis Business Corporation Ordinance and s. 14, Nevis Limited Liability Company Ordinance). As further described below, registered agents (as well as other licensed service providers) are required to maintain identity information concerning beneficial and legal owners of such NBCs and LLCs, in compliance with the anti-money laundering statutes. Compliance with this obligation is monitored by the FSRC during on-site inspections of the licensee (See section on *Anti-Money Laundering laws* below).

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

82. Under the Nevis International Insurance Ordinance, only NBCs with a registered office in Nevis (or in such other place outside of Nevis as approved by the Registrar) can apply to the Registrar of Insurance for a license to conduct international insurance business⁵ (s. 7 and s. 12). As part of the application process, applicants must disclose information concerning the ultimate beneficial ownership of their stocks and shares (s. 6). A registered insurer must forthwith notify the Registrar of Insurance in writing of any changes in the particulars set out in the application for registration or in the documents, information, or evidence accompanying that application (s. 13(2)).

83. In Nevis, domestic companies are required to register with the Registrar of Companies while NBCs and LLCs are required to register with the Registrar of Offshore Companies and Trusts. The NFSRC hosts the Registrar of Offshore Companies and Trusts, the Registrar of Foundations and the Registrar of International Insurance Companies.

84. To register a domestic company in Nevis, the person wishing to register has to file the prescribed form, disclosing the names and addresses of the directors of the company and pay the applicable fee to register. For non-profit companies, the company also has to present a copy of the letter from the Ministry of Finance certifying the company's status as non-profit to the Registrar. The registration form can be found online. However, the forms have to be delivered in person to the Registrar of Companies. Before registering the company, the Registrar will check that the form is filed correctly, that information on directors is provided as required and that the registration fee has been paid. Once registration is completed, the Registrar issues a certificate of incorporation.

85. Domestic companies are required to file annual statements with the Registrar of Companies. In practice, the Registrar sends notices to the company's directors or agents at least 30 days prior to the statutory filing date to encourage timely compliance with the filing obligation. Any changes in ownership information are required to be reported to the Registrar in the

5. International insurance business is defined under the Nevis International Insurance Ordinance, No. 1 of 2004 and amended by The Nevis International Insurance (Amendment) Ordinance, No. 1 of 2006 as the carrying on or the conducting, whether within or outside Nevis, of any insurance business where each of the insured, the person to whom the policy moneys are payable and the owner of the policy or any one or more of such persons: (i) is not domiciled in St. Kitts or Nevis; (ii) is not ordinarily resident in St. Kitts or Nevis; and (iii) is not an entity incorporated or registered in St. Kitts or Nevis under any legislation other than the Nevis Business Corporation Ordinance, 1984, the Nevis Limited Liability Company Ordinance (CAP 7.04) and the Nevis International Exempt Trust Ordinance, 1996.

annual statement. When a change in ownership information is reflected in an annual return, the Registrar ensures that the necessary supporting documents (i.e. transfer of shares) and the form for giving notice to the Registrar of any changes of shareholders has been filed.

86. The authorities of St. Kitts and Nevis indicated that the Registrar regularly imposes fines on companies for late filing of annual returns, but that compliance with the obligation to file annual returns is nevertheless generally high. Statistics on the number of cases where sanctions were applied for late filing are not readily available, but the authorities of St. Kitts and Nevis have indicated that the total amount of late filing fees imposed on ordinary companies during the period under review amounts to XCD 28 578.00. If a company fails to file the annual return on time, it may be liable to be struck from the register after a period of non-compliance. During the three-year review period 202 ordinary companies were struck off by the Registrar of Companies in Nevis.

87. Registration and filing of annual returns with the Registrar of Companies are paper based but the information is copied into a computer data file by the Registrar. The Inland Revenue Department would be alerted that a new domestic company had been created in Nevis when the company applies for a licence to do business in the Federation. The application is addressed to the Ministry of Finance, but the licence, if granted, would be issued by the Deputy Comptroller Inland Revenue (Nevis). As stated above, the Inland Revenue Department requires that the company discloses information identifying the owners of the companies before issuing such a license. Ownership information is kept on the companies' taxpayer files and is updated once a year upon renewal of the business license.

88. In addition to the monitoring conducted by the Registrar of Companies, ownership information is verified as part of the profile of the legal entity when the company is selected for a tax audit. The Deputy Comptroller Inland Revenue (Nevis) conducted 77 tax audits in 2011, 71 in 2012 and 56 audits in 2013. Monitoring of the obligation imposed on the company to maintain ownership information and the accuracy of the information lodged with the Registrar of Companies is also conducted by the FSRC during an on-site inspection of the registered agent, if any (see section on *Anti-Money Laundering laws* below). Even though ordinary companies are not required to be registered by a registered agent, the majority of companies registered in Nevis are registered by registered agents (as of November 2013 210 out of 614 ordinary companies incorporated in Nevis were not registered by a licensed service provider).

89. The Registrar of Companies in Nevis also has the powers to inspect and investigate companies if it suspects that the company does not comply with the obligation to maintain records and registers of the members or shareholders of the company. However, this power has never been used.

90. Similar procedures apply when registering an LLC or an NBC with the Registrar of Offshore Companies and Trusts. As stated above NBCs and LLCs are required to file the articles of incorporation or organisation with the Registrar as well as the name and address of the registered agent representing the company. In practice, upon registration the Registrar checks whether the required information is provided by the company and if the applicable fee has been paid.

91. There are no legal restrictions on who can register an NBC or LLC with the Registrar of Offshore Companies and Trusts, but the St. Kitts and Nevis authorities have indicated that, in practice, registration is always done by the registered agent. Application to register an NBC or LLC is paper based but all information is also entered into the Registrar's computer system. As a consequence, the Registrar keeps both electronic and paper based copies of the registration documents.

92. NBCs and LLCs are not required to file annual statements and, since the Registrar does not keep records of ownership information, changes in shareholders are not reported to the Registrar. However, an obligation to maintain ownership information is imposed on the licensed service provider and compliance with this obligation is monitored by the FSRC when conducting on-site inspections of the licensee (see section on *Anti-Money-Laundering laws* below). Any change in the articles of the company or the local representative (e.g. the registered agent) has to be reported to the Registrar. To change the registered agent, the company has to notify the Registrar, who will contact both the former and the new registered agent to verify the change. The applicable fee has to be paid before the change is accepted by the Registrar.

93. Monitoring of compliance with the obligations to keep ownership and identity information in relation to NBCs and LLCs is conducted by the NFSRC during an on-site inspection of the registered agent representing the company (see section on *Anti-money laundering laws* below).

94. During the period under review, St. Kitts and Nevis received four EOI requests relating to ownership information for NBCs registered in Nevis. One of these cases was handled by the FIU (see C.5 below) and one of the requests was in relation to an NBC that was a trustee of a foreign trust. (This case is described under A.1.4 and C.5 below). In the two other cases, information was requested from the licensed service provider representing the NBC. In one of these cases the licensed service provider claimed not to be in possession of the information requested. The competent authority informed the FSRC of the alleged breach of the obligation to maintain the information. The alleged breach was investigated and the requested information that was required to be maintained was subsequently provided to the competent authority (the case is further described under B.1 and C.5 below). In the last case, information was requested from the same licensed service

provider already under investigation by the FSRC. After the investigation was completed, the competent authority received the information from the licensed service provider and has submitted the information to the requesting jurisdiction.

Foreign companies

95. An external company is a body corporate which is incorporated outside the Federation and which carries on business in the Federation or which has an address in the Federation which is used regularly for the purposes of its business. As of November 2013, there were 57 external companies registered in St. Kitts and 15 external companies registered in Nevis.

96. Under section 196(1) of the Companies Act, a body corporate incorporated outside the Federation must be registered at the Registrar of Companies in order to “carry on business in the Federation or to have an address in the Federation which it uses regularly for the purpose of its business”. As part of the registration process, a director of the company or an agent acting on behalf of the director(s) must disclose to the Registrar current identity information (including full names and addresses) with respect to each director, the secretary and the agent(s) (natural or legal person) (s. 196(3)).

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

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

99. It is unclear, however, if the circumstances described under section 196 of the Companies Act and section 340 and 338 of the Companies Ordinance would capture all the cases where a foreign company has sufficient tax nexus with St. Kitts and Nevis by virtue of its central management

and control therefrom, without carrying on business in the Federation. This is a limited set of circumstances and even when the company is not required to be registered under the companies laws, this ownership information would be available where a foreign company has a bank account in the Federation or engages a licensed service provider, who is subject to the anti-money laundering laws (see below, section on *Anti-money laundering laws* and section on *Banking information*). St. Kitts and Nevis has not received any requests for information in relation to foreign companies and the assessment team could therefore not assess the practical implementation of these requirements for EOI purposes.

100. A foreign company may be re-domiciled to St. Kitts by providing certified copies of all incorporation documents to the Registrar of Companies and, after the company has been re-domiciled, it must submit annual returns with updated ownership information in accordance with section 72 of the Companies Act. This process must be done via a registered agent in the Federation. A foreign corporation (s.105, Nevis Business Corporation Ordinance) or a foreign LLC (s.66, Nevis Limited Liability Company Ordinance) may transfer its domicile to Nevis by filing with the Registrar of Companies an application to transfer domicile containing, among other things, the name and address of the foreign company's registered agent in Nevis. As further described below, registered agents (and other licensed service providers) are required to maintain identity information concerning beneficial and legal owners of such foreign companies, pursuant to the anti-money laundering statutes. St. Kitts and Nevis' authorities have confirmed that during the three-year review period no companies were re-domiciled in St. Kitts or Nevis.

101. Under the Tax Administration and Procedures Act, a person who is not resident in the Federation, but is liable to pay tax therein, must nominate an agent who resides in the Federation for the purpose of complying with this act (s.9(3)). Likewise, under the Nevis Tax Administration and Procedures Ordinance (CAP 6.11(N)), a person who is not resident in the Island of Nevis, but is liable to pay tax therein, must nominate an agent who resides in Nevis for the purpose of complying with this ordinance (s.9(3)).

102. The Inland Revenue Department has indicated that a company will be considered resident for tax purposes in the Federation if;

- the company is incorporated under the laws of the Federation,
- the directors or individuals acting in their capacity as directors or management, control the company in the Federation (irrespective of whether decision making is restricted to the Federation or not),
- the company has its place of effective management and control in the Federation,

- the company is operational in the Federation for 6 months or more, or
- the physical place of administration and management where the company's business is directed and carried out is within the Federation.

103. Where the company satisfies one of the five indicative factors listed above, the Inland Revenue Department considers this sufficient evidence that the company is resident in the Federation for tax purposes. The authorities of St. Kitts and Nevis have confirmed that except for entities that are exempt from taxation under the exempt regime, ownership information for all companies resident for tax purposes is kept by the Inland Revenue Department on the taxpayer's file.

104. Foreign companies conducting business in St. Kitts and Nevis are also required to obtain a business licence. Applications to obtain such licence are addressed to and issued upon the approval of the Ministry of Finance. The actual business licence is issued by the Inland Revenue Department after the Ministry has given its approval. Once the business licence is issued, the Inland Revenue Department sets up a tax file on the company containing ownership information of the company. The business licence is valid for one year. Ownership information is disclosed to the Inland Revenue Department upon renewal of the business licence.

105. The procedures to register an external or re-domiciled company with the Registrar of Companies are similar to the procedures for companies incorporated in St. Kitts and Nevis. Obligations imposed on such companies when registered are generally also the same.

106. Registration of an external company requires presentation of certified copies of documents of incorporation and a certified letter of good standing from the Registrar in the jurisdiction where the company is incorporated. External companies registered in St. Kitts and Nevis are required to report any changes in directors, secretary or agent(s) and file annual returns under the same rules as companies incorporated in the Federation. Monitoring of these requirements is conducted under the same terms as for companies incorporated under the Companies Act or the Company Ordinance. In addition to the desk top monitoring conducted by the Registrar of Companies, the authorities in St. Kitts and Nevis have confirmed that ownership information is verified by the Inland Revenue Department as part of the profile of the legal entity when the company is selected for a tax audit. The Inland Revenue Department conducted 317 audits in 2011, 284 audits in 2012 and 269 in 2013 in total.

107. It is noted that the Company Ordinance makes provisions for the mandatory registration of all external companies carrying on business in Nevis. However, the provisions are subject to exemption which may be granted to an external company by an Order of the Minister. The authorities

in St. Kitts and Nevis have confirmed that the Minister has never granted such an exemption. St. Kitts and Nevis' authorities have stated that compliance with the registration and licensing obligations is generally found to be high. Interested parties may report any incidences of breach of these obligations, and two such breaches were reported to the Inland Revenue Department during the three-year review period. The Inland Revenue Department investigated the cases and found that the company was conducting business in the Federation without the appropriate license and applied sanctions in the form of a fine for non-compliance on the company. In one of the cases, the company in question was also not registered with the Registrar of Companies, and a fine of XCD 300 000 was imposed by the Registrar for not complying with the registration obligation.

108. During the period under review, St. Kitts and Nevis did not receive any EOI requests asking for ownership information of foreign companies.

Nominees

109. In St. Kitts and Nevis, any person who provides the service of acting as nominee shareholders and/or directors must be authorised as a licensed service provider under the Financial Services Regulations Order No. 25 of 1997 (Revised Seventh Schedule to the Companies Act) (s.4). Under the anti-money laundering statutes described below, service providers acting as nominees are subject to extensive requirements as to the procedures which must be applied to identify customers, shareholders, directors and beneficial owners and other relevant persons such as agents.

110. Licensed service providers acting as nominees are under the supervision of the FSRC and subject to the AML requirements stated below. St. Kitts and Nevis did not receive any requests for information involving nominee arrangements during the three year review period.

Anti-money laundering laws

111. Under the Proceeds of Crime Act of 2000 (CAP 4.28) (schedule of regulated business, see list under Annex 5 below), all persons so authorised to conduct finance business (including corporate business) must adhere to the provisions of the Anti-Money Laundering Regulations No. 46 of 2011(AML Regulations) and the Guidance Notes issued by the Financial Services Regulatory Commission pursuant to the Financial Services Regulatory Commission Act, 2009 appended to the Financial Services (Implementation of Industry Standards) Regulations, 2011. The provisions of the AML Regulations and Guidance Notes are equally applicable to Nevis.

112. The authorities of St. Kitts and Nevis have indicated that the FSRC, which is responsible for supervising service providers licensed in the Federation, conducts periodic off-site and on-site due diligence audits to ensure that they are obtaining and maintaining proper identification documents. During the period under review, the FSRC conducted 30 on-site inspections, of which half were conducted by the St. Kitts branch and half by the Nevis branch. The authorities have further stated that information held by the service providers can be easily retrieved by the competent authority, and in practice the competent authority will normally request a service provider to obtain information in relation to an EOI request, when applicable (see section C.5.2 below). Service providers are authorised to conduct finance business under the Financial Services Regulations Order No. 25 of 1997 (Revised Seventh Schedule to the Companies Act).

113. In this order, “finance business” is defined as any (i) deposit-taking business; (ii) investment business; (iii) insurance business; (iv) assurance business; (v) trust business; or (vi) corporate business, carried on for profit or reward in or from within the Federation. As of November 2013, there were 28 licensed financial institutions operating in St. Kitts (5 domestic banks, 1 of which is a branch of a Nevis domestic bank, 13 domestic insurance companies, 1 development bank, 6 money services business, and 3 credit unions) and 20 licensed financial institutions operating in Nevis (5 domestic banks, 3 of which are branches of the St. Kitts domestic banks, 1 offshore bank, 4 money services business, 2 credit unions of which 1 is a branch of a credit union in St. Kitts, 2 mutual fund administrators/managers and 6 agencies of the domestic insurance companies in St. Kitts).

114. In turn, “corporate business” is defined as the carrying on of, and the provision of services in relation to, the business of (a) incorporating or establishing, as may be appropriate, companies or partnerships; (b) providing nominee shareholders, directors, chief executives or managers, as may be appropriate, for companies or partnerships; (c) maintaining the registered office or the office for service, as may be appropriate, for companies or partnerships; (d) managing or administering, as may be appropriate, companies or partnerships. As of November 2013, there were 118 licensed service providers in St. Kitts and Nevis, of which 25 companies, 42 attorneys-at-law and 5 certified accountants were in St. Kitts and 30 companies and 16 attorneys-at-law were in Nevis.

115. AML Regulation 4 specifically requires service providers to apply identification procedures before the establishment of a business relationship or before carrying out a one-off transaction, as well as on-going identification procedures during a business relationship. These identification procedures include procedures for identifying the customer and third parties on behalf of

whom the customer is acting and establishing the true identity of that person, including that person's name and legal status, based on reliable evidence.

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

117. In addition, the Guidance Notes appended to the Financial Services (Implementation of Industry Standards) Regulations, which also have the force of law, provide additional measures which must be employed by regulated entities with respect to identification and record-keeping procedures. Sections 77, 78, 82 and 83 of the Guidance Notes, indicate the documents which may be required in order to establish the identity of individuals and companies.

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

119. The FSRC was established under the Financial Services Regulatory Commission Act, No. 22 of 2009 and is the main regulator and supervisory authority for non-bank financial services and anti-money laundering and countering the financing of terrorism requirements for all regulated businesses and activities in the Federation. The FSRC is responsible for monitoring all regulated persons' compliance with the Proceeds of Crime Act, the Anti-Terrorism Act and Anti-Money Laundering Regulations and other Acts, regulations, codes and guidelines in relation to money laundering or the financing of terrorism in the Federation. The FSRC is also responsible for maintaining contact and developing relations with persons engaged in non-bank financial services business from or within St. Kitts and Nevis.

120. The FSRC St. Kitts branch is currently staffed with 14 people and is responsible for issuing licences, providing education and supervising all licensees operating from or within St. Kitts.

121. A person wishing to conduct non-bank financial services business from or within St. Kitts is required to obtain a licence from the FSRC. When processing the application, the FSRC will carry out a background check on the person to determine whether the person is fit to conduct such business. Processing the application includes reviewing the applicant's qualifications, police records, certified copies of picture identification and reference letters.

Once a licence is issued, the licensee will be under the supervision and guidance of the FSRC.

122. The FSRC St. Kitts branch requires all of its licensees to file annual returns, disclosing amongst other things information about the shareholders/owners, the physical address and the organisational structure of the business conducted by the licensed service provider. Off-site inspections are conducted based on the annual return.

123. On-site inspections of service providers and registered entities are also conducted to determine their compliance with AML and record keeping requirements. On-site visits are generally scheduled in advance and the FSRC conducts regular risk assessments based on the annual returns and off-site inspections, to determine which licensees to inspect. On-site visits include examination of a selection of the customer due diligence files of the service provider to ensure that the service provider complies with KYC and AML requirements. An on-site inspection manual and checklists have been put in place to ensure a thorough inspection. Each inspection team consists of five people and the average time needed to conduct an on-site inspection is estimated to be one week for small businesses and two weeks for larger companies.

124. During the period under review, the FSRC St. Kitts branch conducted 15 on-site inspections of which 5 involved licensed service providers and registered agents (covering approximately 6.9% of the licensed service providers in St. Kitts). The remaining 10 on-site inspections included investigations of credit unions, insurance companies, money services businesses and the development bank. At the end of each examination, a compliance examination report is issued outlining areas of deficiencies and making recommendations for corrective action. A time period, usually three months, is given for corrective measures to be implemented. Follow-up measures are also applied. In three cases, during the review period, follow-up on-site examinations were conducted to ensure that corrective measures were implemented. After the follow-up examinations, the examination team was satisfied with the result in all of these cases. Once the inspection is completed, the FSRC notifies the board of the regulated entity of their findings (including any deficiencies detected during the inspection) and presents their recommendations. The FSRC has reported that generally, they find that the licensees respect their recommendations and comply with their obligations. According to the FSRC, the most common deficiency identified during such examinations was lack of up-to-date client identification.

125. The FSRC Nevis Branch is currently staffed with 16 people, of which 5 work in the Compliance and Enforcement Division responsible for the monitoring of licensees operating from or within Nevis.

126. Currently, only companies incorporated in Nevis and barristers can apply to obtain a licence to conduct financial business in Nevis. When applying for a licence, the applicant is required to provide specific information including information about the owners, copies of audited financial statements and incorporation documents and a detailed business plan of the financial services business intended to be conducted. Before issuing a licence, the FSRC will conduct a full background check on the applicant to ensure that it has the necessary experience to operate as a licensed service provider. All relevant factors will be taken into account before issuing a licence. If the applicant is local, such investigation will be conducted by the FSRC, but if the applicant is foreign the FSRC will in most cases use an international due diligence organisation to conduct the background check on their behalf. In addition, the FSRC has reported that as of December 2012 they have introduced new procedures and are now insisting on meeting the applicant face to face for an interview before issuing a licence.

127. Licences are issued for one year. To renew the licence, the licensee has to provide a certificate of solvency and a copy of its annual return to the Registrar of Companies showing changes in shareholders, if any, etc. If a licence is to be renewed, the FSRC will check the compliance history of the licensee and request additional information if necessary. Determination of whether or not to renew is generally based on experience with the service provider from prior years and local knowledge of the business conducted. The turnover of service providers in Nevis is fairly stable. The FSRC has reported that it received seven new applications from licensees in 2013, two of which were not granted. At the time of the on-site visit, some of these applications were still being processed by the FSRC.

128. Off-site inspections of all licensees are conducted every year. Off-site inspections include examination of audited financial statements, company incorporation statistics, and other information (including information about the business operation during the previous year) required to be disclosed to the FSRC on an annual basis. Based on the off-site inspections the FSRC does a risk assessment to determine which entities should be subjected to an on-site inspection.

129. On-site inspections are generally scheduled in advance, except where they concern serious breaches of regulations, in which case an unscheduled inspection may be conducted. Normally a pre-examination questionnaire is sent to the regulated entity at least two weeks prior to the intended visit to obtain information about the organisational structure, administration and operation of the regulated business. An on-site inspection can be carried out as a full-scale inspection, or a focused inspection which investigates areas of specific concern. During a full-scale onsite inspection, the FSRC looks at the finances and operations of a regulated entity to assess the entity's risk profile,

viability and compliance with legislation and supervisory requirements. Full-scale inspections include checking customer due diligence files to ensure that the service provider is complying with KYC and AML requirements. A focused inspection only looks at specific aspects of a regulated entity's finances or operations. Such focused investigations can include investigation of KYC/AML procedures of the investigated entity if a specific supervisory concern has arisen and needs to be investigated.

130. During the period under review, the FSRC Nevis Branch conducted 15 full scope inspections of regulated entities in Nevis. The 15 on-site inspections included investigation of corporate service providers and registered agents (licensed service providers), Money Service Businesses and Insurance Managers in Nevis. During the three-year review period 12 corporate service providers were inspected by the FSRC Nevis branch, covering approximately 26 % of all licensed service providers in Nevis. The FSRC Nevis Branch has reported that in six cases deficiencies in the regulated entities' obligations were found. The most common deficiency observed during the course of an onsite inspection in Nevis was lack of proper customer due diligence. All deficiencies detected during an on-site inspection are brought to the attention of the Regulated Entity and in all cases where deficiencies were detected the FSRC conducted follow-up exercises to test compliance with the identified deficiencies. In all instances the deficiencies identified had been addressed. In one case, serious deficiencies in record keeping and KYC obligations were detected and the FSRC took immediate action suspending the service provider's licence and since then, the license has been revoked.

131. In addition to the supervision measures undertaken, the FSRC Nevis Branch takes an active approach in educating and raising awareness in the entities that it supervises. For the period under review, the Commission hosted three AML/CFT awareness seminars for the regulated entities. In addition, special classes on AML for compliance officers wishing to become Certified Anti-Money Laundering Specialists have been hosted by the FSRC. Since May 2011, the FSRC has sent a monthly newsletter to all regulated entities covering various sections of the AML Guidance Notes to serve as a continuous training tool.

132. During the three-year review period the FSRC Nevis branch was asked to assist the competent authority to obtain information in one EOI case. The licensed service provider initially challenged the competent authority's power to obtain the information, and then claimed not to be in possession of the information. The FSRC Nevis branch was alerted by the competent authority of the alleged breach of AML/KYC obligations and, upon the request of the competent authority, the FSRC conducted an investigation of the service provider. The requested information was subsequently provided. The case is further described under C.5 below.

Conclusion

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

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

135. In practice, monitoring of legal obligations imposed on companies is conducted by the FSRC when conducting on-site inspections of the licensed service provider and by the Inland Revenue Department when conducting tax audits. Upon registration, of domestic companies the Registrar conducts a desk top check to verify that information disclosing the identity of the owners has been received. Annual statements are also checked to ensure that the information received by the Registrar include any changes in ownership of the company which may have occurred.

136. For exempt companies incorporated in St. Kitts and NBCs and LLCs incorporated in Nevis, monitoring of the obligations to maintain ownership information is conducted by the FSRC when conducting on-site inspections of the service provider representing the company. Such inspections are undertaken by the FSRC in both Islands. For the period under review the FSRC conducted 30 on-site inspections, of which 17 were of licensed service providers or registered agents. It is noted that the FSRC monitors all regulated entities and that on-site inspections are carried out based on a risk assessment. Nevertheless, taking into account the relatively limited proportion of licensed service providers and registered agents monitored during the review period, St. Kitts and Nevis is recommended to ensure that there is an effective oversight of the legal obligations imposed on such entities to ensure the availability of ownership information in all cases.

Bearer shares (ToR A.1.2)

137. Under the Companies Act, exempt companies are allowed to issue bearer shares (s.51). Bearer certificates issued by a company under the Companies Act must be kept in St. Kitts at the offices of a person authorised to carry on finance business (s. 52(1)). This authorised person is required to maintain a record of each bearer certificate deposited in its custody which must contain the following information: (i) the name of the company issuing the bearer certificate; (ii) the identification number of the certificate, number of shares and the class of shares in the company contained in the bearer certificate; (iii) the identity of the bearer of the certificate, that is to say, the name, address, date of birth and details of identification; and (iv) where applicable, its beneficial owner⁶ (s. 52(2)). If the custody of the bearer certificate is transferred to another custodian, the Registrar of Companies must be informed within seven days of the transfer and the notice shall include the particulars of the new custodian (s. 52(3)).

138. As of November 2013, there were no records in the Registrar of Companies indicating any bearer shares issued in St. Kitts.

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

140. As of November 2013 there were 3 290 906 bearer shares in existence, issued by a total of 109 companies in Nevis.

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

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

142. All licensed service providers are authorised to act as custodians for bearer shares in Nevis. Currently, only seven of the licensees are actively acting as such. Of these, one service provider holds the majority of bearer shares certificates. In December 2013, the FSRC Nevis branch conducted an on-site inspection on this service provider and found that all requirements were met and that the custodian was in compliance with all its obligations as a custodian.

Conclusion

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

144. There are no bearer shares issued in St. Kitts and, as of November 2013 there were 3 290 906 bearer shares registered in Nevis. The majority of the bearer shares certificates issued in Nevis were held by one licensed service provider acting as custodian (who was found to be in compliance with the record keeping obligations as custodian). This indicates that the mechanisms in place are adequate and that information about the beneficial owner of a bearer share issued by a Nevis company is available.

145. During the period under review, St. Kitts and Nevis did not receive any requests for information about bearer shares.

Partnerships (ToR A.1.3)

Types of partnerships

146. The following types of partnerships may be formed in St. Kitts and Nevis: (i) general partnerships; and (ii) limited partnerships (LPs), which may be exempt or ordinary (domestic) LPs. As of November 2013, there were 384 general partnerships, eight exempt LPs and five ordinary LPs established in St. Kitts and Nevis.

General partnerships

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

148. In addition, general partnerships are required to pay taxes and to file annual returns under the Unincorporated Business Tax Act No. 5 of 2010 (s.8), the Tax Administration and Procedures Act (s.6(1)), the Nevis Tax Administration and Procedures Ordinance (s.6(1)) and the Value Added Tax Act No. 3 of 2010. Under the Unincorporated Business Tax Act, the partners may designate one partner to file the returns and pay the tax on their behalf (s.6(1)). In such a case, the general partner responsible for complying with these tax obligations would have to know the identity of the other partners. Under the Value Added Tax Act, taxable persons (e.g. general partnerships) which make taxable supplies of goods or services exceeding XCD 150 000 (USD 55 555) per year (or XCD 96 000 (USD 35 555) in the case of professional services) are required to be registered and to provide updated information on partners to the Comptroller. As of November 2013, there were 75 general partnerships registered for Value Added Tax with the Comptroller.

149. Finally, Anti-Money Laundering legislation may impose additional obligations concerning ownership information of general partnerships in a number of cases. In accordance with section 44 of the Guidance Notes appended to the Financial Services (Implementation of Industry Standards) Regulations, any regulated business which conducts business with a partnership is required to treat the general partner as a verification subject and apply the requirements of AML Regulation 4 where identification procedures are concerned, as well as AML Regulation 8 where record retention (for at least five years) is concerned. In addition, the authorities of St. Kitts and Nevis have indicated that general partnerships are required to maintain or disclose updated ownership information in a number of situations, i.e. where they conduct finance business and are so authorised under the Financial Services Regulations Order; where they are regulated businesses, authorised service providers or designated non-financial business or profession, pursuant to the provisions of the AML Regulations.

150. Applications to obtain a business licence are addressed to and issued upon the approval of the Ministry of Finance. The actual business licence is issued by the Inland Revenue Department after the Ministry has given its approval. When issuing the licence, the Inland Revenue Department sets up a tax file for the partnership containing information identifying all the partners of the general partnership. Full names and addresses of all partners must be disclosed before obtaining the licence and two copies of identification papers are required. Paper copies are kept in the partnership's tax files. All partnerships are required to give notice to the Inland Revenue Department of any changes in ownership. The Inland Revenue Department sends out forms annually requiring all partnerships to update the information on its partners. Copies of the return forms are kept in the partnerships' tax files.

151. Tax files are kept on the general partnership, not the partners of the general partnership. The tax return only shows the income from the general partnership and the contact information of the partner selected to represent the partnership in tax matters. However, information on the partners is kept in the partnership's tax file in relation to licencing requirements, which is updated on an annual basis. Ownership information is disclosed to the Inland Revenue Department upon renewal of the business license, which has to be done annually.

152. All general partnerships conducting business in the Federation may be subjected to tax audits. During a tax audit, the Inland Revenue Department verifies that the ownership information kept in the taxpayer files is correct and up to date. However, tax audits are generally conducted to ensure that the declared income and tax liability imposed on the general partnership is correct. In 2011 the Inland Revenue Department conducted 317 tax audits, 284 in 2012 and 269 in 2013. During this three-year period from 2011 to 2013 three general partnerships were selected for tax audits.

153. In cases where the general partnership is conducting a regulated business, the general partnership has to obtain a licence to conduct such business from the FSRC. As stated above (see section on *Anti-Money-laundering laws* and companies) the FSRC conducts off-site and on-site inspections of its licensees to ensure that they comply with their AML requirements. During the period under review, the FSRC St. Kitts Branch conducted one on-site inspection of a general partnership.

Limited partnerships

154. Under the Limited Partnerships Act (CAP 21.12), all LPs are required to maintain a registered office in the Federation (s.21(1) and (4)) and to file annual statements with the Registrar of Companies (s.22), containing current identity information (including name and address) of each general partner

(natural or legal persons) (s. 22(2)(d)). In turn, the general partners of a LP are required to keep, at its office for service, a register showing the particulars (including name and address) of each limited partner (natural or legal person), in alphabetical order.

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

156. The registration process for limited partnerships incorporated in St. Kitts is similar to those that apply for domestic and exempt companies incorporated in St. Kitts and verification of ownership information conducted by the Registrar upon registration is the same (see section A.1.1 on domestic and exempt companies above).

157. Once a year the Registrar sends out reminders to all registered limited partnerships to ensure that they file their annual return on time. If the annual return reflects any changes in the general partners of the limited partnership the Registrar checks that the changes were reflected in the form required to be filed when the change occurred and that the documentation required was sent to the Registrar on time. However, the authorities of St. Kitts and Nevis have explained that during the period 2011-13 none of the limited partnerships filed annual returns with the Registrar of Companies. In a similar way as for companies, the accuracy of the information provided to the Registrar is checked by the FSRC when conducting an on-site inspection of the service provider representing the limited partnership. Ordinary limited partnerships (e.g. limited partnerships incorporated under the laws of St. Kitts and Nevis to do business within the Federation and which are not exempt from taxation) are not required to be represented by a service provider, but nevertheless such entities fall under the supervisory authority of the FSRC. In addition, the Inland Revenue Department monitors compliance when conducting tax audits. During the three-year review period no limited partnerships were selected for tax audit by the Inland Revenue Department.

158. The obligation of the general partner to maintain a register of limited partners of an exempt limited partnership is monitored by the FSRC as part of the supervision of the service provider if the service provider acts as a general partner or registered office.

Conclusions

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

160. The Inland Revenue Department requires all partners of a general partnership to be identified before issuing a business licence to the general partnership. Copies of identification papers are kept in the tax file relating to the general partnership and details are updated at least once a year when the general partnership applies for renewal of the business licence. The accuracy of the information is verified by the Inland Revenue Department when conducting a tax audit. General partnerships conducting financial business have to obtain a separate licence to do so from the FSRC and thus are under the supervision of the FSRC as a regulated entity.

161. Identity information on the general partners of a limited partnership is disclosed to the Registrar of Companies upon registration of the limited partnership. The Registrar of Companies checks that copies of identification documents for all the general partners have been disclosed to the Registrar upon registration. Reminders to submit annual statements are sent to all limited partnerships and once received the Registrar checks that any changes in registered ownership information is reflected in the amended declaration required to be filed within 21 days after the amendment was passed.

162. In practice, compliance with the obligation on general partners to maintain a register of limited partnerships is monitored by the FSRC if the service provider is acting as a general partner or the registered office. In addition, monitoring is also conducted by the Inland Revenue Department when conducting a tax audit on LPs carrying out business in the Federation.

163. During the three-year review period, St. Kitts and Nevis did not receive any requests for ownership information on general partnerships or LPs.

Trusts (ToR A.1.4)

Types of trusts

164. In St. Kitts, ordinary (domestic) or exempt⁷ (international) trusts may be registered under the Trusts Act (CAP 5.19). As of November 2013, there were 31 exempt trusts and 23 ordinary trusts established in St. Kitts, which were registered in the Register of Trusts at the Financial Services Regulatory Commission.

165. The Nevis International Exempt Trust Ordinance (CAP 7.03) provides for the registration of an international trust, which is defined as (s. 2):

“a trust registered under this Ordinance and in respect of which:

a) at least one of the trustees is either:

i) a corporation incorporated under the Nevis Business Corporation Ordinance; or

ii) a trust company doing business in Nevis;

b) the settlor and beneficiaries are at all times non-resident; and

c) the trust property does not include any land situated in St. Christopher and Nevis”.

166. As of November 2013, there were 908 international trusts registered in Nevis.

St. Kitts

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

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

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

169. Additional disclosure requirements apply to unit trusts. The trustees must keep, at the office of service, the particulars (including name and address) of each beneficiary (natural or legal person) and a copy of the written terms of the trust (if any) and amendments thereto, which may identify the settlors, protector (if any) and other trustees (s. 59(4)(c)). This information must be available for inspection by a trustee or the protector (if any) (s. 59(5)). There is no mandatory requirement for such a document to be deposited with the Registrar and no stipulated time is given as to how long this information should be maintained. According to the authorities of St. Kitts and Nevis, this information should be maintained indefinitely since the information must be also kept on past beneficiaries. In addition, the trustees must file annual statements with current information on the trust (s. 60). As of November 2013, no unit trusts were registered in St. Kitts.

170. Upon registration, the Registrar checks the identity of the trustee and that the required documents and information have been disclosed to the Registrar. If the trustee of the trust is a licensed service provider (which is normally the case) the Registrar checks that the identification papers of the trustee are kept on file and are up to date. If the trustee is not a licensed service provider, the Registrar requires that the trustee disclose at least two forms of government-issued identification to the Registrar upon registration. Copies of these identification papers and all other documents required to be filed, are kept on paper files by the Registrar and the information is entered into the computer system of the Registrar.

171. Once the Registrar receives the annual statement from the trustee, the Registrar checks whether this information corresponds with any filings received relating to amendments made to the attestation of the Trust. The authorities of St. Kitts and Nevis have indicated that during the period 2011-13 on average only approximately 25.3% of the registered exempt trusts were compliant with the obligation to file annual statements with the Registrar. During the same period, none of the registered ordinary trusts filed annual returns.

172. The St. Kitts and Nevis authorities have indicated that most of the trustees registering exempt or ordinary trusts in St. Kitts are licensed service providers, however this is not a requirement under the Trust Act. The authorities of St. Kitts and Nevis have explained that any person who is not a minor, or an interdict or a bankrupt, may act as a trustee of a registered trust in St. Kitts. However, trust business is a regulated business activity which may only be conducted by an authorised person licensed under the Financial Services Regulations Order (see section on *Anti-Money Laundering laws* below). All licensed service providers are under the supervision of the FSRC, and the FSRC has the power to inspect the trustee's compliance with the obligation imposed under the Trusts Act to maintain information on the

beneficiary along with other obligations imposed under AML regulations (see section on *Anti-Money Laundering laws* below).

Nevis

173. Pursuant to the Nevis International Exempt Trust Ordinance, international trusts are exempt from taxes and duties and must be registered (s.36(1)). The application must contain, among other things, notice of the name of the trustee and registered office of the trust, which must be the office of the trust company or corporation which is a trustee (ss.36(6) and 41). An annual application for renewal of registration must be made no later than 90 days after the expiry of the last certificate of registration (s. 37(2) and (3)). The provisions of this ordinance cease to apply to any trust that fails to renew its registration (s. 37(6)).

174. Upon registration, the Registrar checks that the application for registration is correctly filed and that the contact information on the trustee is correct. Only NBCs or licensed service providers can act as trustees for an International Exempt trust in Nevis. NBCs are not required to be licensed by the FSRC to act as a trustee of an international trust. However, all NBCs are required to have, at all times, a registered agent in the Federation. All registered agents are under the supervision of the FSRC and the FSRC has the power to inspect the trustees compliance with the obligations imposed on it (see section on *Anti-Money Laundering laws* below).

Foreign trusts

175. Under the Nevis International Exempt Trust Ordinance, a trust company or a barrister or solicitor licensed as registered agents may also register a trust governed by foreign law as a “qualified foreign trust” in Nevis (s. 36(1)). As further described below, registered agents are subject to the anti-money laundering statutes. An annual application for renewal must be made no later than 90 days after the expiry of the last certificate of registration (s. 37(2) and (3)). The application must contain notice of the name of the trustee, registered office of the qualified foreign trust, and the law under which the trust was settled (s.36(6)). As of November 2013, there were 24 qualified foreign trusts registered in Nevis.

176. The authorities of St. Kitts and Nevis have explained that a foreign trust that wishes to become registered under the Nevis International Exempt Trust Ordinance as an international trust must register as a “qualified foreign trust” first. A foreign trust is a trust whose governing law is the law of a jurisdiction other than the island of Nevis. A foreign trust whose governing law is not Nevis law and which wishes to become registered under the Nevis International Exempt Trust Ordinance as an international trust must

amend the trust document so that some aspects or all of the trust is governed by Nevis law. Once the necessary amendments to the trust document are completed and the foreign trust can show that it has registered as a qualified foreign trust, then it is eligible to register as an international trust. The authorities of St. Kitts and Nevis have indicated that most “qualified foreign trusts” make an application for entry on the register for international trusts.

177. Once application for registration as a qualified foreign trust is received by the Registrar, the Registrar checks that the forms are filed correctly and contain the required information. To register, it is required that at least one of the trustees of the foreign trust is resident in Nevis. The registration process and the monitoring conducted by the Registrar is the same as for international trusts registered in Nevis. However, a qualified foreign trust is also required to file a declaration stating that the trust is not under investigation in another jurisdiction or involved in any illegal activity or has any pending litigation against the trust.

Anti-money laundering laws

178. Under the Financial Services Regulations Order, carrying on a trust business is defined as (i) undertaking or executing trusts; (ii) providing trustees or protectors for trusts; (iii) maintaining the office for service of trusts; or (iv) managing or administering trusts. It is considered to be a finance business, which may only be conducted by licensed (natural or legal) persons (s.4(1)). Authorised persons who conduct a trust business (domestic and exempt) must be licensed under the Financial Services Regulations Order and are regulated by the FSRC. The provisions of the AML Regulations and the Financial Services (Implementation of Industry Standards) Regulations with appending Guidance Notes also apply to trustees resident in the Federation carrying on trust business under the Trusts Act and the Nevis International Trust Ordinance (s. 171). However, the authorities of St. Kitts and Nevis have explained that trustees, other than those conducting trust businesses, are not required to obtain a licence from the FSRC to act as a trustee. Furthermore the authorities of St. Kitts and Nevis have explained that an NBC carrying on trust business is not required to be licensed by the FSRC to act as a trustee as the NBC is not carrying on trust business in the Federation. Nonetheless, as NBCs are considered regulated entities under the Proceeds of Crime Act, all NBCs are subject to the same identification procedures as resident trustees mentioned below. In addition to the AML obligations imposed on trustees carrying on trust business, all trustees are governed by common law requirements (see section on *common law requirements* below).

179. Resident trustees in the Federation subject to the AML Regulations and Guidance Notes are required to adhere to substantial identification procedures stated in AML Regulation 4 and to the minimum five-year

record retention period stipulated in AML Regulation 8. AML Regulation 4 specifically requires service providers to apply preliminary and on-going procedures for identifying the customer and third parties on behalf of whom the customer is acting and establishing the true identity of that person, including that person's name and legal status, based on reliable evidence.

180. In addition, the Guidance Notes appended to the Financial Services (Implementation of Industry Standards) Regulations, which also have the force of law, provide that a fiduciary should treat settlors and beneficiaries as verification subjects when making a trust settlement or when accepting trusteeship from a previous trustee (s. 173). A "fiduciary" is any person duly licensed/authorised to conduct trust and/or corporate business under the Financial Services (Regulations) Order, 1997 or licensed as a Registered Agent Service Provider by the Nevis Island Administration and carrying on any fiduciary service in or from within the Federation (s. 172). Fiduciary services include the activities of formation and or execution of trusts, management or administration of trusts and acting as a trustee or protector for a trust, once this activity is carried on as a business (s. 171).

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

182. The FSRC has the power to supervise and monitor licensed service providers acting as trustees within the Federation. Off-site and on-site inspections of licensees are conducted to ensure that the licensees comply with their AML obligations. A specific check list for on-site inspections of fiduciaries is available for staff in the FSRC when monitoring trustees' compliance with AML requirements. During the three year review period, the FSRC conducted 6 on-site inspections of licensed service providers and registered agents acting as fiduciaries in St. Kitts and Nevis. The St. Kitts and Nevis authorities have reported that the main deficiencies detected in Nevis during on-site inspections of fiduciaries (which include licensees acting as trustees) was lack of updated photo identification in the customer due diligence files. In one case, the fiduciary was found in breach of the obligations to conclude a written agreement with the Professional Service Client (PSC) specifying the intermediary's obligation under AML regulations in the Federation. In St. Kitts, no deficiencies were detected during on-site inspections of fiduciaries.

183. As stated above, the authorities of St. Kitts and Nevis have explained that trustees that do not carry out trust business in the Federation, including NBCs, are not required to obtain a licence from the FSRC. It is noted that

NBCs are considered regulated entities and as such are under the supervision of the FSRC. NBCs are also required to at all times have a registered agent in the Federation. Ownership information is required to be kept at the registered address of the NBC, which is the registered agent's address. Monitoring of compliance with the legal obligations imposed on the NBC is conducted by the FSRC during an on-site inspection of the registered agent.

184. During the three-year review period, St. Kitts and Nevis received one request for information in relation to trusts. The request asked for information on the settlor(s) and beneficiaries of a foreign trust with a trustee resident in Nevis. The competent authority sought the information from a person who was believed to be in possession of it (the case is further discussed under C.5 below).

Common law requirements

185. As mentioned above, in addition to the AML obligations imposed on trustees conducting trust businesses, all trustees are governed by common law requirements in St. Kitts and Nevis. The rules governing trusts in St. Kitts and Nevis are based on English common law as a result of the Common Law (Declaration of Application) Act 2002 and, as such, the interpretation and precedent of the English courts is of persuasive authority. This means that for an ordinary trust to be valid, it needs to meet the three certainties: the certainty of intention, the certainty of subject matter and the certainty of object. As a consequence, a trust is only valid if evidenced by a clear intention on behalf of the settlor to create a trust, clarity as to the assets that constitute the trust property and identifiable beneficiaries (*Knight v. Knight* (1849) 3 Beav 148). In addition, the trustee has obligations which suggest that he/she is required to know who the beneficiaries of the trust are in order to be able to comply with these obligations. Examples are the obligation to avoid conflicts of interest between the trustee's fiduciary duties and their own self-interest (*Bray v Ford* [1896]) and the obligation to familiarise themselves with all information regarding the trust including the trust documents and assets (*Hallows v Lloyd* (1888) 39 Ch D 686, 691). Finally, trustees are under a fiduciary duty to keep accounts of the trust and to allow beneficiaries to inspect them as requested (*Pearse v. Green* (1819) 37 E.R. 327 at 329).

186. In summary, the obligations placed on trustees under common law in St. Kitts and Nevis, should ensure the maintenance of identity information on the settlor and beneficiaries. This means that even if a trustee was not otherwise required under the AML Regulations and Guidance Notes to identify the beneficiaries of the trust the trustee would still be required to have this information available based on the common law obligations. In the case of non-professional trustees, the common law fiduciary duties of the trustee should ensure that trustees are complying with their ongoing record-keeping

requirements. However, the effectiveness of these obligations to ensure the availability of information for EOI purposes in practice should be monitored by St. Kitts and Nevis on an ongoing basis.

Conclusion

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

188. Monitoring of licensed service providers acting as trustees is conducted by the FSRC. It is noted that the FSRC monitors all regulated entities and that on-site inspections are carried out based on a risk assessment. Nevertheless, taking into account the relatively limited proportion of fiduciaries inspected during the review period, St. Kitts and Nevis is recommended to ensure that there is an effective oversight of the legal obligations imposed on trustees to ensure the availability of identity information in all cases.

Foundations (ToR A.1.5)

St. Kitts

189. The Foundations Act (CAP 21:19) allows for the establishment of ordinary⁸ and exempt⁹ foundations in St. Kitts (s. 2(1)). As of November 2013, there were 463 exempt foundations and 24 ordinary foundations established in St. Kitts.

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

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

changes take place, the foundations are required to file an amendment of the articles with the Registrar within 14 days of the amendment coming into effect (s. 62(4)).

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

192. Upon registration, the Registrar of Foundations checks that the articles of the foundation and the other information required have been received. In addition, the Registrar checks that the person registering the foundation is licensed to do so. Copies of the documents are kept on paper files and the information is added in the Registrar's computer database. Annual statements are checked by the Registrar to ensure that they correspond with information received about changes occurring during the year, which should be reported to the Registrar within 14 days of the amendment. The authorities of St. Kitts and Nevis have indicated that during the period 2011-13 on average approximately 48.6% of all exempt foundations and 4 % of the ordinary foundations complied with the obligation to file annual statements with the Registrar. The Registrar has reported that penalties for late filing have been applied in a few cases.

193. Verification of the information kept by the Registrar and monitoring of the service providers' compliance with the identification procedures and AML obligations are conducted by the FSRC St. Kitts branch. In practice, one service provider represents the majority of all foundations registered in St. Kitts (96% of all foundations registered between 2001 and 2013 were registered by this one service provider). During the period under review, the FSRC conducted an on-site inspection of the licensed service provider representing the majority of foundations in the Federation. The FSRC has reported that the on-site inspection included inspection of the service provider's customer due diligence files and financial statements of the foundations, and only minor deficiencies were detected.

Nevis

194. In Nevis, the Multiform Foundations Ordinance (CAP 7.08) provides for the registration of multiform foundations as (s. 10):

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

195. As of November 2013, there were 94 multiform foundations (58 ordinary foundations, 14 limited company foundations, 2 LLC foundations, 1 general partnership foundation and 19 trust foundations) established in Nevis.

196. In addition to the requirements to maintain ownership and identity information under the relevant governing laws, Nevis foundations are subject to specific obligations. Under the Multiform Foundations Ordinance, a multiform foundation must have at all times a registered agent in Nevis and a registered office therein (ss.19(1) and 20(1)). The provisions of the AML Regulations and the Financial Services (Implementation of Industry Standards) Regulations with appending Guidance Notes are equally applicable for the island of Nevis. Thus such registered agents are required to adhere to the same identification procedures stated in AML Regulation 4 and to the record retention requirement (at least five years) stipulated in AML Regulation 8 as mentioned above in relation to St. Kitts. A subscriber, promoter or registered agent acting on their behalf is required to register a multiform foundation to the Registrar of Foundations (at the Financial Services Registry), by filing a memorandum of establishment, a statement in the prescribed form and by-laws, if any, and where no by-laws are filed the standard by-laws as prescribed by the Multiform Foundations Ordinance obtains (ss.3, 4 and 6).

197. The memorandum of establishment must state: (i) the particulars (including name and address) of the subscriber or promoter (natural or legal person); (ii) the situation of the registered office in Nevis; and (iii) whether or not the foundation is revocable or irrevocable and, if revocable, the identity of the person who holds the power of revocation (s. 7). Where there are amendments to the initial memorandum of establishment or by-laws, a copy of the amended document must be delivered to the Registrar of Foundations within

14 days of the amendment coming into effect (s. 8(4)). There is no requirement for a multiform foundation to have a beneficiary (s. 11(3)).

198. The registration must also be accompanied by a statement setting out, among other things: (i) the particulars of the registered agent; (ii) the particulars of any person in the first management board, first supervisory board and first secretary;¹⁰ (iii) an undertaking that the management board will forthwith notify the Minister of Finance in the Nevis Island Administration if the multiform foundation ceases to be a tax resident foundation (ss.3, 4 and 95).

199. Each multiform foundation must keep at its registered office a register open to inspection of past and present members of its management board, supervisory board (if any) and secretary, their respective particulars (including name and address) and their interests with respect to the multiform foundation, whether as subscriber or beneficiary (s. 30). Regulation 9 of the Multiform Foundations Regulations of 2005 requires a record of all subscribers and subscriptions to be made and a register of all beneficiaries¹¹ and their respective beneficial entitlements to be kept and maintained at its registered office in Nevis. The record of subscribers and register of beneficiaries must be kept confidential at all times¹², however, this does not impede effective exchange of information as secrecy confidentiality provisions in St. Kitts and Nevis are overridden in connection with a request for information in tax matters (see section B.1, below).

200. Upon registration, the Registrar of Foundations checks that all the required information has been sent to the Registrar including information identifying the subscriber or promoter of the foundation. The prescribed forms are accessible online and they can be completed and printed by the

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10. Section 30(3) of the Multiform Foundations Ordinance of 2004 further states that the register of past and present members of multiform foundation's management board, supervisory board and secretary together with their respective particulars and their interest with respect to the multiform foundation, whether as subscriber or beneficiary shall, during business hours, be open to inspection by the Registrar at the registered office.
 11. "Beneficiary" means: (i) with respect to a multiform stated as a trust or an ordinary foundation, a beneficiary or potential beneficiary, or class of beneficiaries or potential beneficiaries, of that trust or ordinary foundation, and (ii) with respect to a multiform stated as a company, a shareholder, guarantor or member of that company, and (iii) with respect to a multiform stated as a partnership, a partner, whether limited or unlimited in liability, of the partnership (s. 2(1)).
 12. See paragraph 4 of the By-laws of an Ordinary Foundation, a Limited or Unlimited Company Foundation and a Limited Liability Company Foundation and paragraph 5 of the By-laws of a Trust Foundation and a General or Limited Partnership Foundation, all scheduled to the Multiform Foundations Regulations of 2005.

registered agent and must be physically submitted to the registry by the registered agent. Registration is completed once the Registrar has received copies of the required documents and the applicable registration fee has been paid. Copies of all documents are kept on paper files and the information is added in the Registrar's computer database.

201. Verification of the information kept by the Registrar and monitoring of the registered agents' compliance with the identification procedures and AML obligations are conducted by the FSRC Nevis branch. There are currently 14 registered agents licensed to register foundations in Nevis. During the period under review the FSRC Nevis branch conducted on-site inspections of 10 of these licensees, covering approximately 71 % of the registered agents licensed to register foundations in Nevis. No major deficiencies were detected during such on-site inspections.

202. No request for ownership information in relation to a foundation was received by St. Kitts and Nevis during the three-year review period.

Conclusion

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

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

205. Upon registration, the Registrar checks that the required forms are filed correctly and that copies of identify information and other documents required for registration have been received. Annual statements are checked to ensure that the information corresponds with documents required to be filed with the Registrar during the year. Late filing fees are applied when appropriate.

206. Monitoring of the AML obligations imposed on the service providers representing the foundations are conducted by the FSRC. In practice, all foundations are represented by service providers and in this way are indirectly under the supervision of the FSRC. Off-site and on-site inspections are conducted according to risk evaluated by the FSRC on a regular basis.

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

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

Companies

208. Under the Companies Act, if a company fails to keep ownership information in the form of a register of members, the company and every officer of it who is in default commit an offence and is liable to a fine not exceeding XCD 2 500 (USD 926) and a further fine not exceeding XCD 250 (USD 93) for each day on which the offence so continues. A company which fails to provide the ownership information by way of submitting an annual return commits an offence and may be struck off the register of companies (ss.72(5) and 206). If a company fails to give notice to the Registrar within 14 days of the place where its register of members is kept, or of any change of that place, it is guilty of an offence and is liable to a fine not exceeding XCD 2 500 (USD 926) and a further fine not exceeding XCD 250 (USD 93) for each day on which the offence so continues (s.44(4)). During the three-year period under review, 206 companies were struck from the register of companies for failure to file annual returns with the Registrar of Companies in St. Kitts. In addition, fines for late filing of annual returns were paid in 116 cases during the review period. The authorities of St. Kitts and Nevis have explained that while fines for late filing of annual returns are automatically issued to all companies, the number of cases where such sanctions were applied is recorded upon payment. Statistics of the number of companies sanctioned or the amount of fines imposed on such companies for late filing of annual returns are therefore not centrally available. The total amount of late filing fees imposed by the Registrar of Companies in St. Kitts amounted to XCD 477 040 in 2011, XCD 205 130 in 2012 and XCD 194 800 in 2013. The St. Kitts and Nevis authorities did not apply any of the other sanctions during the period under review.

209. By carrying on business in the Federation or having a business address in the Federation without registration with the Registrar of Companies, a foreign company commits an offence and is liable, on conviction, to a fine not exceeding XCD 2 700 (USD 1 000) and a further daily fine not exceeding XCD 200 (USD 74) for as long as the offence continues (s.196(15)). During the period under review one external company was found to be in breach of

this obligation and a fine of XCD 300 000 was imposed on the company. If the information provided to the Registrar of Companies is false, misleading or deceptive, the director commits an offence and is liable, upon conviction, to a fine not exceeding XCD 2 700 (USD 1 000) and, if the director is an individual, to imprisonment for a term not exceeding two years, or both (s. 196(16)). This sanction has not been applied during the review period.

210. A custodian or agent who fails or refuses to comply with the obligation to notify the Registrar of Companies within seven days where the custody of a bearer share certificate is transferred to another custodian or agent, is liable to fines ranging from XCD 20 000 (USD 7 407) to XCD 30 000 (USD 11 111), imprisonment to a term not exceeding twelve months or revocation of the registered agent's licence (s. 52(6)). There was no need to apply these sanctions during the period under review.

211. Under the Companies Ordinance of Nevis, failure by a company to file an annual return containing current identity information on the directors and the shareholders will result in the striking off the register of a domestic or foreign company and/or the imposition of a daily penalty of XCD 10 (USD 3.70) from 1 April to 7 August and XCD 1 (USD 0.37) for each day thereafter (s. 194(3), s. 356(3), (s. 511) and Regulation 2 of the Companies (Amendment) Regulations of 2007 and the Companies (Amendment) Regulations of 2009). During the three-year period under review, 202 local companies were struck off the register for failing to submit annual returns. Upon application and payment of fees, including penalties, six of these companies have been restored in the register. Statistics on the number of cases where sanctions were applied for late filing are not readily available, but the aggregated amount of fines paid for late filing during the period under review amounted to XCD 28 578.00.

212. A person who makes or assists in making a report, return, notice or other document that is required to be sent to the Registrar by this ordinance or the regulations, and that contains an untrue statement of a material fact, or omits to state a material fact, is guilty of an offence and liable on summary conviction to a fine of XCD 5 000 (USD 1 852) and/or to imprisonment for a term of six months (s. 530(1)). When this offence is committed by a body corporate, a director or officer who knowingly authorised, permitted or acquiesced in the commission of the offence is also guilty of the offence and liable on summary conviction to the same sanctions (s. 530(3)). A general fine of XCD 5 000 (USD 1 852), on summary conviction, is imposed on every person who is guilty of an offence under this ordinance, if no punishment is provided for that offence elsewhere in the ordinance (s. 533). No such sanctions were applied during the review period.

213. Pursuant to the Nevis Business Corporation Ordinance, any person, natural or corporate body, found in default of one or more provisions of

this ordinance is liable, upon summary conviction, to a fine not to exceed XCD 5 000 (USD 741) (s.126). Under the Nevis International Insurance Ordinance, failure by a registered insurer to forthwith notify the Registrar of Insurance in writing of any changes in the particulars set out in the application for registration or in the documents, information, or evidence accompanying that application, is an offence (s.13(3)). Such a person is liable, on conviction, if the offender is an individual, to a fine not exceeding XCD 10 000 (USD 3 704) and/or to a term of imprisonment not exceeding 12 months. If the offender is not an individual, the fine should not exceed double of this amount (s. 45(1)). These sanctions have not been applied during the period under review.

Partnerships

214. According to the Limited Partnerships Act, failure to file annual statements to the Registrar of Companies, containing current identity information with regard to the general partners, is an offence (s.22(4)). Every general partner who is in default commits an offence and liable to a fine not exceeding four times the prescribed filing fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) or one half of the prescribed filing fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) for each day the offence is permitted to continue. In addition, the registration of the declaration may be cancelled in accordance with section 61, the provisions of which will apply accordingly. As stated above, statistics of the number of entities sanctioned or the amount of fines imposed on such entities for late filing of annual returns are not centrally available in St. Kitts as this is recorded upon payment. The total amount of late filing fees imposed by the Registrar of Companies in St. Kitts amounted to XCD 477 040 in 2011, XCD 205 130 in 2012 and XCD 194 800 in 2013.

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

Trusts

216. Under the Trusts Act, failure to file annual statements at the Registrar with current information on the trust is an offence and every trustee who is at fault is liable to an offence not exceeding half of the prescribed fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) for each day the offence is permitted to continue (s. 60(4)). The authorities of St. Kitts and Nevis have reported that there are no records of sanctions being applied for failing to file annual statements.

Foundations

217. The Foundations Act states that failure to file annual returns or to file an amendment of the articles with the Registrar within 14 days after the amendment came into effect is an offence and the councillor is liable to a fine not exceeding one half of the prescribed filing fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) for each day in respect of which the offence continues (s. 66(3)). Failure to maintain and keep identity information on each councillor, guardian and secretary available for inspection by the Registrar, founder, councillor, guardian and secretary is an offence and the foundation is liable to a fine not exceeding XCD 2 500 (USD 926) for each day in respect of which the offence continues (s. 18(4)). The authorities of St. Kitts and Nevis have reported that sanctions in the form of late filing fees have been imposed in a few cases and that there was no need to apply any of the other sanctions during the review period. The authorities have indicated that there is a high level of compliance with these obligations.

218. In accordance with section 19(1) of the Multiform Foundations Ordinance, non-compliance with the obligation to maintain a registered agent in Nevis, at all times, may lead to dissolution in accordance with Part XIII of this ordinance. Failure to maintain and keep a register of past and present members of its management board, supervisory board (if any) and secretary, for inspection by the Registrar, a subscriber, a member of the management board or supervisory board (if any), a secretary and a beneficiary, is an offence and the multiform foundation is liable to a fine not exceeding XCD 500 (USD 185) for each day in respect of which the offence continues (s. 30(4)). There was no need to apply these sanctions during the three-year review period.

219. Failure to file annual returns at the Registrar of Foundations is an offence and every member of the management board and the secretary is liable to a fine not exceeding four times the prescribed filing fee or to a fine not exceeding one half of the prescribed filing fee of XCD 50 (USD 18.52) or XCD 100 (USD 37) for each day in respect of which the offence of not filing the annual return continues. Section 96 imposes a penalty on any multiform foundation which does not take reasonable precautions to prevent loss or destruction of, to prevent falsification of entries in, and to facilitate detection and correction of inaccuracies in, the records required to be kept by this ordinance. A multiform foundation which fails to comply with this provision and any member of the management board or the secretary responsible for such failure commits an offence and shall be liable to a fine not exceeding XCD 2 500 (USD 926). During the period under review sanctions for late filing were applied in some cases. Statistics on the number of cases where sanctions were applied for late filing are not centrally available, but the aggregated amount of late filing fees imposed by the FSRC during the period under review amounted to XCD 3 470 858. No other sanctions were applied during the period under review.

Anti-money laundering laws

220. The AML Regulations No. 46 of 2011 stipulates that any person (including resident trustees) who fails to comply with the requirements of the AML Regulations, the requirements of the Guidance Notes as set out in the Schedule of the Financial Services (Implementation of Industry Standards) Regulations or any directive issued under AML Regulation 15, commits an offence and is liable, on summary conviction, to a fine not exceeding XCD 25 000 (USD 9 259). If a contravention continues after such a conviction, the person commits a further offence and is liable to an additional fine of XCD 5 000 (USD 1 852) for each day on which the contravention continues (AML Regulation 14). In practice, there is as yet no case where these sanctions had to be enforced in St. Kitts and Nevis. The FSRC Act provides for an escalating sanctions approach and the authorities of St. Kitts and Nevis have stated that they have found that the first level of sanctions – warnings – has proven effective in many cases. Several warnings were issued to or against persons who contravened the AML provisions. These warnings were either given directly to the offenders or issued on the FSRC website as an alert to the general public about the offenders. The authorities have indicated that generally the licensees are found to be very receptive to recommendations for improvement and remedial action to improve compliance with AML obligations. The authorities have reported that charges have been brought against one professional for breaches of AML obligations. The matter is currently pending before the court.

221. Ongoing monitoring of obligations to maintain ownership information imposed on relevant entities is conducted by the FSRC and, to some extent, the Inland Revenue Department as part of the procedure to obtain a business license, and in field examinations during a tax audit for entities that conduct business within the Federation.

222. Non-compliance with filing obligations to the Registrars is sanctioned by late filing fees in both St. Kitts and Nevis. As previously described, monitoring processes have been put in place to ensure that information is provided to the Registrars when required and that information that needs to be reported is available. The aggregated amount of penalties and late filing fees imposed by the FSRC Nevis branch during the period under review amounted to XCD 3 470 858. The aggregated amount of late fees collected by the FSRC St. Kitts branch during the same period amounted to XCD 916 860 (late fees collected from late filings of annual returns of entities), XCD 463 104 (late fees collected from Domestic Insurance Companies) and XCD 36 180 (late fees collected for Captive Insurance Companies). Statistics on the number of cases where sanctions were applied by the FSRC are not centrally available.

223. With regards to AML obligations, St. Kitts and Nevis has in place a programme of supervision and conducts on-site inspections to check

compliance by licensed service providers with their legal obligations. If non-compliance with AML obligations is detected during an on-site inspection, recommendations will be made by the FSRC in its on-site inspection report and a timeframe will be given to the licensed service provider to address the recommendations. The extent to which these deficiencies are remedied will be followed up by the FSRC on a follow-up inspection. The St. Kitts and Nevis authorities have indicated that generally compliance with AML obligations is high. During the period under review, the main deficiencies detected during on-site inspections in St. Kitts and Nevis were lack of updated photo identification in the customer due diligence files. In one case on Nevis, the fiduciary was found in breach of the obligation to conclude a written agreement with the Professional Service Client (PSC) specifying the intermediary's obligation under AML Regulations in the Federation. During the review period, there was one incident where a significant breach of AML obligations was detected by the FSRC Nevis branch. In this case, the FSRC revoked the licence. In St. Kitts, no licences have been revoked during the review period.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
The regulatory authorities conduct on-site inspections of regulated entities based on a risk assessment. However, during the three-year review period the regulatory authorities only monitored a limited proportion of the licensed service providers in St Kitts and Nevis.	St. Kitts and Nevis should ensure that there is effective oversight of the legal obligations imposed on relevant entities to ensure the availability of ownership and identity information in all cases.

A.2. Accounting records

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

General requirements (ToR A.2.1)

Companies

St. Kitts

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

“Every company shall keep accounting records which are sufficient to show and explain its transactions and are such as to:

1. disclose with reasonable accuracy, at any time, the financial position of the company at that time; and
2. enable the directors to ensure that any accounts prepared by the company under this Part comply with the requirements of this act;
3. allow for the preparation of financial statements.”

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

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

227. If a company fails to comply with the record-keeping requirements above, the company commits an offence and is liable to a fine not exceeding XCD 2 500 (USD 926) and to a further daily fine not exceeding XCD 250 (USD 93) for as long as the offence continues (s. 108(1)(a)). In the case of a

public company, every officer of the company who is in default commits an offence and is liable to imprisonment for a term not exceeding two years or a fine or both (s. 108(1)(a)). A director or auditor of a company who signs or delivers to the Registrar a certificate which contains a statement that is false, misleading or deceptive or an opinion that he/she has no reasonable ground to believe to be accurate commits an offence and is liable to imprisonment for a term not exceeding two years or a fine or both (s. 108(2)). The St. Kitts and Nevis authorities have stated that there was no need to use these measures during the review period, indicating that there is a high level of compliance.

228. The St. Kitts and Nevis authorities have confirmed that the compliance with the obligation imposed on public companies to file financial statements with the Registrar is high. The accuracy of the financial information submitted to the Registry in St. Kitts is verified during on-site inspections conducted by the FSRC in accordance with the procedures applicable for such inspections (see section on *Anti-money laundering laws* below).

229. In practice, compliance with the obligation on the company to maintain accounting records is monitored by the Inland Revenue Department when conducting tax audits. The Inland Revenue Department has the power to examine the accuracy of declarations made by all taxpayers, including companies, and may make requests for information to substantiate tax returns or other authorised purposes.

230. Tax audits are conducted in accordance with the National Audit Plan which is prepared annually. Cases selected for tax audit are based on the risk assessment conducted when preparing the audit plan. Risk criteria include, but are not limited to, local knowledge; industry classification; taxpayer size; filing, payment and registration including compliance information from prior audit cases, when appropriate; and tips from other persons. The risk assessment also takes into account business economic factors (such as the performance ratio of the company in comparison with prior years and other similar ratios for taxpayers in the same industry). Tax audits are conducted to ensure that the income reported and the tax imposed on the company is correct (see section on *Tax laws* below). During a tax audit, the Inland Revenue Department checks the financial statements of the company and the underlying documents. Inland Revenue Department St. Kitts branch conducted 240 tax audits in 2011, 213 in 2012 and 213 audits in 2013. The average time to complete a tax audit is 42 days in St. Kitts. Exempt companies are not liable to tax in St. Kitts, thus no exempt companies are subject to tax audits.

231. Monitoring may also be conducted by the FSRC during a full-scope on-site inspection of the licensed service provider, if any, representing the company. Such inspections can include investigation of the financial statements of the customer if that information is kept on file by the service provider (see section on *Anti-money Laundering laws* below). However, there

are no obligations imposed on the service provider to hold such information on behalf of the customer. Nonetheless, if requested by the FSRC, the service provider is obliged to obtain the requested information from the client (FSRC Act s.33). During the review period, this has not been tested in practice. In practice, no other process to monitor compliance with the obligation on exempt companies to maintain accounting records has been implemented. Therefore, the availability of accounting information in relation to exempt companies may not be ensured in all instances. It is recommended that St. Kitts and Nevis implement measures to ensure that in practice exempt companies comply with their obligations to keep accounting records.

232. During the review period, St. Kitts and Nevis did not receive any requests for accounting information on domestic or exempt companies in St. Kitts.

Nevis

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

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

235. A company and its agents must take reasonable precautions to prevent loss or destruction of, to prevent falsification of entries in, and to facilitate detection and correction of inaccuracies in, the records required

by this ordinance to be prepared and maintained in respect of the company (s. 189). A person who, without reasonable cause, contravenes these obligations is guilty of an offence and is liable on summary conviction to a fine of XCD 5 000 (USD 1 852) or to imprisonment for a term of six months, or to both (s. 531). Furthermore, every officer of the company who was knowingly a party to the default of the company, unless he/she shows that he acted honestly and that in the circumstances in which the business of the company was carried on the fault was excusable, is guilty of an offence (s. 468(1)). No such sanctions were applied during the three-year review period.

236. In practice, supervision of local companies' obligations to maintain accounting records is conducted by the Deputy Comptroller Inland Revenue (Nevis) when conducting tax audits. Selection of cases is conducted in accordance with the National Audit Plan and carried out in a similar way as mentioned above for St. Kitts (see also section on *Tax Laws* below). The Deputy Comptroller Inland Revenue (Nevis) conducted 77 tax audits in 2011, 71 audits in 2012 and 56 audits in 2013.

237. In addition to the requirements mentioned above, public companies in Nevis are also required to submit accounts to the Registrar of Companies. The Deputy Comptroller of Inland Revenue (Nevis) and other Certified Public Accountants are available to assist the Registrar with verifying the accuracy of accounts submitted by public companies in Nevis.

238. During the period under review, the competent authority in St. Kitts and Nevis did not receive any requests for accounting information of any domestic companies in Nevis.

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

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

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

242. A limited liability company that knowingly and wilfully contravenes these obligations will be subject to a penalty of XCD 5 000 (USD 1 852) (s. 48A(4)). In addition, all NBCs and LLCs incorporated and organised under the Nevis Business Corporation Ordinance and the Limited Liability Company Ordinance are deemed regulated businesses by virtue of the AML Regulations and the Financial Services (Implementation of Industry Standards) Regulations with appending Guidance Notes and are, therefore, subject to record-keeping requirements and sanction for non-compliance under AML Regulation 8 (see *Anti-money laundering laws* below).

243. The FSRC has powers to monitor compliance with the accounting records obligations on NBCs and LLCs mentioned above. In practice, monitoring of these obligations is conducted during inspections of the licensed service provider representing the company (see section on *Anti-money laundering law* below). During a full-scope examination of the service provider the FSRC has indicated that they would use their powers to examine the accounting records of a selection of its clients. If the client’s accounting records are not held by the service provider the service provider must obtain such records from its client if requested by the FSRC in accordance with the FSRC Act (s. 33). In practice this power has not been tested. Therefore, the availability of accounting information in relation to NBCs and LLCs in Nevis may not be ensured in all instances. St. Kitts and Nevis is therefore recommended to implement measures to ensure that in practice NBCs and LLCs comply with their obligations to keep accounting records in all instances.

244. During the period under review, the competent authority in St. Kitts and Nevis received three requests asking for copies of financial statements, accounting records and/or certain underlying records in relation to NBCs in Nevis (the cases are further described under C.5 below). A final response has been provided in all three cases.

245. Under the Nevis International Insurance Ordinance, NBCs which are registered insurers are required to keep and maintain such business records¹³ that correctly record and explain their transactions and financial position,

13. “Business records” is defined under section 14(1) as including accounting, policy and claims records of the registered insurer and such working papers and other

in such a manner that will enable true and fair accounts¹⁴ to be prepared from time to time (s. 14(2)(a) and (b)). They must keep and maintain its business records at its principal place of business and if the principal place of business is anywhere outside of Nevis, then a copy of the business records must be kept by the registered agent in Nevis (s. 14(2)(c)). Non-compliance with this section is an offence punishable, on conviction, with a fine not exceeding XCD 10 000 (USD 3 704) or a term of imprisonment not exceeding 12 months, if the offender is an individual, or with a fine not exceeding XCD 20 000 (USD 7 407), if the offender is not an individual (s. 14(3) and 45). St. Kitts and Nevis had no cause to apply these sanctions during the period under review.

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

247. Supervision of International Insurance Companies in Nevis is conducted by the FSRC Nevis Branch. The accuracy of the accounting records for an insurance company is verified through analysis of the Audited Financial Statements submitted to the Registrar of International Insurance Companies. The FSRC conducts a risk based approach in carrying out its supervisory functions. For the period under review, the FSRC Nevis branch conducted inspections of six of the eleven Insurance Managers. The St. Kitts and Nevis authorities have stated that approximately 81% of registered insurers comply with the obligation to submit financial statements to the Registrar.

documents as are necessary to explain the methods and calculations by which its accounts are made up.

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

Letters of warning have been issued to the registered insurers that did not comply with this obligation. No further action has been taken.

248. The competent authority of St. Kitts and Nevis did not receive any requests for accounting information in relation to international insurance companies during the three-year review period.

Partnerships

249. Under section 26 of the Limited Partnerships Act, as amended by the Limited Partnerships (Amendment) Act No. 5 of 2011, the general partners of every LP must keep accounting records which (i) are sufficient to show and explain their transactions in respect of the limited partnership, (ii) are such as to disclose with reasonable accuracy, at any time, the financial position of the limited partnership at that time, and (iii) allow for the preparation of financial statements. Every general partner who is in default commits an offence and is liable to a fine not exceeding XCD 2 500 (USD 926) (s. 26(3)).

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

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

252. Monitoring of the obligations imposed on partnerships in St. Kitts is conducted by the Inland Revenue Department and in some cases by the FSRC (see section on *Anti-money laundering laws* and *Tax laws* below). Cases are selected in accordance with the National Audit Plan (see section on *Tax Law* below). The St. Kitts and Nevis authorities have indicated that during the review period, two general partnerships were selected for tax audits based on the risk selection criteria used by the Inland Revenue Department. No Limited Partnership was selected for tax audit during the review period.

253. In addition to the monitoring conducted by the Inland Revenue Department, certain business activities are also under the supervisory authority of the FSRC. In accordance with the Proceeds of Crime Act (CAP 4.28) this includes lawyers, notaries and other independent legal professionals and accountants, listed in the schedule of regulated business activities. These professionals are subject to the on-site examination regime conducted by

the FSRC during which the obligation to keep accounting records and the accuracy of the information kept is verified. During the review period, the FSRC conducted seven examinations of such professionals. The FSRC did not apply any sanctions during the review period, and have reported a high level of compliance. In addition monitoring of compliance with the obligation to keep accounting records for exempt limited partnerships (that do not conduct such business as mentioned above) is conducted by the FSRC as part of inspection of the licensed service provider. As stated above, the licensed service provider is not obliged to keep such accounting records on behalf of its client, but is required to obtain such records if requested by the FSRC (FSRC Act s. 33). However, during the three-year review period this was not tested in practice. It is therefore unclear whether such accounting records would be available in all cases. St. Kitts and Nevis is recommended to take measures to ensure that exempt LPs comply with their obligations to keep accounting records in all instances.

Trusts

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

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

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

257. Monitoring of compliance with these obligations is conducted by the FSRC. Full-scope on-site examinations are undertaken, which include assessing adherence to the record keeping requirements of the trustee (see section

on *Anti-money laundering law* below). During the three-year period under review the FSRC conducted on-site inspections of 6 trustees. The FSRC did not find any reason to apply any sanctions during the review period.

258. As noted in A.1.4 above, NBCs are not required to be licensed to act as a trustee. Nonetheless, NBCs are considered regulated entities and as such are under the supervision of the FSRC. NBCs are also required to at all times have a registered agent in the Federation. However, the licensed service provider is not obliged to keep accounting records pertaining to the NBCs clients, but is required to obtain such records if requested by the FSRC (FSRC Act s. 33). During the three-year review period this was not tested in practice. It is therefore unclear whether such accounting records would be available in all cases. St. Kitts and Nevis is recommended to take measures to ensure that all trustees comply with their obligations to keep accounting records in all instances.

259. During the period under review, St. Kitts and Nevis received one request for information in relation to accounting records of a foreign trust managed by a trustee resident in St. Kitts and Nevis. The competent authority requested the information and was informed that the person under investigation was not a beneficiary of the trust. This was communicated to the requesting jurisdiction. (The case is further described under C.5 below).

Foundations

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

261. Under section 44(1) of the Multiform Foundations Ordinance, multiform foundations formed in Nevis are required to keep proper books of account with respect to their business and affairs, assets and property. Such accounting records must be kept at the registered office of the multiform foundation (i.e. the office in Nevis of the registered agent), or at such other place as the management board determines by ordinary resolution, and must be open at all times to inspection by the management board, the supervisory

board and the auditor (if any), if the constitution so permits (s.44(3)). Where a member of the management board fails to take all reasonable steps to secure compliance by the multiform foundation with these requirements, or has by his own wilful act been the cause of any default thereunder by the multiform foundation, that member is in default (s.44(3)).

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

263. Monitoring of compliance with these obligations is conducted by the FSRC. Full-scope on-site examinations are undertaken, which include assessing adherence to the record keeping requirements of the secretary of the foundation (see section on *Anti-money laundering laws* below). During the period under review the FSRC Nevis branch conducted on-site inspections of 10 of the 14 registered agents licensed to register foundations in Nevis.

264. During the period under review, St. Kitts and Nevis' authorities did not receive any requests for accounting records of any foundations.

Anti-money laundering laws

265. Every licensed service provider (including resident agents of NBCs and LLCs and trustees), as well as regulated financial business (including NBCs and LLCs) must adhere to the record-keeping requirements under AML Regulation 8 and sections 117-130 of the Guidance Notes appended to the Financial Services (Implementation of Industry Standards) Regulations. Under AML Regulation 8(2)(b), all regulated businesses must ensure that a record is made containing details relating to each transaction carried out by the relevant person in the course of any business relationship or one-off transaction. These records must “in any event include sufficient information to enable the reconstruction of individual transactions” and must be kept for at least five years (AML Regulation 8(3) and (7)). The limitations of the AML Regulations concerning accounting records are further discussed below.

266. Pursuant to section 121 of the Guidance Notes appended to the Financial Services (Implementation of Industry Standards) Regulations, “records relating to transactions will generally comprise: (...) details of financial services product transacted including: a. the nature of such securities/investments/financial services product; b. valuation(s) and price(s); c. memoranda of purchase and sale; d. source(s) and volume of funds and bearer securities; e. destination(s) of funds and bearer securities; f. memoranda of instruction(s) and authority(ies); g. book entries; h. custody of title

documentation; i. the nature of the transaction; j. the date of the transaction; k. the form (e.g. cash, cheque) in which funds are offered and paid out.”

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

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

269. Supervision and monitoring of licensed businesses are conducted by the FSRC. The FSRC conducts off-site and on-site examinations. As stated above in A.1, all licensees are required to file annual returns to the FSRC which include audited financial statements. The FSRC has confirmed that an on-site inspection of the licensee includes examination of the business’ financial records. Generally, the FSRC checks the financial statements of the licensees for any deficiencies and if necessary, underlying documents are consulted.

270. Full-scope on-site inspections may also include examination of the financial accounts of the client. However, in most cases the licensed service provider is not obliged to keep such records on behalf of its client. If the customer files include accounting records, the FSRC has confirmed that an on-site investigation will include inspection of a selection of such records.

271. The FSRC has the power to request the service provider to obtain and provide accounting records from his client pursuant to the FSRC Act (s.33). However, this power remains untested in practice.

272. In addition to the requirements imposed on the service providers mentioned above, the FSRC Act provides wide powers to the FSRC to intervene in the operation of a regulated business if the business is, or is likely to be, financially unsound and prejudicial to the provisions set out in the laws or guidelines regulating the conduct of financial services or regulated businesses for the purposes of combating money laundering or the financing of terrorism (s.40). In such cases, the FSRC may issue a written warning, conclude a written agreement with the regulated entity or issue a cease and desist order. The FSRC has indicated that, generally, the action taken in accordance with this provision is to conclude a written agreement with the financial services or regulated business. During the review period, one case arose where the written agreement was not complied with and the issues remained outstanding at the time of the on-site visit by the assessment team. Subsequently the regulated entity was suspended and since then the FSRC has revoked the license.

Tax laws

273. Under section 6(1) of the Tax Administration and Procedures Act and section 6(1) of the Nevis Tax Administration and Procedures Ordinance, a taxpayer (including the partners in a general partnership) who is engaged in a business or independent professional activity, and is not otherwise required by law to keep records listing all receipts and expenditures relating to that taxpayer's business or professional activity, must keep records and accounts that relate to that taxpayer's business or professional activity. Under section 9(2), a partnership, or other body of persons, which is subject to any tax to which these acts apply, must nominate a member or officer in the partnership or body, whose duty it will be to comply with the requirements of these acts.

274. Section 37(2)(a) stipulates that if the Comptroller makes a demand in writing that a person provide any other information that is relevant to the determination of the taxpayer's tax liability (which can include accounting records) and that person fails to provide that information within the time specified in the document renders that person liable to a penalty of XCD 500 (USD 185). If a subsequent demand is made and the taxpayer fails to comply, an additional penalty of XCD 500 (USD 185) will be imposed or such other amount as may be prescribed (s. 37(2)(b)). However, this penalty only applies when there has been a request by the Comptroller under section 37 and is not equivalent to a penalty for failure to maintain accounting records. To address this issue, the Tax Administration and Procedures Act, no 12 of 2003 was amended in 2012. Section 9 (6) as amended, states that taxpayers, or any other legal entities, partnerships or other bodies which are subject to any tax to which the Tax Administration and Procedures Act applies, that fail

to maintain adequate records in compliance with the provisions of the Act, commit an offence and are liable to a fine not exceeding XCD 25 000 in the case of a taxpayer or XCD 50 000 in the case of a legal entity, partnership or other body corporate.

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

276. The Inland Revenue Department has the power to inspect the accuracy of the declarations made by all taxpayers within the Federation. The powers to inspect a taxpayer may be exercised via examination of taxpayer records from fieldwork, requests for information to substantiate tax returns and requests for information for any other authorised purpose. The Tax Administration and Procedures Act, 2003 gives the Comptroller the power to require a taxpayer to make a tax return or provide any information that is relevant for the determination of the taxpayer's tax liability (s.37(2)), enter any business premises open to the public for authorised purposes (s.56 (1-3) and to request any person to furnish information or produce documents or evidence in that person's control for an authorised purpose (s.55). The Comptroller also has the power to summon any person for examination for authorised purposes (s.55). Any person who obstructs the administration of the Tax Administration and Procedures Act, as amended, commits an offence and is liable on summary conviction to a fine not exceeding XCD 15 000 or to imprisonment for a term not exceeding one year or both (s.60).

277. Tax audits are conducted in accordance with the Income Tax Act, the Valued Added Tax Act, the Tax Administration and Procedures Act, the Tax Administration and Procedures Ordinance and any other legislation applicable.

278. All audits are planned and executed in accordance with the National Audit Plan. The main goal when conducting a tax audit is to obtain reasonable assurance about the accuracy of the tax return and the financial statements to ensure that they are free of any material misstatement by testing the areas where risks and other irregularities are identified, the evidence supporting the amounts disclosed in the financial statements as well as assessing the accounting principles and significant estimates used in the

preparation and presentation of the financial statements. During an audit the tax authority's initial contact with the taxpayer is via letter. An interview of the taxpayer is conducted and examination of records carried out before all results are documented. Tax audits are completed with an audit interview with the taxpayer to disclose audit results and, if found necessary, application of applicable penalties by the Inland Revenue Department. All steps are carefully documented in the audit case file.

279. The Inland Revenue Department conducted 317 audits in 2011, 284 audits in 2012 and 269 in 2013. The average time to complete a tax audit is 42 days. The aggregated amount of penalties applied by the Inland Revenue Department St. Kitts branch amounted to XCD 288 455 in 2011, XCD 1 536 612 in 2012 and XCD 1 791 871 in 2013. The aggregated amount of penalties applied by the Deputy Comptroller Inland Revenue (Nevis) amounted to XCD 630 429.26 in 2011, XCD 242 612.70 in 2012 and XCD 898.39 in 2013. These penalties related to the failure of taxpayers to maintain adequate records in compliance with the Tax Administration and Procedures Act and the Tax Administration and Procedures Ordinance respectively.

Underlying documentation (ToR A.2.2)

Companies, partnerships, trusts and foundations

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

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

281. On 5 May 2011, in Nevis, the Companies Ordinance was amended by the Companies (Amendment) Ordinance No. 4 of 2011 (s. 187(2)), the Nevis Business Corporation Ordinance was amended by Nevis Business Corporation (Amendment) Ordinance No. 3 of 2011 (s. 76A(1)), the Nevis Limited Liability Company Ordinance was amended by Nevis Limited Company (Amendment) Ordinance No. 5 of 2011 (s. 48A(1)), the Nevis International Exempt Trust Ordinance was amended by the Nevis International Exempt

Trust (Amendment) Ordinance No. 1 of 2011 (s.36A(1)) and the Multiform Foundations Ordinance was amended by the Multiform Foundations (Amendment) Ordinance No. 2 of 2011 (s.44(1)). New language was added to these acts to impose explicit obligations on such relevant entities and arrangements to prepare and maintain adequate accounting records which:

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

- a) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
- b) all sales and purchases and other transactions; and
- c) the assets and liabilities of the company”

282. Monitoring of compliance with the requirements imposed on companies, partnerships, trusts and foundations mentioned above is under the supervision of the FSRC. The FSRC’s powers to inspect licensees also cover the power to inspect the customer due diligence files. During a full-scope examination of a service provider financial statements and underlying documents can be inspected. However, such records are normally not required to be kept by the licensed service provider. As stated above, there is no specific system in place to monitor the entity’s compliance with the obligation to keep accounting records or underlying documents unless the entity carries on business in the Federation and thus may be subject to tax audits conducted by the Inland Revenue Department. Therefore, the availability of accounting records and underlying documents may not be ensured in all instances. St. Kitts and Nevis is recommended to implement measures to ensure that all entities comply with the obligation to maintain accounting records and underlying documents.

Tax Laws

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

284. Under the Tax Administration and Procedures Act and the Nevis Tax Administration and Procedures Ordinance, a taxpayer who is engaged in a business or independent professional activity, and who is not required by other laws to keep records listing all receipts and expenditures, must keep records and accounts that relate to that taxpayer's business or professional activity (s.6(1)). As mentioned above, these record-keeping obligations are applicable to general partnerships which carry on business in St. Kitts and Nevis. Section 9(5) of the Tax Administration and Procedures Act, as amended in 2012 imposes explicit obligations on all partnerships to ensure that underlying documents are maintained in all circumstances and that such documents reflect details of:

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

285. These requirements were introduced in 2012 and are in practice untested during the period under review. Therefore, St. Kitts and Nevis is recommended to monitor the practical implementation of these requirements to ensure that appropriate accounting records and underlying documents in relation to all partnerships are properly kept.

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

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

287. The Inland Revenue Department has the power to monitor compliance with the obligation to keep accounting records and underlying documents on all entities that carry on business in the Federation and which are subject to tax under the laws of St. Kitts and Nevis. Audits are carried out in accordance with the National Audit Plan, prepared based on the annual risk assessment of all the entities operating in the Federation. Documents inspected during a tax audit may include accounting records and underlying documents. (See section on *Tax Laws* above).

Document retention (ToR A.2.3)

Companies

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

289. Section 468(1) of the Companies Ordinance imposes a liability on local companies which are wound up where proper books of account are not kept by the company throughout the period of two years immediately preceding the commencement of the winding-up, or the period between the incorporation of the company and the commencement of the winding-up, whichever is the shorter.

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

291. In Nevis, new language was introduced on the Companies Ordinance (s. 187(3)), the Nevis Business Corporation Ordinance (s. 76A(2)(ii)) and the Nevis Limited Liability Company Ordinance (s. 48A(2)(ii)) to impose on such companies consistent and binding obligations to retain accounting records,

including underlying documents, for at least five years from the date on which they were prepared.

Partnerships

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

Trusts

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

Foundations

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

Anti-money laundering laws

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

Tax Laws

296. In accordance with section 7 of the Tax Administration and Procedures Act and section 7 of the Nevis Tax Administration and Procedures Ordinance, a person required to prepare records (which would include the records of a general partnership) must retain the documents for a period of six

years following the date on which the tax liability was first assessed. Under section 79(2) of the Value Added Tax Act, taxpayers' records are to be maintained for a period of six years after the period to which they relate.

In practice

297. In practice, compliance with the obligations imposed on entities to retain accounting records and underlying documents is subject to monitoring by the FSRC and the Inland Revenue Department during the normal course of inspections described above. The St. Kitts and Nevis authorities have not reported any cases where breaches of such obligations have been found.

298. During the three-year review period, the competent authority of St. Kitts and Nevis received three requests asking for financial statements, accounting records, or certain underlying documents that were filed with the tax authorities. The three cases concerned companies that were incorporated under the Nevis Business Corporation Ordinance. NBCs are exempt from tax provided that they do not do business in the Federation. As such, none of the NBCs in question were obliged to file financial records for taxation purposes in St. Kitts and Nevis. Two of the cases requested information in relation to criminal tax matters (these cases are further described under C.5. below). In one case, the requesting jurisdiction asked for copies of certain financial statements prepared or held by or on behalf of a resident trustee of a foreign trust that was not registered in the Federation. However, the registered agent of the resident trustee concerned claimed not to be in possession of the requested information (see also C.5 below).

Determination and factors underlying recommendations

Determination	
The element is in place	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
The amendments made in 2012 to the Tax Administration and Procedures Act, introducing binding requirements on all partnerships that carry on business in the Federation to maintain accounting records, including underlying documents, has not been tested during the period under review.	St. Kitts and Nevis should monitor the practical implementation of the amended legislation to ensure that all partnerships keep appropriate accounting records and underlying documents.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
There are no oversight programmes in place to efficiently monitor compliance with the obligation to maintain accounting records for exempt companies, NBCs, LLCs, exempt LPs or trusts in St. Kitts and Nevis.	St. Kitts and Nevis should ensure that there is effective oversight of the legal obligations on exempt companies, NBCs, LLCs, exempt LPs and trusts to ensure the availability of accounting records in all cases.

A.3. Banking information

Banking information should be available for all account-holders.

299. A person conducting business listed on the schedule of regulated business activities of the Proceeds of Crime Act of 2000 (CAP 4.28) must adhere to the AML Regulations and the Financial Services (Implementation of Industry Standards) Regulations with the appending Guidance Notes. All commercial banking activities under the Banking Act (CAP21.01) and off-shore banking activities under the Nevis Offshore Banking Ordinance (CAP 7.05), are listed as regulated business activities.

300. Currently there are seven institutions licensed to conduct commercial banking under the Banking Act. The number of licensees is considered fairly stable. The last institution to be licensed was granted its licence in 2007.

301. Applications to obtain a license to conduct commercial banking business are addressed to the Ministry of Finance in St. Kitts. Once an application is received by the Minister, the application and any attached documentation is forwarded to the Eastern Caribbean Central Bank (ECCB) for their recommendation. The ECCB conducts a thorough assessment and investigation including due diligence of the applicant, taking into account all relevant factors to determine whether the entity and its owners are qualified to conduct such business. The ECCB has the authority to request any information from the applicant through the Ministry of Finance or other relevant person when conducting the investigation. Once the ECCB has gathered all the relevant information and conducted the assessment of the applicant, it sends a report on the findings of the investigation and recommendation to the Minister of Finance. The Minister shall either grant the licence and may place any restrictions as the Minister deems to be prudent in respect of the licence, or if the Minister is of the opinion that it would be undesirable in the public interest to grant the licence, he may refuse to grant the licence and need not give any reason for so refusing but shall inform the applicant that he

has refused to grant the licence (section 5(5)). The authorities of St. Kitts and Nevis have confirmed that even though the recommendations made by the ECCB are not binding on the Minister, in practice there have not been any cases where the recommendations have not been followed.

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

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

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

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

306. The ECCB is the main supervisory and regulatory authority of commercial banks and financial institutions licensed to conduct banking business under the Banking Act. The ECCB was established by an agreement of 5 July 1983 between Participating Governments¹⁵, with the following purposes:

- To regulate the availability of money and credit;

15. Participating Governments include the Governments of Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and

- To promote and maintain monetary stability;
- To promote credit and exchange conditions and a sound financial structure conducive to the balanced growth and development of the economies of the territories of the Participating Governments; and
- To actively promote through means consistent with its other objectives the economic development of the territories of the Participating Governments.

307. The ECCB employs a risk-based approach to supervision for all entities licensed under the Banking Act, involving a combination of on-site and off-site supervision. Off-site supervision involves the submission of risk-focused information such as Board of Directors' minutes and reports as well as the submission of financial returns. On-site examinations are conducted to evaluate the overall financial condition of a financial institution which includes: determining the significant activities and associated risks in lending; ensuring compliance with relevant laws and prudential guidelines; determining adequacy of policies governing major operations and adherence thereto; and evaluating the effectiveness of the institution's internal control system. As part of its on-site examination process, the ECCB conducts a review of the risk management framework to determine among other things: whether the proper systems and reporting mechanisms are in place with regards to customer due diligence; monitoring of structuring and layering; reporting of suspicious transactions etc. Customer due diligence files are also checked by the ECCB and beneficial ownership information with regards to the shareholding of a financial institution licensed under the Banking Act. Any breach of AML obligations detected during an on-site inspection is reported to the FIU and may be further investigated by the FSRC.

308. After an on-site inspection, the ECCB prepares an examination report highlighting any deficiencies or breaches detected during the on-site examination. The report is shared and discussed with the Board of Directors of the bank and the final report is sent to the Ministry of Finance.

309. If the ECCB finds, during an on-site examination of a bank, that the financial institution or any affiliate, director, officer, employee or significant shareholder of the financial institution is engaging in unsafe or unsound practices in conducting the business of the institution or is in violation of any law, regulations or guidelines to which the institution or person is subject, the ECCB may, pursuant to section 22(2) of the Banking Act:

- Issue a written warning,

Nevis, Saint Lucia, and Saint Vincent and the Grenadines. The Government of Anguilla became a full member of the ECCB on the 01 April 1987.

- Conclude a written agreement with the financial institution providing for a programme of remedial action,
- Issue a cease and desist order that requires the financial institution, the affiliate or the person responsible for the management of the financial institution to cease or desist from the practice or violation specified in the order, or
- Issue such determinations as it deems necessary in relation to the persons comprising the management of the financial institution.

310. The ECCB has indicated that remedial action, normally by signing a Letter of Commitment (LoC) or issuing a Memorandum of Understanding (MoU), to undertake action to address the issues in a specified time period, is taken as the first step when deficiencies are detected during an on-site examination. If corrective action is not taken by the financial institution within the timeframe set out in the LoC or MoU or if the institution has been non responsive to remedial action in the past or has a history of serious problems, a Written Warning will be issued by the ECCB. Where a financial institution continues to be in breach of any law, regulation or guideline and has not taken the corrective action as set out in the Written Warning, the ECCB will issue a Cease and Desist Order. If the breach of law continues, enforcement will continue in the following order – Fixed Monetary Penalties, Legal Proceedings and Restriction of Revocation of licence. During the review period, the ECCB conducted two onsite examinations of one bank in St. Kitts and Nevis. The main deficiencies that were noted related to the management of credit risk and operational risk. Following the onsite examinations, the ECCB entered into a MoU with the bank to effect remedies for the areas of deficiencies highlighted. The ECCB has confirmed that they have not applied any penalties, fines or charges against any institutions licensed under the Banking Act during the three-year period under review.

311. During the three-year review period, the Competent Authority of St. Kitts and Nevis received one request for bank information. The request was processed by the competent authority and information was obtained directly from the company as it related to a bank that was not located in the Federation (this case is further described in C.5 below).

Determination and factors underlying recommendations

Determination
The element is in place.
Phase 2 rating
Compliant

B. Access to Information

Overview

312. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether St. Kitts and Nevis' legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information (EOI).

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

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

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

316. In practice, in order to obtain information for EOI purposes, the competent authority will send a letter to the person believed to hold the information, be it a government authority or a third party. In respect of the four

requests received by St. Kitts and Nevis during the review period, such letters have been issued by the competent authority in three cases requesting ownership information, copies of financial statements and bank information. Of the four requests, three have been processed by the competent authority and are considered closed. The fourth request was, on the request of the competent authority processed by the Financial Intelligence Unit (FIU) in St. Kitts and Nevis and is also considered closed.

317. Where the entity from which information is requested is represented by a licensed service provider, the letter requesting information to be provided is sent to the service provider, who often will be in possession or control of the relevant information. St. Kitts and Nevis' competent authority has confirmed that they will also contact other persons to obtain information if the licensed service provider is not in possession of the requested information. The competent authority may also rely on government agencies and authorities to assist in the process of obtaining information. Of these, the FSRC, as the main regulator of non-bank financial services and the FIU would be the most likely agencies to be asked to provide support. In addition, the EOI Unit might request the Registrars, the Attorney General or Inland Revenue Department to provide information or assist the competent authority in obtaining information from a third party.

318. The St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, 2009 (MEM), provides for notification of the request to be given to the person who is the subject of the EOI request. The notification requirements only apply in relation to civil tax matters when the whereabouts of the taxpayer is known to the competent authority. The notification requirements can be waived in cases where the request is urgent or prior notification would seriously undermine the investigation of the requesting jurisdiction. In practice, no issues have arisen from this notification requirement and in the one case to date where notification was sent, it did not unduly delay the process of obtaining and exchanging the relevant information.

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

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

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

319. The St. Kitts and Nevis’ competent authority is the Financial Secretary, designated as the Tax Cooperation Authority, also referred to as the Competent Authority. The Financial Secretary has overall responsibility for the EOI Unit. The Deputy Financial Secretary is the Competent Authority Designate, and heads the EOI unit with the support of an EOI Officer and the Ministry’s Deputy Legal Adviser. The EOI Unit is tasked with receiving and managing requests for information from St. Kitts and Nevis’ treaty partners. The organisation of the EOI Unit is further described under section C.5.2.

320. Under the MEM, the Tax Cooperation Authority is vested with broad access powers for all tax matters. The MEM applies for the purposes of giving effect to the terms of a “scheduled agreement” in order to provide information in taxation matters or for providing information in taxation matters on request to a “scheduled country” (s. 3). The reference to “scheduled countries” relates to the ability of the authorities to exchange information on a unilateral basis where certain conditions are met. Whether the Act applies in respect of a “scheduled agreement” or a “scheduled country”, the access powers are identical (EOI unilateral mechanism is discussed further, under section C.1 below).

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

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

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

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

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

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

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

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

Gathering of information in practice

325. St. Kitts and Nevis has limited experience in the gathering of information for tax purposes as only four requests were received during the three-year review period, one of which was processed by the FIU due to the urgency of the request and the interpretation by St Kitts and Nevis, of the applicable treaty. Nevertheless, procedures to process incoming requests have been implemented and are followed when an incoming request is received. An EOI manual describing the different steps to process incoming requests is in place and is used in practice.

326. When a request is received, the EOI Unit will check its validity in accordance with the provisions of the relevant EOI Agreement. Once it is determined that the request is valid, the competent authority will determine the best approach to obtain the requested information.

327. The EOI Unit does not have information available to it which it can use directly to answer incoming requests. In most instances, information will be sought from other persons, be they government authorities or third parties. In practice, a letter will be sent to the person believed to be in possession of the requested information. In most cases such letters are addressed to the registered agent or licensed service provider representing the entity from whom information is sought. This letter will refer to the legal basis under which the information is requested (e.g. references to the provision of the MEM,

including the name of the foreign tax authority requesting the information) and will list details of the information required to be provided. The St. Kitts and Nevis authorities have confirmed that the name of the person under investigation in the requesting jurisdiction will only be disclosed when that is necessary in order to obtain the requested information. The letter stresses the importance of confidentiality and, provided that the notification requirements are waived, additional language is added to clarify that the person requested to provide the information is prohibited from notifying any other person (including the taxpayer under investigation) except for their own attorney or any other person named by the competent authority.

328. The record-keeper has 15 days from the date the letter is issued to provide the requested information. If information is not provided within this timeframe the competent authority would send a second letter with a short deadline requesting the record-keeper to obtain and present the information, and informing him/her/it of the obligation to keep and provide the records. To cater for the possibility that the record-keeper claims not to be in possession of the information, even though the information is required to be kept by that person, the letter also outlines the penalties for not having and/or providing the information. If the record-keeper fails to produce the information, the competent authority has indicated that they would notify the regulatory authorities, namely the FSRC, for assistance and, where necessary, to apply penalties, while concurrently exploring other ways for obtaining the information from non-primary sources.

329. During the review period, St. Kitts and Nevis received four requests, all of which requested identity and ownership information. Three of the requests asked for copies of financial statements or accounts and one request also asked for banking information. One of the requests was processed by the FIU, at the request of the competent authority. In the three other cases, the competent authority sent letters to the registered agent to provide the requested information. In one of the three cases the registered agent claimed not to be in possession of any of the requested information. The competent authority noted that the registered agent was under an obligation to hold a portion of the requested information and informed the FSRC of the alleged breach. The case was investigated and the information was subsequently provided (see *use of compulsory powers in practice* below). In the two other cases, the registered agent requested to provide the information was not under an obligation to hold such information and subsequently a notice was issued to the directors of the companies in question. In both these cases the information was obtained from third parties outside the Federation. All three requests have been responded to by the competent authority and are now considered closed (these cases are further described below under C.5).

330. In the case requesting banking information, the requesting jurisdiction did not provide the account number or the name of the bank, and it was unknown whether the company in question had a banking relationship in the Federation. A letter was issued to the directors of the company to compel, among other things, the company's banking information. The competent authority of St. Kitts and Nevis received the information and forwarded it to the requesting jurisdiction (the case is further described under A.3 and C.5).

331. The St. Kitts and Nevis authorities have confirmed that there is no difference with regard to the process to collect information whether it relates to ownership, accounting or banking information. In all cases, a letter to the person believed to be in possession of the requested information will be issued requesting that person to provide the information within 15 days. During the period under review, the competent authority of St. Kitts and Nevis was in a position to request information from third parties in three cases. Final responses were provided in all cases. Considering St. Kitts and Nevis' limited EOI experience, it is recommended that the ability of the St. Kitts and Nevis competent authority to exercise its powers to collect information should be monitored on an ongoing basis.

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

332. The powers described above apply for the express purpose of responding to requests for information from a foreign authority, without regard to whether the information is relevant for St. Kitts and Nevis' domestic tax purposes (s.3). In practice, no issues have arisen.

Compulsory powers (ToR B.1.4)

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

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

335. Although the competent authority has so far never applied for a court order to obtain information in relation to an EOI request, the St. Kitts and Nevis authorities have confirmed that all requests to obtain such an order would begin in Chamber Court, a process that is more efficient than an open court, as the Attorney General’s Chambers generally have in place arrangements with the judge to preserve confidentiality and swift access to the court. The competent authority has also indicated that an application to obtain a court order will be made *ex parte*, as all EOI requests, by their nature, are considered to be urgent.

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

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

Use of compulsory powers in practice

338. In the three-year review period, St. Kitts and Nevis did not apply any penalties or other sanctions for failure to produce information.

339. The competent authority has indicated that when requesting information from registered agents there have been some objections to the competent authority’s powers to obtain such information, but that such objections generally have been mild and were usually dissipated once the competent authority referred to the appropriate statutory provisions and obligations. In one case the competent authority’s powers to obtain information was explicitly challenged by a registered agent. Following delays in responding to the request and implicit and explicit challenges of the competent authority’s ability to both obtain the requested information and to relay the information to the

requesting jurisdiction, the registered agent claimed that it did not maintain the requested information. In this case, the competent authority decided to inform the registered agent's regulator, the FSRC, of the apparent violation and requested that the FSRC conduct an investigation of the registered agent with a view to obtaining the requested information. An investigation was conducted by the FSRC which resulted in the acquisition of the information that the service provider was required to maintain. The service provider subsequently submitted other information that was requested by the competent authority and the requested information was submitted to the requesting jurisdiction (the case is further described under C.5.)

Secrecy provisions (ToR B.1.5)

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

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

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

343. A similar provision is provided under the Nevis Offshore Banking Ordinance and, in that case, the information may also be disclosed when this

is done pursuant to any other enactment (s. 39). Consequently, where information is sought in connection with a request for information under an EOI agreement, and pursuant to the access powers described above, these exceptions will override the secrecy provisions in the Banking Act and the Nevis Offshore Banking Ordinance.

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

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

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

- (a) any communication between an attorney-at-law and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) any communication between an attorney-at-law and his client or any person representing his client or between such attorney-at-law or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) any item enclosed with or referred to in such communications and made
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them;

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

347. The scope of this definition goes beyond the exception for items subject to attorney-client privilege contained in the 2002 OECD Model TIEA. Subsections (b) and (c) of the definition include a concept of legal privilege that does not appear in Article 7(3) of the 2002 OECD Model TIEA. It is important to note that the extension of legal privilege to items made in contemplation of legal proceedings or in connection with the giving of legal advice does not mean that *any* document or piece of information provided to a legal adviser in contemplation of legal proceedings becomes an item subject to legal privilege. The document or piece of information itself must have been made in contemplation of those proceedings. The same would be the case with items enclosed with communications relating to the giving of legal advice. The competent authority in St. Kitts and Nevis has confirmed that the attorney-client privilege was not invoked in order to refuse to provide information in an EOI case during the period under review. Also, no issues were raised by peers in this regard.

Determination and factors underlying recommendations

Determination
The element is in place.
Phase 2 rating
Compliant

B.2. Notification requirements and rights and safeguards

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

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

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

349. Where the judge is satisfied that certain conditions are met, the judge may make an order that the person who appears to him to be in possession or

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

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

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

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

352. Nevertheless, where the judge is satisfied that the conditions are met, the judge “may” issue such an order, but is not bound to do so. Moreover, it is not clear what “reasonable grounds for not granting the request” would consist of, particularly where the Tax Cooperation Authority has certified that the request is valid under the relevant agreement. The St. Kitts and Nevis authorities have indicated that the wording of this provision is simply intended to alert the judge to the applicable scheduled agreement and to ensure that the judge can take into account all relevant factors to ensure that the request is in line with the agreement. The judge has discretion to decide whether to issue an order in the case before him/her.

353. To date, the competent authority of St. Kitts and Nevis has not had to apply the court procedure to gather information for EOI purposes. Therefore, the practical impact of these potential restrictions on the effectiveness of the Tax Cooperation Authority’s access powers could not be assessed, although they appear minimal and in line with the application of reasonable safeguards.

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

355. The MEM provides for notification rights of the person who is the subject of the request (i.e. the taxpayer) in limited circumstances: (i) where a request for information is made that is not in connection with a criminal matter or an alleged criminal matter, and (ii) if the person's whereabouts or address are made known to the Tax Cooperation Authority, then this person must be notified by the Tax Cooperation Authority of the existence of the request and the general nature of the information sought (s. 10(1)). The Tax Cooperation Authority is under no obligation to search for or conduct enquiries into the address or whereabouts of any person for this purpose (s. 10(5)). The St. Kitts and Nevis competent authority has indicated that in practice the taxpayer's whereabouts or address is not likely to be available to them unless provided by the requesting jurisdiction. However, if the subject of the request is a local taxpayer, the competent authority will be able to get the information from the Inland Revenue Department and will notify the taxpayer of the existence of the request when appropriate.

356. Any person notified may, within 15 days from the date of receipt of the notice, make a written submission to the Tax Cooperation Authority specifying any grounds which he/she wishes the Tax Cooperation Authority to consider in making its determination as to whether or not the request is in compliance with the rules for the Exchange of Information on Tax Matters set out in the Schedule to the MEM or with provisions in any scheduled agreement, as the case may be, including any assertions that the information requested is subject to legal privilege. The Tax Cooperation Authority is not obliged to permit or consider any oral submission by the person (s. 10(2) and (3)). The date of receipt of the notice is deemed to be 15 days from the date of issue (s.10(6)). The St. Kitts and Nevis' authorities have explained that this provision would only be applied if the actual date of receipt cannot be established. In practice, however, the competent authority has confirmed that notification letters are sent via courier ensuring that receipt of the notice is documented and to avoid delays, in all cases.

357. The notification requirement only applies in limited circumstances, i.e. in civil tax matters and where the address or whereabouts of the person who is subject of the request are made known to the Tax Cooperation Authority. The time for making a written submission by the subject of the request is short (15 days) and the fact of such submission does not trigger any prohibition on the disclosure of information to the Tax Cooperation Authority

or its transmission to a requesting jurisdiction. The competent authority of St. Kitts and Nevis has confirmed that the notification requirement does not prevent it from proceeding to obtain the requested information during the period when the taxpayer can make written submission specifying any grounds he/she wants the competent authority to consider when determining whether the request is compliant with the applicable EOI agreement.

358. Exemptions from prior notification requirements have been introduced to ensure that notification can be waived in the event that the request is of a very urgent nature or where prior notification would seriously undermine the investigation of the requesting jurisdiction (s. 10(7)). The amendment had effect as of 25 May 2012.

359. The competent authority of St. Kitts and Nevis has indicated that, in practice and if applicable, a letter of notification is sent to the taxpayer after the request has been verified by the EOI Unit. When a request is received by the competent authority, the competent authority will make a preliminary determination as to whether there are any reasons to waive the prior notification requirement, and, unless one of the exemptions applies, it will inform the requesting jurisdiction of the notification requirements. This is communicated to the requesting jurisdiction in the letter acknowledging receipt of the request. If the incoming request is not clear about waiving the prior notification requirements, the competent authority will seek clarification from the requesting jurisdiction before sending the notification letter to the taxpayer. The St. Kitts and Nevis authorities have indicated that the competent authority will not question the requesting jurisdiction's grounds for not notifying the taxpayer in question, as long as the explanation falls within the scope of one of the exemptions from prior notification provided under the law.

360. If none of the exemptions for prior notification requirements apply, the competent authority will send a notification letter to the taxpayer subject to the request, informing him/her of the existence of the request, the name of the jurisdiction making the request, the legal instrument under which the request is made and a very brief and general description of the information being sought. The notice also clearly outlines the timeframe in which the taxpayer may make a written submission specifying any grounds that the taxpayer wishes the competent authority to consider when determining whether the request is compliant with the terms of the relevant EOI agreement.

361. During the three-year review period, three of the four requests received specified that the matter pertained to criminal tax matters and notification was therefore not required. In the other request received, the requesting jurisdiction did not specify if prior notification of the taxpayer would hamper the investigation in the requesting jurisdiction. The competent authority of St. Kitts and Nevis contacted the requesting jurisdiction to clarify this before sending a letter of notification to the taxpayer concerned.

As the requesting jurisdiction did not request that prior notification should be waived, a letter of notification was sent to the taxpayer before the information was obtained by the competent authority. In practice, no issues have arisen from the notification procedure during the review period.

Determination and factors underlying recommendations

Determination
The element is in place.
Phase 2 rating
Compliant

C. Exchanging Information

Overview

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

363. St. Kitts and Nevis' network for exchange of information is multi-form, comprising bilateral, multilateral and unilateral mechanisms covering a total of 34 partner jurisdictions. First, St. Kitts and Nevis is a party to the multilateral CARICOM agreement together with ten other members of that organisation. In terms of bilateral agreements, St. Kitts and Nevis is party to an old DTC with Switzerland, but its EOI network has developed rapidly since April 2009, with the Federation signing 21 TIEAs and two DTCs to the international standard. Discussions or negotiations are underway with an additional seven jurisdictions (see section C.2 below).

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

365. St. Kitts and Nevis has signed EOI arrangements with 34 jurisdictions of which all but one (the TIEA with Germany) has been ratified.

Its treaties with some CARICOM partners and Switzerland are not to the standard. At the time of the phase 1 review St. Kitts and Nevis' authorities indicated that CARICOM had started a review of its double taxation agreement, with a view to bring it to the standard for all its parties. Comments were sought from Global Forum members in the course of the preparation of this report, and no jurisdiction advised that St. Kitts and Nevis had refused to negotiate or conclude such an arrangement (see section C.2 below).

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

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

368. There are no legal restrictions on the ability of St. Kitts and Nevis' competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. However, two peers have reported that St. Kitts and Nevis was not in a position to provide information in relation to criminal tax matters for years predating the entry into force of the applicable TIEAs. Since then, St. Kitts and Nevis has amended the MEM. This amendment, introduced in September 2013, enables St. Kitts and Nevis to exchange information in such instances provided that the information is not used as evidence that would have the effect of having the concerned individual penalised.

369. During the three years under review (1 July 2010 to 30 June 2013), St. Kitts and Nevis received four requests for information from two EOI partners. Of these four requests, St. Kitts and Nevis was in a position to provide a final response within 90 days in one case and within 180 days in two other cases. In the remaining case a final response was sent to the requesting jurisdictions within one year of receipt of the request. St. Kitts and Nevis did not send any requests for information to another jurisdiction during the review period.

370. To ensure adequate processing of incoming requests, in 2013 St. Kitts and Nevis put in place an EOI manual setting out the procedures for handling requests in practice. The manual shows that appropriate procedures are in place to handle incoming EOI requests in the future. Before 2013 the

competent authority of St. Kitts and Nevis used the 2006 OECD EOI Manual for reference when handling incoming EOI requests.¹⁶

C.1. Exchange of information mechanisms

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

371. The EOI network of St. Kitts and Nevis is multiform, comprising tax information exchange agreements (TIEAs), double tax treaties (DTCs), a regional multilateral instrument and a unilateral mechanism, covering a total of 34 jurisdictions (see Annex 2). First, St. Kitts and Nevis is signatory to TIEAs with 21 jurisdictions.¹⁷ Second, St. Kitts and Nevis is a signatory to three DTCs containing EOI articles. One is an old treaty dated 1963 with Switzerland that does not meet the standard. The other two, with Monaco and San Marino, are more recent and contain the latest version of the standard Article 26 of the OECD Model Tax Convention. Both of these have been ratified and entered into force. Third, St. Kitts and Nevis is a party to the CARICOM agreement (1995), the other 10 parties to which are Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago¹⁸ (see Annex 2).

372. The DTC between St. Kitts and Nevis and Switzerland is an extension of a former DTC between the United Kingdom and Switzerland. This DTC contains a number of restrictions, of which the most important ones are as follows. The DTC limits the exchange of information to “information as is necessary for carrying out the provisions of the Convention”, as opposed to for the administration of the domestic tax laws. In addition, it does not contain a provision corresponding with Article 26(5) of the OECD Model Tax Convention regarding bank information. Although St. Kitts and Nevis is able to exchange bank information on a reciprocal basis in the absence of such

16. OECD’s Manual on the Implementation of Exchange of Information Provisions for Tax Purposes, approved by the OECD Committee of Fiscal Affairs on 23 January 2006.
17. Aruba, Australia, Belgium, Canada, Curaçao, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Guernsey, Iceland, Liechtenstein, the Netherlands, New Zealand, Norway, Portugal, St. Maarten, Sweden and the United Kingdom.
18. This agreement is a double tax convention between member states of the Caribbean Community (CARICOM); its full title is: Agreement among the Governments of the member states of the Caribbean Community for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Profits or Gains and Capital Gains and for the Encouragement of Regional Trade and Investment. The other CARICOM members are not parties to the agreement, i.e. The Bahamas, Haiti, Montserrat and Suriname.

provision, Switzerland is not. Because of these restrictions, the DTC with Switzerland does not allow St. Kitts and Nevis to exchange information in accordance with the international standard. It is noted that both Switzerland and St. Kitts and Nevis have expressed interest in renegotiating the agreement. The current DTC with Switzerland is not further considered in this section, which will focus on whether St. Kitts and Nevis' EOI agreements allow it to effectively exchange information.

373. Finally, the MEM provides for the powers to access and provide information for exchange of information purposes in respect of a “scheduled country”. To be selected as a “scheduled country”, a jurisdiction must be a party to (i) a bilateral agreement or arrangement with the Federation that facilitates trade and investment in the Federation by nationals or resident of that jurisdiction, or (ii) a DTC that does not cover EOI in tax matters to the OECD standard (criteria set at point 4(1)(a) of the Schedule). Currently, 16 jurisdictions are designated as scheduled countries.¹⁹ Of the 16 scheduled jurisdictions, St. Kitts and Nevis has signed new TIEAs with five jurisdictions, four of which are in force.²⁰

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

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

376. In fact, as indicated above, a number of the scheduled countries have subsequently signed bilateral exchange of information agreements with St. Kitts and Nevis, and these agreements have been designated as “scheduled agreements”. In those cases, the application of the unilateral mechanism is academic, as exchange of information to the standard is achieved under the agreement. In the case of the CARICOM signatories, that agreement does

19. Denmark, New Zealand, Norway, Sweden, Switzerland, United Kingdom and the parties to the CARICOM agreement.

20. TIEAs signed Denmark, New Zealand, Norway, Sweden and United Kingdom. The TIEA with New Zealand is not yet in force.

provide for exchange of information to the standard where no impediment to obtain and provide bank information exists and where no domestic tax interest is present in either jurisdiction. For St. Kitts and Nevis, Antigua and Barbuda, Barbados, Belize, Jamaica, Saint Lucia and St. Vincent and the Grenadines this is the case, thus those EOI relationships do provide for effective exchange of information. It appears that there are such impediments in Dominica, Grenada and Trinidad and Tobago. It is unclear what the situation is in Guyana.

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

378. Although St. Kitts and Nevis is able to obtain and provide information to the standard pursuant to the unilateral mechanism, impediments to effective exchange of information in certain of the scheduled countries prevent the mechanism from meeting the standard in those cases. It is noted that discussions are underway to update the content of the CARICOM agreement to bring it up to standard for all signatories. Since the Phase 1 review, no new jurisdictions have been added to the list of scheduled countries under the unilateral mechanism and the St. Kitts and Nevis authorities have indicated that they have no intention of adding new jurisdictions to the scheduled country list as their current policy is to conclude EOI agreements to the standard with all relevant partner jurisdictions. This is consistent with the precept that a unilateral mechanism be a temporary measure until bilateral or multilateral mechanisms can be put in place or upgraded to provide for effective exchange of information.

379. As noted above, the CARICOM jurisdictions are currently working on getting the CARICOM agreement amended to ensure that the EOI mechanism is in line with the international standard. The St. Kitts and Nevis authorities have indicated that they first contacted the CARICOM Secretariat to propose amendment of the EOI provision of the CARICOM agreement in 2010 and, in 2011, lobbied the Secretariat for immediate action. Consequently, a draft

Amending Protocol was circulated to the CARICOM members for comments in 2013. St. Kitts and Nevis has indicated that if this draft is adopted, the CARICOM agreement would meet the international standard of transparency and exchange of information. It is recommended that St. Kitts and Nevis continues its efforts to have the CARICOM Agreement updated to ensure that it provides for effective exchange of information, to the standard, in all cases.

380. St. Kitts and Nevis has not exchanged information automatically or spontaneously under any of its agreements, however the St. Kitts and Nevis authorities have not ruled out this possibility in the future and they are currently considering the possibility of signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

381. Apart from exchange of information pursuant to EOI agreements, St. Kitts and Nevis also exchanges information pertaining to criminal tax matters within the ambit of the anti-money laundering, countering financing of terrorism and related activities field with criminal law enforcement agencies in other jurisdictions. The Proceeds of Crime Act and the Financial Intelligence Unit Act empowers the Financial Intelligence Unit (FIU) and other criminal law enforcement agencies (such as the Attorney General's Chambers and the Royal St. Christopher and Nevis Police Force) to assist foreign jurisdictions in criminal matters. Information is transmitted to foreign FIUs, prosecutors or other criminal law enforcement agencies using the Egmont Secure Website which facilitates exchange of information amongst FIUs. In addition, St. Kitts and Nevis exchanges criminal information with the United States under a Mutual Legal Assistance Treaty. During the period under review, the FIU in St. Kitts and Nevis processed five requests for assistance pertaining to criminal tax investigations or prosecutions, one of which had originally been sent to the competent authority in St. Kitts and Nevis under a TIEA. (See section C.5.1 below).

Foreseeably relevant standard (ToR C.1.1)

382. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions”, i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 1 of the OECD Model TIEA, set out below:²¹

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably

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

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

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

384. The EOI officer in charge of the case will validate an incoming request before starting to process it. Part of this validation is to determine whether the request fulfils the conditions set forth in the applicable EOI agreement. The St. Kitts and Nevis competent authority has indicated that, in practice, they do not seek clarification in relation to foreseeable relevance of incoming requests as long as, on the face of it, the request is in conformity with the relevant EOI agreement and contains the information necessary to process the request. In practice, St. Kitts and Nevis has not declined any requests on the basis of a lack of foreseeable relevance.

385. The CARICOM agreement provides for the exchange of information that is “necessary” for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States. St. Kitts and Nevis’ authorities adhere to the commentary to Article 26 of the OECD Model Tax Convention, paragraph 5, which states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing “foreseeably relevant” with “necessary” or “relevant”. During the review period, St. Kitts and Nevis did not receive any requests for information from any of its CARICOM partners.

386. The TIEA with Liechtenstein provides specific circumstances under which the requested party may decline a request if the amount of tax or duty in question does not exceed the threshold of EUR 25 000. Although this agreement also allows an exception to this rule when the case is “deemed to be extremely serious by the applicant party”, there is no guidance as to what constitutes an “extremely serious” case nor to the discretion of the requested party to accept this determination. It is also unclear how the requested party will determine the tax amount and how this rule would be applied in a group of cases, where in each case the tax amount is less than the threshold but the overall tax effect is large. It should further be noted that often the amount of tax involved can only be determined *after* information has been exchanged. St. Kitts and Nevis competent authority has indicated that it would not

question the requesting jurisdiction’s statement that the tax amount exceeded the threshold, and that they would not decline a request based on this provision. To date, St. Kitts and Nevis has not received a request, nor sent any request, for information under this agreement.

In respect of all persons (ToR C.1.2)

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

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

389. The DTCs of St. Kitts and Nevis with Monaco and San Marino indicate that “[t]he exchange of information is not restricted by Article 1”,²² which defines the personal scope of application of the Convention.²³ The CARICOM agreement does not contain the sentence indicating that EOI is not restricted by Article 1. However, its EOI provision applies to “carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention”. This agreement would not be limited to residents because all taxpayers, resident or not, are liable to the domestic taxes listed in Article 2 (e.g. domestic laws also apply taxes to the income of non-residents). Exchange of information in respect of all persons is thus possible under the terms of this agreement.

390. Under the TIEAs concluded with Germany, Portugal and Guernsey the requested party is under no obligation “to provide information which is neither held by the authorities nor in the possession of nor obtainable by persons who are within its territorial jurisdiction”. The relevant provisions under those TIEAs use the words “*obtainable by*” instead of the expression “in control of” used in Article 2 of the OECD Model TIEA. The St. Kitts and

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

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

Nevis' authorities have given their assurance that their official interpretation of the words "obtainable by" in place of "control of" does not reduce EOI and it may actually widen its effectiveness. The implementation of these provisions has not been tested in St. Kitts and Nevis since they did not receive any requests during the review period under any of these agreements.

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

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

Bank information

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

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

394. Among St. Kitts and Nevis' treaty partners, Grenada and Switzerland are currently unable to access bank information for exchange purposes absent an explicit provision in the treaty. Similarly, the authorities of Trinidad and Tobago can access bank information only when there is an ongoing tax assessment and an objection to the assessment by the taxpayer. Therefore,

St. Kitts and Nevis' treaties with these jurisdictions are not considered to meet the international standard.

395. During the period under review, St. Kitts and Nevis received one request for bank information. The information was obtained from the company as it related to a bank that was not located in the Federation and the information was submitted to the requesting jurisdiction.

Absence of domestic tax interest (ToR C.1.4)

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

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

398. The DTCs with Monaco and San Marino provide that the requested party “shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes”. However, the absence of a similar provision in the CARICOM agreement does not create restrictions on exchange of information, provided there is no domestic tax interest impediment to exchange information in the case of either contracting party. In relation to St. Kitts and Nevis' CARICOM partners, a domestic tax interest requirement seems to exist in the case of Dominica, Grenada and Trinidad and Tobago. Accordingly, St. Kitts and Nevis may not be able to exchange information consistent with the standard with these four jurisdictions.

Absence of dual criminality principles (ToR C.1.5)

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

400. None of the EOI arrangements concluded by St. Kitts and Nevis apply the dual criminality principle to restrict the exchange of information. In practice, no issue was raised in this respect.

Exchange of information in both civil and criminal tax matters
(ToR C.I.6)

401. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

402. All of the EOI agreements concluded by St. Kitts and Nevis provide for the exchange of information in both civil and criminal tax matters in all cases.²⁴ During the three year review period, St. Kitts and Nevis received three requests related to criminal tax matters and one request related to civil tax matters. An issue arose in relation to exchange of information in criminal tax matters predating the entry into force of two TIEAs. This issue is described under section C.1.9 below. It is noted that St. Kitts and Nevis has amended its legislation and has since obtained and exchanged the requested information.

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

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

404. All of the TIEAs concluded by St. Kitts and Nevis expressly allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction’s domestic laws (Article 5(3)). In addition, there are no restrictions in St. Kitts and Nevis’ DTCs or laws that

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

would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. In practice, no issue was raised in this respect.

In force (ToR C.1.8)

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

406. In St. Kitts and Nevis, treaties are given effect through federal legislation, and the MEM gives authority to the Minister of Finance to give effect to an EOI arrangement by an order (section 3(5)(a)). The Ministry of Finance is the authority charged with the negotiations of TIEAs and DTCs. Once an agreement has been initialled, it is sent to the Ministry of Foreign Affairs, which prepares the agreement for signature. Once signed, the agreement is sent to the Ministry of Justice and Legal Affairs, which drafts the implementing legislation and presents the agreement to Parliament. Agreements are implemented in domestic law by adding the name of the jurisdiction in the list of scheduled agreements in the MEM and the full text of the agreement is added as an attachment in the third schedule of the Act. Implementation of international agreements is subject to negative resolution in Parliament. If there is no objection the Order implementing the agreement is approved. After an Order is approved, it is gazetted in the Official Gazette along with the Statutory Rules and Orders declaring the TIEA or DTC as a scheduled agreement to the MEM. During this process the Ministry of Finance follows up with the Ministry of Justice and Legal Affairs to ensure that the implementation of the agreement is done in a timely manner. Once implemented in domestic law, the Ministry of Foreign Affairs sends a note through diplomatic channels informing the partner jurisdiction that the domestic procedures for entry into force of the agreement have been completed.

407. At the time of the Phase 1 review of St. Kitts and Nevis such an implementation Order had been approved for all the signed TIEAs, except for the TIEA with Germany, and the partner jurisdictions are listed in a schedule to the Act. Since then, St. Kitts and Nevis has only signed one new TIEA, with Guernsey, which has been ratified and is in force. The CARICOM agreement was given effect through a federal law (the Avoidance of Double Taxation and Prevention of Fiscal Evasion Agreement Act). St. Kitts and Nevis has signed EOI instruments with 34 jurisdictions. Of these, 26 are in force, and the Federation has ratified all but one: the TIEA with Germany signed in October 2010. The authorities of St. Kitts and Nevis indicated that there had been some practical difficulties during the ratification process but that these difficulties now have been resolved and that they are moving ahead

with the ratification process which is expected to be completed at the first sitting of the National Assembly in 2014.

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

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

409. The MEM was enacted to allow St. Kitts and Nevis to comply with the terms of its agreements. The MEM provides for the powers to access and provide information for exchange of information purposes.

410. At the time of the on-site visit two peers had commented that St. Kitts and Nevis had not provided information following requests that related to periods before the entry into force of the TIEAs under which the requests were made. The requests concerned criminal tax matters, and the view of the peers is that the entry into force provision of the TIEA obliges St. Kitts and Nevis to exchange information with respect to criminal tax matters, whether they relate to a taxable period after or before the entry into force of the TIEA. This interpretation is based on the distinction in the TIEAs between the effective dates for criminal tax matters and other matters covered by the Agreement. For other (non-criminal) matters, the entry into force provision explicitly identifies the taxable period from which the agreement will be applicable, whilst for criminal tax matters it states that the agreement shall have effect upon the entry into force of the Agreement (i.e. there is no restriction in the entry into force provision, or in any other provision of the TIEA, regarding the taxable period in relation to criminal tax matters, while such a restriction is clearly made in respect of all other matters).

411. The interpretation by St. Kitts and Nevis was different. St. Kitts and Nevis considers that retroactivity is not permissible unless clearly provided for in the TIEAs concerned, whilst accepting that information with respect to criminal tax matters which predates the entry into force of the TIEA should be exchanged if it relates to a tax period after the entry into force of the TIEA. Therefore, St. Kitts and Nevis considered that as this provision does not reflect a clear intention of retroactivity, no obligation exists to exchange information with respect to criminal tax matters relating to taxable periods before the entry into force of the TIEA. The view of the two peers concerned was that this was not a retroactivity issue.

412. Although St. Kitts and Nevis has not fully accepted the peers' interpretation of the entry into force provision, they have amended their legislation to ensure that they have the power to obtain and exchange information in criminal tax matters that occurred prior to the entry into force of the agreement, or the amended legislation itself, provided that "such information shall

not be used in evidence if its use would have the effect of having the concerned individual penalised”.

413. The amended legislation restricts the competent authority’s powers to obtain and exchange information in criminal tax matters if such information is used as evidence and its use would lead to penalties in the requesting jurisdiction. The wording of the provision covers information in relation to offences occurring before the entry into force of the agreement if the individual under investigation or prosecution is expected (on the basis of the information) to be penalised for the offence. It is uncertain how this provision will be interpreted in practice.

414. The St. Kitts and Nevis competent authority has indicated that their powers to obtain and exchange information will only be restricted where the requesting jurisdiction has started proceedings against the individual and so it does not consider that it would restrict the competent authority’s powers to obtain and exchange information in relation to a criminal tax matter where the person in question is under investigation in the requesting jurisdiction but no such proceedings are under way. It is also uncertain what penalties fall within the scope of the provision and whether sanctions that are considered administrative sanctions in the requesting jurisdiction might be interpreted as penalties under domestic law in St. Kitts and Nevis.

415. The St. Kitts and Nevis competent authority has indicated that they expect there to be very few cases to which retroactivity will apply, and in time this will diminish further as a result of the impact of statutes of limitation and the fact that many criminal matters will be capable of being dealt with because all years covered by the request fall after entry into force of the relevant TIEAs. In the limited number of cases where the competent authority’s powers to obtain and exchange information may be restricted, St. Kitts and Nevis has indicated that they anticipate that its extensive AML EOI network will allow them to co-operate with the requesting jurisdiction using other means. They already have experience of this, involving co-operation with the FIU, in one EOI case involving criminal tax matters. Under the Proceeds of Crime Act and the Financial Intelligence Unit Act, the FIU has the power to render assistance to other jurisdictions for intelligence purposes and so whether and to what extent the FIU is able to provide assistance in a specific case will depend on the nature of the matter under investigation in the requesting jurisdiction.

416. With respect to the requests affected by the divergence of interpretation, the competent authority of St. Kitts and Nevis has informed their EOI partners of the amendment and in two of the cases information was obtained by the competent authority. The third case was, upon the request of the competent authority, processed by the FIU in St. Kitts and Nevis. A final response has been provided to the requesting jurisdictions in all three cases.

417. Most of the TIEAs that St. Kitts and Nevis has concluded contain similar language as the TIEAs mentioned above. There are two TIEAs, however, that contain a definition of criminal tax matters which states explicitly that a criminal tax matter covers intentional conduct “whether before or after the entry into force” of the agreement, which appears to put it beyond any doubt, in respect of these two treaties, that St Kitts and Nevis has the obligation to exchange information relating to taxable periods prior to entry into force. The international standard provides for exchange of past information which relates to a taxable period following the effective date, but the Terms of Reference do not explicitly require that information must be provided that relates to a taxable period before the entry into force of an information exchange agreement. However, the obligations applying in a particular case will depend on the wording of the relevant provisions of the agreement. Where there is a clearly expressed intention in an EOI agreement of retroactivity, in the case of criminal tax matters, which imposes an obligation to exchange information where such matters occurred before the entry into force of the agreement, St. Kitts and Nevis is recommended to ensure that the powers granted under its domestic law enable it to give full effect to the provisions of all such EOI agreements. St. Kitts and Nevis’ authorities have indicated that it is anticipated that the restrictions in the provision mentioned above will be repealed at the next sitting of the National Assembly.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 rating
Compliant

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

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

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

419. In St. Kitts and Nevis, the responsibility for negotiation of exchange of information agreements (TIEAs and DTCs) lies with the Ministry of Finance, Federal Government. Requests for negotiations by interested jurisdictions must be submitted to the Ministry of Foreign Affairs which then seeks the approval of Cabinet to commence negotiations. Once approved, the request is forwarded to the treaty negotiation team for review. The treaty negotiation team comprises five people; two representatives from the Ministry of Finance, one from the Financial Services Regulatory Commission, one from the Inland Revenue Department and one from the Ministry of the Attorney General, Justice and Legal Affairs.

420. St. Kitts and Nevis has signed EOI arrangements with 34 jurisdictions, including 31 Global Forum members, out of which 15 are simultaneously OECD member countries, encompassing four G20 economies. The oldest arrangement was signed with Switzerland in 1963 (i.e. before independence) and the most recent with Guernsey in January 2012 (see Annex 2). Its treaties with some CARICOM partners and Switzerland are not to the standard. It is noted that both Switzerland and St. Kitts and Nevis have expressed interest in opening negotiations with the view to bringing the EOI mechanism in line with the international standard. Further, the CARICOM jurisdictions have started a review of its double taxation agreement, with a view to bringing it up to the standard for all its parties. The authorities of St. Kitts and Nevis are committed to continue their efforts to work with the CARICOM Secretariat and the partner jurisdictions to amend the CARICOM Agreement.

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

422. Since the Phase 1 review, St. Kitts and Nevis has signed a TIEA with Guernsey and is in various stages of TIEA negotiations with India, Ireland, Greece, South Africa, South Korea, United Arab Emirates and the United States. In addition, St. Kitts and Nevis is currently negotiating DTCs with Mauritius and Seychelles. It is noted that both St. Kitts and Nevis and Switzerland have expressed interest in negotiating an EOI mechanism to ensure that the parties can exchange information in line with the standard. It is expected that such negotiation will commence soon.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	St. Kitts and Nevis should continue to develop its EOI network with all relevant partners.
Phase 2 rating	
Compliant	

C.3. Confidentiality

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

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

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

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

Exchange of information instruments

425. The TIEAs of St. Kitts and Nevis include a confidentiality provision (Article 8) that conforms to the standard. Similarly, all EOI articles in St. Kitts and Nevis' DTCs have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the treaties. While each of the articles vary in wording, these provisions contain

the essential aspects of Article 26(2) of the Model Tax Convention and specifically spell out to whom the information exchanged can be disclosed and the purposes for which the information can be used.

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

St. Kitts and Nevis’ legislation

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

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

429. In addition to the confidentiality duties described above, the MEM stipulates that the particulars of, and all matters relating to, a request shall be treated as confidential. Section 13 (2) further states that no person who is notified of a request, or is required to take any action, or produce any document or supply any information in response to or in relation to any matter to which a request relates, shall disclose the fact of the receipt of such request or any of the particulars required or documents produced or information supplied to any other person for such period as he may be notified by the Tax

Cooperation Authority. It is further stated in section 14 (1) of the Act that the requesting party shall not, without the prior written consent of the Authority, transmit or use information or evidence provided in relation to an EOI request for purposes, investigations or proceedings other than those stated in the request. It is unclear whether domestic law in St. Kitts and Nevis can restrict another jurisdiction's use of information once it is exchanged under an EOI agreement, but the provision demonstrates St. Kitts and Nevis' commitment to confidentiality.

Notification of taxpayers

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

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

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

All other information exchanged (ToR C.3.2)

432. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests. The TIEA with Liechtenstein expressly covers these aspects and the provisions of the other instruments are not restrictive.

Ensuring confidentiality in practice

433. The Financial Secretary is Competent Authority and has the overall responsibility for the EOI Unit. The offices of the competent authority are located within the Ministry of Finance and are under the auspices of the Deputy Financial Secretary, in the Fiscal, Policy and Debt Management Division (who is also the Competent Authority Designate) who heads the EOI Unit, supported by an EOI officer and the Ministry's Deputy Legal Advisor.

434. All members of the EOI Unit are subject to the confidentiality rules stated above. In addition, the EOI Unit is guided by the EOI Manual which outlines the procedures and rules to be followed to ensure that information in relation to an EOI request is kept confidential at all times. The EOI Manual states that all documents relating to an EOI case, including the incoming

request and all related documents, shall be stamped with a clearly visible confidentiality stamp.

435. When a request is received by mail, the clerk opens the mail and signs and dates the document. The clerk is part of the administrative staff and has signed a confidentiality agreement. The request is then passed on to the Competent Authority Designate who stamps the documents with a confidentiality stamp.

436. All records in relation to EOI requests are kept in a dedicated fire-proof filing cabinet in the Competent Authority Designate's office. Only she and the EOI Officer have keys to the fireproof cabinet. The EOI Unit has adopted a strict "clean desk" policy, and only files that are being worked on are removed from the filing cabinet and they are returned to the cabinet immediately after use.

437. Before sending the response to the requesting jurisdiction, the Competent Authority Designate would check that the accompanying letter is addressed to the correct person authorised by the foreign competent authority. Physical mail is sent via an international registered mail system with a tracking function. Information exchanged electronically is sent through a dedicated e-mail address that only the Competent Authority and the Competent Authority Designate have access to. Only acknowledgment letters, status updates and requests for clarifications are sent via e-mail and reference is made to case number only. No communication that mentions the taxpayer(s) under investigation, details of requests or any other information that may be confidential is sent through e-mail. All such confidential communication is sent via physical mail with tracking function.

438. The EOI Manual contains template letters to send to Government Agencies and third parties when the EOI Unit has to request such an agency or third party to provide the information. On such occasions, every care is taken to disclose only the information strictly needed for the agency or third party to obtain and provide the information. Incoming requests are never forwarded to any other agency or third party, and the taxpayer's identity is only disclosed to the agency or third party where that information is needed to obtain the requested information.

439. Further, if information is required to be sent to tax administration officials in the Inland Revenue Department or to the Ministry of Justice and Legal Affairs (Attorney General's Chambers), a tracking system is implemented to keep records of the person to whom the information was disclosed and number of copies made. Only the specific information required to be disclosed by the competent authority in order to obtain the information is given and all correspondence is marked with a confidentiality stamp and the necessary warning to safeguard the information.

440. While St. Kitts and Nevis has indicated that public access to the premises of the EOI unit is restricted, during the on-site visit this did not always appear to be strictly enforced. However, it is noted that at the time of the on-site visit the Ministry of Finance was in the process of moving offices, and the authorities of St. Kitts and Nevis have provided reassurances that proper procedures have now been installed in the new premises that effectively restrict public access to the building. The EOI officer's desk is located in a work area shared with other officials within the Ministry of Finance who may not be involved in EOI matters. Even though the other officials are subject to the confidentiality rules stated above, this might increase the risk of confidential tax information reaching unauthorised persons. St. Kitts and Nevis is recommended to monitor the procedures in place to ensure that confidential tax information is not disclosed to unauthorised persons.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 rating
Compliant

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

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

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

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

442. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative.

443. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a

trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

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

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

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

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

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

449. No issue in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of St. Kitts and Nevis’ exchange of information partners.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

450. 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.

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

“6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall: (...)

b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.”

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

453. There appears to be no legal restrictions on the ability of St. Kitts and Nevis' competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

454. To ensure timely answers to incoming requests, St. Kitts and Nevis has put in place a manual and checklist to monitor the quality and accuracy of information exchanged and timelines for responding to an incoming request. According to the established procedures, if a final response cannot be provided within the 90 day period, the competent authority in St. Kitts and Nevis will inform the requesting jurisdiction of this and explain the reasons. Peer input received from EOI partners indicated that communication between the competent authorities is good and that the competent authority of St. Kitts and Nevis, when appropriate, provides status updates and interim replies in a timely manner.

455. During the three year period under review (1 July 2010 to 30 June 2013), St. Kitts and Nevis received four requests for information from two partner jurisdictions. A request is regarded as a single request irrespective of the number of persons or entities that are the subject of the investigation and the number of pieces of information requested. The competent authority in St. Kitts and Nevis has advised that they have never received a further request for information on the same matter where the original request was not fully satisfied. Nonetheless, the competent authority has explained that should such a situation occur, and provided that the requesting jurisdiction maintains the same reference number as that noted on the initial request, the competent authority would consider the second request to be a part of the original EOI request. St. Kitts and Nevis provided a final answer in all four cases. In the course of the review Peer input was received in relation to all these four requests.

456. Of the four requests received during the review period only one of these requests was answered within 90 days. This request was in fact processed by the FIU in St. Kitts and Nevis using the FIU's powers to exchange information with law enforcement and prosecutorial agencies in certain circumstances. The three other requests were processed by the competent authority. A final response was provided within 180 days in two of these cases, and in one case a final response was sent within one year of receipt of the request. Three of the requests (including the one processed by the FIU) related to criminal tax matters occurring prior to the entry into force of the relevant TIEA. Only one of the requests received during the review period was in relation to a civil tax matter. The requesting jurisdiction requested information about the trust deed, settlor and beneficiaries of a foreign trust and copies of correspondence, financial accounts and details of payments made to one specified person under investigation in the requesting

jurisdiction. An interim response was sent within 54 days and a final response was provided within 110 days of receipt of the request. The trust in question was not a registered trust in St. Kitts and Nevis, but the trustee of the foreign trust was a company (an NBC) incorporated in the Federation. The competent authority was able to follow the chain of directors of the NBC and obtain information from a person outside of the Federation that indicated that the person under investigation in the requesting jurisdiction in fact was not a beneficiary of the trust. Even though this was not the exact information that was requested, St. Kitts and Nevis is of the opinion that the information provided is likely to have led to the precise information desired by the requesting jurisdiction. Although requested, the requesting jurisdiction has not informed St. Kitts and Nevis if the information provided was useful (these cases are also discussed in A.1.4 and A.2 above).

457. The only request that was answered within 90 days during the review period was the one processed by the FIU in St. Kitts and Nevis. The request was of an urgent matter, and due to the domestic process of amending the law to enable the competent authority to exchange information predating the entry into force of the TIEA (see C.1.9 above), the competent authority in St. Kitts and Nevis was unable to process the request within the timeframe requested. However, a similar request had already been sent to the FIU by the requesting jurisdiction's prosecutor, and in the spirit of co-operation, the competent authority in St. Kitts and Nevis referred the matter to the FIU for urgent action. The information requested was in relation to a criminal investigation that involved embezzlement and fraud, two offences that fall within the area of money-laundering, and the FIU in St. Kitts and Nevis was therefore able to render assistance in the relevant case. The FIU exchanged the information requested with the prosecutor's office in the requesting jurisdiction under the information-sharing arrangements (FIU-to-Prosecutor category) provided for under domestic law in St. Kitts and Nevis, within 90 days of receipt of the request.

458. During the period under review, St. Kitts and Nevis officially only declined to provide information in one case and this was due to the divergence of interpretation of the entry into force provision in the applicable treaty. After St. Kitts and Nevis amended its legislation, it reopened the case and has since responded to the request. A final response was sent to the requesting jurisdiction within 180 days after the case was reopened. The requesting jurisdiction has indicated that during the process of amending the legislation and subsequently when the competent authority was working on obtaining the requested information, the competent authorities had regular contact and the competent authority of St. Kitts and Nevis provided regular updates on the process. The fourth request was received by St. Kitts and Nevis in May 2013. The competent authority of St. Kitts and Nevis sent an interim response to the requesting jurisdiction in March 2014 and a final

response was sent within one year of receipt of the request. To some extent, the delay in processing this request can also be explained by the divergence of interpretation referred to above and the process of amending the domestic legislation in St. Kitts and Nevis. The amendment was passed and in force as of 24 September 2013, thus only partly explaining the delay in the process of obtaining and exchanging the requested information. The St. Kitts and Nevis competent authority has indicated that when attempting to obtain the requested information from the service provider that was believed to be in possession of it, the service provider first implicitly and then explicitly challenged the competent authority's power to obtain the information, and then claimed not to be in possession of the information, even though the service provider was obliged under domestic law to keep such information. The competent authority informed the FSRC of the apparent violation of the obligation to keep such information under domestic law and requested that the FSRC conduct an investigation of the service provider to ascertain whether this was true. The investigation was conducted by the FSRC and the information was obtained and forwarded to the competent authority (the case is also described under B.1 above).

Organisational process and resources (ToR C.5.2)

459. The TIEAs and DTCs indicate that the competent authority is the Financial Secretary or his authorised representative. The MEM, similarly designates the Financial Secretary as the Tax Co-operation Authority for the purposes of facilitating EOI requests, acting alone or through a person designated by him/her to act on his/her behalf (section 4). The Financial Secretary designated its Deputy Financial Secretary as authorised representative. The contact details of the competent authority are made available to other competent authorities through the Global Forum Competent Authorities database. The information is also publicly available on the Ministry of Finance's website. In addition, the competent authority of St. Kitts and Nevis has indicated that they have written to most treaty partners advising of the competent authority arrangements in the Federation.

Resources

460. The EOI Unit is currently staffed with two people. The EOI Unit is located within the Ministry of Finance, Fiscal, Policy and Debt Management Division. The Deputy Financial Secretary, as Competent Authority Designate, heads the EOI Unit and is supported by an EOI Officer, and receives assistance from the Ministry's Deputy Legal Advisor as required. In addition to handling EOI requests, the EOI officer handles other responsibilities from the Fiscal and Policy Unit. In practice, when a request is received, handling of that request is given priority over all other responsibilities the

EOI Officer has. Considering the number of requests received, the Unit is currently sufficiently staffed to process in an appropriate manner all incoming requests received. Nevertheless, St. Kitts and Nevis recently hired one other person to assist with the work in the EOI Unit and this person is being trained to serve as an alternate when the EOI Officer is on leave and for continuity purposes.

461. The Competent Authority Designate and the Deputy Legal Advisor have attended The Global Forum's Assessor Training Seminar and participated in Global Forum Competent Authorities meetings. The Competent Authority Designate and staff from the Inland Revenue Department have also attended an EOI workshop facilitated by the Global Forum, CIAT, World Bank and the US Treasury in Florida. In addition, the Competent Authority Designate, staff from the Inland Revenue Department and Ministry of Finance of the Nevis Island Administration attended the Exchange of Information Training Seminar facilitated by the Global Forum in Barbados. Training of the EOI officers is primarily in the form of hands-on training. In addition, the Competent Authority Designate has conducted a training session on Effective Exchange of Information which targeted staff of the Ministry of Finance, including the Inland Revenue Department, in which the EOI Officer also participated.

462. In relation to financial resources, the EOI Unit's operation is financed from the Ministry of Finance's budget allocation which is approved by the National Assembly. The St. Kitts and Nevis authorities have indicated that funds were allocated in 2014 for further training of the EOI Unit's staff.

Organisational process

463. St. Kitts and Nevis has limited experience in exchange of information: only four requests were received during the period under review. Nonetheless, and in order to adequately process incoming requests, an EOI manual setting out the procedures to handle incoming and outgoing requests and defining the roles of the officials involved in the process has been put in place by the EOI Unit. These different steps include:

- Registration and acknowledgment of the request: When a request is initially received by the competent authority, the date that the request is received is noted on the request by the clerk responsible for recording incoming mail before forwarding it to the Competent Authority via his/her Personal Assistant. The Competent Authority immediately forwards the request to the Competent Authority Designate who stamps the incoming request with a confidentiality stamp, assigns the request a unique reference number and logs the request in the EOI register, before preparing and sending an acknowledgment letter to

the EOI partner. The acknowledgment letter should be sent within 15 days of receipt of the incoming request.

- Validation of the request: the request is forwarded to the EOI Officer who will check if the request is valid and complete. The validation process includes checking if the request fulfils the conditions set forth in the applicable EOI agreement, ensuring that the request is signed by the competent authority of the requesting state and that it includes all the necessary information to process the request. The EOI officer also does a preliminary assessment of whether the information requested is of a nature that can be provided, if the request contains sufficient information to ascertain what information is required and to identify the taxpayer. If it is determined that there are grounds for declining the request, or the request is incomplete, the Competent Authority Designate should notify the requesting jurisdiction of the deficiencies in the request within 60 days of receipt of the request. The St. Kitts and Nevis authorities confirm that they have not declined a request on the grounds of it being unclear or incomplete during the three year review period. Nonetheless, the competent authority has indicated that if a request received is unclear or incomplete the competent authority will contact the requesting jurisdiction and ask them to rectify the situation.

The EOI manual does not specify a timeframe for the validation process, however, in practice, validation was completed within 5 days of receipt of the request in all four cases received during the review period and did not unduly delay the processing of the incoming requests.

It should be noted that in relation to requests for information pertaining to criminal tax matters occurring before the entry into force of the relevant EOI agreement, validation of the request would also include determining whether the information can be obtained and exchanged according to St Kitts and Nevis domestic law (see C.1.9 above).

- Processing the request: once they have confirmed that the request is valid, the EOI Officer will determine how best to access the information and proceed to gather the requested information by the dissemination of letters to the appropriate agencies or third persons believed to be in possession of the requested information. The letter is addressed to the head of the institution requested to provide the information. The letter states the legal basis under which the information is being requested and outlines the urgency and confidentiality of the proceedings. The agency or third person believed to be in possession of the information is required to provide the

requested information within 15 days of the date of the competent authority's letter. In practice, the competent authority has issued letters to service providers/registered agents and other third persons in three cases. In the fourth case – the case which was handled by the FIU – information was requested from the Registrar.

If the taxpayer's name and address are known to the competent authority, the EOI officer will also prepare a letter to notify the taxpayer of the request, provided that none of the exemptions from the notification requirements is applicable (see B.2 above). The taxpayer is granted 15 days from the date of receipt of the notice to make a written submission to the competent authority specifying any points the competent authority should consider in making its determination as to whether or not the request is in compliance with the EOI agreement. The EOI manual contains a template letter of notification to the taxpayer and different template letters for requesting information from government agencies and third parties. To avoid undue delays, the letter of notification to the taxpayer and notice to the information holder to provide the requested information is sent at the same time.

The EOI Officer creates a file for the request using the unique reference number assigned by the Competent Authority Designate. All files are stored in a dedicated fireproof cabinet when they are not in use.

When the information needed to respond to a request, or part of a request, has been gathered the Competent Authority Designate performs an initial evaluation of the quality of the information received. The information is then forwarded to the EOI Officer who further assesses the information submitted to determine if the information sufficiently responds to the incoming request.

- Responding to the request: If the quality of the information received is acceptable and sufficiently responds to the incoming request, the EOI Officer drafts a response to the request. The EOI Officer uses the OECD's checklist of what to include in a response as a guide. The correspondence to the requesting jurisdiction would then be reviewed and signed by the Competent Authority Designate. Responses to requests are currently only sent via physical mail using an international registration system where a mail tracking function is in place.
- In the event that the information received from the information holder is insufficient, the Competent Authority Designate will contact the information holder with a view to having the deficiencies corrected. If the information holder is uncooperative, the matter will be forwarded to the relevant agency, if any, in charge of monitoring and enforcement of the relevant person, for action. In such a case,

a letter is sent to the head of the relevant agency briefly outlining the matter to be investigated. The competent authority of St. Kitts and Nevis has confirmed that the letter will only provide information that is pertinent to the agency's investigation. The identity of the person under investigation and the background for the request will only be revealed if pertinent to the agency's investigation. In practice, this has been done in one EOI case to date where the FSRC was asked to investigate an alleged breach of AML obligations of the relevant registered agent believed to be in possession of the requested information (the case is further described under C.5.1 above). The information that was required to be held by the service provider was obtained by the FSRC and submitted to the competent authority.

- The EOI Unit strives to submit a response to incoming requests within 90 days of receipt of the request. If information cannot be obtained and provided to the requesting jurisdiction within 90 days of receipt of the request, the Competent Authority Designate sends a status update or an interim reply, if appropriate, to the requesting jurisdiction and at least once every 90 days thereafter until a final response is provided. If it becomes apparent that the requested information cannot be provided, the competent authority will inform the requesting jurisdiction that the information cannot be provided, and the reasons it cannot be provided, as soon as possible. Peer input from EOI partners confirms that, in practice, status updates and interim responses are provided regularly and in a timely manner.

464. St. Kitts and Nevis' EOI manual was adopted in 2013 and is already in use. A significant portion of the manual is based on the 2006 OECD EOI Manual.²⁵ Before the adoption of their own EOI manual, St. Kitts and Nevis used the OECD's EOI Manual as guidance. The St. Kitts and Nevis authorities have indicated that the manual will be continuously updated by the EOI Unit to ensure that it reflects up to date international best practices.

465. To ensure that incoming requests are properly managed and responded to in a timely manner, the Competent Authority Designate maintains an EOI Register, in Excel format, that records incoming requests received by the EOI Unit. Each incoming request is assigned a unique reference number that is recorded in the Register. The EOI Register also captures the date the request was received, the name of the EOI Officer to whom the request is assigned, the status of the case and actions taken. Every time an action is taken on the file, the Competent Authority Designate updates the EOI Register and inserts a new

25. OECD's Manual on the Implementation of Exchange of Information Provisions for Tax Purposes, approved by the OECD Committee of Fiscal Affairs on 23 January 2006.

review date. St. Kitts and Nevis has expressed an interest in utilizing the EOI Database that is being developed and tested by the Global Forum, and intends to replace the manual register with the Global Forum's database once it is available.

466. Members of the EOI unit acknowledged that their experience in processing incoming requests is limited. However, they explained during the on-site visit that in the cases they have processed to date they have followed the steps indicated in the EOI manual to ensure consistency as far as reasonably practicable. The competent authority of St. Kitts and Nevis has indicated that in all cases, the licensed service provider (if appropriate) is contacted first, with other persons contacted as needed (see B.1 above). Taking into account the limited experience of EOI, and the fact that service providers are experiencing the intervention of the competent authority for the first time, the challenges appearing in practice, when requesting service providers to provide information, have been generally mild (with one exception, where the competent authority contacted the FSRC for assistance, see B. 1 and C.5.1).

467. Input from EOI partners also indicated that the Competent Authority in St. Kitts and Nevis has sent status updates and interim replies in a timely manner, and that communication between competent authorities has been good.

Conclusion

468. The responsibility for handling incoming requests lies with the EOI Unit. The unit is presently sufficiently staffed, considering the few number of requests received, and the officials have a high level of knowledge of exchange of information. Most of the staff have attended seminars on exchange of information, and an internal training session targeting relevant staff in the EOI Unit and the Ministry of Finance has been conducted. Adequate procedures and organisational processes have been put in place and should ensure adequate responses within an appropriate timeframe.

469. For the period under review, St. Kitts and Nevis received four requests for information. In two of these cases, delays occurred because of the divergence of interpretation of the entry into force provision of the applicable treaties and the subsequent process of amending the domestic legislation to enable St. Kitts and Nevis to exchange information in criminal tax matters occurring before the entry into force of the relevant agreement. In one case the competent authority's powers to obtain and exchange information was challenged by the information holder, and after a few attempts to obtain the information from the service provider the case was referred to the FSRC for assistance. The requested information was obtained and forwarded to the requesting jurisdiction.

470. The procedures for each step of the EOI process are formalised in the EOI manual and adequate measures are taken to monitor timeliness of

responses to EOI requests. In light of its relatively new and limited experience in EOI, St. Kitts and Nevis is, nevertheless, encouraged to monitor the practical implementation of the organisational processes and the process of handling incoming requests to ensure that they can exchange information effectively and in a timely manner.

Absence of unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

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

472. There are no laws or regulations in St. Kitts and Nevis that impose restrictive conditions on exchange of information that would be incompatible with the international standard. There are no other unreasonable, disproportionate or unduly restrictive conditions on exchange of information existing in practice.

Determination and factors underlying recommendations

Phase 1 Determination	
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly, no Phase 1 determination has been made.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendation	Recommendation
St. Kitts and Nevis has committed resources and introduced organisational processes for handling exchange of information requests. St. Kitts and Nevis only received four requests for information during the three-year review period and in two of these cases some delays occurred when processing the requests primarily on account of a difference in interpretation of the TIEAs between it and the requesting jurisdiction. Consequently, the organisational processes have not been sufficiently tested in practice.	St. Kitts and Nevis should continue to monitor the handling of incoming requests to ensure that comprehensive replies are provided in a timely manner to its partners.

Summary of Determinations and Factors Underlying Recommendations

Overall Rating		
LARGELY COMPLIANT		
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>)		
Phase 1 determination: The element is in place.		
Phase 2 ratings: Largely Compliant	The regulatory authorities conduct on-site inspections of regulated entities based on a risk assessment. However, during the three-year review period the regulatory authorities only monitored a limited proportion of the licensed service providers in St Kitts and Nevis.	St. Kitts and Nevis should ensure that there is effective oversight of the legal obligations imposed on relevant entities to ensure the availability of ownership and identity information in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
Phase 1 determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 ratings: Largely Compliant	The amendments made in 2012 to the Tax Administration and Procedures Act, introducing binding requirements on all partnerships that carry on business in the Federation to maintain accounting records, including underlying documents, has not been tested during the period under review.	St. Kitts and Nevis should monitor the practical implementation of the amended legislation to ensure that all partnerships keep appropriate accounting records and underlying documents.
	There are no oversight programmes in place to efficiently monitor compliance with the obligation to maintain accounting records for exempt companies, NBCs, LLCs, exempt LPs or trusts in St. Kitts and Nevis.	St. Kitts and Nevis should ensure that there is effective oversight of the legal obligations on exempt companies, NBCs, LLCs, exempt LPs and trusts to ensure the availability of accounting records in all cases.
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
Phase 1 determination: The element is in place.		
Phase 2 ratings: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
Phase 1 determination: The element is in place.		
Phase 2 ratings: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
Phase 1 determination: The element is in place.		
Phase 2 ratings: Compliant		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
Phase 1 determination: The element is in place.		
Phase 2 ratings: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
Phase 1 determination: The element is in place.		St. Kitts and Nevis should continue to develop its EOI network with all relevant partners.
Phase 2 ratings: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
Phase 1 determination: The element is in place.		
Phase 2 ratings: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
Phase 1 determination: The element is in place.		
Phase 2 ratings: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		

Determination	Factors underlying recommendations	Recommendations
<p>Phase 2 ratings: Largely Compliant</p>	<p>St. Kitts and Nevis has committed resources and introduced organisational processes for handling exchange of information requests. St. Kitts and Nevis only received four requests for information during the three-year review period and in two of these cases some delays occurred when processing the requests primarily on account of a difference in interpretation of the TIEAs between it and the requesting jurisdiction. Consequently, the organisational processes have not been sufficiently tested in practice.</p>	<p>St. Kitts and Nevis should continue to monitor the handling of incoming requests to ensure that comprehensive replies are provided in a timely manner to its partners.</p>

Annex 1: Jurisdiction’s response to the review report²⁶

St. Kitts and Nevis expresses its appreciation to the Peer Review Group (PRG) and the assessment team for their invaluable contributions to its Phase 2 Peer Review Report.

St. Kitts and Nevis has no objections to the content of the Report. The recommendations that were made have been noted and St. Kitts and Nevis is pleased to advise that enhancements to the current systems have begun. These procedures will guarantee the oversight of legal obligations on relevant entities, ensuring that ownership and identity information, as well as accounting records and underlying documents are available in all cases.

St. Kitts and Nevis reiterates its commitment to the promotion and implementation of international standards for transparency and exchange of information for tax purposes and pledges to support the work of the Global Forum in this respect.

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

Annex 2: List of all exchange of information mechanisms

Exchange of information mechanisms signed by St. Kitts and Nevis as of April 2014

	Jurisdiction	Type of arrangement	Signed	Ratified/In force
	Antigua and Barbuda (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	Aruba	TIEA	11-Sep-09	19-Oct-2011
	Australia	TIEA	05-Mar-10	11-Jan-11
	Barbados (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	Belgium	TIEA	18-Dec-09	Ratified on 23-Nov-10
	Belize (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	Canada	TIEA	14-Jun-10	21-Nov-2011
	Curaçao ²⁷	TIEA	11-Sep-09	Ratified on 22-Nov-10
	Denmark	TIEA	02-Sep-09	23-Feb-2011
	Dominica (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	Faroe Islands	TIEA	24-Mar-10	17-Jun-2011
	Finland	TIEA	24-Mar-10	21-Mar-2011
	France	TIEA	01-Apr-10	16-Dec-10
	Germany	TIEA	13-Oct-10	Not ratified

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

	Jurisdiction	Type of arrangement	Signed	Ratified/In force
	Greenland	TIEA	24-Mar-10	Ratified on 22-Nov-10
	Grenada (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	Guernsey	TIEA	18-Jan-12	14-Apr-2013
	Guyana (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	Iceland	TIEA	24-Mar-10	Ratified on 22-Nov-10
	Jamaica (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	Liechtenstein	TIEA	11-Dec-09	14-Feb-11
	Monaco	DTC	17-Sep-09	01-Dec-2011
	Netherlands	TIEA	02-Sep-09	29-Nov-2010
	New Zealand	TIEA	24-Nov-09	Ratified on 23-Nov-10
	Norway	TIEA	24-Mar-10	12-Jan-11
	Portugal	TIEA	29-Jul-10	Ratified on 22-Nov-10
	San Marino	DTC	20-Apr-10	12-Feb-2014
	St Maarten ²⁸	TIEA	11-Sep-09	Ratified on 22-Nov-10
	Saint Lucia (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	St. Vincent and the Grenadines (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	Sweden	TIEA	24-Mar-10	31-Dec-10
	Switzerland	DTC	26-Aug-63	01-Jan-1961
	Trinidad and Tobago (CARICOM)	DTC	06-Jul-94	25-Oct-2001
	United Kingdom	TIEA	18-Jan-10	19-May-2011

28. See previous footnote.

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

Constitution

Commercial laws:

St. Kitts

Companies Act (CAP 21.03)

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

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

Limited Partnerships Act (CAP 21.12)

Unincorporated Business Tax Act No. 5 of 2010

Trusts Act (CAP 5.19)

Foundations Act (CAP 21.19)

Nevis

Companies Ordinance (CAP 7.06)

Nevis Business Corporation Ordinance (CAP 7.01)

Nevis Limited Liability Company Ordinance (CAP 7.04)

Nevis International Exempt Trust Ordinance (CAP 7.03)

Multiform Foundations Ordinance (CAP 7.08)

Regulated activities and AML/CFT laws:

Banking Act (CAP 21.01)

Nevis Offshore Banking Ordinance (CAP 7.05)

Proceeds of Crime Act of 2000 (CAP 4.28)

Financial Services Regulatory Commission Act, No. 22 of 2009

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

Anti-Money Laundering Regulations No. 46 of 2011

Anti-Terrorism (Prevention of Terrorist Financing) Regulations No. 47 of 2011

Financial Services (Implementation of Industry Standards) Regulations, No. 51 of 2011 with appended Guidance Notes

Tax laws:

Income Tax Act (CAP 20.22)

Tax Administration and Procedures Act (CAP 20.52)

Nevis Tax Administration and Procedures Ordinance (CAP 6.11(N))

Value Added Tax Act No. 3 of 2010

St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act (CAP 20.60)

Annex 4: Overview of laws and other relevant factors for exchange of information

Primary legislation

- Companies Act (CAP 21.03)
- Licences on Business and Occupations Act of 1972 (CAP 18.20)
- Limited Partnerships Act (CAP 21.12)
- Trusts Act (CAP 5.19)
- Foundations Act (CAP 21.19)
- Companies Ordinance (CAP 7.06)
- Nevis Business Corporation Ordinance (CAP 7.01)
- Nevis Limited Liability Company Ordinance (CAP 7.04)
- Nevis International Exempt Trust Ordinance (CAP 7.03)
- Multiform Foundations Ordinance (CAP 7.08)
- Anti-Money Laundering Regulations No. 46 of 2011
- Anti-Terrorism (Prevention of Terrorist Financing) Regulations, No. 47 of 2011
- Financial Services (Implementation of Industry Standards) Regulations, No. 51 of 2011 with appended Guidance Notes
- St. Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act No. 7 of, 2009

Primary government authorities

- Financial Secretary, designated as the Tax Cooperation Authority
- Eastern Caribbean Central Bank

Financial Services Regulatory Commission

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

Registrar of Insurances

Registrar of Companies, Trusts, Foundations and Limited Partnerships
(Financial Services Registry)

Annex 5: Overview of regulated business activities

1. Banking business engaged in pursuant to the Banking Act. Cap. 21.01.
2. Offshore banking carried on under the Nevis Offshore Banking Ordinance.
3. Trust business carried on under the Trust Act, and the Nevis International Trust Ordinance.
4. Business corporations under the Nevis Business Corporation Ordinance.
5. Finance business carried on under the Financial Services Regulations Order.
6. Company business carried under the Companies Act, and the Nevis Limited Liability Companies Ordinance.
7. Insurance business.
8. Venture risk capital.
9. Money transmission services.
10. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
11. Guarantees and commitments.
12. Trading for own account or for account of customers in:
 - a. money market instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc.);
 - b. foreign exchange;
 - c. financial and commodity-based derivative instruments (e.g. futures, options, interests rate and foreign exchange instruments, etc.);
 - d. transferable or negotiable instruments.
13. Money brokering.
14. Money lending and pawning.

15. Money exchange (e.g. casa de cambio).

16. Real estate business:

The business of providing real estate services include agency services for or on behalf of third parties concerning the buying or selling of freehold or leasehold property (including commercial and agricultural property) whether the property is situated in Saint Christopher and Nevis or overseas.

17. Credit unions.

18. Building societies.

19. An activity in which money belonging to a client is held or managed by a Barrister or Solicitor providing legal services:

Provided that for the purposes of this paragraph, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a third party:

Provided that the services are being carried out by independent legal professionals who are not employed by public authorities or undertakings which do not by way of business provide legal services to third parties:

Provided also that those professionals are engaged in the business of providing legal or notarial services to third parties when participating in financial or immoveable property transactions concerning any of the following:

- a. the buying and selling of immoveable property or business entities;
- b. the management of client money, securities or other assets;
- c. the opening or management of bank, savings or securities accounts;
- d. the organisation of contributions necessary for the creation, operation or management of companies;
- e. the creation, operation or management of trusts, companies or similar structures.

20. Accountants and accounting business:

The business of providing any of the following:

- a. external accountancy services;
- b. advice about the tax affairs of another person;
- c. audit services; or
- d. insolvency services

Provided that for the purposes of this Act “external accountancy services” means accountancy services provided to third parties and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide accountancy services to third parties:

Provided also that “audit services” are audit services provided by way of business pursuant to any function under any enactment.

21. The business of acting as company secretary of bodies corporate.
22. Gaming.
23. Charities and other non profit organisations.
24. Jewellers and dealers in precious stones and metal.
25. Other services:

The business of providing any of the following services to third parties not otherwise included in this Schedule:

- a. acceptance of deposits and other repayable funds from the public;
 - b. lending, including consumer credit, mortgage credit, factoring (with or without recourse), financial of commercial transactions (including forfeiting);
 - c. financial leasing;
 - d. participation in securities issues and the provision of services related to such issues;
 - e. advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
 - f. portfolio management and advice;
 - g. safekeeping and administration of securities;
 - h. safe custody services;
 - i. otherwise investing, administering or managing funds or money on behalf of third parties.
26. Any other commercial activity in which there is a likelihood of an unusual or suspicious transaction being conducted.

Annex 6: People interviewed during the on-site visit

Ministry of Finance

Acting Financial Secretary
Deputy Financial Secretary
Deputy Legal Advisor
Treaty Negotiation Team
EOI Unit

Financial Services Regulatory Commission

St. Kitts

Acting Director FSRC, St. Kitts Branch
Registrar of Domestic Insurance Companies
Registrar of Captive Insurance Companies
Deputy Registrar of Companies, Trusts, Foundations and Limited Partnerships

Nevis

Director, FSRC Nevis Branch
Financial Services Counsel to NIA
Deputy Registrar of Credit Unions
Registrar of Multiform Foundations
Executive Officer, Companies Registry
Registrar of Offshore Companies and Trusts

Eastern Caribbean Central Bank

Deputy Director Bank Supervision Department

Ministry of Justice

Minister of Justice and Legal Affairs

Parliamentary Counsel

Law Reform Commissioner

The Inland Revenue Department

Acting Comptroller Inland Revenue Department

Senior Tax Inspectors from the St. Kitts Division

Deputy Comptroller Inland Revenue Department (Nevis)

Senior Tax Inspectors from the Nevis Division

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: FEDERATION OF SAINT KITTS AND NEVIS

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

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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

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

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 visit www.oecd.org/tax/transparency and www.eoi-tax.org.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264217799-en>.

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