

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

NIUE



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Niue 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

March 2016
(reflecting the legal and regulatory framework
as at December 2015)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 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 Niue as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three-year period (from 1 January 2012 to 31 December 2014).

2. Located in the South Pacific Ocean, Niue is a very small island State with a population of approximately 1 600 inhabitants and a tiny economy. Formerly a New Zealand territory, in 1974 Niue chose to become self-governing in free association with New Zealand. Niue is responsible for its external affairs and enters into treaties in its own right. New Zealand has accepted a responsibility to act for Niue in defence and foreign affairs matters if requested by Niue. Geographic isolation, limited natural resources and a small population hamper the development of an independent economy. Cyclones occasionally devastate the island's infrastructure, including housing and tourist facilities.

3. In 1994, Niue introduced a series of measures designed to promote the island as an offshore financial centre. The offshore legislation was repealed in 2006 and the Government of Niue closed all offshore operations. Niue does not appear to have any functioning international financial centre or to have the capacity to establish such a centre in the immediate future. Out of the approximately 10 000 international business companies (IBCs) that were registered in Niue at the time it had an active IBC registrar, only 10 applied for re-registration after the registrar close-down. Nine of those 10 companies have now been struck off from the Companies Registry with the last three being removed on 7 December 2015. The remaining company has complied with its filing obligations with the Companies Registry. Currently there are less than 100 legal entities incorporated or carrying on a business in Niue.

4. Niue has committed to the standards of transparency and effective exchange of information. This review found that Niue has the legal framework for the availability of information in place, but certain aspects of the legal implementation need improvement. Ownership and identity information is generally available for all relevant entities. Identity and ownership

information may not consistently be available in respect of all domestic trusts and foreign trusts with Niuean trustees. Enforcement provisions are in place to enforce most requirements. In practice, the Registrar of Companies had adequate oversight of companies' compliance with their filing obligations and undertook enforcement action where required.

5. Requirements to maintain accounting records in Niue generally meet the international standard. Niue's Companies Act requires that reliable accounting records are kept for all domestic companies. Moreover, the Income Tax Act requires accounting records and underlying documentation to be maintained by taxpayers. Niuean law does not ensure that reliable accounting records or underlying documentation are kept for (i) all trusts which are administered in Niue or in respect of which a trustee is resident in Niue, and (ii) limited liability partnerships and special partnerships in all circumstances.

6. Niue had a taxpayer base of 750 taxpayers as at 12 November 2015, including 522 individuals, and the remaining 228 being business taxpayers (52 companies, 43 partnerships and 133 sole traders). Niue reports that due to its small size and the small size of its private sector, the Taxation Office works closely with businesses and companies to assist with compliance and that audits are conducted on a regular basis. A penalty amnesty concerning the filing of tax returns was provided for all taxpayers until 2012 and no penalties have been applied during the review period.

7. In 2002 Niue closed its offshore bank registry. During the first year under review (year 2012), there was only one bank providing services in Niue through a branch. In 2013, the bank closed its Niuean operations. Since April 2013, a New Zealand based bank offers transactional banking services in Niue through a Niuean agent, a government owned company. The Niuean authorities advised that since the bank operates directly from New Zealand and it is subject to AML/CFT supervision in New Zealand with respect to its Niuean transactions.

8. In respect of access to information, Niue's tax authority has broad powers to obtain bank, ownership and accounting information and has measures to compel the production of such information for domestic tax purposes. These powers have been used during the review in relation to domestic taxation matters. The ability of Niue's tax authority to use these powers for exchange of information with other jurisdictions under a Tax Information Exchange Agreement (TIEA) or Double Taxation Convention (DTC) is specifically provided in the Income Tax Act.

9. While Niue's authorities can *also* exchange some information pursuant to its Mutual Assistance in Criminal Matters Act 1998, this act only provides for exchange of information in criminal (tax) matters on a discretionary basis.

10. In August 2012, Niue signed its first TIEA with New Zealand, which is Niue's main trading partner. This agreement meets the foreseeably relevant standard; however, it was not in force at the time Niue's Phase 1 report was concluded. As a result, Niue was not able to effectively exchange information in accordance with the international standard. Following its Phase 1 review, Niue quickly concluded the ratification of the TIEA with New Zealand which is in force since October 2013. Moreover, Niue signed and ratified TIEAs with seven other jurisdictions, all of which are currently in force with the exception of the one signed with Sweden. Niue is waiting for a communication from Sweden regarding the completion of its ratification procedures. All TIEAs entered into by Niue allow it to exchange all foreseeable relevant information in accordance with the standard. Moreover, on 27 November 2015, Niue signed the Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) as amended, which will allow Niue to exchange information with up to 91 jurisdictions once the Convention is ratified and in force in Niue.

11. During the three year period under review, Niue received no requests for information. Peer input to this review has been received from Niue's main trading partner, New Zealand. New Zealand advises that it has had no need to request information from Niue, and would have limited need to do so in the foreseeable future given Niue's specific circumstances including the fact that Niue's international finance centre closed down in 2006.

12. Niue has nonetheless mobilised appropriate resources and established organisational processes within the Taxation Office and the Crown Law Office to be able to answer future requests. Niue is recommended to monitor the practical implementation of the organisational processes of the competent authority as well as the level of resources committed to EOI purposes to ensure that both the processes and level of resources are adequate for effective EOI in practice, should exchange of information requests be received in the future.

13. The changes introduced by Niue since the Phase 1 report demonstrate its commitment to implementing the international standards for transparency and exchange of information. Niue is encouraged to continue to review and update its legal and regulatory framework to address the remaining recommendations.

14. Niue 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 Niue's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Niue has been assigned the following ratings: Compliant for elements A.3, B.1, B.2, C.1, C.2 C.3 and C.4; and Largely

Compliant for elements A.1, A.2, and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Niue is Largely Compliant.

15. A follow up report on the steps undertaken by Niue to answer the recommendations made in this report should be provided to the PRG by June 2017 and thereafter in accordance with the process set out under the Methodology for the second round of reviews.

Introduction

Information and methodology used for the peer review of Niue

16. The assessment of the legal and regulatory framework of Niue and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*, and was prepared using the Global Forum’s *Methodology for Peer Reviews and Non-Member Reviews*.

17. The assessment has been conducted in three stages: the September 2012 Phase 1 Report, the June 2014 Supplementary Report and the present Phase 2 Report.

18. The 2012 Phase 1 Report of Niue was adopted and published by the Global Forum in October 2012. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at August 2012, other materials supplied by Niue, and information supplied by partner jurisdictions.

19. The 2014 Supplementary Report was prepared pursuant to paragraph 58 of the Global Forum’s Methodology and adopted and published by the Global Forum in August 2014. It was based in the amendments made to the legal and regulatory framework since the Phase 1 review. The assessment considered the laws, regulations, and EOI mechanisms in force or effect as at May 2014, and information supplied by Niue.

20. The Phase 2 assessment looked at the practical implementation of Niue’s legal framework, as well as any amendments made to the legal and regulatory framework since the Phase 1 review. The assessment was based on the laws, regulations, and EOI mechanisms in force or effect as at 18 December 2015. It also reflects Niue’s responses to the Phase 1 and Phase 2 questionnaires, other information, explanations and materials supplied by Niue. An on-site visit was dispensed on the basis of paragraph 26 of the Revised

Methodology for Peer Review and Non-Member Reviews. Conference calls were held with Niue's Taxation Office and Crown Law Office in the course of the review.

21. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Niue's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

22. The 2012 Phase 1, the 2014 supplementary review and the Phase 2 assessments were conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat. In the 2012 Phase 1 review they were: Mr. Sergio Luis Pérez Cruz, Administrator at the Mexican Tax Administration Service; Mr. Huw Shephard, Attorney General of the Turks and Caicos Islands; and Ms. Renata Teixeira from the Global Forum Secretariat. In the supplementary review and the Phase 2 assessments they were: Ms. Marycelia Garcia Valle, Administrator, Large Taxpayers Tax Audits Unit at the Mexican Tax Administration Service, Mexico, Ms. Kenisha Bacchus, Senior Head and Legal Counsel at the Financial Services Commission, Turks and Caicos Islands, and Ms. Renata Teixeira from the Global Forum Secretariat.

Overview of Niue

23. Niue is a raised coral atoll in the centre of a triangle of Polynesian islands, which comprises Tonga to the east, Samoa to the North and the Cook Islands to the south west. Niue is located 2 400 km north-east of New Zealand. A small island State, Niue stretches 19km from north to south and its population is around 1 600 inhabitants according to a census conducted in September 2006.¹ The next census is due to occur in 2016. Alofi is the country's capital. Official languages spoken in Niue are Niuean and English, and the currency used is the New Zealand dollar (NZD), with one NZD equal to EUR 0.574 as at 27 August 2015.²

1. Source: www.spc.int/prism/regional-data-and-tools/demographic-statistics, accessed on 12 March 2012.

2. www.xe.com/.

24. Niue's economy is based mainly on tourism, fishing and subsistence or small scale agriculture. Tourism, noni and taro farming are the most important activities. Other agricultural commodities produced include honey and small amounts of vanilla. The government is the main employer on the island with approximately 450-500 employees as at 31 December 2014. This constitutes approximately 30% of the population. Niue's Gross Domestic Product (GDP) amounted to NZD 20.54 million in 2006³ and NZD 30.7 million in 201⁴. In current prices Niue's economy has increased from NZD 28.1 million in 2012 to NZD 30.3 million in 2013, and with a further increase to NZD 31.3 million in 2014. The economy is fragile and faces constraints such as limited access to air services, shortages of professionals, limited land and poor soil quality. Natural disasters, especially cyclones, have long lasting impact. Geographic isolation, limited natural resources and a small population hamper the development of an independent economy.

25. Niue has one international flight a week and two in the peak season for tourists. There is only one embarkation point to Niue and that is New Zealand.

26. Niue's population has been relatively stable for the past two years and no longer been of as great concern to the government as in previous years. Over 20 000 Niueans currently live in New Zealand and a smaller number also live in Australia.

27. Niue is a member of the Pacific Islands Forum and the Asia-Pacific Group on Money Laundering. It committed to the international standards for transparency and exchange of information in tax matters in 2002.

General information on legal system

28. On 19 October 1974, Niue chose to become self-governing in free association with New Zealand. Under its constitutional arrangements with New Zealand, New Zealand remains responsible for Niue's defence. The Niue Cabinet of Ministers exercises the executive authority on behalf of the Queen Elizabeth II. The United Nations Secretariat has recognised Niue's full treaty-making capacity in 1994 and Niue has signed/ratified conventions only opened to States since then.

29. Niue is a parliamentary democracy. Its Parliament (Legislative Assembly) consists of 20 members – 14 constituency or village seats, and 6 common roll seats – elected every three years by universal suffrage. The Legislative Assembly Speaker is appointed from outside the elected members.

3. Source: www.spc.int/prism/regional-data-and-tools/economic-statistics, accessed on 12 March 2012.

4. Source: Statistics Report - National Accounts Estimates of Niue.

The Cabinet of Ministers has four members of which the Premier, who is elected by the members, is the leader of Niue. The Premier selects the Ministers of the Cabinet and also acts as Minister of Finance.

30. Niue's legal system is based on English common law. The Niue Constitution came into force in 19 October 1974 when both the Niue and New Zealand parliaments passed the Niue Constitution Act 1974. The statutes that apply in Niue include Acts of the New Zealand Parliament extended to Niue before 1974 that have not been repealed by the Niue Assembly since 1974, Niue ordinances (pre-1974) and Acts of the Niue Assembly (post-1974). The sources of Niuean law are, in order of priority, the Constitution, Acts of the Assembly, Regulations, Niuean custom, and the common law of Niue.

31. Treaties including Double Taxation Conventions (DTCs) appear to have the same legal status as other Niue's statute. An exception appears to exist for Tax Information Exchange Agreements (TIEAs), as they are brought into force by way of a cabinet regulation. A TIEA does not require approval from Niue Assembly to enter into force.

32. The High Court of Niue is the court of general jurisdiction for Niue. The High Court consists of a Chief Justice (based in New Zealand) and other judges and commissioners. The commissioners of the High Court are local lay persons. The High Court sits twice a year and also hears any urgent matters via teleconference. All civil matters are listed for hearing before the Chief Justice. The Niue Court of Appeal has five judges who have professional judicial experience in New Zealand (both current and former judges). There is a local court presided over by Commissioners that sits once a month depending on the number of criminal cases and its jurisdictional limits. The Civil Division of the High Court hears tax related matters.

The tax system

33. The current taxation system was established and evolved from the New Zealand system. Income tax, customs duty, manufactured goods tax, consumption tax and license fees apply in Niue. The assessment and collection of taxes is administered by the Financial Secretary of Niue, assisted by the Collector of Inland Revenue.

34. Individuals and companies are subject to income tax in Niue. The Income Tax Act 1961 and subsequent amendments established the taxation system and the taxable income rates.

35. An individual is deemed to be resident in Niue if his or her domicile is in Niue or if he or she is present in Niue for a period of 183 days in any 12 month period. Resident individuals are subject to income tax on their worldwide income. Non-resident individuals are subject to income tax on

income derived from sources in Niue. Individual income tax applies at progressive rates from 10% to 30%.

36. A company is deemed to be resident in Niue if it is incorporated in Niue or if its central administrative management is in Niue. Non-resident companies are subject to income tax in Niue if they derive income from Niuean sources. The term “permanent establishment” is not defined in Niuean law. Resident and non-resident companies are subject to tax at a fixed rate of 30% applied on their taxable income.

37. Individuals and legal entities carrying on business in Niue must file annual tax returns.

38. Niue has developed a network of TIEAs which currently comprises eight jurisdictions. On 27 November 2015, Niue became a signatory to the Multilateral Convention. Moreover, Niue reports that it is in TIEA negotiations with Korea and Chile.

Overview of the commercial laws, the financial sector and other relevant professions

39. Niue introduced a series of measures in 1994 designed to promote the island as an offshore financial centre. In 2006 the offshore legislation was repealed and the Government of Niue closed all offshore operations. This commenced with the repeal of the International Banking Act 1997 in 2002 and subsequent closure of the International Banking Registry in 2002 and the revocation of all licences granted under that act. The final act of closure of the offshore financial centre was on 31 December 2006 when, as a result of the repeal of the International Business Companies Act 1994, all international business companies registered thereunder were effectively dissolved (or restored if they requested for restoration under the new framework established by the Companies Act 2006). Under the Companies Act 2006, the Niue Companies Registry was established. The New Zealand Companies Registry undertakes the company registration services for the Niue Companies Registry and records are held both in Niue and New Zealand.

40. The Niue Companies Registry registers Niue resident companies and overseas companies and has re-registered less than 10 former International Business Companies (IBCs) since the IBC Registry closure in 2006. Nine of the 10 former have now been struck off from the Companies Registry with the last three being removed on 7 December 2015. Pursuant to the Companies Act 2006, all applications for re-registration are made to the High Court before the Niue Companies Registrar can accept such applications. Niue reports that the Niue Companies Act 2006 is based on the New Zealand and Samoa legislation.

41. Niue does not appear to have any functioning international financial centre or the capacity to establish such a centre in the immediate future.

42. There is no evidence of Niue promoting itself as an international financial centre. The Niue government website (www.gov.nu) does not make any reference to international finance or banking. There are a number of non-Niuean government sanctioned websites⁵ that continue to promote Niue as a potential jurisdiction to establish an offshore entity. However, the references to Niue in these websites do not appear to take into account the repeal of Niue's offshore legislation.

43. At the time the Phase 1 report was concluded in 2012, there was only one bank providing services in Niue - Bank South Pacific, which is headquartered in Papua New Guinea - and one money remittance business in Niue. Bank South Pacific, through its Niuean branch, offered only domestic facilities on the island. In 2013, Bank South Pacific closed its Niuean branch. Since April 2013, the Kiwibank based in New Zealand offers transactional banking services in Niue. The Kiwibank provides services through an agent in Niue, Niue Commercial Enterprises Limited. Moreover, there are currently two money remittance businesses in Niue. The remittance business sends and receives normally small amounts to and from overseas, mainly between relatives living in Niue and New Zealand.

44. Cash plays a very important role as Niue is a small economy. Cash is the main form of currency in the country. Payments are usually made by cash or cheque with a few retailers (the bank, travel agency and hotels) offering credit card services for tourists. No automated teller machines are currently available on the island; however, a number of businesses have EFTPOS (electronic funds transfer at point of sale) machines to accept payment and some will provide cash out services.

45. There is one lawyer in private practice in Niue and one accountancy firm that also offers tax advice. Notaries are the staff of the Niuean Crown Law Office. Currently, Niue does not have trust and company service providers. In order to operate as a business in Niue, all legal entities are required to apply for a licence to the Licensor of Businesses pursuant to the Business License Act 1997.

46. New Zealand lawyers, accountants and tax advisors and other company service providers can act in Niue; however, they must register first.

47. As at 1 August 2015, Niue has no insurance companies and all insurance services are provided from New Zealand. There are no casinos, dealers

5. See Offshore Simple <http://offshoresimple.com/niue.htm>, Law and Trust International (<https://lawstrust.com/en/country/nu>), Corporate Business Center (www.3c-corporate.com/jurisdictions/jurisdictions-niue/) and First advisor Limited – www.firstadvisor.com.

in precious metals, or real estate agents as Niuean land cannot be bought or sold. Any leases of land are required to be registered with the Niue Land Court Registry. There is no exchange for the trading in securities or assets, or the buying and selling of businesses. Neither are there any auction houses or investment advisors.

AML law

48. The Financial Transactions Reporting Act 2006 (FTRA) details Niue’s framework for combating money laundering and terrorist financing. A division of the Niue Crown Law Office acts as the Financial Intelligence Unit (FIU). The following government agencies are also involved in AML/CFT control measures: the Police (including Immigration and the Transnational Crimes liaison post); Treasury (including Tax and Customs), the Niue Bank and Monetary Board; other departments upon request.

49. The FTRA obliges banks, trustees acting by way of business, trust companies, company service providers, insurers, among others, to perform customer due diligence and maintain transactions records. The same obligation applies to lawyers, notaries, independent legal professionals and accountants when they act, for instance in managing client money, securities, or other assets or organising contributions for the creation, operation or management of companies, legal persons or arrangements.

50. Niue was admitted as a member of the Asia Pacific Group on Money Laundering (“APG”) in May 2001. Niue was assessed in the APG’s first round of mutual evaluations in 2005 and in the APG’s second round in July 2012. The 2012 report is currently available on the APG’s website. The report concludes that Niue has a low risk of money laundering and terrorist financing and has a very limited financial sector. A number of recommendations are included in the report, including recommendations concerning the implementation of the legal framework and the establishment of requirements on beneficial ownership.

Recent developments

51. On 27 November 2015, Niue became a signatory to the Multilateral Convention. Niue reports that the ratification to the Convention is expected to take place early in 2016.

52. Niue is also working on an Anti-Money Laundering and Countering the Financing of Terrorism Bill that addresses the deficiencies identified in Niue’s Mutual Evaluation Report of 2012 by the APG to meet the standards established by the FATF. The bill is expected to be introduced to the Legislative Assembly in early 2016.

Compliance with the Standards

A. Availability of information

Overview

53. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority⁶ may not be able to obtain and provide it when requested. This section of the report describes and assesses Niue's legal and regulatory framework for availability of information. It also assesses the implementation and effectiveness of this framework in practice.

54. Regarding ownership and identity information, the comprehensive obligations consistently imposed on companies and partnerships ensure that updated information is available either in the hands of public authorities or the entity itself. Tax law requires companies, partnerships, partners of partnerships, and trustees (of non-exempt trusts) to file annual returns. Those obligations are complemented by the customer due diligence requirements imposed by Niue's anti-money laundering (AML) law on obligated entities.

6. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange.

Identity and ownership information may not consistently be available in respect of all domestic trusts and foreign trusts with Niuean trustees.

55. Enforcement provisions are in place to ensure the availability of ownership and identity information.

56. In practice, during the review period the Registrar of Companies had adequate oversight of companies' compliance with their obligations to file annual returns and removed from the Register the non-compliant companies on a regular basis. Niue had a taxpayer base of 750 taxpayers as at 12 November 2015, including 522 individuals, and the remaining 228 being business taxpayers (52 companies, 43 partnerships and 133 sole traders). Niue reports that due to its small size and the small size of its private sector, the Taxation Office works closely with businesses and companies to assist with compliance. A penalty amnesty concerning the filing of tax returns was provided for all taxpayers until 2012. Niue's Taxation Office did not impose any penalties for non-compliance between 2012 and 2015.

57. For the reasons above, element A.1 is found to be in place, but in need of improvement and a rating of Largely Compliant is assigned.

58. Requirements to maintain accounting records in place in Niue generally meet the international standard. Niue commercial law imposes sufficient record keeping requirements on domestic companies. Moreover, all persons carrying on business in Niue are subject to the obligations to keep accounting records, including underlying documentation, pursuant to the Income Tax Act 1961 (ITA). Moreover, Niuean law does not ensure that reliable accounting records or underlying documentation are kept for all trusts which are administered in Niue or in respect of which a trustee is resident in Niue, limited liability partnerships and special partnerships in all circumstances. In practice, Niue's Taxation Office works closely with businesses and companies to assist with compliance of accounting obligations, also due to limited accounting services on the island particularly for the larger businesses. In the assessment of the Niue Tax Office, all businesses and companies who submitted returns maintained adequate accounting records during the review period. No penalties have been applied by the Tax Office during the review period. Element A.2 is found to be in place, but certain aspects of the legal implementation need improvement and a Largely Compliant rating was assigned.

59. Banks and other financial institutions have to comply with detailed customer due diligence obligations and must keep all records pertaining their customers' identity, as well as the nature and amount of financial transactions of account holders, for at least six years. Element A.3 is therefore found to be in place. During the first year under review (year 2012), there was only one bank providing services in Niue through a branch. In 2013, the bank closed its Niuean operations. Since April 2013, a New Zealand registered bank offers

transactional banking services in Niue through a Niuean agent, a Niuean government owned company. The Niuean authorities advised that since the bank operates directly from New Zealand and it is subject to AML/CFT supervision in New Zealand. A rating of Compliant is assigned to Element A.3.

60. During the period under review, Niue received no requests for exchange of information for tax purposes.

A.1. Ownership and identity information

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

Companies (ToR 7 A.1.1)

61. In Niue, companies can be private or public companies and are incorporated and managed in accordance with the Companies Act 2006 (CA).

62. A company is a private company if (CA s. 9(1)):

- its rules prohibit it from offering its securities to the public;
- its rules restrict the number of shareholders in the company to not more than 100; and
- it has not more than 100 shareholders.

63. A company that is not registered as a private company is a public company (CA s. 9(2)).

64. As at 3 April 2012, there were 46 domestic companies (45 private and 1 public) and 1 overseas company⁸. The number of companies has only slightly increased in the last three years. As at 30 June 2015, there were 52 domestic companies and 1 overseas company registered in Niue and after some struck off action carried on the Registrar in December 2015, only 42 domestic companies and the one overseas company remained in the Registrar.

65. Prior to 2006, Niue provided for a special regime pertaining to International Business Companies (IBCs). On 31 December 2006, the International Business Companies Act 1994 was repealed and all existing IBCs were dissolved by operation of law. However, prior to dissolution, those companies were given the opportunity to re-register as domestic companies, subject to all requirements of the CA. Pursuant to the CA, the applications for

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

8. Please see section on foreign companies.

restoration can be made to Registrar or the High Court (ss. 272 and 276). The Niuean authorities advised that, in practice, all applications for re-registration are made to the High Court before the Niue Companies Registrar can accept such applications. The Niue Companies Registry registers Niue resident companies and has re-registered less than 10 former IBCs since the IBC Registry closure in 2006. Pursuant to section 333 of the CA, in case an IBC wishes to re-register as a private company, the application must contain the full name of every shareholder of the company, and the number and class of shares held by each shareholder. Nine of the 10 former IBCs have now been struck off from the Companies Registry with the last three being removed on 7 December 2015.

66. Also prior to 2006, Niue did not have domestic companies legislation. Niuean resident companies were therefore typically incorporated in New Zealand under the New Zealand companies legislation.

Information held by government authorities

67. All domestic companies must lodge an application for incorporation with the Niue Companies Registry (the Registrar) (CA s. 6). The New Zealand Companies Registry undertakes the company registration services on behalf of the Niue Companies Registry and records are held both in Niue and New Zealand.

68. The application for incorporation of a company must specify, *inter alia*, the full name of every shareholder of the proposed company and the number of shares to be issued to every shareholder (s. 6(1)(e)).

69. Companies must file annual returns with the Registrar (s. 124). The Companies Regulations 2006 provide a form according to which annual returns must be filed (Form 10 contained in Schedule 1 of Companies Regulations). Changes in shareholders must be included, together with their addresses, in Form 10.

70. Company information, including a company's annual returns, is publicly available at the Registrar's website free of charge.⁹ The New Zealand Companies Office hosts the Registrar's website on behalf of the Government of Niue.

71. Persons wishing to incorporate a company must deliver to the Registrar of Companies the registration documents (i.e. the application form and consent of directors form) accompanied by the payment of the appropriate fees and a copy of the rules of the company, if they differ from the model rules. All documents filed with the Registrar must be in the Niuean language or English.

9. www.companies.gov.nu/cms.

Documents can be delivered by hand during normal business hours or through the post. Once these steps have been completed, the Registrar will issue a Certificate of Incorporation and the company is considered to be entered on the Register of Companies.

72. The name of a company must end with the term “Limited”. A company name will not be entered on the register if it is identical or almost identical to the name of another company. If an application for incorporation of a company specifies a name that does not meet the requirements of the Companies Act, the Registrar will incorporate the company with a name in the form “Company number x Limited”, where “x” is a unique number assigned to the company by the Registrar for this purpose.

73. Annual returns must be filed by Niuean and overseas companies and in relation to Niuean companies they include updated shareholder information.

74. The Registrar of Companies has adequate oversight of companies’ compliance with their obligations to file annual returns and removes non-compliant companies on a regular basis.

75. If a company fails to comply with its filing requirements or, has requested to be removed from the Companies Office Register, the Registrar must give public notice in the Gazette of the intention to remove the company from the Register. Public notice is given in different ways (the Registrar’s website, newspaper, radio, email, as well as a notice on the board at Niue Public Service Building). Notices are given on an annual basis. On 25 September 2015, for instance, a company removal notice was issued in relation to 11 companies. Pursuant to the notice, unless written objection to removal of these companies was delivered to the Registrar by 2 November 2015, the Registrar was required to remove these companies from the register (with basis on section 264 of the CA). As a result, the Registrar has effectively removed non-compliant companies in December 2015.

76. The number of companies registered in Niue is small and has been stable since the close down of Niue’s international finance centre in 2006. In 2006, the number of international business companies (IBCs) registered in Niue was approximately 10 000. Of these IBCs, only 10 have applied for restoration under the new company regime. While Niue has re-registered 10 former IBCs, these are subject to Niue’s ordinary laws, including the obligation to file annual returns with the Registrar. Nine of the 10 former IBCs have now been struck off from the Companies Registry with the last three being removed on 7 December 2015, following the procedure described in the paragraph above. The remaining company has been filing its annual returns on a regular basis.

Tax law

77. The Income Tax Act 1961 (ITA) requires taxpayers to file income tax returns (s. 5). “Taxpayer” is a person chargeable with income tax, meaning a person who derives assessable income (ITA s. 2). Companies that are incorporated or have a centre of administrative management in Niue are tax residents (ITA s. 2, as amended by the Income Tax Amendment Act 2009) and are taxable on their worldwide income (s. 80). However, Niue operates an exemption method for relieving double taxation (s. 84), which effectively means that overseas income is exempt in Niue if it is subject to income tax in the jurisdiction from which it is derived. Taxpayers that are companies must include the names of shareholders, their address, number of shares and amount of dividends received by each shareholder in their tax return (Company Income Tax Return Form) regardless of whether dividends are paid in the year.

78. Niue had a taxpayer base of 750 taxpayers as at 12 November 2015, including 522 individuals, and the remaining 228 being business taxpayers (52 companies, 43 partnerships and 133 sole traders). Taxpayer related information including tax returns is held in electronic and manual files and stored in a database.

79. Niue reports that due to its small the size and its small private sector, the Taxation Office works closely with businesses and companies to assist with compliance and prompts taxpayers to file returns. The Taxation Office reports having a spreadsheet with updated information of all business and corporate taxpayers and that it monitors if tax returns have been filed. Any person carrying on a business in Niue must obtain a license with Niue’s Business License Registry, and this Registry reports information on any licenses granted to the Taxation Office.

80. Niue undertook a review of its tax system in January 2010, assisted by the Pacific Financial Technical Assistance Centre. Reforms were introduced in particular in the area of personal income tax. Educational campaigns were established and a penalty amnesty concerning the filing of tax returns was given until 2012 to both individual and corporate taxpayers. More details are provided in section A.1.6 of this report.

Information held by companies

81. Pursuant to the CA, a company must maintain a share register that records the shares issued by the company and states, among others, the names, alphabetically arranged, and the last known address of each person who is, or has within the last seven years been, a shareholder (s. 40).

82. The share register must be kept at the registered office of the company in Niue (ss.40(2) and 17). The share register of the company may be maintained by an agent on behalf of the company (s. 40(3)).

Foreign companies

83. All overseas companies intending to carry on business in Niue are obliged to register with the Registrar within 20 working days of commencing business (CA s.281(1)). Failure to register is an offence and subjects the overseas company, on conviction, to a fine not exceeding 50 penalty units (NZD 5 000 or EUR 3 180) (s.281(4)). As at 3 April 2012, there was only one overseas company registered with the Niuean Registrar. The situation remained the same as at 7 December 2015. Information required to be registered includes: the address of the place of business in Niue; full name and address of one or more persons in Niue authorised to accept service of documents on behalf of the company; and the full name and residential address of each director of the company. Ownership information does not have to be provided as part of the registration process, however.

84. A foreign company having a centre of administrative management in Niue becomes a resident for tax purposes and has to submit ownership information when filing tax returns (ITA ss.2 and 5 and Company Income Tax Return Form).

85. During the review period, the one overseas company has not filed tax returns with Niue’s Taxation Office. Niue is recommended to ensure that the obligation of overseas companies to file tax returns is enforced in practice.

Information held by service providers

86. Niue has an AML regime, established under the Financial Transactions Reporting Act 2006 (FTRA).

87. The FTRA places obligations on financial institutions, defined by the Act to include (among others) (s. 3):

- a bank;
- a person carrying on the business as: (i) a trustee in respect of funds of other persons; or (ii) a trust or company service provider;
- A person carrying on a business of: (i) exchanging money; or (ii) collecting, holding, exchanging, or remitting funds, or otherwise negotiating funds transfers, on behalf of other persons; or (iii) preparing pay-rolls on behalf of other persons, in whole or in part, from funds collected; or (iv) delivering funds;

- a person carrying on the business of an insurer, insurance intermediary, securities dealer or futures broker; and
- a lawyer, notary, independent legal professional or accountant when providing services to a client relating to any or all of the following: (i) buying or selling real estate, businesses or business entities; (ii) managing money, securities or other assets; (iii) managing bank, savings or securities accounts; (iv) organising contributions for the creation, operation or management of companies, legal persons or arrangements.

88. These obligated persons must identify their customers and verify the customers' identity, when performing transactions such as opening an account or entering into a fiduciary relationship (FTRA ss.4 and 15). Where a person conducts or attempts to conduct a transaction through or by using the financial institution and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of another person, the financial institution must, in addition to identifying the customer, identify the person for whom, or for whose ultimate benefit, the transaction is being conducted (s. 15(4)). For purposes of the FTRA, a transaction means any deposit, withdrawal, exchange or transfer of funds and includes the opening of an account and the beginning of a fiduciary relationship or the use of trust or company services (s. 4).

89. The FTRA requires that financial institutions keep records of evidence of a person's identity and a record of all correspondence between the identified person and the financial institution for a minimum period of six years after the evidence was obtained (s. 17). The FTRA does not provide for where records must be kept - whether within or outside Niue.

90. There is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date by undertaking reviews of existing records. It is, therefore, possible that CDD at the time a transaction was conducted with a customer (e.g. when a fiduciary relationship was established) and that a later point in time there is a change in the ownership of that customer without triggering an obligation for the FTRA obligated person to update its files. The Niue FIU Guidelines for Financial Institutions issued in July 2009 merely refers to "in a situation where there has been a significant time lapse between dealing with a particular customer, it may be sensible to renew the verification to ensure that the financial institution is dealing with the same person".

91. Moreover, CDD obligations may be waived in the following cases (FTRA s. 15(6)):

- if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of

identity or if the transaction is considered low risk or if it is a regular transaction of institutions like utilities, pension funds and treasury, unless the financial institution has reason to suspect that the transaction is suspicious or unusual, or if the financial institution has reason to doubt the accuracy or veracity of previously obtained information about the identity of the person; or

- if the transaction is an occasional transaction not exceeding 1000 penalty units (NZD 100 000 or EUR 63 600) its equivalent in foreign currency or any other amount that may be prescribed, unless the financial institution has reason to suspect that the transaction is suspicious or unusual. Occasional transaction is defined as any transaction involving cash that is conducted by any person otherwise than through an account in respect of which the person is the holder (s. 15(7)).

92. If the customer is a legal entity, the financial institution must adequately verify its legal existence and structure, including: the customer's name, legal form, address and its directors; the principal owners and beneficiaries; and provisions regulating the power to bind the entity and the authorisation of any person purporting to act on behalf of the customer (FTRA s. 15(2)(a)).

93. As at 1 October 2015, there was one bank agent, two money remittance businesses, one lawyer in private practice and one accountancy firm in Niue.

94. Niue's FIU is an operational agency and resources are shared by key departments, rather than being devoted full-time to AML supervision. Officers from the Niue FIU, Crown Law Office, Police and Customs officers have attended relevant training at regional workshops.

95. Niue reports having not established a formal process of AML supervision to the lawyer and the accountancy firm during the review period. Niue reports, nonetheless, that both the lawyer and the accountant (who heads the small accountancy firm) and their activities are well known to the Tax Office and the Crown Law Office. Both professionals are former government employees. Niue advised that both the lawyer and the accountant mainly provide services to Niueans (local business, estate planning) and work closely in co-operation with the Taxation Office.

Nominees

96. The Companies Act does not require nominees to have information regarding the identity of the person on whose behalf the shares are held. No indication needs to be given in the share registers or information filed with the Registrar when shares are held by nominees either.

97. Notwithstanding the above, under the Niuean AML regime, obligated persons must, when they have reason to believe a customer is undertaking the transaction on behalf of another person, identify both the customer and the person for whom, or for whose ultimate benefit, the transaction is being conducted (FTRA section 15(4)). The Niuean AML regime covers trust and company service providers and also lawyers, accountants and notaries when managing securities and trustees in respect of funds of other persons (FTRA s. 3). The scope of professionals covered by AML seems reasonably broad covering most nominees acting by way of business and in particular those who manage securities. However, there is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date. The impact of the absence of a requirement to update the CDD information in the case of a nominee relationship is not clear. For example, where the nominee acts for a legal person, there is no requirement under the Terms of Reference for the nominee to know who the shareholders of that company are. Consequently, the failure to update the CDD information (such as business address, ownership structure or identity of directors) would not affect the reliability of information pertaining to the identity of the customer itself. Where the customer itself does change, then this should trigger a new obligation to conduct CDD in respect of the new customer. The assessment team is also of the view that the issue appears to be not material at this stage as there are very few companies in Niue.

98. In practice, Niue reports that both the lawyer and the accountant offer nominee services. Both professionals are obligated persons under Niue's AML regime. Niue has not yet established formal AML/CFT supervision but advises that the professionals and their activities are known to the Tax Office and the Crown Law Office. Niue is recommended to monitor the compliance of professionals with the obligation provided under the AML/CFT legislation to ensure the availability of ownership and identity information with regard to persons on behalf of whom they act in practice. In practice, the materiality of this gap appears to be very limited as on 7 December 2015 there were only 43 companies in Niue.

Conclusion and practice

99. The Companies Act requires filing of information on the legal ownership of companies with the Registrar. It also requires companies to maintain a register of their shareholders. Companies that are resident in Niue for tax purposes, including companies incorporated in Niue or abroad, are obliged to provide information identifying their shareholders in their tax returns. Financial institutions and some service providers are required under anti-money laundering legislation to perform customer due diligence and identify the owners of corporate customers, including cases where shares are

held by nominees. There is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date, however.

100. The number of companies registered in Niue is quite small and has been stable since the close down of Niue's international finance centre in 2006. The Registrar of Companies has adequate oversight of companies' compliance with their obligations to file annual returns and removes non-compliant companies from the Register on a regular basis. Niue's Taxation Office has oversight of the filing obligations of domestic companies, although penalties for not filing returns have not been applied during the review period. There is one lawyer in private practice and one accountancy firm in Niue and they provide company formation and nominee services but mainly cater Niueans according to the Niue government. Although both the lawyer and the accountancy firm are subject to the AML/CFT legislation, no supervision has been conducted by the Niuean authorities to test compliance with the AML/CFT customer due diligence and record retention requirements. Niue is recommended to ensure that there is sufficient supervision on persons that may be acting as nominees on a professional basis. The materiality of this gap in practice appears to be very limited as on 7 December 2015 there were only 43 companies in Niue.

Bearer shares (ToR A.1.2)

101. The ability of companies to issue bearer shares in Niue is precluded by the requirements relating to the issue and transfer of shares and the requirement that companies maintain share registers containing the names of shareholders (ss.38-44). In particular, shares in a company may only be transferred by entry of the name of the transferee on the share register (s. 38(2)). Entry of the name of a person in the share register as holder of a share is *prima facie* evidence that legal title to the share vests in that person (s. 41(1)). A company may treat the registered holder of a share as the only person entitled to: exercise the right to vote attaching to the share; receive notices; receive a distribution in respect of the share; and exercise the other rights and powers attaching to the share (s. 41(2)).

102. Bearer shares were previously provided for in section 28 of the International Business Companies Act 1994 (IBCA). The IBCA has been repealed as of 31 December 2006 and all companies which were incorporated according to the act were dissolved, though with the option of re-registering as domestic companies under the Companies Act 2006. The re-registration of a company must follow all requirements established in the Companies Act, as previously described in this section.

103. Niue reports having had no issues with bearer shares in practice.

Partnerships (ToR A.1.3)

104. Partnerships in Niue are governed primarily by a New Zealand law,¹⁰ the Partnership Act 1908 (PA). That Act defines a partnership as *the relation which subsists between persons carrying on a business in common with a view to profit* (PA s.4(1)). Partnerships in Niue are also governed by the Partnership Application Act 1994 (PAA).

105. Niuean law provides for the creation of three types of partnerships: general partnerships; limited liability partnerships; and special partnerships. As at 3 April 2012, 3 special partnerships and no limited liability partnerships were registered with the Niuean Registrar. It is not known exactly how many general partnerships exist in Niue. The Niuean Licensor of Business advised that 34 general partnerships have been issued with a business license for the period 2011-12 and 43 general partnerships have been issued with a license in the period 2014-15. By 7 December 2015, the 3 special partnership were no longer in operation.

General partnerships

106. A general partnership is not a legal entity nor is it separate from the individual partners that comprise the partnership. However, a general partnership is a distinct commercial entity for accounting purposes, with each partner jointly and severally liable for the liabilities of the partnership. A partnership relationship is typically formalised by a partnership agreement, but a written agreement is not essential and the existence of a partnership can be determined based on facts and a consideration of all of the surrounding circumstances. A business license is required to carry on a business in Niue (Business Licence Act 1997, s. 8). The Niuean Licensor of Business has information on the partners of general partnerships that applied for a business license (Business License Act 1997, s. 8).

107. Any person desiring to carry on any business shall make application to the Licensor for a licence to carry on the business. Each such application shall be delivered to the Licensor in the form prescribed and shall specify: (i) the full name, occupation and address in Niue of the applicant; (ii) whether the applicant intends his business to be that of a (a) sole operator; (b) partnership; (c) family business; (d) duly incorporated company; (iii) the precise nature of the business for which the licence is sought; (iv) the type of licence sought, namely (a) a wholesaler's licence; (b) a retailer's licence; (c) a service provider's licence; (v) each business premise at, in, or from which, the

10. Niue became independent of New Zealand in 1974. Any amendments performed by New Zealand after 1974 will only apply in Niue if approved by the Niuean Legislative Assembly.

applicant desires, or intends to engage in, or carry on the business; (vi) the opening and closing hours of the business for which, approval is sought; (vii) all other permits required to operate the business. Each applicant his/her duly authorised agent must sign the application for business license.

108. All partnerships carrying on business in Niue must furnish joint returns of income, stating the amount of taxable income and the entitlement of each partner to a share of it (ITA s.8). The partners are also obliged to include their allocable share of partnership income on their own separate returns of income, and tax is assessed on the partners rather than on the partnership (ITA s.8). Partners are, therefore, required to disclose their identity upon filing tax returns. Moreover, the ITA provides that all persons in business must file a tax return irrespective if a profit has been made or a loss incurred.

Limited liability partnerships

109. A limited liability partnership (LLP) is a partnership that is registered under section 12 of the Partnership Application Act (PAA). Pursuant to section 11 of the PAA, the Registrar of LLPs is required to maintain a register of limited partnerships. However, in practice this register is not operational as there are no LLPs in Niue.

110. The application for registering a LLP must be signed by all partners and must specify a partner of the partnership or a duly appointed attorney thereof such that the registered office of the partnership shall be the address in Niue of that partner or duly appointed attorney (PAA s.12(3)). Pursuant to Section 19 of the PAA, as part of the registration application, the partners must also lodge a guarantee in a prescribed form concerning the amount nominated by each partner as guarantee to all creditors of the partnership (s.12(4)).

111. The registration is valid for the period of one year (s.13(1)). Therefore, partners must apply every year for a renewal of the LLP registration (s.13(1)). The Niuean authorities advised that, in the absence of LLPs registered in Niue, the renewal form has not been created yet. Moreover, the Niuean authorities confirmed that the renewal form can include a requirement for identification of the partners. It is recommended that the renewal form include such a requirement to ensure that ownership is available for LLPs that are created in Niue in the future. The issue appears not to be material at this stage as there are no LLPs in Niue.

112. LLPs are subject to the same tax reporting requirements applicable to general partnerships (see above). As a result, information on all the partners is provided in annual tax returns and each partner must also submit a return, which indicates their allocated share of the partnership (ITA s.8).

Special partnerships

113. The Partnership Act (PA) makes provision for a type of partnership known as a special partnership. Special partnerships may be formed for the transaction of agriculture, mining, mercantile, mechanical, manufacturing or other business (s. 49(1)). These partnerships cannot be used for banking and insurance businesses (s. 49(2)). As at 7 December 2015, there are no special partnerships in Niue.

114. Special partnerships typically comprise a general partner that carries on the partnership business and several special partners who contribute capital. Special partners are only liable for the debts of the partnership to the extent of their capital contribution (s. 50).

115. Before commencing a special partnership, partners must sign a certificate including, *inter alia*, the names and places of residence of all the partners, distinguishing the general from the special partners, the amount of capital which each special partner contributes, and also (if any) the amount contributed by the general partners to the common stock (s. 51). A special partnership is not deemed formed until such certificate is acknowledged by each partner before the Court, and registered in the office of the Court in a book to be kept for that purpose by the Registrar open to public inspection (s. 54). Moreover, a copy of the above reference certificate must be published in the Niuean Gazette and in some newspaper published at the intended principal place of business of the special partnership (s. 56(1)). If the publication is not so made, the partnership shall be deemed to be a general partnership (s. 56(2)).

116. A special partnership cannot be entered into for a longer period than seven years. However, it may be renewed by means of the signature of a renewal certificate. The renewal certificate must be acknowledged, registered and published in like manner as the original certificate (s. 57).

117. Special partnerships are subject to the general taxation rules applicable to general partnerships and LLPs (see above). As a result, information on all the partners is provided in annual tax returns of partnerships carrying business in Niue and each resident partner must also submit a return, which indicates their allocated share of the partnership (ITA s. 8). Niue reports that on 7 December 2015 there were no special partnerships carrying on business in Niue.

Foreign partnerships

118. If a foreign partnership carries on business in Niue its partners are subject to tax in Niue. Partnerships must make a joint tax return of the income of the partnership, setting forth the amount of that income and the

shares of the several partners therein and every such return must be signed by all partners (ITA s. 8). Also, each partner is separately assessed and liable for the tax payable on his total income, including his share of the income on any partnership in which he is a partner (s. 8). Partners are, therefore, required to disclose their identity upon filing tax returns.

Information held by service providers

119. The FTRA requires financial institutions and designated businesses (including lawyers, legal professionals, notaries and accountants) to identify their customers (see section A.1.1 of this report).

120. There is no legal requirement for the establishment of a partnership through a service provider or a legal practitioner. If a service provider or a legal practitioner is involved, however, the general CDD requirements under the FTRA will apply (FTRA s. 15). There is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date.

Conclusion and practice

121. In relation to general partnerships, a combination of tax law and business licensing requirements ensure that information identifying partners is available in the circumstances required under the ToR. LLPs and special partnerships must provide information on the identity of their partners when registering. No LLPs are registered in Niue and the form for registry renewal has not been issued yet. Partners in all partnerships carrying on business in Niue must make a joint tax return of the income of the partnership, setting forth the amount of that income and the shares of the several partners therein and every such return must be signed by all partners (ITA s. 8). Also, each partner is separately assessed and liable for the tax payable on his total income, including his share of the income on any partnership in which he is a partner (s. 8). Partners are, therefore, required to disclose their identity upon filing tax returns.

122. As referred in section A.1.1, Niue had a taxpayer base of 750 taxpayers as at 12 November 2015, including 522 individuals, and the remaining 228 being business taxpayers (52 companies, 43 partnerships and 133 sole traders). Niue reports that due to its small size and its small private sector, the Taxation Office works closely with businesses and companies to assist with compliance. Niue's Taxation Office has oversight of the filing of tax returns. The Taxation Office also receives information from the Licensor of Business and cross check whether all businesses in Niue filed tax returns. A penalty amnesty concerning the filing of tax returns was given from 2010 to 2012. No penalties have been applied until 2015.

Trusts (ToR A.1.4)

123. This section deals with domestic and foreign trusts. Trusts can be created under the laws of Niue. Moreover, there are no obstacles that prevent a Niuean resident from acting as a trustee or administrator of a foreign trust.

Domestic trusts

124. Niue, as a common law jurisdiction, inherited the English concept of trusts. This includes express, discretionary, implied, and many other forms of trusts. In addition to case law, the legal framework applicable to trusts in Niue includes the Trustee Act 1956, a New Zealand enactment, the Trusts Act 1994 and the Trustee Companies Act 1995.

125. The Trusts Act 1994 does not apply to a trust which substantially provides benefits to (i) an individual ordinarily resident in or domiciled in Niue; or (ii) any corporation or other entity owned by an individual ordinarily resident or domiciled in Niue (s.5(7)). The Trustee Act 1956 would still apply to these trusts. The Trusts Act 1994 provides for an exemption from tax reporting obligations to trusts having all settlors, beneficiaries and property outside Niue.

126. The Trustee Companies Act 1995 is listed for repeal. The Niuean authorities confirmed that with the repeal of the offshore legislation the Trustee Companies Act 1995 has little relevance. Moreover, the Niuean authorities confirmed that this act has not been used or implemented and that the Registrar of Trustee Companies as provided in the act has never been appointed. There are no trustee companies currently registered in Niue.

127. Trust law in Niue does not require a written instrument in order to establish an express trust, except in case of unit trusts (Trusts Act 1994 s.6). A unit trust is defined in the Trusts Act as “a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust in any profits or income arising from the acquisition, holding, management or disposal of property” (s.2).

128. It is, however, the normal practice to identify the trustees, settlor(s) and beneficiaries in a written instrument. Identity information concerning beneficiaries would normally be known to the trustees, but is not required to be kept in a register or disclosed publicly. Often, trust deeds merely identify a class of persons who can benefit, at the discretion of the trustees, e.g. “any of the children of X and Y”.

129. Generally, there are no limitations or requirements for persons who can act as trustees in Niue. The Trustee Act 1956 provides for the appointment or substitution of new trustees if an existing trustee is “unfit” or

“incapable” of acting (s. 43). Further, the Courts are authorised to appoint or substitute new trustees when it is “expedient” to do so (s. 51). A company may not act as trustee of a testamentary trust (s. 48). The same person may act as settlor, trustee and beneficiary in relation to a particular trust.

130. Niue is a common law jurisdiction and as such has inherited the English concept of trusts. This means the acceptance of the common law institution of trusts in all its various forms and as it responds to changing circumstances. The Niue Interpretation Act 2004 indicates that Niuean common law is a source of law in Niue, The “common law of Niue” refers to the case law developed by the courts of Niue. There is, however, no specific case law in Niue addressing the extent of the duties of a trustee. Because Niue has a very limited set of precedents and because the judges in the superior courts are recruited from the New Zealand judiciary, the development of the common law of Niue appears to be heavily influenced by the case law of New Zealand, which is treated as highly persuasive. According to the Niuean authorities, the courts have to decide Niue cases on the basis of Niue law and, given its current limited domestic jurisprudence, decisions primarily use New Zealand judgments adapted to any specific Niue circumstances and by this means develop the common law of Niue through Niue precedents.

131. Moreover, the Niuean authorities have explained that when Niue became an autonomous state in 1974, its Constitution was drafted to expressly provide that “The existing law shall continue in force”. In this regard, the “existing law” applicable in Niue before 1974 was the law of New Zealand and it would be reasonable to infer that all of New Zealand’s precedents as at 1974 were applicable directly in Niue.

132. The assessment team was not able to confirm the precise application of the relevant New Zealand case law developed prior to 1974 and whether it sets out the fiduciary duties of trustees concerning keeping and maintaining information identifying the settlor(s) and beneficiaries of a trust. However, even if New Zealand case law developed prior to 1974 would address this matter, it remains unclear how this case law would interact with specific statutory provisions enacted by Niue later in time. One of the Niue statutes on trusts, the Trusts Act 1994, was enacted twenty years after the independence from New Zealand, and provides for specific rules and (tax) exemptions applicable to certain trusts. Again, in the absence of specific precedents in Niue, there is still uncertainty concerning the extent of the trustee duties under the common law of Niue. The case law developed by New Zealand (whether prior or after the independence) appears to provide very persuasive guidance to the Niuean courts, but it is not binding as Niue is an autonomous state and has an independent legal system.

133. Moreover, some Niuean statutes contain a savings clause providing that rules of equity and of common law shall continue in force except so far

as they are inconsistent with the relevant act. Neither the Trustee Act 1956 nor the Trusts Act 1994 contain such savings clause. Therefore, it remains unclear what the extent of common law obligations in Niue is and how they interact with express statutory provisions.

134. In practice, because Niue has a very limited set of precedents and because the judges in the superior courts are recruited from the New Zealand judiciary, the development of the common law in Niue is heavily influenced by the case law of New Zealand, which is treated as highly persuasive. The courts have to decide Niue cases based on Niue law and, given its current limited amount of detail, decisions primarily use New Zealand judgements adapted to any specific Niue circumstances and by this means develop the common law of Niue through Niue precedents. Niue advised that Niuean courts can be expected to follow closely the New Zealand common law on trusts.

Registration of trusts

135. There is no general obligation to register a trust. Pursuant to section 64 of the Trusts Act 1994, the Registrar of the Court does maintain a register of trusts and settlors or trustees may apply to register the trust; however, registration is not compulsory. The Niuean authorities confirmed that, as at 6 August 2012, there was one trust registered in Niue in addition to the Niue International Trust Fund¹¹ created under the Niue Trust Fund Act 2004. The situation remains the same in 31 August 2015. In order to register a trust, the name of the trust (if any), the name of the settlor, the name of the beneficiary or the purpose for which a trust is established must be notified to the Registry (s. 64(4)). Amendments to the terms of a registered trust must be notified to the Registry (s. 64(6)). The Niuean authorities confirmed that the Registrar holds trust records indefinitely.

Tax filing and disclosure requirements for trusts

136. Trustee(s) of a trust are, in principle, required to furnish a return of income if the trust derives taxable income (ITA s. 86). If the income is attributable to the beneficiary of the trust, the trustee is deemed to be the agent of that beneficiary, and shall be assessable and liable for income tax thereon according to the provisions applicable to agents (s. 86(a)). A trustee is required to file a tax return of the whole income so derived by him as trustee, and each such return shall be separate and distinct from any return of income derived by him under any other trust or in his own right (s. 86(c)). It is not required

11. The Niue International Trust Fund is a trust settled by the Niue Government in the benefit of the Niue Government and ultimately the people of Niue.

in the ITA that the trustee must identify the beneficiaries of the trusts when filing tax returns.

137. There is no requirement for a trustee to furnish a return if the trust meets the requirement to be an exempted trust (Trusts Act 1994, s. 65(2)). Pursuant to the Trusts Act 1994, a trust is an exempted trust if it meets the following requirements in any year (s. 65(1)): (i) the settlor is not resident in Niue during that year; (ii) none of the beneficiaries are resident in Niue during that year; and (iii) the trust property does not include any land situated in Niue. The Niuean Taxation Office confirmed that to the best of their knowledge no trusts have been exempted in accordance with this provision. It is noted, however, that there is no obligation for a person to apply for an exemption either.

138. Niue Taxation office reports having received no tax returns in relation to trusts during the period under review. No specific monitoring was conducted in relation to the compliance of tax obligations in relation to domestic trusts. Niue is recommended to ensure that the compliance of trustees with their tax obligations in relation to a trust are enforced in practice. It is noted that the role of tax obligations to ensure the availability of information of ownership information regarding trusts is limited in Niue to the extent that trusts having foreign settlors, beneficiaries and property are exempt from the obligation to file tax returns as described in the paragraph above.

Information maintained by service providers

139. The Niuean AML law, the FTRA, places CDD obligations on financial institutions and designated businesses and professionals, including on all persons carrying on the business as: (i) a trustee in respect of funds of other persons; or (ii) a trust or company service provider (ss.3, 4 and 15). The provision seems broad enough to cover Niuean trustees of domestic or foreign trusts. Therefore, all trustees acting by way of business are required by the FTRA to retain identity and ownership information on their customers.

140. However, there is no guidance in the FTRA concerning specific customer identification requirements in the case of trusts. Section 15(1) of the FTRA establishes that AML obligated persons must, *when establishing a business relationship or conducting a transaction, verify the identity of the person*. It is reasonable to expect that based on this provision trustees are required to identify the settlor of the trust. It is unclear whether the obligation under section 15 of the FTRA would cover the beneficiaries of the trust. Section 15(3) requires *reasonable measures to be taken to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in that transaction*. However, this provision deals with the parties of

the financial transaction (e.g. the transfer of funds) and there is no guarantee that the actual beneficiaries of the trust are going to always be identified. Moreover, there is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date.

141. Niue reports that the service sector in Niue is very small and there is one lawyer and one accountancy firm providing services in Niue. Niue has not established a formal process of AML supervision in relation to the lawyer and the accountancy firm during the review period. Niue reports, nonetheless, that both the lawyer and the accountant (who heads the small accountancy firm) and their activities are well known to the Tax Office and the Crown Law Office. Niue reports that the lawyer commonly acts as trustees of trusts that involve Niuean real estate or Niuean settlors or beneficiaries. Niue is recommended to ensure that there is sufficient supervision on persons that may be acting as trustees on a professional basis. In any case, as noted above, the AML obligations in Niue do not clearly require the identification of beneficiaries of trusts and a recommendation in this regard is given in the Phase 1 box.

Conclusion

142. Trusts having all settlors, beneficiaries and property outside Niue are exempt from tax reporting obligations in Niue. Registration of trusts is not compulsory and as at 31 August 2015 there was only one trust registered in Niue in addition to the Niue International Trust Fund created under the Niue Trust Fund Act 2004. AML obligations do not sufficiently ensure that the identity of the beneficiaries of a trust will be known in all cases. It remains unclear what the extent of common law obligations in Niue is, although practice indicates that New Zealand precedents are treated as highly persuasive. Therefore, a gap appears to exist in relation to the identification of trust beneficiaries. Niue has not yet established formal AML/CFT supervision of the two professionals (lawyer and accountant) that may provide trust services in the island. Niue is recommended to ensure that there is sufficient supervision on persons that may be acting as trustees on a professional basis.

Foreign trusts

143. Under Niue's laws, there are no obstacles that prevent a Niuean resident from acting as a trustee or administrator of a foreign trust. Foreign trusts will be typically governed by foreign law, so it is unclear whether and which common law duties would apply with respect to these arrangements.

144. Resident trustees of foreign trusts and beneficiaries of foreign trusts deriving income sourced in Niue are, in principle, subject to the same

general tax requirements applicable to domestic trusts. No tax return needs to be filed, however, if (i) the settlor is not resident in Niue during that year; (ii) none of the beneficiaries are resident in Niue during that year; and (iii) the trust property does not include any land situated in Niue.

145. Furthermore, resident trustees who qualify as “reporting institutions” under section 2 of the FTRA (e.g. a trustee in respect of funds of other persons or a trust or company service provider) are required to identify their customers. However, as mentioned above, there is no guidance in the FTRA concerning specific customer identification requirements in the case of trusts. It is reasonable to expect that trustees are required to identify the settlor of the trust. It is unclear whether the obligation under section 15 of the FTRA would cover the beneficiaries of the trust. There is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date. It is conceivable that a trust could be created which has no connection with Niue other than that the settlor chooses the trust to be created under or governed by Niue’s common law, with the settlors, beneficiaries, trustees and trust assets all located outside of Niue. In that event, there may be no information about the trust available in Niue.

Conclusion

146. It remains unclear whether trustees of foreign trusts are required to maintain information on beneficiaries in all cases. Niue is recommended to ensure that information is kept Niue has not yet established formal AML/CFT supervision of the two professionals (lawyer and accountant) that may provide trustee services in the island. Niue is recommended to ensure that there is sufficient supervision on persons that may be acting as trustees on a professional basis.

Foundations (ToR A.1.5)

147. There are no laws or common law principles that permit the establishment of foundations in Niue. No foundations were identified in practice.

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

148. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information.

Companies

149. Under the Companies Act (CA), a company is deemed incorporated only after being duly registered with the Niuean Registry (s.6). If the registration procedure is not properly concluded, legal personality is not acquired and, therefore, shareholders are fully liable in their own name for any liability incurred.

150. Failure to furnish an annual return including shareholder information is an offence and, on conviction, a director can be liable to a fine of up to 50 penalty units (NZD 5 000 or EUR 3 180) (CA s.124(9)).

151. Niuean companies are obliged to maintain a share register that reflects the legal ownership of the company. Failure to correctly maintain a share register is an offence and, on conviction, a company can be liable to a fine of up to 50 penalty units (NZD 5 000 or EUR 3 180) and a director can also be liable to a fine of up to 50 penalty units (NZD 5 000 or EUR 3 180) (CA s.40(4)).

152. All overseas companies intending to carry on business in Niue must register with the Registrar within 20 working days of commencing business (CA s.281(1)). Failure to register is an offence and subjects the overseas company and every director, on conviction, to a fine not exceeding 50 penalty units (NZD 5 000 or EUR 3 180) (s.281(4)). Likewise, failure to furnish an annual return is an offence and, on conviction, an overseas company and every director can be liable to a fine of up to 50 penalty units (NZD 5 000 or EUR 3 180) (s.287(6)). However, no ownership information concerning the overseas company has to be provided in the annual return.

153. The Companies Act also sanctions egregious offences with large monetary fines or imprisonment. In particular, section 339 provides that every director, employee, or shareholder of a company who, with the intent to defraud or deceive a person, destroys, alters, or falsifies any register, accounting records, or other document belonging to the company or makes a false entry in any of the above commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1 000 penalty units (NZD 100 000 or EUR 63 600), or both (s.339(4)). More generally, section 337 provides that every person, who with respect to a document required by or for the purpose of the Companies Act, knowingly makes a statement that is false or misleading or omits any matter knowing that the omission makes the document false or misleading commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1 000 penalty units (NZD 100 000 or EUR 63 600), or both (s.337(3)).

154. In practice, during the review period the Registrar of Companies had adequate oversight of companies' compliance with their obligations to file

annual returns and removed the non-compliant companies from the Register on a regular basis. The Registrar maintains statistics on the number of companies incorporated each year, the annual returns filed and the companies removed from the Register. Statistics on years 2012 to 2014 are included below.

Companies incorporated	
Year of Incorporation	Count
2012	6
2013	5
2014	5
Total	16

Company removals	
Year of removal	Count
2012	6
2013	2
2014	-
Total	8

Annual return filed	
Year of incorporation	Count
2012	39
2013	40
2014	40

Partnerships

155. Limited partnerships are obliged to register ownership information with the Registrar, and update that information on an annual basis upon requesting the renewal of its LLP certificate. If registration is not made or renewed the partnership loses its limited liability status and the partners become fully liable for all debts incurred without limitation. Moreover, the PAA provides that any person who: (i) does anything which is forbidden by or under the act; or (ii) omits to do something required or directed by or under the act; or (iii) contravenes or fails to comply with this Act commits an offense and is liable on conviction to a fine not exceeding 50 penalty units (NZD 5 000 or EUR 3 180) or to imprisonment for a term not exceeding one year or to both (s. 7).

156. Special partnerships that fail to register with the Registrar are deemed to be general partnerships and, therefore, partners do not have their liability limited and are liable as general partners.

157. In practice, the Registrar of LLPs is not operational as there are no LLPs in Niue. As at 7 December 2015, there were no special partnerships in Niue. Information on partners of general partnerships is available with the Licensor of Business.

Trusts

158. Resident trustees of domestic and foreign trusts are required to furnish a return of income if the trust derives taxable income. If they fail to do so, the tax laws provide for a penalty (see below). No tax return needs to be filed, however, if (i) the settlor is not resident in Niue during that year; (ii) none of the beneficiaries are resident in Niue during that year; and (iii) the trust property does not include any land situated in Niue. Tax returns do not contain information on the trust beneficiaries.

159. Trustees are also subject to the FTRA and the penalties provided in that act (see below).

160. Failure to fulfil any of his/her duties under common law by the trustee may lead to a risk of being sued by the settlor and/or the beneficiaries of the trust.

Tax laws

161. Pursuant to the Income Tax Act, all taxpayers, including companies, partnerships, partners of partnerships and trustees, must file tax returns. If they fail to do so, they are subject to, on conviction, a penalty not exceeding 2 penalty units (NZD 200 or EUR 127.20) (s. 127). A taxpayer that evades or attempts to evade default in the performance of any duty imposed by the ITA with intent to evade the assessment or payment of any sum which is or may become chargeable against him by way of tax, he is liable, on conviction, to additional tax (penal tax) not exceeding an amount equal to the amount of the deficient tax (s. 130).

162. As reported under A.1.1, Niue had a taxpayer base of 750 taxpayers as at 12 November 2015, including 522 individuals, and the remaining 228 being business taxpayers (52 companies, 43 partnerships and 133 sole traders). In 2010 Niue's tax base generated approximately NZD 3 million in tax revenue including all taxes. Niue reports that due to its small the size and the small size of its private sector, the Taxation Office works closely with businesses and companies to assist with compliance.

163. Niue undertook a review of its tax system in January 2010. Educational campaigns were established and a penalty amnesty concerning the filing of tax returns was provided for all taxpayers until 2012. The amnesty was granted to assist taxpayers with the transition to a revised system and education of taxpayers was prioritised in the reforms. The amnesty did not mean that tax returns were not required to be filed, but that penalties would not be applied for failure to file income tax returns. Until 7 December 2015, no penalties concerning the failure to file returns had been imposed by the Tax Office.

164. In terms of auditing the tax returns filed, Niue's Taxation Office reports that because there are not that many businesses and companies in the Island, it is able to conduct a desk audit in relation to all returns filed. In that process, they can verify if the returns are complete as well as compare the income reported in the return with the income reported in previous years. The Taxation Office also performs an on-site audit in some cases.

165. Public service in Niue is small and the tax staff dealing with requests operates from a small unit of three persons supervised by the collector of tax. One Taxation Officer is responsible for the administration of tax for companies, sole traders and partnerships; another one is responsible for administration of tax for individuals and the third officer deals with Niue Consumption Tax.

AML

166. Under the FTRA, if an obligated entity contravenes the record keeping requirement, does not comply with requirements to identify a customer or fails to retain the records it collects of a person's identity, the obligated entity is guilty of an offence punishable on conviction: in the case of an individual – by a fine not exceeding 250 penalty units (NZD 25 000 or EUR 15 900) or imprisonment for a term not exceeding 2 years, or both; or in the case of a body corporate - by a fine not exceeding 1 000 penalty units (NZD 100 000 or EUR 63 600).

167. During the review period, the FIU issued best practice guidelines which contain information and interpretation on the laws relevant to AML/CFT in Niue, including guidance on customer due diligence. No formal AML supervision of the lawyer and the accountancy firm were conducted during the review period. The Niue Taxation Office and the Crown Law Office report that the activities conducted by both professionals are nonetheless known to them and that they mainly cater local businesses and individuals.

Conclusion

168. During the review period the Registrar of Companies had adequate oversight of companies' compliance with the obligation to file annual returns and removed the non-compliant companies from the Register on a regular basis. It is noted that since the close down of Niue's international financial centre, from the 10 000 IBCs that once existed, only 10 companies have re-registered as ordinary companies. By 7 December 2015, nine of 10 the companies have been de-registered or struck from the Companies Registrar. The remaining company was compliant with its filing obligations.

169. Information on partners of general partnerships is available with the Licensor of Business and the Registrar of LLPs is not operational as there are no LLPs in Niue.

170. Identity and ownership information may not consistently be available in respect of domestic and foreign trusts with a Niuean trustee. Although the number of domestic and foreign trusts with a Niuean trustee is not known, the number of professionals in private practice in Niue who could act as trustees by way of business is very small, consisting of one lawyer and one accountancy firm.

171. Concerning the oversight of the Niuean tax authorities regarding the obligation to maintain ownership and identity information, such oversight focused on domestic businesses and companies carrying on business in Niue and did not cover, for instance, trusts or companies that did not carry on business in Niue. It is noted that the number of legal entities and service providers in Niue is very small and that, as at 7 December 2015, there was only one former IBC that re-registered as a domestic company. Moreover, in relation to trusts, an exemption from the obligation to file tax returns exists for trusts having foreign settlors, beneficiaries and trusts. A recommendation is already provided in the Phase 1 box for Niue to ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases. As a result, the materiality of any deficiency identified in Niue's monitoring and oversight appear to be very limited at the present stage.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Identity and ownership information may not consistently be available in respect of (i) domestic trusts and (ii) foreign trusts with a Niuean trustee. Although the number of domestic and foreign trusts with a Niuean trustee trusts is not known, the number of professionals in private practice in Niue who could act as trustees by way of business is very small, consisting of one lawyer and one accountancy firm.	Niue should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
During the review period, Niue did not have a regular oversight programme in place to monitor the compliance by professionals that could act as nominees and trustees with the obligation to perform customer due diligence pursuant with Niue's AML/ CFT framework. It is noted that the number of companies registered in Niue is very small and that the number of professionals in private practice in Niue who could act as trustees or nominees by way of business is extremely small, consisting of one lawyer and one accountancy firm.	Niue should establish a regular oversight programme to monitor the compliance of professionals that act as nominees and trustees with the obligation to perform customer due diligence pursuant with Niue's AML/ CFT framework.

A.2. Accounting records

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

172. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: (i) correctly explain all transactions; (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

General requirements (ToR A.2.1) Underlying documentation (ToR A.2.2) Document retention (ToR A.2.3)

Companies

Company Law

173. The Companies Act requires the directors of a Niuean company to ensure that accounting records for the company be kept (s. 129). Accounting records must: (i) correctly record and explain the transactions of the company; (ii) enable the financial position of the company to be determined with reasonable accuracy at any time; (iii) enable the directors to ensure that the financial statements of the company comply with section 130 and with any regulations made under the CA (e.g. that financial statements give a true and fair view of the matters to which they relate); and (iv) will enable the financial statements of the company to be readily and properly audited (s. 129).

174. Without limiting the above, section 129 also provides that the accounting records must contain entries of money received and spent each day and the matters to which it relates; and a record of the assets and liabilities of the company. Moreover, if the company's business involves dealing in goods, the company must maintain: (i) a record of goods bought and sold, and relevant invoices; and (ii) a record of stock held at the end of the financial year together with records of any stocktaking during the year; and (iii) if the company's business involves providing services, a record of services provided and relevant invoices (s. 129(2)).

175. Failure to comply with section 129 is an offence and, if convicted, every director of the company can be liable to a fine of up to 50 penalty units (equivalent to NZD 10 000 or EUR 5 678) (s. 129(5)).

176. Accounting records must be kept at either the company’s registered office or at another place provided that the Registrar has been notified of that place (CA s.119(6)). If accounting records are not kept in Niue, the company must ensure that accounting records of the company that disclose with reasonable accuracy the financial position of the company (at intervals not exceeding six months) and will enable the preparation of the company’s financial statements be kept in Niue. Failure to comply with section 119(6) is an offence and, if convicted, the company and every director of the company can be liable to a fine of up to 50 penalty units (equivalent to NZD 10 000 or EUR 5 678) (s. 117(3)).

177. All companies are obliged to maintain accounting records for the current accounting period and for the last seven *completed* accounting periods of the company (s.117(1)). The Registrar may, by notice in writing to the company, approve that records are kept for a period of less than 7 years (s. 117(2)). However, no such notices have been issued so far. Failure to comply with section 117 is an offence and, if convicted, every director of the company can be liable to a fine of up to 50 penalty units (equivalent to NZD 10 000 or EUR 5 678) (s. 119(8)). The Companies Act does not expressly require overseas companies to maintain accounting records. However, foreign companies that are tax residents in Niue are subject to the record keeping requirements established in the Income Tax Act (see below).

Tax law

178. The Income Tax Act 1961 (ITA) requires taxpayers to file income tax returns (s. 5). “Taxpayer” is a person chargeable with income tax (ITA s. 2), meaning a person who derives assessable income. Companies that are incorporated or have a centre of administrative management in Niue are tax residents (ITA s. 2, as amended by the Income Tax Amendment Act 2009). Tax returns must be accompanied by balance sheets and profit and loss accounts (s. 5(2)).

179. The ITA also establishes record keeping requirements that apply to “every person carrying on business or receiving income other than salary or wages” (s. 144). This includes domestic and foreign companies that are resident or carrying on business in Niue for tax purposes.

180. The records that are required to be kept must be sufficient to enable the Financial Secretary to assess the taxpayer’s *assessable income and allowable deductions to be readily ascertained by the Financial Secretary or any officer authorised by him in that behalf*. In particular, such records include both general accounting records and underlying documents such as *books of account recording receipts or payments or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such*

other documents as are necessary to verify the entries in any such books of account and in the case of an agent, records of all transactions carried out on behalf of his principal (ITA s. 144(3)).

181. The ITA does not specifically mention for how long accounting records and underlying documentation are required to be kept. However, the Income Tax Act provides for two prescribed circumstances where records need not be kept. The first instance is when the Treasurer specifically notifies the taxpayer in writing that retention is not required and the second instance is when a company is wound up and finally dissolved (ITA s. 144(2)). In the absence of any other prescribed circumstances, records have to be kept indefinitely. Niue advised that to date there has been no instance where the Treasury notified a taxpayer that records were no longer required to be kept. It is noted, however that, domestic and overseas companies that are dissolved are, therefore, not required to maintain accounting records and underlying documentation for a minimum period of five years as required under the Terms of Reference. Niue should require domestic and overseas companies to keep reliable accounting records, including underlying documentation for a minimum period of five years.

182. If a taxpayer fails to file his or her tax returns, he or she is subject to, on conviction, a penalty not exceeding 2 penalty units (NZD 200 or EUR 127.20) (s. 127). A taxpayer who evades or attempts to evade the performance of any duty imposed by the ITA with intent to evade the assessment or payment of any sum which is or may become chargeable against him or her by way of tax, he or she is liable, on conviction, to additional tax (penal tax) not exceeding an amount equal to the amount of the deficient tax (s. 130).

Partnerships

183. There are no specific accounting requirements in the Partnership Act (PA), but a partner is bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives (PA s. 31). In this regard, it is unclear what true accounts and full information entails and whether it will ensure reliable accounting records and underlying documentation are available for partnerships in all cases.

184. Notwithstanding the above, a partnership carrying on business in Niue must furnish joint returns of income, stating the amount of taxable income and the entitlement of each partner to a share of it (ITA s. 8). The partners are also obliged to include their allocable share of partnership income on their own separate returns of income, and tax is assessed on the partners rather than on the partnership. Annual tax returns must be accompanied by balance sheets and profit and loss accounts (s. 5(2)). The ITA provides

that accounting records and underlying documentation are required to be kept indefinitely (except for the circumstances analysed in the earlier paragraphs).

185. There appears to be no requirement to keep accounting records and underlying documentation if a limited liability partnership (LLP) or a special partnership incorporated in Niue does not carry on business in Niue, does not have Niuean partners and is not in receipt of Niuean source income. Niue is recommended to establish obligations for the maintenance of reliable accounting records, including underlying documentation, for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income. This gap does not however appear to be material at this stage, since there are no LLPs and no special partnerships in Niue.

Trusts

186. The Trustee Act does not explicitly require the keeping of accounting records. Under common law, however, there is a general duty on trustees to maintain proper accounts and records which is linked to the duty to inform beneficiaries. No specific case law exists in Niue in this regard. Foreign trusts will be typically governed by foreign law, so it is unclear whether and which common law duties would apply with respect to these arrangements.

187. Trustees are, in principal, required to furnish annual tax returns (ITA s. 86). However, there is no requirement for a trustee of a domestic or a foreign trust to furnish a return if the trust meets the requirement to be an exempt trust (s. 65(2)). Pursuant to the ITA, a trust is an exempt trust if it meets the following requirements in any year (s. 65(1)): (i) the settlor is not a resident in Niue during that year; (ii) none of the beneficiaries are resident in Niue during that year; and (iii) the trust property does not include any land situated in Niue.

188. Since domestic and foreign trusts may be exempt from tax filing obligations and the common law obligations applicable to them are unclear, there seem to be no express obligation to maintain accounting records and underlying documentation.

AML

189. Financial institutions and designated businesses are also subject to the FTRA, which imposes record keeping requirements. The FTRA requires records to be maintained that are reasonably necessary to enable customer transactions to be reconstructed at any time. Such records must include: the nature of the transaction; the amount of the transaction; the date on which the transaction was conducted; and the parties to the transaction (s. 14) (see Part A.3

of this report). Records are limited to transactions and not all transactions are conducted through financial institutions and designated service providers.

190. Obligated entities under the FTRA are obliged to maintain records for at least five years (s. 14(3)).

In practice

191. During the review period the Registrar of Companies did not have any system of oversight to ensure that accounting records were maintained by Niuean companies and the responsibility for oversight rested solely with the Taxation Office.

192. In practice, due to the size of Niue and the small private sector, Niue reports that its Taxation Office works closely with businesses and companies to assist with compliance. In many instances, the officers from the Taxation Office have conducted on-site visits to businesses/companies to assist them with their accounting obligations, due to limited accounting services available on the island. No penalties were applied during the period under review.

193. The Taxation Office also conducts desk audits on the tax returns received and verify in this process the taxpayers' financial statements. The Taxation Office reports that one of the difficulties it faces is the fact that Niue has a heavy cash economy. However, the use of (internet) banking services has recently become more common more recently in Niue that has facilitated the work of the tax officers, as they can use the bank statements as an additional element to verify whether the taxpayer is adequately reporting his/her income. Moreover, the Tax Office also carries out desk top verification against previous tax returns and information held on the tax database.

194. Tax returns were not filed by the four domestic companies that were former IBCs in Niue during the review period. On 7 December 2015, three of the four companies were struck off from the Company's Registrar for failure to file annual returns and the remaining company complied with its annual filing obligations. Those companies did not carry on a business in Niue during the review period and were not subject to oversight by the tax authorities, including on whether these companies maintained adequate accounting records and underlying documentation. The one overseas company also failed to file tax returns. Niue should ensure that there is sufficient oversight over all relevant entities and arrangements in Niue and that penalties are enforced where appropriate.

195. Public service on Niue is small and the tax staff dealing with requests operates from a unit of three persons supervised by the Collector of Tax. One Tax Officer is responsible for the administration of tax for companies, sole traders and partnerships.

196. It is noted that since the close down of Niue’s international financial centre, from the 10 000 IBCs that once existed, only very few have re-registered as ordinary companies. In this sense, since the number of legal entities and service providers in the island is very small, the materiality of any deficiency is very limited at the present stage.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
<p>Niuean law does not ensure that reliable accounting records and underlying documentation are kept under certain circumstances for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances. On 7 December 2015, there were no special partnerships and no limited liability partnerships in Niue. The number of trusts is not known but the number of professionals in private practice in Niue is very small, consisting of one lawyer and one accountancy firm.</p>	<p>Niue should establish obligations for the maintenance of reliable accounting records, including underlying documentation, for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.</p>
<p>Entities and arrangements other than domestic companies are not required to retain accounting records and underlying documentation for a minimum 5 year period except when they carry on a business in Niue or receive Niuean sourced income. On 7 December 2015, there was only one overseas company, no special partnerships and no limited liability partnerships in Niue. The number of trusts is not known but the number of professionals in private practice in Niue is very small, consisting of one lawyer and one accountancy firm.</p>	<p>Niue should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of 5 years.</p>

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
During the review period, a very small cohort of companies that were registered in Niue but did not carry on business there were not subject to oversight by the tax authorities, including on whether they maintained adequate accounting records and underlying documentation.	Niue should ensure that there is sufficient oversight over the compliance with the obligations to maintain accounting records and underlying documentation by companies registered in Niue, including when these companies do not carry on business in Niue and do not receive Niuean sourced income. Niue should also ensure that penalties are enforced where appropriate.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

197. The record keeping requirements for banks can be found in Niue's AML laws, namely the Financial Transactions Reporting Act 2006 (FTRA).

198. The FTRA requires that obligated institutions keep records of every transaction that is conducted through the financial institution as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the FIU (s. 14). The records must contain:

- the nature of the transaction;
- the amount of the transaction and the currency in which it was denominated;
- the date on which the transaction was conducted;
- the place and time of the transaction;
- the parties to the transaction;
- the nationality of the parties to the transaction;
- if a natural person is a party to the transaction, details of his or her valid passport, drivers licence or official identification; and
- if a legal entity is a party to the transaction, details of its constitution, if not older than three months.

199. A financial institution must keep the records for a minimum period of six years after the completion of the transaction (FTRA s. 14(3)).

200. The obligated persons must identify their customers and verify the customers' identity, when he or she opens an account with the financial institution or performs a transaction (FTRA s.4). If the customer is a legal entity, the financial institution must adequately verify its legal existence and structure, including: the customer's name, legal form, address and its directors; the principal owners and beneficiaries; and provisions regulating the power to bind the entity and the authorisation of any person purporting to act on behalf of the customer (FTRA s. 15(2)(a)).

201. The FTRA requires that obligated persons keep records of evidence of a person's identity and a record of all correspondence between the identified person and the financial institution for a minimum period of six years after the evidence was obtained (s. 17). The FTRA does not provide for where records must be kept - whether within or outside Niue or records must be kept up-to-date. The impact of the absence of a requirement to update the CDD information is not clear. For example, where financial institution deals with a legal person such as a company, there is no requirement under the Terms of Reference for the financial institution to know who the shareholders of that company are. Consequently, the failure to update the CDD information (such as business address, ownership structure or identity of directors) would not affect the reliability of information pertaining to the identity of the customer itself. Where the customer itself does change, then this should trigger a new obligation to conduct CDD in respect of the new customer. While the Niue Bank Act provides for the establishment of a central bank, the central bank has not been formed in Niue and there is no formal institutionalised mechanism in place for the supervision of the AML requirements in Niue.

202. If an obligated entity fails to comply the above-mentioned obligations, it is subject to the following penalties (ss.14 and 15):

- in the case of an individual, a fine not exceeding 250 penalty units (NZD 25 000 or EUR 15 900) or imprisonment for a term not exceeding 2 years, or both; or
- in the case of a body corporate - by a fine not exceeding 1 000 penalty units (NZD 100 000 or EUR 63 600).

203. It should be noted that the Niue Bank Amendment Act 2013 established a specific legal framework to the provision of banking services in by banks registered in New Zealand through Niuean agents. Pursuant to this Act, Niue's Cabinet can designate a New Zealand Bank to provide banking services in Niue. The Act specifies that the provision of an authorised agency banking service in Niue by an approved agent on behalf of its designated bank does not constitute the carrying on of banking business by the bank in

Niue. The laws of Niue apply to every action by an approved agent as if the agent acts in its own right, rather than on behalf of the designated bank (section 84I). Moreover, Niue Bank Amendment Act 2013 specified that the bank accounts opened by a customer in Niue using an agent acting on the bank's behalf, the law of Niue has effect as if the bank account is a bank account in New Zealand and not a bank account in Niue and the operation of the bank account occurs entirely in New Zealand and not in Niue (section 84J). Every designated bank and approved agent must comply with the requirements of the New Zealand legislation in respect of AML/CFT, as if such New Zealand legislation applied in Niue, instead of any Niue AML/CFT legislation (section 84N).

204. Cabinet Regulations No. 2013/01 designated the Kiwibank Limited (a New Zealand bank) to provide banking services and approves the legal entity Niue Commercial Enterprises Limited as an agent in Niue of the Kiwibank Limited.

In practice

205. In 2002 and 2006 respectively Niue closed its offshore bank registry and international business companies registry which were key parts of Niue's earlier international banking regime.

206. During the first year under review (year 2012), there was only one bank providing services in Niue – Bank South Pacific, which is headquartered in Papua New Guinea. Bank South Pacific, had a branch and offered domestic facilities on the island. This bank was licensed and acted under a memorandum of understanding with the Niue Government. In 2013, Bank South Pacific closed its Niuean branch.

207. In addition, during the review period a government-owned development bank, Niue Development Bank, provided both consumer and business loans but did not take deposits.

208. Since April 2013, the Kiwibank based in New Zealand offers transactional banking services in Niue through an agent in Niue, Niue Commercial Enterprises Limited (NCEL, now integrated with the Niue Development Bank).

209. As part of an agreement between the Niue government and the Kiwibank concerning the bank's operations in Niue, the Kiwibank and its agent NCEL are subject to a separate AML/CFT regime as provided under Part 7A of the Niue Bank Act 1994 (pursuant to the Niue Bank Amendment Act 2013). The NCEL and Kiwibank must comply with the requirements of New Zealand legislation in respect of AML/CFT as if such legislation applied in Niue, instead of any Niue AML/CFT legislation. The Niuean authorities

explained that these provisions were included so as to avoid Kiwibank having to be subject to two separate AML/CFT regimes, with two separate compliance systems. Moreover, the Niuean authorities advised that the Kiwibank operates from New Zealand and is subject to AML/CFT supervision in New Zealand. In relation to the NCEL, it is required to conduct customer due diligence when handling transactions in Niue. The NCEL follows under the Niuean AML authorities' supervision, although no supervision has been formally established yet.

210. Niue advises that, with the NCEL/Kiwibank transactions now comprising well over 95% of the total transactions relevant for AML/CFT purposes, and with those NCEL/Kiwibank transactions being subject effectively to New Zealand AML/CFT requirements, there appears to be little justification for Niue to continue to develop a separate AML/CFT regime with its own distinctly worded legislation and processes which would only apply to a very small number of transactions. Therefore, Niue envisages to completely align its AML/CFT framework with the one of New Zealand.

211. A division of the Niue Crown Law Office acts as Niue's Financial Intelligence Unit (FIU). The following government agencies are also involved in AML/CFT control measures: the Police (including Immigration and the Transnational Crimes liaison post); Treasury (including Tax and Customs), the Niue Bank and Monetary Board; other departments upon request.

212. In 2012, the FIU issued best practice guidelines which contain information on the laws relevant to money laundering and terrorist financing in Niue. The guidelines also include information on the CDD requirements of the FTRA such as customer verification, record retention and transactions and significant information on the reporting of suspicion provisions including red flags and indicators.

Determination and factors underlying recommendations

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

B. Access to information

Overview

213. 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 Niue’s legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

214. Niue’s tax authority – the Financial Secretary – has broad powers to obtain bank, ownership, identity, and accounting information and has measures to compel the production of such information. The ability of the Financial Secretary to use those powers for exchange of information with other jurisdictions under a TIEA or DTC is specifically provided in sections 85 and 139 to 142 of the Income Tax Act (as amended by the Income Tax Amendment Act 2012). These powers include the power to inspect books and documents, the power to request information in writing and the production of books and documents, the power to inquire of any person or request the inquiry of a person before a judge. To date, Niue has concluded TIEAs with eight jurisdictions. On 27 November 2015, Niue also became a signatory of the Multilateral Convention.

215. There are no statutory bank or professional secrecy provisions in place that restrict the tax authorities’ access powers or prevent effective exchange of information. For the reasons above, element B.1 was found to be in place in the Phase 1 Report and remains in place in this Phase 2 analysis.

216. Niue’s authorities can also access information pursuant to its Mutual Assistance in Criminal Matters Act 1998 (MACMA). This legislation provides for exchange of information with all foreign governments upon request in criminal matters, including criminal tax matters. Moreover, Niue’s

domestic laws allow for access to ownership and identity information in a criminal tax matter; however, these powers cannot be currently employed in response to a request from another jurisdiction concerning a civil tax matter. During the review period, Niue received one request for mutual assistance in a matter unrelated to tax.

217. To date, Niue’s powers to access information have not been tested in the context of exchange of information, as Niue received no EOI requests from its treaty partners. Niue has nonetheless access taxpayer and banking information in connection with domestic tax investigations during the review period. Element B.1 is therefore rated “compliant”.

218. Application of rights and safeguards (e.g. notification, appeal rights) in Niue do not restrict the scope of information that the Niuean tax authority can obtain. Element B.2 is rated “compliant”.

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

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

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

219. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction’s authorities or is within the possession or control of persons within the jurisdiction’s territorial jurisdiction, ownership information on all such persons in an ownership chain.¹² Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.¹³

220. In Niue, the designated competent authority for the exchange of information for tax purposes under Niue’s TIEAs and the Multilateral Convention is the Financial Secretary, who is also the Head of the Department of Finance and Planning (Treasury) or an authorised representative. To date, there has been no delegation of the role of competent authority in Niue to another

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

13. See JAHGA Report paragraphs 6 and 22.

government official. The Financial Secretary’s contact details are posted in the Niue Government website (www.gov.nu).

221. The Niuean Financial Secretary is also responsible for administering Niue’s tax laws and the collection of taxes with the assistance of the Collector of Inland Revenue. The Financial Secretary has a range of powers to access information. These powers include:

- the power to inspect books and documents (ITA s. 139);
- the power to request information in writing and the production of books and documents (ITA s. 140);
- the power to request the inquiry of a person before a judge or commissioner of the High Court for the purpose of obtaining information (ITA s. 141); and
- the power to inquire into any person to attend and produce evidence before him (or an authorised officer) including all books and documents in the custody or under the control of that person which contain or which the Financial Secretary or the authorised officer considers likely to contain any such information (ITA s. 142).

222. The reference to “books and documents” has, by definition, a very wide meaning. This includes all books, accounts, rolls, records, registers, papers and other documents (ITA, s. 2).

223. All the above powers can be used for purposes of obtaining any information *required to comply with a request made under, give effect to, or enforce a tax agreement (as defined in section 85(4)) that is in force* (ITA, ss.139-142, as amended by the Income Tax Amendment Act 2012). A *tax agreement* includes an agreement to facilitate exchange of information (a TIEA) or to provide relief from double taxation (a DTC) (ITA, s. 85). Prior to the enactment of the Income Tax Amendment Act 2012, Niue was reluctant to conclude negotiations for EOI without having the necessary powers to give effect to such agreements. With the amendments to the Income Tax Act, Niue has concluded TIEAs with eight jurisdictions and under TIEA negotiations with two other jurisdictions. Moreover, Niue signed the Multilateral Convention on 27 November 2015.

224. There are no specific provisions in Niuean law granting the Treasurer powers to obtain information held by banks or other financial institutions concerning the identity of their clients and the related financial records. The general access powers, which talk of information being obtained from “any person”, allow for access to information held by banks.

225. In addition to the ITA provisions, information can also be exchanged under the Mutual Assistance in Criminal Matters Act 1998 (MACMA). Pursuant to the MACMA, the Attorney General has powers to access

information related to criminal tax matters in answer to a mutual legal assistance request received from a foreign authority. A criminal offence that can be investigated under the MACMA includes a criminal offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control (s.3). Civil tax matters are, therefore, excluded from the scope of the MACMA. Further, the provision of assistance may be refused at the discretion of the Attorney General.

In practice

226. Niue has received no requests for exchange of information for tax purposes to date; therefore, its access powers could not be tested in practice in this context.

227. In practice, during the review period, the Niue Tax Office has accessed information from taxpayers and banks in relation to domestic tax investigations. Information gathered from taxpayers includes financial information, information on assets and equity, balance sheet, working capital and revenue and expenses. Information gathered from banks includes information on bank accounts and accountholders for purposes of carrying out domestic tax assessments on individuals or entities.

228. The Financial Secretary is the competent authority for matters relating to the exchange of tax information. He is also the head of Treasury and Treasury's Taxation Office will have the primary responsibility for gathering information and responding to requests for the exchange of information. Officers of the Taxation Office work under the supervision of the Collector (head of the Taxation Office) and are supported by the Crown Law Office. The public service on Niue is small and the tax staff dealing with requests operates from a small unit of three persons, whose roles are described below:

Position	Relevant responsibility
Collector of Customs and Tax Customs and Revenue Division, Treasury Department	Responsible for the oversight of the Customs and Revenue division
Principal Taxation Officer	Responsible for the administration of tax for companies, sole traders, partnerships and businesses
Senior Taxation Officer	Responsible for the Administration of the Niue Consumption Tax (Niue Consumption Tax Act 2009 and Niue Consumption Tax Regulations 2009)
Taxation Officer	Responsible for the administration of tax for Individuals (Income Tax Act 1961)

229. Taxpayer information is held by the Niue Taxation Office on a Microsoft Access database and on two Excel spreadsheets. Information relating to sole traders, partnerships and companies are held in electronic and manual files on a different standalone database.

230. The procedures followed by the Taxation Office to gather information are summarised below:

- *Information held by the Taxation Office:* If information requested for EOI purposes is held by the Taxation Office (such as tax returns, information on the amount of taxes paid), the case officer will gather the information and draft a reply to be reviewed by the Head of the Taxation Office and the Solicitor General. Niue advises that a partial or final response may be available to the requesting jurisdiction within 30 days from the receipt of the request. Taxation Officers may be assigned as case officers, but each officer in the unit can assist.
- *Information held by third parties (other than banking information):* The case officer may contact different government agencies, taxpayers or third-parties to gather information. A timeframe of 10 working days will be given to taxpayers/third parties to provide the information requested by the Taxation Office. Templates forms and sample letters are being drafted to assist case officers in this work. The majority of central agencies are co-located in the Public Service building, Fonuakula, in Alofi and the Crown Law Office and Police are situated in Alofi close by.
- *Banking information:* The case officer issues a letter to be signed by the Head of the Taxation Office. The bank will have 15 days from the receipt of the letter to provide the requested information or explain why it is unable to do so. If the banks need additional time, it can submit a request for extension which should not be more than 30 days from the date of receipt of the original notice.

231. As Niue received no EOI requests, Niue advised that it tested the current procedures using a desktop exercise. This involved the presentation of different scenarios which were prepared to assist staff training in applying the appropriate policies and procedures within the Niue Tax office. Niue considers that the small nature of its public service enables a close collaboration for purposes of EOI. Moreover, the access powers provided for EOI purposes under the ITA are the same ones available for domestic matters and these powers have been tested in a domestic context. It is recommended nonetheless that Niue continues to monitor the implementation of its powers to access information for EOI purposes to ensure that they are effective in practice.

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

232. 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.

233. Niue has no domestic tax interest with respect to its information gathering powers. The broad access powers provided to the Financial Secretary under the ITA (as amended by the Income Tax Amendment Act 2012) can be used to obtain and provide information for the express purpose of giving effect to Niue’s EOI agreements (Income Tax Act, ss.85, 139-142).

Compulsory powers (ToR B.1.4)

234. Pursuant to the ITA, if a person fails to provide information or fails to otherwise comply with sections 139 to 142 of the ITA, this person will be liable on conviction to a fine not exceeding 1 penalty unit, which is equivalent to NZD 100 (EUR 63.60) (ITA s. 143).

235. If any person requested to appear by the Financial Secretary refuses or wilfully neglects to appear before the Financial Secretary or authorised officer or to take an oath as witness or if any person being sworn as a witness at any such inquiry refuses or wilfully neglects to answer any question put to him touching the subject matter of the inquiry or to produce to the Financial Secretary or authorised officer any such documents as aforesaid, that person shall be liable on conviction to a fine not exceeding 2 penalty units, which is equivalent to NZD 200 (EUR 127.20) (ITA s. 142(3)). If any person wilfully gives false evidence at any inquiry under section 142 he or she is liable on conviction of perjury.

236. The Collector may also apply in writing to a Judge or Commissioner of the High Court to hold an inquiry if deemed necessary for the purposes of the administration or enforcement of the Income Tax Act or any other Act administered by the Collector (ITA s. 141(1)). The Judge may summons, and examine on oath touching any matter relevant to the subject matter of the inquiry, all persons whom the Collector or any other interested person requires to be so called and examined (ITA s. 141(2)).

237. The compulsory powers described above have not been used in practice during the period under review for domestic purposes, as according to the Niuean authorities, information has been provided by taxpayers/information holders to the Taxation Office when requested.

Secrecy provisions (ToR B.1.5)

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

239. There are no secrecy provisions under the Niuean legislation that would prohibit or restrict the disclosure of information to the Financial Secretary. Various secrecy provisions may be found in the Niuean legislation, but these are overridden by the Income Tax Act (s. 85). The ITA explicitly provides that a tax agreement including a TIEA and a DTC have effect *despite anything in this Act or any other Act in relation to (...) (iv) any obligation as to privacy or secrecy* (s. 85(3)).

240. There are no statutory provisions providing for bank secrecy in Niue. Bank confidentiality is a contractual obligation between banks and their customers. With respect to trustees, a confidentiality duty exists in the Trusts Act 1994 (s. 29) but it is overridden by the access powers provided under the ITA.

241. Section 341 of the Companies Act described the circumstances where legal professional privilege applies. It appears that the Companies Act expresses principles that would apply generally in Niue. Section 341 reads as follows:

341. Privileged communications

- (1) Nothing in this Act requires a legal practitioner to disclose a privileged communication.
- (2) For the purposes of this Act, a communication is a privileged communication only if –
 - (a) It is a confidential communication, whether oral or written, passing between –
 - (i) a legal practitioner in his or her professional capacity and another legal practitioner in that capacity; or
 - (ii) a legal practitioner in his or her professional capacity and his or her client – whether made directly or indirectly through an agent; and
 - (b) It is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
 - (c) It is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.

- (3) If the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, a book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner.
- (4) The Court may, on the application of any person, determine whether or not a claim of privilege is valid and may, for that purpose, require the information or document to be produced.

242. Based on this provision, the scope of legal professional privilege is limited to legal advice provided by legal practitioners and does not cover other activities legal practitioners might conduct such as company formation etc. For instance, if a lawyer acts as a nominee shareholder, a trustee, a settler, a company directors or under power of attorney to represent a company in its business affairs, the legal privilege does not apply.

243. During the review period, Niue tax authorities have not requested information from lawyers, but have done so in relation to banks in domestic cases. Banks co-operated with the tax authority and provided the information requested. The Taxation Office has obtained taxpayer banking information directly from banks (the Niue Development Bank, the Bank South Pacific and the Kiwibank through its local agent) in the course of domestic audits/investigation to verify a taxpayer financial situation. For that purposes a notice to bank had been issued. Niue has encountered no problems in practice to access information from banks.

Determination and factors underlying recommendations

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

B.2. Notification requirements and rights and safeguards

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

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

244. The *Terms of Reference* provides that 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).

245. The Niuean Financial Secretary is not obliged to inform the person concerned of the existence of an exchange of information request. Likewise, the Financial Secretary is not obliged to inform the taxpayer concerned prior to contacting third parties to obtain information. However if the Financial Secretary subsequently decides to notify the person concerned, Niue has advised that procedures will have to be developed as there are none presently in place in Niue. Niue has advised that any procedures established in the future would observe the international standard. The ITA grants to the right of appeal against tax assessments made by Collector. Pursuant to the ITA, if a person who receives a request from the Collector believes that the request is improper, he may apply to the High Court, within 14 days from the date of receipt (Income Tax Act, s. 33). There are no general appeal rights in the ITA that could be used in EOI matters.

246. Niue's legal and regulatory framework contains rights and safeguards compatible with effective exchange of information, but since Niue did not receive any EOI requests during the three years under review, the implementation in practice of the legal framework in relation to rights and safeguards could not be tested.

247. Niue's draft Standard Operation Procedures (SOPs) on EOI originally provided for the notification of taxpayers in relation to requests for banking information within 60 days from the receipt of the EOI request by Niue. However, Niue recently confirmed that this notification is not currently provided in Niue's statutes or regulations and that the SOPs have been amended to remove the obligation to notify taxpayers concerning the requests for banking information. Since Niue received no EOI requests, no notifications have ever been sent.

Determination and factors underlying recommendations

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

C. Exchanging information

Overview

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

249. Niue committed to the international standards for exchange of information in April 2002. It also became a member of the Global Forum in September 2010.

250. Entering into international treaties is a prerogative of the Executive Branch. Pursuant to the Income Tax Amendment Act 2012, EOI agreements do not require ratification by the Niuean Legislative Assembly. Once Niue concludes an EOI agreement, it must be enacted by way of a Regulation made by the Niuean Cabinet of Ministers.

251. While Niue’s authorities can exchange some information pursuant to its Mutual Assistance in Criminal Matters Act 1998, this legislation provides for discretionary exchange of information upon request by foreign governments for criminal tax matters only and, therefore, it does not meet the international standard. During the review period, Niue received one request for mutual assistance in a matter unrelated to tax.

252. In August 2012, Niue signed its first TIEA with New Zealand, its main trading partner. This agreement meets the foreseeably relevant standard. Since its Phase 1 review, Niue has brought its TIEA with New Zealand into force and signed and ratified TIEAs with seven other jurisdictions (i.e. Denmark, Greenland, Iceland, Faroe Islands, Finland, Norway and Sweden). All TIEAs signed by Niue are currently in force with the exception of the one signed with Sweden. Niue is waiting for a communication from Sweden regarding the completion of its ratification procedures. All TIEAs entered into by Niue allow it to exchange all foreseeable relevant information in accordance with the standard. Niue also signed the Multilateral Convention in November 2015 and its network of EOI agreements now covers 91 jurisdictions (see Annex 2). Element C.1 was found to be in place and is rated “compliant”.

253. In Niue’s 2012 Phase 1 report, Element C.2 was determined to be “in place, but certain aspects of the legal implementation of the element need improvement”. That report noted that only one TIEA had been signed by Niue, although further TIEA negotiations were underway with a number of jurisdictions. Niue was recommended to develop its exchange of information network with all relevant partners. The Phase 1 Report also noted that that Niue had been cautious about concluding negotiations for EOI agreements prior to having the necessary powers to give effect to those agreements. The necessary powers were enacted just before the conclusion of the Phase 1 Report in 2012. Since then, Niue has concluded TIEAs with eight jurisdictions and the Multilateral Convention. Niue is currently under TIEA negotiations with two other jurisdictions and planning to recommence negotiations with four others. Niue’s 2014 supplementary report acknowledged the progress made by Niue in entering into exchange of information agreements but also noted that Niue should continue to develop its exchange of information network with all relevant partners as Niue’s network did not cover a jurisdiction which had indicated that it would like to enter into an exchange of information relationship with Niue. As this jurisdiction is also a signatory to the Multilateral Convention, Niue and this jurisdiction will be able to exchange information once the Multilateral Convention is ratified by Niue. Element C.2 was found to be in place and the rating of the element is “compliant”.

254. All Niue’s TIEAs contain confidentiality provisions which meet the international standard. Niue’s domestic legislation also includes a relevant confidentiality provision, supported by sanctions for non-compliance. Consequently, element C.3 was found to be in place. Adequate policies and measures exist in practice to protect of the confidentiality of the EOI requests and the information exchange. Element C.3 is rated “compliant”.

255. Niue’s TIEAs and the Multilateral Convention also ensure that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. Niue’s domestic legislation and Niue’s practices ensure that the rights and safeguards are protected in accordance with the standard. Element C.4 was thus found to be in place and is rated “compliant”.

256. There appears to be no legal restrictions on the ability of Niue’s competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. In practice, Niue neither received any EOI requests in the three year period under review (2012-14), nor before that period. Accordingly, it has not been possible to assess Niue’s practice in terms of timeliness of responses to EOI requests. Niue has nonetheless demonstrated its commitment towards implementing effective exchange of information by enacting processes and

procedures to deal with EOI and sensitizing government officials on how to handle inbound and outbound requests. Niue is recommended to monitor the practical implementation of the organisational processes of the competent authority as well as the level of resources committed to EOI purposes to ensure that both the processes and level of resources are adequate for effective EOI in practice. Element C.5 is rated “largely compliant”.

C.1. Exchange-of-information mechanisms

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

257. The designated competent authority for the exchange of information for tax purposes under Niue’s TIEAs and the Multilateral Convention is the Financial Secretary, who is also the Head of the Department of Finance and Planning (Treasury) or an authorised representative.

258. Treaties including Double Taxation Conventions (DTCs) have the same legal status as other Niue statutes. Niue has not entered into any DTCs to date. TIEAs are brought into force by way of a cabinet regulation. Regulations are subsidiary legislation in Niue. A TIEA does not require approval from Niue Assembly to enter into force and where there is a conflict; Niue’s domestic law prevails over TIEAs.

259. Niue TIEAs generally follow the 2002 OECD Model Agreement on Exchange of Information on Tax Matters (Model TIEA).

260. Whilst this report is focused on the terms of its EOI agreements and practices concerning EOI on request, it is noted that the Multilateral Convention signed by Niue, explicitly provides for spontaneous and automatic exchange of information. Niue has committed to the standard on automatic exchange of information (AEOI) and to undertake its first exchanges by 2017.

261. Considering that Niue has not received any EOI requests during the review period, the practical implementation of Niue’s exchange of information network under element C.1 can only be assessed to a limited extent.

Foreseeably relevant standard (ToR C.1.1)

262. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions,” i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in

the standard of “foreseeable relevance” which is included in Article 26(1)¹⁴ of the OECD *Model Taxation Convention* set out below:

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

263. All eight TIEAs signed by Niue and the Multilateral Convention provide for exchange of information upon request and meet the “foreseeably relevant” standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA.

264. Article 5(5) of all Niue’s TIEAs establishes the information the applicant party must provide the requested party when making a request for information to demonstrate the foreseeable relevance of the information to the request. This includes the identity of the person under examination or investigation and, to the extent known, the name and address of any person believed to be in possession or control of the requested information.

265. Niue has received no requests for exchange of information during the review period. Pursuant to the guidance established in Niue’s draft Standard Operating Procedures (SOPs) on EOI, Niue will verify whether the information referenced under Article 5(5) of the respective TIEA was provided to verify whether the request meets the foreseeably relevant standard.

In respect of all persons (ToR C.1.2)

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

267. Niue’s TIEAs are neither restricted to certain persons such as those considered resident in or nationals of one of the contracting jurisdictions, nor preclude the application of EOI provisions in respect to certain types of entities or arrangements. Article 2 of the TIEAs entered by Niue follows the

14. Article 1 of the OECD Model TIEA contains a similar provision.

OECD Model TIEA and establishes that *A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.*

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

268. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The OECD *Model Taxation Convention*, which is an authoritative source of the standards, stipulates 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.

269. The TIEAs concluded by Niue include a provision that mirrors Article 5(4) of the OECD Model TIEA, providing for the exchange of information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as ownership and identity information. Section 85 of the Income Tax Act (as amended by the Income Tax Amendment Act 2012) makes it clear that a TIEA has effect despite anything in this act or any other act in relation to any obligation as to privacy or secrecy.

Absence of domestic tax interest (ToR C.1.4)

270. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

271. Niue’s TIEAs contain a provision similar to the Article 5(2) of the OECD Model TIEA, which obliges the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic interest in the requested information. Moreover, the Niuean Financial Secretary’s powers to access information pursuant to the ITA (ss.139-142) can be used in order to reply to a request made under a TIEA or a DTC (see section B.1 of this report).

Absence of dual criminality principles (ToR C.1.5)

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

273. Niue's domestic laws do not appear to contain constraints concerning dual criminality. Moreover, all Niue's TIEAs explicitly exclude that the dual criminality principle may restrict the exchange of information (Article 5(1)).

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

274. 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").

275. The MACMA enables the Niuean authorities to obtain and provide information to foreign authorities in relation to criminal investigations and proceedings only. Civil tax matters are, therefore, excluded from the scope of the MACMA. A criminal offence that can be investigated under the MACMA includes a criminal offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control (s. 3). However, requests for international assistance are made to the Attorney General who has broad authority to refuse a request (s. 7). Within those restricted parameters, the MACMA in principle allows for information in respect to all persons to be exchanged and for all types of information to be exchanged. However, as explained above, the MACMA does not meet the international standard. During the review period, Niue received one request for mutual assistance in a matter unrelated to tax.

276. The TIEAs concluded by Niue provide for the exchange of information in both civil and criminal matters. Niue's domestic legislation allowing for the exchange of information does not differentiate between information needed for civil or criminal purposes. Moreover, Niue reports that processes involved in the collection of information are the same regardless of whether the request involves a civil or criminal investigation.

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

277. 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.

278. The TIEAs concluded by Niue expressly allow for information to be provided in the specific form requested, to the extent allowable under the domestic laws of the requested party. This includes the provision of information in the form of depositions of witnesses and authenticated copies of original records. The Niuean authorities indicate that they would use their best endeavours to satisfy the procedural requirements of Niue's treaty partners.

In force (ToR C.1.8)

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

280. Entering into international treaties is a prerogative of the Executive Branch in Niue. Pursuant to the Income Tax Amendment Act 2012, TIEAs do not require ratification by the Niuean Legislative Assembly. TIEAs concluded by Niue must be enacted by way of a Regulation made by the Niuean Cabinet of Ministers.

281. The Phase 1 Report noted that Niue had signed only one exchange of information agreement, with New Zealand its main trading partner. This agreement contained provisions that allow Niue to exchange all foreseeably relevant information; however, it was not yet in force and, as a result, Niue was not able to effectively exchange information. Niue could also exchange information on criminal tax matters under the Mutual Assistance in Criminal Matters Act 1998; however, this legislation does not meet the international standard.

282. Since then, the TIEA with New Zealand entered into force (on 31 October 2013). Moreover, Niue has signed seven other TIEAs (with Denmark, Greenland, Iceland, the Faroe Islands, Finland, Norway and Sweden). Niue has

ratified all its TIEAs and all are currently in force with the exception of the one signed with Sweden. Niue is waiting for a communication from Sweden regarding the completion of its ratification procedures.

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

283. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

284. In August 2012, Niue enacted the legislation necessary to give effect to EOI agreements. Notably, the Income Tax Amendment Act 2012 gives necessary powers to the Niuean competent authority to enter into EOI agreements as well to access and exchange information in order to reply to a request made under such agreements. Since then, procedures have been established to allow effective exchange of information in practice.

Determination and factors underlying recommendations

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

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

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

285. 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.

286. Under the Income Tax Amendment Act 2012, Niue can explicitly enter into EOI agreements both under the form of TIEAs and DTCs (ITA, s. 85(1)). Niue also became a signatory to the Multilateral Convention in November 2015, and its network of EOI agreements now covers 91 jurisdictions (see Annex 2).

287. In the Phase 1 report, it was noted that no jurisdiction had advised that Niue had refused to negotiate or enter into an agreement. Comments from Global Forum members were again sought in the course of the 2014 supplementary review and the Phase 2 review and no jurisdiction advised that Niue had refused to enter into negotiations or conclude EOI agreements. One peer jurisdiction did note in the course of the 2014 supplementary review that TIEA negotiations with Niue started in 2010; however, the peer did not receive further contact from Niue. As the peer at issue is a signatory to the Multilateral Convention, Niue and this jurisdiction will be able to exchange information in accordance to the standard once the convention is ratified by Niue.

288. Niue progressed in the negotiations with two jurisdictions and Niue reports it is going to re-establish contact with four others.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Niue should continue to develop its exchange of information 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)

289. 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.

290. The text of Article 8 of the TIEA concluded by Niue with New Zealand reads:

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

291. All Niue's TIEAs contain a provision consistent with Article 8 of the OECD Model TIEA, ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received.

292. Moreover, section 4 of the Income Tax Act provides that the Financial Secretary and every other officer of the Niue Government must maintain and aid in maintaining secrecy of all matters relating to the Act which comes to the knowledge of the officer, and shall not communicate any such matters to any person except for the purpose of giving effect to the Act or any other Act that imposes taxes. There is no exception for the benefit of any government agency or person in Niue. The Income Tax Act contains provisions concerning EOI instruments and, therefore, the secrecy duty is extended to the EOI agreements as well.

293. A person convicted of acting in contravention of the above secrecy provisions is liable for imprisonment not exceeding six months or a fine not exceeding NZD 200 (EUR 77 20) (s.4(3)). There are no specific provisions in the Income Tax Act authorising the disclosure of information received under a DTC or TIEA. Section 85(3) of the Income Tax Act provides that "a tax agreement ... has effect despite anything in this Act or any other Act in relation to (iii) the exchange of information that relates to a tax; (iv) any obligation as to privacy or secrecy". This provision, taken together with section 4, ensures that information received from EOI partners should be kept confidential in accordance with the TIEA provisions.

294. In practice, Niue has not received EOI information since it never sent or received an EOI request so no breach could have occurred. The Niuean authorities also indicate that no breach of Niue tax information has taken place either. That said, Niue has put in place a procedure in anticipation of

receiving EOI requests. All files would be kept under lock or in a dedicated database, separately from Niue information and labelled to indicate its confidential and treaty-based origin. There is also an agreement in place with the Crown Law Office to ensure the confidentiality of the information shared with the office in tax matters, so that the Crown Law Office cannot use treaty exchanged information for non-tax purposes, including criminal purposes. The Crown Law Office can provide advice to the Tax Office on EOI related matters. As the Tax Office consists of only four officers, it is expected that it will rely on the expertise of Niue’s Solicitor General on legal matters to reply to EOI requests. The Crown Law Office is bound by the Public Service Regulations 2004 and the Code of Conduct to observe confidentiality.

All other information exchanged (ToR C.3.2)

295. 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.

296. The confidentiality provisions in the EOI agreements and in Niue’s domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

297. Niue’s draft Standard Operating Procedures (SOPs) for exchange of information provide that all information received by Niue’s competent authority is confidential and should be stored securely. The EOI files are to be secured in a secure storage unit within the Taxation Office File Room. Files remain in the storage unit when they are not actively worked on by the case officer or any authorised officer.

298. The draft SOPs also provide for the following procedures aiming at maintaining confidentiality of information received/exchanged:

- prior to sending information to the foreign competent authority, the Head of the Taxation Office should confirm that the person who has requested the information was authorised to make the request and receive the information. It should also be confirmed that the foreign competent authority name and address are correct before sending any information;

- all confidential information should be clearly labelled in terms of its confidentiality classification;
- physical mail should only be sent via an international registration system where a mail tracking function is in place;
- the cover letter to the foreign competent authority should emphasise the confidentiality of the information, for example by including the following statement “This information is furnished under the provisions of a DTA/TIEA and its use and disclosure are governed by the provisions of such DTA/TIEA.”;
- all documents related to an exchange of information request should bear a clearly visible confidentiality stamp.

299. Currently, the Niue Taxation Office is only able to exchange taxpayer information by mail and does not exchange information electronically. Niue understands that electronic exchange would require information to be encrypted or sent on a secure platform and currently such facilities are not available in the Niue Taxation Office.

300. Procedures are also provided in the draft SOPs to ensure confidentiality is maintained when the case officer needs to gather information from the tax administration and other government agencies.

Determination and factors underlying recommendations

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

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

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

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

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

302. Among other reasons, an information request can be declined where the requested information would disclose confidential communications

protected by legal professional privilege, which is a feature of the legal systems of many jurisdictions. However, communications between a client and a lawyer or other admitted legal representative are, generally, only privileged to the extent that the lawyer or other legal representative acts in his or her capacity as a lawyer or other legal representative. Where legal professional privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that a lawyer acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of legal professional privilege.

303. In respect of the taxpayers' rights and safeguards, the OECD Model TIEA provides that they remain applicable "to the extent that they do not unduly prevent or delay effective exchange of information". Seven of the eight TIEAs signed by Niue contain such provision. The TIEA signed with New Zealand provides that a requested party "shall use its best endeavours" to ensure that their application does not so unduly prevent or delay effective EOI. It is unlikely, however, that this variation will materially affect the effectiveness of EOI.

304. Moreover, domestic provisions on the professional privilege are in accordance with the international standard (see section B.1.5 of this report).

305. Article 7 of the TIEAs concluded by Niue indicates that a request can be declined where it may impose the disclosure of trade, business, industrial, commercial, or professional secrets or trade process, or where the information disclosed would be contrary to public policy. Nevertheless, the TIEAs expressly provide that information may not be treated as a secret or trade process merely because it is held by a bank, other financial institutions or persons "acting in an agency or fiduciary capacity including nominees and trustees".

306. Moreover, the attorney-client privilege protected under the TIEAs concluded by Niue refers specifically to:

confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are: (a) produced for the purposes of seeking or providing legal advice; or (b) produced for the purposes of use in existing or contemplated legal proceedings.

307. The TIEAs also establish that an EOI request must not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.

308. Niue did not receive any EOI requests during the three years under review. No issues in relation to the rights and safeguards of taxpayers and

third parties have been encountered in practice (in domestic matters), nor have they been raised by any of Niue’s exchange of information partners.

Determination and factors underlying recommendations

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

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

309. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

310. There are no specific legal or regulatory requirements in place which would prevent Niue responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

311. Niue has received no requests during the three years under review (years 2012 to 2014).

312. Niue has nonetheless developed Standard Operating Procedures (SOPs) for exchange of information. Those SOPs are currently in a draft form and provide for specific timeframes to provide responses to EOI requests.

313. Pursuant to the SOPs, a letter of acknowledgement will be prepared by the head of the Taxation Office. The acknowledgement of the receipt of the EOI request shall occur within 14 days from receipt. Postal services are by air and operate on flights once a week out of Niue to Auckland, New Zealand. The acknowledgement letter should advise the requesting competent authority that translation of documents will be an issue, as Niue does not have available translation services. Moreover, Niue will also inform the requesting jurisdiction if it would intend to contact the taxpayer concerned to gather the information.

314. Within 90 days of receipt of the request, the SOPs require Niue to issue:
- a status update (if no information is available);
 - an interim response (if some information is available); or
 - a final response (if all information is available).

315. The SOPs also require Niue to issue update/interim replies every 90 days until a final reply is issued.

316. Niue will verify if the requests contain the information required under Article 5(5) of the relevant TIEA. If the minimum required information has not been provided, Niue's competent authority (Financial Secretary) will advise the requesting State, by letter, to provide more details to allow the request to be processed or return the request explaining the reason, e.g. lack of clarity in the request, poor quality of data received. Where a request is considered to be invalid or incomplete, the Financial Secretary will notify the requesting State of the deficiency within 60 days of receipt of the request. If the request is deficient in some respects but other parts are valid, Niue will try to provide information that is responsive to the part of the request that is valid.

Organisational process and resources (ToR C.5.2)

317. The Financial Secretary is the authority responsible for tax matters in Niue and is Niue's competent authority for the exchange of information for tax purposes.

318. The Financial Secretary is also the head of Treasury. Treasury's Taxation Office will in general have the primary responsibility for gathering information and responding to requests for the exchange of information for tax purposes. Officers of the Taxation Office work under the supervision of the Collector (head of the Taxation Office) and are supported by the Crown Law Office.

319. Although Niue has not received EOI requests to date, it developed comprehensive processes and procedures to handle any inbound and outbound requests in the future.

320. Niue's main trading partner, New Zealand, advised that it has had no need to request information from Niue during the review period, and anticipates would have limited need to do so in the foreseeable future given Niue's specific circumstances, including the close-down of Niue's international finance centre in 2006. Should the need ever arise for a request for information to be made, New Zealand and Niue have concluded a supporting administrative instrument that provides for Niue to seek assistance from New Zealand in complying with the request. New Zealand also noted that given that Niueans have New Zealand citizenship and utilise New Zealand banking and other services, Niue may have the need from time to time to use the TIEA to request information from New Zealand for its tax purposes.

321. Niue has developed a system to log and track EOI requests sent and received. Niue has also developed Standard Operating Procedures (SOPs) to deal with exchange of information for tax purposes. The SOPs are currently in a draft format.

EOI Database

322. A Microsoft Access database is maintained by Niue's Taxation Office for dealing with EOI requests. This database is used to track and log incoming and outgoing requests, it also has collation and query features. The Collector of Tax is responsible for logging receipt of the EOI request and completing the logging in details in the appropriate fields on the database.

323. The database allows statistical reports to be prepared, the tracking of cases and the monitoring of some performance measures, such as cases pending over 90 days or 180 days, or how long it has been since action was taken in a case.

Standard Operating Procedures (SOPs) on Exchange of Information

324. The SOPs have been developed (current draft dates 2 August 2015) to guide the government of Niue and its Taxation Office in particular on the processes and procedures to be followed in relation to exchange of information for tax purposes. The SOPs on EOI are one of three SOP modules that form the Taxation Office Training Module – the other two being the SOP on Assessment and the SOP on Education and Advisory Services. The SOPs will be revised as necessary by the Head of the Taxation Office or other authorised officer. Niue clarified that Niue's Financial Secretary has approved the SOPs' promulgation subject to the ongoing updating of the module in conjunction of with the Head of Crown Law and the Head of the Tax Office. The SOPs are approved as an Internal Procedure and are now considered is considered fully adopted as operational guidelines.

325. The SOPs on EOI outline detailed guidance on how to deal with the various aspects of EOI requests, including logging the requests, validation, processing, information gathering, drafting a response. It also contains guidance and protocols to be followed to protect confidentiality.

Human resources

326. The public service on Niue is small and human resources dedicated to EOI perform other functions. In practice the Financial Secretary and the Head of Crown Law would work closely together in ensuring that the appropriate response is provided to the requesting competent authority. They are supported by Niue's Taxation Office. The tax staff dealing with EOI requests operates from a small unit of three persons.

Organisational process

327. Once received, requests are forwarded by the Financial Secretary to the Collector of Tax for evaluation and processing. All requests will then be examined by the head of the Taxation Office and a case officer will be assigned. The case officer is responsible for researching, collating and drafting the reply and providing it to the Head of the Taxation Office and the Crown Law Office for checking before passing to the Financial Secretary for signing.

Conclusion

328. Niue has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Niue did not process any EOI requests during the three-year period under review. Consequently, the organisational processes have not been tested in practice. Niue is recommended to monitor the practical implementation of the organisational processes of the competent authority as well as the level of resources committed to EOI purposes to ensure that both the processes and level of resources are adequate for effective EOI in practice.

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

329. There are no laws or regulatory practices in Niue that impose restrictive conditions on exchange of information.

Determination and factors underlying recommendations

Phase 1 determination	
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendation	Recommendation
Niue has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Niue did not process any EOI requests during the three-year period under review. Consequently, the organisational processes have not been tested in practice.	Niue is recommended to monitor the practical implementation of the organisational processes of the competent authority as well as the level of resources committed to EOI purposes to ensure that both the processes and level of resources are adequate for effective EOI in practice.

Summary of determinations and factors underlying recommendations

Overall Rating
LARGELY COMPLIANT

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Identity and ownership information may not consistently be available in respect of (i) domestic trusts and (ii) foreign trusts with a Niuean trustee. Although the number of domestic and foreign trusts with a Niuean trustee is not known, the number of professionals in private practice in Niue who could act as trustees by way of business is very small, consisting of one lawyer and one accountancy firm.	Niue should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases.

Determination	Factors underlying recommendations	Recommendations
<p>Phase 2 rating: Largely Compliant</p>	<p>During the review period, Niue did not have a regular oversight programme in place to monitor the compliance by professionals that could act as nominees and trustees with the obligation to perform customer due diligence pursuant with Niue's AML/CFT framework. It is noted that the number of companies registered in Niue is very small and that the number of professionals in private practice in Niue who could act as trustees or nominees by way of business is extremely small, consisting of one lawyer and one accountancy firm.</p>	<p>Niue should establish a regular oversight programme to monitor the compliance of professionals that act as nominees and trustees with the obligation to perform customer due diligence pursuant with Niue's AML/CFT framework.</p>
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)</p>		
<p>Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.</p>	<p>Niuean law does not ensure that reliable accounting records and underlying documentation are kept under certain circumstances for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances. On 7 December 2015, there were no special partnerships and no limited liability partnerships in Niue. The number of trusts is not known but the number of professionals in private practice in Niue is very small, consisting of one lawyer and one accountancy firm.</p>	<p>Niue should establish obligations for the maintenance of reliable accounting records, including underlying documentation, for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.</p>

Determination	Factors underlying recommendations	Recommendations
	<p>Entities and arrangements other than domestic companies are not required to retain accounting records and underlying documentation for a minimum 5 year period except when they carry on a business in Niue or receive Niuean sourced income. On 7 December 2015, there was only one overseas company, no special partnerships and no limited liability partnerships in Niue. The number of trusts is not known but the number of professionals in private practice in Niue is very small, consisting of one lawyer and one accountancy firm.</p>	<p>Niue should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of 5 years.</p>
<p>Phase 2 rating: Largely Compliant</p>	<p>During the review period, a very small cohort of companies that were registered in Niue but did not carry on business there were not subject to oversight by the tax authorities, including on whether they maintained adequate accounting records and underlying documentation.</p>	<p>Niue should ensure that there is sufficient oversight over the compliance with the obligations to maintain accounting records and underlying documentation by companies registered in Niue, including when these companies do not carry on business in Niue and do not receive Niuean sourced income. Niue should also ensure that penalties are enforced where appropriate.</p>
<p>Banking information should be available for all account-holders (<i>ToR A.3</i>)</p>		
<p>Phase 1 determination: The element is in place.</p>		
<p>Phase 2 rating: Compliant</p>		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
Phase 1 determination: The element is in place.		Niue should continue to develop its exchange of information 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 (<i>ToR C.3</i>)		
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 (<i>ToR C.4</i>)		
Phase 1 determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Largely Compliant	Niue has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Niue did not process any EOI requests during the three-year period under review. Consequently, the organisational processes have not been tested in practice.	Niue is recommended to monitor the practical implementation of the organisational processes of the competent authority as well as the level of resources committed to EOI purposes to ensure that both the processes and level of resources are adequate for effective EOI in practice.

Annex 1: Jurisdiction’s response to the review report¹⁵

The Government of Niue acknowledges the important contribution the Global Forum continues to make in ensuring that the international tax standard is kept.

The Niue Government remains committed to ensuring it has a robust tax framework including the development of a legal and regulatory regime that will ensure ongoing high level compliance with the tax standard.

Niue wishes to express its gratitude to the Peer Review Assessment team for its commitment and valuable contribution to Niue’s ongoing efforts. The Niue authorities commend the comprehensive work of the assessment team and the professional manner in which the review was conducted.

Niue voluntarily joined the Global Forum in 2010, and, despite severe capacity constraints, has actively participated in the Phase 2 Peer Review process and has been fully cooperative.

Niue has made solid progress over the past 10 years in meeting the objectives of the Global Forum from 2006 when it closed its International Business Company Registry, from its aligned anti-money laundering and countering the financing of terrorism (AML/CFT) work with the Asia Pacific Group on Money Laundering (APG) to signing 8 Tax Information Exchange Agreements, to signing the Multilateral Convention in late 2015 expected to be ratified in the first half of 2016.

Furthermore, Niue is a member of the Early Adopters Group of the new global standard on the automatic exchange of information, and made this commitment to demonstrate solidarity despite resource constraints as a small jurisdiction.

Niue reiterates its statement during the 2012 Phase 1 Peer Review that any peer review must also take into consideration that Niue is a Small Island State; even by Pacific Island standards. It has a tiny population – 1500 people,

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

and tiny economy with little in the way of characteristics that may attract money laundering, terrorist financing or other undesirable activity.

The formal view of the Asia Pacific Group on Money Laundering (APG) is that Niue is “low risk” in terms of the AML/CFT standards set by the FATF as confirmed in the APG 2012 Mutual Evaluation of Niue. Niue supports this view, which is also supported in our assessment of the circumstances of the island and the very limited types and amount of banking business transacted.

To give further context, Niue has a small public service relative to other jurisdictions and the tax administration is small with a total of 280 business “taxpayers” that it administers. Of 280 business “taxpayers”, less than 100 were legal entities (companies and partnerships), the remaining being sole-proprietorship businesses in Niue. Tax revenues total \$3 million annually. Niue has one financial institution and a bank with its headquarters in New Zealand that provides transactional banking services. Niue’s economy is small, estimated at around \$30.7 million in GDP in 2014. The national budget is \$US16m.

With this in mind the Niue government’s approach to Niue’s tax framework regime, in being robust and effective, is also risk-focused, proportionate, workable and cost-effective having regard to Niue’s size, circumstances and resources. Niue believes that it has a unique case when compared to jurisdictions of a similar nature.

Given Niue’s low risk and the materiality and potential impact on the Global Forum’s overall objectives, Niue believes the overall rating of Largely Compliant is appropriate to the facts and circumstances of the review.

From the outset of this review, Niue has reemphasised its size as a small South Pacific nation; a coral atoll of approximately 100 square miles with a population of 1500 people. When considering Niue’s report:

- Geographically Niue is isolated with two international flights a week that direct to and from New Zealand (Niue main trading partner), in the peak season for tourists and one flight in the off-season.
- There is one shipping service for supplies from Auckland, New Zealand although it also calls into neighbouring countries of the Cook Islands and Tonga.
- Niue has no insurance companies and the very small numbers of insurance services are provided from New Zealand at very high cost.
- There are no casinos, dealers in precious metals, or real estate agents as Niuean land cannot be bought or sold.

- There is no exchange for the trading in securities or assets, or the buying and selling of businesses. There is no logging or mining industries.
- There is no high value or luxury goods sold in Niue as these are generally purchased offshore and imported. Neither are there any auction houses or investment advisors because with securities and insurance sectors, the size of the Niuean economy does not provide a commercially viable basis for the local provision of these services.
- Niue only has one lawyer in private practice and one accountancy firm.
- The operation of the International Business Company Registry is a historical legacy from which Niue has moved on from in the last 10 years. In consultation with its main trading partner New Zealand, Niue’s financial services are largely now provided by a New Zealand bank and Niue’s one financial institution.
- Niue closed all operations for its International Business Companies Registry in 2006. Such closure means that all offshore operations have ceased. Niue does not have an offshore centre and has no capacity to establish one.
- Materiality remains important because while there was a suite of legislation passed in 1994 to establish Niue as an offshore centre, the key functioning parts have been repealed and other legislation such as Limited Liability Partnerships have not been used. As such there are no Limited Liability Partnerships, no trustee companies and only one trust is registered.
- Niue previously had just under 10,000 IBCs registered and of this only 10 have applied for restoration to the new companies regime. While Niue has re-registered 10 former international business companies since the closure of the International Business Companies Registry, these are subject to Niue’s ordinary laws and only 1 remains active on the registry. It is also worth noting that there are two ways former IBCs may re-register; the first option is through the Registrar of Companies, and the second is through an application to the Niue High Court. The Registrar requires that all applications for restoration are to be made by application to the High Court and the 10 companies that have gone through this process have applied to the High Court before being permitted to apply to the Companies registry. Niue neither markets nor encourages offshore companies to register under its new companies registry.

Niue recognises the Assessors Summary of the Key Conclusions of the Review and commends the comprehensiveness of the process.

As stated earlier, given Niue's low risk and the materiality and potential impact on the Global Forum's overall objectives, Niue believes the overall rating of Largely Compliant is appropriate to the facts and circumstances of the review.

Aligned to the Global Forum process, Niue has also been heavily committed to achieving the FATF international standards for AML/CFT and is making steady progress by following its strategic implementation action plan to address AML/CFT deficiencies identified in the 2012 APG Mutual Evaluation Report on Niue.

While the Niue jurisdiction has not received a tax information exchange request it has demonstrated its commitment to the process by working diligently to ensure that systems and processes are in place to deal with such requests given the special nature and circumstances faced by Niue.

The Niue authorities are following an action plan that addresses deficiencies identified in the Phase 2 Peer Review, some of which are being addressed under the AML/CFT action plan.

The assistance and guidance provided by the Global Forum and the Secretariat during the course of the review has indicated that some further technical assistance may be required to further enable Niue to efficiently meet the proposed recommendations and the standards outlined.

Annex 2: List of all exchange of information mechanisms

List of EOI agreements signed by Niue as at 18 December 2015, including eight TIEAs and the Convention on **Mutual Administrative Assistance in Tax Matters, as amended** (MAC). The MAC has not yet entered into force in Niue. The EOI agreements listed below do not limit, nor are they limited by, provisions contained other EOI arrangements between the same parties concerned or other instruments which relate to co-operation in tax matters.

The chart of signatures and ratification of the Multilateral Convention is available at www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf.

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
1	Albania	MAC	Signed	In force in Albania
2	Andorra	MAC	Signed	Not yet in force
3	Anguilla	MAC ^b	Extended	In force in Anguilla
4	Argentina	MAC	Signed	In force in Argentina
5	Aruba	MAC ^c	Extended	In force in Aruba
6	Australia	MAC	Signed	In force in Australia
7	Austria	MAC	Signed	In force in Austria
8	Azerbaijan	MAC	Signed	In force in Azerbaijan
9	Barbados	MAC	Signed	Not yet in force
10	Belgium	MAC	Signed	In force in Belgium
11	Belize	MAC	Signed	In force in Belize
12	Bermuda	MAC ^b	Extended	In force in Bermuda
13	Brazil	MAC	Signed	Not yet in force
14	British Virgin Islands	MAC ^b	Extended	In force in British Virgin Islands
15	Bulgaria	MAC	Signed	Not yet in force
16	Cameroon	MAC	Signed	In force in Cameroon

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
17	Canada	MAC	Signed	In force in Canada
18	Cayman Islands	MAC ^b	Extended	In force in Cayman Islands
19	Chile	MAC	Signed	Not yet in force
20	China (People's Republic of)	MAC	Signed	Not yet in force ^e
21	Colombia	MAC	Signed	In force in Colombia
22	Costa Rica	MAC	Signed	In force in Costa Rica
23	Croatia	MAC	Signed	In force in Croatia
24	Curaçao	MAC ^c	Extended	In force in Curaçao
25	Cyprus ^a	MAC	Signed	In force in Cyprus
26	Czech Republic	MAC	Signed	In force in Czech Republic
27	Denmark	MAC	Signed	In force in Denmark
		TIEA	10 January 2014	22 February 2014
28	El Salvador	MAC	Signed	Not yet in force
29	Estonia	MAC	Signed	In force in Estonia
30	Faroe Islands	MAC ^d	Extended	In force in Faroe Islands
		TIEA	10 January 2014	13 June 2014
31	Finland	MAC	Signed	In force in Finland
		TIEA	10 January 2014	22 February 2014
32	France	MAC	Signed	In force in France
33	Gabon	MAC	Signed	Not yet in force
34	Georgia	MAC	Signed	In force in Georgia
35	Germany	MAC	Signed	In force in Germany
36	Ghana	MAC	Signed	In force in Ghana
37	Gibraltar	MAC ^b	Extended	In force in Gibraltar
38	Greece	MAC	Signed	In force in Greece
39	Greenland	MAC ^d	Extended	In force in Greenland
		TIEA	10 January 2014	29 April 2014
40	Guatemala	MAC	Signed	Not yet in force
41	Guernsey	MAC ^b	Extended	In force in Guernsey
42	Hungary	MAC	Signed	In force in Hungary
43	Iceland	MAC	Signed	In force in Iceland
		TIEA	10 January 2014	31 June 2014

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
44	India	MAC	Signed	In force in India
45	Indonesia	MAC	Signed	In force in Indonesia
46	Ireland	MAC	Signed	In force in Ireland
47	Isle of Man	MAC ^b	Extended	In force in Isle of Man
48	Israel	MAC	Signed	Not yet in force
49	Italy	MAC	Signed	In force in Italy
50	Japan	MAC	Signed	In force in Japan
51	Jersey	MAC ^b	Extended	In force in Jersey
52	Kazakhstan	MAC	Signed	In force in Kazakhstan
53	Korea	MAC	Signed	In force in Korea
54	Latvia	MAC	Signed	In force in Latvia
55	Liechtenstein	MAC	Signed	Not yet in force
56	Lithuania	MAC	Signed	In force in Lithuania
57	Luxembourg	MAC	Signed	In force in Luxembourg
58	Malta	MAC	Signed	In force in Malta
59	Mauritius	MAC	Signed	In force in Mauritius
60	Mexico	MAC	Signed	In force in Mexico
61	Moldova	MAC	Signed	In force in Moldova
62	Monaco	MAC	Signed	Not yet in force
63	Montserrat	MAC ^b	Extended	In force in Montserrat
64	Morocco	MAC	Signed	Not yet in force
65	Netherlands	MAC	Signed	In force in the Netherlands
66	New Zealand	MAC	Signed	In force in New Zealand
		TIEA	29 August 2012	31 October 2013
67	Nigeria	MAC	Signed	In force in Nigeria
68	Norway	MAC	Signed	In force in Norway
		TIEA	10 January 2014	28 May 2014
69	Philippines	MAC	Signed	Not yet in force
70	Poland	MAC	Signed	In force in Poland
71	Portugal	MAC	Signed	In force in Portugal
72	Romania	MAC	Signed	In force in Romania
73	Russia	MAC	Signed	In force in Russia
74	San Marino	MAC	Signed	In force in San Marino

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
75	Saudi Arabia	MAC	Signed	Not yet in force
76	Seychelles	MAC	Signed	In force in Seychelles
77	Singapore	MAC	Signed	Not yet in force
78	Sint Maarten	MAC ^c	Extended	In force in Sint Maarten
79	Slovak Republic	MAC	Signed	In force in Slovak Republic
80	Slovenia	MAC	Signed	In force in Slovenia
81	South Africa	MAC	Signed	In force in South Africa
82	Spain	MAC	Signed	In force in Spain
83	Sweden	MAC	Signed	In force in Sweden
		TIEA	10 January 2014	Not yet in force
84	Switzerland	MAC	Signed	Not yet in force
85	Tunisia	MAC	Signed	In force in Tunisia
86	Turkey	MAC	Signed	Not yet in force
87	Turks and Caicos Islands	MAC ^b	Extended	In force in Turks and Caicos Islands
88	Uganda	MAC	Signed	Not yet in force
89	Ukraine	MAC	Signed	In force in Ukraine
90	United Kingdom	MAC	Signed	In force in United Kingdom
91	United States	MAC	Signed	Not yet in force

Notes: a. 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.

- b. Extension by the United Kingdom.
- c. Extension by the Kingdom of the Netherlands.
- d. Extension by Kingdom of Denmark.
- e. On 16 October 2015, China (People’s Republic of) deposited their instrument of ratification of the Convention as amended by the Protocol at the OECD (Paris). In accordance with article 28, the Convention shall enter into force on 1 February 2016.

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

Constitution

Civil and commercial laws

Companies Act 2006
International Business Companies Act 1994 (repealed)
Partnership Act 1908 (New Zealand enactment)
Partnership Application Act 1994
Trustee Act 1956 (New Zealand enactment)
Trusts Act 1994
Trustee Companies Act 1994
Incorporated Societies Act 1908

Regulated activities and AML/CFT laws

Financial Transactions Reporting Act 2006
Best Practices Guidelines for Financial Institutions
Mutual Assistance in Criminal Matters Act 1998
Niue Bank Act 1994
Niue Bank Amendment Act 2013
Niue Bank (Kiwibank and Niue Commercial Enterprise Limited)
Regulations 2013
Niue Act 1966

Tax laws

Income Tax Act 1961

Income Tax Amendment Act 2009

Income Tax Amendment Act 2012

Other laws

Interpretation Act 2004

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: NIUE

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 130 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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

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

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

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