



Supplementary Peer Review Report Phase 1 Legal and Regulatory Framework

NIUE



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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 is a supplementary report on the legal and regulatory framework for transparency and exchange of information in Niue. It complements the Phase 1 peer review report on Niue which was adopted and published by the Global Forum in October 2012.
2. This supplementary report reviews the legislative amendments made, including the exchange of information agreements signed and ratified, by Niue since July 2012 (the date at which the legal and regulatory framework was previously assessed) to address some of the recommendations made in the Phase 1 peer review report. These amendments pertain to the determinations and recommendations made in respect of concluding and bringing into force exchange of information mechanisms with relevant partners (elements C.1 and C.2). In view of the legislative amendments made, Niue asked for a supplementary peer review report pursuant to paragraph 60 of the *Methodology for Peer Reviews and Non-member Reviews* Niue is of the view that these developments and legislative amendments are such that elements C.1 and C.2 should now be determined to be in place.
3. The Phase 1 report concluded that ownership and identity information is available for all relevant entities. However, identity and ownership information may not consistently be available in respect of all domestic trusts and foreign trusts with Niuean trustees. Although requirements to maintain accounting records in Niue generally meet the international standard, Niuean law does not ensure that reliable accounting records or underlying documentation are kept for (i) all trusts which are administered in Niue or in respect of which a trustee is resident in Niue, and (ii) limited liability partnerships and special partnerships in all circumstances. Banking information for all account-holders is available. Since July 2012 no changes have occurred in Niue’s legal and regulatory framework in respect of the availability of information. The determinations and recommendations under elements A. 1, A. 2 and A. 3 therefore remain unchanged.
4. In respect of access to information, the 2012 Report did not contain any recommendations and the determinations for elements B.1 and B.2 were “element is in place”. No legislative amendments were made by Niue

in respect to those elements and the recommendations and determinations remain unchanged.

5. The 2012 Report noted that, even though Niue signed its first tax information exchange agreement (TIEA) with New Zealand, its main trading partner, in August 2012, this agreement was not in force at the time of the report. In the absence of any exchange of information instrument in force, Niue was not able to effectively exchange information. Since then, Niue has brought its TIEA with New Zealand into force. Moreover, Niue has signed and ratified TIEAs with seven other jurisdictions, two of which are in force and another two will enter into force on 28 May 2014 and 14 June 2014. Niue is now waiting for the other three treaty partners to complete their ratification procedures. All TIEAs entered into by Niue allow it to exchange all foreseeable relevant information in accordance with the standard. The recommendation under element C.1 has therefore been removed and the determination of this element has been changed to “in place”.

6. The 2012 Report noted that only one TIEA had been signed by Niue and that further TIEA negotiations were underway with a number of jurisdictions. Niue was recommended to develop its exchange of information network with all relevant partners. The 2012 Report also noted that Niue had been cautious about concluding negotiations for EOI agreements prior to having the necessary powers to give effect to those agreements. The necessary powers were enacted just before the conclusion of the 2012 Report. Since then, Niue has engaged in TIEA negotiations with eight jurisdictions. Seven TIEAs have been concluded by Niue and the negotiations with one jurisdiction are also on-going. Niue plans to re-establish negotiations with four other jurisdictions, one of which had approached Niue prior to the 2012 Report. This report acknowledges the progress made by Niue in entering into exchange of information agreements with a number of jurisdictions, but also notes that Niue should continue to develop its exchange of information network with all relevant partners as Niue’s EOI network does not currently cover one jurisdiction which has indicated that it would like to enter into an exchange of information relationship with Niue. The factor underlying recommendation under element C.2 has been amended to reflect the current situation but the determination of this element given in the Phase 1 (“element is in place, but certain aspects of the legal implementation of the element need improvement”) remains unchanged.

7. The changes introduced by Niue since the 2012 Report demonstrate its commitment to implementing the international standards for transparency and exchange of information. Niue is encouraged to continue to review and update its legal and regulatory framework to address the remaining recommendations. Considering the steps undertaken by Niue to remedy the deficiencies highlighted in the 2012 Report, Niue can now move to Phase 2.

As the Phase 2 review was originally scheduled to be launched in the first half of 2014 and this time has already passed, it is proposed to reschedule the review to the second half of 2015. In the meantime, a follow up report on the steps undertaken by Niue to address the remaining recommendations should be provided to the PRG within twelve months of the adoption of this report. Any further developments in the legal and regulatory framework, as well as the application of the framework to EOI practice in Niue, will be considered in detail in the Phase 2 peer review.

Introduction

Information and methodology used for the peer review of Niue

8. The assessment of Niue’s legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 60 of the Global Forum’s *Methodology for Peer Reviews and Non-member Reviews*, and considers recent changes to the legal and regulatory framework of Niue based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*. This supplementary report is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 23 May 2014, and information supplied by Niue. It follows the Phase 1 peer review report on Niue which was adopted and published by the Global Forum in October 2012 (“the 2012 Report”).

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

10. The assessment was conducted by an assessment team, which consisted of two expert assessors and a representative of the Global Forum Secretariat: Ms. Marycelia Garcia Valle, Subadministrator, International Tax Audits at the Mexican Tax Administration Service, Mexico, Ms. Kenisha Bacchus, Senior Head and Legal Counsel at the Financial Services Commission, Turks and Caicos Islands, and Ms. Renata Teixeira from the Global Forum Secretariat. The assessment team assessed the legal and regulatory framework for

transparency and exchange of information and relevant exchange of information mechanisms in Niue.

11. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found in the table at the end of this report.

12. Niue appears to have no functioning international financial centre. Legislation that established an international financial centre and an offshore companies registry was repealed in 2006 and the offshore registry was closed. Niue reports that there are no plans to re-establish an international financial centre or offshore registry.

Compliance with the Standards

A. Availability of Information

Overview

13. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons.

14. Since July 2012 (the date at which the legal and regulatory framework was previously assessed) no changes have occurred in the legal and regulatory framework of Niue in respect of the availability of information. The determinations and recommendations under elements A.1, A.2 and A.3 therefore remain unchanged. A brief description of the issues raised can be found below.

A.1. Ownership and identity information

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

Companies (ToR A.1.1), Bearer shares (ToR A.1.2), Partnerships (ToR A.1.3), Trusts (ToR A.1.4), Foundations (ToR A.1.5) and Enforcement provisions to ensure availability of information (ToR A.1.6)

15. The 2012 Report concluded that the availability of ownership and identity information in respect of all legal entities was ensured. Comprehensive obligations consistently imposed on companies and partnerships ensure that updated information is available either in the hands of public authorities or the entity itself. Tax law requires companies, partnerships, partners of partnerships, and trustees (of non-exempt trusts) to file annual returns. Those obligations are complemented by the customer due diligence requirements imposed by Niue's anti-money laundering law on obligated entities. However, identity and ownership information may not consistently be available in respect of all domestic trusts and foreign trusts with Niuean trustees. A recommendation was made in this respect. Niue reports that it is currently working to improve customer due diligence requirements with the Niue Anti-Money Laundering and Countering Financing of Terrorism Bill and make further amendments to its trust legislation. The amendments have not yet been passed. The determination and recommendation made in the Phase 1 report under element A.1 therefore remain unchanged.

16. Niuean law does not allow for the establishment of foundations. Enforcement provisions are in place and their effectiveness in ensuring to the availability of ownership and identity information will be considered as part of the Phase 2 peer review of Niue.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Identity and ownership information may not consistently be available in respect of (i) domestic trusts and (ii) foreign trusts with a Niuean trustee.	Niue should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts 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), Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)

17. The 2012 Report concluded that requirements to maintain accounting records in place in Niue generally meet the international standard. Niue commercial law imposes sufficient record keeping requirements on domestic companies. Moreover, all persons carrying on business in Niue are subject to the obligations to keep accounting records, including underlying documentation, pursuant to the Income Tax Act 1961 (ITA). However, Niuean law does not ensure that reliable accounting records or underlying documentation are kept for all trusts which are administered in Niue or in respect of which a trustee is resident in Niue, limited liability partnerships and special partnerships in all circumstances. Moreover, entities and arrangements other than domestic companies are not required to retain accounting records and underlying documentation for a minimum 5 year period except when they carry on a business in Niue or receive Niuean sourced income. Element A.2 was found to be in place, but certain aspects of the legal implementation need improvement. Niue is working to address the issues but has not yet taken all the necessary steps. The determination and recommendations made in the Phase 1 report under element A.1 therefore remain unchanged.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Niuean law does not ensure that reliable accounting records and underlying documentation are kept under certain circumstances for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.	Niue should establish obligations for the maintenance of reliable accounting records, including underlying documentation, for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Entities and arrangements other than domestic companies are not required to retain accounting records and underlying documentation for a minimum 5 year period except when they carry on a business in Niue or receive Niuean sourced income.	Niue should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of 5 years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

18. The 2012 Report found that Niue has a legal framework in place to ensure the availability of relevant banking information for all account holders. No relevant legislative changes have been made since the 2012 Report.

Determination and factors underlying recommendations

Determination
The element is in place.

B. Access to Information

Overview

19. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access all such information. This includes, but is not limited to, information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities.

20. Niue's tax authority – the Financial Secretary – has broad powers to obtain bank, ownership, identity, and accounting information and has measures to compel the production of such information. The ability of the Financial Secretary to use those powers for exchange of information with other jurisdictions under a TIEA or DTC is specifically provided in the Income Tax Act. There are no statutory bank or professional secrecy provisions in place that restrict the tax authorities' access powers or prevent effective exchange of information. Hence, the 2012 Report found element B.1 to be in place. No relevant legislative changes have been made by Niue since the 2012 Report.

21. Application of rights and safeguards (e.g. notification, appeal rights) in Niue do not restrict the scope of information that the Niuean tax authority can obtain. As a result, the 2012 Report found element B.2 to be in place. Since the 2012 Report no relevant legislative changes have been made by Niue concerning the application of rights and safeguards.

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

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

Ownership and identity information (ToR B.1.1), Accounting records (ToR B.1.2.), Use of information gathering measures absent domestic tax interest (ToR B.1.3), Compulsory powers (ToR B.1.4) and Secrecy provisions (ToR B.1.5)

22. The 2012 Report found that Niue's tax authority – the Financial Secretary – has broad powers to obtain bank, ownership, identity, and accounting information and has measures to compel the production of such information. These powers include the power to inspect books and documents, the power to request information in writing and the production of books and documents, the power to inquire of any person or request the inquiry of a person before a judge. The ability of the Financial Secretary to use those powers for exchange of information with other jurisdictions under a TIEA or DTC is specifically provided in sections 85 and 139 to 142 of the Income Tax Act (as amended by the Income Tax Amendment Act 2012). Niue has no domestic tax interest with respect to its information gathering powers. There are no statutory bank or professional secrecy provisions in place that restrict the tax authorities' access powers or prevent effective exchange of information. Hence, the 2012 Report found element B.1 to be in place. No relevant legislative changes have been made by Niue since the 2012 Report.

Determination and factors underlying recommendations

Determination
The element is in place.

B.2. Notification requirements and rights and safeguards

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

23. The 2012 Report found that the rights and safeguards that apply to persons in Niue are compatible with effective exchange of information, and no relevant legislative changes have been made since 2012.

Determination and factors underlying recommendations

Determination
The element is in place.

C. Exchanging Information

Overview

24. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. This section of the report examines whether Niue has a network of information exchange arrangements that allow it to achieve effective exchange of information in practice.

25. In the 2012 Report, element C.1 was determined to be “not in place”. This determination arose mainly from the fact that, at the time of the 2012 Report, Niue had one sole exchange of information instrument, a TIEA with New Zealand, which was not yet in force. Even though the terms of this agreement met the international standard, the fact that it was not in force meant that it did not allow for effective exchange of information at that stage. Niue has successfully addressed the recommendation given under element C.1. It has brought into force its TIEA with New Zealand and signed and ratified TIEAs with seven other jurisdictions (i.e. Denmark, Greenland, Iceland, Faroe Islands, Finland, Norway and Sweden). In addition, to the TIEA with New Zealand, the TIEAs with Denmark and Greenland are also in force and the TIEA with Norway will enter into force on 28 May 2014 and the TIEA with the Faroe Islands will enter into force on 13 June 2014. Niue is now waiting the other jurisdictions to complete their ratification procedures. All TIEAs entered into by Niue allow it to exchange all foreseeable relevant information in accordance with the standard. In view of the progress made by Niue, the determination for element C.1 has been upgraded to “in place”.

26. Element C.2 was determined to be “element is in place, but certain aspects of the legal implementation of the element need improvement” in the 2012 Report. The 2012 Report noted that only one TIEA had been signed by Niue, although further TIEA negotiations were underway with a number of jurisdictions. Niue was recommended to develop its exchange of information network with all relevant partners. The 2012 Report also noted that Niue had been cautious about concluding negotiations for EOI agreements prior to having the necessary powers to give effect to those agreements. The

necessary powers were enacted just before the conclusion of the 2012 Report. Since then, Niue has engaged in TIEA negotiations with eight jurisdictions. Seven TIEAs have been concluded by Niue and the negotiations with one jurisdiction are also on-going. Niue plans to re-establish negotiations with four others jurisdictions, one of which had approached Niue prior to the 2012 Report. This report acknowledges the progress made by Niue in entering into exchange of information agreements with a number of jurisdictions but also note that Niue should continue to develop its exchange of information network with all relevant partners as Niue’s network does not currently cover a jurisdiction which has indicated that it would like to enter into an exchange of information relationship with Niue. The factor underlying recommendation under element C.2 has been amended to reflect the current situation but the determination of this element given in the Phase 1 remains unchanged.

27. The 2012 Report also concluded that elements C.3 and C.4 were “in place”. The additional TIEAs entered into by Niue following the 2012 Report contain confidentiality provisions that meet the international standard. Moreover, those TIEAs also 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. Hence, the determinations for elements C.3 and C.4 remain unchanged.

28. The 2012 Report did not identify any issues relating to Niue’s ability 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 or any restrictive conditions on exchange of information. Similar to the 2012 Report, the present report does not address element C.5, as this involves issues of practice that will be dealt with in the Phase 2 review.

C.1. Exchange of information mechanisms

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

29. The 2012 Report noted that Niue had signed only one exchange of information agreement, with New Zealand its main trading partner. This agreement contained provisions that allow Niue to exchange all foreseeably relevant information; however, this agreement was not yet in force and as a result Niue was not able to effectively exchange information. Niue could also exchange information on criminal tax matters under the Mutual Assistance in Criminal Matters Act 1998; however, this legislation, reviewed in the 2012 Report, does not meet the international standard.

30. Since the 2012 Report, Niue and New Zealand brought their TIEA into force. Moreover, Niue has signed TIEAs with seven additional jurisdictions (i.e. Denmark, Greenland, Iceland, Faroe Islands, Finland, Norway and

Sweden). All these TIEAs meet the international standard. The TIEAs with Denmark and Greenland are in force. The TIEA with Norway will enter into force on 28 May 2014 and the TIEA with the Faroe Islands will enter into force on 13 June 2014. Niue has concluded its ratification procedures in relation to all remaining TIEAs and informed its treaty partners accordingly. The following table shows the progress made by Niue since the 2012 Report in **underlined bold italics**:

Jurisdiction	Date of signature	Date of ratification	Date Niue sent notification	Date of entering into force
Denmark	<u>6/ 19 September 2013</u>	<u>10 January 2014</u>	<u>27 January 2014 (email)</u> <u>30 January 2014 (airmail)</u>	<u>22 February 2014</u>
Greenland	<u>6/ 19 September 2013</u>	<u>10 January 2014</u>	<u>28 January 2014 (email)</u> <u>30 January 2014 (airmail)</u>	<u>29 April 2014</u>
Iceland	<u>26 August 2013/ 19 September 2013</u>	<u>10 January 2014</u>	<u>27 January 2014 (email)</u> <u>30 January 2014 (airmail)</u>	
Faroe Islands	<u>6/ 19 September 2013</u>	<u>10 January 2014</u>	<u>28 January 2014 (email)</u> <u>30 January 2014 (airmail)</u>	<u>13 June 2014</u>
Finland	<u>30 April 2013/ 19 September 2013</u>	<u>10 January 2014</u>	<u>28 January 2014 (email)</u> <u>30 January 2014 (airmail)</u>	
New Zealand	29 August 2012	<u>7 March 2013</u>		<u>31 October 2013</u>
Norway	<u>2/ 19 September 2013</u>	<u>10 January 2014</u>	<u>27 January 2014 (email)</u> <u>30 January 2014 (airmail)</u>	<u>28 May 2014</u>
Sweden	<u>19 September 2013 / 4 October 2013</u>	<u>10 January 2014</u>	<u>27 January 2014 (email)</u> <u>30 January 2014 (airmail)</u>	

31. As a result of these developments, the recommendation for Niue to bring into force exchange of information agreements has been removed and the determination of element C.1 changed from “not in place” to “in place”.

Foreseeably relevant standard (ToR C.1.1)

32. All eight TIEAs signed by Niue for exchange of information upon request meet the “foreseeably relevant” standard as described in the Commentary to Article 1 of the OECD Model TIEA. Moreover, Article 5(5) of all Niue’s TIEA establishes the information the applicant party must provide the requested party when making a request for information to demonstrate the foreseeable relevance of the information to the request. This includes the identity of the person under examination or investigation and, to the extent known, the name and address of any person believed to be in possession or control of the requested information.

In respect of all persons (ToR C.1.2)

33. Niue’s TIEAs are neither restricted to certain persons such as those considered resident in or nationals of one of the contracting jurisdictions, nor preclude the application of EOI provisions in respect to certain types of entities or arrangements.

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

34. The TIEAs concluded by Niue include a provision that mirrors Article 5(4) of the OECD Model TIEA, providing for the exchange of information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as ownership and identity information.

Absence of domestic tax interest (ToR C.1.4)

35. Niue’s TIEAs contain a provision similar to the Article 5(2) of the OECD Model TIEA, which obliges the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic interest in the requested information.

Absence of dual criminality principles (ToR C.1.5)

36. All Niue’s TIEAs explicitly provide that information must be exchanged without regard to whether the conduct being investigated (and

giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country.

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

37. The TIEAs concluded by Niue provide for the exchange of information in both civil and criminal matters.

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

38. The TIEAs concluded by Niue expressly allow for information to be provided in the specific form requested, to the extent allowable under the domestic laws of the requested party. This includes the provision of information in the form of depositions of witnesses and authenticated copies of original records.

In force (ToR C.1.8)

39. At the time of the 2012 Report, Niue had entered into a sole exchange of information instrument in accordance with the standard, a TIEA with New Zealand, which is by far Niue's main trading partner. At the time of the report, this TIEA was not in force.

40. Since then, the TIEA with New Zealand entered into force (on 31 October 2013). Moreover, Niue has signed seven other TIEAs (with Denmark, Greenland, Iceland, the Faroe Islands, Finland, Norway and Sweden). The TIEAs with Denmark and Greenland are in force and the ones with Norway and the Faroe Islands will enter into force on 28 May 2014 and 13 June 2014, respectively, pursuant to the terms of their Article 11(2). Niue has completed its ratification procedures in respect of all remaining agreements.

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

41. The 2012 Report found that, in August 2012, Niue enacted the legislation necessary to give effect to EOI agreements. Notably, the Income Tax Amendment Act 2012 gives necessary powers to the Niuean competent authority to enter into EOI agreements as well to access and exchange information in order to reply to a request made under such agreements. No legislative changes in this respect have been made since the 2012 Report.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Niue has no agreements in force which provide for effective exchange of information in accordance with the international standard.	Niue should bring into force agreements providing for effective exchange of information to the international standard as soon as possible.

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

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

42. The 2012 Report found that Niue had only one signed exchange of information agreement that met the international standard – a TIEA with New Zealand, which counted for the vast majority of its trading. TIEA negotiations were underway with a number of jurisdictions (i.e. Australia, France, the Republic of Korea and the Netherlands). Element C.2 was determined to be “element is in place, but certain aspects of the legal implementation of the element need improvement” in the 2012 Report. Niue was recommended to develop its exchange of information network with all relevant partners.

43. The 2012 Report also noted that Niue had been cautious about concluding negotiations for EOI agreements prior to having the necessary powers to give effect to those agreements. The necessary powers were enacted just before the conclusion of the 2012 Report. Since then, Niue has concluded seven other TIEAs that meet the international standard – with Denmark, Greenland, Iceland, Faroe Islands, Finland, Norway and Sweden. TIEA negotiations are also on-going with Chile. Niue reports that it plans to recommence negotiations with Australia, France, the Republic of Korea and the Netherlands still in the course of 2014. Niue reports that it gave priority to sign and ratify the agreements it started to negotiate recently, but that it will engage and conclude negotiations with all relevant partners, meaning those partners who are interested in entering into an information exchange agreement with Niue.

44. In the 2012 Report, it was noted that no jurisdiction had advised that Niue had refused to enter into negotiations or conclude an EOI agreement. Comments from Global Forum members were again sought in the course of this supplementary review and no jurisdiction advised that the Niue had

refused to enter into negotiations or conclude EOI agreements. One peer jurisdiction did note that TIEA negotiations with Niue started in 2010; however, the peer did not receive further contact from Niue since then.

45. While the progress made by Niue in entering into exchange of information agreements with a number of jurisdictions is acknowledged, the recommendation that Niue continue to develop its exchange of information network with all relevant partners remains warranted as Niue's network does not currently cover all jurisdictions which have indicated that they would like to enter into an exchange of information relationship with Niue. The factor underlying recommendation under element C.2 has been amended to reflect the current situation but the determination of this element given in the Phase 1 remains unchanged

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
<p><u>Niue has entered into exchange of information agreements with a number of jurisdictions. However, its exchange of information network does not currently cover a jurisdiction which has indicated that it would like to enter into such a relationship with Niue.</u> Although there is a number of ongoing negotiations, Niue has signed only one EOI instrument to date.</p>	<p>Niue should <u>continue to</u> develop its exchange of information network with all relevant partners.</p>

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) and All other information exchanged (ToR C.3.2)

46. The 2012 Report found that there were adequate provisions in Niue to ensure the confidentiality of the information received. Moreover, the TIEA with New Zealand contains a provision consistent with Article 8 of the OECD Model TIEA, ensuring the confidentiality of information exchanged and

limiting the disclosure and use of information received. The seven TIEAs signed by Niue after the 2012 Report contain similar provisions.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

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

47. The 2012 Report found that the rights and safeguards applicable in Niue did not unduly prevent or delay effective exchange of information. Moreover, the TIEA with New Zealand also ensured 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. Similar provisions exist in the seven TIEAs signed by Niue after the 2012 Report.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1), Organisational process and resources (ToR C.5.2) and Unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

48. The 2012 Report did not identify any issues relating to Niue's ability to respond to exchange of information requests within 90 days, organisational process and resources, or any restrictive conditions on the exchange of information. No issues have been identified in the preparation of this supplementary report.

Determination and factors underlying recommendations**Phase 1 determination**

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Identity and ownership information may not consistently be available in respect of <i>(i)</i> domestic trusts and <i>(ii)</i> foreign trusts with a Niuean trustee.	Niue should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Niuean law does not ensure that reliable accounting records and underlying documentation are kept under certain circumstances for all <i>(i)</i> limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and <i>(ii)</i> trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.	Niue should establish obligations for the maintenance of reliable accounting records, including underlying documentation, for all <i>(i)</i> limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and <i>(ii)</i> trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.

Determination	Factors underlying recommendations	Recommendations
	Entities and arrangements other than domestic companies are not required to retain accounting records and underlying documentation for a minimum 5 year period except when they carry on a business in Niue or receive Niuean sourced income.	Niue should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of 5 years.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
The element is in place.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i>		
The element is not in place.	Niue has no agreements in force which provide for effective exchange of information in accordance with the international standard.	Niue should bring into force agreements providing for effective exchange of information to the international standard as soon as possible.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
<p>The element is in place, but certain aspects of the legal implementation of the element need improvement.</p>	<p><u>Niue has entered into exchange of information agreements with a number of jurisdictions. However, its exchange of information network does not currently cover a jurisdiction which has indicated that it would like to enter into such a relationship with Niue. Although there is a number of ongoing negotiations, Niue has signed only one EOI instrument to date.</u></p>	<p>Niue should <u>continue to</u> develop its exchange of information network with all relevant partners.</p>
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
<p>The element is in place.</p>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
<p>The element is in place.</p>		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
<p>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</p>		

Annex 1: Jurisdiction’s response to the supplementary report¹

The Government of Niue confirms its commitment to the Global Forum to comply with the expectations of the international community with respect to implementation of the international tax standard. Despite severe capacity constraints, Niue has actively participated in the Peer Review process and has been fully cooperative.

The sole reason for Niue’s Peer Review not previously proceeding to Phase 2 was that Phase 2 examines a jurisdiction’s information exchange practice. Niue’s tax information exchange agreement (TIEA) with New Zealand, its sole significant economic partner, entered into force on 31 October 2013. TIEAs with 7 other jurisdictions have since also been concluded. However, Niue has yet to receive any requests for information under any of these TIEAs. We do not anticipate that many (if any) requests for information will ever be made.

Niue is a tiny jurisdiction, with a population of approximately 1600 people, a national budget of approximately \$US16m, no insurance companies, or other financial intermediaries. All transactional banking services are provided by a New Zealand bank on an agency basis by a company wholly owned by the Niue government. The bank and its Niue agency are subject to New Zealand anti-money laundering and countering the financing of terrorism (AML/CFT) legislation.

Niue did at one time operate an international finance centre, but, as clarified in Niue’s Phase 1 Global Forum Peer Review report, this was completely closed with effect from 2006 and will not be reopened. Niue is therefore a low risk jurisdiction, as confirmed in its 2012 Asia Pacific Group on Money Laundering (APG) Mutual Evaluation.

The Niue authorities nonetheless remain committed to ensuring Niue has a robust tax and transparency framework and will continue to work towards the development of a legal and regulatory regime that will ensure ongoing high-level compliance with international standards.

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

As regards to the entering into exchange of information treaties, Niue has adopted a cautious approach to concluding such agreements by first ensuring that framework legislation is in place. The enactment of the Income Tax Amendment Act 2012 in August provides a solid basis for Niue to commence concluding agreements.

Since the 2012 Phase 1 Peer Review, Niue has concluded TIEAs with 8 jurisdictions and is finalising the ratification process with 2 of these jurisdictions. As Niue has focused on finalising the TIEAs with 7 jurisdictions in 2013 it now intends to conclude TIEAs with the other counties, in particular the jurisdiction that approached Niue in 2010.

We note that additional TIEA discussions are currently in progress with several jurisdictions, and Niue confirms that it will also conclude TIEAs with any other country that asks for one. Niue has further indicated its intention to sign the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Finally, Niue is pleased that the Global Forum Supplementary Report concludes that Niue should now progress to Phase 2. We thank the Global Forum Secretariat for their efforts and assistance, and reaffirm our commitment to work constructively with the Global Forum assessors towards a successful Phase 2 outcome.

Annex 2: request for a supplementary report received from Niue



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10 March 2014

Mr François D'Aubert
 Chair
 Peer Review Group
 Global Forum on Transparency and Exchange of Information for Tax Purposes
 2, rue André-Pascal
 75775 Paris Cedex 16
 FRANCE

Via email: glixcooperation@oecd.org

Dear Mr D'Aubert

REQUEST FOR SUPPLEMENTARY REPORT

Niue's Phase 1 Peer Review Report was adopted by the Peer Review Group (PRG) at its meeting on October 2012.

We wish to advise the following developments that have taken place in Niue's legal framework:

- 1) Niue and the Nordic countries (Denmark, Faroes, Finland, Greenland, Iceland, Norway, Sweden) signed treaties, the signing procedure was completed on 16 October 2013 and the ratification processes are underway.
- 2) Niue has completed its Constitution and legal approvals of these treaties as of 20 January 2014 and is in the process of informing each country accordingly.
- 3) Niue's treaty with New Zealand entered into force on 31 October 2013 in accordance with the terms of the treaty.
- 4) Niue plans to continue its negotiations with Chile, Korea, and to recommence negotiations with France and Australia.

Accordingly, we are of the view that such developments are likely to result in an upgrade in a determination of an essential element, being Element C.1 and Element C.2 to "the element in place".

Should any further information or clarification be required please do not hesitate to contact us.

Yours sincerely

Richard Hipa
 Secretary to Government

Cc Monica Bhatia, Head of Secretariat, Global Forum

Encl.

Annex 3: List of all exchange-of-information mechanisms

Exchange of information agreements signed by Niue, in alphabetical order:

	Jurisdiction	Type of arrangement	Date signed	Date in force
1	Denmark	TIEA	10 January 2014	22 February 2014
2	Greenland	TIEA	10 January 2014	29 April 2014
3	Iceland	TIEA	10 January 2014	31 June 2014
4	Faroe Islands	TIEA	10 January 2014	13 June 2014
5	Finland	TIEA	10 January 2014	
6	New Zealand	TIEA	7 March 2013	31 October 2013
7	Norway	TIEA	10 January 2014	28 May 2014
8	Sweden	TIEA	10 January 2014	