GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

SINT MAARTEN

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Sint Maarten 2015

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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(reflecting the legal and regulatory framework
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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 Sint Maarten as well as the practical implementation of that framework. 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. While Sint Maarten's legal and regulatory framework is in place, the report identifies a number of areas where Sint Maarten could improve its legal and practical infrastructure to more effectively implement the international standard. The report includes recommendations to address these shortcomings. The assessment of effectiveness in practice has been performed in relation to a three year period (January 2011 to December 2013).

2. Sint Maarten is located at the northeastern part of the Caribbean Sea, forming part of the Kingdom of the Netherlands, along with the Netherlands, Aruba and Curaçao.[1] The economy of Sint Maarten is mainly based on tourism, accounting for around 85% of GDP. As a result of a comprehensive tax reform in 1999, the offshore tax regime was abolished, subject to extensive grandfathering rules. In 2001, the Netherlands Antilles (now succeeded by Sint Maarten) committed to co-operate with the OECD's initiative on transparency and effective EOI and to comply with the 1999 Report of the EU's Code of Conduct Group.

3. In terms of assessing the framework to ensure the availability of relevant information, Sint Maarten's legislation (civil, commercial and tax) has clear requirements for companies, partnerships (or partners), foundations and foreign trusts, to retain certain ownership, identity, accounting

1. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curaçao and Sint Maarten) with the remaining three "BES islands" (Bonaire, Sint Eustatius and Saba) joining the Netherlands as special municipalities.

and banking information and, in some instances, to provide that information to government authorities. In addition, obligations are imposed through the licensing regime applicable to certain regulated financial activities in Sint Maarten, including credit institutions, insurance companies, money transfer companies, and trust company service providers. Finally, anti-money laundering regulations apply to anyone who renders services as a profession or as a trade. However, several deficiencies were identified in respect of oversight and enforcement of obligations to maintain ownership and accounting records in practice.

4. Limited liability companies (NVs) may issue bearer certificates, provided this is permitted under the articles of association of the company. However, under the current business license policy of Sint Maarten, only offshore companies (as opposed to locally owned and operated companies) may issue bearer certificates. Various mechanisms are currently in place to immobilise such bearer shares and anti-money laundering laws also apply to ensure the availability of ownership information in these cases. However, there is a lack of monitoring and enforcement to ensure that all bearer shares are immobilised as required under Sint Maarten's law. Obligations to ensure the availability of identity and ownership information for relevant entities and arrangements are generally in place.

5. In practice, Sint Maarten does not have an effective system of oversight in place to monitor and enforce the compliance of entities with obligations to maintain or provide ownership and identity information. In addition, there are deficiencies in the oversight of and enforcement of sanctions against offshore companies. As a result it cannot be determined whether ownership information is actually available in respect of many of these companies. Despite legal obligations on offshore companies to have a Trust Service Provider (TSP) at all times in Sint Maarten, only a small number have been reported as having a TSP in Sint Maarten to the Central Bank of Curaçao and Sint Maarten. Given that compliance rates for filing information with the trade register and for filing of profit tax returns with the tax office are relatively low this raises a concern as to whether ownership information would always be available even in respect of other companies especially in cases where they do not conduct any business in Sint Maarten. Furthermore, there is limited oversight of a policy prohibiting a company that can issue bearer shares from obtaining a business license and there are no mechanisms to identify owners of bearer shares of NVs which issued bearer shares but do not conduct business in Sint Maarten or do not engage a TSP there.

6. Sint Maarten's accounting record-keeping requirements are generally satisfactory. Under Sint Maarten's tax law, companies, partnerships, foundations and trust company service providers are required to keep accounting records and underlying documentation for at least ten years. Under the AML/

CFT framework, service providers, such as credit institutions, insurance companies and certain relevant professionals, are required to establish and verify the customer's identity and the person on whose behalf a customer is acting. They are obliged to keep records in respect of all transactions for five years from the date of the termination of the agreement under which service was provided or execution of the service. The system of oversight of accounting obligations is limited to tax supervision and the compliance rate for the filing of profit tax returns remains relatively low, particularly with regards offshore companies. As a result it cannot be determined whether accounting information is actually available in respect of many of these companies.

7. In respect of access to information, Sint Maarten's competent authorities – the Minister of Finance and the Head of the Tax Administration are vested with broad powers to gather relevant information for civil tax purposes, complemented by powers to search premises, seize information and compel oral testimony. On criminal tax matters, the Minister of Justice must be consulted before the Minister of Finance can provide the requested information, though in practice this is a formality. Secrecy provisions in Sint Maarten's law are overridden where information is required for EOI purposes, and there is no domestic tax interest requirement. However, the appeal rights available under Sint Maarten's law may delay the effective exchange of information. In practice, Sint Maarten experienced obstacles in obtaining banking information and did not use its compulsory powers to provide the requested information in a timely manner. Furthermore, the practical application of legal professional privilege in Sint Maarten remains to be tested in respect of obtaining information for exchange of information purposes. Finally, since there has been no case during the period under review where requested information related to an offshore company it has not been possible to test the relationship between Sint Maarten's obligation to provide the information for exchange of information purposes and the grandfathering clause granting exception from providing the information to the tax authority.

8. Sint Maarten's network for the exchange of information has continued to develop rapidly. Presently, Sint Maarten has EOI relationships with 88 jurisdictions, including 21 TIEAs; a DTC; an agreement between the jurisdictions forming the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, the BRK, comprised of the Netherlands, Aruba, Curaçao and Sint Maarten); and is covered by the *Convention on Mutual Administrative Assistance in Tax Matters* as amended (the Multilateral Convention). Of these EOI relationships with 88 jurisdictions, EOI agreements concerning 61 jurisdictions are in force. Three additional TIEAs have been agreed and are awaiting signature and negotiations are underway with an additional three jurisdictions. Sint Maarten should continue to develop its EOI network with all relevant partners.

9. Sint Maarten's competent authority is the Minister of Finance and the Head of the Tax Administration is mandated by the Minister to act as the competent authority for the exchange of information for tax purposes. The Head of Fiscal Affairs remains the competent authority for the negotiation of tax treaties.

10. Sint Maarten has limited experience with EOI due to a small number of requests being received each year. During the period under review from 1 January 2011 to 31 December 2013, Sint Maarten received a total of 16 requests from three EOI partners. Sint Maarten provided the requested information within 90 days in 6% of cases, within 180 days in 31% of cases, within one year in 44% of cases and 25% of cases took over a year to respond to during the reviewed period. During this period there was no clear internal policy in place regarding EOI to ensure efficient and timely responses to incoming requests

11. The tax administration in Sint Maarten has created an exchange of information manual which will assist in clarifying the processes and procedures to be followed when a request for information is received. There remain certain areas where improvement is needed in order to ensure that the requested information and/or status updates are provided in a timely manner in all cases.

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

13. A follow-up report on progress by Sint Maarten in these areas should be provided to the PRG within 12 months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Sint Maarten

14. The assessment of the legal and regulatory framework of Sint Maarten as well as its practical implementation 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 conducted in two stages: the Phase 1 review assessed Sint Maarten's legal and regulatory framework for the exchange of information as at July 2012, while the Phase 2 review assessed the practical implementation of this framework during a three year period (January 2011 to December 2013) as well as amendments made to this framework following the Phase 1 review up to May 2015. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 26 May 2015, other materials supplied by Sint Maarten, information supplied by partner jurisdictions and explanations provided by Sint Maarten during the on-site visit which took place from 29 September – 2 October 2014.

15. The Terms of Reference break down the standards of transparency and exchange of information into ten essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Sint Maarten's legal and regulatory framework as well as the practical implementation of this 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. A summary of the findings against those elements is set out at the end of this report.

16. The Phase 1 assessment was conducted by a team which consisted of two assessors: Mr. Liangmu Wang, Principal Staff Member of the International Taxation Department of the State Administration of Taxation of the People's Republic of China and Mr. Anthony Vella Laurenti, Assistant Director (International Affairs) International Tax Unit of the Ministry for Finance, the Economy and Investment of Malta; and Ms. Laura Hershey from the Global Forum Secretariat. The Phase 2 assessment was conducted by Mr. Liangmu Wang, Deputy Consultant of the Global Cooperation and Compliance Division of the International Taxation Department of the State Administration of Taxation of the People's Republic of China (China) and Mr. Anthony Vella Laurenti, Director (International Taxation), Legal and International Division, Office of the Commissioner for Revenue, International Tax Unit of the Ministry for Finance of Malta and Ms Kathryn Dovey and Mr Radovan Zidek from the Global Forum Secretariat. The assessment team examined the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Sint Maarten.

Overview of Sint Maarten

Governance, economic context and legal system

17. Sint Maarten forms part of the Kingdom of the Netherlands, along with the Netherlands, Aruba and Curaçao. The Netherlands Antilles (of which Sint Maarten was part) was dissolved on 10 October 2010, resulting in two new constituent jurisdictions (Curaçao and Saint Maarten), with the other islands (Bonaire, Saint Eustatius and Saba) joining the Netherlands as special municipalities. The capital is Philipsburg.

18. The island of Sint Maarten/Saint Martin is divided between the Kingdom of the Netherlands and France. Dutch Sint Maarten (which is covered in this report) encompasses the southern half of the island in the northeastern Caribbean's Leeward Islands, and the island is part of the Lesser Antilles. Sint Maarten, as a whole, has a land area of 37 square miles (with the Dutch side occupying 16 square miles) and, as of April 2014, it had a population of 37 224 inhabitants. Dutch and English are the official languages of Sint Maarten.

19. The monetary unit of Sint Maarten is the Netherlands Antillean Guilder (ANG), which has been pegged to the US dollar since 1946. Since 1971, the exchange rate of USD 1.00 = ANG 1.79 has not changed.

20. Sint Maarten's Gross Domestic Product in 2012 was ANG 1.76 billion increasing in 2013 to ANG 1.824 billion. In addition to low growth, other macroeconomic challenges facing Sint Maarten include a need for

institutional capacity following the dissolution of the Netherlands Antilles. The island has a relatively high unemployment amongst young people and has a relatively young population. The national balance of payments is under some pressure but measures have been taken to ensure stability. Sint Maarten's major trading partners are the Netherlands and the United States.

21. The relationship between Sint Maarten and the other parts of the Kingdom of the Netherlands is governed by the Charter for the Kingdom of the Netherlands. Pursuant to such Charter, Sint Maarten is self-governing to a large degree and accordingly has legislative autonomy on various subjects, including taxes. Defence, foreign relations, nationality and extradition are handled by the Kingdom of the Netherlands as a whole (article 3(1), Charter for the Kingdom of the Netherlands). On 10 October 2010, a Co-operation Agreement for Aruba, Curaçao and Sint Maarten was drafted on the basis of article 38(1), Charter for the Kingdom of the Netherlands. The draft is to govern the manner in which Sint Maarten co-operates with Curaçao and Aruba on justice and some legal matters. The Agreement requires ratification by Aruba in order to enter into force. Curaçao and Sint Maarten already co-operate in the manner governed in the draft Co-operation Agreement to the extent possible in advance of ratification.

22. The sovereign of the Kingdom of the Netherlands is the Head of State, appointing a Governor to Sint Maarten for a term of six years. Sint Maarten has a parliamentary system with a unicameral parliament called *Staten*, which consists of 15 members who are elected by popular vote for a four-year term of office after which they can be re-elected. Legislative powers are shared by the Government (the Council of Ministers chaired by the Prime Minister, together with the Governor) and Parliament (*Staten*) and are exercised through the Constitution, National Ordinances (*landsverordeningen*), National decrees, containing general measures, (*landsbesluiten, houdende algemene maatregelen*) and Ministerial regulations (*Ministeriële regelingen).*

23. According to article 81 of the Constitution of Sint Maarten, the laws applicable in Sint Maarten have the following hierarchy: *(i)* the Charter for the Kingdom of the Netherlands; *(ii)* agreements with other jurisdictions and international organisations insofar as they have been ratified for Sint Maarten; *(iii)* Kingdom laws and Kingdom administrative orders that are binding in terms of the Charter for Sint Maarten; *(iv)* the Constitution; *(v)* mutual regulations as specified in article 38(1) of the Charter in so far as they have been given statutory authority by a competent body of Sint Maarten; *(vi)* mutual regulations as specified in article 38(2) of the Charter; *(vii)* national ordinances, including the unified national ordinances; *(viii)* national decrees, containing general measures,; *(ix)* ministerial regulations; *(x)* ordinances by public bodies as defined in article 97(2) and independent administrative bodies as defined in article 98(2).

24. The Constitution expressly provides for the precedence of directly effective binding provisions of international treaties. International treaties (including tax treaties) take precedence over any conflicting national law and enjoy priority over national ordinances, decrees, regulations and even over the Constitution itself. Pursuant to article 94 of Sint Maarten's Constitution, draft national ordinances that relate to the implementation of treaties or decisions by international law organisations may not under any circumstances be the topic of referendum.

25. Sint Maarten is a civil law jurisdiction. The legal system of Sint Maarten is derived from the law of the former Netherlands Antilles, which is based on the Dutch legal system with some modifications due to local and/or regional circumstances. Prior to the restructuring of the Netherlands Antilles, the island territory of Sint Maarten had the discretion to adopt Island Ordinances. After 10 October 2010, most of these Island Ordinances received the status of National Ordinances (when not based on a national ordinance of the former Netherlands Antilles), the others became national decrees, containing general measures (when based on such a National Ordinance). The transition from Dutch Antilles Law into Sint Maarten Law is governed by the National Ordinance on transitional provisions for legislation and administration. Apart from Kingdom legislation, the legal system now relies on a single national law. The basic rights of citizens, the institution and separation of the judiciary, legislative and executive branches, the organisation of government and its tasks and obligations, along with related subjects are regulated in the Constitution of Sint Maarten.

26. The judiciary is comprised of independent judges who are appointed by the sovereign upon recommendation of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (Joint Court). Cases (excluding tax cases) are heard in first instance by the Court in First Instance (*Gerecht in eerste aanleg*) and can be appealed to the Joint Court in second instance.

27. In tax matters, there is at present only one level of appeal to the Council of Appeal (*Raad van Beroep in belastingzaken*), pursuant to article 31 of the National Ordinance on General National Taxes. Further appeal is possible at the Supreme Court of the Netherlands for civil and penal cases. In tax matters, the judges of the Council of Appeal are the judges from the Supreme Court of Justice seated in The Hague. Twice a year, they are flown in to deal with pending court cases. Cases from Curaçao, Aruba and Bonaire will be dealt with in Curaçao, cases from Sint Maarten, Saba and St. Eustatius will be dealt with in Sint Maarten. These judges do not have a permanent seat in Curaçao or Sint Maarten.

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

28. There are several types of legal persons in Sint Maarten, characterised by their nature, functions and legal status. Commercial laws governing legal persons are in the Civil Code, Book 2; Trade Register Ordinance, of 9 September 2009; and Trade Register Decree, of 22 December 2009.

29. A business license is necessary for everyone who wants to start a business, expand or make changes to an existing business in Sint Maarten (National Ordinance on Business licensing). Furthermore, legal entities that carry on an enterprise in Sint Maarten need to have a license for the managing directors to act as such (director's license). In addition, the Central Bank of Curaçao and Sint Maarten may issue licenses to credit institutions (banks), insurance companies, company (trust) service providers, investments institutions, and administrators of investments institutions (National Ordinance on the Supervision of Banking and Credit Institutions 1994 (N.G. 1994, no. 4), National Ordinance on the Supervision of the Insurance Industry (N.G. 1990, no. 77), National Ordinance on the Supervision of Investment Institutions and Administrators (N.G. 2002, no. 137), and National Ordinance on the Supervision of Trust Service Providers (N.G. 2003, no. 114) ("NOST")).

30. Sint Maarten has a comprehensive anti-money laundering framework (AML/CFT framework). In Sint Maarten, the Financial Intelligence Unit (FIU) is called *Meldpunt Ongebruikelijke Transacties* (MOT). The MOT is a recognised member of the Egmont Group and it is authorised to exchange information with all other FIUs, which are members of this international association (120 FIUs) without the need of a Memorandum of Understanding (MOU) if the national legislation of the other country doesn't make it mandatory to enter into one. With regard to non-Egmont FIUs, a MOU is necessary for exchanging information. The MOT can also exchange information with local and international Law Enforcement Agencies, the Public Prosecutors Office, the investigation unit of the Tax Department, the Central Bank of Curaçao and Sint Maarten and the Customs Office. The Central Bank is entrusted with the supervision of anti-money laundering/countering financing of terrorism (AML/CFT) for all its licenses. The MOT performs anti-money laundering and anti-financial terrorism supervision of the Designated Non-financial Businesses and Professions (DNFBP).

31. In 2001, the former Netherlands Antilles (now Curaçao and Sint Maarten) made a political commitment to co-operate with the OECD's initiative on transparency and effective EOI. Sint Maarten continues to endorse this commitment. As a result of the EU Code of Conduct Group recommendations, several tax measures which were considered as harmful tax practices have been abolished, including the offshore tax regime (tax rates from 2.4% to 3%). Grandfathering rules apply until 2019 for qualifying

offshore companies[2] incorporated before 1 January 2000, provided certain conditions were met. From this point onwards the distinction between offshore and onshore for new entities no longer existed. Prior to the abolition of the offshore regime in 2001, there were approximately 666 offshore companies registered in the tax system. As of 1 January 2001, there were 269 companies covered under the grandfathering provisions and registered with the tax authorities. These 269 entities were made up of 267 NVs and 2 BVs. Sint Maarten's tax authorities indicate that of these entities, there could be a significant amount that are currently inactive but have not formally been discontinued or de-registered. The Sint Maarten authorities indicated that the remaining 397 offshore companies have either re-located their seats to other jurisdictions, were not eligible under the grandfathering rule (are thus deemed to be onshore companies), or have become inactive.

General information on the taxation system

32. Sint Maarten's competent authorities are the Minister of Finance and the Head of the Tax Administration. The Minister is the competent authority under EOI agreements and has the ultimate political responsibility over an EOI request. With the dissolution of the Netherlands Antilles and the change of the government structure, it was decided that the new Tax Administration of Sint Maarten should be delegated the authority to carry out the functions of the Competent Authority. By Ministerial Decree (nr. 2013/1321) dated 8 August 2013, the Head of the Tax Administration is mandated by the Minister to act as the Competent Authority for the exchange of information for tax purposes. The Head of Fiscal Affairs remains the Competent Authority for the negotiation of tax agreements.

33. The tax system of Sint Maarten is regulated under the National Ordinance on General National Taxes and the National Ordinance on Income Tax. The taxes levied in Sint Maarten include: *(i)* personal income tax (*inkomstenbelasting*); *(ii)* wage tax (*loonbelasting*); *(iii)* corporate income tax, also referred to as profit tax (*winstbelasting*); *(iv)* turnover tax (*belasting op*

2. An offshore company is defined in Sint Maarten as "a public limited company or a private limited company established in the country Curaçao or the country Sint Maarten whose statutory object is pursued upon orders and for the benefit of one or more non-residents or the company itself, by means belonging to one or more non-residents or the company itself and whose issued shares are owned by one or more non-residents or as such by virtue of these Regulations by a limited or private company considered as non-resident" (article 1(12), Foreign Exchange Transactions Regulations for Curaçao and Sint Maarten). In order to qualify for the transitional arrangements to 2019, offshore companies needed to have exclusive or almost exclusive income from dividends, interest and/or royalties.

bedrijfsomzetten); *(v)* inheritance and gift tax (*successiebelasting*); *(vi)* transfer tax (*overdrachtsbelasting*); *(vii)* savings tax (*spaarvermogensheffing*); *(viii)* motor vehicle tax (*motorrijtuigenbelasting*); and *(ix)* car rental tax (*verhuurautobelasting*).

34. There are two different systems for filing and paying taxes due in Sint Maarten: assessment taxes, such as corporate and individual income taxes, where the taxpayer has to file an annual return based on which the tax authorities will issue an assessment; and filed return taxes, such as wage tax, turnover tax and social security premiums, where the taxpayer has to file a return and pay taxes on monthly basis or upon dividend distribution.

35. Income tax is levied according to the provisions of the National Ordinance on Income tax 1943 (*Landsverordening op de inkomstenbelasting 1943*). A wage withholding system applies with respect to employment income, which is included in the National Ordinance on Wage tax 1976 (*Landsverordening op de loonbelasting 1976*), which functions as a prepayment of the income tax.

36. Sint Maarten has a progressive income tax rate; individual income tax rates range from 10% to 38% (a 25% local surcharge is levied, resulting in an overall tax rate of 12.5% to 47.5%). The income tax is levied on individuals resident in Sint Maarten on the basis of the individual's taxable worldwide income from the various categories. Gross income of residents includes profits, and income derived from business or profession, employment, proceeds from immovable property, net income from capital, and periodical payments (life annuity and all benefits that are not associated with employment).

37. Corporate income tax (*Winstbelasting*) is levied on the net taxable income of entities specified in the National Ordinance on Corporate Income Tax Law (*Landsverordening op de Winstbelasting 1940*). The corporate income tax rate is 30% (a 15% local surcharge is levied, resulting in an overall tax rate of 34.5%). Except for dividends, all sources of income are subject to normal corporate income tax rates. However, private limited liability companies (BVs) may obtain a tax-exempt status and become exempt from corporate income tax provided certain criteria are met (see section A.1.1, subsection on *Tax Law* below). Moreover, dividends received by a resident company from other resident companies are not taxed. There are no withholding taxes on dividends paid to (offshore) shareholders.

38. Pursuant to the National Ordinance on Economic Zones, Sint Maarten has a legal framework which allows for the creation of an E-zone[3]. However, no area has been designated for this purpose within Sint Maarten.

3. The National Ordinance describes an e-zone as an area within the Netherlands Antilles where goods can be stored, processed, machined, assembled, packaged,

39. Resident companies (companies incorporated under Sint Maarten law or effectively managed and controlled in Sint Maarten) are taxed on their worldwide income. Non-resident companies are taxed on the following Sint Maarten-source income: income attributable to a permanent establishment; income from real property situated in Sint Maarten; and interest on loans secured by a mortgage on property situated in Sint Maarten.

Overview of the financial sector and relevant professions

40. The Central Bank of Curaçao and Sint Maarten provides the regulatory and supervisory framework in Sint Maarten. The following (financial) service providers are subject to the supervision of the Central Bank: financial institutions such as banks and other credit institutions, insurance companies and insurance intermediaries, pension funds, and investment institutions. Additionally, trust service providers and administrators of investment institutions are subjected to the Central Bank's supervision.

41. As of year-end 2013, the financial sector of Sint Maarten comprised 3 trust service providers (volume of assets USD 498 624), 2 money transfer companies, 6 credit institutions (1 local general bank, 3 branches of foreign banks, 1 specialised credit institution, 1 non-consolidated international bank) (volume of assets USD 1 135 339), and 5 insurance companies (1 life insurance company and 4 non-life insurance companies, 1 general pension fund, 1 corporate pension fund and 1 funeral insurer (volume of assets USD 653 390). This total includes total assets for both pension funds reported as at December 31, 2012. Other relevant professionals include 41 lawyers, 44 accounting firms, 3 public notaries.

Recent developments

42. Since the Phase 1 report, Sint Maarten has made the following legislative amendments:

- Enactment of the National Ordinance on trusts and corresponding amendments in the Civil Code: it is now possible within Sint Maarten to create a trust under a trustee's authority for beneficiaries or for a particular cause.

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displayed and released or handled in any other way, and where or from where services can be provided. Only legal entities with a capital divided into shares may perform activities within an e-zone. The activities of these companies must in principle be focused on trading or providing services to companies located outside the Netherlands Antilles.

- Enactment of the Ordinance on Partnerships and corresponding amendments in the Civil Code: partnerships have been re-categorised so that Limited Partnerships are now a sub-category of public partnerships. An obligation has been created for general partners of public partnerships to keep identity information concerning their limited partners.
- Other amendments to the civil code:
  - foundations and private fund foundations are required to keep a register of identity information concerning their beneficiaries and holders of certificates of participation.
  - the comprehensive annual account requirement is extended to foundations, co-operatives and mutual insurance societies.
- The Penal Code has been amended to establish penalties for non-compliance with the amended Civil Code provisions and to apply the same penal sanction for improper recordkeeping of the register of shareholders by the Board of Directors of companies to the improper recordkeeping of the personal data of beneficiaries of foundations, private fund foundations or trusts and of limited partners of a limited partnership (Article 23, Penal Code, Book 3, new). This amendment was adopted by the Parliament of Sint Maarten on 24 February 2015 and entered into force on 21 April 2015.

Finally, in September 2014, the Tax Administration adopted a new exchange of information manual setting out all relevant EOI procedures, timelines and templates.

43. In addition, the Trade Register Decree will be amended to set out the provisions for the registration of general partners and trusts and to require companies established in Sint Maarten owned by foreign legal entities or branches of companies owned by foreign legal entities to make a statement that information regarding the beneficial owners shall be made available at the office in Sint Maarten.

44. Sint Maarten expects a new tax bill to be adopted by Parliament and to enter into force by the end of 2015. The General Ordinance on National Taxes will be amended to:

- extend the term "entities" to permanent establishments and permanent representatives;
- create a provision in the General Ordinance on Taxes requiring partnerships to keep a register of identity information concerning their limited partners and trusts/foundations to keep a register of identity

information concerning their beneficiaries to match with the existing requirements in the civil code;

- abolish the notification procedures and the corresponding right for a party to object and appeal against the decision of the competent authority;
- delete the requirement for consultation with the Minister of Justice with respect to EOI on criminal tax matters;
- clarify the scope of legal and professional privilege.

45. The judicial system in the Dutch Caribbean will be reformed to make it possible to appeal a court ruling in tax cases in second instance at the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (Joint Court). The Supreme Court of Justice in The Hague (the Netherlands) will hear appeals in cassation regarding the ruling of the Joint Court in tax cases. A permanent seat will be created in Curaçao and in Sint Maarten to deal with tax cases from respectively Curaçao, Aruba and Bonaire and Sint Maarten, Saba and Eustatius in the Court of First Instance.

46. Finally, there will be a consultation in Sint Maarten in 2015 to consider whether bearer shares should be abolished.

Compliance with the Standards

A. Availability of information

Overview

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

48. In respect of ownership and identity information, Sint Maarten's laws provide for the retention and maintenance of identity and ownership information for domestic companies, partnerships, trusts and foundations, in line with the terms of reference and penalties available to enforce these obligations. In practice, however, Sint Maarten does not have an effective system of oversight to monitor and enforce the compliance of entities with obligations to maintain and provide ownership and identity information.

49. Further, whilst a limited liability company (*naamloze vennootschap*, NV) may issue bearer certificates, if permitted under the articles of association of the company, the obligations imposed on corporate trust service providers have the effect of immobilising bearer shares. Under the current business license policy of Sint Maarten, only foreign owned and operated companies may issue

bearer certificates and a trust service provider must have, with regards to every offshore company to which it provides trust services updated data regarding the identity of the ultimate beneficial owner of offshore companies and bearer certificates must be kept in custody in order to enable corporate trust service providers to know the identity of the ultimate beneficial owner of offshore companies. However, there is limited oversight of a policy prohibiting a company that can issue bearer shares from obtaining a business license and no mechanisms to identify owners of bearer shares of NVs which issued bearer shares but do not conduct business in Sint Maarten or do not engage a TSP there.

50. The combination of civil, commercial and tax laws require the availability of full accounting records, including underlying documents, for all relevant entities, for a minimum of ten years, in such a manner that rights and obligations can be ascertained from those records, at any time. There is a range of sanctions available under the tax laws ensuring that accounting information required to be maintained or disclosed to the administrative authorities is in fact maintained. In practice however, the compliance with profit tax return filing obligations remains relatively low, particularly in respect of offshore companies.

51. Banks are covered institutions for AML purposes and therefore required to keep adequate records of accounts and related financial and transactional information in line with the Terms of Reference.

52. During the period under review, Sint Maarten received a total of 16 requests. One request related to ownership and identity information in respect of companies. The requested information was provided. Sint Maarten received three requests for banking information. One of the requests is still pending at the time of the review and has been pending for over a year although partial responses have been sent. Of the remaining two requests for banking information, one was responded to within 180 days and one took over a year to respond to. Sint Maarten received five requests in relation to accounting information; one request was responded to and the other four were put on hold by the requesting state. Eight of the requests received related to debt recovery and requested identity information, including the name and address of the individual concerned.

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.

53. The relevant entities and arrangements of Sint Maarten are companies (*ToR* A.1.1), partnerships (*ToR* A.1.3) and foundations (*ToR* A.1.5). Bearer shares may be issued (*ToR* A.1.2). Trusts can be created under the law of Sint

Maarten and foreign trusts are also recognised (*ToR* A.1.4). This section also deals with enforcement provisions to ensure compliance with the laws on the ownership of relevant entities (*ToR* A.1.6).

Companies *(ToR A.1.1)*

Types of Companies

54. In Sint Maarten, there are two different relevant types of companies:

- Limited liability company (*naamloze vennootschap*, NV) is a legal entity with one or more shares issued in registered or bearer form, incorporated by one or more persons, by notarial deed (articles 100-144, Civil Code, Book 2); and,
- Private limited liability company (*besloten vennootschap*, BV) is a legal entity with one or more registered shares, not being bearer form, incorporated by one or more persons, by notarial deed (articles 200-242, Civil Code, Book 2).

55. As of August 2014, there were registered in Sint Maarten 4 390 companies in the tax system. Of the 4 390 companies, 3 974 are NVs, 267 are offshore NVs, 147 are BVs (including one exempt company) and two are offshore BVs. According to the Sint Maarten authorities, in the Chamber of Commerce register there are 7 084 NVs and 274 BVs as at 31 December 2014. The Caribbean Financial Action Taskforce Mutual Evaluation report dating from 8 January 2013 cites a total of 11 550 NVs and 173 BVs registered in 2010. It has not been possible to verify the correct number of companies registered with the Chamber of Commerce.

56. All offshore NVs or BVs are required to obtain a foreign exchange exemption in order to make capital transactions, some current transactions (e.g. distribution of profits and dividends) and to open a bank account in Sint Maarten (articles 10-16 and 24(2), Foreign Exchange Regulation of Curaçao and Sint Maarten). An offshore company must have a local representative to obtain the aforementioned exemption. The local representative must be a trust service provider that is licensed with the Central Bank.

Civil and Commercial Law

57. The managing directors of both NVs and BVs must keep a shareholder register containing, among other things, the names and addresses of all (legal) shareholders of registered shares, the class of share and voting rights attached thereto, the amount paid up, and the date of acquisition (articles 109 and 209, Civil Code, Book 2). Moreover, a note must also be made of the establishment or assignment of an usufruct on the shares (including the

name of the usufructuary) and the creation of a pledge on the shares, as well as any transfers of voting rights connected therewith (articles 109 and 209, Civil Code, Book 2). NVs must additionally describe whether or not a bearer certificate has been issued (see section A.1.2. on *Bearer shares* below).

58. The shareholder register must be kept at the company's office and must be updated on a regular basis, including the dates in which any changes have occurred (articles 109 and 209, Civil Code, Book 2). The managing directors of NVs and BVs may be held severally liable for not fulfilling their obligations, unless they can prove that they did not act with negligence (article 14(4), Civil Code, Book 2). A transfer of registered shares or the establishment of an usufruct on registered shares is effected by an instrument of transfer signed by the parties and provided to the company (article 110(2), Civil Code, Book 2). A proposed amendment to the Trade Register Decree will create a new requirement on companies established in Sint Maarten owned by foreign legal entities or branches of companies owned by foreign legal entities. Such entities will be required to make a statement that information regarding the beneficial owners shall be made available at the office in Sint Maarten.

59. Companies are incorporated by notarial deed, signed by a public notary, which must contain the articles of incorporation. In general, the public notary is obliged by law to keep the original of the notarial deed (article 47, National Ordinance on the Public Notary). In Sint Maarten, the public notary holds a public office (article 2, National Ordinance on the Public Notary). The deed of incorporation contains the articles of association, the names and addresses of the first directors and other officers who must be appointed according to the law or the articles, the number and classes of the shares subscribed on incorporation and the names and addresses of the persons who subscribed for such shares (legal owners) (articles 4 and 100, 101, 200, 201, Civil Code, Book 2). Notarial deeds, e.g. the deed of incorporation, must be kept for at least 30 years by the public notary (article 74, National Ordinance on the Public Notary). There are three notaries based in Sint Maarten. All are established in the form of an NV entity (limited liability company). Notaries are under the direct supervision of the Chamber of Supervision (Kamer van Toezicht). When a notary neglects his/her professional obligations the Chamber of Supervision may impose a fine (up to a maximum of AWG 10 000 [USD 5 587]), suspend his/her practice for one year or ban him/her from this profession entirely. There is the possibility of appeal to the Joint Court of Justice. No case of notaries breach of his/her obligations was encountered during the period under review and accordingly their compliance with legal requirements is reported to be high.

60. In addition, companies formed under the law of Sint Maarten or the former Netherlands Antilles that carry on activities in Sint Maarten are

required by law to be registered in the Trade Register kept by the Chamber of Commerce and Industry of Sint Maarten (article 1, Trade Register Ordinance). Registration must include the personal data (name, gender, residential address, date, place, and country of birth, nationality, and signature) concerning each managing director and supervisory director, including his/her date of appointment as such, and in addition, a certified copy of the deed of incorporation must be registered (article 20, Trade Register Decree). In the event of changes, information required to be filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change (article 6, Trade Register Decree).

61. Article 4 of the Trade Register Decree gives the Chamber of Commerce the authority and obligation to investigate the completeness and accuracy of updated information and to request further documentary evidence if needed. In order to protect the privacy of persons listed in the commercial register, limitations may be established by national decree, containing general measures, upon data or documents designated by said decree (article 13, Trade Register Ordinance). The Trade Register and documents filed therein are publicly accessible against the payment of a fee (article 11, Trade Register Ordinance).

In practice

62. The Sint Maarten Chamber of Commerce and Industry was created in 1979. Following the dissolution of the Netherlands Antilles and the creation of Sint Maarten the Chamber started to cover only the territory of Sint Maarten. Prior to 2010 the Chamber also held files in its registry for entities established in St. Eustatius and Saba which have since been sent to the Netherlands as these islands became special municipalities of the Netherlands in 2010. The Chamber of Commerce and Industry is a public law entity but not a government entity. It is comprised of nine democratically chosen members, three of which are up for election every year based on an annual rotation schedule, through an election procedure.

63. The Chamber is responsible for the function of holding the Trade Register in Sint Maarten. The Secretary (Executive Director) of the Chamber is responsible for the management of the registry. All registered information is kept on the Trade Register which is a physical register with paper filings dating back to 1 February 1979. All registrations must be done on legally prescribed forms and all information is then uploaded to an electronic database. As such, all records are electronically stored but not yet available online. Upon receipt of company information to be kept on the Trade Register, the Chamber of Commerce and Industry has the authority under Articles 3-5 of the Trade Register Decree to check whether the person providing the information is authorised to provide the information.

64. In order to register a company with the Chamber, an authentic copy of the notarial deed needs to be submitted to the Chamber. The primary responsibility for this lies with the Managing Directors/Board members of the entity but in practice it is done by the notary, who has the same responsibility.

65. There is no specific party which is expressly charged with the responsibility of monitoring the compliance of companies' (and entities') registration obligations. The Chamber does not engage in active monitoring of the registration of the incorporated entities as the registration is a shared legal obligation of both the public notary and the statutory directors of the entity.

66. The availability of information required to be filed with the Chamber depends mainly on compliance with the legal obligation to file by either the public notary or the statutory director of the registered entities. Registered parties are also the beneficiaries of duly registered and updated information on the Trade Register. Any person (third party) who has an interest in the registration, and is of the opinion that incorrect information has been registered or that the required information has not been registered, may request the Court of First Instance of Sint Maarten to order the registration of a company or order amendments to be made to the registration of the entity with the Trade Register. Any information that is declared by judicial decision to be partly wrongful or missing would need to be noted in the Trade Register by the Chamber of Commerce.

67. The Sint Maarten authorities indicated that entities send in updates regarding changes within 7 days on a regular basis. In 2013 the Chamber received a total of approximately 4 000 amendments however more detailed statistics allowing an assessment of the level of compliance with the reporting requirements are not available. According to paragraph 4 of Article 24, Book 2 Civil Code, under certain conditions dissolution may be requested by the Chamber of Commerce, an interested party or the public prosecution. However no such requests were made during the period under review.

68. While there are no other measures to monitor compliance with the registration obligation, besides the obligation on the public notary to file the deed of incorporation with the tax administration and the right of an interested third party to request the Court in First Instance to adjust a registration, the regular use of the Trade Register for day-to-day business activities provides incentives for entities to ensure that the registered information remains updated. However, it is noted that such incentive is limited by the fact that most of the records are not electronically available. Non-compliance with registration obligations may result in the civil law liability of the company's officials if a third party who consults the public register finds registered information that is incorrect and holds it against the company and/or its officials in a court case. Non-compliance may also have implications in terms of criminal liability if the company does not register or registers incorrect

information. This may lead to a fine of between ANG 20 000 to ANG 50 000 (USD 11 173 to 27 933) (Article 21, Trade Register Ordinance). However, during the period under review no such breaches were found and no fines were imposed.

69. All companies are required to pay an annual fee to the Chamber. The Chamber noted that there is approximately 50% compliance with the fee payment obligation. In 2011 the Chamber appointed a compliance officer who is responsible for visiting entities on Sint Maarten to request payment of the annual fees. Such visits led to updates in address details and an increase in fee payments. In 2012 the compliance officer visited approximately 250 companies in the capital.

70. Despite legal obligations applicable to offshore companies requiring them to have a local representative at all times in Sint Maarten in order to have a foreign exchange exemption from the Central Bank[4], of a total of 267 offshore NVs and two offshore BVs only 60 have been reported as having a TSP in Sint Maarten. The Sint Maarten authorities note that it is possible that a significant amount of these 269 offshore companies are either serviced by a TSP in Curaçao and therefore not reported under a TSP operating in Sint Maarten, or are inactive but have not formally been discontinued or de-registered from the system of the tax administration or are old offshore companies that engaged a local representative when they were incorporated in the past, and the local representatives have failed to apply for a license or request a dispensation when the *National Ordinance on the Supervision on Trust Service Providers* (N.G. 2003, no. 114) was enacted. An exact number of the inactive entities could not be provided. Although the majority of offshore companies have not been reported as having a TSP in Sint Maarten as required by the law no enforcement measures have been taken. Consequently, there is a lack of oversight and enforcement of the obligations of these companies to maintain ownership information in line with Sint Maarten's law. It is recommended that Sint Maarten put in place a regular system of oversight and enforcement to ensure compliance with the obligations to maintain ownership information by all companies in accordance with Sint Maarten's law.

71. Given that compliance rates for filing information with the trade register and for filing profit tax returns with the tax office are relatively low (see further below) a company (other than an offshore company) may not have in Sint Maarten an updated registered address or a local representative despite the legal obligation to do so. This is especially a concern if the company does not conduct business in Sint Maarten (i.e. does not apply for a business license). Considering the importance of the ownership information kept

4. Articles 10 – 16 of the Foreign Exchange Transactions Regulations for Curaçao and Sint Maarten (2010).

by the company (in particular the shareholder register) this raises concerns as to whether such information would always be available and retrievable upon request of the competent authority as a company without an updated registered address or a local representative may not be contactable by Sint Maarten's authorities and its obligation to keep such information may not be verified.

Tax Law

72. Companies are required to file tax returns with the tax authorities which includes ownership information due to the requirement to submit details of the name, address and total share possession of their shareholders. In addition, companies are required to submit their deed of incorporation and any updates to the deed that occurred during the year. Offshore companies are also required to submit a tax return annually which includes the same ownership information.

73. The Inspector can issue a tax return form to anyone who, in his opinion, is presumably subject to taxation or responsible for withholdings at source (articles 6 and 8, National Ordinance on General National Taxes). Those "liable to keep an administration"[5] are required to document the state of their assets and liabilities and of everything concerning their business in accordance with the requirements of that business and to keep the corresponding "data carriers"[6] in such a manner that their rights and obligations and also the information that is of importance for the levying of taxes clearly appear from this administration at all times (article 43, National Ordinance on General National Taxes). Companies are required to disclose in the tax returns identity information concerning their legal owners and any changes thereof. In addition, Sint Maarten authorities advise that this information must be systematically kept and made available at a Tax Inspector's request (article 40(1), National Ordinance on General National Taxes). Sint Maarten

5. Article 43(1) defines those liable to keep an administration as those individuals operating a business or practicing a profession; individuals who are responsible for withholding of taxes and contributions at source; and, entities (as defined in article 2(1)(c): associations and other legal entities, partnerships, corporations and allocated funds (*doelvermogen*)).
6. According to the Explanatory Note to the National Ordinance on General National Taxes, the definition of "data carriers" includes both physical (books, accounting records, files, correspondence, discs, tapes etc.) and non-physical (electronic files, computing, network, storage, IT infrastructure, emails, voice-recording, etc.) medium that contains data relevant for the levying of taxes. The scope is very broad, including everything varying from a handwritten letter to an electronic database storage.

officials indicate such requests are made determined by a risk analysis, but that generally all legal entities are audited in such a manner at least once every five years.

74. Legal entities opting for a special tax exempt regime are known as "exempt companies" and are subject to additional disclosure requirements. Under the Profit Tax Ordinance, as amended in 2009, a BV may obtain tax exempt status and, as a consequence, become exempt from corporate income tax, provided the following criteria are met:

- the BV must file a request for tax exempt status with a Tax Inspector;
- the board of managing directors must maintain a register with the names and addresses of all ultimate beneficiaries holding an interest of more than 10% in the capital of the BV;
- the board of managing directors may only consist of individuals residing in Sint Maarten or licensed trust service providers residing in Sint Maarten, or their directors and employees;
- the board of managing directors must annually prepare financial statements which are audited and approved by an independent expert within 12 months after the end of the financial year;
- the purpose of the BV and its actual activities consist exclusively or nearly exclusively (ie more than 90%) of providing credit and/or investment in securities and deposits; and
- the BV may not be a bank or other financial institution subjected to the supervision of the Central Bank (article 1a(1)(f), National Ordinance on Profit Tax).

75. An exempt status will be revoked if the BV's profit consists of more than 5% of dividends received from other companies that are not subject themselves to a profit tax at a rate of at least 15% (article 1a(13), National Ordinance on Profit Tax). There is presently 1 BV that has obtained tax exempt status in Sint Maarten.

In practice

76. All companies including offshore companies and exempt companies are required to submit a completed tax return to the Sint Maarten tax authorities. If a return is not submitted on time, the tax authorities can make an estimated assessment and charge penalties. The compliance rate for submission of profit tax returns during the period under review was relatively low in particular with regards offshore companies as set out in the following table. Ownership information is available in the general database of the Tax

Administration upon registration of the company and is submitted with the annual profit tax return. Nevertheless, the compliance rate for profit tax filing obligations was relatively low during the period under review especially in respect of offshore companies as set out in the table below.

	Provisional profit tax		Profit tax		Profit tax offshore		Wage tax		Turnover tax	
Year	Registered	Filed	Registered	Filed	Registered	Filed	Registered	Filed	Registered	Filed
2011	3 684	2 232 (61%)	3 684	2 263 (61%)	269	52 (19%)	3 506	2 595 (85%)	3 469	2 869 (83%)
2012	3 865	2 309 (60%)	3 865	2 146 (56%)	269	45 (17%)	3 221	2 618 (81%)	3 650	2 909 (80%)
2013	4 121	2 351 (57%)	4 121	1 875 (45%)	269	23 (7%)	3 000	2 654 (88%)	3 376	2 955 (88%)

77. The Sint Maarten authorities noted that while many companies in Sint Maarten are struggling under the current global crisis, some companies have been put out of business or relocated to other jurisdictions. They note that the database, however, has not kept up with these developments. Furthermore, they noted that companies have been granted extensions to file their profit tax returns. As such, the compliance rate as stated above does not give a complete picture of the rates of compliance.

78. Information submitted at the point of registration or via tax returns is held on several databases managed by the tax administration. These databases store such information as the personal Tax Identification Number for each taxpayer. The main tax database is the CRIB system which is linked to the various types of taxes. The CRIB system contains identity information of both individual taxpayers and legal entities including ownership information provided upon registration with the tax authority, information on the business conducted by the entity, copies of the deed of incorporation, registration at the Chamber of Commerce, directors license or business license.

79. Compliance with tax obligations is mainly monitored by tax audits performed by the audit and criminal investigation department. The audit section within the audit and criminal investigation department carried out a total of 86 audits in 2011, 60 in 2012 and 69 in 2013. These did not relate to requests for information from foreign jurisdictions. The findings of non-compliance included failure to have an good administration, failure to file the correct amount of sales, failure to tax the correct components of wages, and failure to file within the correct timeframe prescribed by the law amongst others. The Sint Maarten authorities noted that when deficiencies are found, this will generally result in corrections and/or an estimated assessment, the reversal of burden of proof and penalties. From April – May

2014 a representative from the Tax Audit Department of Curaçao (Stichting Overheidsaccountantsbureau) visited Sint Maarten to transfer knowledge of compliance activities that have been carried out by them in recent years. The Tax Administration of Sint Maarten is in the process of using the transferred knowledge to carry out compliance visits to companies. In addition, the tax administration is currently undergoing a reform project in partnership with the Netherlands which includes information technology improvements and plans for direct access to databases within the ministry.

Regulated Activities

80. Credit institutions are governed by the National Ordinance on the Supervision of Banking Institutions, of 2 February 1994. As of year-end 2013, there were 2 money transfer companies, 9 credit institutions (1 local general bank, 3 branches of foreign banks, 3 branches of local general banks in Curaçao 1 specialised credit institution, and 1 non-consolidated international bank).

81. Legal entities (as well as partnerships) engaged in such regulated activities are supervised by and required to obtain a licence from the Central Bank. According to the Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing issued by the Central Bank, a corporation or institution intending to carry on the business of a credit institution must provide information pertaining to the number, identity and antecedents of the persons who determine the day-to-day policy of the corporation or institution; who are the members of its Board of Directors; or who exercise authority by means of voting rights (such as derived from their number of shares in the general meeting of shareholders or in a comparable manner) (article 3(2), National Ordinance on the Supervision of Banking Institutions).

82. Investment companies (body corporate), investment funds (non-incorporated capital) and administrators (legal persons) thereof are also subject to a licence requirement and the supervision of the Central Bank, falling under the scope of the National Ordinance on the Supervision of Investment Institutions and Administrators, of 18 December 2002. As of year-end 2011, there were no investment companies, no investment funds, and no administrators registered in Sint Maarten.

83. Investment companies and investment funds are also required to register and to disclose information on the identity of directors, members of supervisory board and any person who ultimately exercises authority in the institution to the Central Bank (articles 4, 15, 9, 13 and Annex A, III, 3.4, Directives on the Supervision of Investment Institutions and Administrators). A change of directors or members of supervisory board

requires prior authorisation by the Central Bank (articles 9, 18, Directives on the Supervision of Investment Institutions and Administrators).

In practice

84. The Central Bank is the supervisory authority for regulated entities in Sint Maarten. The Central Bank's supervisory role covers obligations stemming from the performance of regulated activities as well as under the AML obligations.

85. When new entities apply to the Central Bank they will receive either a license or a dispensation or they will be registered. Insurance brokers are registered with the bank as opposed to licensed. Pension funds are not registered with the Central Bank, but are required to report to the Central Bank pursuant to the *National Ordinance for Company Pension Funds* (N.G. 1985, nr. 44) in order to fall under the supervision of the Central Bank. All other entities need to apply for a license or a dispensation. Pursuant to the National Ordinance on the Supervision of Trust Service Providers (N.G. 2003, no. 114) a "license" is granted to a trust service provider that is a legal person, partnership, or natural person providing trust services in the exercise of its, his or her profession or business. A "dispensation" may be granted to either a legal person or natural person providing trust services for other considerations than as part of the exercise of its, his or her profession or business. Consequently, a dispensation has limitations attached to it relative to the number of offshore companies (maximum of 10) for which the trust service provider renders services and the amount of annual income as a result of the services provided. According to the Policy Guidelines on Dispensation for Trust Service Providers, trust service providers with a license or dispensation have to comply with the same regulatory requirements. Thus, a dispensation does not exempt the trust service provider from any on-going regulatory requirements and compliance. All entities are subject to the same integrity testing and continuous supervision by the bank.

86. The Central Bank carries out on-site inspections on the basis of a risk matrix which determines which entities should be visited and when. All entities are also subject to off-site monitoring. In general, entities are visited once every 3-4 years. During the period under review, the bank performed 10 on-site examinations of credit institutions. The main breaches resulting from the on-site examinations related to incomplete files whereby not all identification documents as required by the National Ordinance on Identification of Clients when Rendering Services (N.G. 1996, no. 23) as amended by N.G. 2009, no 66 (N.G. 2010 no. 40) (NOIS) were available and/or valid as at the close of business (cut-off date). In addition, non-compliance with the National Ordinance on the Reporting of Unusual Transactions (N.G. 1996, no. 21) as amended by N.G. 2009, no 65 (N.G. 2010, no 41) (NORUT) were identified

which implies that not all reportable transactions were reported/reported in a timely manner to the MOT. The findings resulting from the on-site examinations were communicated to the credit institutions by means of examination reports/letters containing corrective measures to be taken by the credit institutions within a stipulated timeframe including general warnings regarding non-compliance with the legislation and the provisions and guidelines for credit institutions. Penalties and fines were imposed on one supervised credit institution in 2014.

Corporate Service Providers

87. The activities performed by "trust" service providers, in the framework of their business or profession, are regulated under the National Ordinance on the Supervision of Trust Service Providers, of 23 December 2003. Trust services are subject to the Central Bank's supervision and license, which cover:

- establishing an offshore company (i.e. a NV or BV which is owned by non-residents and which operates offshore, but which has its corporate or factual seat in Sint Maarten and which has been granted a general foreign exchange exemption) or causing it to be established when such is performed by a resident of Sint Maarten;
- acting as the local representative or the managing director, residing or established in Sint Maarten, of an offshore company;
- making natural persons or legal persons, residing or established in Sint Maarten, available as the local representative or managing director of an offshore company; and
- winding up an offshore company or causing it to be wound up, when such is performed by a resident of Sint Maarten.

88. Trust services may only be provided by licensed trust officers (and authorised natural and legal persons acting under the licensee's responsibility), which have their registered office and principal place of business in Sint Maarten, provided they satisfy the certain requirements imposed by the Central Bank (articles 1, 2, 3, 6 and 7, National Ordinance on the Supervision of Trust Service Providers). Under article 12 of the National Ordinance on the Supervision of Trust Service Providers, a trust service provider must have, with regards to every offshore company to which it provides trust services, updated data demonstrating:

- the direct and indirect source or sources of the capital entered into the company at the time of incorporation and afterwards; and
- the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution.

89. On an annual basis, the trust service provider has to submit a statement to the Central Bank declaring that it has available the information mentioned above (article 16, National Ordinance on the Supervision of Trust Service Providers). It is noted, however, that the National Ordinance on the Supervision of Trust Service Providers does not provide for a period during which this data must be stored. Nevertheless, trust service providers are covered by the AML/CFT framework, which sets out a minimum retention period of five years (see details on subsection Anti-money laundering laws below) and thus meets the international standard.

In practice

90. As of September 2014 there are three licensed TSPs in Sint Maarten all of which are supervised by the Central Bank. Two of the TSPs are small entities and have received a "dispensation" from the bank; the third has the majority of client companies. According to the Policy Guidelines on Dispensation for Trust Service Providers, trust service providers with a license or dispensation have to comply with the same regulatory requirements. Thus, a dispensation does not exempt the trust service provider from any on-going regulatory requirement and compliance. TSPs are visited at least once every 2 years by the bank and in August 2014 two TSPs received a meeting with the Central Bank and one had a full on-site examination. During the on-site examination, the bank will select a representative sample of the clients of the TSP to ensure that all information that ought to be maintained is in fact held by the TSP. In terms of deficiencies, nothing critical was noted by the bank although there were some deficiencies regarding filing obligations. As part of the supervision of the bank, TSPs will be required to provide a list of clients. Collectively the TSPs have relationships with 60 client companies. Given the relatively small number of companies with TSPs, the Central Bank also regularly checks the list of shareholders of the clients of TSPs. There were no deficiencies identified by the Central Bank in this respect during the period under review.

91. Out of 269 offshore NV companies (i.e. companies that qualified for the offshore tax regime), only 60 have been reported as having a TSP in Sint Maarten. However, no enforcement measures have been taken to ensure compliance with the requirements of Sint Maarten's law to have a TSP in Sint Maarten. Therefore although ownership information in respect of offshore companies that engaged a TSP should be available in practice it is not clear whether ownership information on all offshore companies is available as required under the international standard. It is therefore recommended that Sint Maarten put in place a regular system of oversight and enforcement to ensure the compliance of offshore companies with the obligations to maintain ownership information in accordance with Sint Maarten's law.

Anti-money laundering laws

92. In Sint Maarten, the Financial Intelligence Unit (FIU) is called *Meldpunt Ongebruikelijke Transacties* (MOT). Sint Maarten has a comprehensive AML/CFT framework, including the National Ordinance on Identification of Clients when rendering Services (NOIS) and the National Ordinance Reporting Unusual Transactions, both dating back to 1996 and recently amended in July 2010.

93. The NOIS and the National Ordinance Reporting Unusual Transactions have a very similar scope as both cover a person who renders, as a profession or as a trade, one of the following services performed in Sint Maarten:

- financial services, amongst other: *(i)* opening an account on which a balance in funds, securities, precious metals or other values can be held; and *(ii)* crediting or debiting an account, or having an account credited or debited on which a balance in funds, securities, precious metals or other values can be held;
- fiduciary services, i.e. providing management services whether or not against payment in or from Sint Maarten for offshore companies, including at any rate: *(i)* making natural or legal persons available as a manager, representative, administrator or other official for offshore companies; *(ii)* providing domicile and office facilities for offshore companies; and *(iii)* establishing offshore companies or having such established, or liquidating such or having such liquidated by order of, but at the expense of third parties;[7] and
- legal services, i.e. giving advice or assistance as a legal profession or trade, acting as a lawyer, civil-law notary, accountant, tax advisor or expert in the juristic, tax or administrative field, or practicing a similar legal profession or trade, when: *(i)* purchasing or selling real estate; *(ii)* managing funds, securities, coins, government notes, precious metals, precious stones or other values; *(iii)* establishing and managing corporations, legal persons or similar bodies; *(iv)* buying or selling or taking over enterprises.

94. Under articles 2 and 8 of the NOIS, the service provider is obliged to establish the identity of a client and the ultimate interested party, if such exists, of a company before rendering such a client a service. Article 3 of the NOIS lists the valid documents through which the identity of a client and the ultimate interested party must be established and imposes on the service provider the obligation to verify their identities using reliable and independent sources.

7. Pursuant to article 1(4) of the NOIS, the provisions regarding offshore companies are fully applicable to enterprises that are not established under the laws of Sint Maarten.

95. The ultimate interested party is defined as the natural person who has or holds a qualified participation or qualified interest in a legal person (article 1(1)(j), NOIS). In turn, qualified participation or qualified interest means a direct or indirect interest of 25% or more of the nominal capital, or a comparable interest, or being able to exercise 25% or more of the voting rights directly or indirectly, or being able to exercise directly or indirectly a comparable control (article 1(1)(k), NOIS). For domestic companies, however, this 25% threshold is not an issue since there is an obligation imposed on the company's managing directors to maintain a shareholder register containing updated identity information on all (legal) shareholders, as mentioned above under *Civil and Commercial Law*. In addition, information pertaining to their legal owners must be systematically kept and made available to tax authorities during an audit process as described above under subsection on *Tax Law*.

96. Pursuant to the NOIS, service providers are under the obligation to keep identification and verification data in an accessible manner until five years from the termination of the agreement on the grounds whereof the financial service was rendered, or until five years from the performance of the service (article 7, NOIS).

In practice

97. Ensuring compliance with the AML requirements in Sint Maarten falls to both the Central Bank and the FIU (MOT). The Central Bank has a mandate to ensure compliance with the AML requirements applicable to regulated entities.

98. The Central Bank carries out offsite and on-site monitoring of regulated entities. During the period under review, the bank performed 10 on-site examinations of credit institutions. Each on site examination is followed by an examination report which contains recommendations. The company then has two weeks to respond to the report with comments, following which a final examination report is issued by the bank. (See *Regulated Activities*).

99. The FIU is a new entity created at the time of Sint Maarten's creation in 2010 and it joined the Egmont Group in June 2014. The FIU is responsible for ensuring compliance with the NORUT and NOIS. The MOT supervises the DNFBPs which includes accountants, lawyers, notaries and tax advisors. They are in the process of creating their supervision department. The plan is to build a team of ten staff made up of five financial experts and five legal experts. To date the FIU in Curaçao has assisted by providing training to staff in the FIU. They are also working on setting up a DNFBP registry which at present is maintained in an excel file.

100. Due to limited personnel capacity, the FIU is prioritising two sectors at a time. The first to be selected are jewellery and real estate

nevertheless these entities would fall outside the terms of reference. The other sectors which are not yet being examined or approached by the Supervision Department of the FIU are being approached by the Analyst Department of the FIU to inform the institutions of their reporting obligation under the NORUT and NOIS and to avoid a gap in monitoring the obligations. Sint Maarten has started working on the information distribution and monitoring of all sectors for compliance with their AML requirements.

Foreign companies

101. According to the *Terms of Reference*, where a company or body corporate has a sufficient nexus to another jurisdiction (for example by reason of having its place of effective management or administration there), that other jurisdiction will also have the responsibility of ensuring that ownership information is available.

102. Companies that are formed under the laws of another jurisdiction, but which are residents of Sint Maarten for tax purposes by virtue of their place of effective management, are required to register and file profit tax returns with the tax authorities (article 1(1)(c), National Ordinance on Profit Tax). They are required to disclose ownership information in the form by submitting details of the name, address and total share possession of their shareholders with the tax return, in the same way as for domestic companies. In addition, Sint Maarten's officials advise that this information must be systematically kept and made available during the audit process, as described above under subsection on *Tax Law*.

103. Companies established in Sint Maarten or having a branch office located in Sint Maarten which is owned by a foreign legal entity must be entered in the Trade Register at the Chamber of Commerce. Information pertaining to both the registration of the foreign company and on directors and administrators of the company must be registered (article 3(4), Trade Register Ordinance); as well as information that is required to be entered in the trade register or otherwise made public under the foreign law which governs the company, together with a Dutch or English translation signed by a sworn translator (article 22(4), Trade Register Decree) however, ownership information is not required if the law under which the foreign company is incorporated does not require such information. As of August 2014, there were 143 foreign companies resident for tax purposes in Sint Maarten registered with the Chamber of Commerce. However, the Chamber does not engage in any monitoring of registered entities in practice.

104. In so far as foreign companies utilise service providers in Sint Maarten (for example for establishing a bank account or seeking the assistance of a lawyer, accountant or similar legal profession or trade), obligations concerning

ownership information on their controlling shareholders would be applicable since service providers are governed by the National Ordinance on the Identification when rendering Services (NOIS) (see *Anti-Money Laundering Laws* above).

105. Therefore, although foreign companies are not systematically required to provide ownership and identity information as part of registration requirements with the Chamber of Commerce, nor are they required to keep a shareholder register under Sint Maarten's laws, they are required to disclose ownership and identity information with the profit tax return and as such the information should be available in Sint Maarten. However there is a relatively low rate of compliance with the obligation to file profit tax returns and this may have a negative impact on the availability of ownership information in practice.

Nominees

106. The *Terms of Reference* require that jurisdictions ensure that information is available to their competent authorities that identifies the owners of companies and any bodies corporate. Owners include legal owners, and, in any case where a legal owner acts on behalf of another person as a nominee or under a similar arrangement, that other person, as well as persons in an ownership chain, 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.

107. The concept of nominee that exists in some jurisdictions, in particular common law jurisdictions does not exist in Sint Maarten's law and there is no specific provision in Sint Maarten's tax law that deals with the question of nominees. However, in Sint Maarten, legal and economic ownership can be separated by contract; therefore, nominee ownership may exist in Sint Maarten.

108. A Sint Maarten resident acting as a nominee, whether a natural person conducting a business or profession or a legal entity, would be covered by the general record-keeping obligations imposed by the National Ordinance on General National Taxes in article 43(1). Persons acting as nominees are required to keep records of any information that is relevant for the enforcement of tax laws in respect of their own business, assets, and liabilities, including identifying the beneficial owner when receiving payments for fiduciary services rendered (article 43(2), National Ordinance on General National Taxes). Persons acting as nominees are also subject to the record-keeping obligations with regard to the taxation of third parties, as the dividend income received by the nominee is actually attributable and taxable to the beneficial owner (article 45(1), National Ordinance on General National

Taxes). Therefore, the nominee must maintain information about beneficial owners of shares held by the nominee.

109. Provisions of Sint Maarten's AML laws have been designed to establish an obligation regarding nominees. Specifically, the Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing issued by the Central Bank mandate that all trust service providers that provide nominee shareholder services must know the true identity of the persons(s) (resident or non-resident) for whom assets are held or are to be held, including the ultimate beneficial owner(s).[8] The identity of these clients must be established in accordance with the legally prescribed identification procedures. Under articles 2 and 8 of the NOIS, the service provider is obliged to establish the identity of a client (i.e. the shareholder) and the ultimate interested party, if such exists, of a company before rendering such a client a service.

110. Moreover, all service providers operating within the financial sector have the obligation to identify their clients and the ultimate beneficiaries of the clients, before rendering a service to the clients (article 2, NOIS). Furthermore, a service provider has the obligation to establish the identity of the natural person appearing before it on behalf of a client or on behalf of a representative of a client before rendering the service (article 5, NOIS).

111. Nominee shareholders, other than service providers covered by the NOIS, do not have a specific legal obligation to retain identity information on the person for whom they act as the legal owner. Nevertheless, it may be expected that such nominees do know who their client is in order to correctly perform their duties as a nominee. In addition, these nominees might establish a relationship with a financial institution in Sint Maarten (e.g. opening a bank account to receive dividends on the shares they hold), in which case the financial institution is required to perform customer due diligence measures with respect to the person acting as nominee and the beneficial owner, as in the preceding paragraph. In any event, the group of nominee shareholders not covered by the NOIS would primarily consist of persons performing services gratuitously or in the course of a purely private non-business relationship and is therefore likely to be limited.

8. (Ultimate) beneficial ownership refers to the natural person(s) who ultimately own(s) or control(s) a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person.

In practice

112. It was confirmed that the NOIS covers the large majority of nominee shareholders and that those not covered (persons performing services gratuitous or in the course of a purely private non-business relationship) represent a very small number and are rare in Sint Maarten.

113. Furthermore, the Central Bank requires that all service providers that provide nominee shareholder services and/or provide custody of bearer shares must know the true identity of the person/persons (resident or non-resident) for whom assets are held or are to be held, including the ultimate beneficial owners (articles 2 and 8, NOIS). The identity of these clients must be established by conducting proper customer due diligence and service providers should at all times have up to date information on the ultimate beneficiaries on file. The Central Bank has in place a comprehensive system of on-site and off-site examinations as set out above.

114. The FIU is responsible for monitoring the obligations upon DNFBPs to determine the identity of clients. The DNFBPs are required to register with the Analyst Department through the online reporting portal. A total of 456 DNFBPs have been registered with the Analyst Department this includes 37 accountants, 20 tax advisors, 18 law offices and three notaries. The FIU has communicated with the DNFBPs through the publication of its Provisions and Guidelines for DNFBPs on its website. The Provisions and Guidelines are based on article 22 of the NORUT. The Analyst Department of the FIU is monitoring the sectors based on their reporting obligations and in particular the identification obligations based on the NOIS.

Conclusion

115. NVs and BVs established in Sint Maarten are required to keep an updated shareholder register at the company's registered office in Sint Maarten, containing the identity information on all legal owners of registered shares. Foreign companies are not systematically required to provide information identifying their owners as a part of registration requirements, nor are they required to keep a shareholder register under Sint Maarten's laws if the foreign laws under which the company is incorporated do not require this. However, ownership information must be disclosed through submitting details of the name, address and total share possession of the shareholders via the profit tax return, although the compliance rate for the filing of profit tax returns remains relatively low.

116. Nominee shareholders resident in Sint Maarten are not subject to specific obligations to keep identity information concerning the beneficial ownership of shares. Nevertheless, the AML/CFT obligations in conjunction with the obligations to maintain information that is relevant for the

enforcement of tax laws both in respect of the taxpayer and of third parties, permit the availability of such information with respect to the beneficial owner of shares held by a nominee. Therefore, there would be limited circumstances, including nominee shareholders not covered by the NOIS comprising persons performing services gratuitously or in the course of a purely private non-business relationship, under which ownership information would not be available to the Sint Maarten competent authorities in respect of nominee shareholders.

In practice

117. While there was some oversight during the period under review Sint Maarten does not have a rigorous system in practice of monitoring entities' obligations in all cases and there is minimum enforcement and/or penalties applied generally to ensure the availability of ownership information. There was also limited supervision of the registration and subsequent filing obligation with the Chamber and compliance rates with profit tax filing requirements are also relatively low. Despite legal obligations on offshore companies to have a local representative at all times in Sint Maarten in order to have a foreign exchange exemption from the Central Bank[9] (and hold data regarding the identity of the ultimate beneficial owners, and hold bearer shares in custody where relevant (see *A.1.2*)), of a total of 267 offshore NVs and 2 offshore BVs only 60 have been reported as having a TSP in Sint Maarten.

118. Therefore it is recommended that Sint Maarten introduces a system of oversight and enforcement to ensure companies' compliance with obligations to maintain ownership information according to Sint Maarten's law and to take measures to ensure that ownership information in respect of companies established under Sint Maarten's law is available in all instances. Sint Maarten's authorities indicated that all parties involved (the Tax Authority, Chamber of Commerce and the Central Bank) have agreed to jointly address this issue by updating their databases and by ensuring that all offshore companies have a local representative with either a license or a dispensation from the Central Bank.

119. During the period under review, Sint Maarten was able to respond to the one request it received relating to ownership and identity information in respect of companies. The requested information was provided and peers were satisfied with the responses received from Sint Maarten.

9. Articles 10-16 of the Foreign Exchange Transactions Regulations for Curaçao and Sint Maarten (2010).

Bearer shares *(ToR A.1.2)*

120. Bearer shares may not be issued by BVs, nor can registered shares be converted into bearer shares at the shareholders' request, since a similar provision of article 104(2) of the Civil Code, Book 2 is not included for BVs.

121. For NVs, with regard to shares that have been issued, it may be determined in the deed of incorporation that at the shareholder's request a bearer certificate be issued in exchange for the registered share certificate (article 104(2), Civil Code, Book 2).

122. The managing directors of NVs must keep a shareholder register containing, among other things, details on the identity of the legal shareholders and whether or not a bearer share certificate has been issued. This does not result in the ownership of a bearer share being kept or disclosed at the shareholder register. Nevertheless, immobilisation mechanisms are established under Sint Maarten's laws, as described below.

123. Under the current business license policy of the Department of Economic Affairs (DEA) only offshore companies (as opposed to locally owned and operated companies) may issue bearer certificates (as outlined in the Explanatory Statement belonging to the National Decree of 15 June 2010, laying down general provisions for the enforcement of article 12, second paragraph of the National Ordinance on the Supervision of Trust Service Providers). Given this is a matter of policy, local companies will not be granted a license to establish a business in Sint Maarten if their articles of association provide for the possibility of converting registered shares into bearer shares through the issuance of a bearer certificate.

124. The Department of Economic Affairs (DEA) confirmed that it is not possible to obtain a license to do business in Sint Maarten if the company has the possibility of issuing bearer shares in its articles of association. However, this is not a legal requirement rather a policy decision of the DEA. Furthermore, the DEA indicated that in practice, the articles of association and the deed of incorporation are reviewed when handling applications for business licenses however it is not usual practice to verify whether the company can issue bearer shares unless there are reasons to question the company's application (e.g. it is incomplete or otherwise invalid). According to the Sint Maarten authorities cases where companies may issue or convert bearer shares are very rare in practice and consequently the DEA has not encountered such companies during the review period. The DEA also did not refuse to issue any business license during the reviewed period.

125. In the case of offshore companies, they are required to have at least a local representative at all times (i.e. a trust service provider) in order to obtain a foreign exchange exemption from the Central Bank, itself crucial to make all capital transactions, some current transactions and to establish a bank

account (articles 10 – 16 of the Foreign Exchange Transactions Regulations for Curaçao and Sint Maarten (2010)). If an offshore company ceases to have a local representative, its foreign exchange exemption is repealed (article 22(1)(h), Foreign Exchange Transactions Regulations for Curaçao and Sint Maarten (2010)).

126. Under article 12 of the National Ordinance on the Supervision of Trust Service Providers, a trust service provider must have with regards to every offshore company to which it provides trust services updated data regarding the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution, which includes all bearer certificate holders. As detailed in section A.1.1. (see subsection on *Anti-money laundering laws*) above, on an annual basis, the trust service provider has to submit a statement to the Central Bank declaring that it has availability of the information mentioned above (article 16, National Ordinance on the Supervision of Trust Service Providers). However, the National Ordinance on the Supervision of Trust Service Providers does not provide for a period during which this data must be stored. Nevertheless, trust service providers are covered by the AML/CFT framework, which sets out a minimum retention period of five years and thus meets the international standard.

127. On 16 June 2010, the National Decree on the Custody of Bearer Certificates was enacted to enable the implementation of article 12 of the National Ordinance on the Supervision of Trust Service Providers. According to the Sint Maarten authorities, this decree is a codification of the already long existing practice in Sint Maarten (and formerly, the Netherlands Antilles), requiring that bearer certificates are kept in custody in order to enable corporate trust service providers to know the identity of the ultimate beneficial owner of offshore companies. The decree does not apply to shares or certificates in the capital of an offshore company listed on the stock exchange in Sint Maarten or abroad.[10]

128. Pursuant to the National Decree on the Custody of Bearer Certificates, corporate trust service providers which render management services to offshore companies, with regard to which bearer certificates were or will be issued, are under the obligation to take such bearer securities in safe custody without delay, against the issue of a depositary receipt to the party entitled to the bearer shares (article 2(1), National Decree on the Custody of Bearer Certificates). Under article 2(3) of the National Decree on the Custody of

10. The standard does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties (Article 5(4), 2002 OECD Model Agreement on Exchange of Information on Tax Matters).

Bearer Certificates, corporate trust service providers may hire out the obligation to maintain records, provided that the external depositary issues a depositary receipt including:

- the identity and address of the natural or legal person in whose behalf the bearer shares are kept in safe custody;
- statements to the effect that *(i)* the trust service provider will be given notice of any change in the data mentioned above without delay, including the updated information on the identity of the natural or legal person in whose behalf the bearer shares are kept in safe custody; *(ii)* the bearer shares will not be transferred from the deposit to any new depositary before the trust service provider is informed thereof; and *(iii)* as soon as the bearer securities are held for any party other than the original party entitled to the bearer certificate, the trust service provider will be informed thereof by the depositary.

129. According to article 2(4) of the National Decree on the Custody of Bearer Certificates, the following entities may act as external depositaries, whether established in Sint Maarten or in a country that meets at least ten of the core recommendations made by the Financial Action Task Force: *(i)* foreign establishments of or foreign companies affiliated with the corporate trust service provider; or *(ii)* other corporate trust service providers, civil law notaries, banks and other financial institutions which, in their countries of establishment, are subject to a similar AML/CFT obligations as in Sint Maarten with regards to the identification of clients and reporting unusual or suspicious transactions.

In practice

130. The authorities in Sint Maarten noted that it is unlikely companies would issue bearer shares since this could impact their ability to receive a business license in Sint Maarten. In addition, offshore companies are required to immobilise these shares with a custodian. However, notwithstanding a legal obligation to do so a significant number of offshore companies do not have a TSP in Sint Maarten.

131. During the last quarter of 2014 the Central Bank conducted a comprehensive survey of all the licensed trust service providers in Sint Maarten to verify compliance with the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36). One trust service provider was found to provide services to a total of four offshore companies which have issued bearer share certificates in the past which had not been immobilised. The Central Bank sent a letter requiring immediate immobilisation of outstanding bearer share certificates and requiring the TSP to have up-to-date data on the identity and address of the natural person or legal person on whose

behalf the bearer securities are kept in safe custody with the trust company service provider.

132. The trust service provider in question has subsequently immobilised all its outstanding bearer share certificates. The identity and address of the natural person or legal person on whose behalf the bearer shares involved are kept in custody, including a statement that the trust service provider will be given notice of any change in the aforementioned data without delay (including the new data of identity and address), are duly known to the trust service provider.

Conclusion

133. Under the current business license policy of the Department of Economic Affairs, only offshore companies (as opposed to locally owned and operated companies) may issue bearer certificates. Offshore companies are required to have at least a local representative (i.e. a trust service provider) in order to obtain a foreign exchange exemption from the Central Bank, itself crucial to make all capital transactions, some current transactions and to establish a bank account. Trust service providers must have, with regards to every offshore company to which they provide trust services, updated data regarding the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution, which includes all bearer certificate holders.

134. In practice, the authorities in Sint Maarten noted that they did not come across a company which could issue bearer shares during the application process for a business license and there were only four companies with a local TSP which did not immobilise their bearer shares before 2014. However, it is noted that there is limited oversight upon application for a business license of whether the company can issue bearer shares and there are no mechanisms to identify owners of bearer shares of NVs which issued bearer shares but do not conduct business in Sint Maarten or do not engage a TSP there. It is therefore recommended that Sint Maarten introduce measures to ensure that the identity of all legal owners of NVs that have issued bearer shares is known. According to the Sint Maarten authorities the Sint Maarten government is planning to hold a consultation in 2015 on the possibility of abolishing bearer shares outright.

Partnerships *(ToR A.1.3)*

Types of Partnerships

135. There are de facto three types of partnerships that can be set up in Sint Maarten:

- Public partnership (*Openbare Vennootschap*): a partnership for carrying out a profession or business or the performance of professional or business transactions, which holds itself out as such to the public using a clearly visible name (article 801, paragraph 1, Civil Code, Book 7).
- Limited partnership (*commandiataire vennootschap*, CV): is a Public Partnership which acts as a Limited Partnership and which, in addition to one or more general partners, has one or more limited partners. Limited partners are partners who do not exclusively contribute labour and are excluded from the authority to perform legal acts on behalf of the partnership, article 836, Civil Code, Book 7). Whilst the managing or general partners manage the affairs of the CV and represented in dealings with third parties, being liable for the debts resulting from the enterprise of the CV, the liability of the limited partner is limited to the amount of capital contributed. The limited partner is prohibited from directly managing the affairs of the CV or he forfeits his right to the protection of the limited liability (articles 836a and 837, Civil Code, Book 7). Limited partnerships may be divided by shares (*op aandelen*).
- Silent partnership (*Stille Vennootschap*): a partnership which is not a public partnership (article 801, paragraph 2, Civil Code, Book 7). A managing partner of a silent partnership may only act in its name if he is authorised to do so by the other partners (article 812, Civil Code, Book 7). The partners of a silent partnership shall each be bound for an equal share in respect of the obligations of the partnership if these are divisible, unless the contract with the third party provides that they shall be bound for unequal shares or jointly and severally (article 813, paragraph 3, Civil Code, Book 7).

136. As of August 2014, there were five partnerships (all five are silent partnerships) registered with the tax administration. Of these five partnerships, four are registered for wage tax and three for turnover tax.

137. The new Ordinance on Partnerships (AB 2014, no. 13) entered into force in April 2014. The Ordinance creates a requirement in the Civil Code on managing partners to keep the names and addresses of all limited partners and the amount of their contribution (article 836b). In addition, the Penal Code has been amended to establish penalties for non-compliance with this provision (article 23, Penal Code, Book 3).

Civil and Commercial Law

138. Since April 2014 there are no formalities in respect of the formation of a partnership, although in practice a (notarial or private) deed is customary. Partnerships must be registered at the Trade Register, and any statement for the amendment of any entries in the trade register must be made no later than one week after the fact to be entered has taken place (article 3(2) Trade Register Ordinance and article 6, Trade Register Decree).

139. At establishment, the following information must be entered in the Trade Register with respect to any partnership: *(i)* the name, date of establishment and term of duration; *(ii)* personal data[11] concerning the (general) partners and date in which new partners have been admitted into the partnership; *(iii)* relevant information to determine the rights of a third party, if applicable; and *(iv)* the amount of funds contributed and the value of property brought into the partnership (articles 16 and 17, Trade Register Decree). In accordance with the Ordinance on Partnerships (article 836b Book 7 Civil Code), limited partnerships are now required to hold the above information regarding their limited partners. In addition, the number of limited partners and their country of residence must be registered at the Trade Register.

140. In the event of changes, information required to be filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change (article 6, Trade Register Decree). The Trade Register and documents filed therein are publicly accessible against the payment of a fee (article 11, Trade Register Ordinance).

141. Limited partnerships divided by shares (*op aandelen*) may issue bearer shares, however the immobilisation mechanisms applicable to the limited liability company (NV) are also applicable in such circumstances (see section A.1.2, on *Bearer Shares*). A limited partnership divided by shares with bearer shares has the same registration requirement as the limited partnership, with the exception of the amount of the funds contributed and the value of the property collectively brought in. Rather, a limited partnership with bearer shares must register in the Trade Register the amount of the capital of the limited partnership, the number and amount of the shares they are divided into and the amount of the subscribed capital (article 17(g), Trade Register Decree). Furthermore, with effect from April 2014 it is no longer possible for limited partnerships divided by shares to issue bearer shares since there is now a requirement to identify all limited partners and therefore the partnership divided by bearer shares is de facto abolished. The Sint Maarten authorities noted that it would be extremely unlikely

11. Under the Trade Register Decree, personal data means name, gender, residential address, date, place, and country of birth, nationality, and signature (article 1, Trade Register Decree).

for a partnership established in Sint Maarten to have issued bearer shares. Nevertheless, there is no mechanism to identify holders of bearer shares issued by a CV if a TSP is not involved and the partnership does not conduct business in Sint Maarten.

142. Registration of partnerships is organised in the same way as for company owners, thus as a business entity owned by partners. There is no difference in registration procedures for the various types of partnerships. The information held on the Trade Register is the main source of ownership and identity information in respect of partnerships. The partnership is deemed to be owned by the partners who are registered as such. Sint Maarten's law considers mandatory registration as proof of ownership, which acts as an incentive for keeping this information updated. It is not possible to legally bind the partnership if it cannot present proof of registration at the time of the transaction. The system of legal proceedings (procesrecht) does not recognise unregistered partners as legally entitled to the partnership's equity (behoudens beter bewijs) nor can any counterpart objectively establish legal representative power of a partner if not through proof of registration, meaning that unregistered partners cannot transact on behalf of the partnership, not with banks, lawyers, notaries, government nor any other business partner.

Tax Law

143. Partnerships are generally considered transparent for tax purposes and therefore as a business entity only liable for Wage tax (when having employees) and Turnover Tax (when selling goods or rendering services liable to tax; the individual partners are required to file an annual tax return for their share of income derived by the partnership. However, limited partnerships divided by shares (*op aandelen*) are considered non-transparent and are required to register and to annually file tax returns with the Tax Authorities (article 1(1)(a), National Ordinance on Profit Tax). For tax purposes, limited partnerships divided by shares are treated like limited liability companies. Limited partnerships divided by shares are required to disclose in the tax returns a copy of the deed of incorporation and any amendments thereof (which contain identity information concerning their legal owners). Ownership information is also available in the general database of the Tax Administration at the point of registration of the limited partnership in the system and upon the issuing of a Tax Identification Number (Crib number). The Sint Maarten authorities indicated that there are no limited partnerships divided by shares in Sint Maarten.

144. Under the National Ordinance on General National Taxes, partnerships (whether or not considered transparent for tax purposes) and each of the partners individually, must keep records of all information that is relevant for

the enforcement of tax laws, both to the partnership itself the partners and to third parties, (article 43(1)(c) and 43(2), National Ordinance on General National Taxes). Furthermore, qualifying partners who exercise control over the partnership, or who hold at least 50% of the share capital, are required to have all information that is relevant for the enforcement of tax legislation and may be compelled to provide it to a Tax Inspector upon request (article 40(3), National Ordinance on General National Taxes). However, it is noted that these record-keeping obligations will not apply in cases where there is no relevant information for the enforcement of tax laws, including tax treaties e.g. where there are no taxable activities in Sint Maarten.

145. Partnerships are transparent for tax purposes and are registered with the tax administration in the same way as for companies or as for sole proprietors, depending on the way in which the partners (either as an legal entity or in person) participate in the partnership. The identity of all partners is entered into the tax database upon registration of the partnership. In the event the partner is a legal entity (in all cases an NV in the system of the tax administration), the identity of the beneficial owner i.e. the shareholder is also registered in the system. Furthermore, the Sint Maarten authorities confirmed that if the shareholder of the company is also a corporate entity, this corporate entity will also be registered in the tax system. The tax filing compliance rates for partnerships participating through a legal entity (NV) are set out below for reference:

	Wage tax		Turnover Tax	
Year	Registered	Filed	Registered	Filed
2011	4	4 (94%)	3	3 (92%)
2012	4	3 (75%)	3	2 (67%)
2013	4	3 (75%)	3	2 (67%)

Foreign partnerships

146. A partnership incorporated under the laws of a foreign jurisdiction (foreign partnership) which establishes a branch, subsidiary or office in Sint Maarten will be subject to the same requirements concerning authorisation and registration that are applicable to foreign companies (see subsection on *Foreign Companies* above). Sint Maarten has indicated that foreign partnerships are subject to the same registration requirements as domestic partnerships; as such, they are required to register in the trade registry their

general partners, the number of their limited partners, and their resident countries (Articles 16 and 17, Trade Register Decree). Furthermore, foreign partnerships must make public in Sint Maarten anything that must be filed at the Trade Register or otherwise made public under the foreign law governing the foreign partnership. As of August 2014, there are no foreign partnerships registered in Sint Maarten.

147. For tax purposes, foreign partnerships are transparent. Foreign persons conducting a business or profession in Sint Maarten or a foreign legal entity doing business in Sint Maarten are subject to the general record-keeping obligations imposed by the National Ordinance on General National Taxes (article 43(1), National Ordinance on General National Taxes). Foreign partners are required to keep records of any information that is relevant for the enforcement of tax laws, in respect of their own business, assets, and liabilities.

148. As such, foreign partnerships carrying on business or having income, deductions or credits for tax purposes in Sint Maarten are required to provide ownership information identifying their partners as a part of registration requirements, and to maintain identity information concerning their partners under Sint Maarten's laws.

Conclusion

149. Updated ownership information concerning public partnerships must be filed at the Trade Register.

150. Foreign partnerships carrying on business or having income, deductions or credits for tax purposes in Sint Maarten are required to provide ownership information identifying their partners as a part of registration requirements, and to maintain identity information concerning their partners under Sint Maarten's laws.

151. During the period under review, Sint Maarten did not receive any requests for information pertaining to partnerships. In practice the information held on the Trade Register and by the Tax Administration is the main source of ownership and identity information in respect of partnerships. Although there is a legal requirement to provide the identification of partners to the Chamber of Commerce and the tax administration Sint Maarten does not have in place a comprehensive system of oversight and enforcement to ensure that partnerships comply with these requirements. Sint Maarten is therefore recommended to introduce measures to address this issue.

152. Sint Maarten introduced new legislation which came into force in April 2014 to ensure that information is available concerning the limited partners of a limited partnership. The National Ordinance on Partnerships (AB

2014, no. 13) creates a requirement in the Civil Code on managing partners to keep the names and addresses of all limited partners and the amount of their contribution (article 836b). A penalty in respect of this requirement has been introduced into the Penal Code with effect from 21 April 2015. However, this is new legislation and its effectiveness in practice has not been tested. Sint Maarten is therefore recommended to monitor the application of this new legislation.

Trusts *(ToR A.1.4)*

153. In April 2014, the Trust Ordinance (AB 2014, no. 7) entered into force in Sint Maarten, amending Title 6 of Book 3 of the Civil Code. This new legislation creates the possibility for trusts to be established under the law of Sint Maarten. According to the ordinance, a trust must be established and certified by notarial deed, which contains information on the identity of the trustee and beneficiaries, as well as on the purpose of the trust and the description of the trust assets (Article 130 of the civil code, Book 3). In addition, the identity of the settlor which would always be included in the notarial deed would also be recorded. In addition to the domestic trust, it is possible for a foreign trust to have a trustee or administrator resident in Sint Maarten.

Domestic trusts

154. In accordance with the Trust Ordinance, a trust is defined as the juridical relations constituted by a juridical act amongst persons living (inter vivos) or on the death of a person (testamentary trust), by a person, the "settlor", when the trustee acquires legal title to property for the benefit of a beneficiary or for a specific purpose (Article 127 Civil Code, Book 3). It is noted that the assets of the trust constitute a separate estate which does not form part of the estate of the trustee, that the trustee is the person who has legal title to the trust estate and that the trustee has the power and duty to administer the trust estate. Furthermore, article 127 notes that it is not necessarily incompatible with the existence of a trust for the settlor to reserve specific rights and powers or for the trustee to have specific rights as beneficiary.

155. A trust is constituted by notarial deed executed by or before a notary based in Sint Maarten. Any amendments to the trust provisions or revocation of the trust must also be done by notarial deed. The trust deed must contain the trust provisions which need to include at a minimum *(a)* the designation of a beneficiary or specific object; *(b)* the appointment of at least one trustee resident or established in Sint Maarten and the acceptance of such appointment; *(c)* a provision ensuring that there will always be a trustee resident or established within Sint Maarten; *(d)* a description of the trust estate and

(e) the name of the trust, in which the word "trust" must feature. However, it is noted that the Central Bank may grant dispensation from (b) and (c) subject to conditions.

156. The trust must be registered in the Trade Register of the Chamber of Commerce by either the notary before whom the trust deed is executed or the trustee. At this point, an authentic extract of the trust deed must be filed with the Chamber of Commerce. This extract must contain at a minimum the date the trust was created, the name of the trust, the personal data of the trustees. In addition, the extract must state the purpose of the trust without necessarily identifying the beneficiary or the specific object of the trust.

157. Trusts are "entities" as defined under article 2(1)(c) of the National Ordinance on General National Taxes and are thus subject to the same disclosure obligations applicable to other persons under Sint Maarten tax laws (article 43, National Ordinance on General National Taxes). All domestic trusts are required to be registered with the tax authorities and, unless the trust is created exclusively for the promotion of a general social interest, to file profit tax returns (article 1(1)(b), National Ordinance on Profit Tax). However, trusts exempt from profit tax might still be subjected to Wage Tax, Turnover tax and/or other taxes.

158. Under the National Ordinance on Profit Tax, the profits of a trust created for purposes other than charity are treated in the same way as those of a NV or BV. The trust is tax exempt if it does not conduct a business (article 2(1)(i), National Ordinance on Profit Tax). Persons, deemed resident in Sint Maarten according to article 1 of the National Ordinance on Income Tax and who are beneficiaries to a (local or foreign) trust and as such, receiving (periodical or one-time) benefits and allowances from a trust, must file a tax return in respect of that income (articles 7(3) and 11(1), National Ordinance on Income Tax). Subsequently, resident trustees in Sint Maarten are required to keep information available regarding the names and addresses of all beneficiaries and what is due to them, in instances where the trust is established for one or more beneficiaries (Article 137a of the Civil Code, Book 3) in order to substantiate the tax liability of the persons concerned.

Foreign trusts

159. A trust is considered tax resident in Sint Maarten when it is constituted under the laws of Sint Maarten, effectively managed in Sint Maarten or has a trustee resident or established in Sint Maarten (Article 4(3) General National Ordinance on Taxes). Foreign trusts resident in Sint Maarten are subject to tax in the same way as a domestic trust. Similarly, resident beneficiaries receiving payments from a foreign trust must pay income tax in respect of these payments.

160. Further, under the National Ordinance on General National Taxes, a resident trustee or administrator of a foreign trust, whether a natural person conducting a business or profession or a legal entity, would also be covered by the general record-keeping obligations imposed by the National Ordinance on General National Taxes (article 43(1), National Ordinance on General National Taxes). Such persons acting as trustees or administrators are required to keep records of any information that is relevant for the enforcement of tax laws, in respect of their own business, assets, and liabilities. Sint Maarten's authorities have confirmed that this would include trusts e.g. identification of settlors who transferred assets to the trustee or identification of beneficiaries who are entitled to receive payments from the trustee (article 43(2), National Ordinance on General National Taxes).

161. In addition, foreign trusts and persons acting as trustees would be subject to record-keeping obligations with regard to the taxation of third parties, e.g. payments and assets received from or transferred to settlors and other trustees, or income attributed and distributed to the beneficiaries (article 45(1), National Ordinance on General National Taxes). This includes information about settlors, trustees and beneficiaries. Furthermore, the Sint Maarten's tax authorities have powers to request information from a foreign trust and from a resident acting as a trustee of a foreign trust, whether this relates to domestic taxes or foreign taxes, to respond to an EOI request (as further described under Part B below).

162. Trustees of foreign trusts resident in Sint Maarten conducting a business or profession are required to keep and preserve books, accounting records and other data carriers with regards to all the assets and liabilities of the trust in such a way that it is possible at all times to determine its rights and obligations in accordance with the standards acknowledged for trusts (article 15i, of the Civil Code, Book 3). Furthermore, if a trust is not created in Sint Maarten, it must make public in Sint Maarten anything that must be filed at the Trade Register or otherwise made public under the foreign law governing the foreign trust. In addition, a statement shall be made that information regarding the beneficiaries is available at the office of the trust in Sint Maarten (Article 17a (3) to Article 22 (4), Trade Register Decree). A foreign trust is required to be registered in the Trade Register when the trustee is residing in Sint Maarten.

163. The AML/CFT legislation establishes an obligation regarding the identification of clients by designated service providers. Specifically, the NOIS regards any provider of fiduciary services as a service provider (article 1(1)(b)(14), NOIS). Although not explicitly referenced as examples of fiduciary services, Sint Maarten's authorities confirm that "fiduciary services" cover both trustees and those acting as administrators of a trust, as persons acting in such a capacity would normally perform a fiduciary type

of activity. As such, trustees and those administering a trust in Sint Maarten have an obligation to establish the identity of the client and the ultimate interested party, in respect of trusts defined as "the natural person who is entitled to the assets or the proceeds of a trust", i.e. the beneficiaries thereof (article 1(1)(j), NOIS). Although the NOIS does not specifically refer to settlors and trustees, the definition of client is broad and encompasses anyone to whom services are rendered (article 1(1)(c), NOIS).

164. Article 3 of the NOIS lists the valid documents through which the identity of a client and the ultimate beneficiaries must be established and imposes on the service provider the obligation to verify their identities using reliable and independent sources. The service provider must record the identity information, in an accessible manner, for five years from the termination of the agreement or execution of the service (articles 6, 7, NOIS) (See Anti-Money Laundering Laws under *ToR* A.1.1).

165. TSPs of trusts that are resident in Sint Maarten require a license from the Central Bank (Article 2 National Ordinance on the Supervision of Trust Service Providers). Such trustees are subject to monitoring by the Central Bank and will be assessed during on site examinations to ensure they meet the various requirements set out above. During the period under review, the Central Bank visited all three TSPs based in Sint Maarten and confirmed that no trusts have yet been registered in Sint Maarten since the introduction of the legislation allowing for the creation of trusts is recent.

166. The Central Bank, through its regulatory regimes ensures that trustees comply with the AML provisions and requirements set out in the NORUT, NOIS, and the Central Bank's Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Company (Trust) Service Providers.

167. A narrow gap under the AML obligations in respect of non-professional trustees is in practice limited by its low materiality confirmed by the Sint Maarten authorities and by the fact that non-professional trustees resident in Sint Maarten are covered by other obligations detailed above notably tax law obligations. Non-professional trustees amount to a very small number in Sint Maarten.

Conclusion

168. Previously, it was not possible to create a trust under the laws of Sint Maarten but since April 2014, this is now a possibility. The trust ordinance amending book 3 of the civil code sets out the obligations upon trustees and notaries to ensure that the trust is registered in Sint Maarten and that information in respect of the trust is held and kept up-to-date. In addition, the Penal Code has recently been amended to establish penalties for non-compliance with these requirements. Given that the new laws are very recent, it has

not been possible to assess its effectiveness in practice and Sint Maarten is therefore recommended to monitor the effectiveness of these laws.

169. In addition, the AML/CFT obligations on trustees, together with the obligation to maintain information that is relevant for the enforcement of tax laws both in respect of the taxpayer and of third parties, enable the availability of such information with respect to foreign trusts professionally administered in Sint Maarten. It can, therefore, be concluded that Sint Maarten has taken reasonable measures to ensure that ownership information is available to its competent authorities in respect of express foreign trusts administered in Sint Maarten or in respect of which a trustee is resident in Sint Maarten. This includes information about settlors, trustees and beneficiaries.

170. During the period under review, Sint Maarten did not receive any requests for information relating to trusts. However, for domestic purposes, the tax authorities have handled two cases concerning trustees of a foreign trust in Sint Maarten and although they experienced some initial reticence on the part of the trustee, they were able to obtain the information following a delay of approximately 30 days.

Foundations *(ToR A.1.5)*

171. The law of Sint Maarten provides for the establishment of private fund foundations (*stichting particulier fonds*, SPF) and (common) foundations (*stichting*). Only SPFs are relevant under the Terms of Reference, as a common foundation may not make distributions, save for those for charitable or social purposes (article 50(3), Civil Code, Book 2). In any case, the same registration and identity and ownership requirements apply to common foundations as do apply to private fund foundations.

172. The purpose of the SPF is not limited to charitable purposes. The object of the SPF, as laid down its articles, may include in general or specific terms of the making of distributions of the founders and/or others. However, the objects of a SPF may not include the conduct of a business. The following activities are not considered to be conducting a business: engaging in the investment of its capital, regardless of the nature of such investments, having an interest in any other legal entity, and/or participating as a limited partner in a limited partnership (article 50, Civil Code, Book 2). Thus, there may be distributions to incorporators or to others (such as children of the founder) without serving a charitable or social purpose, and beneficiaries of such distributions can, but are not required to, be appointed/designated in the articles of association, and if such is done, either in very general or specific terms (article 50(3), Civil Code, Book 2).

173. SPFs are legal entities created as such by a notarial deed executed before a civil law notary in Sint Maarten, they have no members or

shareholders and their purpose is to realise specific objects mentioned in its articles using capital allocated for such purpose (article 50, Civil Code, Book 2). The articles of incorporation must include, among other things, its name, purpose, place where domiciled, the first managing board and the manner how board members are appointed and dismissed (article 51, Civil Code, Book 2). SPFs must be registered in the Trade Register (article 4(1), Trade Register Ordinance). As of August 2014, there were 321 SPFs registered with the Chamber of Commerce.

174. Registration must include the personal data concerning the founder(s), the board members and the supervisory directors. Under the Trade Register Decree, personal data means name, gender, residential address, date, place, and country of birth, nationality, and signature (article 1, Trade Register Decree). In addition, a certified copy of the deed of incorporation must be registered (article 21, Trade Register Decree). In the event of changes, information required to be filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change (article 6, Trade Register Decree). The Trade Register and documents filed therein are publicly accessible against the payment of a fee (article 11, Trade Register Ordinance).

175. In Sint Maarten, SPFs are commonly used for the administration of (foreign-owned) real properties and, to a lesser extent, used as pension funds. Although not common practice in Sint Maarten, foundations may be used to administer shares in companies. In this case, they would be transferred to the foundation against the issuance of certificates of participation, entitling the former shareholders to the benefits from the shares. These certificates would be either nominative or bearer form and would be freely transferable. As of April 2014, foundations and private fund foundations are required to keep a register of identity information concerning their beneficiaries and holders of certificates of participation (Ordinance on the amendment of Book 2 of the Civil Code (AB 2014, no. 11) amending Article 50a Title 2, Book 2, Civil Code. In addition, the Penal Code has recently been amended to establish penalties for non-compliance with this provision (article 23, Penal Code, Book 3).

176. A board (*bestuur*), consisting of one or more members manages a foundation. The powers of the board are set out in the articles of association of the foundation (article 8, Civil Code, Book 2). A foundation may also have a supervisory board which supervises the board in accordance with the articles of association (article 19, Civil Code, Book 2). The founder of a foundation and the members of the board and of the supervisory board cannot participate in the assets and/or profits of a foundation (article 50(3), Civil Code, Book 2), with the exception of pensions (article 50(4), Civil Code, Book 2).

177. Registration of foundations with the Chamber of Commerce is organised in the same way as for companies. There is no difference in registration procedures. The information held on the Trade Register is the main source

with regards ownership and identity information in respect of foundations (along with the register of beneficiaries held by the foundation). Although there is a requirement to update information held by the Chamber within a period of 7 days following the change, it is unclear whether this is complied with in practice. There is no specific party which is expressly charged with the responsibility of monitoring the compliance of foundations' registration obligations. The Chamber does not engage in active monitoring of the registration of the incorporated entities as the registration is a shared legal obligation of both the public notary and the statutory directors of the entity.

Tax law

178. SPFs are legal entities and are thus subject to the same disclosure obligations applicable to other persons under Sint Maarten tax laws, whether taxed or tax exempt (article 43, National Ordinance on General National Taxes). This may include information about founders, beneficiaries, holders of certificates of participation and directors. However, these record-keeping obligations will not apply where there is no information that is relevant for the enforcement of tax laws, e.g. where a foundation or a private foundation has no resident beneficiaries and no activities or income derived from sources in Sint Maarten.

179. Foundations are also registered with the tax authorities and are required to file tax returns unless the foundation is created exclusively for the promotion of a general social interest. Article 1(1)(b) of the Profit Tax was amended when the Trust Ordinance was introduced in April 2014. Since trusts are treated in the same way as foundations for tax purposes, all non-charitable foundations are now subject to profit tax. Under the National Ordinance on Profit Tax, the profits of a foundation created for purposes other than charity are treated in the same way as those of a NV.

180. See the table below for an overview of compliance rates for foundations, including SPFs.

	Provisional profit tax		Profit tax		Wage tax		Turnover tax	
Year	Registered (active)	Filed	Registered (active)	Filed	Registered (active)	Filed	Registered (active)	Filed
2011	334	157 (47%)	334	171 (51%)	174	150 (86%)	229	168 (73%)
2012	369	171 (46%)	369	167 (45%)	182	146 (80%)	243	164 (67%)
2013	403	150 (37%)	403	132 (33%)	168	157 (93%)	212	165 (78%)

181. The profit tax return filing rates of foundations during the period under review were relatively low. Sint Maarten's tax authorities confirmed that this is in part a timing issue, since foundations are granted extensions to file their profit tax returns, but it is also due to a lack of a systematically updated database. It is possible that some of the foundations are inactive or dissolved, however the system hasn't registered this yet. However, it is noted that tax filing obligations are not the main source of ownership information for foundations since such information should also be available in accordance with the AML provisions set out below.

182. Foundations' compliance with tax filing obligations is supervised by the audit department. During the period under review, the audit department carried out five investigations into foundations, one of which was a complete audit examining the whole administration of the foundation. The audited foundation was not complying with record-keeping requirements in place. As a result, the individuals responsible for the administration of the foundation have been dismissed and an estimated assessment was imposed along with a penalty.

Anti-Money Laundering Laws

183. SPFs are managed by one or more directors (natural or legal persons). The NOIS imposes on such service providers (i.e. directors) the obligation to establish the identity of a client and the ultimate interested party, if such exists, before rendering such a client a service (article 2, NOIS). The NOIS defines ultimate interested party as the natural person who has or holds a qualified participation or qualified interest in a legal person or corporation or the natural person who is entitled to the assets or the proceeds of a trust or private fund foundation (article 1(1)(j), NOIS).

184. Pursuant to the National Ordinance on the Supervision of Trust Service Providers, private foundations that have been granted a general foreign exchange exemption under articles 10-16 of the Foreign Exchange Transactions Regulations for Curaçao and Sint Maarten fall under the scope of the supervision of the Central Bank. Consequently, the Central Bank is responsible for the supervision of the AML requirements of aforementioned foundations. The Central Bank, through its regulatory regimes ensures that these foundations comply with the AML provisions and requirements set out in the NORUT, NOIS, and the Central Bank's Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Company (Trust) Service Providers.

Conclusion

185. During the period under review, Sint Maarten received four requests for information relating to foundations. In three of the instances, the information was obtained from a lawyer and in one instance from a TSP. Peers did not report any difficulties regarding the ability of Sint Maarten to obtain information relating to foundations. As of April 2014, foundations are required to hold identity information concerning their beneficiaries and holders of certificates of participation. However, this is a recent legislative change and therefore Sint Maarten is recommended to monitor the effectiveness of this provision. In addition, Sint Maarten is recommended to put in place a system of oversight and enforcement to ensure compliance with the obligations to disclose information to the Trade Register.

Other relevant entities and arrangements

Types of Entities

186. In Sint Maarten, there are two other types of relevant entities:

- co-operative society (*coöperatie*): legal person established to meet certain material needs of its members, other than insurance, in the course of its business, pursuant to agreements effected with them and aimed at their benefit (articles 90-99, Civil Code, Book 2).
- mutual insurance company (*onderlinge waarborgmaatschappij*): legal person with the object to enter into insurance agreements with its members and to conduct its insurance business for the benefit of its members (articles 90-99, Civil Code, Book 2).

Civil and commercial law

187. Co-operative societies and mutual insurance companies must be established through a notarial deed and must be registered in the Trade Register at the Chamber of Commerce. As of August 2014, there were four co-operative societies, and no mutual insurance companies registered in Sint Maarten.

188. Pursuant to the Trade Register Decree, ownership and identity information necessary for EOI purposes must be maintained and updated for both co-operative societies and mutual insurance companies. Registration must include the personal data (name, gender, residential address, date, place, and country of birth, nationality, and signature) concerning each director and commissioner, including his/her date of admission (article 20(1), Trade Register Decree). The membership list must be filed upon registration and updated annually (article 20(2), Trade Register Decree). Within a month after the financial year the board must attach a written statement of the changes

the membership list underwent in the course of the financial year. In addition, a certified copy of the deed of incorporation must be registered (article 20, Trade Register Decree). In the event of changes, information required to be filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change (article 6, Trade Register Decree). The Trade Register and documents filed therein are publicly accessible against the payment of a fee (article 11, Trade Register Ordinance).

Tax law

189. In addition to the ownership and identity information provided pursuant to the Trade Register Decree, Sint Maarten's tax law may provide additional requirements for co-operative societies and mutual insurance companies. Pursuant to article 1 of the National Ordinance on Profit Tax a profit tax is levied on co-operative societies and mutual insurance companies. As such, these entities must submit a tax form on an annual basis. The managers and managing partners, as well as the representatives within Sint Maarten shall be jointly and severally liable for tax owed by the entity (article 16, Profit Tax Ordinance). This tax form must be accompanied by a copy the deeds of incorporation and of any amendment thereto, unless same were already submitted with a previous tax return (article 18, Profit Tax Ordinance).

Conclusion

190. Ownership and identity information concerning co-operative societies and mutual insurance companies must be filed at the Trade Register and this information maintained and updated. Additionally, it must be provided to authorities for tax purposes. In practice, Sint Maarten did not receive any requests relating to co-operative societies or mutual insurance companies during the period under review. Sint Maarten is recommended to introduce a system of oversight to ensure compliance with the obligations for co-operative societies and for any future mutual insurance companies to disclose ownership information to the Trade Register.

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

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

Trade Register (domestic companies, general partnerships, cooperative societies, mutual insurance companies)

192. Upon establishment, domestic and foreign companies, general and limited partnerships, foundations, co-operative societies and mutual insurance companies must be registered with the Trade Register. Non-compliance with the registration and disclosure requirements under the Trade Register Ordinance is considered a criminal offense, punishable by a financial penalty not exceeding ANG 50 000 (USD 27 933) (article 21, Trade Register Ordinance).

193. The shareholder register must be kept at the company's office and must be updated on a regular basis, including the dates in which any changes have occurred (articles 109 and 209, Civil Code, Book 2). For non-compliance, the managing directors may be held severally liable for not fulfilling their obligations and subject to sanctions to be determined by the court depending on the gravity of their conduct, unless they can prove that they did not act with negligence (article 14(4), Civil Code, Book 2). Further, pursuant to article 455 of the Penal Code, the sanction for not maintaining an up-to-date register of shareholders is punishable with an imprisonment of maximum three months or a fine of maximum ANG 3 000 (USD 1 672). The Penal Code has been amended to establish penalties for non-compliance with the amended Civil Code provisions and to extend the penal sanction of improper recordkeeping of the (internal) register of shareholders by the Board of Directors of companies to the improper recordkeeping of the personal data of the beneficiaries of foundations, private fund foundations or trusts and the personal data of limited partners of a limited partnership (Article 23, Penal Code, Book 3, new). This amendment was adopted by the Parliament of Sint Maarten on 24 February 2015 and entered into force on 21 April 2015.

194. Notarial deeds must be kept for at least 30 years by the public notary (article 74, National Ordinance on the Public Notary). As the holder of a public office, a public notary is subject to the provisions of the Penal Code, which states that "any person charged with any form of public service, be it temporary or permanent, who willfully destroys or damages or allows another to destroy or damage or serves as an accomplice to destroy or damage deeds, documents or records which he has in his custody and are intended as evidence, shall be punished by imprisonment up to a maximum of 4 years and 6 months" (article 377, Penal Code). Nevertheless, updated ownership information is available at the shareholder register and enforcement measures drawn from both the Civil Code and Penal Code apply in case of non-compliance.

195. During the period under review, no sanctions were imposed on managing directors for failure to keep a shareholder register at the company's office. and the Attorney General confirmed that no reports pertaining to such behaviour, which is a misdemeanour punishable under paragraph 455 of the

Penal Code, have reached the prosecutor's office. Therefore, there were no prosecutions for this offence during the period under review. Similarly, no sanctions were imposed by the Chamber of Commerce for failure to register with the Trade Register or for failure to update the Trade Register when changes occurred. The Chamber estimated that approximately 4 000 changes were received by the Chamber in 2013 requesting updates to be made to the information held by the Chamber. However, it is not possible to know how many entities were not making such updates as there is very limited oversight of their obligations to do so. Although the exact compliance rate is not available, it is nevertheless estimated by the Chamber that the compliance rate is rather low at approximately 50%. The Chamber relies, due to its role, on the responsibilities of statutory directors and liabilities pursuant to both the civil and criminal code, along with the right of third parties to request adjustment through the Court on information that is provided to it by the entities themselves or third parties such as notaries or banks. This is especially a concern in respect of the obligation to maintain a shareholder register. Sint Maarten's authorities stressed that due to the small size of the population in Sint Maarten and the importance of constructive relationships, sanctions were rarely imposed by the Chamber, as the preference was to encourage compliance through co-operation.

Tax Law (NVs, BVs, partnerships, trusts, cooperative societies, mutual insurance companies)

196. Article 49(1) of the National Ordinance on General National Taxes imposes a fine not exceeding ANG 25 000 (USD 13 966) (or the amount of the tax due and unpaid if higher) and/or detention for a maximum of six months, in case someone's action or omission cause the violation of an obligation under this ordinance, as follows:

- failure to file a tax return within the set period of time or filing it incorrectly or incompletely, except if the person files a correct and complete tax return before being challenged by a Tax Inspector;
- failure to provide information, data, or indications, or providing them incorrectly or incompletely, except if the person provides correct and complete information, data or indicators before being challenged by a Tax Inspector;
- failure to preserve data carriers or to allow the inspection of their contents, or making them available in a false, falsified or incomplete form;
- failure to keep administration and accounting records in accordance with the requirements laid down in a tax ordinance, or to lend co-operation to a Tax Inspector for the investigation of such records.

- failure to provide the following annual lists, or providing them incompletely, to a Tax Inspector: *(i)* a list of third parties that were employed by or for this person during the past year, including managing directors, supervisory directors, and any persons other than persons working on commission basis (article 45(2), National Ordinance on General National Taxes) and *(ii)* a list of third parties that performed any work or provided any services to or for this person during the past year without being employed (article 45(3), National Ordinance on General National Taxes).

197. If proved that any of the violations listed above was wilfully committed, the punishment may be increased to a fine of no more than ANG 100 000 (USD 55 866) (or twice the amount of the tax due and unpaid if higher) and/or imprisonment for no more than four years (article 49(2), National Ordinance on General National Taxes). Furthermore, if the requested information is not provided, the burden of proof in terms of the estimated tax assessment may be reversed (article 30(6), National Ordinance on General National Taxes).

198. Non-compliance with the obligations of a trust to file a tax return is considered a criminal offence, punishable by a term of imprisonment of up to six months and/or a fine amounting to ANG 25 000 (USD 13 966), or in the event that the insufficiently levied tax is higher than this amount, at most once the amount of the insufficiently levied tax, or both penalties will be imposed. If the failure is intentional, the trustee will be punished by a term of imprisonment up to four years and/or a fine amounting to ANG 100 000 (USD 55 866), or, if the insufficiently paid tax is higher than this amount, at most twice the amount of the insufficiently paid tax, or both penalties will be imposed (article 49, National Ordinance on General National Taxes). Furthermore, the burden of proof may be reversed (article 30(6), National Ordinance on General National Taxes).

199. Persons acting as trustees are subject to record-keeping obligations with regard to the taxation of third parties, e.g. payments and assets received from or transferred to settlors and other trustees, or income attributed and distributed to the beneficiaries (article 45(1), National Ordinance on General National Taxes). Non-compliance with regards to the general record-keeping obligations imposed by the National Ordinance on General National Taxes is a criminal offense, punishable by a term of imprisonment of up to six months and/or a fine amounting to ANG 25 000 (USD 13 966), or in the event that the insufficiently levied tax is higher than this amount, the amount of the insufficiently levied tax, or both these amounts. If the failure is intentional, the trustee will be punished by a term of imprisonment up to four years and/or a fine amounting to ANG 100 000 (USD 55 866), or, if the insufficiently paid tax is higher than this amount, at most twice the amount

of the insufficiently paid tax, or both penalties (article 49, General National Ordinance on General National Taxes).

200. According to the Sint Maarten authorities, instances of non-compliance with the tax filing obligations should generally result in an estimated assessment, the reversal of burden of proof and the imposition of penalties. In this light, the need to apply sanctions set out in article 49 of the National Ordinance on General Taxes is seen by the Sint Maarten authorities as limited. However, the tax filing compliance rates during the period under review are relatively low. For instance, only 61% of registered NVs and BVs filed a profit tax return in 2011, 56% in 2012 and 45% in 2013, whereas 83% of NVs and BVs filed Turnover tax returns in 2011 along with 80% in 2012 and 88% in 2013. Offshore companies appear to pay little regard to their tax filing obligations. The limited application of sanctions and enforcement may have a negative impact on effective exchange of information especially in cases where timeliness of obtaining the information from the information holder has a crucial impact on the results of the inquiry (see further section B.1.4).

Regulated Activities (banks and credit institutions, trust service providers)

201. The Central Bank and respective officials and employees have broad investigation powers relating to the supervision of credit institutions, to the extent reasonably necessary for the fulfilment of their duties. They are authorised to obtain all information, to request access to all business books, records and other data carriers. The sanctions for non-compliance with regard to credit institutions, investment companies, investment funds and administrators are: *(i)* unintentional breach shall be punishable by charge order subject to imprisonment not exceeding one year and/or an administrative fine not exceeding ANG 250 000 (USD 139 665), and *(ii)* intentional breach shall be punishable by criminal prosecution subject to imprisonment of up to four years, a fine not exceeding ANG 500 000 (USD 279 330) or both, if intentionally committed (article 50, National Ordinance on the Supervision of Banking Institutions, and article 38, National Ordinance on the Supervision of Investment Institutions and Administrators).

202. Moreover, the Central Bank can revoke the licence or apply administrative sanctions in the event of non-compliance with the disclosure obligations mentioned above (articles 11, 38, National Ordinance on the Supervision of Investment Institutions and Administrators, articles 9, 50 National Ordinance on the Supervision of Banking and Credit Institutions).

203. Any intentional violation of the obligation of a trust service provider to have updated data regarding the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after

dissolution, which includes the bearer certificate holders, is a criminal offense, punishable by up to four years imprisonment and/or a fine of up to ANG 500 000 (USD 279 330). Unintended non-compliance with this provision is considered a punishable offence and is subject to imprisonment not exceeding one year and/or a fine of up to ANG 250 000 (USD 139 665) (article 25, National Ordinance on the Supervision of Trust Service Providers).

204. Pursuant to the article 2 of the National Decree on the Custody of Bearer Certificates, corporate trust service providers are under the obligation to take bearer securities in safe custody without delay, against the issue of a depositary receipt to the party entitled to the bearer shares, or to hire out the obligation. Article 25 of the National Ordinance on the Supervision of Trust Service Providers provides that intentional violation of this obligation is a criminal offence punishable by up to four years imprisonment and/or a fine of up to ANG 500 000 (USD 279 330). Unintentional violation of this obligation is punishable by up to one year's imprisonment and/or a fine of up to ANG 250 000 (USD 139 665).

205. The Central Bank carries out on-site inspections on the basis of a risk matrix which determines which entities should be visited and when. All entities are also subject to off-site monitoring. Twice a year, the bank holds a risk meeting whereby they determine which entities ought to be visited. In general, entities are visited once every 3-4 years. During the period under review, the bank performed 10 on-site examinations of credit institutions. The main breaches resulting from the on-site examinations related to incomplete files whereby not all identification documents as required by the National Ordinance on Identification of Clients when Rendering Services (N.G. 1996, no. 23) as amended by N.G. 2009, no 66 (N.G. 2010 no. 40) (NOIS) were available and/or valid as at close of business (cut-off date). In addition, non-compliance with the National Ordinance on the Reporting of Unusual Transactions (N.G. 1996, no. 21) as amended by N.G. 2009, no 65 (N.G. 2010, no 41) (NORUT) was identified which implies that not all reportable transactions were reported or reported in a timely manner to the MOT. The findings resulting from the on-site examinations were communicated to the credit institutions by means of examination reports/letters containing corrective measures to be taken by the credit institutions within a stipulated timeframe and general warnings regarding consequences of non compliance. As deficiencies were remedied as prescribed, penalties and fines were imposed only in relation to one supervised credit institution in 2014.

206. During the period under review, there was one instance of license revocation by the Central Bank. This related to a TSP which was found to have failed to perform proper due diligence on one of its clients and was involved in a criminal case. Prior to the criminal case, the Central Bank detected the non-compliance during an on-site examination and instructed

the TSP to take the necessary corrective measures. The Central Bank then ultimately withdrew the licence.

207. The limited application of sanctions and enforcement have a negative impact on effective exchange of information especially in cases where timeliness of responses has a crucial impact on the results of the inquiry (see further section B.1.4).

Anti-money laundering laws (nominees, banks and credit institutions, foundations, trusts)

208. Violation of regulations laid out in Sint Maarten's AML legislation by service providers responsible for establishing, maintaining and updating ownership and identity information is a criminal offence that is liable on summary conviction to a custody term not exceeding four years or a fine not exceeding ANG 500 000 (USD 279 330) or a combination of both (article 10, NOIS). If the breach of Sint Maarten's AML legislation is not intentional, service providers are liable to a maximum imprisonment of one year or a fine of ANG 250 000 (USD 139 665) or a combination of both (article 10, NOIS).

209. The FIU is tasked with the supervision of a specified category of DNFBPs (including lawyers, accountants, tax advisors, and notaries). The FIU put in place the respective policies and guidelines in August 2014. The organising of information sessions regarding these guidelines started in July 2014. The FIU launched an information campaign to inform the obliged persons of their obligations and to register with the FIU. As the supervisory activities commenced only recently no inspections were carried out and no sanctions or penalities were applied.

Conclusion

210. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements. However, their application in practice may not ensure that the ownership information in respect of the relevant entities is available in all cases. In particular, there is a lack of oversight and enforcement of entities' obligations to maintain shareholder register and file information with the Trade Register. During the period under review, Sint Maarten received one request in respect of ownership and identity information which was responded to. Sint Maarten is recommended to introduce a system of oversight and enforcement to ensure compliance with the obligations for all relevant entities to maintain or provide ownership information in all instances to ensure that information is available in practice.

Determination and factors underlying recommendations

Determination
The element is in place

Phase 2 rating	
Partially compliant	
Factors underlying recommendations	**Recommendations**
Sint Maarten does not have an effective system of oversight in place to monitor and enforce the compliance of relevant entities with obligations to maintain or provide ownership and identity information. This is of particular concern with regards offshore companies.	Sint Maarten should put in place a system of oversight and enforcement to ensure compliance with the obligations to maintain or provide ownership information for all relevant entities to ensure that information is available in practice.
There is limited oversight of a policy prohibiting a company that can issue bearer shares from obtaining a business license and there are no mechanisms to identify owners of bearer shares of NVs which issued bearer shares but do not conduct business in Sint Maarten or do not engage a TSP there.	Sint Maarten should introduce measures to ensure that the identity of all legal owners of NVs which issued bearer shares is known there in all cases.
Sint Maarten has recently introduced new legislation pertaining to the keeping of ownership information for trusts, partnerships and foundations. Since this legislation is recent it has not been sufficiently tested in practice.	Sint Maarten should monitor the operation of the new legislation in practice.

A.2. Accounting records

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

211. The Terms of Reference set 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. Accounting records need to be kept for a minimum of five years.

General requirements (ToR A.2.1)

212. Sint Maarten's Civil Code states that the management of a legal entity, including a foundation, trust, co-operative society, mutual insurance association, limited liability company and private limited company, must for administrative purposes, keep a record of the financial condition and of everything relating to the activities of the legal person according to the requirements to which such activities give rise, and it must keep the books, documents and other data-carriers in such a manner that the rights and obligations of the legal person can be ascertained there from at any time (article 15(1), Civil Code, Book 2). Concerning (domestic) trusts, according to article 137 paragraph 2 Civil Code, Book 3 the trustee must keep separate accounts and books of each trust estate and keep the books, records and other data carriers pertaining thereto in such a manner that the composition, income and outgoings of each trust estate can be established from the books and accounts. A similar obligation exists for partnerships (article 814 Civil Code, Book 7).

213. Further, each year, within eight months from the end of the financial year, unless this period has been extended by the general meeting for a maximum of six months on account of special circumstances, the management of all legal entities (including a limited liability company, private limited company, foundation, co-operative society and mutual insurance association) shall prepare annual accounts consisting of at least a balance sheet, a profit and loss and notes to these accounts (article 15(2) and article 216, Civil Code, Book 2). The accounting records have to be organised in such a way that the financial position of the company can be determined with reasonable accuracy at any time (article 15(3), Civil Code, Book 2).

214. The annual accounts, prepared in accordance with generally acceptable accounting principles, shall provide such a view as enables a sound judgment to be formed on the assets and liabilities and results of the legal person and, insofar as the nature of annual accounts permit, of its solvency and liquidity. For large companies, specific provisions on the annual accounts apply, such as that the accounts should be prepared in accordance with the accounting principles set by the International Accounting Standards Board (IASB) or other international accepted accounting principles (articles 94, 116, 119, 120, and 216, Civil Code, Book 2).

215. Sint Maarten's Civil Code establishes general bookkeeping obligations. Anyone (individuals, partners of a partnership, companies, foundations, trusts, etc.) who carries a business or an independent profession is obliged to keep for ten years such records of their financial position and of anything related to the business, in accordance with the requirements of such business, in such a manner that rights and obligations can be ascertained from those records, at any time (article 15i Civil Code, Book 3, with reference to article 15(1 and 3), Civil Code, Book 2).

216. In addition, the managing directors of a NV or a BV are further required to submit within eight months after closing of the company's fiscal year a balance sheet and a profit and loss statement accompanied by an explanation to the general shareholders meeting for approval (article 15(2), Civil Code, Book 2). Similar obligations apply to the management board of foundations, private foundations, co-operative societies and mutual insurance companies (article 94, Civil Code, Book 2).

217. An expert (usually an auditor) can or, in case the articles of incorporation so require, must be appointed by the general shareholders meeting to examine the books of the limited liability company (NV) and to report on the balance sheet and profit and loss statement as presented by the management (article 121, Civil Code, Book 2). If the limited liability company (NV) has issued (or is allowed to do so under the deed of incorporation) an aggregate amount of more than ANG 50 000 (USD 27 933) of either bearer shares or bearer certificates, the board of managing directors must file complete copies of the financial statements at the Trade Register for public inspection, within eight days after their adoption (article 122, Civil Code, Book 2). In addition, these companies are required to publish their annual accounts in the newspaper. As of April 2014, any foundations with 20 employees or more and a turnover of 10 million ANG or more are required to have an expert examine the books and to submit them to the Trade Register.

218. Every credit institution, as well as branch of a foreign credit institution established in Sint Maarten, is required to maintain and keep in Sint Maarten the accounts, records and other data carriers relating to its accounting system (article 13, National Ordinance on the Supervision of Banking Institutions). In addition, credit institutions, investment institutions and administrators must submit, on an annual basis, annual accounts including at least a balance sheet and a profit and loss account with explanatory notes on the past financial year in a form to be laid down by the Central Bank (article 15, National Ordinance on the Supervision of Banking Institutions and article 8(1), National Ordinance on the Supervision of Investment Institutions and Administrators).

219. For tax purposes, companies are required to keep extensive accounting records. These accounting records are required to be substantiated by all

relevant documents as contracts and invoices (see further section A.2.2 on *Underlying documentation* below). These accounting records constitute the basis for the companies' financial statements. The accounting records should comprise all relevant circumstances in order to determine the financial position of the company (article 43, National Ordinance on General National Taxes). Companies are also required to annually lodge a tax return together with a copy of their accounts or finance statements, at the tax authorities.

220. In addition, companies must supply each year a statement concerning third parties (not being employees) that rendered services to the company as well as a statement concerning third parties that were employed by these companies during the past year, including managing directors, supervisory directors, and any persons other than persons working on a commission basis (article 49(2) and 49(3), National Ordinance on General National Taxes).

221. Finally, for tax purposes, individuals conducting any business or profession (including partners and trustees), individuals liable for withholding taxes, and entities (including resident companies, partnerships, trusts and foundations, regardless of whether or not conducting a business) "are liable to keep an administration". As such, they are required to document the state of their assets and liabilities and of everything concerning their business in accordance with the requirements of that business and keep the corresponding data carriers in such a manner that their rights and obligations and also the information that is of importance for the levying tax clearly appear from this administration at all times (article 43, National Ordinance on General National Taxes). Such persons and entities must also supply to the Tax Authorities each year a statement concerning third parties (not being employees) that rendered services (article 45(3), National Ordinance on General National Taxes). This obligation on entities may also be fulfilled by any *director of an entity*, which includes "the general partner of a partnership and the local representative of an entity which is not established in Sint Maarten as well as the person charged with the liquidation in the event of dissolution" (article 3(1)(a), in connection with article 34(2), National Ordinance on General National Taxes).

222. Article 45(1) of the National Ordinance on General National Taxes extends the disclosure obligations under articles 40 to 43 to individuals and bodies (associations, partnerships, trusts, allocated funds (doelvermogen) and other legal entities – such as companies and foundations, article 2(1)(c), National Ordinance on General National Taxes) that are liable to keep accounting records, for the purposes of levying taxes on third parties and of levying taxes they are supposed to withhold. Such record keeping obligations are equally applicable to any persons, such as residents of Sint Maarten acting as trustees, who administer a foreign trust with respect to their business as well as with respect to the taxation of third parties, including

settlors, other trustees and beneficiaries. It is noted, however, that individuals performing services gratuitously or in the course of a purely private non-business relationship will not be subject to these record-keeping obligations under commercial and tax laws, provided they are not liable for withholding taxes or not considered to be the director (e.g. local representative) of the entity under article 3(a) of the National Ordinance on General National Taxes. However, these situations are likely to be rare and not to prevent effective EOI. The Trust ordinance which allows for the creation of domestic trusts in Sint Maarten requires the trustee to keep separate accounts and books in Sint Maarten of each estate and to keep books, records and other data carriers in such a way that the composition, income and expenditure of each trust estate can be established from the books and accounts. This obligation, laid down in article 43(2), National Ordinance on General National Taxes, is also applicable to the resident trustee of a foreign trust established in Sint Maarten.

223. In practice, the tax department (in co-operation with the Tax Accountants Bureau ("Stichting Belasting Accountants Bureau" (SBAB)) monitors the compliance of entities with their record-keeping requirements for accounting information. During the period under review, the tax audit department carried out a total of 215 audits, which amounted to 86 in 2011, 60 in 2012, and 69 in 2013, which means that approximately 2% of domestic companies were subject to a tax audit over that period. The findings of non-compliance included failure to have a good administration, failure to maintain adequate accounting records, failure to file the correct amount of sales, failure to tax the correct components of wages, and failure to file within the correct timeframe prescribed by the law amongst others. However, no failure to keep accounting records as required was encountered.

224. As detailed in section A.1, the compliance rate for tax filing obligations remained relatively low over the period under review. In the case of profit taxes the compliance rate even decreased during these years from 17% to 7% in respect of profit tax filing by offshore companies from 2012 to 2013. For other companies, the compliance rate for filing profit tax returns dropped from 56% to 45% during the same period. These low compliance rates do not ensure that taxpayers keep the necessary accounting information to substantiate their tax liabilities as in many cases the tax liability is not even reported and assessed.

225. The main oversight of the obligations of entities in Sint Maarten to maintain accounting information would appear to occur through the filing of tax returns. Given that compliance rates for filing with the tax office are relatively low this raises concerns as to whether information would always be available.

226. The Central Bank monitors compliance of the entities it supervises with the requirement to hold accounting records. This includes financial

institutions, trust service providers and administrators of investment institutions. The Central Bank has a system of off-site and on-site monitoring to ensure compliance with the obligations to hold accounting information. During the period under review, the bank performed 14 on-site examinations of banks and money transfer companies. The Central Bank reported that as no breaches were identified during on-site examinations related to record keeping, the Central Bank did not impose any sanctions with regards record-keeping obligations of the banking sector.

Underlying documentation *(ToR A.2.2)*

227. For tax purposes, individuals (including partners and trustees) conducting any business or profession, companies, foundations and partnerships are required to keep accounting records comprising all relevant information in order to determine the financial position of the taxpayer at all times (article 43(2), National Ordinance on General National Taxes). Furthermore, these accounting records must be substantiated by all relevant documents such as contracts and detailed invoices (article 43(4), National Ordinance on General National Taxes). This is further confirmed by extensive Dutch case law, which are also applicable to Sint Maarten.[12] These accounting records constitute the basis for companies' and foundations' financial statements.

228. Specifically, all persons and entrepreneurs providing services or selling goods are required to issue invoices that are numbered consecutively and dated on the date on which the delivery or service was provided, as well as the name and address of the person providing the delivery or service, the registration number assigned by the Tax Authorities to the one providing the delivery or service, a clear description of the goods delivered, the compensation, and the amount of tax that has become due with respect to the delivery or service (not applicable to turnover taxes) (article 44, National Ordinance on General National Taxes).

Document retention (ToR A.2.3)

229. Under civil and tax laws, individuals conducting any business or profession, companies, foundations and partnerships are obliged to keep for ten years such records of their financial position and of anything related to the business, in accordance with the requirements of such business, in such a manner that rights and obligations can be ascertained from those records, at any time (article 15i Civil Code, Book 3, with reference to article 15(3), Civil Code, Book 2, and article 43(6), National Ordinance on General National Taxes).

12. For example, Hof 's-Gravenhage, 27 June 2002, case no. 00/0997 and Hof Arnhem, 5 February 1986, case no. 2525/1982.

230. The board of management must, for a period of ten years, keep a record of the financial condition and of everything relating to the activities of the legal person according to the requirements to which such activities give rise, and it must keep the books, documents and other data carriers in such a manner that the rights and obligations of the legal person can be ascertained there from at any time (article 15(1), Civil Code, Book 2). After the liquidation, the books and records of the dissolved legal person are held by the liquidator or a custodian for a period of ten years (article 33, Civil Code, Book 2).

231. A person who carries on a business or independently performs a profession must, for a period of ten years, keep records showing the state of his assets and liabilities and everything concerning his business or profession, in accordance with the requirements of that business or profession, and must keep such records and the related books, papers and other data carriers in such a way that his rights and obligations may be established at any time (article 15(a), Civil Code, Book 3).

232. Further, pursuant to the Civil Code of Sint Maarten, anyone who carries on a business is obliged to, for a period of ten years, maintain records regarding his/her financial status and regarding everything that concerns his business, in accordance with the requirements of his business in such a manner that from those records the rights and obligations can at any time be ascertained (article 15(a), Civil Code, Book 3).

233. In concurrence with the requirements of the Civil Code, the National Ordinance on General National Taxes requires those liable to keep an administration and the corresponding data carriers during ten years (article 43(6), National Ordinance on General National Taxes).

234. Article 49(1) of the National Ordinance on General National Taxes imposes a fine not exceeding ANG 25 000 (USD 13 966) (or the amount of the tax due and unpaid if higher) and/or detention for a maximum of six months, in case someone's action or omission cause the violation of an obligation under this ordinance. In particular, such penalties apply for failure to keep administration and accounting records in accordance with the requirements laid down in a tax ordinance, or to lend co-operation to a Tax Inspector for the investigation of such records. If proven that non-compliance was wilfully committed, the punishment may be increased to a fine of no more than ANG 100 000 (USD 55 866) (or twice the amount of the tax due and unpaid if higher) and/or imprisonment for no more than four years (article 49(2), National Ordinance on General National Taxes). Furthermore, if the requested information is not provided, the burden of proof may be reversed (article 30(6), National Ordinance on General National Taxes).

235. Further, article 349 of the Penal Code imposes the penalty of imprisonment for no more than one year in the event a director, controlling shareholder or a director of a company or co-operative intentionally discloses a false balance sheet, profit and loss account or the explanatory notes. The director of a public or private limited liability company which is declared bankrupt shall be punished with an imprisonment of maximum one year in the event that he is found at fault of not meeting the obligations of article 15i of Book 3 of the Civil Code or that the books, records and other data carriers cannot be presented in an undamaged condition (article 355(3), Penal Code). Finally, in the event of fraudulent bankruptcy, the penalty is a maximum imprisonment of six years (article 356(4).

236. There were no instances encountered by Sint Maarten's authorities where accounting information was not available in accordance with the retention requirements. Accordingly, no sanctions for breach of these obligations were applied. However, there was a lack of a comprehensive system of oversight in respect of such obligations.

Conclusion

237. All relevant entities in Sint Maarten are subject to legal requirements under accounting and tax law to maintain accounting records and underlying documentation in line with the standard for a minimum of ten years.

238. The accounting obligations are supervised by the tax administration. There were no substantive failures to keep accounting records identified by the tax administration. Further, during the period under review, Sint Maarten received five requests for information relating to accounting information. In one case the requested information was provided in full and the remaining four cases are on hold. These four requests are still considered open and therefore they are included in the total of five pending requests at the time of review. However, Sint Maarten is not required to take any further action in respect of these requests. These four cases were considered to be complex cases.

239. During the period under review, the tax audit department performed 215 audits. However, the relatively low tax filing compliance rate does not ensure that taxpayers keep the necessary accounting information to substantiate their tax liabilities. The low compliance rates by offshore companies are a particular concern as there is no supervision of their compliance with accounting requirements other than through filing of tax returns. Considering that the accounting obligations are supervised only by the tax authorities, the enforcement of tax obligations (including the obligations to keep and maintain accounting records and underlying documentation) is not sufficient to ensure availability of accounting information in line with the standard.

Sint Maarten is therefore recommended to put in place effective oversight and enforcement measures to ensure that accounting obligations under Sint Maarten's law are properly implemented in practice.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 rating	
Partially compliant	
Factors underlying recommendations	**Recommendations**
The system of oversight of accounting obligations is limited to tax supervision however compliance with tax obligations remains relatively low and no efficient enforcement measures were taken.	Sint Maarten should put in place an efficient system of oversight and enforcement to ensure compliance with the obligations to maintain accounting information in accordance with its law.
Although the number of offshore companies in Sint Maarten is small and there is oversight of those that have engaged a TSP, it cannot be determined whether accounting information is actually available in respect of the remainder of these companies.	Sint Maarten should take measures to ensure that accounting information in respect of offshore companies is available in all instances.

A.3. Banking information

Banking information should be available for all account-holders.

240. Access to banking information is of interest to the tax administration only if the bank has useful and reliable information about its customers' identities and the nature and amount of financial transactions. In Sint Maarten, banks and other financial institutions are obliged to keep records of all financial transactions performed by natural persons and legal entities holding accounts and investments, as well as to provide this information to the tax authorities upon request.

Record-keeping requirements (ToR A.3.1)

241. Pursuant to the NOIS, service providers are required to establish the identity of the client and the ultimate beneficial owners (if any) before rendering their services (article 2, NOIS). Banks and other financial institutions are considered service providers as the services they normally render, such as opening an account on which a balance in cash, securities, precious metals or other values can be held, are listed in the NOIS (article 1(1)(b), NOIS). Under article 6 of the NOIS, the service providers are obliged to keep for five years the following information in such a way that it is accessible:

- name, address and residence or place of establishment of the client and the ultimate interested party[13], if there is any, and of the person in whose name the deposit is made or the account is held, of the person who will have access to the safe-deposit box or the person in whose name a payment or transaction is made, and also of their representatives (anonymous accounts are thus forbidden);
- nature, number and date and place of issue of the document with the help of which the identification has taken place;
- nature of the service;
- specific details depending on the type of financial service, such as, *(i)* a clear description of the type of account and the number allotted to that account in the event of opening an account; and *(ii)* the amount that is involved with the transaction and the account number in question in the event of crediting or debiting an account, amongst others; and
- specific details concerning fiduciary and legal services, including: *(i)* the nature and other unique features of the real estate and the amount involved with the transaction; *(ii)* the nature, origin, destination, volume and other unique features of the values and matters managed by the service provider; and *(iii)* the identity of the corporations and legal persons involved or similar bodies.

13. The ultimate interested party is defined as the natural person who has or holds a qualified participation or qualified interest in a legal person or who is entitled to the assets or the proceeds of a trust or private fund foundation (article1(1)(j), NOIS). In turn, qualified participation or qualified interest means a direct or indirect interest of 25% or more of the nominal capital, or a comparable interest, or being able to exercise 25% or more of the voting rights directly or indirectly, or being able to exercise directly or indirectly a comparable control (article 1(1)(k), NOIS).

242. It is expressly prohibited for the service provider to render a service, if the identity of the client has not been established in the manner prescribed in this act, but it is silent with respect to the identity of the ultimate interested party, if there is any (article 8, NOIS). It should be noted that the NOIS stipulates that if there is an ultimate interested party, he must be identified in the same manner as indicated in the first, second or third paragraph. Therefore, identification of a client that is a legal person must include identification of its ultimate interested party. Implicitly, if the ultimate interested party has not been identified, the client has not been identified in the prescribed manner. Rendering a service is then prohibited (article 3(4), NOIS).

243. Under the National Ordinance on the Reporting of Unusual Transactions, anyone who renders a service as a profession or as a trade is obliged to report to the FIU (MOT) an unusual transaction performed or an intended transaction immediately (article 11, National Ordinance on the Reporting of Unusual Transactions). Banks and other financial institutions are considered service providers as the services they normally render such as opening an account on which a balance in cash, securities, precious metals or other values can be held, are listed under in the National Ordinance on the Reporting of Unusual Transactions (article 1(a)(2), National Ordinance on the Reporting of Unusual Transactions). This report must contain, insofar as possible, the following data:

- the identity of the client;
- the nature and the number of the identification paper of the client; *(iii)* the nature, the date and the place of the transaction;
- the amount, destination and origin of the funds, securities, precious metals or other values involved in the transaction; and
- the circumstances on the basis of which the transaction is considered unusual.

244. To this end, financial institutions are explicitly required under the Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing issued by the Central Bank to monitor accounts and to have systems to detect these types of unusual transactions with suspicious patterns.

245. Credit institutions are required to preserve, during a period of at least ten years, all letters, documents and data carriers concerning their business, as well as transaction records relating to all accounts maintained by the credit institutions in their own names or for third parties with letters, documents and other data carriers pertaining thereto (article 42, National Ordinance on the Supervision of Banking and Credit Institutions, 1994).

246. Additionally, the Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing issued by the Central Bank provide that where appropriate, it must be considered to retain certain records e.g. customer identification, account files, and business correspondence, and internal and external reports relative to unusual transactions of clients for periods which may exceed that required under the relevant money laundering and terrorist financing legislation, rules and regulations (Paragraph 2(3), Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing).

In practice

247. The Central Bank is responsible for supervising the obligation on financial institutions to hold banking information. During the period under review, the bank performed a total of 14 on site examinations of banks and money transfer companies of this total ten examinations contained AML/CFT components. Of the ten examinations, two banks have been inspected twice during the period under review and one bank was inspected during 2014. The main breaches identified during the on-site examinations related to incomplete files whereby not all identification documents as required by the National Ordinance on Identification of Clients when Rendering Services (N.G. 1996, no. 23) as amended by N.G. 2009, no 66 (N.G. 2010 no. 40) (NOIS) were available and/or valid as of close of business (cut-off date). In addition, non-compliance with the National Ordinance on the Reporting of Unusual Transactions (N.G. 1996, no. 21) as amended by N.G. 2009, no 65 (N.G. 2010, no 41) (NORUT) was identified which implies that not all reportable transactions were reported/reported in a timely manner to the MOT. The findings resulting from the on-site examinations were communicated to the credit institutions by means of examination reports/letters containing corrective measures to be taken by the credit institutions within a stipulated timeframe. This included general warnings regarding non-compliance with legislation and the provisions and guidelines for credit institutions. As no breaches were identified during on-site examinations related to record keeping, no sanctions were imposed with regards the record-keeping obligations of the banking sector.

248. Each on-site examination is followed up by an examination report which contains recommendations. The institution then has two weeks to respond to the report with comments, following which a final examination report is issued by the Central Bank. In addition, the bank can issue a formal instruction (following either an on-site examination or off-site monitoring) accompanied by a deadline for remedial action. If there is no response to the issuance of the formal instruction the bank would escalate the measures. For instance, a company may be subject to silent trusteeship whereby the bank

appoints a trustee. More severe measures are license revocation and/or the emergency measure. The emergency measure is issued following a petition of the court and made public afterwards. This measure entails that the bank has the authority to carry out the tasks of the managing and supervisory board of the institution. This measure is made public at a later stage.

Conclusion

249. During the period under review, Sint Maarten received three requests for banking information. The type of information requested included copies of the contracts to open the accounts, signature cards, bank statements, copies of cancelled checks, copies of certificates of deposits, money transfers, communication with the client, etc. Peers noted that there were some delays occasioned in the provision of this information and one of the requests is still pending at the time of the review although partial responses have been sent (see B.1). The reason why the request is pending is that the information was not electronically available and the bank did not appropriately prioritise retrieving the information to respond to the request from the tax administration. As set out below, the Sint Maarten authorities did not use compulsory powers to ensure the provision of the information. However, the obligations to ensure the availability of banking information have otherwise been implemented in practice.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 rating
Compliant

B. Access to information

Overview

250. 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 Sint Maarten's legal and regulatory framework as well as the practical implementation of that framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information (EOI).

251. Sint Maarten's competent authorities are the Minister of Finance and the Head of the Tax Administration. With the dissolution of the Netherlands Antilles and the change of the government structure, it was decided that the new Tax Administration of Sint Maarten should be delegated the authority to carry out the functions of the Competent Authority. By Ministerial Decree (nr. 2013/1321) dated August 8th 2013, the Head of the Tax Administration is mandated by the Minister to act as the Competent Authority for the exchange of information for tax purposes. The Head of Fiscal Affairs remains the Competent Authority for the negotiation of tax treaties. The competent authorities have power to obtain relevant information on ownership, identity, banking, accounting and financial information from any person within the jurisdiction who has relevant information within his possession, custody or under his control, even if it is not required to be held by this person.

252. However, it is unclear whether the access powers of Sint Maarten's competent authority apply in respect of entities covered under grandfathering rules which set out the transitional rules regarding the previous taxation regime in place for offshore entities. Although this has not caused difficulties in practice, Sint Maarten did not receive a request for information related to an offshore company and therefore the relation between the obligation to

provide the information for exchange of information purposes and the grandfathering clause granting exception from providing the information to the tax authority remains untested.

253. In addition, Sint Maarten received three requests for banking information over the period under review and of them one is still pending for over a year due to obstacles in obtaining the requested information from the bank. No compulsory powers were applied by Sint Maarten in order to compel the provision of the banking information.

254. There is no domestic tax interest requirement in Sint Maarten's law. There are no bank secrecy provisions in Sint Maarten. In addition, the competent authorities have access powers to obtain information for international EOI purposes and measures to compel the production of such information. This information can be accessed by various means: provided orally, in writing, or otherwise, within a set time.

255. Sint Maarten's law provides for safeguards to protect confidential information, such as information that is subject to professional secrecy and attorney-client privilege. In practice, the application of legal professional privilege in Sint Maarten goes beyond that defined in the international standard however, it remains to be tested whether it will prevent access to information for exchange of information purposes.

256. Although, the power of Sint Maarten's tax authorities to promptly provide information for exchange purposes is subject to interpretation issues (namely, under what circumstances the Minister may not be subjected to a minimum two-month waiting period to release EOI information as the definition of "urgent reasons" is not provided in Sint Maarten's laws), in practice this was not found to be a barrier to the provision of information. However this was because in practice the information was always provided without any notification of the taxpayer due to the requesting jurisdiction indicating that the information was needed urgently. Finally, a person who is requested to supply information can appeal against the decision to provide information at the Council of Appeal in tax matters, which only meets twice a year.

257. This factor could prevent effective exchange of information within reasonable time. Sint Maarten should proceed with the intended change of the judicial procedure as well as the intended change of its procedural framework to reduce the conditions and timelines in which information can be provided in response to a request for information.

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

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

258. In Sint Maarten, the Minister of Finance is the competent authority under EOI agreements and has the ultimate political responsibility for EOI requests. With the dissolution of the Netherlands Antilles and the change of the government structure, it was decided that the new Tax Administration of Sint Maarten should be delegated the authority to carry out the functions of the Competent Authority. By Ministerial Decree (nr. 2013/1321) dated 8 August 2013, the Head of the Tax Administration is mandated by the Minister to act as the Competent Authority for the exchange of information for tax purposes. The Head of Fiscal Affairs remains the Competent Authority for the negotiation of tax treaties.

259. There is no EOI Unit within the tax administration of Sint Maarten. In practice, there are individuals who will carry out particular roles to work on requests for information and this functions as a "virtual" unit. This is mainly due to the fact that Sint Maarten receives only a limited number of requests each year. Key roles are played by the Head of the Tax Administration who will receive a request and then pass it on to officers within the Inspectorate Department or the Audit and Criminal Investigation Department to obtain the information requested.

260. Sint Maarten's competent authority is identified in all EOI agreements, the contact details of the competent authority are provided on the website of the Global Forum and any changes to the Competent Authority are communicated to the main treaty partners of the jurisdiction. Steps are being put in place to communicate contact details to all partners on a more regular basis.

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

261. The main sources of ownership and identity information for the purposes of the tax administration are:

- Tax databases held by the Tax Administration
- The Trade Register held by the Chamber of Commerce
- The taxpayer directly or their legal representative
- Other government databases including the land registry and the civil registry

262. A request for information is received by the Head of the Tax Administration who will check whether the information being requested is foreseeably relevant in accordance with the standard. If the information requested can be obtained from an individual taxpayer, the request will be passed to the head of the Inspectorate Department and then worked by officers within the department. If the information needs to be obtained from a third party, it will be passed to the Head of Audit and Criminal Investigation. The deadline for responding to the Head of the Tax Administration is set at 4-6 weeks.

263. The officers who are tasked with obtaining information to respond to a request will always use the most effective methods to obtain the information. They will begin with the internal tax databases to see what further information is required. They will then complement that information by obtaining details from the Trade Register held by the Chamber of Commerce, or the databases held by the Land Registry and Civil Registry. Following this, the taxpayer or third party holding the information will be approached. In certain instances this has meant obtaining information from a lawyer who is tasked with representing the taxpayer in question. During the period under review, the information has been obtained from various sources as set out below:

- From the Trade Register in one case
- From a TSP in two cases
- From a lawyer in four cases (which have been put "on hold" by the requesting state)
- From a bank in three cases

264. When information is held with a third party, a notice will be issued requesting the information and imposing a deadline of two weeks. If the information is being requested from a bank, this deadline will be reduced to one week.

265. Under Sint Maarten's law, the competent authorities have equal access powers to obtain information for domestic as well as international EOI purposes (articles 40(1), 62(1), 63(1) and 63(5), National Ordinance on General National Taxes). These powers are consistently exercised regardless of the type of information sought (i.e. ownership, identity, banking or accounting information) and from whom the information is sought (i.e. directly from the person under investigation or from a third party in possession or control). In particular, the competent authorities have powers to obtain information held by any person acting in an agency or fiduciary capacity, including nominees and trustees. These powers include the right to make enquiries, inspect documents, as well as search and seizure.

266. Sint Maarten's competent authorities have information-gathering powers for civil and criminal tax matter purposes, as set out in Chapter VI (articles 40-48) and Section 2 of Chapter VIII (articles 61-67) of the National Ordinance on General National Taxes. The Minister of Finance may ask a Tax Inspector or tax auditor to make inquiries or conduct an investigation to satisfy an EOI request from a competent authority of a foreign state, in accordance with the Tax Arrangement of the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, BRK), a double tax convention (DTC) or a tax information exchange agreement (TIEA) (article 61, National Ordinance on General National Taxes).

267. Under article 40(1) of the National Ordinance on General National Taxes, a Tax Inspector may compel any person within Sint Maarten's jurisdiction to provide any data and information "that can be of importance with regard to his own taxation" or data carriers or the contents thereof "which can be of importance for the establishment of the facts that can be of influence with regard to his own taxation". Article 63(1 and 5) of the National Ordinance on General National Taxes extends these access powers to cases where "the Tax Authorities conduct an investigation to comply with a request for information by the competent authority." These provisions enable Sint Maarten to exchange information pursuant to its EOI agreements mentioned under article 61 of the National Ordinance on General National Taxes.

268. The access powers provided under article 40(1) of the National Ordinance on General National Taxes cover not only information that is relevant for the "assessment or collection" of taxes, but also for "the recovery and enforcement of tax claims" (article 48(2), National Ordinance on General National Taxes) and for "the investigation or prosecution of tax matters" (article 54, National Ordinance on General National Taxes).

269. In particular, the access powers of a Tax Inspector cover: *(i)* third parties which hold in custody (e.g. a bookkeeper) data carriers belonging to the person under investigation (article 40(2), National Ordinance on General National Taxes); *(ii)* controlling or majority shareholders holding, by virtue of a mutual co-operation agreement, at least half of the capital shares of a body (i.e. a company, foundation or partnership) which is liable to taxes in Sint Maarten (article 40(3) National Ordinance on General National Taxes); and *(iii)* third parties whose affairs are regarded as affairs of the "presumed taxpayer" (e.g. the taxpayer's spouse and/or children) by virtue of any tax ordinance (article 40(4), National Ordinance on General National Taxes).[14]

14. In particular, under the Individual Income Tax Ordinance, income from one spouse is taxed as income of the other spouse, or children's income is treated as income of the parents. In this case, the spouse or child may be compelled by the Tax Inspected to provide information regarding their income to the extent

270. Article 45(1) of the National Ordinance on General National Taxes (read in conjunction with article 43), which applies by analogy to cross-border EOI requests (see section B.1.3 on *Use of information gathering measures absent domestic tax interest* below), extends the disclosure obligations under articles 40 to 43 to individuals and bodies (companies, partnerships and foundations) that are liable to keep accounting records, for the purposes of levying taxes from third parties and of levying taxes they are supposed to withhold. Therefore, companies and partnerships may be required to disclose information about their shareholders and partners, as well as financial institutions about their clients.

271. In addition, persons liable to keep accounting records are required to annually provide a Tax Inspector with *(i)* a list of third parties that were employed by or for this person during the past year, including managing directors, supervisory directors, and any persons other than commissionaires (article 45(2)), National Ordinance on General National Taxes, and *(ii)* a list of third parties that performed any work or provided any services to or for this person during the past year without being employed (article 45(3), National Ordinance on General National Taxes).

272. All criminal tax investigations are performed by a Tax Inspector and other tax officials appointed to that end by a government decree (article 185, Code of Criminal Procedures, in conjunction with article 54, National Ordinance on General National Taxes). When an EOI request concerns the investigation of a criminal (tax) offense, the information can only be exchanged by the Minister of Finance after the Minister of Justice has been consulted (article 62(6), National Ordinance on General National Taxes). If an investigative action is required, the EOI request is forwarded to the Public Prosecutor, who exercises supervisory powers over such an investigation (article 183 and 556, Code of Criminal Procedures).

273. The Sint Maarten authorities informed that this consultation procedure with the Minister of Justice is a necessary formality in light of the responsibility and authority of the respective Ministers. This consultation procedure could lead to one of the reasons for declining an EOI request under article 64 of the National Ordinance on General National Taxes[15] or under

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this income is taxed in the hands of the other spouse or one of the parents under investigation.

15. Under article 64 of the National Ordinance on General National Taxes, Sint Maarten is not required to exchange information concerning trade, business, industrial, commercial or professional secrets, trade processes, or information disclosures which would be contrary to public policy, as well as information which cannot be obtained under Sint Maarten's laws or administrative practices (articles 64(1) and 64(2)).

Sint Maarten's EOI agreements (see section B.1.5 on *Professional secrecy and attorney-client privilege* below). Even if this formality does not cause any delay or restriction to the response to an EOI request on criminal tax matters, Sint Maarten's authorities plan to abolish this provision (see *Recent Developments* above).

274. Based on provisions concerning the offshore companies contained in the National Ordinance on Profit Tax (articles 8A, 8B, 14, 14A, 45AA up to 45E) and the grandfathering rules regarding the offshore tax regime (paragraph 10 article VI), companies which qualified as offshore entities appear to not be required to disclose information to the tax administration up until 31 December 2019. Although entities covered under the grandfathering provisions are also subjected to ownership and accounting information obligations under the civil, commercial and tax laws as described in the assessment under elements A.1 and A.2. In accordance with Article 45E(4) of the National Ordinance on Profit Tax, the administration officer who executes activities on behalf of an offshore company as referred to in articles 8A, 8B, 14 and 14A of the 1940 National Ordinance on Profit Tax, is not required to assist in third party inspections. In practice, this means that the administration officer for the offshore companies may not be obligated to provide ownership and accounting information when requested by the Inspectorate of Taxes or the SBAB. With respect to banking information of these offshore companies that are covered by these grandfathering provisions, the Sint Maarten authorities indicate that the information can be obtained by the tax administration from the banks for EOI purposes.

275. In practice, Sint Maarten has not received any requests for information in respect of the offshore companies. It is therefore unclear whether the grandfathering provisions will be invoked and how these provisions should be applied if the information is requested for exchange of information purposes. As Sint Maarten's law contains a rule that international treaties take precedence over any conflicting national law it might be argued that the obligation under the treaty to provide the requested information would overrule the grandfathering clause.

276. According to Sint Maarten's authorities, the tax authority's access powers under article 63 of the National Ordinance remain applicable in respect of the offshore companies and they are obliged to provide the requested information. However, there has been no case during the period under review where the requested information related to the offshore company and therefore the relationship between the obligation to provide the information for exchange of information purposes and the grandfathering clause remains untested. However, there is a risk that the grandfathering provisions would obstruct the access powers of Sint Maarten for exchange of information purposes. Accordingly, Sint Maarten is recommended to monitor the use of access

powers in respect of the offshore entities and, if necessary, to take measures to ensure that the requested information can be obtained from these entities.

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

277. 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. Information gathering powers provided to Sint Maarten's competent authorities under the National Ordinance on General National Taxes can be used to provide exchange of information assistance regardless of whether Sint Maarten needs the information for its own domestic purposes.

278. Article 63(1) of the National Ordinance on General National Taxes provides that "the Minister [of Finance] can have an official of the Tax Authorities conduct an investigation to comply with a request for information by the competent authority". Article 63(2) of the National Ordinance on General National Taxes provides for the possibility of foreign authorities carrying on tax examinations in Sint Maarten. Article 63(5) of the National Ordinance on General National Taxes provides that "for the application of the first and second paragraphs [of article 63], the provisions of chapter VI [articles 40-48] shall be applicable by analogy".

279. In practice, Sint Maarten did not receive any requests during the period under review where the requested information related to a person with no nexus to the jurisdiction for tax purposes. No issue of domestic tax interest was indicated by peers.

Compulsory powers (ToR B.1.4)

280. Jurisdictions should have in place effective enforcement provisions to compel the production of information. The National Ordinance on General National Taxes provides for such compulsory measures. In addition, there are several types of penalties applicable in case of non-compliance with the obligation to provide any information and/or clarification required by the competent authorities in the exercise of their duties, within a stipulated period.

281. A Tax Inspector can require information to be provided orally, in writing or otherwise, within a set time. The tax authorities can make copies, printouts and extracts of the data carriers, as well as confiscate the data carriers when copies or printouts cannot be made on spot (article 41, National Ordinance on General National Taxes). Tax Inspectors and experts are given the power to enter any premises, other than a dwelling, for the purpose of an inspection (article 42, National Ordinance on General National Taxes).

282. In criminal tax matters, article 54 of the National Ordinance on General National Taxes, in conjunction with articles 185 and 556 of the Code of Criminal Procedures, puts a request for information by a foreign tax authority on par with a domestic preliminary criminal investigation, when an investigative action is required. In a domestic criminal investigation, competent authorities have full powers to gather the information: the powers of the investigation judge to hear the suspect, witnesses, experts, to issue search warrants, to seize items of evidence, to tap telephone lines, etc.

283. If the information requested for EOI purposes is not furnished to the tax administration, the competent authority can conduct an investigation to comply with a request for information by the competent authority in which the same rules are applicable as if the information was required for national purposes (article 63(1), National Ordinance on General National Taxes). Furthermore, the burden of proof may be reversed. Under article 30(6) of the National Ordinance on General National Taxes, the same penalties apply when information is sought for domestic or foreign tax purposes.

284. Under article 49 of the National Ordinance on General National Taxes, any person failing to comply with a request for bank information is committing a criminal offence and will be penalised by a term of imprisonment of up to six months and/or a fine amounting to ANG 25 000 (USD 13 966), or in the event that the insufficiently levied tax is higher than this amount, at most once the amount of the insufficiently levied tax. If the failure is intentional, the person will be punished by a term of imprisonment up to four years and/or a fine amounting to ANG 100 000 (USD 55 866), or, if the insufficiently paid tax is higher than this amount, at most twice the amount of the insufficiently paid tax.

285. In practice the tax authority's compulsory powers are rarely used and work mainly as a deterrent factor. There was no case during the period under review where these powers were used for exchange of information purposes although in four cases the requested information was provided after one year following receipt of the request due to a delayed response from the information holder. Lack of the use of compulsory powers is a concern particularly in respect of obtaining banking information. Sint Maarten received three requests for banking information during the period under review. One of the requests is still pending at the time of the review and has been pending for over a year although partial responses have been sent. Of the remaining two requests, one was responded to within 180 days and one took over a year to respond to.

286. According to the Sint Maarten authorities, the reason for the request that has been pending for over a year is that the information was not electronically available and the bank did not appropriately prioritise retrieving the information to respond to the request from the tax administration. It was

noted by both peers who requested banking information from Sint Maarten that they experienced significant delays in receiving the information which may have a negative impact on the effective use of the requested information. The Sint Maarten authorities noted that they followed up with the bank to encourage the provision of information, and that they understood the challenges for banks to obtain the requested information in a timely manner due the content and scope of those particular requests and also due to the unfamiliarity of the banks in dealing with EOI-requests in general. However, compulsory powers were not used by the Sint Maarten authorities, mainly because the community in Sint Maarten is small and closely connected and the emphasis was placed on co-operation versus sanction.

287. Effective exchange of information requires that the requested information is provided in a timely manner. The Sint Maarten authorities should ensure that holders of information give appropriate priority to the tax authority's request and provide the information in accordance with the deadline prescribed by the tax administration. If the information is not provided within the deadline and no legally valid reasons for the delay are provided, there should be effective mechanisms to compel production of the information. It is therefore recommended that Sint Maarten ensures that the compulsory powers of the tax authority are used more effectively so that the requested information can be provided in a timely manner.

Secrecy provisions *(ToR B.1.5)*

288. Jurisdictions should not decline on the basis of their secrecy provisions (e.g. bank secrecy, corporate secrecy, professional secrecy, etc.) to respond to a request for information made pursuant to an EOI agreement.

Bank secrecy

289. Sint Maarten's authorities have stated that, other than the restrictions for fishing expeditions in EOI agreements and the professional secrecy provisions outlined below in *Professional secrecy and attorney-client privilege*, there are no restrictions in Sint Maarten's legislation to obtain information held by banks or other financial institutions.

290. During the period under review, Sint Maarten received three requests for banking information. One of the requests is still pending at the time of the review and has been pending for over a year although partial responses have been sent. Of the remaining two requests for banking information, one was responded to within 180 days and one took over a year to respond to. The authorities confirmed that the banks are aware of their obligation to transmit the information and that there are no disputes about the banks' obligation to provide the information. The reason for the delay was the challenge for the

bank in obtaining information that was considered older and stored in files within the bank's offices. The banks provided the information they had available to hand and the delay related to the provision of older information (see further section B.1.4).

291. In one case during the period under review, the bank specifically requested identification of the person under investigation in the form of the date of birth of the individual. The bank had already received the name of the account holder and the bank account number. As all forms of identification were provided by the requesting jurisdiction, the requested information was submitted by the bank. However, the requirement to specifically identify the person under investigation by the date of birth is not in line with the international standard since the requesting jurisdiction is required to identify the person by any means that allow the requested entity to determine the identity of the person, i.e. the bank account number alone should be sufficient. Nevertheless, there was only one such a case out of three requests received and there is no such requirement under Sint Maarten's law or policy. Sint Maarten's authorities also confirmed that they explained the treaty requirements to the bank and are able to provide the requested banking information if the requirements of Art 5(5) of the Model TIEA are met.

Anti-money laundering laws

292. A number of secrecy rules apply in the context of Sint Maarten's AML/CFT laws; however, these can be overridden for exchange of information purposes, as further explained below. Article 20 of the National Ordinance Reporting Unusual Transactions Act contains a secrecy provision pursuant to which information supplied or received in accordance with this ordinance is considered confidential. Anyone who supplies such information and anyone who submits a report is obliged to maintain confidentiality. This provision also prohibits anyone who performs any duties under this act to make use or give publicity thereof further or otherwise than for performing his/her duties or as required by this ordinance.

293. Under article 12 of the National Ordinance on the Supervision of Trust Service Providers, a trust service provider must have with regards to every offshore company to which it provides trust services updated data regarding the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution, which includes the bearer certificate holders. Article 14 of this ordinance contains a secrecy provision pursuant to which a trust service provider and natural or legal persons placed under the licensee's responsibility are required to keep secret the data referred to in article 12 in respect of everyone, with the exception of the Central Bank.

294. Nevertheless, all the secrecy and confidentiality provisions under Sint Maarten's law are lifted if domestic or foreign authorities request information for tax purposes. Under article 46(1) of National Ordinance on General National Taxes, no one may invoke the circumstance that he/she is, for whatever reason, under the obligation to observe secrecy, not even if such obligation is imposed by means of a national ordinance. This rule exonerates a person from any liability to prosecution in respect of other secrecy provisions.

295. During the period under review, the Sint Maarten authorities did not indicate that the secrecy and confidentiality provisions in the National Ordinance Reporting Unusual Transactions Act or the National Ordinance on the Supervision of Trust Service Providers were a hindrance to effective exchange of information. Furthermore, Sint Maarten obtained information for requests from TSPs in two instances.

Professional secrecy and attorney-client privilege

296. Pursuant to the Civil Code, an expert may be appointed by the general shareholders meeting to inspect all books, records and other data carriers of a company (article 121(1), Civil Code, Book 2). The expert is not permitted to disclose any information respecting the company's business, other than as required pursuant to the instructions given to the expert (article 121(4), Civil Code, Book 2).

297. Criminal penalties are imposed on those who violate the provisions of professional secrecy, providing that an employee of a commercial enterprise who by virtue of his office is required to store information discloses data to third parties outside the scope of his or her duty, can be accused of committing a criminal offence in breach of professional secrecy (article 286, Penal Code).

298. Nevertheless, these restrictions outlined in the Civil Code and Penal Code do not apply where an employee has a duty to provide the information to the tax authorities for tax purposes (article 46(1), National Ordinance on General National Taxes). In addition, an exception to this duty of confidentiality applies to anyone who has knowledge of such serious offences as described in articles 198 and 200 of the Criminal Procedure Code (article 50(2), National Ordinance on General National Taxes). Rather, the Criminal Procedure Code provides that anyone who has knowledge of such serious offences has to report them to an investigative officer. Moreover, the Minister may grant dispensation from this duty of confidentiality (article 50(3), National Ordinance on General National Taxes).

299. Even though secrecy provisions are lifted for EOI purposes by article 46(1) of the National Ordinance on General National Taxes, an exception is established to protect professional secrecy. Under article 46(2) of the

National Ordinance on General National Taxes, ministers of clergymen, civil law notaries, lawyers, doctors and pharmacists "can invoke the confidentiality that they, by reason of their state, office or profession are obliged to maintain". The scope of this exception appears to be limited to the protection of personal information received by these professionals by virtue of their professional activities. This interpretation has been confirmed by the Supreme Court of the Netherlands in its decision of 27 April 2012 in the case of *Tradman Netherlands B.V. v. the State of the Netherlands*. In this judgement, the Supreme Court confirmed that professional secrecy only applies to information entrusted to such persons in their professional capacity, and excludes information obtained outside of their professional capacity. Paragraph 3.5.1. of this judgement states: "the right to refuse to give evidence (…) only relates to data (carriers) and such which the person bound by secrecy keeps in his capacity as confidant".

300. In addition, article 1(3) of the NOIS and article 1(3) of the National Ordinance Reporting Unusual Transactions contain an exception to the AML/CFT framework concerning legal privilege. Under these provisions, certain legal services are excluded from the scope of these acts, i.e. activities which are related to the provision of the legal position of a client, its representation at law, giving advice before, during and after a legal action, or giving advice on instituting or avoiding a legal action, insofar as performed by a lawyer, civil-law notary or junior civil-law notary or an accountant, acting as an independent legal adviser.

301. It is noted that Sint Maarten is not required to exchange information concerning trade, business, industrial, commercial or professional secrets, trade processes, or information disclosures that would be contrary to public policy as well as information that cannot be obtained under Sint Maarten's laws or administrative practices (articles 64(1) and 64(2), National Ordinance on General National Taxes). These exceptions are also reflected in Sint Maarten's EOI agreements, which mirror those provided for in Article 7 of the OECD Model TIEA and Article 26(3) of the OECD Model Tax Convention (see section C.4 on *Rights and safeguards of taxpayers and third parties* below). Therefore, the broad scope of the professional secrecy provisions and legal privilege exception mentioned above could prevent effective exchange of information in practice.

302. Whereas no issues in practice arose regarding the practical application of professional secrecy with regards accountants, the practical application of legal professional privilege in respect of information held by civil law notaries and lawyers may have a negative impact on effective exchange of information. Although the scope of legal professional privilege appears to be limited to the protection of personal information received by these professionals by virtue of their professional activities, its domestic application in practice has been

wider than this and has covered all information held by those professionals. The claim that the information is covered by professional privilege is subject to the decision of the respective lawyer or the civil notary holding the information and there is a limited possibility for the tax administration to effectively appeal against such a claim. In the majority of domestic situations, once the notary or the lawyer claims that the information is subject to professional privilege the claim is not challenged and the information is therefore not disclosed. A case heard by the Supreme Court of the Netherlands on 1 July 2014 found that where legal professional privilege is claimed, the claim needs to be respected unless there could be reasonable doubt that such a claim is not justified. It appears to be very difficult in practice to verify the claim that the information is protected by professional privilege unless the law enforcement authority already has evidence that the lawyer or the notary participates in criminal activity.

303. During the period under review, the tax administration was able to obtain requested information from lawyers in eight cases when the information was requested from them. However, in each of these cases the lawyers were acting on behalf of their clients under Power of Attorney. There was no case where a lawyer or a notary was the subject of the notice to provide the requested information and therefore could have claimed professional privilege. As such, the application of legal professional privilege with regards exchange of information remains untested in practice. Consequently, Sint Maarten should monitor the practical application of legal professional privilege to ensure that no practical barriers exist which could prevent effective exchange of information.

Determination and factors underlying recommendations

Determination	
The element is in place.	
There has been no case during the period under review where the requested information related to an offshore company and therefore the relation between the obligation to provide the information for exchange of information purposes and the grandfathering clause granting exception from providing the information to the tax authority remains untested. However, there is a risk that the grandfathering provisions would obstruct the access powers of Sint Maarten for exchange of information purposes.	Sint Maarten should monitor the use of the access powers in respect of the offshore entities and if necessary take measures to ensure that the requested information can be obtained from them.

Phase 2 rating	
Partially compliant	
Factors underlying recommendations	**Recommendations**
Sint Maarten received three requests for banking information over the period under review and of them, one is still pending for more than a year due to obstacles in obtaining the requested information from the bank.	Sint Maarten should use the compulsory powers of the tax authority more effectively so that the requested information is provided in a timely manner.
The practical application of legal professional privilege in Sint Maarten appears to go beyond that defined in the international standard, however, it remains to be tested in respect of obtaining information for exchange of information purposes.	Sint Maarten should monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information.
There has been no case during the period under review where the requested information related to an offshore company and therefore the relation between the obligation to provide the information for exchange of information purposes and the grandfathering clause granting exception from providing the information to the tax authority remains untested. However, there is a risk that the grandfathering provisions would obstruct the access powers of Sint Maarten for exchange of information purposes.	Sint Maarten should monitor the use of the access powers in respect of the offshore entities and if necessary take measures to ensure that the requested information can be obtained from them.

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)*

304. Rights and safeguards should not unduly prevent or delay effective exchange of information. 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).

305. Under article 62(2) of the National Ordinance on General National Taxes, the Minister of Finance is required to inform the person, with respect to whom a request for information was made of his decision to comply with such request. In the notification, the Minister of Finance gives a description of the information to be provided and identifies the requesting competent authority.[16]

306. Under article 62(3) of the National Ordinance on General National Taxes, the granting of a request is not to occur earlier than two months after the notification referred to in the second paragraph has been sent, unless urgent reasons oppose such delay. Article 62(4) provides that such urgent reasons may compel the Minister of Finance to postpone the sending of the notification up to four months after the date of his decision to comply with the request. According to the Sint Maarten's authorities, there is no definition of urgent reasons under the law, but it is generally understood that a case of presumed tax fraud or an ongoing tax claim which could be rendered invalid due to a statute of limitations could be considered an urgent reason. However, it is noted that there are no express exceptions for prior notification when it is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction.

307. It is possible that this will also involve a criminal tax matter that requires the consultation of the Minister of Justice before the requested information can be provided, pursuant to article 62(6) of the National Ordinance on General National Taxes (see sections B.1.1 on *Ownership and identity information* and B.1.2 on *Accounting records* above). In addition, the person concerned may challenge in court the competent authority's decision to comply with the request for exchange of information. Two months appears to

16. This appears to be consistent with paragraph 12 of the Commentary to Article 26(2) of the OECD Model Tax Convention, which states that "information may be also be communicated to the taxpayer, his proxy or to the witnesses".

be excessive and may interfere with Sint Maarten's obligations under its EOI agreements to forward the information as promptly as possible to the competent authority of the requesting party, as generally required under article 5(6) of Sint Maarten's TIEAs. It is therefore recommended that Sint Maarten proceed with proposed legislation to ensure that the notification rights are compatible with effective EOI (see *Recent Developments* above).

308. Article 62(5) of the National Ordinance on General National Taxes contains appeal rights in accordance with the National Ordinance on Administrative Justice. The person notified can appeal to the Council of Appeal (*Raad van Beroep*) within 30 days from the date of the notification. However, this court only meets twice a year. As a result, in case of an appeal, there may be considerable delays until a final decision in the case is reached and this may impede effective exchange of information. It is therefore recommended that Sint Maarten proceed with proposed legislation to ensure that the appeal rights are compatible with effective EOI (see *Recent Developments* above).

In practice

309. The person with respect to whom the request for information was made was notified in five instances out of 16 requests for information. In each of these cases the notification took place after the first set of information had already been provided to the requesting jurisdiction. The Sint Maarten authorities indicated that this was because each of these cases was deemed to be urgent and therefore the notification could happen after the sharing of the information. In six cases the tax administration was not able to notify the taxpayer, in one instance because the taxpayer was deceased and in the remaining five instances because the taxpayer was not known to the Sint Maarten authorities and they had no contact information for sending the notification. In the remaining five cases, one case is pending and four cases are "on hold" (see C.5 below) and to date no notification has been sent in respect of these taxpayers.

310. The notification letter itself contains a description of the information to be provided, the name of the requesting jurisdiction and identifies the person holding the requested information in Sint Maarten.

311. The tax administration is required to wait for a period of two months from the date when the notification letter has been sent before sharing the information with the requesting jurisdiction, unless there are urgent reasons. However, in practice the holding period did not have an impact upon exchange of information. During the period under review the Sint Maarten authorities either did not notify the taxpayer or they notified the taxpayer once the first set of information had already been shared with the requesting jurisdiction.

312. There was no case during the period under review where obtaining or providing the requested information was appealed. Nevertheless the Sint Maarten authorities note that the treaty obligation on the competent authority to exchange the information requested would in practice not be suspended by the lodging of an appeal to the Court of Appeal.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Appeals to Council of Appeal, which meets only twice a year, may delay the effective exchange of information in Sint Maarten.	Sint Maarten is encouraged to proceed with the intended change of the judicial procedural to allow an appeal to the judge in administrative law.
The power of the Sint Maarten's tax authorities to promptly provide information for exchange purposes is subject to interpretation issues (namely, the minimum two-month waiting period and the definition of urgent reasons) that could prevent effective exchange of information within reasonable time.	Sint Maarten is encouraged to proceed with the intended change of its procedural framework to reduce the conditions and timelines in which information can be provided in response to a request for information.
The prior notification procedure only allows for an exception in case of urgent reasons.	It is recommended that wider exceptions from prior notification be permitted in tax matters (e.g. in cases in which the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

Phase 2 rating
Largely compliant

C. Exchange of information

Overview

313. 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 upon request relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report assesses Sint Maarten's network of international agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

314. In Sint Maarten, the legal authority to exchange information derives from bilateral or multilateral instruments (e.g. double tax conventions, tax information exchange agreements, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters) as well as from domestic law to a lesser extent. Within particular regional groupings, information exchange may take place pursuant to exchange instruments applicable to that grouping (e.g. within the EU, the directives and regulations on mutual assistance).

315. In 2001, Sint Maarten (formerly the Netherlands Antilles) made a political commitment to co-operate with the OECD's initiative on transparency and effective EOI. Sint Maarten concluded its first EOI instrument with the Netherlands in 1964. In addition, Sint Maarten signed a double tax convention (DTC) with Norway in 1989. Presently, Sint Maarten has EOI relationships with 88 jurisdictions, including 21 tax information exchange agreements (TIEAs); 1 DTC; an agreement between the jurisdictions forming the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, the BRK, comprised of the Netherlands, Aruba, Curaçao and Sint Maarten); and, is covered by the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention). Of these EOI relationships with 88 jurisdictions, EOI agreements concerning 61 jurisdictions are in force, including 19 of the 21 TIEAs, a DTC and the BRK.

316. Since the time of the Phase 1 review of Sint Maarten, no new TIEAs have been signed by Sint Maarten. Of the eight TIEAs that were awaiting entry into force at the time of the Phase 1 review, six have entered into force leaving two awaiting entry into force (British Virgin Islands and Cayman Islands). An EOI relationship exists with both of these jurisdictions by virtue of the Multilateral Convention. Sint Maarten is nevertheless encouraged to bring into force these signed TIEAs.

317. Sint Maarten's EOI network allows for tax information exchange with all relevant partners. Sint Maarten is currently negotiating two DTAs and one TIEA and has initialled an additional three TIEAs. Comments were sought from Global Forum members in the course of the preparation of this report, and no jurisdiction advised that Sint Maarten had refused to negotiate or conclude an EOI agreement with it.

318. The confidentiality of information exchanged with Sint Maarten is protected by obligations imposed under its EOI agreements, as well as in its domestic legislation (article 50, National Ordinance on General National Taxes), and is supported by sanctions for non-compliance. Consequently, element C.3 was found to be in place.

319. The grounds for declining the exchange of certain types of information is in accordance with the international standard, including business or professional secrets, information subject to attorney-client privilege, or where the disclosure of the information requested would be contrary to public policy. These exceptions are reflected in Sint Maarten's domestic law (articles 50 and 64, National Ordinance on General National Taxes) as well as in its EOI agreements. Hence, element C.4 was found to be in place.

320. There appear to be no legal restrictions on the ability of Sint Maarten's competent authority to respond to a request within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

C.1. Exchange of information mechanisms

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

321. Sint Maarten has EOI relationships with 88 jurisdictions, including 22 bilateral agreements (21 TIEAs; 1 DTC); the BRK; and, is covered by the Multilateral Convention. Of these EOI relationships with 88 jurisdictions, EOI agreements concerning 61 jurisdictions are in force, including 19 of the 21 TIEAs signed by Sint Maarten, a DTC and the BRK.

322. Sint Maarten signed 21 TIEAs, with Antigua and Barbuda, Australia, Bermuda, British Virgin Islands, Canada, Cayman Islands, Denmark, Faroes

Islands, Finland, France, Greenland, Iceland, Mexico, New Zealand, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Spain, Sweden, the United Kingdom, the United States. Of these 21 TIEAs, 19 are in force (Antigua and Barbuda, Australia, Bermuda, Canada, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, Mexico, New Zealand, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and Grenadines, Spain, Sweden, the United Kingdom and the United States), as detailed in Annex 2.

323. Sint Maarten agreed a DTC with Norway in 1989. This DTC was amended by a Protocol in 2009 to replace article 27 by a provision that mirrors the 2005 version of Article 26 of the OECD Model Tax Convention. This Protocol came into force on 1 September 2011.

324. In addition, Sint Maarten is party to the Tax Arrangement of the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, BRK), comprised of the Netherlands, Aruba, Curaçao and Sint Maarten (i.e. the former Netherlands Antilles). This agreement provides for the avoidance of double taxation and the prevention of fiscal evasion within the Kingdom of the Netherlands. Under Articles 37 and 38, it includes an EOI provision that generally follows the old wording of Article 26 of the OECD Model Tax Convention, i.e. before the inclusion of paragraphs 4 and 5 in the 2005 update. Sint Maarten is thus able to exchange information in tax matters with the Netherlands, Aruba, and Curaçao in accordance with the standard. It was decided that with the dissolution of the Netherlands Antilles, the BRK should be amended into separate bilateral agreements. Therefore Sint Maarten has agreed a DTA with the Netherlands which is due to enter into force on 1 January 2016 and replace the BRK agreement, separate bilateral agreements will be negotiated between the Netherlands and Aruba and Curaçao respectively.

325. Furthermore, on 27 May 2010, the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (MAC) was signed by the Kingdom of the Netherlands, on behalf of Sint Maarten. This extension of the Protocol came into force for Sint Maarten on 1 September 2013. In March 2011, the reservations to the MAC were removed which previously limited the application of the MAC to Sint Maarten only in respect of Parties to the MAC with which the Kingdom of the Netherlands had concluded a DTC containing an EOI provision. The MAC provides for all possible forms of administrative co-operation among its Parties in the assessment and collection of taxes, including EOI upon request.

326. Since 2005, Sint Maarten has agreed to implement measures equivalent to those contained in the EU Directive on the Taxation of Savings Income (2003/48/EC) which provides for exchange of information concerning interest payments or a withholding tax as a transitional measure. Sint Maarten is a party to the reciprocal bilateral agreements on savings taxation signed by the

former Netherlands Antilles with each EU Member State. Those agreements provide that the taxpayer may opt for withholding tax at a 35% rate or voluntary disclosure on an annual basis in respect of interest and similar payments made to beneficial owners (individuals) which are resident of EU Member States (National Ordinance on Tax on Income from Savings). Sint Maarten is currently engaged in consultations with its banking sector to adopt automatic exchange and abolish the withholding tax.

Foreseeably relevant standard (ToR C.1.1)

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

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

328. The Commentary to Article 26(1) of the OECD Model Tax Convention and the Commentary to Article 5(5) of the OECD Model TIEA refer 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" or "relevant".

329. Article 37 of the BRK provides for EOI that is "necessary" for carrying out the provisions of the convention and the domestic tax laws of the contracting States concerning taxes covered by the convention, insofar as the taxation there under is not contrary to those convention. Likewise, the TIEA with Bermuda only refers to information that is "relevant" for EOI purposes. Sint Maarten's authorities confirmed that the terms "necessary" and "relevant" under these EOI agreements are interpreted in accordance with Commentary to Article 26(1) of the OECD Model Tax Convention. Therefore, the BRK and the Sint Maarten-Bermuda TIEA meet the "foreseeably relevant" standard.

330. Some TIEAs concluded by Sint Maarten create a requirement for establishing a valid request which is in addition to those set out in Article 5(5)

of the OECD Model TIEA, i.e. the requesting party must specify: "(…) the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting party" (Article 5(6)(d), Sint Maarten-British Virgin Island TIEA) or "(…) why it is relevant to the determination of the tax liability of a taxpayer under the laws of the applicant party" (Article 5(7)(g), Sint Maarten-Bermuda TIEA).

331. Article 5(6) of the Sint Maarten-Bermuda TIEA also creates another additional condition for the establishment of a valid request under Article 5, requesting that the applicant party confirm the relevance of the requested information, as follows:

> Where the applicant Party requests information in accordance with this Agreement, a senior official of the competent authority of the applicant Party *shall certify* that the request is relevant to, and necessary for, *the determination of the tax liability of the taxpayer* under the laws of the applicant Party. [*emphasis added*]

332. It is also noted that in Sint Maarten's TIEAs with Bermuda (Article 5(5)(ii)) and British Virgin Islands (Article 5(5)(b)), a requested party is under no obligation to provide information which relates to a period more than six years prior to the tax period under consideration.

333. Nevertheless, those variations to Article 5(5) of the OECD Model TIEA appear to be in line with the purpose of the requirements in this provision, which is to demonstrate the foreseeable relevance of the information sought. The Sint Maarten authorities confirmed that it was proposed and accepted by both parties for a broad application to be given to article 5 of the TIEA. This TIEA entered into force on 8 April 2015.

334. Item I of the Protocol to the TIEA with the Cayman Islands states that the term "pursued all means available in *its own territory*" in Article 5(5)(g) of this TIEA is understood as including an obligation for the requesting party to use "exchange of information mechanisms it has in force with any third country *in which the information is located*" [*emphasis added*]. That is, under this interpretation of Article 5(5)(g), a requesting party (either Sint Maarten or Cayman Islands) cannot make an EOI request until it has sought the information from the jurisdiction where the information is located.

335. This interpretation of Article 5(5)(g) may impose difficulties on the requesting party to make use of EOI mechanisms to obtain information outside its own territory and is inconsistent with the Commentary to Article 5(5) of the OECD Model TIEA (paragraph 73) and narrower than the international standard. Sint Maarten and the Cayman Islands have agreed to delete the entire protocol to the Sint Maarten-Cayman Islands TIEA in order to eliminate these difficulties. The Multilateral Convention was extended to Sint Maarten by the Netherlands and by the United Kingdom to the Cayman

Islands. Since the Multilateral Convention is in force in both Sint Maarten and the Cayman Islands, exchange of information to the standard can take place under this convention. Nevertheless, Sint Maarten is encouraged to delete the protocol to the TIEA to bring it into conformity with the international standard.

336. In all other regards, the BRK, the DTC with Norway and the TIEAs signed by Sint Maarten meet the "foreseeably relevant" standard as described in Article 26(1) of the OECD Model Tax Convention and the Commentary thereto and in Articles 1 and 5(5) of the OECD Model TIEA and the Commentary thereto.

337. Sint Maarten did not decline any requests for information during the period under review on the basis that the requested information was not foreseeably relevant. The authorities confirmed that the Head of the Tax Administration will determine whether the request is valid upon receipt of the request. This will involve the following:

- Establish whether an EOI relationship exists with the requesting jurisdiction
- Establish if the requesting jurisdiction has demonstrated foreseeable relevance by providing the identity of the person under examination;
- A statement of the information sought;
- The tax purpose for which it is sought;
- Grounds for believing that the information is held in Sint Maarten or is in the possession or control of a person within Sint Maarten;
- To the extent known the name and address of the person believed to be in possession of the information;
- A statement that the request is in conformity with the law and administrative practices of the requesting state and that if the information was within the jurisdiction of the requesting state then the competent authority of that state would be able to obtain the information under their laws;
- A statement that the requesting jurisdiction has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties

338. No issue in respect of Sint Maarten's interpretation of foreseeable relevance was raised by peers. On at least two occasions Sint Maarten sought clarification from the requesting jurisdiction prior to responding to the request.

In respect of all persons (ToR C.1.2)

339. For EOI to be effective it is necessary that a jurisdiction's obligations to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for EOI envisages that EOI mechanisms will provide for exchange of information in respect of all persons. Article 26(1) of the OECD Model Tax Convention indicates, "The exchange of information is not restricted by Article 1", which defines the personal scope of application of the Convention. The DTC with Norway contains this sentence.

340. Unlike the OECD Model Tax Convention, the BRK does not contain a provision that explicitly indicates that the EOI mechanisms under Articles 37 and 38 are not restricted by the personal scope of application of the BRK, i.e. to persons who are residents of countries of the Kingdom of the Netherlands. However, Article 37(1) applies to information "necessary for carrying out this Law or the laws of each of the countries [of the Kingdom] concerning taxes covered by this Law, insofar as the taxation there under is not contrary to this Law". Because of this language, the BRK would not be limited to residents to the extent that all taxpayers, resident or not, are liable to the domestic taxes listed in Article 3. Exchange of information in respect of all persons is thus possible under the terms of the BRK.

341. All the TIEAs signed by Sint Maarten contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA and which conforms to the international standard. Sint Maarten's agreement with France contains additional language regarding citizenship and nationality. Specifically, it states that "that the agreement will be applied whether or not the information relates to a resident, national or citizen of a Contracting Party, or is maintained or not by this resident, national or citizen". This language is additive, rather than restrictive, and it is in line with the standard.

342. No issue restricting exchange of information in this respect has been indicated by the authorities in Sint Maarten or by peers.

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

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

agency or fiduciary capacity or because the information relates to an ownership interest.

344. The BRK does not include the provision contained in Article 26(5) of the OECD Model Tax Convention, which states that a contracting State may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. However, the absence of this paragraph does not automatically create restrictions on exchange of bank information. The Commentary to Article 26(5) indicates that whilst paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information (see paragraph 19.10 of the Commentary to Article 26(5) of the OECD Model Tax Convention).

345. Sint Maarten has access to bank information for tax purposes in its domestic law (see section B.1.5 on *Secrecy provisions* above), and is able to exchange this type of information when requested, under the BRK (article 38, National Ordinance on General National Taxes). Since the other parties in the BRK are similarly able to do so under their domestic laws, the BRK meets the standard in spite of the absence of a provision that mirrors Article 26(5) of the OECD Model Tax Convention.

346. All the TIEAs concluded by Sint Maarten and the DTC with Norway (after the 2009 Protocol) explicitly forbid the requested jurisdiction to decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

347. In practice, Sint Maarten has never declined to respond to a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. This has been confirmed by peers.

348. During the period under review, Sint Maarten received three requests for banking information. One of the requests is still pending at the time of the review and has been pending for over a year although partial responses have been sent. Of the remaining two requests for banking information, one was responded to within 180 days and one took over a year to respond to.

Absence of domestic tax interest (ToR C.1.4)

349. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A

refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

350. The BRK does not include the provision contained Article 26(4) of the OECD Model Tax Convention, which states that the requested party "shall use its information gathering measures to obtain the requested information, even though that [it] may not need such information for its own tax purposes". However, the absence of a similar provision in other treaties does not, in principle, create restrictions on EOI provided there is no domestic tax interest impediment to exchange information in the case of either contracting party (see item 19.6 of the Commentary to Article 26(4) of the OECD Model Tax Convention).

351. Sint Maarten has no domestic tax interest restrictions on its powers to access information (see section B.1.3 on *Use of information gathering measures absent domestic tax interest* above). Sint Maarten may exchange information under the BRK, including in cases where the information is not publicly available or already in the possession of the governmental authorities (article 38, National Ordinance on General National Taxes). Since the other parties in the BRK are similarly able to do so under their domestic laws, the BRK meets the standard in spite of the absence of a provision that mirrors Article 26(4) of the OECD Model Tax Convention to be considered as meeting the standard.

352. All of the TIEAs concluded by Sint Maarten and the DTC with Norway (after the 2009 Protocol) explicitly permit the information to be exchanged, notwithstanding the fact that Sint Maarten may not need such information for a domestic tax purpose. Similarly, Sint Maarten's domestic powers to access relevant information are not constrained by a requirement that the information is sought for a domestic tax purpose.

353. In practice, the authorities in Sint Maarten have indicated, and feedback from peers has confirmed, that in all cases Sint Maarten has provided information to its contracting party regardless of whether or not it has an interest in the requested information for its own domestic tax purposes.

Absence of dual criminality principles (ToR C.1.5)

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

355. None of the EOI agreements concluded by Sint Maarten applies the dual criminality principle to restrict exchange of information. The authorities in Sint Maarten reported that no request for information has been refused on this basis during the period under review. Similarly, no issues were raised by peers in this respect.

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

356. 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"). All of the EOI agreements signed by Sint Maarten may be used to obtain information to deal with both civil and criminal tax matters.

357. The BRK contains a similar wording to the one 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 nor criminal matters.

358. All the TIEAs signed by Sint Maarten and the DTC with Norway (after the 2009 Protocol) mention that the information exchange will occur for the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims (i.e. civil matters), or the investigation and prosecution of tax matters (i.e. criminal matters).

359. Sint Maarten is able to exchange information in both criminal and civil tax matters and no issues were raised by peers in this regard. During the period under review, Sint Maarten received one request related to criminal tax matters. This request is pending due to a delay in accessing banking information; however, this delay is not linked to the fact that the information is requested for criminal tax purposes *(see B.1.4)*. Although procedurally, the tax administration is required to consult with the Minister of Justice prior to responding to cases that relate to criminal tax matters, this step did not occur in this particular case because the requesting jurisdiction only mentioned in subsequent follow-up correspondence that the request related to criminal tax matters. Nevertheless, if a request is identified as relating to criminal tax matters from the outset, the tax administration will consult with the Minister of Justice.

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

360. 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.

361. The BRK, the DTC with Norway and the TIEA with the United States do not expressly address this question but they do not contain any restrictions either which would prevent Sint Maarten from providing information in a specific form, so long as this is consistent with its own administrative practices.

362. All of the other TIEAs concluded by Sint Maarten allow for information to be provided in the specific form requested, notably witness depositions and authenticated copies, to the extent allowable under the requested jurisdiction's domestic laws (usually under article 5(3)). Domestic law accommodates this requirement by requiring information to be produced orally or in writing, in the form and within the period determined by a Tax Inspector (article 54, National Ordinance on General National Taxes).

363. During the period under review, Sint Maarten received one request that called for the provision of affidavits to attest to the authenticity of the information provided by a bank. This was made in a follow-up letter to an original request. The authorities were unable to comply with this additional requirement since the documentation provided by the bank was considered authentic in accordance with the administrative procedures of Sint Maarten.

In force *(ToR C.1.8)*

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

365. In the Kingdom of the Netherlands, each of the four countries has authority to decide individually if an international treaty is to be extended to that country or if it wishes a treaty to be concluded on its behalf. However this excludes the topics covered in article 3 of the Charter of the Kingdom of the Netherlands such as nationality and defence. Upon decision of the government of Sint Maarten to be covered by a treaty, a decision is also made at a higher level in the Kingdom Council of Ministers. Approval is sought

to arrange for signature and to start the treaty approval procedure. Upon signature EOI agreements are published in the Treaty Series of the Kingdom of the Netherlands (*Traktaten Blad*). EOI agreements are then sent to the Council of State of the Kingdom for advice. The Council of State will submit their advice, which will be sent to Parliament in The Hague and Parliament in Sint Maarten. The States General Chambers will automatically adopt the treaty after 30 days if no questions are raised under a tacit consent procedure (*Stilzwijgende Goedkeuringsprocedure*).

366. Either the First Chamber (*Eerste Kamer* or *Senaat*), Second Chamber (*Tweede Kamer*) or the Minister Plenipotentiary of Sint Maarten can stop the tacit consent procedure by requesting an explicit consent procedure (*Uitdrukkelijke Goedkeuringsprocedure*). A Committee of the Second Chamber will first review the EOI agreement and its explanatory note. The matter is then handled during the plenary session of the Second Chamber. When adopted by the Second Chamber, the EOI agreement is submitted to a Committee of the First Chamber. This is followed by a debate in the First Chamber during the plenary session. Once adopted, the EOI agreement is approved. Entry into force depends on the terms of the agreement itself.

367. Sint Maarten has EOI relationships with 88 jurisdictions, including 22 bilateral agreements and is a party to two agreements involving multiple jurisdictions. To date, Sint Maarten has ratified: 19 TIEAs (with Antigua and Barbuda, Australia, Bermuda, Canada, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, Mexico, New Zealand, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Spain, Sweden, the United Kingdom and the United States); a DTC (with Norway); and the BRK (with the Netherlands, Aruba and Curaçao). In addition, the Multilateral Convention has been extended to Sint Maarten by The Netherlands. The status of these EOI agreements is set out in Annex 2. Sint Maarten is also covered by the EU Directive on the Taxation of Savings Income.

368. Sint Maarten has indicated that the ratification process normally takes between six months to one year. However, due to the dissolution of the Netherlands Antilles in October 2010, the ratification process of some of these EOI agreements has taken longer than usual.

369. Since the time of the Phase 1 review of Sint Maarten in July 2012, no new TIEAs have been signed by Sint Maarten Of the eight TIEAs that were awaiting entry into force at the time of the Phase 1 review, six have entered into force leaving two awaiting entry into force (British Virgin Islands and Cayman Islands). An EOI relationship exists with both jurisdictions by virtue of the Multilateral Convention Sint Maarten is nevertheless encouraged to bring into force both of the signed TIEAs.

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

370. For information exchange to be effective, the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. Other than the ratification process described above, there is no specific mechanism of incorporation of EOI agreements into Sint Maarten's law. Sint Maarten's competent authorities may use their domestic tax information gathering powers to obtain information relevant to exchange of information requests made pursuant to EOI agreements, by virtue of articles 40(1), 61, 63(1) and 63(5) of the National Ordinance on General National Taxes.

Determination and factors underlying recommendations

Determination
The element is in place

Phase 2 rating
Compliant

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

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

371. 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.

372. The policy of Sint Maarten with respect to expanding its EOI network has been to focus on jurisdictions that are OECD and EU members, as well as those jurisdictions with which it has a significant economic relationship. Sint Maarten has EOI relationships with 88 jurisdictions. Of its TIEA partners, 11 are Global Forum members, including 10 OECD member countries, seven EU member states, and seven G20 countries. EOI agreements (three DTCs and three TIEAs) are being concluded with an additional six jurisdictions, including four Global Forum members, three of which are G20 countries.

373. As of September 2014, Sint Maarten has signed 21 TIEAs, a DTC with Norway, the BRK with Aruba, Curaçao and Aruba, and the Multilateral Convention which was extended to Sint Maarten by the Kingdom of the Netherlands. Sint Maarten's first TIEA was signed in 2002 (in force since 2007) with its most important trading partner, the United States. Other relevant trading partners of Sint Maarten are the jurisdictions which form part of the Kingdom of the Netherlands (covered by the BRK, which is in force since 1964), Mexico (TIEA in force since 2011) and Spain (TIEA in force since 2010).

374. It is also noted that Sint Maarten has concluded TIEAs with a number of smaller jurisdictions of the region, such as Antigua and Barbuda, Bermuda, British Virgin Islands, Cayman Islands, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadine. Of these TIEAs, two are awaiting ratification (British Virgin Islands and Cayman Islands) An EOI relationship exists with both of these jurisdictions by virtue of the Multilateral Convention Sint Maarten is nevertheless encouraged to bring into force all of the signed TIEAs.

375. Negotiation priorities for Sint Maarten include a DTA with the Netherlands which is due to enter into force on 1 January 2016 and will replace the BRK agreement. It was decided that with the creation of Sint Maarten, the BRK should be amended into separate bilateral agreements with the jurisdictions concerned. In addition, negotiations are ongoing with one jurisdiction for a TIEA and two jurisdictions for DTAs.

376. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised that Sint Maarten had refused to negotiate or conclude an EOI agreement with it. Sint Maarten has an extensive EOI network in place, including through the extension of the Multilateral Convention. Nevertheless, Sint Maarten is encouraged to continue to develop its EOI network with all relevant partners.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Sint Maarten should continue to develop its EOI network with all relevant partners.

Phase 2 rating
Compliant

C.3. Confidentiality

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

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

377. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

378. The EOI agreements concluded by Sint Maarten generally meet the standard for confidentiality including the limitations on disclosure of information received and use of the information exchanged, which are reflected in Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA.

379. It is noted, however, that the Sint Maarten-British Virgin Islands TIEA does not expressly provide that "information may be disclosed in public court proceedings or in judicial proceedings". This potentially restricts the use of information as it may lead to evidence being inadmissible in courts. However, it would be possible to disclose information in these circumstances with the express written consent of the competent authority of the requested party. The authorities in Sint Maarten confirmed that in practice this would not restrict the possibility of using the information obtained via the Sint Maarten-British Virgin Islands TIEA in court.

380. These confidentiality obligations are also reflected in Sint Maarten's domestic law. Articles 50 of the National Ordinance on General National Taxes stipulates that "anyone who is involved with the implementation of this Ordinance and thereby acquires information about which he knows or should reasonably presume the confidential character, and to whom an obligation to maintain confidentiality does not already apply by reason of office, profession or statutory provisions with respect to such data, is required to maintain confidential such information except insofar as any statutory provision

obliges him to divulge such information or the necessity to do so arises from his duties."

381. An exception to this duty of confidentiality applies to anyone who has knowledge of such serious offences as described in articles 198 and 200 of the Criminal Procedure Code (article 50(2), National Ordinance on General National Taxes). Under these articles, any one with knowledge of such crimes as have resulted in life threatening danger, kidnapping or rape, or have knowledge of the intention of another towards one of these crimes, is obliged to immediately report the matter to an investigating officer. Moreover, the Minister has the discretion to grant dispensation from the duty of confidentiality (article 50(3), National Ordinance on General National Taxes).

382. A person who intentionally violates the confidentiality requirement will be sentenced to imprisonment of at most two years, or payment of a fine of at most ANG 100 000, or receive both penalties (article 50(4), National Ordinance on General National Taxes). Furthermore, a person who is to blame for the violation of the confidentiality requirement will be sentenced to imprisonment of at most six months or payment of a fine of at most ANG 50 000 (article 50(5), National Ordinance on General National Taxes).

383. There is no clear regulation in Sint Maarten's laws setting out whether information obtained from the requesting jurisdiction (including the EOI request) should be included in the taxpayer's file and open to his/her inspection. According to the Sint Maarten authorities information obtained from the requesting jurisdiction is not stored in the taxpayer's file and therefore is not subject to his/her inspection. There was one case during the period under review where the taxpayer requested to inspect the information obtained from the requesting jurisdiction, however, the request was declined by the tax authority and the information was not disclosed. Nevertheless, considering limited experience with this issue and lack of specific legal regulation, Sint Maarten is encouraged to monitor the issue and take necessary measures, if appropriate, to ensure that only the information which the requesting jurisdiction has indicated can be disclosed to the taxpayer is disclosed, for instance in the context of an appeal to the courts.

384. The template notice to the information holder contains a description of the requested information, the legal basis for the notice (i.e. reference to Art. 40 and 45 of the General National Tax Ordinance), the deadline for provision of the requested information and the contact person in the Sint Maarten tax administration. This is in line with the standard and Sint Maarten is encouraged to continue to use the template notice in its practice.

In practice

385. Requests sent to Sint Maarten arrive initially in the mailroom and are date stamped upon arrival. The request is then provided to the Head of the Tax Administration. A copy is made of the request and a new file is opened. The Head of the Tax Administration will enter the details into an EOI database and then review the request to determine whether the information requested is foreseeably relevant. Following this, the Head of the Tax Administration will address a letter to either the Head of the Inspectorate Department or the Head of the Audit and Criminal Investigation Department requesting the individual to research and obtain the requested information, upon receiving this letter the Department head will sign for it. The Head of the Tax Administration will then physically pass the file to the Department head who will pass it to an officer to work the request. The internal letter to the Department head will indicate an internal deadline of 6-8 weeks for completion.

386. All requests for information are kept in a locked cupboard to which only the Head of the Tax Administration has a key. This is within an office which is locked each evening. In addition, the office is based in a secure building which can only be accessed with a pass or by signing in visitors. Within the building itself, access to various floors is restricted by badge access. In addition, the tax administration operates a clean desk policy to ensure that papers are cleared at the end of each day.

387. All employees of the tax administration are under a general obligation of confidentiality as set out in Article 50 of the National Ordinance on General National Taxes. Breaches of confidentiality can result in a fine of ANG 50 000 (USD 27 933) and/or six months' imprisonment or if intentionally violated a fine of ANG 100 000 (USD 55 866) and/or two years' imprisonment. In addition, a wider confidentiality provision applies to all civil servants and sets out that breaches can result in termination of employment. This confidentiality obligation continues following the end of service.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 rating
Compliant

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

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

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

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

389. The limits on information which must be exchanged under Sint Maarten's EOI agreements mirror those provided for in the Article 7 of the OECD Model TIEA and Article 26(3) of the OECD Model Tax Convention. That is, information that is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged. All the EOI agreements signed by Sint Maarten contain such exceptions. These exemptions provided under Sint Maarten's EOI agreements are also reflected in its domestic laws. Under 64 of the National Ordinance on General National Taxes, Sint Maarten is not required to exchange information concerning trade, business, industrial, commercial or professional secrets, trade processes, or information disclosures which would be contrary to public policy, as well as information which cannot be obtained under Sint Maarten's laws or administrative practices (articles 64(1) and 64(2)).

390. As described in section B.1.5 on *Secrecy provisions* above, the scope of the professional secrecy protected under Sint Maarten's AML/CFT laws, Commercial Code and Penal Code are lifted if domestic or foreign authorities request information for tax purposes under article 46(1) of the National Ordinance on General National Taxes, which provides that no one may invoke the circumstance that he/she is, for whatever reason, under the obligation to observe secrecy, not even if such obligation is imposed by means of a national ordinance. However, an exception is made by article 46(2) of the National Ordinance on General National Taxes to protect professional secrecy for ministers of clergymen, civil law notaries, lawyers, doctors and pharmacists, who "can invoke the confidentiality that they, by reason of their state, office of profession are obliged to maintain". This clause was clarified by the Supreme Court of the Netherlands in a judgement provided in the case of *Tradman Netherlands B.V. v. the State of the Netherlands* on 27 April 2012. According to this decision, professional secrecy only relates to

information entrusted to these professionals in their capacity of confidant (see section *Professional secrecy and attorney-client privilege* above).

391. As described in section B.1.5, the practical application of the legal professional privilege in respect of information held by civil law notaries and lawyers may have a negative impact on effective exchange of information. The claim that the information is covered by the professional privilege is subject to the decision of the respective lawyer or the civil notary holding the information. In the majority of domestic situations, the claim is not challenged and the information is therefore not disclosed. Although during the period under review, the tax administration was able to obtain requested information from lawyers in all eight cases when requested, there was no case where a lawyer or a notary was the subject of the notice to provide the requested information and therefore no cases where the lawyer could have claimed professional privilege. As such, the application of legal professional privilege with regards exchange of information remains untested in practice. Consequently, Sint Maarten should monitor the practical application of legal professional privilege to ensure that no practical barriers exist which could prevent effective exchange of information.

392. Although it might be difficult to obtain the requested information, Sint Maarten's authorities confirmed that they will provide all information once obtained from lawyers and notaries regardless of the domestic scope of professional privilege unless providing such information would not be in line with the international standard as captured in the commentary to Article 26 of the OECD Model Tax Convention.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

393. In order for EOI to be effective, it needs to be provided in a time-frame 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.

394. With the exception of its agreement with the Cayman Islands, the TIEAs concluded by Sint Maarten include an obligation to either respond to the request, or provide a status update within 90 days of receipt of the request, provided for under paragraph 6(b) of Article 5. Paragraph 6 of Article 5 of the Sint Maarten-Cayman TIEA uses the words, "The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party." The TIEA with the United States includes no wording with respect to timing of responding to requests for information.

395. During the period under review, Sint Maarten received 16 requests from three EOI partners. Requests from EOI partners are counted as one request regardless of the number of entities to which the request relates. The response times for the requests are set out in the table below:

Response times for requests received during 3 year review period

		2011		2012		2013		Total	
		num.	%	num.	%	num.	%	num.	%
Total number of requests received *	(a+b+c+d+e)	1	100%	8	100%	7	100%	16	100%
Full response **: <90 days		0	0%	1	13%	0	0%	1	6%
<180 days (cumulative)		0	0%	5	63%	0	0%	5	31%
<1 year (cumulative)	(a)	0	0%	7	88%	0	0%	7	44%
1 year+	(b)	1	100%	1	13%	2	14%	4	25%
Declined for valid reasons	(c)	0	0%	0	0%	0	0%	0	0%
Failure to obtain and provide information requested	(d)	0	0%	0	0%	0	0%	0	0%
Requests still pending at date of review	(e)	0	0%	0	0%	5	86%	5	31%

* Sint Maarten counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

** The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was received.

396. During the period under review, Sint Maarten responded to one request within 90 days. Five requests were responded to within 180 days, seven requests within one year and four requests in over a year. Of the 16 requests received, four have been put "on hold" by one partner for domestic reasons. These four requests are still considered open and therefore they are included in the total of five pending requests at the time of review. However, Sint Maarten is not required to take any further action in respect of these requests. These four cases were considered to be complex cases. The remaining pending request, has been delayed as a result of difficulties in accessing certain types of banking information *(see B.1).*

397. The delays in responding to requests were attributable to a variety of reasons. Firstly, as a relatively young jurisdiction only in existence since October 2010, Sint Maarten has been required to create new policies and processes in a variety of areas including EOI. During the period under review, there was no clear internal policy in place regarding EOI to ensure efficient and timely responses to incoming requests (see further section C.5.2). In addition, on two occasions, requests for Sint Maarten were addressed to the Netherlands Antilles and sent therefore to Curaçao. This caused some delays although they were not extensive. Sint Maarten is encouraged to ensure that that its competent authority's contact details are available to its treaty partners (e.g. through the Global Forum Competent Authority database, Sint Maarten's competent authority website or through letters).

398. Furthermore, delays were experienced in the tracking and processing of the requests. Sint Maarten did not have a policy of date stamping incoming requests prior to 2012 which made it difficult to track delays during the processing of requests. Linked to this, on four occasions it was unclear when the request was received by Sint Maarten and on five occasions, the delay between the date on the original request and the date when the tax administration received the request exceeded 18 months.

399. Internally, Sint Maarten experienced delays in between information being provided to the competent authority by either the Inspectorate Department or the Audit and Criminal Investigation Department and then forwarded on to the requesting jurisdiction. This occurred on seven occasions and related to relatively simple requests which requested information to confirm the name, address and other personal details of taxpayers resident in Sint Maarten. These internal delays varied from three months to 12 months. Finally, there were delays occasioned in obtaining the information from the taxpayer or the information holder in respect of banking information (see further section B.1.4)).

400. Sint Maarten provided the requested information within 90 days in 6% of cases, within 180 days in 31% of cases, within one year in 44% of cases and 25% of cases took over a year to respond to during the period under

review. While the long response time might be explained by the reasons described above and the complexity of some of these requests it should be ensured that the provision of information is not unduly delayed and the deadlines for providing the information in timely manner are respected and met in practice. Long response times were also commented on by peers especially in respect of obtaining banking information. It is therefore recommended that Sint Maarten take measures to ensure that internal deadlines for obtaining and providing the requested information are respected to enable it to respond to EOI requests in a timely manner or provide status updates where the information cannot be provided within 90 days.

401. Over the period under review Sint Maarten did not systematically provide updates on the status of requests where information could not be provided within 90 days. This has also been confirmed by peers. Although Sint Maarten is taking steps to ensure that status updates on requests where information cannot be provided within 90 days are provided in all cases, these steps are not yet implemented and therefore it is recommended that Sint Maarten establish a routine process to update requesting authorities on the status of their requests where the response takes more than 90 days.

Organisational process and resources *(ToR C.5.2)*

402. In Sint Maarten, the Minister of Finance is the competent authority under EOI agreements and has the ultimate political responsibility over an EOI request. With the dissolution of the Netherlands Antilles and the change of the government structure, it was decided that the new Tax Administration of Sint Maarten should be delegated the authority to carry out the functions of the Competent Authority. By Ministerial Decree (nr. 2013/1321) dated 8 August 2013, the Head of the Tax Administration is mandated by the Minister to act as the Competent Authority for the exchange of information for tax purposes. The Head of Fiscal Affairs remains the Competent Authority for the negotiation of tax treaties.

403. The Tax Administration of Sint Maarten is made up of 111 full time equivalent employees. The Sint Maarten authorities indicated that there are presently 37 vacant roles within the administration but limitations in terms of funding means that these roles cannot be filled. Within the Head of the Tax Administration and Support Section as well as the Audit and Criminal Investigation Department there remain 10 and 9 vacancies amounting to 42% and 39% of the staffing totals respectively.

404. In practice, there are individuals within the tax administration who carry out particular roles to work on requests for information and this functions as a "virtual" unit. Sint Maarten receives only a limited number of requests each year and does not require an EOI Unit. Key roles are played

by the Head of the Tax Administration who will receive a request and then pass it on to officers within the Inspectorate Department or the Audit and Criminal Investigation Department to obtain the information requested.

405. Sint Maarten's competent authority is identified in all EOI agreements, the contact details of the competent authority are provided on the website of the Global Forum and any changes to the Competent Authority are communicated to the main treaty partners of the jurisdiction. Steps are being put in place to communicate contact details to all partners on a more regular basis.

Handling of EOI requests

406. Requests sent to Sint Maarten arrive initially in the mailroom of the tax administration and are date stamped upon arrival as of 2013. Prior to this date there was not a consistent policy of date-stamping. The request is then provided to the Head of the Tax Administration. A copy is made of the request and a new file is opened. The Head of the Tax Administration will enter the details into an EOI database and then review the request to determine whether the information requested is foreseeably relevant. During the period under review Sint Maarten did not send responses to the requesting jurisdictions to acknowledge receipt. The use of the database for tracking requests began in mid-2012 which allowed more effective monitoring and management of the timeliness of responses.

407. Provided the information requested is foreseeably relevant, an initial search for information will be carried out within the tax administration's own databases. In most cases, the taxpayer is known to the tax administration and the information is fully or partially available in their databases. This was the case in eight of the requests received during the period under review. If the information or aspects of the information is not available there it will be passed to either the Head of the Inspectorate Department or the Head of the Audit and Criminal Investigation Department. The former will be sent the request if it relates to an individual taxpayer and the latter will be involved if there is a need to obtain the information from a third party such as a bank. In addition, any taxpayer not registered in the system of the tax administration will be registered and a taxpayer identification number (crib number) will be issued, the taxpayer will also receive an invitation to file a tax return.

408. To involve the other departments, the Head of the Tax Administration will address a letter to either the Head of the Inspectorate Department or the Head of the Audit and Criminal Investigation Department requesting the individual to research and obtain the requested information, upon receiving this letter the Department head will sign for it. The Head of the Tax Administration will then physically pass the file to the Department head

who will pass it to an officer to work the request. The internal letter to the Department head will contain details of an internal delay of 6-8 weeks for completion. The timelines are monitored through use of a database however this database was only created in mid-2012 and has not been tracked on a consistent basis until recently. As a result, some delays have occurred during the period under review in between information being provided by the Inspectorate Department or the Audit and Criminal Investigation Department and then being sent on to the requesting jurisdiction.

409. When requests are logged in the database, the following information is stored:

- Requesting country or jurisdiction;
- Date the request was sent;
- Date the request was received;
- Date a reminder was sent;
- Date a reminder was received;
- Date the request was completed;
- Name of subject requested;
- Correspondence number;
- Name of the person sending the request;
- Name of the person working the request (within the tax administration);
- Date the response was sent to the requesting jurisdiction.

410. If information is required from a third party, a notice will be sent indicating the information required along with the name of the taxpayer. In the case of banking information, the account number will also be provided. No information is provided regarding the reasons why the information is requested. The bank will then be given a deadline of 15 days to respond to the letter. If the information is not provided, reminders will be sent. As set out in B.1.4, there has been no use of compulsory powers by the tax administration towards banks that have not provided the information within the deadline requested. It was noted by the Sint Maarten authorities that the emphasis is on ensuring good relations amongst such entities given the size of the community in Sint Maarten.

411. Once the information is obtained, the department head checks it to make sure it is complete, and transfers the answer to the Head of the Tax Administration. The Head of the Tax Administration reviews the information and issues a response to the requesting jurisdiction.

Communication

412. Sint Maarten will only respond to requests that are made in Dutch or in English. If the jurisdiction receives a request in another language it will communicate with the requesting jurisdiction to request a translation. Sint Maarten does not require a specific format for incoming requests for information. The majority of requests are received by regular post although on three occasions from two jurisdictions the request was received by express delivery. Sint Maarten only responds by registered post to requests received.

413. Following the dissolution of the Netherlands Antilles and the creation of Sint Maarten, requests for Sint Maarten were sometimes sent to the Netherlands Antilles and therefore arrived in Curaçao, thus resulting in additional delays. Certain older requests were followed up by reminders from the requesting jurisdiction which were not reaching the Head of the Tax Administration. This meant that on occasion, a request would begin to be processed following receipt of the third or fourth reminder.

IT tools, monitoring, training

414. The main database sources of information for the purposes of the tax administration are:

- Tax databases held by the Tax Administration
- The Trade Register held by the Chamber of Commerce
- Other government databases including the land registry and the civil registry

415. As noted above, since mid-2012 an EOI database has been used to monitor the status of requests. Of the employees present within the tax administration, a total of five have received training in respect of exchange of information although there are plans to increase this, resources permitting. Given the low number of requests received to date by Sint Maarten, this number would seem sufficient to allow for timely processing of requests for information.

416. In September 2014, the Tax Administration adopted a new exchange of information manual setting out relevant EOI procedures. The manual sets out procedures for correctly logging the request (including the use of a date stamp and confidentiality stamp), sending an acknowledgement letter within 7 days of receipt of the request and the process for validating the request at the outset. There is a chapter in the manual dedicated to the creation of an EOI database system to ensure all actions in relation to incoming and outgoing requests are logged. In addition, the manual includes several template letters including for sending an acknowledgement letter or status update

letter to the requesting jurisdiction and for sending a notice to a bank. The template notice to the bank includes the initial deadline of 15 days for the bank to respond, followed by a possible extension of a maximum of 30 days should this be requested by the bank. Other letters to third parties or other government agencies will contain a deadline of maximum four weeks followed by an additional 30 days maximum if no response is obtained within the initial deadline. The intention is to roll this manual out within the relevant departments to improve the timeliness of responses to requests. It is therefore recommended that Sint Maarten implement the new exchange of information manual. Implementation of the manual might further reveal that changes in administrative procedures and allocation of resources are required to ensure that the information is provided in a timely manner in all cases.

Conclusion

417. During the period under review, there were some delays in Sint Maarten's responses to requests for information. As a relatively young jurisdiction Sint Maarten has been required to create new policies and processes in a variety of areas including in the area of EOI. The delays experienced occurred at various stages during the request process including at the point of receipt by the tax administration, when passing information from the tax administration to the requesting jurisdiction along with delays in obtaining banking information from banks in Sint Maarten. There was no appropriate internal manual setting out clearly the internal delays and the deadlines to be imposed upon third parties. Inputs received from some of Sint Maarten's peers confirm that delays were experienced in the provision of banking information. There were reminders sent from requesting jurisdictions which sometimes provoked the first processing of the request. However, Sint Maarten is committed to effective EOI procedures and in September 2014, Sint Maarten created a new exchange of information manual clearly setting out the relevant procedures, checklists and templates. Sint Maarten should implement the exchange of information manual and, if necessary, take measures to ensure that adequate resources are allocated to EOI.

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

418. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. As noted under section B.2 on *Notification requirements and rights and safeguards* above, there is a requirement that the Minister of Finance hold the information for a minimum of two months after sending the notification to the taxpayer, before passing it to the requesting EOI partner (article 62, National Ordinance on General National Taxes). The Government of Sint Maarten proposes to

reduce this two-month period to 15 days. A bill is being prepared in which the National Ordinance on General National Taxes will be amended to this effect. Other than those matters identified earlier, there are no further conditions which may restrict the provision of exchange of information assistance. Other than those matters set out earlier in the report, there are no aspects of Sint Maarten's laws or practices that impose additional restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

Determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating	
Partially compliant	
Factors underlying recommendations	**Recommendations**
Sint Maarten provided the requested information within 90 days in 6% of cases and within 180 days in 31% of cases over the reviewed period. Long response times were also noted by peers.	Sint Maarten should ensure that internal deadlines for obtaining and providing the requested information are respected to enable it to respond to EOI requests in a timely manner.
During the period under review, Sint Maarten did not systematically provide status updates to EOI partners within 90 days.	Sint Maarten should ensure it provides status updates to EOI partners within 90 days when it is unable to provide a substantive response within that time.
In September 2014, the Tax Administration adopted a new EOI manual setting out exchange of information procedures, checklists and templates providing for effective exchange of information.	Sint Maarten should implement the exchange of information manual and, if necessary, take measures to ensure that adequate resources are allocated to EOI.

Summary of determinations and factors underlying recommendations

Overall rating
Partially Compliant

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Partially Compliant	Sint Maarten does not have an effective system of oversight in place to monitor and enforce the compliance of relevant entities with obligations to maintain or provide ownership and identity information. This is of particular concern with regards offshore companies	Sint Maarten should put in place a system of oversight to ensure compliance with the obligations to maintain or provide ownership information for all relevant entities to ensure that information is available in practice.
	There is limited oversight of a policy prohibiting a company that can issue bearer shares from obtaining a business license and there are no mechanisms to identify owners of bearer shares of NVs which issued bearer shares but do not conduct business in Sint Maarten or do not engage a TSP there.	Sint Maarten should introduce measures to ensure that the identity of all legal owners of NVs which issued bearer shares is known there in all cases.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Partially Compliant *(continued)*	Sint Maarten has recently introduced new legislation pertaining to the keeping of ownership information for trusts, partnerships and foundations. Since this legislation is recent it has not been sufficiently tested in practice.	Sint Maarten should monitor the operation of the new legislation in practice.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Partially Compliant	The system of oversight of accounting obligations is limited to tax supervision however compliance with tax obligations remains relatively low and no efficient enforcement measures were taken.	Sint Maarten should put in place an efficient system of oversight and enforcement to ensure compliance with the obligations to maintain accounting information in accordance with its law.
	Although the number of offshore companies in Sint Maarten is small and there is oversight of those that have engaged a TSP, it cannot be determined whether accounting information is actually available in respect of the remainder of these companies.	Sint Maarten should take measures to ensure that accounting information in respect of offshore companies is available in all instances.
Banking information should be available for all account-holders *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

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) *(Tor B.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Partially Compliant	Sint Maarten received three requests for banking information over the period under review and of them, one is still pending for more than a year due to obstacles in obtaining the requested information from the bank.	Sint Maarten should use the compulsory powers of the tax authority more effectively so that the requested information is provided in a timely manner.
	The practical application of legal professional privilege in Sint Maarten appears to go beyond that defined in the international standard, however, it remains to be tested in respect of obtaining information for exchange of information purposes.	Sint Maarten should monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information.
	There has been no case during the period under review where the requested information related to an offshore company and therefore the relation between the obligation to provide the information for exchange of information purposes and the grandfathering clause granting exception from providing the information to the tax authority remains untested. However, there is a risk that the grandfathering provisions would obstruct the access powers of Sint Maarten for exchange of information purposes.	Sint Maarten should monitor the use of the access powers in respect of the offshore entities and if necessary take measures to ensure that the requested information can be obtained from them.

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Appeals to Council of Appeal, which meets only twice a year, may delay the effective exchange of information in Sint Maarten.	Sint Maarten is encouraged to proceed with the intended change of the judicial procedural to allow an appeal to the judge in administrative law.
	The power of the Sint Maarten's tax authorities to promptly provide information for exchange purposes is subject to interpretation issues (namely, the minimum two-month waiting period and the definition of urgent reasons) that could prevent effective exchange of information within reasonable time.	Sint Maarten is encouraged to proceed with the intended change of its procedural framework to reduce the conditions and timelines in which information can be provided in response to a request for information.
	The prior notification procedure only allows for an exception in case of urgent reasons.	It is recommended that wider exceptions from prior notification be permitted in tax matters (e.g. in cases in which the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).
Phase 2 rating: Largely Compliant		
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Phase 1 determination: The element is in place.		Sint Maarten should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
Phase 1 determination: The element is not assessed.	**This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.**	
Phase 2 rating: Partially Compliant	Sint Maarten provided the requested information within 90 days in 6% of cases and within 180 days in 31% of cases over the reviewed period. Long response times were also noted by peers.	Sint Maarten should ensure that internal deadlines for obtaining and providing the requested information are respected to enable it to respond to EOI requests in a timely manner.
	During the period under review, Sint Maarten did not systematically provide status updates to EOI partners within 90 days.	Sint Maarten should ensure it provides status updates to EOI partners within 90 days when it is unable to provide a substantive response within that time.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Partially Compliant *(continued)*	In September 2014, the Tax Administration adopted a new EOI manual setting out exchange of information procedures, checklists and templates providing for effective exchange of information.	Sint Maarten should implement the exchange of information manual and, if necessary, take measures to ensure that adequate resources are allocated to EOI.

Annex 1: Jurisdiction's response to the review report[17]

Sint Maarten would like to use this opportunity to express its appreciation for the work done by the Assessment team, particularly the Secretariat's representatives for the manner in which they assisted us during our Phase 2 assessment. Sint Maarten is generally satisfied with the outcome of the Report and will continue to work towards full compliancy with the international standard.

Sint Maarten has received 16 EOI requests over the period under review, of which five requests were still pending on the date of review. On 1 June 2015 Sint Maarten responded to the outstanding EOI request pertaining to bank information. The remaining four EOI cases, which have been put on hold by the requesting state, are currently closed. As such all pending EOI requests have been fully responded to.

Although Sint Maarten did not have any EOI cases where requested information could not be provided, some gaps have been identified in Sint Maarten's enforcement to ensure the availability of accounting, identity and ownership information. In order to effectively address these shortcomings, a Ministerial Committee – consisting of the Tax Administration, the Chamber of Commerce and the Central Bank of Curacao and Sint Maarten – has recently been created with the task of updating the various databases; inactive companies that have not fulfilled their obligations will be dissolved and liquidated. In addition, the Government of Sint Maarten has prepared a legislative change to abolish the possibility to convert registered shares into bearer shares. With these initiatives, together with the proposed legislative amendments as mentioned in the report, Sint Maarten has confidence that its legal and practical infrastructure will be in line with the international standard.

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

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

Multilateral arrangements

In the case of Sint Maarten the relevant instruments with respect to EOI are as follows:

- Tax Arrangement of the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, BRK) of 28 October 1964 (in force as of 1 January 1965), which is an agreement concluded among the three former parts of the Kingdom – the Netherlands, Aruba, Curaçao and Sint Maarten (i.e. the former Netherlands Antilles[18]) – for the avoidance of double taxation and the prevention of fiscal evasion. Under Articles 37 and 38, it includes an EOI provision which generally follows the old wording of Article 26 of the OECD Model Tax Convention, i.e. before the inclusion of paragraphs 4 and 5 in the 2005 update.
- The Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol was extended to Sint Maarten by the Kingdom of the Netherlands. The amended version of the Convention entered into force for Sint Maarten on with effect from 1 September 2013. The status of the Multilateral Convention is set out in the below table. [19]

18. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curaçao and Sint Maarten) with the remaining three islands (Bonaire, St. Eustatius and Saba) joining the Netherlands as special municipalities. TIEAs concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, continue to apply to Curaçao, Sint Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and are administered by Curaçao and Sint Maarten for their respective territories and by the Netherlands for Bonaire, St. Eustatius and Saba.
19. The updated table is available at www.oecd.org/dataoecd/8/62/48308691.pdf.

- EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims at ensuring: *(i)* that savings income in the form of interest payments in favour of individuals or residual entities being resident of an EU Member State are effectively taxed in accordance with the fiscal laws of their state of residence; and *(ii)* that information is exchanged with respect to such payments. Since 2005, Sint Maarten has agreed to implement measures equivalent to these contained in this Directive via reciprocal bilateral agreements signed with each EU Member State (National Ordinance on Tax on Income from Savings (P.B. 2006, no 50)).

Bilateral and multilateral arrangements

List of EOI arrangements of relevance for Sint Maarten as at May 2015 including Tax Information Exchange Agreements (TIEAs), Double Tax Conventions (DTCs), the Tax Arrangement of the Kingdom of the Netherlands (BRK) and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters as amended (MAC). The EOI agreements listed below do not limit, nor are they limited by, provisions contained other EOI arrangements between the same jurisdictions concerned or other instruments which relate to co-operation in tax matters.

	Jurisdiction	Type of EoI arrangement	Date signed[a]	Date entered into force[b]
1	Albania	MAC	Signed	01/12/2013
2	Andorra	MAC	Signed	Not in force
3	Anguilla[c]	MAC	Extended	01/03/2014
4	Antigua and Barbuda	TIEA	29/10/2009	05/12/2013
5	Argentina	MAC	Signed	01/09/2013
6	Aruba	BRK	28/10/1964	01/01/1965
7	Australia	TIEA	01/03/2007	04/04/2008
		MAC	Signed	01/09/2013
8	Austria	MAC	Signed	01/12/2014
9	Azerbaijan[d]	MAC	Signed	Not in force
10	Belgium	MAC	Signed	Not in force
11	Belize	MAC	Signed	01/09/2013
12	Bermuda[c]	TIEA	28/09/2009	08/04/2015
		MAC	Extended	01/03/2014
13	Brazil	MAC	Signed	Not in force

	Jurisdiction	Type of EoI arrangement	Date signed[a]	Date entered into force[b]
14	British Virgin Islands[c]	TIEA	11/09/2009	Not in force
		MAC	Extended	01/03/2014
15	Cameroon	MAC	Signed	Not in force
16	Canada	TIEA	29/08/2009	01/01/2011
		MAC	Signed	01/03/2014
17	Cayman Islands[c]	TIEA	29/10/2009	Not in force
		MAC	Extended	01/01/2014
18	Chile	MAC	Signed	Not in force
19	China (People's Republic of)	MAC	Signed	Not in force
20	Colombia	MAC	Signed	01/07/2014
21	Costa Rica	MAC	Signed	01/09/2013
22	Croatia	MAC	Signed	01/06/2014
23	Curaçao	BRK	28/10/1964	01/01/1965
24	Cyprus[e]	MAC	Signed	Not in force
25	Czech Republic	MAC	26/10/2012	01/02/2014
26	Denmark	TIEA	10/09/2009	01/06/2011
		MAC	Signed	01/09/2013
27	Estonia	MAC	Signed	01/11/2014
28	Faroe Islands[f]	TIEA	10/09/2010	01/07/2011
		MAC	Extended	01/09/2013
29	Finland	TIEA	10/09/2009	01/06/2011
		MAC	Signed	01/09/2013
30	France	TIEA	10/09/2009	01/08/2012
		MAC	Signed	01/09/2013
31	Gabon	MAC	Signed	Not in force
32	Georgia	MAC	Signed	01/09/2013
33	Germany	MAC	Signed	Not in force
34	Ghana	MAC	Signed	01/09/2013
35	Gibraltar[c]	MAC	Extended	01/03/2014
36	Greece	MAC	Signed	01/09/2013
37	Greenland[f]	TIEA	10/09/2009	01/05/2012
		MAC	Extended	01/09/2013
38	Guatemala	MAC	Signed	Not in force

	Jurisdiction	Type of EoI arrangement	Date signed[a]	Date entered into force[b]
39	Guernsey[c]	MAC	Extended	01/08/2014
40	Hungary	MAC	Signed	Not in force
41	Iceland	TIEA	10/09/2009	01/02/2012
		MAC	Signed	01/09/2013
42	India	MAC	Signed	01/09/2013
43	Indonesia	MAC	Signed	01/05/2015
44	Ireland	MAC	Signed	01/09/2013
45	Isle of Man[c]	MAC	Extended	01/03/2014
46	Italy	MAC	Signed	01/09/2013
47	Japan	MAC	Signed	01/10/2013
48	Jersey[c]	MAC	Extended	01/06/2014
49	Kazakhstan	MAC	Signed	Not in force
50	Korea	MAC	Signed	01/09/2013
51	Latvia	MAC	Signed	01/11/2014
52	Liechtenstein	MAC	Signed	Not in force
53	Lithuania	MAC	Signed	01/06/2014
54	Luxembourg	MAC	Signed	01/11/2014
55	Malta	MAC	Signed	01/09/2013
56	Mexico	TIEA	01/09/2009	04/02/2011
		MAC	Signed	01/09/2013
57	Moldova	MAC	Signed	01/09/2013
58	Monaco	MAC	Signed	Not in force
59	Montserrat[c]	MAC	Extended	01/10/2013
60	Morocco	MAC	Signed	Not in force
61	Netherlands	BRK	28/10/1964	01/01/1965
62	New Zealand	TIEA	01/03/2007	02/10/2008
		MAC	Signed	01/03/2014
63	Nigeria[g]	MAC	Signed	Not in force
64	Norway	DTC	13/11/1989	17/12/1990
		Protocol	10/09/2009	01/09/2011
		MAC	Signed	01/09/2013
65	Philippines	MAC	Signed	Not in force
66	Poland	MAC	Signed	01/09/2013

	Jurisdiction	Type of EoI arrangement	Date signed [a]	Date entered into force [b]
67	Portugal	MAC	Signed	Not in force
68	Romania	MAC	Signed	Not in force
69	Russia	MAC	Signed	Not in force
70	Saint Kitts and Nevis	TIEA	11/09/2009	06/11/2014
71	Saint Lucia	TIEA	29/10/2009	01/10/2013
72	Saint Vincent and the Grenadines	TIEA	28/09/2009	31/07/2013
73	San Marino	MAC	Signed	Not in force
74	Saudi Arabia	MAC	Signed	Not in force
75	Seychelles	MAC	Signed	Not in force
76	Singapore	MAC	Signed	Not in force
77	Slovak Republic	MAC	Signed	01/03/2014
78	Slovenia	MAC	Signed	01/09/2013
79	South Africa	MAC	Signed	01/03/2014
80	Spain	MAC	Signed	01/09/2013
		TIEA	10/06/2008	27/01/2010
81	Sweden	TIEA	10/09/2009	20/04/2011
		MAC	Signed	01/09/2013
82	Switzerland	MAC	Signed	Not in force
83	Tunisia	MAC	Signed	01/02/2014
84	Turkey	MAC	Signed	Not in force
85	Turks and Caicos Islands [c]	MAC	Extended	01/12/2013
86	Ukraine	MAC	Signed	01/09/2013
87	United Kingdom	TIEA	10/09/2010	01/05/2013
		MAC	Signed	01/09/2013
88	United States	TIEA	17/04/2002	22/03/2007
		MAC	Signed	Not in force

Notes: a. Some of the bilateral arrangements originally covered the Netherlands Antilles and continue to apply to Sint Maarten

b. Please note that the Kingdom of the Netherlands extended the Multilateral Convention and the Protocol amending the Convention to Sint Maarten. The latter entered into force for Sint Maarten on 1 September 2013. In respect of the Multilateral Convention as amended this column reports information regarding the partner jurisdiction.

c. Extension of the Multilateral Convention by the United Kingdom.

d. Azerbaijan deposited its instrument of ratification of the Multilateral Convention on 29 May 2015 and this Convention will enter into force for Azerbaijan on 1 September 2015.

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

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

f. Extension of the Multilateral Convention by the Kingdom of Denmark.

g. Nigeria deposited its instrument of ratification of the Multilateral Convention on 29 May 2015 and this Convention will enter into force for Nigeria on 1 September 2015.

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

Civil and commercial laws

Book 2 of the Civil Code, of 29 December 2003 (Official Gazette 2004, no. 6, as amended by P.B. 2004, no. 98 and P.B. 2006, no. 71)

Commercial Code of Sint Maarten

Penal Code of Sint Maarten, of 4 October 1913 (Official Gazette 1913, no. 67, as amended)

Trade Register Ordinance, of 9 September 2009 (P.B. 2009, 51)

Trade Register Decree, of 22 December 2009 (P.B. 2009, 71)

Business and Directors' License Policy for Offshore Companies, of 7 March 2006

Trust Ordinance (AB 2014, no. 7)

Ordinance on Partnerships (AB 2014, no. 13)

Ordinance on the amendment of Book 2 of the Civil Code (AB 2014, no. 11)

Tax laws

National Ordinance on General National Taxes, of 3 August 2001 (P.B. 2001, no. 81, as amended by P.B. 2001, no. 145; P.B. 2006, no. 50; P.B. 2006, no. 98; P.B. 2007, no. 110 and P.B.2008, no. 74)

Explanatory Note to the National Ordinance on General National Taxes, of 3 August 2001 (P.B. 2001, no. 81, as amended by P.B. 2001, no. 145; P.B. 2006, no. 50; P.B. 2006, no. 98; P.B. 2007, no. 110 and P.B.2008, no. 74)

National Ordinance on Income Tax 1943, of 15 March 2002 (P.B. 2002, no. 63, as amended by P.B. 2006, no. 50; P.B. 2006, no. 71; P.B. 2006, no. 98; P.B. 2006, no. 99 and P.B. 2008, no. 68)

Profit Tax Ordinance, of 6 March 2002 (P.B. 2002, no. 54, as amended by P.B. 2002, no. 83; P.B. 2004, no. 16; P.B. 2006, no. 98; P.B. 2007, no. 110; P.B. 2009, no. 54 and P.B 2009, no. 77)

Dividend Withholding Tax Ordinance, of 29 December 1999 (P.B. 1999, no. 246, as amended by P.B. 2001, no. 89; P.B. 2001, no. 144 and P.B. 2001, no. 145)

National Ordinance on Tax on Income from Savings, of 12 July 2006 (P.B. 2006, no 50)

Regulated activities

National Ordinance on the Supervision of Banking Institutions, of 2 February 1994

National Ordinance on the Supervision of Investment Institutions and Administrators, of 18 December 2002

National Ordinance on the Supervision of Trust Service Providers, of 23 December 2003 (Official Gazette 2003, no. 114)

National Decree of 15 June 2010, laying down general provisions for the enforcement of article 12, second paragraph of the National Ordinance on the Supervision of Trust Service Providers

National Decree on the Custody of Bearer Certificates, of 15 June 2010 (P.B. 2010, no. 36)

Foreign Exchange Transactions Regulations for Curaçao and Sint Maarten (August 2010)

AML/CFT laws

National Ordinance on Identification when Rendering Services, of 5 July 2010 (P.B. 2010, no. 40)

National Ordinance Reporting Unusual Transactions, of 13 July 2010 (P.B. 2010, no. 41)

Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing for Administrators of Investment Institutions and Self-Administered Investment Institutions (May 2011)

Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing for Company (Trust) Service Providers (May 2011)

Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing for Credit Institutions (May 2011)

Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing for Money Transfer Companies (May 2011)

Provisions and Guidelines on the Detection and Deterence of Money Laundering and Terrorist Financing for Insurance Companies and Intermediaries (Insurance Brokers) (May 2011)

Annex 4: People interviewed during the on-site visit

Officials from the Sint Maarten Tax Administration

Officials from the Central Bank of Curaçao and Sint Maarten

Officials from the Ministry of Finance

Officials from the Ministry of General Affairs

Representative from the Office of the Attorney General of Sint Maarten

Officials from the Sint Maarten Financial Intelligence Centre

Officials from the Sint Maarten Chamber of Commerce and Industry

Officials from the Department of Economic Affairs

Representatives from the private sector (tax advisors, lawyers, accountants)

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: SINT MAARTEN

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

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

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

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

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