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OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

DOMINICAN REPUBLIC

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Dominican Republic 2015

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

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(reflecting the legal and regulatory framework
as at May 2015)

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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 the Dominican Republic. 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 recommendations that have been made concern the requirement for a mechanism to identify the owners of bearer shares in all cases and also a requirement to ensure that banking information can be accessed in a timely manner, in particular, in urgent cases.

2. The Dominican Republic is a country of approximately 9.9 million inhabitants covering 48 442 square kilometres on the island of Santa Domingo which it shares with Haiti, in the Caribbean Sea. The Dominican Republic’s GDP amounted to approximately USD 64 billion in 2014, making it the second largest economy in the Caribbean and Central American region¹.

3. Relevant legal entities in the Dominican Republic include: joint stock or public limited companies, limited liability companies and SRLs (whose capital is divided into quotas), collective or general partnerships and limited liability partnerships. Whilst trusts are not recognised in the Dominican Republic, there is the possibility of establishing a *Fideicomiso*, with certain trust like characteristics. Obligations to ensure availability of ownership and identity information exist for all of the above named entities. There is no prohibition for a Dominican Republic resident to act as a trustee for a foreign trust or for a foreign trust to invest in the Dominican Republic. Authorities from the Dominican Republic have reported that to date they have not encountered any such incidence of foreign trusts. However, in the case that a Dominican Republic resident were to act as a trustee for a foreign trust or if a foreign trust were to invest in the Dominican Republic, there are a combination of

1. <https://www.cia.gov/library/publications/the-world-factbook/geos/dr.html>.

requirements under the Commercial Code, the Tax Code and the regulatory laws in place ensuring the availability of trustee, settlor and beneficiary ownership information in all cases. Public foundations are possible in the Dominican Republic but may only be formed as not for profit entities.

4. A deficiency has been identified under element A.1. in relation to bearer shares which may be issued by Joint Stock companies in the Dominican Republic. Although ownership information on the holders of the shares may be maintained in certain cases under the requirements of the AML Law or Tax Code, there is currently no mechanism in place to ensure that the owners of such shares can be identified. Further, the authorities of the Dominican Republic were unable to quantify the number of companies that have issued bearer shares or the number of bearer shares in circulation. As a result, element A.1 has been found to be not in place.

5. All relevant entities are subject to the provisions of the Commercial Code, which requires all “merchants” (Commercial Entities) to maintain a full range of accounting records, including underlying documentation for a period of ten years.

6. Full bank information, including all records pertaining to account holders as well as related financial and transaction information, is required to be kept by banks in the Dominican Republic under AML legislation.

7. The competent authority of the Dominican Republic is the Minister for Finance who delegates this power to the Commissioner of the National Internal Tax Directorate (DGII, *Dirección General de Impuestos Internos*). The DGII has significant information resources at its disposal, including ownership, identity, banking and accounting information.

8. In respect of access to information, the DGII is invested with broad powers to compel the provision of any information not already in its possession. These measures can be used for EOI purposes in the same way as for domestic purposes. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. Whilst there are statutory provisions in place protecting the disclosure of banking information in the Dominican Republic, these can be overridden for the purposes of accessing banking information for EOI purposes via a court procedure and therefore do not restrict the tax authorities’ access powers or prevent effective exchange of information. However, this process to access banking information usually takes from 6-12 months and as there are no exceptions, in particular, in urgent cases, this may unduly delay the effective exchange of information. Therefore, it is recommended that the Dominican Republic ensures that detailed banking information can be accessed in a timely manner. As a result, element B.1 has been found to be in place but certain aspects of the legal implementation of the element need improvement.

9. The Dominican Republic has a network of three treaty partners (Canada, Spain and the United States) all of which are relevant treaty partners in terms of economic ties with the Dominican Republic. All three of its agreements (one TIEA and two DTCs) are in line with the international standard. Further, the Dominican Republic is currently devising a treaty negotiation policy through which it has identified 20 jurisdictions of interest with which it wishes to have an exchange agreement in place. Once the Dominican Republic has concluded its model exchange agreement, it shall then propose this model to each of these jurisdictions.

10. The response of the Dominican Republic to the recommendations in this report, as well as the application of the legal framework to the practices of its competent authority will be considered in detail in the Phase 2 Peer Review of Dominican Republic which is scheduled for the last quarter of 2015.

Introduction

Information and methodology used for the peer review of the Dominican Republic

11. The assessment of the legal and regulatory framework of the Dominican Republic was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange-of-information mechanisms in force or effect as at 22 May 2015, other materials supplied by the Dominican Republic, and information supplied by partner jurisdictions.

12. 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 the Dominican Republic'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 on how certain aspects of the system could be strengthened (where relevant).

13. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mr. Rob Gray, Director of Income Tax, Guernsey; Ms. Carmen Arribas Haro, Spanish Tax Administration; and Ms. Mary O'Leary of the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange-of-information mechanisms in the Dominican Republic.

Overview of Dominican Republic

14. The Dominican Republic is a country of 48 442 square kilometres and approximately 9.9 million inhabitants located on the island of Santa Domingo which it shares with Haiti, in the Caribbean sea. The Dominican Republic gained independence from Spain in 1821 and from Haiti in 1844. Spanish is the official and spoken language, although English is often used in commerce and international trade. Its currency is the Dominican peso (DOP), with USD 1 equal to DOP 44.94 as at 22 June 2015².

General information on the Legal System

15. The Dominican Republic is a democratic republic, with its system of government made up of three separate branches: the executive, legislature and the judiciary. As the head of the executive branch, the President of the Dominican Republic serves as both head of state and head of government, followed by the Vice President (who are both elected for four years) and the Council of Ministers who are all directly chosen by the President. There are 31 provinces whereby executive power is vested in department governors, municipal mayors and local administrators for smaller administrative subdivisions.

16. The structure of the Dominican Republic's government is provided for in the Constitution. At the national level, legislative power is exercised by the Dominican Republic Congress which is a bicameral house comprising a 178-member Chamber of Congressmen and a 32-member Senate. Members of both houses are elected by popular vote and are elected to serve four-year terms.

17. The judicial system consists of the Constitutional Court, the Supreme Court, the Appeals Courts, and Administrative Courts. The Constitutional Court ensures the supremacy of the Constitution and as the highest court regarding constitutional matters, it is charged with the review of the constitutional validity of laws adopted by the Legislature, certain decrees issued by the Executive and has jurisdiction over cases related to the protection of fundamental constitutional rights). The Supreme Court is the court of highest instance in the Dominican Republic regarding penal and civil matters and consists of 16 judges.

18. The Dominican Republic is a civil law jurisdiction. The hierarchy of laws is: the Constitution of the Republic; statutory and organic Laws (which deal with the core aspects of fundamental constitutional rights and require special quorums for their approval by Congress); ordinary Laws, decrees (which are enacted by the Executive setting out how to deal with certain

2. www.xe.com/fr/currencyconverter/convert/?Amount=1&From=USD&To=COP.

matters under ordinary laws) and international treaties including DTCs and TIEAs; and regulations and other administrative instructions (referred to as “*circulares*” or “*resoluciones*”) as issued by the Executive. A law of a higher rank will prevail over a law of a lower rank in the case of a conflict, when they concern the same subject matter, and a law which is later in time will prevail over an older law of equal hierarchy.

19. The provisions in an international treaty ratified must be first approved by the Constitutional Court and once approved, they become part of the laws of the Dominican Republic and are granted the same legal hierarchy as other ordinary laws. However, in the event of a conflict between a treaty and a domestic ordinary law, the provisions of the international agreement will prevail. This is the case for the TIEA and two DTCs which have been signed and ratified to date by the Dominican Republic.

Economy

20. The Dominican Republic has the second largest economy in the Caribbean and Central America region and is dependent mainly on agriculture, trade, development and tourism. In 2014, the GDP of the Dominican Republic was approximately USD 64 billion representing 4.6% consecutive growth over the years 2010 – 2014. Traditionally, the country’s main exports; sugar, coffee, and tobacco, formerly accounted for the majority of the Dominican Republic economy but in recent years the service sector has overtaken agriculture as the economy’s largest employer, due to growth tourism, and free trade zones and to a lesser extent due to growth in telecommunications. The Dominican Republic joined the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) with the United States and five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) which came into force in March 2007. The Dominican Republic’s main export partners are the USA (46.1%), Haiti (17.4%), Canada (12%) and China (2.1%) with gold being one of its most prominent exports. The main imports consist of foodstuffs, petroleum, cotton and fabrics, chemicals and pharmaceuticals and the main import partners are the USA (42.5%), Venezuela (7.4%), China (6.2%), Mexico (5.2%), and Colombia (4.2%)³.

21. Foreign direct investment in the Dominican Republic averaged USD 2.3 billion over the years 2010 – 2013, with a peak of USD 3.1 billion in 2012 and much of it invested in the energy and tourism sectors, free trade zones and the telecommunications sector. Remittances from Dominican migrants are also a large part of investment in the Dominican Republic with remittances from the United States alone amounting to approximately 5% of GDP.

3. <https://www.cia.gov/library/publications/the-world-factbook/geos/dr.html>.

22. An important aspect of the Dominican Economy is the Free Trade Zones as regulated by the Promotion of Free Trade Zones Law (No. 8-90) and by the Border Free Trade Zone Development Law (No. 28-01). Although total exports have been decreasing in the past decade or so, the importance of the Free Trade Zones lies in the employment generated. The Promotion of Free Trade Zones Law and the Border Free Trade Zone Development Law provide for exemption from all taxes, duties, charges and fees affecting production and export activities in the zones. These incentives are available for 20 years for those Free Trade Zones located near the Dominican-Haitian border and 15 years for those located throughout the rest of the country. As of 2014, there were 57 Free Trade Zones in operation comprised of 533 companies with 42% operating as branches of companies incorporated in the United States. All companies operating in the Free Trade Zones remain subject to the Tax Code, despite the fiscal exemptions which have been provided for under the Free Trade Zone laws.

23. In regards to international organisations, the Dominican Republic is a member of the Caribbean Forum (CARIFORUM), the Inter-American Development Bank, the International Monetary Fund (IMF), the United Nations (UN) and the World Trade Organization (WTO), amongst others. Since October 2013, the Dominican Republic has been a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Financial Services in Dominican Republic

24. The Dominican Republic has a diversified financial system which has undergone rapid expansion since the 1980s and is composed of different activities including banking, insurance and reinsurance activities, stock exchange related activities, the administration of investment funds, and the administration of pension funds. The Central Bank of the Dominican Republic (*Banco Central de la República*) is the state-run central bank of the Republic. Banking is the most significant component of the financial services sector in Dominican Republic. As of May 2015, there were 65 banks operating in the Dominican Republic with 58 being domestically owned banks (64 private and 1 public) and the other 7 being subsidiaries of foreign banks. As of May 2015, the total in assets held in banks in Dominican Republic amounted to DOP 110.4 billion (approximately USD 2.4 billion).

25. The Monetary and Financial Administration (MFA, *Administración Monetaria y Financiera*) which is made up of the Central Bank (*Banco Central*), the Banking Superintendent (*Superintendencia de Bancos*) and the Monetary Board (*Junta Monetaria*), are the overarching bodies responsible both for directing monetary policy as well as regulating the financial sector in the Dominican Republic.

26. More specifically, the Monetary Board is the superior governing organ of the MFA consisting of nine members including the Governor of the Central Bank. All entities wishing to operate in the financial sector in the Dominican Republic must receive prior authorisation from the Monetary Board. In terms of day-to-day operational activity, the Banking Superintendent is responsible for overseeing all regulated entities' compliance with the obligations under the Financial and Monetary Law (*Ley Monetaria y Financiera*) as well as the requirements of the Anti-Money Laundering (AML) regime.

27. The Dominican Republic securities exchange is the *Bolsa de Valores de la República Dominicana* (BVRD) with an annual turnover in 2014 of approximately USD 2.4 billion. However, this only represents a small number of the overall transactions in the securities market as these tend to place in over the counter transactions. For example, in April 2015, out of a total of USD 223 million generated in securities transactions, USD 162 million was attributable to over-the-counter transactions with USD 60.7 million being traded via the BVRD. Fifteen brokerage companies currently participate in the BVRD. As well as being subject to the obligations of the Financial and Monetary Law, the BVRD is subject to the Law of the Stock Market (*Ley de Mercado de Valores*).

Taxation

28. The National Internal Tax Directorate (DGII, *Dirección General de Impuestos Internos*) is an independent government agency responsible for internal revenue collection on behalf of the Government of the Dominican Republic. The Director of the DGII is the Commissioner of Taxation (Commissioner) who is appointed by the President.

29. The imposition of income tax is governed by the Tax Code (*Código Tributario*) which also sets out the general tax principles, rules for the administration of taxes, penalties, procedures and collections.

30. The Dominican Republic tax system is based on the territoriality principle, whereby all income derived from Dominican sources is subject to income tax. However, financial income earned worldwide by Dominican residents is taxable in the Dominican Republic. Therefore, resident or branch corporations are subject to corporate income tax (ISR, *impuesto sobre la renta*) on their local income only or income generated by activities within the country. A company is resident in the Dominican Republic if it is incorporated under the laws of Dominican Republic or its day to day management and control are exercised in the Dominican Republic at any time during the year of assessment. Foreign companies and entities and branches of foreign companies not having their effective management and control in Dominican Republic are subject to income tax on certain income from sources in the Dominican Republic, such as income attributable to a permanent establishment.

31. The Dominican Republic imposes a range of taxes which are collected at the national level by DGII. Income tax (*impuesto sobre la renta*) is imposed at a rate of 27%. Tax rates for individuals are progressive with a minimum rate of 15% after a non-taxable threshold of DOP 399 923 (approximately USD 9 032) and a maximum rate of 25%. Capital gains tax is imposed at a rate of 15-25% depending on whether the gain is incurred by an entity or an individual and a value added tax (*impuesto de valor agregado*) at a rate of 18%. Owners of real estate are subject to tax at a rate of 1%. However, no property tax applies for rural properties.

32. Branches of foreign companies are subject to the same tax rates as resident companies and are only taxed on their Dominican sourced income. An exemption from the obligation to pay income tax exists for companies based in Free Trade Zones, for a maximum of 20 years. Nevertheless, these companies will still be subject to the requirements of the Tax Code and must file a tax return each year detailing the income earned, although it will be exempt from taxation. Dividends paid to any resident or non-resident shareholder (be they individuals or entities) are subject to 10% withholding tax, deducted at the company level. Withholding tax on royalties paid to a non-resident is levied at a rate of 27%. Interest paid to a recognised non-resident financial entity for a loan given to a Dominican company is subject to a withholding tax of 10% and in the case that the loan has been provided by a non-resident non-financial entity, tax is withheld at a rate of 27%.

Recent developments

33. In June 2015, the Dominican Republic finalised an internal treaty making policy whereby it identified 20 jurisdictions of interest with which it wishes to negotiate an EOI agreement. A draft of its EOI agreement has already been sent to seven of these jurisdictions in order to commence negotiations, which it hopes to have concluded by the end of 2015.

Compliance with the Standards

A. Availability of information

Overview

34. 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 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 the Dominican Republic's legal and regulatory framework on the availability of information.

35. In respect of ownership and identity information, the comprehensive obligations consistently imposed on domestic and foreign companies and partnerships ensure that information is available either in the hands of public authorities (i.e. the Mercantile Registrar or the DGII), the entity itself (in its articles of incorporation or shareholder register) or service providers (i.e. financial institutions and other entities supervised by the Banking Superintendent). These obligations are complemented by the AML legislation and rules concerning regulated activities. The concept of nominee ownership is forbidden in the Dominican Republic.

36. The law of the Dominican Republic provides for the creation of a *Fideicomiso* arrangement which shares some trust like features. It is also possible for a resident of the Dominican Republic to act as a trustee for a foreign

common law trust. Only persons and entities authorised by the Monetary Board are permitted to act as a fiduciary for a *fideicomiso* and are subject to the AML laws, which require a covered entity or person to know the identity of the settlor and beneficiaries. In the case of a resident of the Dominican Republic acting as the trustee of a foreign law trust or of a foreign trust investing in the Dominican Republic, a combination of information-keeping requirements in the Commercial Entities Laws, the Tax Code and certain regulatory laws ensure that information on the settlor, trustee and beneficiaries of foreign trusts will be available in all cases. Foundations in the Dominican Republic can only be established for non-profit, charitable activities.

37. A deficiency has been identified under element A.1. in relation to bearer shares which may be issued by all Joint Stock companies which represent 23% of all companies in the Dominican Republic. Although ownership information on the holders of the shares may be maintained in certain cases under the requirements of the AML Law or Tax Code, there is currently no mechanism in place to ensure that the owners of such shares can be identified. Further, authorities of the Dominican Republic were unable to quantify the number of bearer shares which have issued bearer shares or the number of bearer shares that are currently in circulation. As a result, element A.1 has been found to be not in place.

38. All merchants (including all commercial entities) must keep reliable accounting records and underlying documentation for at least 10 years under the Commercial Code. Pursuant to the Tax Code, all legal entities (companies, partnerships, *fideicomisos* and trustees of foreign trusts) are required to keep reliable accounting records for at least ten years. Under the Commercial Entities Law, all companies and partnerships are required to maintain accounting information, including underlying documentation, to the standard for a period of ten years. Hence, element A.2 was found to be in place.

39. Banks and other financial institutions have to comply with detailed know-your-customer obligations set out under the AML Law and must keep all records pertaining to account holders, as well as related financial and transaction information, for at least ten years. Element A.3 was therefore found to be in place.

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.

40. The various types of entities in Dominican Republic are not categorised as companies or partnerships, but rather the main type of entity is called a *Sociedad* which can be formed under the General Law of Commercial and Individual companies with limited responsibility (Law 479-08, *Ley General*

de las Sociedades Comerciales y Empresas Individuales de Responsabilidad Limitada) from here on referred to as the “Commercial Entities Law”. A distinction can be made between *Sociedades de Capital* (companies formed by capital) and *Sociedades de Personas* (companies formed by persons). All types of *sociedad* are treated as separate entities liable to taxes.

41. To facilitate a comparison with other reports, *Sociedades anónimas* (joint-stock corporations or SA), *Sociedades en comandita por acciones* (limited liability companies or SCA) and *sociedad de responsabilidad limitada* (SRLs) are most comparable to companies in common law countries and therefore dealt with in the Companies section of this report. *Sociedades en nombre colectivo* (SCs), and *sociedad en comandita simple* (limited liability partnerships or LLPs) are comparable to the concept of “partnership” which exists in many common law countries and are therefore analysed in the Partnerships section of this report.

Companies (ToR A.1.1)

Types of companies

42. In the Dominican Republic, companies (*sociedades de capital*) are incorporated pursuant to the provisions of the Commercial Entities Law.

43. There are three different types of company:

- *Sociedades anónimas* (SA, Joint Stock or Public Limited Company): The company’s capital is divided into nominative shares represented by negotiable share certificates. Shareholders can be either entities or individuals. As a general rule, shareholders’ liability is limited to the amount of their capital contributions (except in case of fraud, and other specific exceptions provided for in the law). As of May 2015, there were 21 962 SAs in the Dominican Republic.
- *Sociedades en comandita por acciones* (SCA, Limited Liability Company): The company’s capital is divided into nominative shares represented in negotiable share certificates. SCAs have two different kinds of members: (i) general partners (*socios gestores*) with unlimited liability who are responsible for the company’s management and (ii) limited partners (*socios comanditarios*) whose liability is limited to the amount of their capital contributions. SCAs are governed by articles 141 to 148 of the Commercial Entities Law. AS of May 2015, 94 SCAs were registered in the Dominican Republic.
- *Sociedad de responsabilidad limitada* (SRL) is a commercial company formed by one or several members not personally liable for the company’s debts. The quota holders’ liability is limited to the amount

of their capital contributions except for tax and labour liabilities. SRLs are governed by articles 89 to 140 of the Commercial Entities Law. At least two persons are required to form an SRL, and it may have a maximum of twenty-five members. As of May 2015, there were 74 136 SRLs in the Dominican Republic.

Company ownership and identity information required to be provided to government authorities

44. Pursuant to article 13 of the Commercial Entities Law, all types of company can be formed either under private or public deed. The company deed must contain information such as details of the legal representative, its capital distribution, and details of the different types of shares it can issue (art. 14, Commercial Entities Law). However, ownership information is not required. Within a month of its incorporation by deed, all companies must deposit a copy of its constitutional deed, and in the case that it has been granted before a notary, a copy of the notarial certificate as proof it has been incorporated validly via public deed, with the Secretariat of the Mercantile Registry in the region where it has been constituted (art. 15, Commercial Entities Law). Until such time as the company has registered with the Mercantile Registry, it is not recognised as having legal personality (art. 5, Commercial Entities Law).

45. Registration with the Mercantile Registry must be performed in person by a representative of the company who is obliged to submit information pertaining to the company including: the company name, address, details of its business activity, general information about the directors and board of management, its investment in business activities, the lending institutions with which it plans to operate, and two references from an already registered business (art. 10, Law 03-02). All companies are obliged to also deposit a document detailing the subscribed capital as well as a list of all the shareholders giving their names, address and the number of shares they hold (art. 42, Commercial Code). All documents as deposited with the Mercantile Registry, such as the shareholder register, must also be displayed by the company (art. 42, Commercial Code). All documents deposited with the Mercantile Registry are maintained indefinitely.

46. Every two years all entities registered with the Mercantile Registry must renew their registration and submit updated information on all the information that was submitted at the time of its original registration (art. 12, Mercantile Registry Law). However, updated ownership information is required to be submitted to the tax authorities on a regular basis as discussed below.

Tax Law

47. All types of company are required to be registered in the *Registro Nacional de Contribuyentes* (National Taxpayers Registry) as maintained by the tax authorities (DGII, *Dirección General de Impuestos Internos*) (DGII) (Art. 5 Tax Code). At the time of registration all companies must include a company tax registration form as well as the presentation of other documents such as identification documentation for the company's legal representative. The tax registration form requires the name of the company, the company address in the Dominican Republic, a description of the activity that will be carried out, the exact address where the activity will be carried out as well as the name, identity number, address and signature of the legal representative. A list of all shareholders must also be submitted. On completion of the requisite forms, the company is issued a taxpayer identification number (RNC number).

48. The DGII must be notified of any changes to the information supplied at the time of registration within 10 days (art. 50 (c), Tax Code). Failure to comply with the requirements of registration or not informing the DGII of subsequent changes to the information supplied at the time of registration is an offence (art. 254, Tax Code) and is punishable with a fine equal in value to five to thirty times the minimum monthly wage (art. 257, Tax Code)⁴.

49. The Tax Code requires that all companies and partnerships must file an income tax return with the DGII annually. The tax return form will include the RNC number and the name of the entity and an update on the information as provided at registration including any changes to the shareholder information. Officials from the DGII have reported that all information submitted by taxpayers is maintained indefinitely.

50. In accordance with section 50(c) of the Tax Code, all entities must be registered with the DGII and this obligation extends to all entities operating in the Free trade Zones in the Dominican Republic. Further, article 7(I) of the Tax Code specifically sets out that all entities and individuals registered with the DGII, whether or not they have a tax liability, are subject to the provisions of the Tax Code. Article 116 of regulation 140-98 requires all companies operating in the Free Trade Zones to file an Income Tax Return, which is the standardised company Income Tax Return and therefore the same form as that for entities operating outside of the Free Trade Zones. Therefore, all companies operating in the Free Trade Zones in the Dominican Republic will be required to comply with the ownership information requirements at the time of registration and any subsequent changes to this information will also have to be provided to the DGII at the time of filing the income tax return.

4. In 2015, the monthly minimum salary in the Dominican Republic is DOP 5 117.50 (USD 113.97).

Company ownership and identity information required to be held by companies

51. There is a general obligation under article 16 of the Commercial Entities Law which pertains to all entities and sets out that all companies must maintain a shareholder register which clearly states the name of the shareholder (in the case that it is nominative), the type of share, the nominal value of each share and the date of issue of each share (art. 14(a) Commercial Entities Law). There are also more specific obligations set out under the Commercial Code to maintain an updated shareholder register under article 305 for SAs, article 78 for SCAs and article 94 for SRLs.

52. In the case of a transfer of a nominal share, the company is obliged to update the shareholder register with the full name of the successive shareholder as well as their address. (art. 305(I) for SAs, art. 86 for SCAs and art. 116 for SRLs, Commercial Entities Law). Only those named in the shareholder register are recognised as shareholders (art. 305(II) for SAs, art. 86 for SCAs and art. 94, Commercial Entities Law). Similarly, in the case of a share transfer, the new shareholder is only recognised once it has been registered in the shareholder register which in the case of all companies may be examined at any time by the shareholders. Pursuant to article 32 of the Commercial Entities Law, all companies are obliged to maintain all company records, including a record of the shareholder register, for a period of ten years.

Regulated Entities

53. Financial sector activity in the Dominican Republic is regulated by the Monetary Board (*Junta Monetaria*) which is an organ of the Central Bank (art. 223, Constitution). The obligations of financial entities are set out under the Monetary and Financial Law (Law 189-02 *Ley Monetaria y Financiera*). All “financial intermediary” entities are subject to regulation which includes all banks, financial institutions, insurance companies and credit unions (art. 34, Monetary and Financial Law).

54. In order to carry on business in the financial sector, all entities must first obtain authorisation from the Banking Superintendent which ultimately reports to the Monetary Board. At the time of application for authorisation, all entities must provide a completed application form and annex certain documents such as a copy of the shareholder register. All sales of shares within entities operating in the financial sector must be reported to the Banking Superintendent. In the event that there is a sale of shares representing more than 30% of the paid capital, the regulated entity is obliged to first obtain authorisation from the Monetary Board and to then inform the Banking Superintendent of this transfer (art. 35(a), Monetary and Financial Law).

Foreign Companies

55. All companies carrying on business in the Dominican Republic that have been duly incorporated under the laws of another jurisdiction will be recognised as “foreign companies” in the Dominican Republic. Pursuant to article 11 of the Commercial Entities Law, all foreign companies must register with the Mercantile Registry as well as the DGII prior to carrying on business in the Dominican Republic.

56. Pursuant to article 11 of the Commercial Entities Law, at the time of registration with the Mercantile Registry, all foreign companies are obliged to provide full shareholder information. Further, at the time of registration with the DGII, all foreign entities are obliged to supply information including an address in their jurisdiction of residence, company identification information including information on all shareholders with more than a 10% shareholding in the company (art. 1, Regulation 50-13). In the event that there is a change to any of the details submitted at the time of registration, the foreign company is obliged to notify the DGII of this change (art. 50(c), Tax Code).

57. In the event that foreign companies do not register with the DGII and provide all of the required information they will be subject to a fine equal to 5 to 30 times the minimum monthly salary (art. 253 and 255, Tax Code).

58. In addition to the above, the DGII is able to require the production of ownership information from foreign companies at any time in relation to the administration and enforcement of the company’s tax obligations (see section B.1 *Access to Information*).

59. Therefore, the combination of requirements under the Tax Code and Commercial Entities Law will ensure that ownership information in respect of all foreign companies carrying on business in the Dominican Republic is being maintained. A practical assessment of the ownership requirements for foreign companies will take place in the Phase 2 peer review of the Dominican Republic.

Nominees

60. The concept of nominee shareholding and the distinction between legal and beneficial owner that exists in other jurisdictions, in particular common law jurisdictions, does not exist in the Dominican Republic. Where a person purports to hold property for the benefit of a third person, that third person would have no rights under Dominican Republic law to claim the property. Consequently, shares issued by companies registered in the Dominican Republic are in principle held by their beneficial owner, whose identity is known to (or accessible by) the company and the Dominican Republic authorities.

61. Further, authorities from the Dominican Republic have reported that if a person were to hold shares in the name of another person, pursuant to article 20 of the Commercial Entities Law, this action would be deemed as the interposition of people. Pursuant to article 482 (b) of the Commercial Entities Law, this action is punishable with imprisonment of up to two years or a fine equal in value to 60 times the value of the minimum salary. Further, where a person purports to hold property for the benefit of a third person authorities from the Dominican Republic have reported that this may also be deemed as tax fraud (art. 238(4), Tax Code) and in which case this action would be punishable by imprisonment of up to two years (art. 239, Tax Code).

Conclusion

62. All companies incorporated in the Dominican Republic are required to keep an updated register of members. All companies must also register with the DGII and at the time of registration must provide a list of all shareholders and in the event that there are changes to this information, the DGII must be informed. Foreign companies that are carrying on business in the Dominican Republic that are resident for tax purposes must register with the DGII, file an annual return, and maintain ownership information above a 10% threshold. The concept of nominee shareholding and the distinction between legal and beneficial owner that exists in other jurisdictions, does not exist in the Dominican Republic. However, in the case that the situation of nominee shareholding were to arise in the Dominican Republic, the DGII would still be able to access this information using their access powers as outlined below (see section B.1.1 Competent Authority's ability to obtain and provide information). Therefore, these obligations ensure that ownership information is available in respect of all companies in the Dominican Republic.

Bearer shares (ToR A.1.2)

63. In accordance with Article 35 of the Commercial Code of the Dominican Republic, amended by Act 127 of the 25th April 1980, shares may be nominative, or bearer. Article 36 of the Commercial Code states that bearer shares are those shares issued with no indication of the name of the beneficial owner, and which contain the phrase "To Bearer" or the equivalent. The issuance of bearer shares by SAs (joint stock companies) is provided for under article 305 of the Commercial Entities Law. No other type of legal entity can issue bearer shares in the Dominican Republic. The issuance of bearer shares must be noted in the shareholder register but no ownership information is required (art. 310 (f), Commercial Entities Law). The transfer of bearer shares requires only the physical transfer of the share certificate (art. 305(VII), Commercial Entities Law).

Commercial Entities Law

64. In certain cases ownership information pertaining to the bearer share may become available such as when the shareholder wishes to participate at the shareholders meetings. In order to participate at the company's general assembly, holders of bearer shares must deposit their certificates with the company secretary four days prior to the general assembly at which time they can exercise the rights associated with the share such as the right to vote (art. 195(I), Commercial Entities Law).

Tax Code

65. For tax purposes, all taxpayers are obliged to inform the DGII of any change in circumstance which may lead to an altered tax liability within ten days of the change (art. 50 (e), Tax Code). Authorities from the Dominican Republic have reported that this obligation would apply to all share transfers including that of bearer shares. At the time of reporting the share transfer, identification information on the transferor and the transferee must be provided. The failure to comply with this requirement is an offence (art. 235, Tax Code) and will attract a monetary penalty of 5 to 30 times the minimum monthly wage (art. 237, Tax Code). Authorities from the DGII have confirmed that as the transfer of a share in a Dominican company will attract a capital gain (or loss as the case may be), this reporting requirement will equally apply in cases where there is a foreign transfer of the bearer share by a non-resident, whether to a Dominican resident or to another non-resident.

AML Regime

66. In certain cases, individuals and legal entities that are subject to the obligations of the AML Law will be under an obligation to carry out customer due diligence (CDD) and in these cases may have to maintain information on the holders of bearer shares. The persons that are subject to the AML regime include (art. 38 and 40, AML Law):

- All regulated financial entities
- Natural or legal persons engaged in brokerage or trading of securities or securities, investment and future sales
- Natural or legal persons intermediating in foreign exchange
- Casinos
- Real estate agents
- Companies and individuals that engage in the purchase and sale of vehicles

- Insurance brokers
- Commercial activities that habitually use cash or bearer shares as the means of payment, including without limitation the purchase and sale of firearms, metals, art, artifacts, jewellery, boats and airplanes
- Professional services
- Any other business which by its nature could be used for money laundering or to provide offshore financial services.

67. All persons subject to the AML Law are required to conduct CDD on those clients for whom they act and to maintain information on the identity of their customer. In the course of performing CDD those institutions subject to the AML regime must verify the identity, name of the client and the beneficial owner, age, occupation or corporate purpose, marital status, address, nationality and legal capacity. (art. 41, AML Law). Therefore, in certain cases, where a company has a business relationship with a named entity under the AML Law, ownership information on all owners, including those with bearer shares may be maintained.

Conclusion

68. Bearer shares can be only be issued by SAs in the Dominican Republic. However, as there are currently 21 962 SAs out of a total of approximately 96 000 companies, this represents a substantial number of the total number of companies operating in the Dominican Republic. Officials from the DGII have reported that in February 2015 they requested the 100 largest taxpayers (all of which are joint stock companies and together account for 65% of total tax revenue in the Dominican Republic) to report if they had ever issued bearer shares. Of the 89 companies that replied, 80 of them responded that they had never issued bearer shares and the other 9 confirmed that they could not issue bearer shares as they either belonged to multinational firms or were subsidiaries of foreign banks.

69. Nevertheless, the Dominican Republic was otherwise unable to quantify the possible number of entities that may have issued bearer shares or the possible number of bearer shares in existence in the Dominican Republic. The fact that there are no legal mechanisms in place to identify the owners of bearer shares (aside from those outlined above) is also a recommendation made in the 13th Follow-Up Report by the Caribbean Financial Action Task Force of the Dominican Republic.

70. In certain instances, information on the holder of the bearer share may be available such as in the case that an entity that has issued bearer shares has a business relationship with a person that is subject to the provisions of the AML Law. Further, in the case that there is a transfer of share

ownership (nominal or bearer) in the Dominican Republic, the transferor and transferee are subject to a requirement to notify the DGII of this transfer. However, the effectiveness of this obligation may not ensure that ownership information on bearer shares is maintained in all cases. For example, the DGII will only receive information in the case of a share transfer. Therefore, ownership information relating to the original holder of the bearer share will not be available until such time as there is a transfer of ownership. Further, it remains to be verified how the penalties imposed on shareholders would be collected in relation to non-compliant shareholders who are not resident or located in the Dominican Republic especially in situations where no income on shares has been declared or paid by the company. Therefore, it is recommended that the Dominican Republic should ensure that appropriate reporting measures are in place to effectively ensure that owners of bearer shares can be identified in all cases.

Partnerships (ToR A.1.3)

Types of Partnerships

71. Pursuant to Decree 408-10 on Entrepreneurial Reorganisation, there are two types of partnership (*sociedades de personas*) that can be set up in the Dominican Republic:

- *Sociedad en nombre colectivo* (SC, General partnership) is a commercial entity with at least two partners (either natural or legal persons), who are jointly, personally and severally liable for the partnership's obligations without any limitation. SCs are governed by articles 59 to 74 of the Commercial Entities Law. The transfer of ownership in the partnership requires an amendment to the partnership's by-laws. As of May 2015, there were 23 SCs in the Dominican Republic.
- *Sociedad en comandita simple* (LLP, Limited liability partnership) is a commercial entity whose capital is divided into parts or quotas (rather than shares) that can be traded, despite the fact that they are not represented in certificates. LLPs are governed by articles 75 to 88 of the Commercial Entities Law. The transfer of quotas requires an amendment to the partnership's by-laws. The partnership has two kind of partners: (i) *socios comanditados* which are jointly and severally liable for the partnership's obligations such as in the *Sociedad Colectiva*, and (ii) *Socios Comanditarios* who are the equivalent to quota holders in a *Sociedad de responsabilidad limitada*; hence their liability is limited to the amount of their capital contributions except for tax and labour liabilities. As of May 2015, there were 6 LLPs in the Dominican Republic.

Partnership ownership and identity information required to be provided to government authorities

Commercial Entities Laws

72. Both SCs and LLPs may be formed via public or private deed (art. 13, Commercial Entities Law). Within a month of its formation by deed, all partnerships must deposit a copy of its deed with the Mercantile Registry at a branch of the Chamber of Commerce in the region where it has been formed (art. 15, Commercial Entities Law). Until such time as the partnership has registered with the Mercantile Registry, it will not be legally recognised (art. 5, Commercial Entities Law).

73. Registration with the Mercantile Registry must be performed in person by a representative of the partnership who is obliged to submit such information as; the activity of the partnership, general information relating to the partners including each of their names and address and information concerning the capital invested (art. 10, Mercantile Registry Law, Law 03-02 (*Ley de Registro Mercantil*)).

74. Changes in the partnership ownership information require an amendment to the partnership's articles of association which must be registered in the Mercantile Registry within one month of such change (art. 13, Mercantile Registry Law). In addition, every two years all entities registered with the Mercantile Registry must renew their registration and submit updated information on all the information that was submitted at the time of its original registration (art. 12, Mercantile Registry Law). All documents deposited with the Mercantile Registry are maintained indefinitely.

Tax law

75. All partnerships are required to be registered in the *Registro Nacional de Contribuyentes* (National Taxpayers Registry) (RNC) as maintained by the tax authorities (*Dirección General de Impuestos Internos*) (DGII) (Art. 5 Tax Code). Partnerships are taxed at the entity level at a rate of 27% (art. 254(d), Tax Code). In the event of liquidation or termination of the partnership, the partners will be taxed on the income of the partnership (art. 11(f), Tax Code).

76. The same as for a company, registration for partnerships includes the completion of a commercial entity registration form, as well as the presentation of a valid identity document for the legal representative. Upon completion of registration with the DGII, each partnership will be issued a RNC number. The registration form requires the name of the partnership, the address, a description of the activity that will be carried out, the exact address where the activity will be carried out as well as the name, identity

number, address and signature of the legal representative. In addition, a list of all partners must be submitted. In the event that there are any changes to the information supplied at the time of registration, such as the partner identity information, these changes must be submitted to the DGII (art. 50(c), Tax Code). Officials from the DGII have reported that all information submitted by taxpayers is maintained indefinitely.

77. Failure by partnerships to comply with the registration requirements of the Tax Code is an offence (art. 254(I)(I), Tax Code) and in such case the partnership will be subject to a fine equal in amount to 5 to 30 times the minimum monthly wage (art. 257, Tax Code).

Foreign partnerships

78. A legal arrangement created in accordance with the law of any foreign country (such as a foreign partnership), whether or not described as a partnership, cannot operate in the Dominican Republic unless it registers as a foreign company both with the Mercantile Registry and the tax authorities (art. 11, Commercial Entities Law) and in such case will be subject to the information keeping requirements as outlined above (see section A.1.1 *foreign companies*). In the case that the foreign partnership wished to operate as a partnership in the Dominican Republic, they would have to form a Dominican Republic partnership and be subject to all of the information keeping requirements as above outlined for domestic partnerships.

79. There is no provision for a foreign partnership to operate in the Dominican Republic. Pursuant to article 11(I) of the Commercial Entities Law, any association of persons that operate in the Dominican Republic (such as a foreign partnership) will be subject to Dominican Law. Therefore, in the case that any association of persons, whether local or foreign, wishes to operate as a partnership in the Dominican Republic, it must form the partnership under the laws of the Dominican Republic. Upon registration the entity will be obliged to comply with the filing of annual returns and the registration of changes in composition of partners as outlined above. Therefore, there are comprehensive obligations to ensure that identity information on all partners of relevant partnerships is being maintained.

Conclusion

80. Overall, there are comprehensive obligations established under the Commercial Entities Law, the Mercantile Registry Law and the Tax Code to ensure the availability of ownership information concerning partnerships which must be submitted to both the Mercantile Registrar and the DGII. In the case that there is a change to the partnership deed, this change must be recorded in the Mercantile Registry within one month. Similarly, changes to

all information supplied at the time of registration must be submitted to the DGII. Foreign partnerships are not recognised in the Dominican Republic, unless registered to carry out business in the Dominican Republic as a foreign company. Otherwise the foreign partnership would have to incorporate as a company or form a partnership under the laws of the Dominican Republic, ensuring that ownership information will be available. Therefore, there are sufficient ownership obligations in the Dominican Republic to ensure that updated ownership information on all entities will be made available.

Trusts (ToR A.1.4)

81. The common law concept of “trust” does not exist in the Dominican Republic, nor has it signed the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. There is, however, no obstacle in domestic law that prevents a resident from acting as a trustee, or for a foreign trust to invest or acquire assets in the Dominican Republic.

82. The Law for the Development of the Mortgage Market and Trusts Law No. 189-11 (from here on referred to as “Mortgage and Trusts Law”), was introduced in the Dominican Republic in 2011 with the objective of promoting investment in the property market. The law provides for the establishment of a *fideicomiso* arrangement which shares some common law trust like features.

83. In the *fideicomiso*, a *fideicomitente* (settlor) transfers the ownership of goods or rights to a *patrimonio fideicomitado* which is a separate arrangement administered by a *fiduciario* (fiduciary) that holds the property for the benefit of a third party (who can be either the settlor or another person) (art. 3, Mortgage and Trusts Law). *Fideicomisos* are entered into for the fulfilment of a specific purpose that must be stated clearly in the contract. The *patrimonio fideicomitado*, which holds the assets is not an entity, under Dominican Republic law, but can exercise certain rights and is subject to certain obligations, both of which are exercised and fulfilled by the *fiduciario* who acts as administrator on behalf of the *patrimonio fideicomitado*. At such time as the purpose as stated in the *fideicomiso* agreement has been fulfilled, all assets held by the *patrimonio fideicomitado* are distributed either to the settlor or the beneficiary.

84. According to article 25 of the Mortgage and Trusts Law, the only persons that may act as a *fiduciario* in a *fideicomiso* arrangement are legal entities who have been formed under the laws of the Dominican Republic whose activity is that of:

- Sole purpose companies;
- Securities brokers;
- Administrators of investment funds;

- Banks;
- Savings institutions; or
- Other financial entities that have been authorised to carry on this business for this purpose by the Monetary Board (*Junta Monetaria*).

85. In order to operate as a *fiduciario* in a *fideicomiso* arrangement sole purpose companies must obtain prior authorisation from the DGII, securities brokers and Administrators of Investment funds will require prior authorisation from the *Superintendencia de Valores* and banks and savings institutions will require prior authorisation from the *Superintendencia de Bancos*. All other financial entities authorised to carry on business for this purpose must obtain permission from the Monetary Board (*Junta Monetaria*) before undertaking the activities of a *fiduciario* in a *fideicomiso* arrangement.

86. The Mortgage and Trusts Law establishes various forms of *fideicomiso* with some of the most common being as follows:

- *Fideicomiso de administración*: The *fiduciario* administers the assets transferred to the *patrimonio fideicomitado* following instructions by the settlor regarding the distribution of the assets, when they are to be distributed and any other information concerning the treatment of the assets;
- *Fideicomiso de inversion*: The purpose of this type of arrangement is for the *fiduciario* to strictly undertake different investment activities specifically identified by the settlor; and
- *Fideicomiso inmobiliario*: This *fideicomiso* brings together different entities with in order to develop an investment project related to real estate. This arrangement offers various advantages in terms of the co-ordination of the different entities and the security if offers in terms of guarantees.

87. Other types of trust which may also be established under the Mortgage and Trusts Law include Estate Planning Trusts, Cultural and Educational Trusts, and Public trusts as established by government in order to execute or enforce projects of public interest.

Ownership information provided to the government authorities

88. A *fideicomiso* contract can take the form of a private document (art. 12, Mortgage and Trusts Law). The contract (whether private or public) must contain certain information and must identify all the parties to the *fideicomiso* (art. 12, Mortgage and Trusts Law). However, be the deed in private

or public form, it will require the signature of a Public Notary at all times and a copy is maintained at the office of the notary where it is publicly accessible.

89. All *fideicomiso* deeds (private or public) must be registered at an office of the Chambers of Commerce in the Mercantile Registry (art. 17, Mortgage and Trusts Law). The *fideicomiso* must also be registered with the taxpayer register as maintained by the DGII (art. 48, Mortgage and Trusts Law). At the time of registration with the DGII, a copy of the deed, containing identification information regarding the settlor, trustee must be provided. Further, all beneficiaries must be easily identifiable.

Anti-Money Laundering Law

90. As only those entities authorised by the Monetary Board can act as the *fiduciario* (equivalent to a trustee) in a *fideicomiso* arrangement, they will come under the provisions of the AML Law whereby all financial institutions are obliged to identify their clients and maintain updated information for a minimum period of five years from when the transaction was entered into. In the event of failure to maintain such information, the AML regime provides for strict sanctions that can be enforced (see section A.1.6 Enforcement below). Therefore, the requirements of the AML regime ensure that full ownership information on the *fideicomitentes* (settlors) and *fiduciarios* (trustees) of all *fideicomiso* arrangements is available in the Dominican Republic.

Ownership information retained in relation to the fideicomiso

91. A *fideicomiso* contract has to be in writing which can take the form of a public or private deed (art. 12, Mortgage and Trusts Law). The *fideicomiso* agreement will identify all the parties to the arrangement, and a copy must also be retained by the *fiduciary* (art. 12, Mortgage and Trusts Law) and also at the office of the notary.

Foreign trusts

92. Whilst the common law concept of “trust” does not exist in the Dominican Republic, there is, however, no obstacle in the laws of the Dominican Republic preventing a resident from acting as a trustee of a foreign trust, or for a foreign trust to invest or acquire assets in the Dominican Republic. Therefore, foreign trusts may do business in the Dominican Republic directly or through a resident trustee or administrator.

93. Authorities of the Dominican Republic have advised that the situation of a resident acting as trustee for a foreign trust has not yet arisen in the Dominican Republic. This is attributable mainly to the fact that as the Dominican Republic does not recognise the common law concept of trusts,

this creates a legal risk for any persons involved in a foreign trust. In the event of a resident acting as the trustee of a foreign trust, any assets of the trust will be deemed to be owned by the resident trustee, and therefore considered part of his/her assets for such purposes as income tax or capital gains tax where applicable, in case of death (for inheritance purposes) or concerning potential actions of creditors. Therefore, it is unlikely that the resident would take on such a liability. However, the fiduciary relationship between the trustee, settlor and beneficiaries may be relevant in specific situations, in which case, if there was a trustee resident in the Dominican Republic, they will be subject to information keeping requirements as further outlined below.

AML Regime

94. In certain cases, the trustee of a foreign trust residing in the Dominican Republic would be subject to obligations to maintain information about the trust. Where the trustee is a person that is subject to the AML regime, then the CDD rules will apply. The persons that are subject to the AML regime include (art. 38 and 40, AML Law):

- All regulated financial entities
- Natural or legal persons engaged in brokerage or trading of securities or securities, investment and future sales
- Natural or legal persons intermediating in foreign exchange
- Casinos
- Real estate agents
- Companies and individuals that engage in the purchase and sale of vehicles
- Insurance brokers
- Commercial activities that habitually use cash or bearer shares as the means of payment, including without limitation the purchase and sale of firearms, metals, art, artifacts, jewellery, boats and airplanes
- Professional services
- Any other business which by its nature could be used for money laundering or to provide offshore financial services.

95. All persons subject to the AML Law are required to conduct CDD on those clients for whom they act and to maintain information on the identity of their customer. In the course of performing CDD those institutions subject to the AML regime must verify the identity, name of the client and

the beneficial owner, age, occupation or corporate purpose, marital status, address, nationality and legal capacity. (art. 41, AML Law).

96. Authorities from the Dominican Republic have reported that in the event that a resident was acting as trustee for a foreign trust this activity would be deemed to be a “professional service” and the trustee would be subject to the obligation to maintain updated information on the trust including on that of the settlor and all beneficiaries. As indicated above, however, this situation has not arisen in practice.

Commercial Entities Laws

97. The Commercial Code contains book keeping requirements for all “*comerciantes*” or “merchants”. Merchants are defined under Article 1 as being all persons who engage in a commercial activity and make it their habitual profession. Therefore, the Dominican Republic advises that all professional trustees and administrators resident in the Dominican Republic will be deemed merchants for the purposes of the Commercial Code and would be subject to general record-keeping requirements applicable to all merchants in the Dominican Republic, with respect to the income that is earned by the foreign trust (see A.2 *Accounting Information*). This typically would include the trust deed and also all correspondence with settlors and beneficiaries containing the names of the settlors and identification of the beneficiaries of the trust and the nature of the assets in the trust that have generated the income.

98. In addition, as a merchant, the trustee must register with the Commercial Registry, providing his/her identification, and a description of the activity carried on. Further, a merchant must keep records relating to the business administered including any contracts or agreements relating to the trusteeship. Therefore, in these cases it is possible that ownership and identity information on the settlor, trustee and beneficiary would be maintained by the trustee.

99. Further, in the event that a resident of the Dominican Republic purported to act as the trustee of a foreign trust, in a professional capacity, the Ministry of Finance of the Dominican Republic has confirmed that this would be deemed as conducting the activities of a *fiduciario* in a *fideicomiso* arrangement. As outlined above (see section *Fideicomisos*), in a *fideicomiso* arrangement, similar to a trust relationship, assets or rights are transmitted to the trustee to manage and eventually pass on to the beneficiary. Such activity by the *fiduciario* would only be permitted to the extent that the resident trustee was an approved person or entity as authorised to do so by the Monetary Board (*Junta Monetaria*) as required under article 25 of the Mortgage and Trusts Law.

100. In this case, the foreign trust would then be subject to the same information keeping requirements under the Commercial Code and tax laws as

for the *fideicomiso* (as outlined above). In the event that the trustee was not a financial entity authorised to act in such a capacity by the financial regulator, this trust arrangement would not be recognised under Dominican Republic law.

101. In regards to sanctioning for carrying out such activity without being licensed as a *fideicomiso*. The Monetary and Financial Law and the Stock Market Regulation Law No. 19-00 both refer to the situation whereby a resident of the Dominican Republic was found to be offering such trustee services without the authorisation of the Monetary Board. Where a person offers services of a trustee without being authorised, this is considered as a serious infraction in accordance to paragraph 1) letter A) of article 68 of the Monetary and Financial Law, punishable in accordance with paragraph 1) letter a) article 60 of the same law. If a person acts as an intermediary of value without authorisation this action may be punishable by a fine ranging in value from DOP 500 000 (approximately USD 11 135) to DOP 5 000 000 (approximately USD 111 358) or to a term of imprisonment of between six months and two years, or may be subject to both penalties (art. 115, Stock Market Regulation Law).

Tax code

102. The Tax Code does not contain specific provisions on the taxation of assets or income derived through foreign trusts with a link to the Dominican Republic. Nevertheless, ownership information must be kept if a trustee (professional or not) is resident in the Dominican Republic, the trust is administered in Dominican Republic or certain assets are located in the Dominican Republic.

103. For income tax purposes, authorities of the Dominican Republic have reported that the assets and income of a foreign trust will be deemed as being attributable to the resident trustee. These assets and income are subject to tax as any other assets or income of the trustee, as well as any benefit attributed to the beneficiaries and must be declared by the trustee in their income tax return. In that case, the trustee would be liable to tax on income earned in the Dominican Republic (but not in respect of income earned elsewhere) and therefore also required to register with the DGII and keep accounting records (see section A.2. *Accounting Information* below).

104. In the event that a trustee claimed that a portion of his taxable income was generated from assets he held on trust, the resident trustee could only avoid such a tax liability by providing evidence of the existence of such a fiduciary relationship (most typically the trust deed) and disclosing the identity of the settlor and beneficiaries to the DGII. Further, pursuant to article 120 of Regulation 139-98 as issued by the DGII, where a foreign

trust with a Dominican trustee earned income all derived from outside of the Dominican Republic, the trustee of the foreign trust would still have to register with the DGII. Further under Regulation 139-98, the trustee of the foreign trust would be subject to a requirement to file returns with such income included as exempt income.

105. At the time of registering with the DGII, the trustee would have to supply information concerning the entity for which he was acting, i.e. the trust and therefore would be obliged to present a copy of the trust deed to the DGII at this stage.

106. All income derived from sources in Dominican Republic by a foreign trust or payments made to foreign beneficiaries out of Dominican Republic source income are subject to withholding tax at a rate of 10% (art. 308, Tax Code). All legal entities that withhold tax on payments to foreign beneficiaries are subject to a requirement to file a withholding tax declaration concerning the amounts withheld and details of the foreign beneficiary to the DGII.

107. Finally, the tax administration can use all the powers at its disposal to seek and request information not already in its possession, as further described in Part B below. Therefore, the DGII may ask a resident trustee, administrator or beneficiary for all information necessary to determine the amount of the taxable income or assets.

Conclusion

108. The Dominican Republic does not recognise the common law concept of trust. However, the Law on Mortgages and Trusts provides for a *fideicomiso* arrangement which has certain trust like features. Only financial entities may act as the equivalent of a trustee in a *fideicomiso* arrangement and must obtain prior authorisation from the Monetary Board at which time full ownership information on the *fideicomiso* arrangement will have to be submitted. In addition, all such persons will come under the AML regime and be subject to due diligence procedures and be required to maintain full ownership information in respect of the *fideicomiso* arrangement. The deed setting out the *fideicomiso* arrangement must be in writing with a copy identifying all parties maintained by the *fiducario* and the *fideicomiso* arrangement will have to be registered with the Mercantile Registrar with all ownership information submitted at the time of registration. Therefore, the information keeping requirements in the Law on Mortgages and Trusts, together with the AML requirements on *fiduciaros* under the AML laws ensure that ownership information on *fideicomisos* is fully available.

109. Further, in the exceptional event that a resident trustee was acting in the capacity as trustee of a foreign trust, the Dominican Republic

has reported that this activity would initially be deemed to be that of a *fideicomiso* and in the event that the trustee was not authorised to engage in fiduciary services, there are strict enforcement measures and penalties in the form of fines and possible imprisonment in place for failing to do so. In addition, the combination of the requirements of the AML Law and the tax obligations to maintain and submit information to the DGII and obligations under the Commercial Code ensure that information regarding the settlors, trustees and beneficiaries of all trusts will be available to the authorities. It can, therefore, be concluded that the Dominican Republic has reasonable measures in place to ensure that ownership information is available to its competent authorities in the event that a foreign trust was administered in the Dominican Republic or in respect of which a trustee is resident in the Dominican Republic. A practical assessment of the effectiveness of the requirements for ownership information for foreign trusts will take place in the Phase 2 peer review of the Dominican Republic.

Foundations (ToR A.1.5)

110. The concept of private foundation does not exist under the laws of Dominican Republic. The Law on Non-Profit Organisations No. 122-05, provides for the creation of public foundations that operate on a non-profit basis to address socially significant interests identified by the founders. According to article 2 of the Law, a Non-Profit Organisation is an agreement amongst five or more persons or entities with the objective to engage in social or public interest activities for a lawful purposes without any reward (monetary or otherwise).

111. In order to be authorised to act as a Non-Profit Organisation, the organisation must apply to the Office of the Attorney General. At the time of requesting authorisation, pursuant to Regulation 40-08 of the Law on Non-Profit Organisations, the organisation must submit all information regarding the members such as their names, profession, marital status, address and a piece of identification. In addition, all Non-Profit Organisations must be registered with the DGII and at the time of registration are obliged to submit all identification information concerning the founding members. All Non-Profit Organisations are required to file an annual return with the DGII 90 days after the end of the fiscal year and in the event that there have been any changes to the information submitted at the time of registration, such as changes to the originally submitted ownership information, this must also be submitted (art. 60, Law on Non-Profit Organisations Regulation).

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

112. The Dominican Republic should have in place effective enforcement provisions to ensure the availability of information, one such possibility among others being sufficiently strong compulsory powers. This section of the report assesses whether the provisions requiring the availability of information with the public authorities or within the entities reviewed in Section A.1 are enforceable and failures are punishable.

Companies and partnerships

Commercial Entities Laws

113. All companies and partnerships are required to keep an updated share register or in the case of partnerships an updated deed identifying all of the partners. In the case of companies, the transfer of shares has no legal effect for the company and for third parties until the share register has been updated to reflect this transfer (art. 42, Commercial Code).

114. Further, pursuant to article 17 of the Commercial Entities Law, all shareholders or other persons with a legitimate interest in the company or partnership may request that the company rectifies the omission via court procedure. The directors or the company or founding partners in the case of a partnership will then be responsible for any damage caused to a shareholder or third party due to any omission or failure to update the shareholder register (art. 18, Commercial Entities Law).

115. Within a month of being constituted, all companies and partnerships are required to register with the Mercantile Registry. Pursuant to Article 17 of the Commercial Entities Law, in the event that a company or partnership does not register in the Mercantile Registrar within one month of its formation, the affected shareholders or partners are entitled to sue the company or partnership and have this omission corrected. Further, until such time as the company or partnership is registered with the Mercantile Registrar, the entity will not be legally recognised (art. 14, Commercial Entities Law).

Tax code

116. All companies and partnerships must be registered with the DGII and at the time of registration are subject to a requirement to provide information on all shareholders and partners. Further, in the event that there are any changes to the information supplied at the time of registration such as a change in the shareholders or partners, the DGII will also have to be informed of this change (art. 5 and 50(c), Tax Code). Non-compliance with

the tax registration and tax filing obligations is considered an offence under the Tax Code (art. 254, Tax Code), in which case the entity will be subject to a fine equal in value to 5 to 30 times the amount of the minimum monthly salary⁵ (art. 257, Tax Code).

AML Law

117. All entities subject to the requirements of the AML Law are required to carry out due diligence and maintain updated information concerning all persons for whom they act. Failure to comply with the due diligence obligations constitutes an offence (art. 41, AML Law). The entity in breach of the due diligence obligations shall be subject to a fine equivalent to the value of 50 to 150 minimum monthly salaries (art. 44, AML Law). In addition, a fine equivalent in value to 50 to 150 times the minimum monthly salary shall also be imposed on the employee or officer of the entity that is responsible for this breach in the requirement to conduct due diligence on all clients.

Trusts

118. In the Dominican Republic, the equivalent of a trustee in a *fideicomiso* arrangement has to be authorised to perform these services by the Monetary Board. In the event that an individual or entity were to undertake activities which by law may only be carried out by institutions authorised by the Monetary Board, or when an entity under surveillance by the Banking Superintendent performs activities for which it is not authorised, such conduct will be sanctioned. Where a person offers services of a trustee without being authorised, this is considered as a serious infraction in accordance to paragraph 1) letter A) of article 68 of the Mortgage and Trusts Law, punishable in accordance with paragraph 1) letter a) article 60 of the same law. If a person acts as an intermediary of value without authorisation this action may be punishable by a fine ranging in value from DOP 500 000 to DOP 5 000 000 or to a term of imprisonment of between six months and two years, or may be subject to both penalties (art. 115, Stock Market Regulation Law).

119. The equivalents of trustees of a *fideicomiso* in the Dominican Republic, being financial entities, are also subject to the AML laws, which require them to take CDD measures. In the event of breach of these due diligence procedures, the entity in breach shall be subject to a fine equivalent to the value of 50 to 150 minimum monthly salaries (art. 44, AML Law). In addition, a fine equivalent in value to 50 to 150 times the minimum monthly

5. In 2015, the monthly minimum salary in the Dominican Republic is DOP 5 117.50 (USD 113.97).

salary shall also be imposed on the employee or officer of the entity that is responsible for this breach in the requirement to conduct due diligence on all clients.

120. All *fideicomisos* will have to be registered for tax purposes with the tax liability being imposed on the *fiduciario* who will be subject to tax filing obligations in respect of the *fideicomiso*. In the event of non-compliance with tax filing obligations, the *fiduciario* will be subject to pay a penalty of 5 to 30 minimum wages (art. 257, Tax Code).

121. The effectiveness of the enforcement provisions that are in place in the Dominican Republic, and in particular the value of the fines will be considered as part of the Phase 2 Peer review.

Phase 1 determination	
The element is not in place.	
Factor underlying recommendation	Recommendation
Joint stock companies, which represent approximately 23% of all companies in the Dominican Republic, may issue bearer shares. Although there are obligations in certain cases under the AML Law and the Tax Code for the reporting of ownership information in the case of a transfer of a bearer share, these reporting mechanisms do not sufficiently ensure that the owners of such shares can be identified in all cases.	The Dominican Republic should ensure that appropriate reporting measures are in place to effectively ensure that owners of bearer shares can be identified 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)

122. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should; (i) correctly explain all transactions, (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should

further include underlying documentation, such as invoices, contracts, *etc.* and need to be kept for a minimum of five years.

Commercial Code

123. The Commercial Code contains accounting requirements for all “*comerciantes*” or “merchants”. Merchants are defined under Article 1 as being all persons who engage in a commercial activity and make it their habitual profession. As a result, all relevant entities including domestic companies, foreign companies, partnerships, *fideicomisos* and resident trustees of a foreign trust will be subject to the accounting obligations for merchants as set out under the Commercial Code and described below.

124. General accounting record keeping obligations are currently set out under article 8 of the Commercial Code which includes a general obligation for all merchants to “maintain a daily journal outlining all trade operations and all documents required to verify these operations”. Article 9 requires that an inventory must be kept of all assets and liabilities in order to accurately prepare a balance sheet and profit and loss statement. Further an “Inventory Book” must be maintained by each merchant and a copy of the balance sheet and income statement must also be recorded in the Inventory Book.

125. Both the Daily Journal and the Inventory Book have to be maintained chronologically, in Spanish and without any alteration to the entries. All of the books and records of the merchant must be maintained for a period of 10 years.

Commercial Entities Law

126. In addition to the accounting requirements under the Commercial Code, which apply to all relevant entities, there are also requirements set out under the Commercial Entities Law which will apply to all types of company and partnership, including foreign companies. Pursuant to article 31 of the Commercial Entities Law, all operations of commercial entities must be verified by “proper accounting records in accordance with the principles as established by the institute of Certified Public Accountants of the Dominican Republic”. The accounting records as maintained by the commercial entities should generate sufficient information for the preparation of “financial statements which reflect the financial position, any changes in equity, cash flows, and any disclosures which should be contained in notes to the financial statements”.

127. The obligations set out under the Commercial Code and Commercial Entities Law will cover the requirement to maintain a balance sheet, inventory books, accounting journals and a general ledger. These obligations will

apply to all relevant entities and arrangements other than those foreign trusts that do not carry on a commercial activity in the Dominican Republic.

Tax Law

128. The Tax Code also imposes accounting record keeping requirements. Pursuant to Article 50 of the Tax Code, all entities, whether they are subject to tax or not, are under an obligation to maintain comprehensive accounting books which may be required by the tax authorities. The accounting books must reflect all operations as they are realised by the commercial entity. Further, article 50(h) of the Tax Code explicitly requires that all entities subject to the Tax Code (whether they are taxpayers or not) must conserve all accounting books, for a minimum period of ten years. Non-compliance with these accounting record keeping obligations is punishable with a fine equal in value from five to thirty minimum wages (art. 257, Tax Code).

Fideicomisos

129. In addition to the above requirements, there are also specific accounting requirements applicable to *fideicomisos*. Pursuant to the Mortgage and Trusts Law, the *fiduciario* (trustee equivalent) is bound by law to keep the assets which compose the *patrimonio fideicomitado* separate from his own assets (art. 29, Mortgage and Trusts Law). Therefore, in order to meet this requirement the *fiduciario* will have to maintain comprehensive accounting records in respect of each *patrimonio fideicomitado* for which the financial institution acts in such a capacity to ensure that the assets are kept strictly separate. In addition, the *fiduciario* is obliged to maintain accounts and records of the *fideicomiso* in accordance with established best accounting practices and must render the accounts of the *fideicomiso* to both the settlor and beneficiary at least twice a year (art. 29(k), Mortgage and Trusts Law). Both of these requirements ensure the *fiduciario* will be under an obligation to keep accounting records of the activities it undertakes with each *patrimonio fideicomitado*.

Foreign Trusts

130. In the case of a resident from the Dominican Republic acting as a professional trustee for a foreign trust, they will be considered a “merchant” under the Commercial Code and therefore, the accounting obligations as set out above under the Commercial Code would equally apply in these cases. In the event, that a resident of the Dominican Republic was not acting as a professional trustee they will not be subject to the accounting obligations under the Commercial Code. However, given the uncertainty surrounding resident trustees acting for foreign trusts in the Dominican Republic (see

section A.1.3) it can be concluded that a resident of the Dominican Republic acting for a foreign trust will only occur in very rare circumstances. Officials from the DGII have reported that a non-professional resident trustee holding foreign trust assets and income would have to declare them as his/her own in his/her annual tax return and keep accounting records concerning such assets and income as set out under the Tax Code. However, the application of the general tax obligations to foreign trusts remains largely untested in practice and the matter should be closely monitored in Phase 2 peer review of the Dominican Republic.

Underlying documentation (ToR A.2.2)

131. Article 8 of the Commercial Code requires that “merchants”, being all entities that are subject to the Commercial Code, including all relevant entities (i.e. domestic companies, foreign companies, partnerships, *fideicomisos* and professional trustees) must maintain “all documents which enable all of the operations as recorded in their accounting ledgers to be verified”. Authorities from the Dominican Republic have advised that this is interpreted as a requirement to maintain all underlying records such as receipts, invoices and contracts that are entered into and issued/received by the entity.

132. The provisions of the Commercial Entities Law which apply to all companies and partnerships add another layer to the underlying accounting records that must be maintained. According to article 32 of the Commercial Entities Law, all companies and partnerships are required to maintain all documents and factual information which will enable them to verify that the operations the underlying information supports.

133. Pursuant to the provisions of the Tax Code, there are requirements for entities to maintain all “ledgers, special registers, records, receipts, all proofs of payment, and any document (physical or electronic) related to the operations and activities of the taxpayer” (art. 50(h), Tax Code). This requirement extends to all entities and individuals that are registered for tax purposes regardless of whether or not they have a tax liability in the Dominican Republic, including all companies operating in the Free Trade Zones. Non-compliance with these accounting record keeping obligations is punishable with a fine equal in value from five to thirty minimum wages (art. 257, Tax Code).

134. Therefore, the obligations set out under the Commercial Entities Laws and Tax Code conform with the international standard to maintain all relevant underlying documentation. However, these requirements will not apply in the event of residents of the Dominican Republic administering foreign trusts in Dominican Republic in a non-professional capacity.

Document retention (ToR A.2.3)

135. The Commercial Code requires that the books and records of all merchants must be maintained for a period of ten years (art. 11, Commercial Code).

136. Article 32 of the Commercial Entities Law requires that all accounting records be maintained in their original form for a period of ten years.

137. For tax law purposes, all documents, including accounting records must be kept for a minimum period of ten years (art. 50(h), Tax Code).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

A.3. Banking information

Banking information should be available for all account-holders.
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Record-keeping requirements (ToR A.3.1)

138. Banking information should be available for all account-holders and should include all records pertaining to the accounts as well as to related financial and transactional information.

139. All financial entities in the Dominican Republic are subject to the regulatory requirements as set out by the Monetary and Financial Administration, including the maintenance of records concerning all accounts and transactional information. In addition, the AML Law of the Dominican Republic requires that all financial institutions record the incoming and outgoing cash transactions.

140. Financial institutions are regulated in the Dominican Republic under the Monetary and Financial Law (*Ley del Sistema Monetario y Financiero*) and the AML regime. Pursuant to article 1(b) of the Monetary and Financial Law, the Monetary and Financial Administration is the entity responsible for the regulation of the financial sector in the Dominican Republic. The Monetary and Financial Administration is composed of the Monetary Board (*Junta Monetaria*), the Central Bank (*Banco Central*) and the Banking Superintendent (*Superintendencia de Bancos*).

141. Within the Monetary and Financial Administration, the Banking Superintendent is charged with overseeing compliance by all financial entities with the obligations as set out under the Monetary and Financial Law.

Financial entities include all banks, savings institutions, credit unions, lending associations and insurance operators (art. 34, Monetary and Financial Law). All entities as regulated by the Banking Superintendent of the Monetary and Financial Administration are also subject to the AML Law (art. 38(a), AML Law). The requirements for those entities to maintain all bank information relating to their clients are outlined below.

AML Regime

142. Pursuant to the AML regime, CDD measures must be undertaken by all financial institutions not only for regular business relationships, but also for occasional customers, regardless of the amounts involved. Pursuant to article 41 of the AML Law, all financial institutions are required to maintain all account holder and transaction information including:

- The identification of all clients for whom they act; all persons must supply either an identification card or passport at the time they open an account with the bank.
- The identification of all beneficial owners; in the case that a person is acting for a third party, the bank will be obliged to fully establish the identity of the beneficial owner.
- Records of all domestic and international transactions; and
- All suspicious transactions.

Monetary and Financial Law

143. Pursuant to article 51 of the Monetary and Financial Law all regulated financial entities are obliged to document all of their operations and financial transactions, including identity information pertaining to all persons and entities involved in transactions. All records have to be maintained for ten years. All documentation must be available to be inspected by the Monetary and Financial Administration at all times.

Record Keeping

144. Article 41(6) of the AML Law sets out that all information must be maintained for a period of 10 years from the date of when the operation occurred with the client occurred. There is no limitation of this requirement to transactions over a specific amount.

Conclusion

145. The customer identification obligations and record keeping obligations set out under the AML regime and under the Monetary and Financial Law require banking information to be available in the Dominican Republic for all transactions by all account holders.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to information

Overview

146. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether the Dominican Republic’s 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.

147. As regards requests and provision of information, the named competent authority under the Dominican Republic’s TIEA with the United States and its DTC with Canada is the Financial Secretary or his authorised representative. In the case of its DTC with Spain, the competent authority is the Minister of Finance or his authorised representative. Authorities from the Dominican Republic have reported that in 2006, pursuant to Law 496-06, the title of “Financial Secretary” was changed to “Minister of Finance”. Therefore, the competent authority is the same under all of its exchange agreements. In the case of all agreements, the power to exchange information has been delegated to the Director (from herein referred to as the “Tax Commissioner”) of the National Internal Tax Directorate (DGII, *Dirección General de Impuestos Internales*). The DGII has significant information resources and power to obtain information at its disposal, including ownership, identity, banking and accounting information. In addition, the DGII has broad access powers to obtain information for international EOI purposes and measures to compel the production of such information.

148. Bank secrecy is protected under the Monetary Law in the Dominican Republic but may be overridden for the purpose of accessing bank information for tax purposes. However, in regards to accessing banking information directly from the bank or financial institution, there is a special procedure

in place whereby the DGII must request the Office of the Attorney-General to obtain a court order to request this information from the financial regulator who requests this information from the bank. Overall this process takes 6-12 months. In addition, it is not certain under what circumstances the Court will grant authorisation to the DGII to access bank information directly. Therefore, the procedures for obtaining bank information directly could unduly delay the effective exchange of information and the Dominican Republic should provide exceptions in order to ensure that in urgent cases detailed banking information can be accessed in a timely manner. Therefore, element B.1 was found to be in place but needing improvement.

149. Application of rights and safeguards (e.g. notification and appeal rights) in the Dominican Republic do not restrict the scope of information that the DGII can obtain for the purposes of responding to an EOI request. Therefore, element B.2 was found to be in place.

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).

150. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction’s authorities or is within the possession or control of persons within the jurisdiction’s territorial jurisdiction, ownership information on all such persons in an ownership chain.⁶ Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.⁷

151. The named competent authority under the Dominican Republic’s TIEA with the United States and its DTC with Canada is the Financial Secretary (which in 2006 was renamed as the Minister of Economy and Finance) or his authorised representative. In the case of its DTC with Spain, the named competent authority is the Minister of Finance or his authorised representative. In the case of all agreements, the power to exchange information has been delegated to the Tax Commissioner of the DGII.

6. See OECD Model TIEA Article 5(4).

7. See JAHGA Report paragraphs 6 and 22.

Ownership, identity and bank information (ToR B.I.1)

152. The DGII has broad access powers to obtain bank, ownership and identity information and accounting records from any person for both domestic tax purposes and in order to comply with their obligations under the Dominican Republic’s exchange of information agreements. The access powers are contained in the Tax Code.

153. Pursuant to Article 44 of the Tax Code, the DGII has “broad powers of inspection, audit and investigation in order to ensure compliance with the Tax Code and other laws, regulations and fiscal norms for which they are responsible”. In the exercise of these powers, the DGII is empowered to:

- (a) Carry out inspections in offices, commercial and industrial establishments, transportation or premises of any kind which are not exclusively devoted to the home address of the taxpayer. To perform these inspections in private homes, it is necessary to obtain a search warrant issued by Court Order;
- (b) Require taxpayers or third parties to produce books, documents, business correspondence, goods and merchandise;
- (c) Review and examine the books, documents, goods and commodities inspected and safety measures for their conservation in the place where they are kept;
- (d) Seize or retain documents, goods, merchandise or objects in infringement when the gravity of the case requires. This measure must be properly grounded and will remain where the administration deems it necessary in order to resolve an ongoing investigation,. A copy of the search order is to be sent to the affected;
- (e) Inspect inventories, or cross-check inventories with the stock as declared by taxpayers;
- (f) Require taxpayers and third parties with special books or records of their negotiations and operations that they preserve and display as a means of explaining their tax compliance, to retain these for not less than 10 years;
- (g) Require that taxpayers and other persons subject to the Tax Code to produce underlying documents within the ten year period retention period; and
- (h) Require that accounting records are supported by relevant documentary evidence.

154. Therefore the above listed powers under the Tax Code are sufficient to ensure that the competent authority has access to all ownership and identity information both for domestic and exchange of information purposes.

Access to banking information

155. The above outlined powers may also be used by the DGII in order to access banking information from the taxpayer. In the event that banking information must be accessed directly from the bank, pursuant to article 44 of the Tax Code, the DGII is empowered to:

- (j) Request information from banks or credit institutions, public or private, which are obliged to provide it.

156. There is a particular process set out under the Monetary and Financial Law in order to access banking information directly from the banks or financial institutions in the Dominican Republic. This procedure is quite complex and involves a number of steps as set out below.

157. First, the Tax Commissioner of the DGII must make a formal request for the information to the Office of the Attorney-General outlining the reasons for the banking information being requested, why it is being sought directly and providing a brief overview of the details of the case (art. 56(b), Monetary and Financial Law). It is noted that officials from the Dominican Republic have confirmed that the Attorney-General would only deny such a request in exceptional cases on a legal basis. Generally, in regards to the requests for banking information, his role is as that of an intermediary in order to request the information needed by the DGII.

158. Authorities from the Dominican Republic have reported that it must be a reason of the request that the information being sought is in connection with a tax investigation or a tax fraud. Officials from the Dominican Republic have confirmed that banking information that was sought pursuant to an exchange of information request will always be deemed to be in connection with a “tax investigation” and would satisfy this criterion. Otherwise, the request to the Attorney-General must outline the information sought and the identification of the information holder. Officials from the Dominican Republic have reported that this step usually takes up to one month

159. Once the request has been reviewed by the Office of the Attorney-General, it will then proceed to then request authorisation to access the information from a judge via court order. Authorities from the Dominican Republic have reported that the fact that the information was being sought in connection with an EOI request in the course of a tax investigation and also the fact that the information was sought under an international agreement would both be very strong factors in favour of the judge granting access

to the banking information. Officials from the Dominican Republic have reported that obtaining the court order can take from 10 days to one month.

160. On obtaining the authorisation to access the banking information for tax purposes, the office of the Attorney-General then notifies the Banking Superintendent (*Superintendencia de Bancos*) as the entity responsible for the regulation of the financial industry within a period of ten days from obtaining the court order. On receipt of this notification from the Office of the Attorney-General, the Banking Superintendent will then proceed to request the information directly from the bank or financial institution who are allocated a timeframe of up to three months to provide the requested banking information. (art. 8, Monetary and Financial Law). Upon receipt of the banking information from the entity, the Banking Superintendent will then prepare a report within a timeframe of 10 days to one month and then sends this information to the DGII. For the purposes of fulfilling an EOI request, the DGII would then supply the information to the treaty partner. It is noted that there is no requirement to notify the taxpayer in order to access banking information in the manner prescribed above.

161. By reason of the number of steps and the timelines that are legally prescribed in order to access banking information directly this process can take 6-12 months and in the event that information was urgently needed there is no exception to accessing banking information without court order in the Dominican Republic. Therefore, it is foreseeable that the procedures for obtaining bank information as prescribed above could unduly delay the effective exchange of information. Therefore, it is recommended that the Dominican Republic ensures that detailed banking information can be accessed in a timely manner, in particular where it is required in urgent cases.

Accounting records (ToR B.1.2)

162. For the purposes of accessing information, the DGII will also use its access powers under Article 44 of the Tax Code. In particular, the DGII specifically requires that taxpayers having to conserve accounting records and underlying documentation for 10 years (art 44(f) and (h), Tax Code).

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

163. 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.

164. The Dominican Republic has no domestic tax interest requirement with respect to its information gathering powers. Information gathering

powers provided to the DGII under the Tax Code can be used to provide EOI assistance regardless of whether the Dominican Republic needs the information for its own domestic tax purposes.

165. Pursuant to article 44 of the Tax Code, the DGII through its powers of inspection, audit and investigation in order to ensure compliance with the Tax Code and other laws, regulations and fiscal norms may require taxpayers or third parties to produce any books, documents, goods and merchandise. The access powers are not limited to ensuring compliance with the provisions of the Tax Code but also with other laws, regulations and fiscal norms under their domain. Authorities from the Dominican Republic have advised that the reference to “other laws, regulations and fiscal norms” for the exercise of these powers would extend to requesting information pursuant to an exchange of information agreement which the authorities have advised are part of the domestic legal framework of the Dominican Republic.

166. The use of the Dominican Republic’s domestic powers for EOI purposes is based on treaties and the way in which they have been given effect in domestic law. The Constitution includes specific provisions on the integration of the Dominican Republic’s international treaty obligations into domestic laws such as the Tax Code. In particular, article 93(I) of the Constitution gives parliament the power to approve international treaties which have been entered into by the Executive.

167. Pursuant to article 13 of the Organic Law of the Ministry of Finance (Law no. 494-06), the Fiscal Policy Directorate of the Ministry of Finance is granted the power to enter into conventions for fiscal purposes. This reference to international agreements in the Organic Law of the Ministry of Finance implies that the provisions of international agreements related to tax will also come under the domain of the tax authorities.

168. Therefore, the tax authorities of the Dominican Republic have the power to request information both for enforcement of the obligations under the Tax Code as well as other laws such as the provisions of an exchange of information agreement. Nevertheless, as the powers to request information for the purposes of an EOI request are not explicit nor have the access powers of the Dominican Republic been tested in connection with an EOI request, this issue should be followed up in the Phase 2 assessment of the Dominican Republic.

Compulsory powers (ToR B.1.4)

169. Jurisdictions should have in place effective enforcement provisions to compel the production of information. In the Dominican Republic, there are clear penalties for failure to provide information requested by the DGII and it also has significant powers to compel information.

170. The Tax Code empowers the DGII to carry out investigations under search and seizure powers permitted by Court order (Art. 44(a), Tax Code). Further, the DGII may also request information in person and affidavits from taxpayers and third parties in order to verify facts related to their activities as well as requesting them to produce information or documentation (Art. 44 (i), Tax Code).

171. Pursuant to article 254(13) it is an offence to not share information requested under the Tax Code with the tax authorities. Persons failing to comply with a request to supply information or that fail to appear to provide information in person are liable to a penalty equal in amount from five to 30 minimum monthly salaries.

Secrecy provisions (ToR B.1.5)

172. Jurisdictions should not decline on the basis of their secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

General secrecy provisions

173. Article 44 of the Constitution provides for the right to privacy (“*intimidad*”) which is set out as follows:

Everyone has a right to privacy. Respect and non-interference in private life is guaranteed in relation to family, home and correspondence of the individual....Therefore:

2) Everyone has the right to access to information and data on her or its assets [which] rest in official or private records, and know the destination and use made of them, within the limits set by the law. The processing of data and personal information or property shall nevertheless respect the principles of quality, legality, loyalty, security and purpose. Persons are permitted to apply to the competent judicial authority to oppose their use, modification or destruction which illegitimately affect their rights.

3) the inviolability of private correspondence, documents or messages is recognised both for physical, digital, electronic or any other type formats. Such documents may only be intercepted or recorded, by order of a competent judicial authority through legal procedures in the conduct of affairs founded on justice that nevertheless preserve the secrecy of the corresponding information.

174. However, the constitutional right to privacy has been interpreted by the Dominican Republic courts as not being absolute and is overridden for

compliance with the provisions of the Tax Code. Case No. 201/2013 of the Constitutional Court specifically sets out that for ensuring the upholding of the legal obligations set out under the Tax Code and the AML Law, the authorities may access information without obstructing the right to privacy. Rulings of the Constitutional Court set out how provisions of the Constitution should be interpreted, including the right to privacy, which can be overrode for compliance with the Tax Code, such as responding to a request for information from the Commissioner.

175. As outlined above, access to information by the DGII for compliance with its international agreements, including for EOI purposes, is provided for under Article 44 of the Tax Code which enables the Tax Commissioner to access information related to obligations under the Tax Code as well as other laws (such as pursuant to an exchange of information request under an international agreement).

Bank Secrecy

176. Article 56 of the Monetary and Financial Law establishes general confidentiality obligations such as the requirement that financial institutions are legally compelled to maintain the secrecy of the funds received from the public in a disaggregated manner so as not to reveal the identity of the person. Further, only the account holder, or a person authorised by the holder through reliable means endorsed by the law, may request information about operations relating to their account.

177. In addition to the general confidentiality obligations, financial institutions have a legal obligation to retain as confidential all information relating to the deposits received from the public.

178. However, under the secrecy of banking information provisions of the Monetary and Financial Law, there is an exception provided when information must be supplied to certain other government authorities such as the DGII so long as it is disclosed in the following manner:

The information to be supplied by the entities subject to regulation, to the Tax Administration, the bodies in charge of preventing money laundering and the penal tribunals of the Republic, must be made case by case through the Banking Superintendent both for the receipt of the request of information and to the dispatch of the information, provided that they are requested through the fulfilment of the legal procedures set down by the judiciary.

179. Therefore, once information is requested in the above prescribed manner as set out under the Monetary and Financial Law, there is an exception to bank secrecy ensuring that bank information can be accessed for exchange of information purposes.

Attorney-client privilege

180. The scope of attorney-client privilege in the Dominican Republic is set out under the Lawyers Code of Conduct (*Código de Ética del Colegio de Abogados*) which takes the form of a Presidential Decree meaning it ranks lower than that of an ordinary law. Further, officials from the Dominican Republic have reported that the right to privacy as set out under Article 44 of the Constitution relates to personal privacy for individuals and does not extend to professional secrecy.

181. Under articles 17 and 18 of the Lawyers Code of Conduct, professional secrecy extends to all “confidences” that the lawyer has had relayed to him “by his client”... “in the course of his profession”. However, attorney-client privilege may be lifted where information is requested in connection with criminal proceedings.

182. According to the international standards, communications between attorneys, solicitors or other admitted legal representatives and their clients are only confidential if, and to the extent that, such representatives act in their capacity as attorneys, solicitors or other admitted legal representatives and not in a different capacity such as a nominee shareholder, trustee, settlor, company director or under a power of attorney to represent a company in its legal affairs. Further the communications shall only be kept confidential to the extent that they are produced for the purposes of seeking or providing legal advice or produced for use in existing or contemplated legal proceedings.⁸

183. On comparing the scope of legal privilege with that set out under the international standard above, it is noted that the fact that the Lawyers Code of Conduct refers to secrets that the “client” has confided in him infer that the extent of attorney-client privilege only encompasses professional communications disclosed in the course of the attorney-client relationship. Therefore, disclosures made to an attorney by virtue of a private relationship with a client, counterparty or colleague will not be considered secret.

184. Further, authorities from the Dominican Republic have reported that the scope of professional secrecy would only cover those circumstances where the lawyer was acting in their capacity as “attorney, solicitor or other admitted legal representatives” and would not extend to those cases where a lawyer might be acting for a company as a company director or as a *fiduciario* or trustee. Further, in the case that a lawyer was acting as a notary, article 53 of the Tax Code establishes an express duty for public notaries to provide the DGII with any documents that might have an effect for tax purposes.

8. See commentary to Model DTC, paragraph 19.3.

185. In addition, the fact that the Lawyers Code of Conduct refers generally to “confidences” lends to an interpretation of “secrets” as “confidential communications”. Therefore, attorney-client privilege would only extend to those communications which the client could reasonably have expected to be kept confidential. However, as attorney-client privilege is set out in quite general terms under the Lawyers Code of Conduct and only refers to “confidences” of the client being maintained as secret, it is not clear if the scope of attorney-client privilege would also extend to communications that were produced for reasons other than being produced for the purposes of seeking or providing legal advice or produced for use in existing or contemplated legal proceedings.

186. However, it is noted that the Lawyers Code of Conduct takes the form of a Presidential Decree and does not have the status of an ordinary law and will therefore rank lower in the hierarchy of laws passed by Congress. As a result, the Dominican Republic has reported that article 50 of the Tax Code, which sets out that taxpayers and third parties are obliged to facilitate and assist the DGII with the tasks of determination, collection and investigation of tax revenue, would override any claim of attorney-client privilege that may be made over information that is requested by the DGII. Nevertheless, the scope of attorney-client privilege and its effect on EOI should be followed up in the Phase 2 report of the Dominican Republic.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The legal procedure for accessing detailed banking information entails a number of steps and extensive timelines which may impede the effective exchange of information, in particular, in urgent cases.	The Dominican Republic is recommended to ensure that the judicial procedure to access banking information does not unduly delay or prevent effective exchange of information, in particular, in urgent cases.

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)

187. Rights and safeguards should not unduly prevent or delay effective exchange of information.⁹ For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

188. In the Dominican Republic there is no obligation to notify the subject of a request for EOI nor is there a prior notification requirement even in the case that banking information is requested and has to be accessed under the special procedure as outlined above (see section *Ownership, identity and bank information* B.1.1).

189. Further, it is noted that there are no grounds for objection or appeal in the Dominican Republic in the case that information is requested by the DGII or to challenge any of the actions of the Tax Commissioner such as the exchange of information under an EOI request.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

9. See OECD Model TIEA Article 1.

C. Exchanging information

Overview

190. 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 Dominican Republic has a network of information exchange that would allow it to achieve effective exchange of information in practice.

191. The Dominican Republic's network of three EOI mechanisms is comprised of one TIEA with the United States and two DTCs, one with Canada and the other with Spain. All of these agreements are in force and meet the internationally agreed standard containing sufficient provisions to enable the Dominican Republic to exchange all relevant information. Element C.1 was found to be in place.

192. The Dominican Republic's network of exchange agreements covers three treaty partners; Canada, Spain and the United States, all of whom have significant economic ties to the Dominican Republic. Comments were sought from Global Forum members in the course of the preparation of this report and in no cases has the Dominican Republic refused to enter into an EOI agreement. Further, the Dominican Republic had identified 20 jurisdictions with which it wishes to have an EOI agreement in place and will approach all of these jurisdictions with its model EOI agreement by the end of 2015. The Dominican Republic is encouraged to continue to strengthen its EOI network and negotiate agreements with all of its relevant partners. Consequently, element C.2 was found to be in place.

193. All EOI articles in the Dominican Republic's DTCs and TIEA contain confidentiality provisions that meet the international standard and its domestic legislation also contains appropriate confidentiality provisions and enforcement measures. While each of the articles might vary slightly in wording, they generally contain all of the essential aspects of Article 26(2)

of the OECD Model Tax Convention. Consequently, element C.3 was found to be in place.

194. The Dominican Republic's DTCs and TIEA protect rights and safeguards in accordance with the standard, by ensuring 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. Most of these rights and safeguards are also explicitly provided under domestic law. However, the scope of attorney-client privilege may be wider than the international standard. Element C.4 was found to be in place.

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

C.1. Exchange-of-information mechanisms

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

196. To date, the Dominican Republic has concluded two DTCs and one TIEA and all three of these EOI agreements are in force. The DTC with Spain (2011) was signed after the update to the OECD Model Tax Convention in 2005 and generally follows this model. The DTC with Canada (1976) generally follows an older version of the United Nations Model DTC and the TIEA with the United States (1989) was negotiated prior to the Model TIEA being in existence.

197. All international treaties must be approved by Congress (art. 93(I), Constitution) and they become law once they have been published in the official gazette of the Dominican Republic (art. 26, Constitution). In the event of a conflict between the provisions of an ordinary law and the terms of an international agreement, the provisions of the international agreement will prevail (art. 26(4), Constitution). However, the Constitution, as the supreme body of law in the Dominican Republic, will prevail over international treaties. Officials from the Dominican Republic have reported that there are no conflicting provisions between the Constitution and the terms of its EOI agreements.

198. As regards EOI requests and provision of information, the named competent authority under the Dominican Republic's TIEA with the United States and its DTC with Canada is the Financial Secretary (which as of 2006 became referred to as the Minister of Finance) or his authorised representative. In the

case of its DTC with Spain, the competent authority is the Minister of Finance or his authorised representative. In the case of all agreements, the power to exchange information has been delegated to the Tax Commissioner.

199. Whilst this report is focused on the terms of its exchange of information agreements and practices concerning exchange of information on request, it is noted that the TIEA with the United States also provides for automatic and spontaneous exchange of information.

Foreseeably relevant standard (ToR C.1.1)

200. The international standard for exchange of information envisages information exchange to the widest possible extent. Nevertheless, it does not allow for “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 26(1) of the OECD Model Tax Convention, set out below:

The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

201. The commentary to Article 26(1) of the OECD Model Tax Convention refers to the standard of “foreseeable relevance” and 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”. The DTC signed with Spain expressly provides for the exchange of information which is foreseeably relevant for the carrying out of the provisions of the Convention or the administration or enforcement of the domestic laws concerning taxes of every kind’ and so meets the foreseeably relevant standard. The DTC with Canada provides for the exchange of information that is necessary for “carrying out the provisions of this Convention or for the administration or enforcement of domestic laws”. Authorities from the Dominican Republic have confirmed that the term “necessary” under this EOI agreement is interpreted in accordance with the Commentary to Article 26(1) of the OECD Model Tax Convention. Therefore, this DTC is also in line with the international standard.

202. Article 4 of the Dominican Republic’s TIEA with the United States provides that the competent authorities shall exchange information “to administer and enforce the domestic laws of the Contracting States concerning taxes covered by this Agreement, including information to effect the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, or the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration”. Although the wording varies from the Model TIEA which was drafted in 2002 and after this TIEA was agreed, the Dominican Republic has reported that it would enable them to exchange information that is foreseeably relevant to the administration and enforcement of the domestic tax laws of the Contracting Parties. Therefore, this interpretation would place the TIEA with the United States in line with the international standard in regards to foreseeable relevance.

In respect of all persons (ToR C.1.2)

203. For exchange of information to be effective it is necessary that a jurisdiction’s obligation 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.

204. Paragraph 1 of the OECD Model Tax Convention indicates that “The exchange of information is not restricted by Article 1” which defines the personal scope of application of the Convention.¹⁰ The Dominican Republic’s DTC with Spain contains an exchange of information article which includes this sentence and therefore provides for the exchange of information in respect of all persons.

205. In the case of its DTC with Canada, the exchange of information article does not expressly provide that the EOI provision is not restricted by Article 1, which sets out the persons covered. However, both the Dominican Republic and Canada have advised that they interpret the exchange of information provision to allow exchange with respect of all entities.

206. As set out in its scope (Art. 3), the Dominican Republic-United States TIEA is not restricted to certain persons such as those considered resident or nationals of either contracting party, nor does it preclude the application of EOI provisions in respect to certain types of entities. Therefore, the TIEA contains a similar jurisdictional scope provision and allows for exchange of information in respect of all persons.

10. DTCs apply to persons who are residents of one or both of the Contracting States.

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

207. 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 Tax Convention and the Model TIEA, which are the 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 relates to an ownership interest.

208. Article 5(4)(a) and (b) from the Model TIEA provides that parties “shall ensure that its competent authorities...have the authority to obtain and provide upon request: a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity...”.

209. The Dominican Republic-United States TIEA does not include a similar provision equivalent to Article 5(4)(a) and (b) of the Model TIEA. The agreement is worded such that “the competent authorities of the Contracting States shall exchange information to administer and enforce the domestic laws of the Contracting States concerning taxes covered by this Agreement, including information to effect the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, or the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration.” It appears that this wording would require the Dominican Republic to exchange banking information in all situations where it may be requested by the United States. The authorities from the Dominican Republic have reported that they adopt a broad interpretation to the exchange of information article with the United States and in this way would interpret this article as requiring the exchange of banking information.

210. Article 26(5) of the OECD Model DTC provides that the contracting parties should not refuse to supply information because it is held by “a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity...”. The DTC with Spain contains an exchange of information article with this wording and therefore permits the exchange of bank information.

211. Whilst the DTC with Canada does not include a similar provision equivalent to Article 26(5) of the OECD Model Tax Convention, the absence of this provision does not automatically create restrictions on exchange of bank information in the Dominican Republic. The Dominican Republic has full access to bank information for tax purposes in its domestic law (see section B.1.1 *ownership, identity and bank information*), and pursuant to its treaties is able to exchange this type of information when requested.

Absence of domestic tax interest (ToR C.1.4)

212. 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. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

213. Article 5(2) of the Model TIEA states that a party “shall use all relevant information gathering measures to provide the requesting party with the information requested notwithstanding that the requested Party may not need such information for its own tax purposes”. The TIEA with the United States does not expressly provide that information should be exchanged without regard to a domestic tax interest. However, it specifically refers to the enforcement of the domestic laws of both the parties concerning taxes covered by the agreement. Therefore, this agreement permits the Dominican Republic to gather and exchange information notwithstanding that it is not required for its own domestic tax purposes.

214. Article 26(4) of the OECD Model DTC states that the requested party “shall use its information gathering measures to obtain the requested information, even though it may not need such information for its own purposes”. The Dominican Republic’s DTC with Spain contains a provision similar to article 26(4) of the Model DTC and therefore allows for information to be obtained and exchanged notwithstanding that it is not required for a domestic tax purpose.

215. Whilst the DTC with Canada does not include a similar provision equivalent to Article 26(4) of the Model Tax Convention, the absence of this provision does not, in principle, create restrictions on exchange of information provided there is no domestic tax interest impediment to exchange of information in the case of either contracting party. The Dominican Republic has full access to information for tax purposes in its domestic law even where it is not required for its own domestic purposes (see section B.1.3 *Use of information gathering measures absent domestic tax interest*), and pursuant to its treaties is able to exchange all types of information when requested.

Absence of dual criminality principles (ToR C.1.5)

216. The principle of dual criminality provides that assistance can only be provided if 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. In order to be effective, exchange of

information should not be constrained by the application of the dual criminality principle.

217. Neither of the DTCs concluded by the Dominican Republic apply the dual criminality principle to restrict exchange of information. The TIEA with the United States also does not apply the dual criminality principle to restrict exchange of information.

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

218. 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”).

219. The Dominican Republic’s DTC with Spain contains similar wording to that used in 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”, without excluding either civil or criminal tax matters. Similarly, the Dominican Republic’s DTC with Canada refers to information necessary for “carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention” and does not exclude civil or criminal tax matters.

220. The Dominican Republic’s TIEA with the United States permits the contracting parties to exchange information “to administer and enforce the domestic laws of the Contracting States” “including information to effect the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, or the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration”. Therefore, the agreement permits the exchange of information in both civil and criminal tax matters.

Provide information in specific form requested *(ToR C.I.7)*

221. 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.

222. The Dominican Republic's TIEA with the United States provides that the parties will provide information in the same form as if the tax of the applicant state were the same as the requesting state. It specifies that books, papers, records and other tangible property shall be provided. It also provides for witness depositions and certified copies of documents.

223. Although there is nothing in either of the Dominican Republic's DTCs that expressly provide for the form of information, there is also nothing contained in them that would limit it. In addition, there are no impediments in Dominican Republic law which would prevent information being obtained in the form requested, to the extent that it is consistent with its own domestic laws.

In force (ToR C.1.8)

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

225. The Dominican Republic has a network of three signed agreements which are all in force and, as analysed above, are to the standard for the exchange of information on request.

226. In the Dominican Republic, the process for ratification of DTCs and TIEAs is the same. The international agreement must first be signed by the President, the Minister for foreign affairs or someone authorised as the President's representative. Once signed, the agreement then goes to the Constitutional Court at the request of the Attorney-General, which follows the procedures to ensure its constitutionality. The agreement is then submitted by the President to the Congress for approval in the same manner as all ordinary laws in the Dominican Republic. Approval in Congress must be obtained from both the plenary of the Senate and the Chamber of Representatives. After the act is approved by Congress, the President then signs the act in order for it to become a law. The treaty is then ratified and the partner jurisdiction is notified accordingly.

227. The average time taken to ratify an agreement from the time of signing is one year. Therefore, there are no legal impediments affecting the length of time in which the Dominican Republic ratifies its agreements.

In effect (ToR C.1.9)

228. 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.

229. Once an international agreement has been ratified, it is granted “*lex specialis*” status in the Dominican Republic. As mentioned above, in the event of a conflict with the provisions of ordinary law, the provisions of the international agreement will take precedence. Both the Dominican Republic’s DTCs and its TIEA are in force and have been given effect in this manner.

230. As discussed in section B.1, there is nothing in the Dominican Republic’s domestic laws that prevent it from complying with the terms of its international agreements.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

231. 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.

232. As of June 2015, the Dominican Republic has a treaty network providing for exchange of information with three jurisdictions: Canada, Spain and the United States, all of whom are main trading partners of the Dominican Republic and are also members of the OECD and the Global Forum.

233. In terms of recent developments, the Dominican Republic is currently devising a treaty negotiation policy through which it has identified 20 jurisdictions of interest with which it wishes to have an exchange agreement in place. Once the Dominican Republic has concluded its model exchange

agreement, it shall then propose this model to each of these 20 jurisdictions by the end of 2015.

234. Comments were sought from Global Forum members in the course of the preparation of this report, and in no cases has the Dominican Republic refused to negotiate an EOI agreement. Nevertheless, the Dominican Republic is encouraged to increase its treaty network and to continue to develop its EOI network with all relevant partners. Element C.2 was therefore found to be in place.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	The Dominican Republic should continue to develop its EOI network with all relevant partners.

C.3. Confidentiality

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

Information received: disclosure, use, and safeguards (ToR C.3.1); all other information exchanged (ToR C.3.2)

235. 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 countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

Exchange of information agreements

236. Article 4(9) of the Dominican Republic's TIEA with the United States contains a confidentiality provision similar to the standard as contained in Article 8 of the Model TIEA. Similarly, the Dominican Republic's

DTCs (Canada and Spain) contain provisions similar to Article 26(2) of the OECD Model Tax Convention and are therefore in line with the standard.

237. There is no provision in the Dominican Republic’s legislation specifically addressing the issue of confidentiality of information exchanged for tax purposes under DTCs, TIEAs or multilateral instruments on mutual administrative assistance. Nevertheless, the exchange of information for tax purposes under DTCs, TIEAs or multilateral instruments on mutual administrative assistance is also subject to domestic privacy and disclosure laws as set out below.

Domestic law

238. The Tax Code establishes the general rules pertaining to the disclosure of tax information in the Dominican Republic. Article 47 of the Tax Code establishes that the declarations and information received by the Tax Administration from taxpayers, representatives and third parties, through any means, will, in principle, be confidential and may be used by the administration for the purposes authorised by the law. While there is no explicit reference to information exchanged with another government, the same level of protection that is afforded to information obtained for domestic purposes will also apply to information exchanged with a treaty partner.

239. Article 47, paragraph 1 sets out that the duty of confidentiality placed on the DGII may be lifted where it becomes an obstacle to promote transparency of the tax system and when information is required by law or by the courts for the purposes of compulsory collection of taxes, in the course of a criminal procedure or the dissolution of a matrimonial regime.

240. Finally, in the event that domestic law provisions on general confidentiality rules were found to be less restrictive than those provided under the EOI agreements concluded by the Dominican Republic, as treaties will override domestic law (art. 26(4), Constitution), the confidentiality provisions of the international agreements will prevail ensuring that the international standard in regards to confidentiality is met. However, it is noted that the provisions that provide for confidentiality in the Dominican Republic are consistent with the obligations set out in its EOI agreements.

Penalties for breach of confidentiality

241. Dominican Republic legislation establishes both criminal and disciplinary penalties for breach of confidentiality provisions.

242. Pursuant to articles 259 and 260 of the Tax Code, public employees that disclose confidential facts or documents, encountered through their position as public employees, will be excluded from their functions, without pay,

for a period up to 3 months, or will be dismissed from their position. Further, if the information disclosed is used for the purposes of facilitating tax fraud, the public official would then be considered as an accomplice and liable to be penalised with imprisonment from six days to two years (Articles 236 and 239 of the Tax Code).

243. In summary, the general domestic rules on confidentiality, read in conjunction with the confidentiality provisions contained in the Dominican Republic's exchange of information agreements, lead to the conclusion that information exchanged with foreign authorities may only be disclosed to persons or authorities, including courts and administrative bodies, concerned with the assessment, collection, prosecution or enforcement of the tax law in question or in criminal proceedings related to such taxes.

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)

244. 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 legitimate secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries. 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.

245. 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 *fiduciario*, 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.

Exchange of information agreements

246. The limits with which information can be exchanged, as provided for in Article 26(3) of the OECD Model Tax Convention and Article 7 of the OECD Model TIEA, are included in each of the DTCs concluded by the Dominican Republic and in the Dominican Republic-United States TIEA. 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. However, the term “professional secret” is not defined in the EOI agreements and therefore this term would derive its meaning from the Dominican Republic’s domestic laws.

Domestic law

247. As described in section B.1.5 above, the scope of attorney-client privilege as contained in the Lawyers Code of Ethics in the Dominican Republic is unclear and may extend beyond that permitted to be in line with the international standard. For example, the scope may extend to communications that were produced for purposes other than providing legal advice or for use in existing or future legal proceedings.

248. However, as noted previously in section B.1 of the report, claims of attorney-client privilege in the Dominican Republic would not prevent access by the DGII to information requested in order to respond to an EOI request. Nevertheless, the scope of attorney-client privilege and its application in the context of exchange of information should be followed up in the Phase 2 review of the Dominican Republic.

249. There are no explicit provisions under the Dominican Republic’s domestic legislation concerning commercial and industrial secrets, and notification requirements do not exist in the Dominican Republic’s domestic laws.

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)

250. 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 co-operation as cases in this area must be of sufficient importance to warrant making a request.

251. Neither the Dominican Republic's TIEA with the United States, nor either of its DTCs, provide for a timeline to respond to an information request. Nonetheless, the Dominican Republic has reported that when exchange of information requests are received under any of their agreements, it is internal policy to provide a response to all treaty partners within 90 days.

Organisational process and resources (ToR C.5.2)

252. It is important that a jurisdiction has appropriate organisational processes and resources in place to ensure a timely response. A review of the practical application of these processes and the resources available will be conducted in the context of the Dominican Republic's Phase 2 review.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

253. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. As noted in Part B of this Report, there are no aspects of the Dominican Republic's domestic laws that appear to impose additional restrictive conditions on effective EOI that would be incompatible with the international standard.

Determination and factors underlying recommendations

Phase 1 determination

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

Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The element is not in place.	Joint stock companies, which represent approximately 23% of all companies in the Dominican Republic, may issue bearer shares. Although there are obligations in certain cases under the AML Law and the Tax Code for the reporting of ownership information in the case of a transfer of a bearer share, these reporting mechanisms do not sufficiently ensure that the owners of such shares can be identified in all cases.	The Dominican Republic should ensure that appropriate reporting measures are in place to effectively ensure that owners of bearer shares can be identified 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.		
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
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, but certain aspects of the legal implementation of the element need improvement.	The legal procedure for accessing detailed banking information entails a number of steps and extensive timelines which may impede the effective exchange of information, in particular, in urgent cases.	The Dominican Republic is recommended to ensure that the judicial procedure to access banking information does not unduly delay or prevent effective exchange of information, in particular, in urgent cases.
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 in place.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners <i>(ToR C.2)</i>		
The element is in place.		The Dominican Republic should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received <i>(ToR C.3)</i>		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties <i>(ToR C.4)</i>		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner <i>(ToR C.5)</i>		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Dominican Republic’s response to the review report¹¹

We would like to thank the Global Forum Secretariat and its assessment team for all the effort and dedication they invested towards the discussion of our Phase 1 Report. This report shows strengths and opportunities for improvement of which we are quite aware. We appreciate the support of the Peer Review Group (PRG) for the opportunity extended to our country to move to a Phase 2 review.

The Dominican Republic joined the Global Forum in 2013 as part of our National Development Strategy established in 2012. One of the main goals of this strategy is to reach a transparent, efficient and equitable tax system. Initiatives in this respect include the implementation of thin capitalization rules as well as transfer pricing regulations in line with OECD recommendations. In fact, we were the first country in the Central America and the Caribbean region to introduce this kind of regulations in our domestic law.

Our current tax treaty partners include Canada, the United States, and Spain. These jurisdictions represent more than half of our direct foreign investment and of our exports. Nonetheless, we have implemented a strategy to broaden our tax agreement network to include all other economically relevant jurisdictions. As part of this strategy, we have drafted a tax agreement model following 2002 OECD TIEA recommendations which we are sending to twenty (20) jurisdictions, and will request joining the Convention on Mutual Administrative Assistance in Tax Matters in the very near future.

The Dominican Republic has also reached an agreement in substance to sign the FATCA – IGA Model 1-A for reciprocal exchange of information with the United States. Towards this end, the tax administration is adjusting its policies and IT systems in order to obtain ISO certifications 20000 and 27001 for IT service management and information security management respectively.

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

The report and the PRG approval to move forward to the second phase of the review validates that our legal framework allows for an effective exchange of information for tax purposes. These results and the efforts made by the Dominican Republic so far confirm our commitment to fully comply with Global Forum standards.

Nonetheless, we are aware of the important work we have ahead of us regarding the recommendations that were highlighted in the report and during the meeting in order to fully implement Global Forum tax transparency standards. Regarding the existence of bearer shares in the legislation, the Dominican government is in the process of implementing regulations to eliminate this possibility. Similarly, concerning the length of the process needed to access and exchange banking information, there is broad consensus and commitment to resolve this issue.

The Dominican Government, represented by the Ministry of Finance, has the goal of converging with the public policy best practices of OECD countries. Therefore, Peer Review Group Members should rest assured that the Dominican Republic will implement all necessary changes to allow exchange of information within the standards of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Annex 2: List of all exchange-of-information mechanisms in effect

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
1	Canada	DTC	6-Aug-1976	23-Sept-1977
2	Spain	DTC	16-Nov-2011	25-July-2014
3	United States	TIEA	7-August-1989	13-October-1989

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

Constitution

Constitution of the Dominican Republic

Civil and Commercial Entities Laws

Border Free Trade Zone Development Law (No. 28-01)

Civil Code (*Código Civil*)

Commercial Code (*Código Commercial*)

Commercial Entities Law No. 479-08 (*Ley General de las Sociedades Comerciales y Empresas Individuales de Responsabilidad Limitada*)

Decree 408-10 on Entrepreneurial Reorganisation (*Partnerships Law*)

Promotion of Free Trade Zones Law No. 8-90

Mercantile Registry Law No. 03-02 (*Ley de Registro Mercantil*)

Mortgage and Trusts Law No. 189-11 (*Ley de Fideicomiso*)

Regulation No. 50-13 (*Foreign Companies*)

Law on Non-profit Organisations No. 122-05
Regulation 40-08 of the Law on Non-Profit Organisations

Financial sector laws

Monetary and Financial Law No. 189-02 (*Ley del Sistema Monetario y Financiero*)

Stock Market Regulation Law No. 19-00

Tax laws

Tax Code (*Código Tributario*)

Regulation No. 139-98 (*Income derived outside of the Dominican Republic*)

Miscellaneous

Lawyers Code of Conduct (*Código de Ética del Colegio de Abogados*)

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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.

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: DOMINICAN REPUBLIC

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/10.1787/9789264237711-en>.

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