



SUPPLEMENTARY PEER REVIEW REPORT

Phase 2

Implementation of the Standard in Practice

BARBADOS



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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.

Abbreviations

| | |
|--------------|--|
| AML | Anti-Money laundering |
| BRA | Barbados Revenue Authority |
| CAIPO | Corporate Affairs and Intellectual Property Office |
| CDD | Customer due diligence |
| CTF | Counter Terrorism Financing |
| DTC | Double Tax Conventions |
| EOI | Exchange of information |
| FATF | Financial Action Task Force |
| FIU | Financial Intelligence Unit |
| FSC | Financial Services Commission |
| IBC | International Business Company |
| IBU | International Business and Financial Services Unit |
| MLPA | Money Laundering (Prevention) Act |
| OECD | Organisation for Economic Co-operation and Development |
| SRL | Society with Restricted Liability |
| TIEA | Tax Information Exchange Agreements |

Executive summary

1. This report assesses developments in the legal and regulatory framework for transparency and exchange of information in Barbados, as well as its practical implementation, under the international standard set out in the Global Forum's *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information*. During the Phase 2 review in 2014, the Global Forum evaluated Barbados for its implementation of the international standard in practice. Barbados was rated Partially Compliant overall. This supplementary report evaluates developments to the framework and progress made by Barbados since the last review. This report concludes that Barbados is now rated Largely Compliant overall.

2. The Phase 2 rated Barbados was Compliant for elements A.3 (Availability of Banking Information), B.2 (Notification Requirements and Rights and Safeguards), C.3 (Confidentiality) and C.4 (Rights and Safeguards), Largely Compliant for elements A.1 (Availability of Ownership and Identity Information), A.2 (Availability of Accounting Information), B.1 (Access to Information) and C.1 (EOI Mechanisms), Partially Compliant for element C.5 (Exchanging Information), and Non-Compliant for element C.2 (Network of EOI Mechanisms).

3. Obligations to ensure the availability of identity and ownership information for relevant entities are generally in place, although in Phase 2, the Global Forum identified gaps relating to enforcement, including the lack of penalties for not maintaining share registers in the case of companies and societies with restricted liability. Legislative gaps pertaining to penalties were rectified by amendments to relevant commercial laws in 2015 instituting sanctions for contravention of record-keeping requirements. However, to date, Barbados has yet to take enforcement measures in cases of non-compliance. Further, the International Business Division still does not have a compliance department to monitor the compliance of entities and service providers with requirements to maintain ownership information. Therefore, the recommendation to take effective enforcement measures remains applicable and the rating for element A.1 remains Largely Compliant.

4. In 2013, Barbados enacted legislation providing for the creation of foundations although the law did not enter into force until January 2016, after the conclusion of the Phase 2 review. The Foundations Act provides for identity information on founders to be filed with the Registrar of Companies. Information on beneficiaries is required to be maintained by the foundation's secretary or registered agent, but it is not guaranteed to be in Barbados in all instances.

5. The Phase 2 report also identified a gap in Barbados legislation concerning trusts without tax obligations in Barbados as these would not be required under the Income Tax Act to maintain reliable accounting records, including underlying documentation, for a minimum of five years. In 2015, Barbados enacted the Corporate and Trust Service Providers Act, imposing record-keeping obligations on trustees (as licensed service providers). However, as the record-keeping requirements would pertain to the books and accounts of the licensee's own business, this new law does not suffice to rectify the deficiencies identified in the Phase 2 report. Further, although the Revenue Authority is meant to supervise the filing obligations of entities within its purview, it has not audited IBCs during the period under review, nor has it imposed penalties on any entity for failure to comply with accounting or filing requirements under Barbadian law. Accordingly, the element A.2 is now rated Partially Compliant.

6. Regarding access to information, the Barbadian competent authority was deemed in Phase 2 to have adequate powers to access information for exchange purposes, but due to secrecy provisions, Barbados's ability to access information on some trusts was limited. Barbados was thus recommended to review its laws to remove any uncertainties about its powers to obtain information on all types of trusts. Since the time of the Phase 2 review, Barbados has amended its laws to allow the competent authority to access confidential information from all categories of trusts, Barbados' legal framework has been improved and is now deemed to be "in place". However, in practice, Barbados has experienced significant delays in obtaining information and did not exercise any compulsory powers during the review period. Accordingly, element B.1 remains Largely Compliant and Barbados is recommended to use all of its access powers, including compulsory powers, to ensure the timely exchange of information.

7. In Phase 2, Barbados was criticised for not having answered enough invitations to sign TIEAs with Global Forum members. Barbados was therefore rated Non-Compliant on element C.2 and encouraged to continue updating its treaty network to bring all of its EOI arrangements into line with the standard. Since Phase 2, Barbados has taken steps to expand its network both bilaterally and on a multilateral basis. Barbados has signed four new DTCs and one new TIEA. Barbados also signed the Convention on

Mutual Administrative Assistance in Tax Matters (Multilateral Convention), as amended in October 2015. Barbados deposited its instrument of ratification on 6 July 2016 and the Multilateral Convention will enter into force in Barbados on 1 November 2016. Once in force, the Multilateral Convention will provide Barbados with an EOI network that covers a total of 113 jurisdictions. Accordingly, elements C.1 and C.2 have been upgrade to Compliant.

8. In practice, Barbados received 11 requests for information during the period from 1 July 2012 to 30 June 2015 from two partners, Canada and the United Kingdom. Of the 11 requests, Barbados answered one within 90 days (representing 9% of all requests), two within 180 days (cumulatively, 18.2% of responses), three between three months and a year (27.3%) and four only after one year (cumulatively, 36.4%). One response (8%) is still outstanding at the time of the current review. Although Barbados' EOI practice improved towards the end of the review period, with the operationalisation of its new EOI unit, organisational issues towards the beginning of the review period resulted in significant delays, which have not been entirely resolved. Therefore, element C.5 remains Partially Compliant and Barbados is recommended to ensure that answers to EOI requests are made in a timely manner and systematically provide status updates where needed.

9. As a result of this supplementary assessment, Barbados' rating for each of the ten essential elements and its overall rating have been revised. 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 Barbados' legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Barbados has been assigned the following ratings: Compliant for elements A.3, B.2, C.1, C.2, C.3 and C.4; Largely Compliant for elements A.1 and B.1; and Partially Compliant for elements A.2 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Barbados is Largely Compliant.

10. A follow-up report on the steps undertaken by Barbados to answer the recommendations made in this report should be provided to the PRG in June 2017 in accordance with the 2016 Methodology for the second round of peer reviews.

Introduction

Information and methodology used for the peer review of Barbados

11. The assessment of the legal and regulatory framework of Barbados, as well as its practical implementation, is based on the international standard for transparency and exchange of information set out in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*. The assessment was prepared using the Global Forum’s *Methodology for Peer Reviews and Non-Member Review* and has been conducted in successive phases. The Phase 1 evaluation of Barbados’ legal and regulatory framework for transparency and the exchange of information was conducted in 2010 and was followed by a Supplementary Phase 1 assessment in 2011. The Phase 2 assessment of the practical implementation of Barbados’ legal and regulatory framework took place in 2013. The current Phase 2 supplementary review evaluates updates to Barbados’ legal and regulatory framework until August 2016 and its practical implementation and effectiveness during the three year peer review period of 1 July 2012 to 30 June 2015.

12. The Supplementary Phase 2 assessment is based on the laws, regulations, and exchange of information mechanisms in force or effect as at 19 August 2016, Barbados’ responses to the Phase 2 questionnaire and supplementary questions, information supplied by partner jurisdictions, other relevant sources, as well as information collected during the on-site visit in Bridgetown, Barbados in April 2016. During the on-site visit, the assessment team met with officials and representatives from, *inter alia*, the Ministry of Finance, the Ministry of Industry, International Business, Commerce and Small Business Development (Ministry of International Business), the Barbados Revenue Authority, and the Financial Services Commission (see Annex 4 for a full list of participating agencies).

13. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. In respect of each

essential element, a determination is made that: *(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 needed. In addition, in reflection of the Phase 2 component, recommendations are made concerning Barbados' practical application of each of the essential elements. Barbados has also received a rating of *(i)* Compliant, *(ii)* Largely Compliant, *(iii)* Partially Compliant, or *(iv)* Non-Compliant on each element. An overall rating is also assigned to reflect Barbados' overall level of compliance with the standards.

14. The Phase 1, Supplementary Phase 1, Phase 2 and Supplementary Phase 2 assessments were each conducted by an assessment team composed of two expert assessors and representatives of the Global Forum Secretariat, as described below.

| Assessment | Assessors | Peer review period | Date of adoption by the Global Forum |
|-------------------------------------|---|------------------------------|--------------------------------------|
| Phase 1 report | Ms. Monica Bhatia, from the Income Tax Department of India Mr. Jesper Leth Vestergaard, from the Ministry of Taxation of Denmark Ms. Gwenaëlle Le Coustumer from the Secretariat of the Global Forum | N/A | January 2011 |
| Phase 1 supplementary report | Ms. Monica Bhatia, from the Income Tax Department of India Ms. Merete Helle Hansen, from the Ministry of Taxation of Denmark Ms. Gwenaëlle Le Coustumer from the Secretariat of the Global Forum | N/A | February 2012 |
| Phase 2 report | Mr. Ram Mohan Singh, from the Income Tax Department of India Ms. Merete Helle Hansen, from the Ministry of Taxation of Denmark Ms. Gwenaëlle Le Coustumer from the Secretariat of the Global Forum | July 2009- June 2012 | April 2014 |
| Phase 2 supplementary report | Ms. Vandana Ramachandran, from Ministry of Finance of India Ms. Flor Nieto Velázquez, from the Tax Administration Service of Mexico Ms. Kathleen Kao and Ms. Renata Teixeira from the Secretariat of the Global Forum | 1 July 2012- 30 June 2015 | September 2016 |

Overview of Barbados

15. The overview of Barbados' governance, economic context and legal system is set out at paragraphs 14-43 of the Phase 2 report. The sections below provide a brief summary of Barbados' tax system, relevant laws, EOI history, Phase 2 findings, and modifications or updates made to the legal system and regulatory system.

General information on the taxation system

16. The administration of income tax in Barbados is governed by the 1968 Income Tax Act (ITA) and the 1969 Income Tax Regulations. Resident individuals and corporations are taxed on their worldwide income. A resident but not domiciled person is taxed on Barbados income and any income remitted to Barbados; a non-resident person is taxed only on Barbados income (ss. 5, 16 and 17 ITA). The Barbadian tax system is a self-assessment system (s. 52(5) ITA). Resident individuals and companies are required to calculate their taxable income and tax liability, and to pay the tax due at specified times. Pursuant to the Pay As You Earn System, employers are mandated to withhold tax at specified rates from their employees' salaries. No tax on capital gains is imposed in Barbados.

17. For corporations, the place of management and control determines residence for tax purposes. External (foreign) companies carrying on business through a branch pay corporate tax on locally sourced income as well as a tax on branch profit remittances. Corporate tax applies to companies and societies with restricted liability.

18. The Administration of the income tax system (including tax assessment and collection) is carried out by the Revenue Commissioner, assisted by a staff of approximately 321 persons. There are approximately 98 000 individual taxpayers in Barbados in 2015, of which 98% file their tax returns electronically. There are also approximately 7 001 corporate taxpayers, of which approximately 88% file electronically. Remaining taxpayers file tax returns in paper format.

Overview of commercial laws and relevant agencies

19. The main commercial law of Barbados is the Companies Act (CA), supplemented by specific laws dedicated to particular forms of companies or activities, such as international business companies (IBCs) under the International Business Companies Act (IBC Act), and societies with restricted liability under the Societies with Restricted Liability Act (SRL Act).

20. Barbados' international business sector is regulated by the International Business Division of the Ministry of Industry, International Business, Commerce and Small Business Development. The International Business Division is divided into three units: (i) the International Business and Financial Services Unit (IBU), responsible for the supervision of international business and financial services; (ii) the Corporate Affairs and Intellectual Property Office (CAIPO), responsible for the registration of business names, the incorporation and registration of companies and limited partnerships, and the organisation of societies with restricted liability; and (iii) the Copyright Unit.

Overview of the financial sector and relevant professions

21. Barbados' financial sector is comprised of both onshore and offshore entities. In Barbados, onshore commercial banks, trust companies, finance companies, merchant banks, and other financial institutions are regulated under the Financial Institutions Act (FIA). Offshore entities, such as international banks and international financial services¹, are regulated under the International Financial Services Act (IFSA). The Central Bank and the Financial Services Commission (FSC) are jointly responsible for the continuous oversight of the financial system. The Central Bank of Barbados is the regulatory authority of both onshore and offshore banks, and trust and finance companies, whereas the FSC is responsible for the supervision of the non-banking financial sector in Barbados (discussed below). As of June 2016, Barbados has 5 commercial banks (with assets of USD 6.46 billion), 13 trust companies, financial companies and merchant banks (with assets of approximately USD 1 billion), and 27 international banks (with assets of USD 33.5 billion).

22. The FSC, established in April 2011 by the Financial Services Commission Act (2010), is responsible for supervising and regulating non-banking financial entities licensed and registered under specific Acts of Parliament pertaining to insurance, securities and other financial services. The FSC regulates the insurance industry under the Insurance Act and the Exempt Insurance Act. Entities engaged in business related to securities and mutual funds are also regulated by the FSC under the Securities Act and the Mutual Funds Act, respectively. Persons participating in the securities industry include securities companies, brokers, dealers, traders, underwriters and investment advisers. Mutual fund business is defined under Barbadian law as registered unit trusts, finance companies and corporate entities carrying on mutual fund business. The FSC also supervises credit unions and entities operating under the Co-operatives Societies Act. In 2015, Barbados had 15

1. International financial services include the receiving, using and accepting in trust, of foreign funds (section 4 of IFSA).

exempt insurance companies, 44 qualifying insurance companies, 11 holding companies, and 24 management companies. Total assets held by the insurance sector as of December 2014 was USD 52 058.

23. Other service providers offer primarily trust and corporate services to local and international clients, including company formation services, registered offices, corporate secretarial services, day to day management and administration, accounting, the provision of directors and officers, the creation of trusts and acting as trustee, mutual fund administration, and investment management. Previously, only international service providers had to be licensed pursuant to the International Corporate and Trust Service Providers Act. Since May 2015, all corporate service providers must be licensed under the Corporate and Trust Service Providers Act and are supervised by the International Business Division. Entities that are licensed with the FSC are not required to also be licensed with the International Business Division.

Anti-money laundering framework

24. Barbados' AML regime establishes obligations on regulated financial service entities as well as on persons carrying on certain other business activities that require retention of ownership, identity and accounting information in respect of the persons with whom they do business. The Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23 (the Money Laundering Prevention Act, or the MLFTA) provides the legal basis for Barbados' AML framework. Under the Money Laundering Prevention Act, the principal supervisory AML body is the Anti-Money Laundering Authority. On a day-to-day basis, the obligations of Barbados' AML regime are administered by the Financial Intelligence Unit (FIU), which is the central agency responsible for receiving (and requesting), analysing, and disseminating to the competent authorities, disclosures of financial information in reports of suspicious or unusual transactions.

25. All persons carrying out financial activities as described in the First Schedule of the Money Laundering Prevention Act, as well as designated non-financial business entities and professionals, such as attorneys and accountants engaged in certain activities described in the Second Schedule, and international service providers under the International Corporate and Trust Service Providers Act, are subject to AML requirements. The recently enacted Corporate and Trust Service Providers Act replaced and repealed the International Corporate and Trust Service Providers Act and extends AML obligations to corporate service providers with domestic clientele as well.

26. In May 2015, the International Business Division, in collaboration with the Anti-Money Laundering Authority, issued the latest Guidelines

for the Detection and Prevention of Money Laundering and Financing of Terrorism and Proliferation (AML Guidelines) to reflect changes in Barbados' legislative framework. The Guidelines are meant to be read in conjunction with the Money Laundering Prevention Act and are intended to provide guidance to all licensees and registrants of the International Business Division. The Guidelines stipulate that IBCs, international SRLs, and licensees under the Corporate and Trust Service Providers Act are subject to AML laws. Under the updated Guidelines, all registered agents are considered fiduciaries and are thus required to comply with AML obligations.

International exchange of information for tax purposes

27. Barbados is committed to the OECD standards of transparency and exchange of information for tax purposes. As of June 2016, Barbados has concluded 32 DTCs and 6 TIEAs. Barbados is also a signatory to the Multilateral Convention on the Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention) and the CARICOM Multilateral Tax Treaty (signed with ten other Caribbean states²).

28. The exchange of information provisions in Barbados' tax treaties are generally based on Article 26 of the OECD Model Tax Convention or the Model Tax Information Exchange Agreement but not all of them are up to the standard. Barbados TIEAs are all based on the Model TIEA (see part C for more detailed information on Barbados' treaty network).

29. Barbados has committed to the implementation of the Common Reporting Standard on Automatic Exchange of Information (AEOI). In this respect, Barbados signed a Multilateral Competent Authority Agreement to automatically exchange information based on Article 6 of the Multilateral Convention at the Global Forum Meeting in October 2015, thereby committing itself for the adoption of automatic exchange of bank account information by September 2017. On 28 October 2015 Barbados signed the Multilateral Convention for Mutual Administrative Assistance in Tax Matters (the Multilateral Convention). Barbados deposited its instrument of ratification on 6 July 2016 and the Multilateral Convention will enter into force in Barbados on 1 November 2016.

Recent legislative developments

30. In 2012, Barbados passed the Private Trust Companies Act introducing a new concept in Barbadian law: a company that would act as the trustee of private trusts (mainly for the management of family assets). This structure

2. Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

allows the individuals founding the trust to control the administration of that trust as they can be the managers of the trust company acting as trustee. The Private Trust Companies Act entered into force in May 2014, but could not be administered until Barbados finalised an accompanying piece of legislation, the Corporate and Trust Service Providers Act, laying out the obligations and responsibilities of licensed trustees.

31. In 2013, Barbados also passed a Foundations Act aimed at introducing in Barbadian law foundations for private purposes. Similarly with the Private Trust Companies Act, the Foundations Act, although passed, could not be administered while legislation on corporate service providers was still pending. As the Corporate and Trust Service Providers Act entered into force in May 2015, the Foundations Act is now also in force.

32. The Corporate and Trust Service Providers Act entered into force in May 2015 requiring the licensing and registration of all corporate service providers and trustees with the International Business Division.

33. In 2015, Barbados amended the Companies Act to create a new type of company, the incorporated cell company, which may create one or more “cells” with their own distinct legal identity. Incorporated cell companies, as limited liability companies, have the same requirements to maintain ownership and accounting information under the Companies Act and Income Tax Act.

34. In 2015, Barbados amended the Companies Act and the Societies with Restricted Liability Act to put in place financial sanctions for non-compliance with filing obligations. Barbados also amended both Acts to require limited companies and SRLs to maintain information on their beneficial owners at their registered office.

35. Also in 2015, Barbados amended section 51 of the Income Tax Act allowing for an exception to the provision of confidential information to persons legally entitled to the information where such disclosure would contradict the provisions of a treaty signed by Barbados.

Compliance with the Standards

A. Availability of information

Overview

36. 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 authority³ may not be able to obtain and provide it when requested. This section of the report describes and assesses Barbados legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework in practice.

37. In respect of ownership and identity information, the obligations imposed by Barbados on companies and partnerships in the domestic and offshore sectors are generally sufficient to identify their legal owners. At the time of the Phase 2 report, Barbados' legal and regulatory framework for maintaining ownership information was found to be largely in place although deficiencies with respect to sanctions and enforcement measures were identified. Since the Phase 2 review, Barbados has put in place penalties

3. 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 agreement.

to sanction non-compliance with obligations to maintain up-to-date share registers. However, neither the Ministry in charge of international entities nor the Corporate Affairs and Intellectual Property Office (CAIPO) have established compliance departments to monitor the compliance and apply the recently enacted penalties for non-compliance. Therefore, Barbados continues to be recommended to take effective enforcement measures to ensure that all entities comply with their requirements to maintain ownership information. In practice, some information on international entities was exchanged during the review period.

38. Since the time of the Phase 2, Barbados has also enacted new legislation providing for the creation of foundations. Legal requirements are in place to ensure that identity information is available on founders. However, information on beneficiaries may not be available in Barbados at all times. Therefore, Barbados is recommended to ensure that such obligations are in place.

39. Anti-money laundering obligations also ensure the availability of identity information where a fiduciary or service provider acts on behalf of or administers the assets of another. At the time of the Phase 2 review, Barbados did not have in place effective sanctions for professional service providers to follow AML obligations. Since the time of the Phase 2 review, Barbados enacted the Corporate and Trust Service Providers Act imposing penalties on service providers who do not oblige with customer identification and record-keeping requirements.

40. Accounting records must be kept pursuant to the Income Tax Act for most relevant entities. However, the Phase 2 report identified a gap in relation to trusts outside the ambit of the Income Tax Act, as they are not subject to record-keeping requirements. Despite legislative amendments, the accounting obligations of some categories of trusts, in particular non-taxable trusts, remain unclear. In practice, enforcement of the accounting obligations is performed mainly by the tax authorities. As international entities have limited tax obligations in Barbados, they do not appear to have been the focus of the tax authorities' audit programme during the review period. Accounting information requested during the review period has been provided to EOI partners most of the time.

41. As regards banking information, the AML rules applicable to financial institutions impose appropriate obligations to ensure that domestic and offshore banks keep all records pertaining to accounts, as well as related financial and transactional information. The Central Bank of Barbados ensures the proper implementation of the laws and regulations applicable to financial institutions and appropriate measures are taken to ensure that relevant banking information is available in Barbados.

42. In practice, Barbados has received 11 exchange of information requests during the period 1 July 2012 – 30 June 2015. Most of these covered elements of identity and ownership information. About half covered accounting information and one third banking information. In some cases information was not exchanged due to treaty restrictions or information-gathering issues, but, the situation has not yet arisen where information was not available due to a defect in Barbados' legal framework.

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 4 A.1.1)

43. A summary of the conclusions from the Phase 2 report are detailed below, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal requirements for companies in Barbados, please refer to paragraphs 54-88 of the Phase 2 report.

Types of companies

44. There are three types of companies in Barbados: (i) companies (public and private companies with limited liability incorporated under the Companies Act and doing business in or from Barbados); (ii) societies with restricted liability (SRLs) (entities organised under the Societies with Restricted Liability Act similar to limited liability companies in other jurisdictions); and (iii) non-profit companies (entities operating for the benefit of a specified non-commercial purpose). For the purpose of this assessment, non-profit companies, as they have no commercial purpose, are not considered relevant.

45. Companies or societies incorporated under the Companies Act and the Societies with Restricted Liability Act (SRL Act) can obtain a licence to conduct specific offshore activities from Barbados. Such companies can be formed as international business companies (IBCs), licensed under the International Business Companies Act (IBC Act) to conduct international manufacturing or trade and commerce. SRLs can be formed as international SRLs, if they are organised and licensed under the SRL Act to transact business from Barbados with persons outside Barbados. International SRLs are

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

designed primarily for use in international transactions and are prevented from doing business with residents of the Caribbean Community. As of June 2016, there were 22 604 domestic companies, 212 domestic SRLs, 10 465 IBCs and 1 027 international SRLs registered with the Registrar of Companies. For a more detailed description of the types of companies that can be formed in Barbados, please see paragraphs 51-53 of the Phase 2 report.

46. In 2012, Barbados passed the Private Trust Companies Act providing for the creation of a specific type of limited company authorised to act as trustee to one or more family trusts. A private trust company is offered as an alternative to the usual trust arrangement when the settlor of the trust wishes family members to retain a degree of involvement in decisions relating to the trust. The Private Trust Companies Act establishes a number of rights and responsibilities specific to private trust company, but first and foremost, such entities come within the purview of the Companies Act (as they are subject to the same registration, incorporation and filing requirements as other companies). At the time of the Phase 2 review, although the legislation governing private trust companies was in place, legislation governing the licensing of corporate service providers had not been finalised. Therefore, no such entities had yet been created. In May 2015, the Corporate and Trust Service Providers Act entered into force, but still to date, no private trust companies are yet in operation in Barbados.

47. In February 2016, Barbados amended the Companies Act to allow for the creation of incorporated cell companies. An incorporated cell company is a single incorporated entity that acts as the “core” company to one or more “cells”. Each cell is considered to be a limited liability company and has its own governance structure with its own board of directors and officers independent from the core company. Such a structure also allows each cell to separate its assets, liabilities, shareholder agreements and other legal obligations from other cells within the incorporated cell company. The incorporated cell company, as well as each cell, must be registered pursuant to the Companies Act. Consequently, for the purpose of this assessment, they are considered to be no different from other domestic companies in terms of their obligations to maintain and provide ownership information where required.

Ownership and identity information held by Barbadian authorities

48. The Phase 2 report found that the rules regarding the maintenance of ownership information by government authorities in respect of companies in Barbados were generally in accordance with the international standard and appeared to be effective in practice, although some questions regarding their enforcement were raised. Ownership information is generally held by Barbadian regulatory authorities or the entities themselves. To a significantly lesser degree, information on certain types of entities is held by the Registrar.

A recommendation regarding the absence of applicable sanctions for non-compliance with legal obligations to maintain share registers was made in the Phase 2 report. Barbados was additionally recommended to put in place effective enforcement measures. Barbados has made changes to its legal framework to address the Phase 1 recommendation on the absence of sanctions; however, further work remains to be done on implementing enforcement measures. Further, since the time of the Phase 2 review, Barbados has created several new types of legal entities: private trust companies, incorporated cell companies and foundations. As with all other companies, ownership information on private trust companies and incorporated cell companies is ensured under the Companies Act. Foundations are discussed below in section A.1.5.

Commercial law requirements and oversight

49. The Corporate Affairs and Intellectual Property Office (CAIPO), which is headed by the Registrar, does not consistently maintain ownership and identity information on all relevant entities. All companies and SRLs incorporated in Barbados must be registered with CAIPO, but ownership information is not required to be submitted upon registration for all entities. Information on the legal owners of domestic and international SRLs is required for registration with CAIPO, but the SRL Act does not stipulate any deadlines for updating information previously submitted. Domestic and international companies, on the other hand, do not have to disclose their legal or beneficial ownership upon registration.

50. Pursuant to the Companies Act section 15A and the SRL Act section 24(1), every company and SRL incorporated in Barbados with share capital must file with the Registrar an annual return. The annual return does not require any ownership information, but, in the case of international entities, requires an attestation from the service provider that he/she has conducted the requisite due diligence on the shareholders, directors and managers. Failure to file the annual return as required results in a fine of BBD⁵ 10 (USD 5) per day the default continues and the possibility of being struck off the register (ss. 15(A)(2) and (3) CA). The Corporate (Miscellaneous Provisions) Act enacted in 2015 to amend the Companies Act also further require companies (including private trust companies) to certify in their annual returns that information on shareholders and beneficial ownership is being maintained at their registered office (s. 15(A) CA). Where provisions of the Companies Act are not inconsistent with the express provisions of the SRL Act, they apply to SRLs. Under this principle, domestic SRLs use the same annual return form as domestic companies, and are subject to the same obligation.

5. Since 1975, the Barbados Dollar has been pegged to the United States Dollar at a rate of two to one (2 BBD = 1 USD).

51. In addition to domestic companies, certain foreign companies are relevant under the Terms of Reference where they have a sufficient nexus with Barbados. The Companies Act defines external companies as bodies (incorporated or unincorporated) formed under the laws of a foreign jurisdiction (s.324(1)(a) CA). As with companies formed under the laws of Barbados, external companies are required to register with the Registrar, but are not required to submit any ownership information upon registration (ss. 326(1) and 330). Section 343 of the Companies Act also sets an obligation for external companies to file annual returns, but as mentioned above, the annual return form does not require any ownership information. However, with amendments to the Companies Act in 2015, external companies are required by the Companies Act to maintain a record of beneficial ownership in Barbados (s.170(2) CA). Further, as with IBCs and international SRLs, external companies conducting international business are required to submit information on shareholders and ultimate beneficial owners in their offshore license application form. External companies that do not require an offshore license to operate or conduct international business, would not be required to submit information on shareholders, but would have to keep this information themselves. As of June 2016, 2 327 external companies are registered with Barbados.

52. In practice, CAIPO is the body responsible for registering businesses under Barbadian law. Registration of certain types of entities will take place in a two-step process. All businesses must be first registered with CAIPO, and then additionally with the Ministry in charge of international entities if required to obtain a license (e.g. in the case of IBCs, international SRLs and corporate service providers) or where permission from the Minister is required to operate (e.g. in the case of Private Trust Companies).

53. In terms of oversight, CAIPO maintains that, as a public registry and not an enforcement body, its oversight responsibilities are limited to ensuring that entities comply with their registration and filing requirements. As such, CAIPO does not monitor or supervise entities' obligations under the law to maintain records. During the current review period, the Registrar had commenced enforcing compliance obligations with registration and annual return filing obligations under the Companies Act by imposing the daily penalty of BBD 10 (USD 5) only in the beginning of 2016 (for activities having taken place in 2015). Representatives from CAIPO at the on-site visit report that most recent deadlines for the filing of annual returns were 31 March 2016 and 15 June 2016 (depending on the entity's financial year). Therefore, as of the time of the on-site visit, the Registrar had only begun to impose penalties for entities in default. Of the 22 604 companies registered with CAIPO as of June 2016, only 6 960 companies had filed annual returns. CAIPO was unable to provide statistics on the timeliness of filing.

54. In addition to the monetary penalty described above, the Registrar may strike off the register any company that fails to send any return, notice, document or prescribed fee to the Registrar as required by the Companies Act (s.412(1) CA). Where the Registrar is of the opinion that a company is in default, he/she must send it a notice advising it of the default and stating that, unless the default is remedied within 30 days after the date of the notice, the company will be struck off the register (s.412(2) CA). After the expiration of the time mentioned in the notice, the Registrar may strike the company off the register. A notice of the striking off must be published in the Gazette (s.412(4) CA). In the period under review, the Registrar had not struck off any companies from the register.

Tax law requirements and oversight

55. The tax authority does not maintain any significant ownership information on Barbadian entities. Section 52(1) of the Income Tax Act requires every person and company carrying on business in Barbados to register with and submit annual returns to the tax authority. The tax authorities indicated in Phase 2 that the concept of “carrying on business” is interpreted broadly and includes the management of assets. However, in general, no ownership information is required at the time of registration or in annual tax returns. When filing tax returns, corporate taxpayers must disclose their legal ownership structure to benefit from group relief; however, group relief provisions are not available to IBCs, SRLs and international financial institutions established under the IFSA. Consequently, the tax return is rarely a source of ownership information for EOI purposes.

56. In practice, there are 7 001 companies registered for tax purposes with the BRA. All entities registered for tax are generally obliged to file a tax return by 31 March each year. However, as there is no requirement for entities to provide ownership information in their tax returns, the BRA has not been responsible for monitoring or oversight of ownership obligations in Barbados.

Oversight by licensing bodies and regulators

57. Where ownership information is available with public authorities, it is generally held by the Barbadian regulatory bodies. Every entity conducting international business in Barbados must have a license. Ownership information is required to be filed with the relevant licensing or regulatory authority.

58. All IBCs, international SRLs, and external companies conducting international business must first obtain a license from the International Business Division of the Ministry of International Business pursuant to section 2 of the IBC Act and section 40 of the SRL Act, respectively. IBCs and international SRLs are required to submit information on shareholders (or quota owners

in the case of international SRLs) and ultimate beneficial shareholders and owners in their license application form. The International Business Division oversees registration requirements by ensuring that all required materials are received and by checking the ownership information against identity documents. Prior to 2014, licenses issued by the International Business Division were required to be renewed on an annual basis. Pursuant to amendments to the IBC Act in 2014, licenses granted to IBCs and international SRLs are considered “indefinite” and remain valid until cancelled (s. 5 IBC Act). Under the indefinite licensing system, entities do not need to renew their licenses on an annual basis, but they are required to submit an annual form to the International Business Division. Changes in shareholder information must be included in this form. A licence may be cancelled where an entity fails to pay the annual fee or supply the required information. Changes to information should also be notified to the International Business Division as they occur, although Barbadian legislation does not stipulate a timeframe for this; rather, Barbadian officials explain that changes must be reported “within a reasonable amount of time”. The International Business Division collaborates with CAIPO in regulating this obligation. Updates on ownership (such as in the form of share transfers) that are registered with CAIPO are made known to the International Business Division as well. Pursuant to section 28A of the IBC Act, failure to comply with the obligation to update ownership information is punishable upon summary conviction to a fine of BBD 25 000 (USD 12 500) or to imprisonment for a term of 12 months or both. Section 29A of the SRL Act imposes a fine of BBD 10 000 (USD 5 000) for such a contravention. During the period under review, the International Business Division did not cancel any licenses.

59. The Financial Institutions Act and International Financial Services Act establish the statutory requirements for the licensing of financial institutions and institutions providing international financial services. All entities coming under either Act must first obtain a license before commencing operations. Foreign banks under the International Financial Services Act must disclose the names and addresses of their shareholders, and the number of share held directly or indirectly by them, in their license application with the Bank Supervision Department of the Central Bank (s. 7 IFSA). Further, transfers of shares in an international bank require the prior approval of the Minister of Finance (s. 13 IFSA). Commercial banks and trust and finance companies are also required to obtain a license from the Central Bank under the Financial Institutions Act (s. 4 FIA). Ownership information is not required to be submitted at the time of the license application, but no person may acquire more than a 20% share in a Barbadian bank without the prior approval of the Minister of Finance (s. 10 FIA). A breach of any statutory duty or obligation can result in revocation of the bank’s license (s. 15 IFSA and s. 10 FIA).

60. All entities licensed under the International Financial Services Act and Financial Institutions Act must submit to the supervision of the Central

Bank (s. 13(2) IFSA and s. 43 FIA). The Central Bank has powers of audit and inspection under both statutes. In the Central Bank, the Bank Supervision Department is responsible for the licensing and supervision of relevant entities. At present, the Bank Supervision Department has 30 staff, which are divided into 4 teams. Each team is assigned a portfolio of institutions that they will monitor on an on-going basis. The Central Bank estimates that, currently, it has within its supervision 27 international, 5 domestic commercial banks and 12 Part III entities as defined in the Financial Institutions Act (trust and finance companies and merchant banks). The Central Bank's compliance department performs off-site and on-site controls over the Central Bank's licensees through sample checks on the identification of clients and the retention of documents. For a more detailed description of the Central Bank's supervision, see section A.3 on banking information.

61. Non-banking financial entities (such as exempt insurance companies, companies engaged in securities or mutual funds, credit unions, and pension fund administrators) must obtain a license from the FSC before commencing economic activity. Legal and beneficial ownership information must be disclosed as part of the application process.

Ownership information held by companies

62. In general, information on legal and beneficial owners is held by the entities themselves. Pursuant to section 170 of the Companies Act, all companies are required to maintain in Barbados a register of shareholders. However, at the time of the Phase 2 review, under the SRL Act, a list of persons entitled to receive dividends without being members of the SRL was not required to be maintained. Since the Phase 2 review, Barbados amended the SRL Act to include a requirement for SRLs to prepare and maintain at their registered office a record of the beneficial ownership of the society (s. 24(1) SRL Act). The Companies Act was similarly amended to require that companies maintain in a register the record of beneficial ownership (s. 170(2)(d) CA).

63. A deficiency identified at the time of the Phase 2 review was that no sanctions were applicable in case of failure to maintain the share register. Following the Phase 2 review, Barbados amended the Companies Act and the SRL Act to include penalties for contraventions of record-keeping requirements (discussed more in depth below in section on enforcement).

Anti-money laundering obligations relating to ownership information

64. The Phase 2 report noted that AML/CFT requirements applicable to nominees and service providers were in place although, as with companies, Barbados did not have in place effective enforcement measures to ensure that service providers were in compliance with their obligations under the law.

Since the Phase 2 review, Barbados has enacted legislation that would rectify this gap. The Corporate and Trust Service Providers Act now requires all service providers to be licensed and imposes penalties for non-compliance with legal obligations. For a more detailed description of applicable AML obligations, please refer to the Phase 2 report paragraphs 80-86.

Corporate service providers

65. At the time of the Phase 2 report, the relevant pieces of legislation establishing obligations for service providers to hold ownership information on domestic and international companies were the Money Laundering Prevention Act and the International Corporate and Trust Service Providers Act, 2011. As noted in the Phase 2 report, the creation of international entities could only be performed by licensed service providers who were required by law to identify their clients and provide this information to the Ministry responsible for international business. Licensed international service providers were required to maintain records on clients for at least five years from the end of their business relationship with the client (s. 14 ICTSPA). When applying for the annual renewal of the licence of its clients, the international service provider had to provide information on any changes made to the initial application form. However, at the time of the Phase 2 report, no measures had been taken to enforce the International Corporate and Trust Service Providers Act. Further, at that time, only service providers for IBCs and international SRLs had to be licensed under the International Corporate and Trust Service Providers Act.

66. Since the Phase 2 report, Barbados repealed and replaced the International Corporate and Trust Service Providers Act with the Corporate and Trust Service Providers Act, establishing a licensing regime applicable to all corporate service providers, those with international and domestic clients. According to chapter 40 of the Explanatory Memorandum, the following pieces of legislation are to be amended to reference the Corporate and Trust Service Providers Act in place of the former International Corporate and Trust Service Providers Act: the SRL Act, the Money Laundering Prevention Act, the Private Trust Companies Act, and the Foundations Act.

67. The International Business Division is responsible for the licensing and oversight of all corporate service providers. However, as the Corporate and Trust Service Providers Act entered into force only in May 2015, the International Business Division has not yet formed a compliance department or begun regulating the industry. During the on-site visit, the International Business Division advised it was still in the process of granting licenses and that the next step would be to develop a system of oversight once all license applications had been processed. To date, the International Business Division has received approximately 100 applications and has granted 75 licenses. No

applicant has yet been denied a license. Licensed service providers interviewed at the on-site confirmed that thus far, the International Business Division has not yet commenced any supervisory activities, for instance, in the form of requesting specific client files or spot checks. As such, the Phase 2 recommendation to take effective enforcement measures to ensure that all entities comply with their record-keeping requirements remains.

Nominees

68. The Phase 2 report did not identify any serious issues with nominee ownership in Barbados. Professional nominees are regulated under Barbados' AML regime and are required to take reasonable measures to determine the true identity of the persons for whom they act. Barbadian nominees acting by way of business are considered corporate service providers and therefore have customer identification obligations. Further, financial institutions and designated non-financial business entities and professionals must identify the beneficial owners of their clients having a minimum of 10% shareholding. Finally, information on nominee ownership of IBCs and International SRLs is maintained by the Ministry of International Business and international service providers. For a detailed analysis of the legal requirements for nominees to maintain ownership information see paragraphs 80-86 of the Phase 2 report.

69. The Phase 2 report did note, however, that the application of the law to non-professional nominees was uncertain. The Phase 2 report also observed that identity information would not be available in the case of a non-professional nominee shareholder holding less than 10% of a private company, but this gap was ultimately deemed to be immaterial. According to the Bar Association of Barbados in Phase 2, non-professional nominee shareholding is not part of the corporate practice in Barbados. This gap was not considered to be material, but Barbados was recommended to monitor the effect of this on EOI in practice in the Phase 2 report. As the situation has not changed, Barbados is recommended to continue to monitor the effect of this gap on EOI in practice on an ongoing basis.

Ownership information on companies exchanged in practice

70. In practice, Barbados received ten exchange of information requests for identity and ownership information concerning companies over the review period. Barbados was able to provide the information requested in the majority of cases, but in one instance, a request for ownership information was answered only after one year (discussed more in depth in section C.5 below).

Bearer shares (ToR A.1.2)

71. No company may issue bearer shares or bearer share certificates, pursuant to section 29(2) of the Companies Act. The situation has not changed since the time of the Phase 2 review.

Partnerships (ToR A.1.3)

72. Barbados legal system provides for two types of partnerships: limited liability partnerships and general partnerships (or partnerships *simpliciter*), which are governed by the Limited Partnerships Act and the Partnerships Act, respectively. Limited liability partnerships are composed of limited partners, whose liability for the debts or obligations of the partnership is limited to a certain pre-determined amount but who cannot manage the entity, and general partners, who are liable for all debts and obligations of the partnership and have power to bind the entity. By contrast, general partnerships are composed exclusively of general partners. There is no international/foreign partnership law. Barbados has advised that foreign partnerships operating in Barbados have to comply with the same tax rules as Barbadian partnerships.

73. As of June 2016, Barbados has 5 limited partnerships and 6 general partnerships. CAIPO indicates that its records do not reflect any partnerships formed under the laws of another jurisdiction currently carrying on business in Barbados.

Ownership and identity information held by Barbadian authorities

74. The Phase 2 report concluded that ownership information on limited partnerships and general partnerships is available in Barbados with public authorities and that the application of such obligations appeared to be adequate in practice. A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal and tax requirements for partnerships in Barbados, see the Phase 2 report, paragraphs 90-103.

Commercial law requirements and oversight

75. The Registrar maintains a register of limited partnerships pursuant to section 4 of the Limited Partnerships Act (LPA).⁶ A limited partnership is registered when the Registrar receives a statement signed by the partners

6. If a limited partnership is not registered, it shall be deemed to be a general partnership, and every limited partner shall be deemed to be a general partner (i.e. liable for all debts and obligations of the partnership).

containing, in particular, the full name of each of the partners. Any changes made to the information submitted must be filed with the Registrar within seven days (section 8 LPA). The identity of the partners in a limited partnership (legal owners), including ongoing changes, is a matter of public record. A body corporate may be a limited partner (section 3(4) LPA), in which case there is no requirement to disclose the identity of the ultimate owners of that partner.

76. No formal registration procedure exists for creating a general partnership under the Partnership Act, but section 3 of the Registration of Business Names Act requires the registration of all firms⁷. Identity information on partners is required to be submitted as part of registration. Partners have 14 days to register a partnership or changes to the listed particulars.

77. In practice, the Registrar noted no deficiencies in the registration or change forms received and no sanction has ever been applied in this respect.

78. There are no specific rules regarding the retention period of the information on legal ownership in the Registration of Business Names Act and the Limited Partnerships Act. However the Phase 2 report noted that such information is kept indefinitely.

Tax law requirements and oversight

79. Partnerships are not subject to tax under the Income Tax Act as partners are taxed individually. All partners who share in the profits of a partnership are required to file a tax return and thus registered with the tax authority. General and limited partnerships carrying on business in Barbados must deliver to the Revenue Commissioner an information return, pursuant to section 52(3) of the Income Tax Act, indicating the assessable income of the partnership together with a statement of the names and addresses of all the partners in that income year and a statement of the share of the assessable income of the partnership to which each partner is entitled. There is no requirement to disclose the ultimate owners of partnerships when a partner is a corporate body. Fines may be imposed in cases of non-compliance (s. 67 ITA).

Information held by the partnership and other persons

80. The Phase 2 report noted that general partners are required to maintain legal ownership information in their books and records. Section 75 of the Income Tax Act requires that every person carrying on business keeps

7. Except partnerships that have a place of business in Barbados and act under the names of all partners.

records and books of account in Barbados, in such form and containing such information as will enable the taxes payable under this Act to be determined. Since the full list of all partners is necessary to determine the share of profit of each partner, legal ownership information must be maintained in the partnership. The situation in Barbados with respect to partnerships has not changed since the time of the Phase 2 review.

Exchange of information about partnerships in practice

81. Barbados has not received any EOI requests related to a general or limited liability partnership over the three years under review.

Trusts (ToR A.1.4)

82. Being a common law jurisdiction, Barbados recognises the concept of trusts. Barbadian law provides for the creation of domestic trusts (under common law and the Trustees Act), international trusts (under the International Trusts Act), offshore trusts (licensed under the International Financial Services Act), registered unit trusts (under the Mutual Funds Act), and charitable trusts (under the Charities Act). As of June 2016, there are 40 domestic trusts, approximately 160 offshore and 80 international trusts (supervised by the Central Bank), and 2 unit trusts in Barbados. For a more detailed description of the types of trusts that can be formed in Barbados, see the Phase 2 report paragraphs 104-105.

83. The Phase 2 report concluded that all professional trustees of domestic, international and offshore trusts have a clear obligation under AML regulations to identify the settlors and beneficiaries of trusts they administer. A summary of the conclusions from the Phase 2 report and a discussion of any developments since the last review are included here. For a more detailed analysis of the legal, tax and AML requirements for common law and international trusts in Barbados, please see the Phase 2 report, paragraphs 106-123.

Ownership and identity information held by Barbadian authorities

84. The Phase 2 report found that, for the most part, domestic and international trusts have no registration requirements. However, “purpose trusts”, or international trusts formed for the benefit of an aggregate of persons ascertained by reference to some personal relationship (and not for the benefit of specifically named beneficiaries) are required to be registered with the Director of International Business. To obtain a certificate of registration, the trustee of a purpose trust must submit a register containing, *inter alia*, the names of the settlor and protector of the trust. No information on beneficiaries is required to be filed.

85. Unit trusts, as are mutual funds, are regulated by the FSC under the Mutual Funds Act (MFA) and are thus required to submit ownership information on the trustee(s) (legal owner) and unitholders (beneficial owners) as part of the registration and licensing process. To carry on mutual fund business or securities activities, a unit trust must first register with the Ministry of Finance and then obtain a licence from the FSC. The license application appended to the Mutual Funds Regulation, 2002 requires the name and contact details of the trustee as well as the structure and ownership of the trust, including the contact information of the ultimate beneficial owner. With respect to unit trusts, although the application only requires the submission of information on significant unit holders, Barbados has advised that the regulator can request a full list of owners if deemed necessary. Further, the details of the trustee must be contained in the offering documents and the constitutive documents. Changes to a unit trust's registered address or its operator must be reported to the FSC within seven days of such change occurring (s. 13 MFA).

86. For the purposes of the Income Tax Act, with the exception of unit trusts, a trust is deemed to be a separate person (s. 40(1) ITA) and must deliver to the Commissioner a return of its taxable income (s. 52 ITA). As discussed above, annual returns generally do not require ownership information. However, in calculating its income, a trust can deduct payments made to its beneficiaries (s. 40(2) ITA); therefore, in practice, the trustee must supply information on the beneficiaries for the deduction to be accepted. In addition, the beneficiaries themselves (if resident in Barbados) are taxed on income derived from a trust (s. 8(1)(k) ITA and s. 29(4) International Trusts Act). International trusts and offshore trusts having no Barbadian-sourced income and for which no benefit from foreign-source income is derived in Barbados (the settlor and beneficiaries being non-residents) are not taxable in Barbados and do not file any tax returns. Registered unit trusts (as resident companies) must be registered in accordance with the Income Tax Act (s. 2 ITA). Persons having an interest in the registered unit trust are deemed to be shareholders (s. 41(1) ITA).

Information held by the trustees and service providers

87. As was noted by the Phase 2 report, obligations of trustees to maintain information on their settlors and beneficiaries largely stem from common law and AML. Resident trustees of domestic trusts are not required to maintain such identity information under the Trustees Act. Likewise, neither the International Trusts Act nor the International Financial Services Act details what kind of information must be included in the trust deed of international trusts and offshore trusts or held by the trustees or service providers, purpose trusts being the exception. Under the International Trusts Act, trustees of purpose trusts must keep in Barbados: a) a copy of the instrument creating the trust (as well as amendments and supplements); b) a register containing

the name of the settlor, a summary of the purposes of the trust, the name of the protector of the trust, and c) such documents as are necessary to show the true financial position of the trust.

88. AML regulations are the primary source of the legal obligations of trustees and service providers to maintain information on settlors and beneficiaries. Pursuant to the Money Laundering Prevention Act, trustees of international trusts or offshore trusts and licensed trust companies are now covered by the definition of financial institutions (s. 2 MLFTA), whereas individual trustees are now covered by the definition of trust service providers, and are therefore qualified as non-financial business entities and professionals (s. 2 and Second Schedule MLFTA). For a more detailed description of AML obligations applicable to trustees, see the Phase 2 report paragraphs 114-120.

89. Since the Phase 2 report, Barbados has enhanced its AML framework with respect to individuals administering trusts. In May 2015, Barbados passed the Corporate and Trust Service Providers Act (CTSPA) and issued a new set of AML Guidelines applicable to licensees and registrants under that Act, as well as the International Trusts Act. Under the new AML Guidelines, “all persons and institutions must implement all reasonable measures to determine the ultimate beneficial ownership information related to any Trust for which they act” (s. 12(2) AML Guidelines). This duty applies to all settlors, beneficiaries, trustees, lawyers or any other service provider who acts on behalf of the trust (s. 12(2) AML Guidelines). Although the Trustees Act is not specifically referenced by the AML Guidelines, all professional trustees (as licensed service providers) are now subject to the Money Laundering Prevention Act and must take reasonable measures to establish and verify the true identity of a customer and, where this customer is not an individual, its beneficial owners (s. 15 MLFTA and s. 28(1)(iv) CTSPA).

90. In terms of oversight, the Central Bank, the financial regulator, and the International Business Division have supervisory responsibilities to ensure that trustees and service providers are complying with their obligations under Barbadian law. The Central Bank supervises trustees under its purview (namely, trustees of offshore trusts formed under the International Financial Services Act and trustees of domestic trusts formed under the Trustee Act). As part of its oversight, the Central Bank will conduct both on-site and off-site examinations, which will include checking whether the trustee has fulfilled its fiduciary responsibilities by adhering to customer identification and CDD requirements under AML law. The International Business Division is responsible for supervising trustees of international trusts formed under the International Trusts Act. However, as noted above, the International Business Division has only begun issuing licenses under the Corporate and Trust Service Providers Act and has not yet begun regulating the industry. Finally, unit trusts, as mutual funds, as supervised by the FSC as described above.

91. In addition to AML obligations, in Barbados, all trustees are governed by common law requirements. The rules governing trusts in Barbados are based on English common law, applicable in Barbados by way of the Supreme Court of Judicature Act section 38, which states that the High Court and Court of Appeal shall give the same effect to to “all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by common law or by any custom, or created by any statute”. Under common law, trustees have a duty to avoid conflicts of interest and be familiar with all documents relating to the trust and the trust’s assets. In order to comply with such common law obligations, trustees must know the identities of settlors and beneficiaries.

92. The Phase 2 report noted that non-professional trustees are not covered by AML obligations, although they remain subject to the common law fiduciary obligations and tax duties to identify the settlor and beneficiaries. Although to date, this gap has not had any impact on EOI in practice, Barbados is recommended to monitor the effect of this gap on EOI in practice on an ongoing basis.

Exchange of information about trusts in practice

93. During the period under review, Barbados did not receive any requests for information concerning trusts.

Foundations (ToR A.1.5)

94. At the time of the Phase 2 report, the concept of foundations was not recognised under Barbadian law. However, since the time of the Phase 2 review, Barbados passed the Foundations Act governing the creation of foundations. This section will discuss the newly established legal requirements applicable to foundations.

95. The Foundations Act (FA), which entered into force on January 2016, defines a foundation as a legal entity established for a specific purpose, which must be elaborated in its charter. A foundation shall manage, administer, invest and disburse its assets for the benefit of its beneficiaries in accordance with its charter and by-laws (s. 4(2) FA). A foundation may not engage in any financial services unless it has been granted a license to do so (s. 4(4) FA). Barbadian officials advise that often foundations are used for charitable purposes (public purposes), but can also be used for wealth management (private purposes) as an alternative to trusts. The Registrar for companies is also the Registrar for foundations and shall maintain a Register of Foundations, which records the name, official registration number, registered address, the registered agent (in the case of international foundations), the council members, the secretary, and the guardian of the foundation (s. 44 FA).

96. Pursuant to section 29(1) of the Foundations Act, every international foundation shall have a registered agent licensed in accordance with the International Corporate Trust and Service Providers Act. According to Barbadian authorities, this requirement is intended to be extended to all foundations, regardless of whether domestic or foreign. The newly enacted Corporate Trust and Service Providers Act lists foundations in its first schedule as a “specified entity” requiring the engagement of a licensed corporate service provider. However, as the Foundations Act is worded at the present moment, a legal requirement for domestic foundations to engage a service provider remains ambiguous. Barbados is encouraged to clarify this requirement in its laws.

97. Under the Foundations Act, information on the founding members will be made available to the Registrar. Information on beneficiaries is not guaranteed to be in the hands of public authorities in all cases, but is required to be maintained by the secretary or registered agent of the foundation. However, in the case of domestic foundations, no requirement exists for the secretary to be present in Barbados.

Ownership and identity information held by Barbadian authorities

98. As with all other legal entities, a foundation must be registered with the CAIPO (s.5 FA). The establishment of a foundation will not be complete until the founder, or a person who acts on behalf of the founder (subject to certain qualifications, as described below), has delivered to the Registrar: (i) a notarised copy of the charter of the foundation and (ii) a statement signed by, or on behalf of the founder, stating the address of the foundation’s registered office, the initial assets of the foundation, the secretary of the foundation, and information on the foundation council members (s.6(1) FA). The charter of a foundation must include, *inter alia*, name and address of the founder(s) (and if the founder is a company, the number and place of registration of the company) as well as the manner of designation of the beneficiary or the identification of a person, body or class of persons by reference to which the beneficiary is to be ascertained (s.8(1) FA). The charter will therefore include identity information on the founding member(s), but not necessarily on individual beneficiaries. Where the charter of a foundation provides for the adoption of by-laws, the by-laws *may* include provisions specifically identifying any beneficiary (s.10(1) FA). However, as neither these provisions nor the by-laws themselves are mandatory, this information will not be submitted upon registration in every case.

99. An international foundation is defined by the Foundations Act as a foundation organised in a jurisdiction other than Barbados (s.24 FA). International foundations must apply to the Registrar for a certificate of continuance (s.25(1) FA). Articles of continuance shall state: (i) the name of the international foundation and the name under which it is being continued,

(ii) the jurisdiction under which it was established, (iii) the date on which it was established, and (iv) such other terms as are required under the Foundations Act to be contained in a foundation's charter, and must be signed by the council members (s. 26(3) FA). Accordingly, as with domestic foundations, international foundations are required to identify their founder(s), but not individual beneficiaries in all cases. International foundations must have, at all times, a registered agent that is a resident of Barbados (s. 29(1) FA). Any change of registered agent must be filed with the Registrar (s. 29(3) FA). Where the registered agent intends to cease acting as such, he/she must give not less than 30 days written notice to the foundation council and the Registrar (s. 29(5) FA). Failure to provide such notice is punishable by a fine of BBD 25 000 (USD 12 500) or a term of imprisonment of 12 months or both (s. 29(7) FA).

100. Any changes to the foundation's charter must be reported to the Registrar with 14 days of the amendment coming into effect (s. 8(4) FA). Where a foundation fails to comply with a statutory requirement to deliver any document or give notice to the Registrar and does not make good such failure with 14 days of being notified by the Registrar, the Registrar may make an application to the Court to issue an order directing the foundation to take the action required of it (s. 48(1) FA).

101. Pursuant to section 57(1) of the Foundations Act, a foundation's profits and gains are subject to tax. International foundations are exempt from tax, but are still within the ambit of the Income Tax Act (s. 57(3) FA). As such, all foundations must register with the tax authority and submit annual returns. However, as noted above in the section on companies, the tax authority does not maintain significant ownership information on entities as it requires no ownership information upon registration or in the annual return form.

Anti-money laundering obligations

102. Barbados advises that its AML framework has been extended to cover licensees and registrants under the Foundations Act. The AML Guidelines have been amended to include reference to the Foundations Act. However, that amendment alone may not be sufficient to ensure that information on the beneficiaries of foundations is maintained in Barbados. Under the AML Guidelines, service providers acting on behalf of foundations must take all reasonable measures to identify their customers or verify the ultimate beneficial owners on whose behalf a customer is acting (s. 11(2) AML Guidelines). However, as a foundation's beneficiaries have no interest in the foundation's assets, nor does the foundation owe any fiduciary duty to the beneficiaries, beneficiaries cannot be said to have a beneficial ownership in the foundation. In the absence of provisions specifically requiring the identification of a foundation's beneficiaries, general AML obligations (even if they were to apply) to identify customers and beneficial owners would not appear to apply to the

beneficiaries of a foundation. Further, in the absence of specific provisions in the body of the AML Guidelines itself, it is unclear to whom AML obligations would apply (e.g. the service provider, the secretary, the founder, the council member, etc.). The application of AML to administrators of domestic foundations is thus uncertain.

103. As noted above, a founder can elect someone to act on his or her own behalf, but such a person or entity must be one of the following: (i) licensed to carry on the business of a trust company, (ii) a merchant bank, finance company or other licensed financial institution, (iii) or a licensed corporate service provider (s. 5(4) FA). In each of those instances, the person acting on behalf of the founder would be subject to AML requirements. However, as described in the preceding paragraph, such a person would have a duty under the AML Guidelines to identify and conduct CDD on only the founder(s), and not the foundation's beneficiaries.

104. International foundations, however, must have, at all times, a registered agent who is a licensed service provider under the International Corporate and Trust Service Providers Act (s. 29(2) FA) and who is subject to AML regulations. Since the coming into force of the Corporate and Trust Service Providers Act, the International Corporate and Trust Service Providers Act is no longer in effect. The Explanatory Memorandum accompanying the Corporate and Trust Service Providers Act sets out in the Third Schedule to the Act the legal provisions that are to be amended by replacing references to the International Corporate and Trust Service Providers Act with the Corporate and Trust Service Providers Act. However, section 29(2) of the Foundations Act is not one such provision listed under the Third Schedule. Barbados maintains that all foundations are deemed "specified entities" requiring the engagement of a licensed corporate service provider, but in light of incongruous provisions in the law, this obligation is not clearly established with respect to domestic foundations. The registered agent of an international foundation, as an AML obliged person, will have duties under the Money Laundering Prevention Act to know and identify the founders and beneficiaries and to keep such records at his or her registered office. Under section 55 of the Foundations Act, and pursuant to the Money Laundering Prevention Act, the FSC is the body responsible for supervising the foundation and may inspect the accounts and records and other documents held by a relevant person relating to a foundation established under the laws of Barbados.

Ownership information held by the foundation

105. Section 23(1) of the Foundations Act requires that a foundation maintain a copy of its charter and by-laws (where applicable), including any amendments, at its registered office. Where records are kept at a place other than the registered office, the registered agent of the foundation must be

notified of the location within 14 days after the designation of such location and, upon request, be furnished with the books, or notarised copies of the books, within a reasonable time for the purpose of inspection. The secretary of the foundation, or, in the case of international foundations, the registered agent, must keep a register containing identity information of the foundation council members, the guardian, beneficiaries, and any person granted power-of-attorney by the foundation (ss. 23(1) and (2) FA). The Foundations Act does not require the secretary of the foundation to have a presence in Barbados or be subject to Barbadian jurisdiction. Registered agents of international foundations, however, as licensed service providers, are required to maintain an office in Barbados. All records required to be kept under section 23 of the Foundations Act must be retained for six years (s. 23(6) FA). Failure to maintain records for the requisite period of time is punishable by a fine of BBD 25 000 (USD 12 500) or a term of imprisonment of 12 months or both (s. 23(7) FA).

Availability of information in practice

106. As the Foundations Act only entered into force only in January 2016, no foundations have yet been formed in Barbados.

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

107. The Phase 2 report concluded that Barbados did not have in place sufficient enforcement mechanisms, including penalties for non-compliance with legal obligations, to ensure the availability of ownership and identity information. In particular, the Phase 2 report noted the lack of any administrative or criminal penalty for failure to maintain a register of shareholders. Consequently, Barbados received a recommendation in Phase 2 to introduce sanctions against companies and SRLs that fail to comply with requirements to maintain share registers. Since the Phase 2 review, Barbados amended relevant commercial laws to include penalties for failure to comply with record-keeping obligations. These new legal provisions are discussed below. For a more detailed description of Barbados' enforcement provisions as at the time of the Phase 2 review, please refer to the Phase 2 report paragraphs 125-145.

Commercial and tax enforcement provisions

108. In the case of limited companies, in 2015, Barbados introduced sanctions for contravention of record-keeping obligations under the Companies Act. Pursuant to (s. 170(2)(d) CA), failure to maintain a register of the company's beneficial ownership is punishable by a fine of BBD 10 000 (USD 5 000) (s. 175(A) CA). Barbados also increased the fine for falsifying or omitting any

material facts in any document required to be submitted to the Registrar from BBD 5 000 to BBD 10 000 (USD 2 500 to 5 000) (s. 432(1) CA).

109. With respect to SRLs, failure to maintain a register of beneficial ownership is now punishable with a fine of BBD 10 000 (USD 5 000) (s. 29(A) SRL Act).

Enforcement provisions in practice

110. At the time of the Phase 2 review, the Registrar had not taken any enforcement actions (such as striking a company off the registrar or imposing financial penalties) during the three year period under review. During the current review period, the situation had not changed as Barbados' new enforcement regime was still too new to have been tested. Therefore, no enforcement actions have been taken to date. Barbados is therefore recommended to take effective enforcement measures to ensure that all entities comply with their requirements to maintain ownership information

111. Under Barbados' AML framework, in the years 2012-2015, the Central Bank conducted 15 on-site inspections. In general, the Central Bank's method of rectifying deficiencies has been to formulate action plans with applicable timeframes for licensees to follow. One licensee was also issued an early warning for issues relating to its CDD and Know-Your-Customer (KYC) policies and practices. In this case, the identified issues were resolved before additional sanctions were required. The Central Bank reports that no other penalties have been deemed necessary as all licensees inspected have followed their prescribed action plans. For a description of enforcement provisions under Barbados' AML regime, please see the Phase 2 report paragraphs 144-145.

Conclusions regarding Element A.1

112. The Phase 2 report found that although Barbados' legal framework for the maintenance of ownership information was largely in place for all entities, including trusts, it contained important deficiencies relating to enforcement. Therefore, element A.1 was determined to be "in place, but needed improvement" and rated Largely Compliant. Barbados received a Phase 1 recommendation on the lack of penalties for failure to maintain shareholder registers as required under the law and a Phase 2 recommendation on the need to take effective enforcement measures to ensure compliance with legal obligations.

113. Since Phase 2, Barbados amended the Companies Act and the SRL Act to include penalties for failure to comply with record-keeping requirements. Accordingly, the Phase 1 recommendation to introduce effective sanctions has been removed. In practice, however, these provisions have only recently entered into force and therefore have not yet been applied. Further, although Barbados has enacted new legislation requiring all service providers

(both those representing domestic and those representing international clients) to submit to the supervision of the International Business Division, this licensing regime is still only at a nascent stage and such, no supervision of international businesses has yet occurred. Further, the International Business Division has still not developed a compliance department to monitor entities under its purview, as was recommended in the Phase 2 report, nor has it taken any enforcement actions. As such, the Phase 2 recommendation relating to enforcement measures remains.

114. Since the time of the Phase 2 review, Barbados also passed legislation creating several new entities, including foundations. Under the Foundations Act, foundations are required to provide information on their founders to the Registrar. Information on beneficiaries is maintained by the foundation's secretary or registered agent, although it is not clearly stipulated that such information must be kept in Barbados. International foundations are obliged to engage a licensed service provider under the International Corporate and Trust Service Providers Act, but domestic foundations do not appear to have a comparable obligation.

Determination and factors underlying recommendations

| Phase 1 Determination | |
|---|---|
| The element is in place, but certain aspects of the legal implementation of the element need improvement. | |
| Factors underlying recommendations | Recommendations |
| The Foundations Act requires the secretary (of domestic foundations) and registered agent (of international foundations) to maintain a register containing information on the foundation's beneficiaries. However, in the case of domestic foundations, the secretary is not required to be present in Barbados or be subject to Barbadian jurisdiction. Accordingly, information on foundations may not be always available in Barbados. | Barbados should ensure that ownership and identity information is fully available with respect to both international and domestic foundations in all cases. |

| Phase 2 Rating | |
|---|--|
| Largely compliant. | |
| Factors underlying recommendations | Recommendations |
| Although penalties for non-compliance with filing obligations have been introduced into Barbadian law, legal provisions are too new to have been enforced. Neither monetary nor non-monetary penalties (such as striking off) been applied in the period under review. | Effective enforcement measures should be taken to ensure that all entities comply with their requirements to maintain ownership information. |
| The Ministry in charge of International Business does not have in place a system of monitoring compliance with ownership and identity information keeping requirements in respect of all international entities and trusts. The International Business Division has not yet developed a compliance department and to date, no supervision of IBCs, licensed trustees and service providers is taking place. | Barbados should implement a regular and comprehensive system of oversight to ensure compliance by all relevant international entities and arrangements with obligations to maintain ownership information under Barbadian law. |

A.2. Accounting records

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

115. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The obligation to maintain reliable accounting records are found in most of the laws governing the various types of entities covered by this report, and in the Income Tax Act.

General requirements (ToR A.2.1)

116. The Phase 2 report found that the rules regarding the maintenance of accounting information in respect of all entities, except for trusts with no tax liability in Barbados, were in accordance with the standard, although no

enforcement measures had been taken. Although accounting information could not be provided in all cases where it was requested, the Phase 2 report concluded that the failure to provide the requested information was not due to deficiencies in Barbados' legal framework on accounting requirements or deficiencies in implementation of the framework. A summary of the conclusions from the Phase 2 report as well as an analysis of the experience in practice since the last review are included here. For a more detailed analysis of the legal and tax requirements for accounting records in Barbados, see Phase 2 report, paragraphs 147-178.

Accounting requirements under commercial and tax law

117. The Phase 2 report concluded that accounting requirements with respect to companies in commercial and tax law ensure the availability of accounting records from which it is possible to accurately review all transactions, to assess the financial position of all entities, and to prepare financial statements. These requirements are codified in the commercial law, the tax law, as well as individual pieces of legislation governing the establishment of various entities. In general, under Barbados' commercial law, all companies domestic and foreign have obligations to prepare and maintain "adequate accounting records" (s. 172 CA). Companies must also prepare financial statements (s. 147 CA). These provisions are supplemented by provisions in the Income Tax Act providing specific guidance on the nature of books and records to be kept and the period such records are required to be retained. The Income Act also provides for sanctions for non-compliance.

118. As described in the Phase 2 report, the Income Tax Act also contains accounting and record-keeping requirements applicable to domestic and foreign companies, societies, partnerships and some trusts. Every person carrying on business, or who may be required to pay a tax, must keep records and books of accounts, including an annual inventory, in Barbados, in such form and containing such information as will enable the tax liability to be determined (s. 75 ITA). According to the Phase 2 report, the Income Tax Act requires all entities to keep accounts that enable the company's financial position to be determined with reasonable accuracy at any time. Barbadian officials confirmed again at the time of the current review that all entities carrying on business, regardless of tax liability, are subject to the Income Tax Act and, therefore, must comply with its accounting and record-keeping provisions.

119. Under the Income Tax Act, failing to keep or retain records or books of account is an offence subject upon summary conviction to a fine between BBD 10 and 10 000 (USD 5 and 5 000) (s. 79 ITA). No such sanctions had been applied at the time of the Phase 2 review.

120. In addition to the requirements set out above, companies with a gross revenue that, or assets the value of which, exceeds a certain threshold must file their financial statements with the Registrar. IBCs have a similar obligation to submit their financial statements to the Ministry responsible for international entities (s. 22 IBC Act). According to the Phase 2 report, the Companies Regulations specify that financial statements must be prepared in accordance with International Financial Reporting Standards. The Phase 2 report noted that financial statements must contain at least: a balance sheet, a statement of retained earnings, a statement of income and a statement of changes in financial position (Regulations 10 and 11 Companies Regulations 1984).⁸ No sanctions are applicable in case of breach of sections 172 or 147 of the Companies Act, except in the case where the company is required to send its financial statements and reports of the auditor to the Registrar. In this case, the Registrar may choose to strike off a company from the register if it fails to send any document required to be filed under the Act (s. 412 CA), although no such sanction has been applied.

121. The Phase 2 report determined that domestic and international SRLs were also subject to adequate accounting rules. SRLs must prepare and maintain adequate accounting records and annual financial statements (s. 26 SRL Act). If the records of a company or SRL are not kept in Barbados, accounting records that are adequate to enable the directors or managers to ascertain on a quarterly basis the financial position of the entity must be maintained in Barbados (s. 172(3) CA and s. 26(2) SRL Act). The financial statements of the SRLs whose gross revenue or assets exceed a certain threshold must be audited at least once in every financial year. Domestic SRLs must also send their financial statements to the Registrar. Persistent non-filing can trigger the dissolution of the SRL (ss. 25, 35 and 47 SRL Act). As with companies, there is no financial sanction applicable for the non-maintenance of records in conformity with section 26. However, as all entities come under the purview of the Income Tax Act, applicable sanctions would apply.

122. The Phase 2 report found that, trusts, on the other hand, unlike other types of entities, were not always subject to accounting requirements in line with the international standard. Patchwork accounting obligations applicable to trusts may be found in various pieces of legislation and are supplemented by tax obligations under the Income Tax Act depending on the type of trust. All trustees in Barbados have a common law fiduciary duty to keep accounts of the trust and to allow beneficiaries to inspect them as requested (*Pearse v. Green* (1819) 37 E.R. 327 at 329). The Trustees Act does not hold

8. A holding company must also keep at its registered office a copy of the financial statements of each of its subsidiaries where the accounts of the subsidiary companies are consolidated in the financial statements of the holding company, pursuant to section 149 of the Companies Act.

an additional obligation for domestic trustees to keep any records. Trustees of international non-charitable purpose trusts have more specific accounting requirements. They must keep in Barbados such documents as are necessary to show the true financial position of the trust (s. 13(iv) International Trusts Act). The non-compliance with this requirement and the making of a false statement are punishable to a fine of BBD 10 000 (USD 5 000) and possibly the prohibition to act as a trustee of an international trust for two years. Trustees of other types of international trusts are “accountable for the management and administration of the assets of the trust” (s. 3(d) International Trust Act). Registered unit trusts must submit their audited accounts to the FSC (s. 32 MFA). Failure to prepare accounts is punishable with a fine up to BBD 25 000 (USD 12 500) and up to two years imprisonment (s. 54 MFA). In the absence of specific provisions prescribing the nature of accounts to be held, it is not clear whether the existing obligations ensure that reliable accounting records are available in all cases in respect of all types of trusts.

123. Not all trusts, are subject to the Income Tax Act. The book-keeping obligations contained in the Income Tax Act would apply to trusts within its ambit (i.e. trusts created under Barbadian law where the trustee is resident in Barbados or trusts generating income in or deriving profit from Barbados). Trusts with taxable income must be registered as taxpayers in Barbados. However, international and offshore trusts deriving no benefit or income in Barbados are not considered taxpayers in Barbados and are thus not subject to accounting or record-keeping obligations in the Income Tax Act. As a result, the Phase 2 report recommended that all relevant entities and arrangement should be required to maintain reliable accounting records for the minimum five-year period.

Developments since the Phase 2 review

124. As discussed above, Barbados now recognises the concept of foundations, which must also be required to maintain books and accounts to the international standard. The Foundations Act requires that a foundation keep “such accounts and records as would be necessary to reflect accurately the financial position of the foundation at its registered office” (s. 23 FA). Where accounting records of a foundation are kept outside Barbados, the foundation must ensure that it keeps, at its registered address, accounts and returns adequate to enable the financial position of the foundation to be ascertained with reasonable accuracy on a quarterly basis (s. 23(5) FA). Contravention of this obligation is punishable by a fine of BBD 25 000 (USD 12 500) or a term of imprisonment of 12 months, or both (s. 23(7) FA). The Foundations Act does not, however, require that such books and accounts correctly explain all transactions or allow for the preparation of financial statements, as is required by the international standard. Neither does it specify who is to be sanctioned in the case of default. Barbados explains that it is in the process of

developing regulations on foundations where such specifics could be elaborated. However, in the absence of specific provisions in the Foundations Act, foundations (even those that are exempt from tax) are subject to the accounting requirements and penalties contained in the Income Tax Act (s. 57 FA).

125. Since the last review, Barbados has also created private trust companies, which are subject to the accounting requirements under the Income Tax Act. Although the Private Trust Companies Act (PTCA), which governs the creation and licensing of private trust companies, does not contain any provisions relating to books and records, private trust companies, including those exempt from tax, are required to follow the accounting regulations set out in the Income Tax Act. A private trust company is tax exempt if (i) it is managed by a trust licensed under the International Financial Services Act (i.e. an offshore trust) and its activities are restricted to engaging in the business of buying, selling, holding or managing securities (s. 13(1) PTCA); or (ii) where it is established by a non-resident settlor for the benefit of non-resident beneficiaries and its funds consist solely of foreign currency or foreign securities and the trust is under the management of a licensee under the International Financial Services Act (s. 13(4) PTCA). Additionally, transfers of shares of private trust companies are not taxable (s. 13(2) PTCA). However, according to Barbadian authorities, all private trust companies are required to file an annual tax return as the annual return is the means by which an entity may prove its tax exemption. Further, a private trust company must file a tax return whenever it represents a third party interest.

126. Finally, Barbados has also enacted the Corporate and Trust Service Providers Act, which imposes accounting obligations and record-keeping requirements on all licensed service providers, including trustees. Barbados contends that these new obligations on all service providers suffice to ensure that accounts and records on all trusts will be maintained by their trustees. However, the books and records provisions of the Corporate and Trust Service Providers Act refer to the books and accounts of the service provider and not to his/her clients. Section 24(1) requires service providers to keep records in line with AML regulations and which can allow the financial position of the service provider to be determined. Further, record-keeping requirements under AML are primarily transaction-based and aimed at verifying the legitimacy and authenticity of transactions under a risk-based system. The provisions in the AML Guidelines on record-keeping, for instance, are concerned with the details of the parties involved (including beneficiaries) and the details of securities and investments involved (s. 18 AML Guidelines) rather than with adhering to strict accounting rules and principles. As such, the Phase 1 recommendation remains.

Oversight of legal obligations

127. With respect to oversight, the BRA is currently the only body conducting any supervisory activities. The BRA, as the tax authority, is responsible for supervising the filing obligations of entities under the Income Tax Act. The BRA was established in 2014. It is an amalgamation of the Inland Revenue Department, the Land Tax Department and the VAT and Excise Divisions of the Customs and Excise Department. The intent behind the amalgamation was to create a new revenue authority to bring more cohesion to the different agencies that were previously decentralised. Towards this end, all of the departments have been amalgamated into one body on a functional basis. As the revenue authority underwent significant restructuring and the new organ is fairly new, some of its processes are still in the process of being developed. At present, the BRA has an audit selection committee composed of six auditors and a compliance department that deals with non-filers. The BRA is in the process of developing a risk assessment department. The primary method of oversight by the BRA is through field audits, conducted by the Audit Services Division. At the time of the review, the BRA had not yet begun to compile statistics. As such, compliance rates relating to filing obligations and figures on late and non-filers are not available.

128. During the on-site visit, the BRA explained that although IBCs are technically within their purview, as they do not generally generate income in Barbados, they are considered low priority and are not as susceptible to being audited. As IBCs are required to file their financial statements with the Ministry of International Business, that Ministry would appear to be the more relevant authority to monitor IBCs. However, as described above, the Ministry of International Business has not yet developed a compliance department and thus, at present, no supervision of the filing requirements of IBCs is taking place. Further, no IBCs have been audited in the last three years. The Ministry of International Business explains that it has a good working relationship with the financial regulator, which is authorised to assist in the supervision of IBCs, although at present, it does not appear that any government body is directly supervising IBCs.

129. With respect to tax obligations, in practice, financial penalties were applied for late filing. In 2012, the BRA sanctioned 1 397 corporate taxpayers and 6 843 individual taxpayers. Statistics for more recent years were unavailable.

Underlying documentation (ToR A.2.2)

130. The Phase 2 report found that none of the aforementioned laws, with the exception of the Income Tax Act, describe what is meant by books and records, or mention underlying documentation (e.g. invoices, contracts). The Income Tax Act does require that every person required to keep records and

books of account retains every account, voucher or other record necessary to verify such record or book of account (s. 75(4) ITA). However, entities and arrangements not liable to tax would not be subject to the record keeping requirements of the Income Tax Act. Barbados was thus recommended to ensure that all entities be required to maintain reliable accounting records, including underlying documentation.

131. Barbados' legal framework has not improved in this respect since the last review (in fact, it has arguably worsened with the loopholes relating to certain new entities, namely private trust companies). Therefore, the Phase 1 recommendation remains the same.

5-year retention standard (ToR A.2.3)

132. Under the Income Tax Act, all businesses must keep their accounting records “for a period of up to five years after the end of the relevant income year, unless the Commissioner otherwise directs, before the disposal of the records”. Permission to dispose of records must be sought from the tax authority, even if the applicable retention period has expired. Therefore, the effect in practice, as explained by Barbadian authorities, is that accounting records will be kept indefinitely if permission to dispose of such records is not granted. As noted in the Phase 2 report, in practice, authorisation is generally given to individuals after five years concerning documents on their salary, and with respect to others after seven or nine years. Only the general correspondence can be destroyed after two years. The BRA will first conduct an audit to determine whether any impropriety has taken place. If not, then permission to destroy records will be granted. The Barbadian authorities confirmed that no authorisation of destruction of records can be granted for partnership agreements, share records, minute books, fixed assets records, long term liabilities and related documentation, which must be kept indefinitely.

133. No mention of an applicable retention period is mentioned in the Mutual Funds Act or the International Trusts Act. Section 383 of the Companies Act requires that documents and records must be kept for six years following a company's dissolution. The Private Trust Companies Act does not contain bookkeeping requirements and therefore has no applicable retention period for documents; however, as mentioned above, private trust companies will come under the Income Tax Act provisions on accounting. The Foundations Act stipulates that records must be preserved for a period of no less than six years (s. 23(6) FA). However, Barbados maintains that all entities carrying on business will be required to retain records for at least the minimum period stipulated in the Income Tax Act in the absence of another applicable retention period.

Availability of accounting information in practice

134. The Phase 2 report noted that neither the Registrar nor the Barbados Revenue Authority (BRA) applied financial sanctions for breaches of the accounting obligations of registered entities. As noted above in the section on ownership information, the Registrar does not check whether companies keep proper records, but controls whether entities file returns (including financial statements) in a timely manner. Where companies fail to do so, the Registrar will issue a reminder and, in cases of continued default, refuse to issue a certificate of good standing. BRA similarly does not impose fines for accounting breaches, but rather will ask the taxpayer to rectify the problems noted during audits.

135. Over half of the requests received by Barbados solicited accounting information. One partner sought accounting information in the form of tax returns, contracts and agreements, property tax information, tax treatment of transactions, and source or funds. Three of the accounting requests were fulfilled within 180 days and four within 1 year. Two requests were outstanding for over two years at the time of the review, although a partial response was sent with respect to one of the requests after two years. Barbados explained that in both instances, a comprehensive audit was required to be conducted. Further, the request that was partially answered related to records dated over ten years and the information-holder had requested, and was granted, permission to dispose of the documents. As such, only a partial answer could be provided.

136. As was the case at the time of the Phase 2 review, Barbados explains that the requests that could not be satisfied related to very old accounting records, for which permission to destroy had been granted or which were outside of the statutory retention period. Barbados indicates that in every instance, even though the retention period had expired, the competent authority still attempted to access the records, but was not successful in all cases. These cases are further referred in section C.5 of this report.

Conclusions regarding Element A.2

137. At the time of the Phase 2 review, most entities, with the exception of non-taxable trusts, were subject to accounting obligations. The Phase 2 report identified some deficiencies with respect to the definition of books and accounts and underlying documentation, as well as with respect to the applicable retention period. Provisions relating to both underlying documentation and time for retention of documents were contained only in the Income Tax Act, resulting in gaps with respect to specific arrangements not within the purview of the Income Tax Act. These gaps have remained despite legislative amendments. Accordingly, the Phase 1 recommendation to ensure that all entities maintain reliable accounting records in line with the international standard remains.

138. With respect to the new legal entities available in Barbados since the last review, although the Foundations Act contains a requirement to maintain accounts and records as would be necessary to reflect accurately the foundation's financial position, it does not reflect all aspects required by the international standard (namely, accounting records that correctly explain all transactions and allow financial statements to be prepared). Similarly, accounting requirements to the international standard are not contained in the Private Trusts Companies Act. However, both entities would come under the purview of the Income Tax Act. Barbados maintains that the Income Tax Act would prevail where provisions are inconsistent or contradictory.

139. Finally, the tax authority appears to be the only body supervising the filing obligations of entities within its purview, although it has not begun to maintain any statistics on compliance rates. Although sanctions have been applied in cases of late filing, in the absence of data on compliance rates, the adequacy of sanctions imposed cannot be determined. As such, Barbados is recommended to maintain statistics on compliance with filing obligations.

140. Further, the BRA admits that IBCs have not been its priority; to date, no IBCs have been audited. Although the Registrar of Companies controls the filing requirements of registered entities, it has not imposed any sanctions for non-compliance. Similarly, the Ministry of International Business has not enforced obligations of IBCs to submit financial statements. From discussions at the on-site visit, the Ministry appear to rely on the financial regulator for supervision of the international business sector. As the FSC is not the official body responsible for IBCs, there remains a lacuna in oversight with respect to international entities. Accordingly, Barbados is recommended to ensure there is adequate oversight of international businesses.

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 |
| Barbados legislation does not ensure that reliable accounting records or underlying documentation are kept for all trusts. | All relevant entities and arrangements should be required to maintain reliable accounting records including underlying documentation for a minimum of 5 years. |

| Phase 2 Rating | |
|--|---|
| Partially Compliant | |
| Factors underlying recommendations | Recommendations |
| During the review period, Barbados did not have a regular system of oversight in place with respect to international entities. Although the tax authority routinely audited domestic entities, no IBCs were audited in the three years under review. | Barbados is recommended to ensure that there is adequate oversight of the compliance of international entities with their accounting obligations. |
| No sanctions have been applied for any violation of record-keeping obligations. Although sanctions exist, no authority has yet applied them for failing to maintain records as required. | Effective enforcement measures should be taken to ensure that all entities comply with record-keeping requirements. |

A.3. Banking information

Banking information should be available for all account-holders.

141. The Phase 2 report of Barbados found that the legal requirements to maintain banking information as well as the monitoring in practice were in accordance with the international standard and effective in practice. At the time of the supplementary review, however, Barbados experienced some issues in exchanging bank information on a timely basis, although this is not deemed to be a result of deficiencies in Barbados' legal framework for the maintenance of banking information.

Record-keeping requirements (ToR A.3.1)

142. A summary of the conclusions from the Phase 2 report is included here and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal requirements under the AML regime for maintaining banking information, see the Phase 2 report, paragraphs 179-187.

Requirements to maintain banking information and oversight

143. The Phase 2 report determined that Barbados has in place a system ensuring the availability of banking information both in its legal framework and from a practical perspective. As described above in section A.1, all

financial entities licensed under the International Financial Services Act and the Financial Institutions Act come under the supervision of the Central Bank (s. 7 IFSA) and are subject to CDD obligations and penalties for non-compliance. Additionally, both onshore and offshore banks must maintain all transaction records (including all records pertaining to accounts) in Barbados and must be capable of providing sufficient information to permit an external audit or an on-site examination at their principal office in Barbados.

144. In addition, the Phase 2 report determined that the supervision of the banking sector by the Central Bank was adequate by means of on-site visits and off-site supervision. The obligations of onshore and offshore banks to maintain banking information is enforced by the Bank Supervision Department of the Central Bank. Licensees are subject to AML/CFT oversight based on their risk profiles generated from ongoing review of inherent risk and the quality of risk management. The Central Bank's inspection programme consists of two phases: a desk review and an on-site examination. The first stage is a desktop review, which will determine the scope of the supervision, whether it will require a full on-site inspection or just a desktop review. The Bank Supervision Department advises that when they receive an indicator or red flag, they will conduct an on-site inspection. Otherwise, they conduct on-going desktop reviews based on quantitative and qualitative information they are constantly receiving (e.g. in the forms of returns or self-assessments). Once the scope of the inspection is determined (full scope or partial), the team will prepare a scoping document that details the reason for the inspection, proposed actions, any intended output (e.g. a report, a risk profile, an internal note updating the entity's inherent risks, etc.), as well as the team members, the duration, and the timelines. Based on the scoping document, the team will prepare a working paper to guide the examiners on which areas to cover and any relevant legislation or guidelines. The on-site process is as follows. Prior to the on-site inspection, the team will determine which areas (e.g. liquidity risk, CDD, etc.) are to be examined and send out a notification to the entity to indicate the date of the inspection, the number of examiners, and a list of documents to be submitted in advance. As the Central Bank adopts a risk based approach to its supervision, the manner, frequency and nature of its inspections with respect to a given entity will be based on that entity's particular risk profile and the presence of any indicators (or red flags) that might trigger an exam. The team will further notify the entity the types of samples they will want to see, whether they will require access to their computer system, and if they will need to interview staff. If the team is inspecting compliance with CDD obligations, they will perform spot checks of files to check that the proper identification as prescribed under the law is on record. The team will also verify the frequency with which such files are kept current. After the on-site inspection, the team will gather all of its findings into a report, detailing the deficiencies and the date by which such

deficiencies must be rectified. In general, the entity will be asked to follow an Action Plan, which will aim to resolve issues identified within a month of the inspection. Other measures to ensure compliance include supervisory letters requiring specific actions, restrictions or conditions on activities, or follow-up on-site inspections. In the period 2012-2015, the Central Bank did not apply any sanctions or penalties as remedial action had proven to be effective.

145. The Bank Supervision Department reports that at present, all except for a few banks that were licensed only very recently, have now undergone an on-site inspection. All banks are undergoing ongoing desktop monitoring. In practice, the Central Bank reports having taken measures, such as requiring action plans and increased frequency of prudential reporting, where deficiencies were identified. The Central Bank notes that deficiencies have varied depending on the entity and type of AML/CFT framework being implemented. However, areas that have been flagged for improvement have arisen in the oversight framework of regulated entities, including their policies and procedures relating to CDD and KYC.

Exchange of banking information in practice

146. In practice, banking information was requested in four requests during the period under review. Barbados responded fully to three of the requests, one within 90 days, one within 180 days, and one after nine months. Barbados was able to provide only a partial response to the fourth request after more than one year as the request related to old information (information outside of the prescribed retention period), which the bank had asked permission to dispose of. As the records were older than ten years, such permission was granted. The unavailability of records falling outside of the statutory retention period should have no negative bearing on Barbados' EOI practice; however, Barbados' failure to provide status updates in such cases is addressed below in section C.5. Although previously, some of Barbados' agreements contained language that restricted exchange of bank information, this issue has been resolved (see section C.1) and it does not appear that the delays in responding to requests for information in the current period under review were specific to banking information, nor arose from deficiencies in Barbados' legal framework for accessing banking information. The issue of delays in responding to requests is discussed more in depth under Element B.1 and section C below.

147. The Phase 2 report noted that Barbados did not have in place a unified bank account identification system, so that if no bank was specified in the request, the Barbadian tax authorities would need to contact all commercial banks and offshore banks individually. In practice, however, the competent authority admitted at the time of Phase 2 that it did not contact all of the banks, only the main ones, which resulted in the transmission of

incomplete information to the treaty partner in one instance. This issue is addressed in section C.5 on timeliness of responses.

Conclusions regarding Element A.3

148. Barbados has in place the legal and regulatory framework for ensuring the availability of banking information and there appears to be rigorous and ongoing monitoring. At the time of Phase 2, Element A.3 was therefore determined “in place” and rated “compliant”.

149. Barbados’ legal and regulatory framework has not changed at the time of the supplementary review. In practice, Barbados responded to most requests seeking banking information. In one instance Barbados was not able to satisfy a request for banking information, but not because of deficiencies in the legal or regulatory framework on banking information. For a more detailed discussion of outstanding requests, see sections B and C on access and exchange of information.

Determination and factors underlying recommendations

| |
|---------------------------------|
| Phase 1 Determination |
| The element is in place. |
| Phase 2 Rating |
| Compliant. |

B. Access to information

Overview

150. 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 Barbados' legal and regulatory framework gives the authorities access powers that cover all relevant persons and information, and whether rights and safeguards would be compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

151. The Phase 2 report found that Barbados had sufficient powers to obtain information, whether or not it is required to be kept, and adequate measures in place to compel the production of such information. However, the Phase 2 report identified some instances where uncertainties existed about the competent authority's powers to obtain information for exchange purposes. In particular, an issue was identified concerning the existence of competing confidentiality provisions contained in legislation concerning international trusts and unit trusts. Consequently, element B.1 was found to be in place, but in need of some improvement and rated Largely Compliant. A recommendation was issued to Barbados to clarify its legal framework to allow the competent authority to access such information. Since the Phase 2 review, Barbados has amended its legislation to allow trustees of international trusts and unit trusts to disclose confidential information to persons authorised by the Income Tax Act to collect information for EOI purposes. The recommendation was thus removed.

152. In practice, although Barbados was able to access all types of information, including ownership, accounting and bank information, in several cases, Barbados experienced delays before being able to provide the information requested, and one request remains outstanding at the time of the current

review. This request has been outstanding for over three years at the time of the current review. Delays were ultimately not attributed to any deficiency in the legal framework establishing Barbados' access powers, but rather to the practical application of such powers by Barbadian EOI authorities. For instance, despite significant delays in obtaining information from third party information-holders, Barbadian authorities have not revised their practice in any way to try to expedite the information-gathering process or apply compulsory powers where needed. As such, Barbados is recommended to use its compulsory powers in all appropriate cases to ensure that all information for exchange of information purposes is obtained in a timely manner.

153. The Phase 2 report also found that the rights and safeguards available under Barbados law were compatible with the effective exchange of information. Element B.2 was thus determined to be in place and rated Compliant. However, at the time of the Phase 2 review, a challenge to the competent authority's ability to access and exchange information was pending in court. This case remains unresolved during the present review.

154. At the time of the present review, the legal framework for notification has not changed. The competent authority is not required to notify the taxpayer that an EOI requested has been made and, in practice, Barbados does not send notifications to taxpayers. Notices for production of information issued by the current EOI unit include only a reference to the Barbadian authorities' domestic powers to access information under the Income Tax Act. The EOI unit does not yet have a formalised policy on how to answer taxpayer inquiries following the receipt of such a notice.

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).

155. The Phase 2 report found Barbados' legal framework establishing the competent authority's ability to obtain and provide information to be largely in accordance with the standard, although requiring improvement with respect to the access of confidential information held by certain categories of trusts. A summary of the conclusions from the Phase 2 report, as well as a description of developments and an analysis of the experience in practice since the last review, are included in this section. For a more detailed analysis of the access powers of the Competent Authority, see the Phase 2 report, paragraphs 193-237.

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

156. The majority of Barbados' DTCs indicate that the competent authority for the exchange of information is the Minister of Finance or his authorised representative. As an exception, the DTC with the United Kingdom nominates the IRD. The practical effect, however, is the same in all instances as the Minister of Finance has nominated as his authorised representative the Revenue Commissioner, who is responsible for receiving and responding to EOI requests for tax purposes. In practice, the gathering of information for EOI purposes is handled by the IRD's EOI Unit, which is supported by the IRD's Audit Division where needed.

157. The access powers for the competent authority are defined in the Income Tax Act. The competent authority's statutory powers apply irrespective of whom information is to be obtained from or the nature of the information sought. Barbados has powers to obtain information, whether or not it is required to be kept, with more invasive powers available when the information sought is required to be kept for tax purposes. Section 76 of the Income Tax Act gives the competent authority the right to require from any person any information or additional information in the form of a return of income or a return of information or otherwise, and production of any books, letters, accounts, invoices, statements or other documents within a reasonable period of time stipulated in the request. This power applies to all entities in Barbados, whether liable to taxes or not.

158. Notwithstanding the apparently broad scope of section 76, at the time of the Phase 2 review, Barbados advised that where both parties have excluded from the treaty entities such as offshore entities, it would not exchange information in respect of those entities. As such, at that time, Barbados had refused to exchange information on IBCs on a few occasions. Barbados considered that this was the correct interpretation of its treaties, although that view was not shared by all of its treaty partners. This issue is addressed more in depth under the section on exchange of information mechanisms (Element C.1).

159. Additionally, at the time of the Phase 2 review, confidentiality legislation relating to international trusts and registered unit trusts had the potential to impede access to identity information in the case of such entities. The Phase 2 report was not satisfied that section 76 would override these confidentiality requirements. Therefore, Barbados received a recommendation to ensure that its competent authority could access confidential information covered by the International Trusts Act and the Mutual Funds Act.

Developments since the Phase 2 review

160. Since the Phase 2 report, Barbados has amended its legislation to allow for confidential information to be disclosed to the competent authority if such information is the subject of an EOI request. The Corporate Trust and Service Providers Act now contains an express exception for the Competent Authority carrying out a duty under the Income Tax Act by acting in pursuance of an international agreement to which Barbados is a party (s. 34(3) ITA) (see also below section on secrecy provisions).

161. Barbados is now also able to access information on IBCs and other international entities to exchange it with all its treaty partners as it has entered into a new agreement with one treaty partner to allow for this and enacted a protocol to a second agreement that had been similarly restricted in this fashion (see section C.1 for a more in-depth discussion).

Gathering of ownership and accounting information in practice

162. Information is gathered by the EOI Unit, which can seek the information from the taxpayer, a third party, or another government agency. The Phase 2 report found that the primary holders of information of interest for EOI purposes are the Registrar of Companies and third-party information holders, as well as the taxpayers themselves, to a lesser degree. During the on-site visit, the EOI unit confirmed that it frequently seeks information from third-party information holders, such as commercial banks. Since April 2012, the tax authorities have direct access to the electronic database of the Registrar concerning companies, and can exchange the information contained therein without the assistance of the Registrar. To solicit information from a third party information holder, the EOI unit reports that it will send a written notice specifying the information needed and citing the relevant provision in the Income Tax Act (section 76). The information-holder has 30 days to respond to the notification with the requested information.

163. The EOI unit may also be assisted by the audit division of the BRA when the request is of a complex nature or when an audit is in progress. The EOI unit has two auditors, but where they require the expertise of the audit division, the audit division will send its auditors to conduct an audit based on the specific circumstances of the EOI request, although they will not receive the EOI request itself, nor be told that the information sought is for the fulfilment of an EOI request. Only the Head of the audit division will be informed that the information is needed for EOI purposes. No timeframe is stipulated for the completion of such an audit, although the EOI unit will advise the audit division on a case by case basis the date by which an audit must be concluded. The EOI unit may also solicit the assistance of other government agencies, but in this case, it reports that would not divulge that the

information is for EOI purposes. In two instances during the current review period was the audit department solicited to perform an audit on behalf of the EOI unit.

164. During the period under review, the Competent Authority used its access powers to exchange ownership, accounting and banking information, although exchanges were often subject to significant delays. At the time of the review, one request was reported by peers to be outstanding for two years. One was answered during the review, but only after nine months. Some issues were identified with respect to the availability of information outside of the retention period for accounting records (see above, section A.2 on accounting requirements). One peer in particular had asked for a number of records dating back over ten years. Representatives from the BRA at the on-site visit explained that regardless of the retention period, entities must always request permission before disposing of records. Therefore, unless the entity had been granted permission to dispose of records, the Competent Authority would be able to gather the information even if the retention period had expired. The Competent Authority confirmed that the expiration of the retention period notwithstanding, it would always still make the request for the information, even where permission to dispose of records had been granted. Only in one instance was the competent authority unable to provide the information requested because permission to dispose of records had been granted. In this case, the information-holder requested, and was granted, two extensions to locate the records. Ultimately, it was determined that the records had been legally disposed of as they dated back over ten years. The BRA reports that it provided this explanation to the requesting jurisdiction, although eight months had elapsed by that time. A partial response was provided to the requesting jurisdiction. Treatment of this request is assessed in section C.5 below.

165. Delays were also experienced when seeking information from third-party information holders. In one case concerning ownership and identity information, the competent authority needed to obtain the information from a third-party and was only able to provide the requested information after one year. In four requests for accounting information and two other requests for banking information, Barbados took close to or up to a year to respond (see more in section C.5 below). Despite the delays in several cases, Barbadian authorities have indicated that they have not needed to use their compulsory powers in any case as information-holders have generally complied with correspondence from the BRA's legal department to produce information. However, the need to apply compulsory powers was obviated in only three of eight requests taking longer than six months to fulfil. In three additional requests, Barbados could not provide any reason for the length of the response time, despite the fact that no extensions were reported to have been requested (or granted). These requests and the issue of compulsory powers are discussed more below.

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

166. 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.

167. Section 76 of the Income Tax Act indicates that the powers of the Commissioner relate to the “administration or enforcement of this Act”, i.e. the Income Tax Act. Section 76 read alone would result in the existence of a domestic tax interest. However, Barbadian authorities during the Phase 2 review and the present assessment note that section 76 should be read in conjunction with, and is supplemented by, section 83 of the Income Tax Act, which gives the force of law to Barbados DTCs and TIEAs (as agreements “with respect to the avoidance of double taxation, the prevention of fiscal evasion or other matters relating to the taxation of income”). Section 83 allows the competent authority to disclose to an authorised officer of a treaty partner “any information the agreement requires or contemplates”. Barbadian authorities indicate that in practice they have already exchanged information on the residence and bank information of entities that were not taxpayers in Barbados and the access power of the competent authority under section 83 has never been challenged.

168. At the time of the Phase 2 review, three of Barbados’ DTCs, however, limited Barbados’ domestic information gathering measures. The agreements with the United Kingdom, Switzerland and Venezuela restricted the exchange of information to information that is already “at the disposal” of the tax authorities. The Phase 2 Report found that such wording introduced considerable uncertainty regarding the applicability of Barbados information gathering powers for the purposes of exchanging information with these treaty partners, as it could be interpreted as restricting exchange of information to information that is already held by the tax authorities. Since the Phase 2 report, Barbados has taken steps to rectify such deficiencies in its EOI arrangements (discussed more in depth in section C). Barbados has addressed this issue bilaterally (such as, in the case of the United Kingdom, with which Barbados has negotiated new agreements) and on a multilateral basis. On 28 October 2015, Barbados signed the Multilateral Convention and it will enter into force in Barbados on 1 November 2016.

Compulsory powers (ToR B.1.4)

169. The Phase 2 report determined that enforcement provisions to compel production and access to information were in place in Barbados. Section 76 of the Income Tax Act on information gathering powers confers the power to require information from a taxpayer and from third parties. It

also gives the BRA the power to enter premises to audit and seize documents, and the power to question a person. If a person fails to comply with a request for information, he/she can be fined between BBD 10 and 10 000 (USD 5 and 5 000). Sanctions can include up to six months imprisonment where a person wilfully and knowingly gives any false or deceptive information or makes false or deceptive entries in books of accounts (s. 79 ITA).

170. The Competent Authority did not apply any compulsory powers over the review period although a number of requests could not be answered without significant delay. The Competent Authority will allow the information holder to have one extension past the deadline for submission of information, after which he/she will receive a letter from the BRA's legal department. According to the Barbadian authorities, they did not have to impose any measures beyond the letter as in each case, the taxpayer has complied after receiving the letter from the legal department. During the current review period, Barbados received eight requests that took longer than six months to be fulfilled. In the instance described above relating to information dating past ten years, the information-holder was exceptionally granted two extensions and no letter was issued. In another case that transpired during the Phase 2 review, a taxpayer refused to provide the requested information, but no sanctions were applied since the taxpayer filed for an injunction in court. This case is still ongoing during the present review. In a third case, delays resulted from difficulties verifying the requesting authority. In the remaining three cases, Barbadian authorities did not cite any particular reason for delays. No information was provided on whether a letter was sent in each case, if so, after what period of time, and whether any extensions were requested. It is therefore unclear whether Barbados used its access powers, including compulsory powers, to their fullest extent. Accordingly, Barbados is recommended to use all of its access powers, including its compulsory powers, to ensure timely exchange of information.

Secrecy provisions (ToR B.1.5)

171. The Phase 2 report found that in general, with respect to companies and SRLs (both domestic and international), although secrecy provisions existed in Barbadian law, they did not impact EOI practice as derogations existed in the law. However, the Phase 2 report questioned the ability of the competent authority to access confidential information held by trustees. In the case of international trusts and registered unit trusts, the competent authority would need a court order to obtain the information as the International Trusts Act and the Mutual Funds Act prohibited any disclosure of information relating to the settlor, beneficiaries, or the trust's accounts unless so ordered by a court. At the time of Phase 2, Barbados disagreed with the assessment that the competent authority could not access confidential

information held by trustees of international trusts and unit trusts. Barbadian authorities maintained that the International Trusts Act prohibited the disclosure of confidential information only to persons “not legally entitled” to the information and that the Mutual Funds Act permitted disclosure “permitted or authorised by any other Act”. Indeed, Barbados exchanged information on international trusts twice during the Phase 2 review period. Nonetheless, Barbados was recommended to clarify to ensure that their access powers could be exercised with respect to trusts formed under both the International Trusts Act and the Mutual Funds Act.

172. Since the Phase 2 review, Barbados has further clarified in its legal framework that confidential information held by the trustees of international and unit trusts should be disclosed to the competent authority if so required under an existing EOI agreement. Section 34(1) of the Corporate Trust and Service Providers Act, which entered into force in May 2015, allows for a derogation from the duty of confidentiality contained therein with respect to “any person carrying out any duty imposed on him by the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (Act 2011-23), the Income Tax Act, Cap. 73 or any other enactment or otherwise acting in pursuance of an international agreement to which Barbados is a party”.

Conclusions regarding Element B.1

173. At the time of Phase 2, Barbados’ legal framework establishing the competent authority’s ability to obtain and provide information was already largely in accordance with the standard. In light of recent amendments allowing for the competent authority to access confidential information from all categories of trusts, Barbados legal framework has been improved and is now deemed to be “in place”.

174. In practice, the success of Barbados’ competent authority to access information has been mixed. On one hand, the EOI provisions of the new agreements with Canada and the United Kingdom were in effect during the three years under review and have been used for exchanging information. In several instances the Barbadian authorities have used their information gathering powers to collect information not publicly available or available in the tax databases. On the other hand, Barbados has experienced significant delays in responding to some requests, and a few requests that were received over the course of the current review period are still outstanding. It does not appear that these delays are primarily due to issues concerning the competent authority’s legal ability to access information. However, with respect to eight requests, the Competent Authority could only provide responses after six months and did not use its compulsory powers in any instance, even where information in the hands of a third party was outstanding for close to or up to a year. Barbados is therefore recommended to use all of its access powers,

including its compulsory powers, to ensure that it can exchange information in a timely manner. This issue is further discussed in section C.5 below.

Determination and factors underlying recommendations

| Phase 1 Determination | |
|---|---|
| The element is in place. | |
| Phase 2 Ratings | |
| Largely Compliant | |
| Factors underlying recommendations | Recommendations |
| Barbados experienced significant delays in responding to eight requests for banking and ownership information over the review period although these delays do not appear to stem from deficiencies in the legal framework for Barbados’ access powers. In those cases, compulsory powers were not used. | Barbados is recommended to use its compulsory powers in all EOI cases to ensure that all information for exchange of information purposes is obtained in a timely manner. |

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)

175. 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). A summary of the conclusions from the Phase 2 report are included here, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed description of Barbados’ notification requirements, please see paragraphs 238-244.

176. The Phase 2 report found that the rules regarding prior notification procedure were in accordance with the standard. Barbados domestic laws do not require the notification of the person who is the object of a request for information. Further, an information-holder is not informed of the reason for

the request for information. In practice, however, if asked the reason for the request, the competent authority will inform the person that the information was requested for EOI purposes but a copy of the request will not be provided, as the request is considered confidential information protected under Barbados' treaties. In 2012, a taxpayer went to court to challenge a notice related to an EOI request. In this particular case, although an injunction was granted to the taxpayer, the Crown was able to successfully challenge the granting of the injunction. As a result, the interim injunction was discharged. The taxpayer subsequently filed for another injunction related to a second claim. As this request was under challenge, the information could not be provided to the requesting authority. This case was ongoing at the time of Phase 2 review and was not resolved at the time of the present review.

177. Barbados is also contemplating how to address the situation where a taxpayer asks what the information is for. The authorities report that, to date, they have not been asked. The EOI unit is working on developing its official approach to this eventuality. Barbados is recommended to continue its efforts developing a policy on how to respond to inquiries about notifications to produce information.

Conclusions regarding Element B.2

178. The rules regarding prior notification procedure in Barbados are in accordance with the standard. Barbados domestic laws do not require the notification of the person who is the object of a request for information.

Determination and factors underlying recommendations

| Phase 1 Determination |
|---------------------------------|
| The element is in place. |
| Phase 2 Rating |
| Compliant |

C. Exchanging information

Overview

179. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Barbados, the legal authority to exchange information derives from bilateral or multilateral mechanisms (double tax conventions, tax information exchange agreements, regional mechanism) as well as from domestic law to a lesser extent. This section of the report examines Barbados’ network of information exchange instruments against the standards and the adequacy of its institutional framework for effective exchange of information in practice.

180. The Phase 2 report found that of the 33 EOI instruments Barbados had at that time, 7 were not in line with the standard because of deficient provisions in the treaty or due to deficiencies in the domestic laws of treaty partners that did not allow reciprocity in the implementation of the treaty. Barbados was therefore encouraged to continue to renegotiate existing treaties, or enter into protocols or TIEAs where the existing treaties do not meet the international standard. Since the Phase 2 report, Barbados has taken steps to amend its EOI network on a bilateral basis. At present, Barbados has entered into DTCs and TIEAs with 38 partner jurisdictions, 32 of which are being covered by DTCs and 6 by TIEAs. Additionally, Barbados is a member of the regional CARICOM treaty with 10 other Caribbean states. Barbados has also signed and ratified the Multilateral Convention, which will enter into force on 1 November 2016 in Barbados, bringing Barbados’ EOI network to 113 jurisdictions. Since the Phase 2 report, the number of EOI agreements to the standard has risen from 29 to 36, out of a total of 40 EOI relationships. Of the 4 relationships not to the standard, two will come in line with the standard with the entry into force of the Multilateral Convention and one has been addressed via a protocol that awaits ratification by the treaty partner. As such, Element C.1 remains “in place” and has been upgraded from Largely Compliant to Compliant.

181. The Phase 2 report found Barbados to be unresponsive to a number of peers that had attempted to initiate negotiations to establish EOI arrangements. Further, Barbados also showed reluctance to signing TIEAs (as opposed to DTCs). At that time, Barbados had also indicated that it was not yet ready to sign the Multilateral Convention. Consequently, Element C.2 was determined “not in place” and rated Non-Compliant. Since the last review, Barbados has been in the process of expanding its network of EOI mechanisms by signing and ratifying the Multilateral Convention and has also shown effort to increase its treaty network and bring it in line with the international standard on a bilateral basis. Accordingly, the rating for element C.2 has been upgraded to “in place” and Compliant.

182. No significant issues were raised in Phase 2 with respect to Elements C.3 (Confidentiality) and C.4 (Rights and safeguards of taxpayers and third parties), both of which were determined to be “in place” and Compliant.

183. Regarding Element C.5, the Phase 2 report noted extremely long response times and lack of status updates. Most of these issues were attributed to human resource issues. In the supplementary review, again a period of time lapsed when Barbados was unresponsive to peers during the restructuring of Barbados’ Revenue Authority. Barbados’ response times to EOI requests also continue to be quite long and status updates are still not consistently provided. As the situation has not improved, the rating for Element C.5 remains Partially Compliant and Barbados is still recommended to ensure that exchange of information occurs in a timely manner and to provide status updates as needed.

C.1. Exchange of information mechanisms

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

184. Barbados has a broad network of EOI arrangements comprised of 32 DTCS (26 of which are in force), 6 TIEAs (5 of which are in force), the multilateral CARICOM tax treaty (with 10 other members of the Caribbean Community) and the Multilateral Convention. On 28 October 2015, Barbados signed the Multilateral Convention and on 6 July 2016, Barbados deposited its instrument of ratification. The Multilateral Convention will enter into force in Barbados on 1 November 2016, bringing Barbados’ number of EOI relationships to 113. A summary of findings in the Phase 2 review are presented below, along with a discussion of developments since the last review. For a more detailed description of Barbados’ legal framework pertaining to treaty negotiation, please see the Phase 2 report paragraphs 256-260.

185. At the time of Phase 2, Barbados had to revise a number of EOI instruments, as some of Barbados’ DTCs limited exchange of information,

and in certain cases Barbados did not exchange information in respect of entities (IBCs, offshore banks, etc.) not covered by the treaty. Barbados took two types of action to remedy these deficiencies. First, it passed a regulation that created a unilateral exchange mechanism. Second, Barbados began negotiating a number of protocols or new EOI instruments to bring its bilateral agreements to the standard.

186. During the Phase 2 evaluation, the legal effectiveness of the unilateral mechanism was called into question as it was uncertain whether the regulation would apply to EOI agreements already in force. Language in the regulation applying to agreements that “no longer meet the standard” also raised doubts as to whether the regulation would apply to agreements that never met the standard. Additionally, it was not clear whether Barbados had communicated the option to request information under the unilateral mechanism. Finally, some treaty partners might not have been able to use confidential information in their EOI requests to Barbados based on the unilateral regulation as it was not sure to be recognised as legal basis in all jurisdictions.

187. At the time of the present review, Barbados advised that the unilateral mechanism had always been intended to serve only as a temporary measure. As it appeared to be defective for all of the reasons enumerated above, the unilateral mechanism was never used in practice. Instead, Barbados relied on bilateral negotiations with treaty partners to rectify the deficiencies in its EOI agreements. As such, the unilateral mechanism will need to be repealed. Although the unilateral regulation does not appear to pose a problem in practice as it is universally recognised as being ineffective, to minimise legislative discord and to avoid potential confusion in the future, Barbados is recommended to expeditiously repeal the unilateral mechanism.

188. At the time of Phase 2, Barbados had begun efforts to improve its EOI network through negotiations to update older DTCs or negotiate new DTCs, as well as negotiations for further TIEAs in a number of cases. Since the Phase 2 review, Barbados initialled four new DTCs (with Belgium, Cyprus, Malaysia and Vietnam) and two new TIEAs (with France and Germany). Barbados has also signed and ratified the Multilateral Convention.

189. The following table presents a breakdown of Barbados’ relationships. It shows the number of Barbados’ EOI agreements and relationships that are to the standard and in force. Under all of the Barbados’ agreements to the standard and in force, Barbados should be able to exchange all types of information, including banking information. A table listing all of Barbados’ agreements is also included in Annex 2 to this report.

| Categories of EOI agreements | Num. |
|--|------|
| Number of signed agreements | 40 |
| Number of DTCs/TIEAs to the standard | 36 |
| Number of DTCs/TIEAs to the standard that are in force | 34 |
| Number of EOI relationships (DTCs, TIEAs and CARICOM) to the standard* | 44 |
| Number of EOI relationships to the standard that are in force* | 37 |
| Total number of EOI relationships* | 113 |

* On 29 October 2015, Barbados signed the Multilateral Convention, which was ratified on 6 July 2016 and will enter into force on 1 November 2016. As a result, the Multilateral Convention was included for the purpose of calculating the number of Barbados' EOI relationships, in addition to its DTCs, TIEAs and the CARICOM regional treaty.

Foreseeably relevant standard (ToR C.1.1)

190. The international standard for exchange of information envisages exchange of information upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions”, that is to say 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 paragraph 1 of Article 26 of the OECD Model Tax Convention.

191. The Phase 2 report found that Barbados' agreements generally met the standard of foreseeable relevance as provided for in Article 26 of the OECD Model Tax Convention. Most of Barbados' EOI instruments signed after 2009 used the language of the Model Tax Convention, and agreements entered into prior to 2009 generally provided for the exchange of information “necessary” for carrying out the provisions of the agreement, which is deemed consistent with the standard pursuant to the Commentary to Article 26. However, the Phase 2 report questioned whether the protocol contained in Barbados' DTC with Panama was in accordance with the international standard. In particular, it questioned whether information required to be provided by the Protocol to demonstrate foreseeable relevance was not unduly restrictive. At the time of the Phase 2 review, Barbados had been in contact with Panama to agree on an interpretation that would be in line with the international standard, although this interpretation has yet to be tested. Barbados was thus recommended to monitor the application of the protocol in exchange of information with Panama to ensure compliance with the foreseeable relevance standard.

In respect of all persons (ToR C.1.2)

192. 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 EOI mechanisms will provide for exchange of information in respect of all persons. Article 26(1) of the OECD Model Tax Convention indicates that “[t]he exchange of information is not restricted by Article 1”, which defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States.

193. The Phase 2 report concluded that while most of Barbados agreements did not contain such a restriction, Barbados' DTC with Switzerland provided for exchange of information only for the purposes of “carrying out the provisions of the present Convention in relation of the taxes which are the subject of the Convention”. Barbados and Switzerland entered into discussions to negotiate the conclusion of a TIEA. Although at the time of the current review, negotiations for a TIEA are still ongoing, both Barbados and Switzerland are signatories to the Multilateral Convention and will be able to exchange information to the standard once the Convention enters into force in both jurisdictions.

194. At the time of Phase 2, two of Barbados DTCs (with Canada and the United Kingdom) excluded specific entities – notably, offshore entities – from their scope of application. Four other agreements (with Finland, Mexico, Portugal and the Netherlands) contained ambiguous language that created uncertainty as to whether they would be applicable to all entities. Since the last review, a new DTC with the United Kingdom and a protocol to the agreement with Canada have both entered into force. Both are in line with the international standard and were in effect over the current review period. When the Multilateral Convention enters into force, Barbados will be able to exchange information with Finland, Mexico, Portugal and the Netherlands in line with the international standard on its basis.

Exchange of information held by financial institutions, nominees, agents and ownership and identity information (ToR C.1.3)

195. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Tax Convention and the Model Agreement on Exchange of Information on Tax Matters, which are the authoritative sources of the standards, stipulate

that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

Bank information

196. At the time of Phase 2, all of Barbados' EOI instruments Barbados allowed for the exchange of banking information. However, among Barbados' treaty partners, four (Austria, Botswana, Grenada and Switzerland) were unable to access bank information for exchange purposes absent an explicit provision in the treaty. Therefore, Barbados treaties with those jurisdictions were not to the standard. Barbados indicated that it had reached an agreement on the text of a protocol with Botswana, was discussing protocols with two other jurisdictions, and had received a TIEA proposal from the final. At the time of the current review, the protocol with Botswana had been concluded, but was awaiting ratification in Botswana. Most CARICOM jurisdictions, including Grenada, have amended their laws to allow for exchange of information to the standard; therefore, Barbados is now able to exchange bank information to the standard with Grenada. Although no new agreements have been reached with Austria or Switzerland, the Multilateral Convention is already in force in Austria. When the Multilateral Convention enters into force in Barbados and Switzerland, exchange of banking information will be possible with both jurisdictions.

Information at the disposal of tax authorities only

197. The Phase 2 report also concluded that two of Barbados' DTCs (with Switzerland and Venezuela) contained a potentially restrictive provision to allow the exchange of information only where it was already at the disposal of the tax authorities. One interpretation of this provision would restrict EOI to information already held by the tax authorities. However, another agreement (with the United Kingdom) also contained a similar provision, but the competent authority was able to demonstrate in practice its broad interpretation of the treaty language. Nonetheless, Barbados invited Venezuela to negotiate a protocol to the existing DTC in November 2011 and received a TIEA proposal from Switzerland in 2013. Neither discussion had resulted in a concrete outcome at the time of the present review. However, as noted above, with the entry into force of the Multilateral Convention in both jurisdictions, Barbados will be able to exchange information to the standard with Switzerland.

Absence of domestic tax interest (ToR C.1.4)

198. 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.

199. The Phase 2 report noted that several of Barbados’ agreements potentially contained a domestic tax interest. The treaty with the United States provides that the requested party “shall endeavour to obtain the information to which the request relates in the same manner and to the same extent as if the tax of the [requesting] state were the tax of that other state and were being imposed by the other state”. As noted above, three of Barbados DTCs (with Switzerland, United Kingdom (1970) and Venezuela) contained a potentially restrictive EOI provision which covers only the information already at the disposal of the tax authorities. If the interpretation of such a provision would restrict information exchange to information already held by the tax authorities, this requirement would be tantamount to a domestic tax interest. Further, at the time of Phase 2, the legal frameworks of Dominica, Grenada, and Trinidad and Tobago did not allow them to exchange information with Barbados to the standard under the CARICOM treaty.⁹ Since the Phase 2 review, Dominica and Grenada have rectified deficiencies in their legal frameworks, although deficiencies with respect to Trinidad and Tobago remain. As Guyana is not under review by the Global Forum, it cannot be determined whether exchange of information to the standard is possible with this jurisdiction. Therefore, it is recommended that Barbados works with its CARICOM EOI partners to ensure that its agreements with them allows for EOI to the standard.

Absence of dual criminality principles (ToR C.1.5)

200. 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 jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

9. Exchange is currently possible in line with the international standard between Dominica and most parties to the CARICOM. The only exception where exchange of information is still not to the standard is with Trinidad and Tobago. Guyana has not yet been assessed by the Global Forum and, it is therefore not possible to confirm that the CARICOM agreement with regard to Guyana meets the standard.

201. The Phase 2 report found no dual criminality provisions in Barbados DTCs and TIEAs. Peers did not indicate any issue with dual criminality, nor was any dual condition applied in practice during the review period.

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

202. 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”). The EOI articles in all double taxation conventions signed by Barbados may be used to obtain information to look into both civil and criminal tax matters.

203. All of Barbados’ EOI agreements provide for the exchange of information in both civil and criminal tax matters. The Phase 2 found that none of Barbados’ DTCs drew a distinction between civil and criminal matters as far as taxation was concerned. No peers raised any issues with respect to this issue. The situation has not changed in Barbados since the last review.

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

204. According to the Phase 2 report, there are no impediments under Barbados’ domestic law and tax treaties that would prevent Barbados from providing information in the specific form requested. In practice, Barbados has been requested to provide information in specific forms and has done so, for instance by issuing certified copies of documents.

In force (ToR C.1.8)

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

206. As of August 2016, the number of DTCs and TIEAs in force in Barbados stands at 31. The multilateral CARICOM treaty with 10 jurisdictions is also in force. With the entry into force of the Multilateral Convention on 1 November 2016, agreements with an additional 53 partners will also enter into force and the number of agreements in force will increase to 33.

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

207. For information exchange to be effective the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. Section 83 of the Income Tax Act provides that DTCs and TIEAs entered into by the Government of Barbados have the force of law.

Conclusions regarding Element C.1

208. At the time of Phase 2, 7 of Barbados' 33 EOI agreements were not to the standard. Further, Barbados did not seem willing at that time to enter into new agreements (in particular TIEAs) and was reported to be unresponsive by a number of peers who had requested to negotiate exchange agreements. A number of issues were also identified with respect to existing agreements. However, since the last review, Barbados has taken steps to update its EOI network on a bilateral basis, to the effect that now 36 of Barbados' 40 EOI instruments are to the standard. Barbados has also signed and ratified the Multilateral Convention, which, when it enters into force, will bring Barbados' relationship with Austria to the standard and resolve ambiguities with respect to the agreements with Finland, Mexico, Portugal and the Netherlands. Barbados reports continuing efforts to bring the remainder of its EOI agreements in line with the standard.

209. As the new DTC with the United Kingdom and the protocol to the agreement with Canada are now in effect and Barbados has ratified the Multilateral Convention, none of Barbados' treaties exclude offshore entities from their scope. Accordingly, the Phase 2 recommendation is removed. Although the protocol with Botswana is not yet in force in Botswana, it has been ratified by Barbados. With the entry into force of the Multilateral Convention in November 2016, exchange of information to the standard will be possible with Austria and Switzerland. Therefore only one agreement (with Venezuela) not to the standard remains unaddressed; ; however, Barbados is recommended to continue to revise its existing treaties in line with the international standard where they do not currently meet that standard.

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.

210. 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.

211. At the time of the Phase 2, Barbados had bilateral DTCs signed with 42 jurisdictions. The Phase 2 report found that Barbados had arrangements with its main trading partners and that Barbados was continuing to revise its existing DTCs where they did not meet the standard. A new DTC with the United Kingdom entered into force in December 2012 and a protocol to the DTC with Canada entered into force in December 2013. The Phase 2 report noted, however, that Barbados did not appear willing to enter into new agreements, particularly TIEAs. At the time of the Phase 2 review, several Global Forum members had unsuccessfully approached Barbados for negotiations on a TIEA or EOI protocol to an existing DTC. A number of peers reported receiving no answers to requests to initiate negotiations or refusals to negotiate a TIEA. Barbados was thus recommended to continue upgrading existing EOI provisions, and sign further EOI agreements when requested by relevant partners, and element C.2 was deemed “not in place” and rated Non-Compliant.

212. Barbados has shown efforts to update and expand its treaty network bilaterally. Since the last review, Barbados has initialled four new DTCs (with Belgium, Cyprus, Malaysia and Vietnam) and two new TIEAs (with France and Germany). Barbados has also signed and ratified the Multilateral Convention.

Conclusions regarding C.2

213. At the time of Phase 2, only 29 of Barbados' EOI arrangements met the international standard and Barbados did not successfully advance negotiations to amend these arrangements when requested to do so. Since Phase 2, Barbados has signed and ratified the Multilateral Convention and continued in its efforts to resolve deficiencies bilaterally. Progress on updating agreements has stalled in some cases, although not always due to delays on Barbados' end (see above section C.1 for details on agreements still not

to the standard). Accordingly, C.2 is now determined to be “in place” and upgraded to “Compliant”.

Determination and factors underlying recommendations

| Phase 1 Determination | |
|------------------------------------|---|
| The element is in place. | |
| Factors underlying recommendations | Recommendations |
| | Barbados 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)

214. 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.

Ensuring confidentiality in practice

215. The Phase 2 report concluded that all of Barbados' EOI arrangements contained provisions to protect the confidentiality of information exchanged pursuant to those agreements. All EOI articles in Barbados' DTCs and TIEAs include confidentiality provisions that ensure that information exchanged is disclosed only to persons authorised by the agreements. These provisions contain all of the essential aspects of paragraph 2 of the Model Tax Convention and were deemed to be in line with the standard.

216. Barbados domestic legislation also contains protections for the confidentiality of information exchanged. Section 51 of the Income Tax Act imposes a duty on tax officials to maintain the secrecy of all matters arising under the Act (which includes exchange of information). The Income Tax Act does provide for an exception to the duty of confidentiality that was deemed broader the standard included in some of Barbados' exchange agreements in that the exception allowed for disclosure to persons legally entitled to the information under the Income Tax Act or any other enactment. However, in instances where treaty language conflicts with another piece of legislation, treaty provisions will prevail. Any person who contravenes such duty commits an offence and is liable to a fine of BBD 100 (USD 50) as well as dismissal from employment (s. 79(3) ITA).

217. Tax officials are also required to take an oath of secrecy before taking up post. Barbadian officials advise that in the three year period under review, no breaches of confidentiality or the oath of secrecy were identified.

218. The competent authority has also implemented practical measures to ensure the confidentiality of information exchanged. Members of the EOI unit must follow a clean desk policy. Information received and to be sent is stored in a secure manner separately from other files and access to the files is restricted to officials handling the request. At present, EOI files are stored in a locked filing cabinet in the office of a senior EOI official. Only the four EOI officers have access to the locked cabinet.

219. Although all of Barbados' policies regarding confidentiality appear to be in place, during the restructuring of the Inland Revenue Department to the BRA, several EOI requests were lost in the move from the old premises to the new premises. As this was an isolated incident, and as the files were never lost outside of the Revenue Department, this occurrence is not viewed as indicative of the BRA's confidentiality practices overall. However, Barbados is recommended to continue efforts to locate such files as well as to ensure that, in the future, should EOI files need to be relocated, proper measures to protect their confidentiality are applied. This issue (in particular, its impact on Barbados' EOI practice) is further addressed under section C.5 (timeliness of requests).

220. Further, on one occasion in the past, a taxpayer was inadvertently notified about the existence of an EOI request when it was so written in the subject line of the notice letter requiring production of information. The EOI unit explains that this incident occurred during the time of the old EOI unit under the former Inland Revenue Department, likely before it had developed formalised policies on EOI practice. The EOI unit provides assurances that no such incident has taken place since the establishment of the BRA in 2014. Nonetheless, Barbados is recommended to monitor its EOI procedures and practices with an eye to ensuring confidentiality.

All other information exchanged (ToR C.3.2)

221. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests. The Phase 2 report found that safeguards in Barbadian law equally protect information gathered in response to a request and information forming part of a request.

Conclusions regarding Element C.3.

222. The Phase 2 report determined that Barbados had sufficient provisions both in its EOI arrangements and in its domestic laws to ensure the confidentiality of all information exchanged with treaty partners. As such, the element C.3 was determined to be “in place” and rated “Compliant”. As the situation has not changed since Phase 2, the determination and rating remain the same.

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)

223. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where an issue of trade, business or other secret may arise or where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

224. Most of Barbados DTCs and its TIEAs contain provisions that the requested state is not obliged to provide information considered professional or trade secrets, or information the disclosure of which would be contrary

to public policy, exceptions being the DTCs with Switzerland and the United Kingdom (which do not cover commercial secret and public policy, respectively). The CARICOM double taxation agreement contains similar provisions that are even more restrictive than that contemplated by the international standard.

225. The Phase 2 report also found the scope of attorney-client privilege in Barbados to be in line with the standard. No issues relating to attorney-client privilege have occurred in practice or been raised by peers. Barbadian authorities explained during the current assessment that under new corporate service provider legislation, service providers who have a dual role as an attorney or accountant are expected to keep their professional responsibilities separate. Accountants and attorneys interviewed at the on-site visit confirmed this practice.

Conclusions regarding Element C.4

226. At the time of the Phase 2 report, Element C.4 was determined to be “in place” and rated “Compliant”. No issues relating to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of Barbados’ exchange of information partners. Therefore, the determination and rating for Element C.4 remain the same.

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)

227. 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.

Response time in practice

228. Barbados received 11 requests from two treaty partners over the three years under review (1 July 2012-30 June 2015), almost all based on DTCs. Barbados has seen a decrease in the number of requests from 30 in the previous review period to 11 in the current review period. In general, response times improved slightly since the last review, but still varied over the three year period and were indicative of significant delays in some cases.

Response times for requests received by Barbados during the review period (1 July 2012-30 June 2015)

| | Jul-Dec 2012 | | 2013 | | 2014 | | Jan-Jun 2015 | | Total | Average |
|---|-----------------|---|------|-----|------|------|-----------------|------|-------|---------|
| | num. | % | num. | % | num. | % | num. | % | | |
| Total number of requests received* (a+b+c+d+e) | | | 2 | 100 | 6 | 100 | 3 | 100 | 11 | 100 |
| Full response**: <90 days | | | | | 1 | 16.7 | | | 1 | 9 |
| <180 days (cumulative) | | | | | 2 | 33.3 | 1 | 33.3 | 3 | 27.3 |
| <1 year (cumulative) (a) | | | | | 3 | 50 | 2 | 100 | 6 | 54.5 |
| 1 year+ (b) | | | 1 | 50 | 3 | 50 | | | 4 | 36.4 |
| Declined for valid reasons (c) | | | | | | | | | | |
| Failure to obtain and provide information requested (d) | | | | | | | | | | |
| Requests still pending at date of review (e) | | | 1 | 50 | | | | | 1 | 9 |

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

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

229. At the time of Phase 2, Barbados was able to answer simple cases such as requests for contact details of taxpayers within 90 days, but more complex requests took significantly more time to be answered, in some cases up to 4 years. The Phase 2 report found that the reasons for long response times and recent improvement were mainly linked to human resources issues within the Inland Revenue Department. Up until early 2012, Barbados did not have a formal EOI unit, but rather a senior tax officer in charge of handling requests under the supervision of the Deputy Revenue Commissioner. During the Phase 2 review period, Barbados developed a dedicated unit to EOI and put in new administrative processes to address some of the issues

experienced previously. Peer input at the time of Phase 2 noted an improvement in EOI practice towards the end of the review period.

230. Although Barbados has improved its response times (in that no requests have been outstanding for four years) since the last review, delays in responding to requests continue. During the current review period, Barbados answered only one request within 90 days (representing 9% of total requests) and three within 180 days (representing 27.3% of all requests). A further three (27.3% of requests) were answered in between six months and a year, four (36.4% of requests) took longer than a year to be answered and one (9% of requests) is still outstanding.

231. Generally, where delays occurred, they involved third-party information holders, although in one case, a request for tax information was also delayed for a year. Four requests for accounting information were responded to in almost one year. Two of the four requests for bank information resulted in significant delays. Barbados was able to respond to one within nine months and the other only after a year. The former was sent as an urgent request. In the latter, Barbados was able to provide a partial response after four months. Another request concerning employee information took seven months to be answered. A fourth request concerning ownership information was answered after almost one year, and a final seeking employee information from tax returns, which should not have required the competent authority to use its access powers, took one year to be answered, although a partial answer was delivered after four months.

232. As mentioned above, according to Barbados, some of the delays may have been caused by the restructuring of the Inland Revenue Department to the BRA, which was accompanied by relocation to new premises. The BRA conjectures that two such requests that were received in 2013 may have been misplaced or misfiled at the time when files were being moved from one office to another. This resulted in long delays as the requests had to be resent by the treaty partner in those instances. In both instances, the requests were resubmitted in June 2015. One of the two resubmitted requests related to corporate tax returns and was answered in November 2015. The second related to ownership information and was answered in February 2016.

233. In one instance, a delay of over one year occurred because Barbados could not definitively confirm the identity of the requesting individual as an official staff member of the treaty partner's competent authority. Communications between Barbados and the requesting jurisdiction transpired over a year period, resulting in an in-person meeting during the Global Forum's 2015 plenary in Bridgetown. According to Barbados, the difficulties in verifying the legitimacy of the requesting party arose because the treaty partner had not informed the competent authority of a change in staff so that the individual was unknown to the EOI unit. Further, each correspondence received

by Barbados was sent by a different individual, leading to more confusion. This question was finally resolved one year and one month after receipt of the request and accordingly, the requested information was delivered.

234. In another case, the taxpayer was inadvertently notified that the request for information resulted from an EOI request and challenged the validity of the request with the Commissioner (see section B.2). The BRA reported that a hearing was scheduled to allow for the Commissioner to hear the taxpayer's concerns. In this case, the taxpayer complied with the request and provided the information requested, but the competent authority has not yet sent the information pending the outcome of the hearing with the Commissioner.

235. As discussed above (sections A.2 and B.1), Barbados explains that delays were sometimes caused by requests for very old information (dating back past ten years) for which the prescribed document retention period had expired. In one case, the information holder had requested, and was granted, permission to dispose of the documents; therefore, Barbados could not provide the information. Barbados did not apply its compulsory powers in any of the aforementioned instances (as described above in section B.1) or communicate the reason for the delay to its treaty partners.

236. The current EOI unit (under the BRA) also notes that most of the issues that arose during the review period (such as those described above – the accidental misplacement of files and the accidental notification of a taxpayer) date back to the previous EOI unit (under the former Inland Revenue Department) and that steps are being taken to ensure that similar problems do not arise again (for instance, having put in place internal policies on how to seek information from a third party). Although improvements towards the end of the review period have been noted by peers, not all of the old requests have been answered. Barbados is thus recommended to answer all outstanding requests as a matter of priority.

237. Finally, as described above in the section on banking information, Barbados does not have in place a unified bank account identification system. The Phase 2 report noted that, in the case of a request where the bank is not specified and could not be inferred from the account number or other information provided, Barbadian tax authorities would contact only the main commercial and offshore banks. At the time of the Phase 2 review, this process led to the transmission of incomplete information in one instance. Barbados explains that when it now receives a request where the bank is not identified, it will contact all of the commercial banks, but not the offshore banks. Although offshore banks are not allowed to accept deposits from any Barbadian resident (s. 13(c) IFSA), they are not prohibited from accepting deposits from non-residents. As such, Barbados is still recommended to clearly describe its process of collecting banking information to its peers.

Acknowledgements of requests and status updates

238. The Phase 2 report acknowledged that Barbados' practice of sending status updates improved towards the end of the period under review, with the establishment of the formal EOI Unit. The Barbadian authorities admitted that the limited resources dedicated to EOI before 2012 did not allow them to send acknowledgements and status updates in all cases. Several peers had to send multiple reminders to Barbados. However, peers noted a marked improvement in efforts to send acknowledgements and status updates in a timely manner towards the end of the review period.

239. However, at the time of the supplementary review, Barbados again experienced a number of delays in responding to requests. Moreover, it appears that Barbados is still not sending updates on more systematic basis. One peer reported that out of nine requests taking more than 90 days to be fulfilled, it received a status update in four. Further, Barbados does not appear to be in the practice of requesting clarification or additional information where it believes a request to be defective. For instance, Barbados indicates that in a few instances, the validity (i.e. the foreseeable relevance) of the request has been questioned, leading to delays in answering. Although this concern is legitimate, Barbados could have saved a great deal of time by confirming the foreseeable relevance of the request upfront.

240. Finally, reminiscent of peer input received during the Phase 2 review, one peer indicated during the present review that for almost all of 2013 and part of 2014, Barbados was extremely unresponsive. Then, starting in mid-2014, communications improved. During the on-site visit, the BRA explained that it was during that time that the former Inland Revenue Department was being restructured into the existing tax revenue authority, the BRA. During this time, no requests were answered and no updates were sent. Although it is understandable that such a restructuring could cause disruption to normal operations, Barbados did not warn its treaty partners in advance of such an event, nor did it provide a temporary solution to cover the year of transition from the old revenue authority to the new one.

Organisational process and resources (ToR C.5.2)

241. The Phase 2 report found that Barbados' organisation and resources greatly improved over the course of the review period, in particular, with the establishment of a formal EOI unit. Prior to the establishment of a formal EOI unit, EOI was carried out by only a single EOI officer and did not appear to have a formalised system of responding to requests. The formalised EOI unit under the Inland Revenue Department was staffed with three experienced tax officers all of whom underwent both international and domestic training on exchange of information. The Phase 2 report was thus satisfied that sufficient resources were being channelled to EOI. Although Barbados also provided

reassurance that it would continue to provide resources commensurate to its EOI needs, it should be noted that during the transition period from the Inland Revenue Department to the BRA, it did not appear that any personnel were responding to or handling EOI requests. In mid-2014, however, the EOI situation in Barbados has improved. Currently, the EOI office under the BRA has a staff of four, counting the Revenue Commissioner, the Deputy Commissioner and two EOI officers (including an audit officer).

242. The Phase 2 report also found that since many of the issues raised by peers over the Phase 2 review period were resolved with the creation of the new EOI Unit, which was better organised in its handling and monitoring of requests. Further, the 2013 EOI Manual systematised the procedure to be followed by the EOI team. The current EOI unit still uses the 2013 Manual as a basis for its EOI practice and the same processes and procedures previously formalised. For a more detailed description of Barbados' EOI resources and organisational procedures, see the Phase 2 report, sections 358-375.

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

243. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no further conditions that appear to restrict effective exchange of information in Barbados. There are no other unreasonable, disproportionate or unduly restrictive conditions on exchange of information existing in practice.

Conclusions regarding Element C.5

244. Although Barbados has taken significant efforts to improve its EOI practice by creating a dedicated EOI unit, many of the same problems identified in Phase 2 are recurring at the time of the present review. It is acknowledged that, similar to the time of the Phase 2 review, Barbados underwent another restructuring of its EOI unit (this time as part of a larger restructuring of the tax authority itself), which resulted in some disorganisation and negatively impacted EOI. However, issues relating to the EOI unit's internal procedures and practices also undermined Barbados' ability to exchange information in a timely fashion. Some procedures relating to resolving taxpayer disputes or with respect to gathering information from certain third party information-holders (such as commercial banks) also resulted in significant delays. In none of the cases described did the competent authority take any steps to expedite the process of obtaining the required information. In general, it did not seem as if Barbados feels a sense of urgency in fulfilling EOI requests, including those that have been outstanding for a significant amount of time. Therefore,

the rating for Element C.5 remains at Partially Compliant and Barbados is still recommended to ensure that it can answer EOI requests in a timely manner and that it provides status updates where it cannot.

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 |
|-----------------------------|
| Partially compliant. |

| Factors underlying recommendation | Recommendation |
|--|---|
| During the three years under review, Barbados has not regularly provided status updates to its EOI partners within 90 days when the competent authority was unable to provide a substantive response or when further information from the requesting jurisdiction was needed. Further, the Barbadian tax authority was restructured in 2013, resulting in a period of unresponsiveness of more than a year, during which time no requests were answered and no status updates were provided. | Barbados should systematically provide an update or status report to its EOI partners within 90 days when the competent authority is unable to provide a substantive response within that time. |
| Barbados has experienced some difficulties during the review period to answer EOI requests in a timely manner due to a variety of reasons, unrelated to the specific type of information requested. Due to organisational issues, two EOI requests were misplaced and had to be re-sent and delays occurred in a number of other cases. Finally, Barbados has still not answered one of the requests received in 2013 by the EOI unit. | Barbados should ensure that answers to EOI requests are made in a timely manner in all cases. |

Summary of determinations and factors underlying recommendations

| Overall rating | | |
|--|--|--|
| Largely Compliant | | |
| Determinations | 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: The element is in place, but certain aspects of the legal implementation of the element need improvement | The Foundations Act requires the secretary (of domestic foundations) and registered agent (of international foundations) to maintain a register containing information on the foundation's beneficiaries. However, in the case of domestic foundations, the secretary is not required to be present in Barbados or be subject to Barbadian jurisdiction. | Barbados should ensure the availability and accessibility of ownership and identity information with respect to both international and domestic foundations. |
| Phase 2: Largely compliant | Although penalties for non-compliance with filing obligations have been introduced into Barbadian law, legal provisions are too new to have been enforced. Penalties for non-compliance are still unenforced in practice. Neither have any non-monetary penalties (such as striking off) been applied in the period under review. | Effective enforcement measures should be taken to ensure that all entities comply with their requirements to maintain ownership information. |

| Determinations | Factors underlying recommendations | Recommendations |
|---|---|--|
| <p>Phase 2: Largely compliant <i>(continued)</i></p> | <p>The Ministry in charge of International Business still does not have in place a system of monitoring compliance with ownership and identity information keeping requirements in respect of all international entities and trusts. The International Business Division has not yet developed a compliance department and to date, no supervision of IBCs, licensed trustees and service providers is taking place.</p> | <p>Barbados should implement a regular and comprehensive system of oversight to ensure compliance by all relevant entities with obligations to maintain ownership information under Barbadian law.</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: The element is in place, but certain aspects of the legal implementation of the element need improvement</p> | <p>Barbados legislation does not ensure that reliable accounting records or underlying documentation are kept for all trusts.</p> | <p>All relevant entities and arrangements should be required to maintain reliable accounting records including underlying documentation for a minimum of 5 years.</p> |
| <p>Phase 2: Partially Compliant</p> | <p>During the review period, Barbados did not have a regular system of oversight in place with respect to international entities. Although the tax authority routinely audited domestic entities, no IBCs were audited in the three years under review.</p> <p>No sanctions have been applied for any violation of record-keeping or filing obligations under any law. Although sanctions exist for the most part, no authority has yet applied them.</p> | <p>Barbados is recommended to ensure that there is adequate oversight of the compliance of international entities with their accounting obligations.</p> <p>Effective enforcement measures should be taken to ensure that all entities comply with record-keeping and filing requirements.</p> |

| Determinations | Factors underlying recommendations | Recommendations |
|--|---|---|
| Banking information should be available for all account-holders. <i>(ToR A.3)</i> | | |
| Phase 1: The element is in place. | | |
| Phase 2: Compliant | | |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i> | | |
| Phase 1: The element is in place | | |
| Phase 2: Largely Compliant | Barbados experienced significant delays in responding to eight requests for banking and ownership information over the review period although these delays do not appear to stem from deficiencies in the legal framework for Barbados' access powers. In those cases, Barbados experienced delays of close to a year accessing information held by a third party information holder and yet compulsory powers were not used. | Barbados is recommended to use its compulsory powers in all EOI cases to ensure that all information for exchange of information purposes is obtained in a timely manner. |
| 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: The element is in place | | |
| Phase 2: Compliant | | |
| Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i> | | |
| Phase 1: The element is in place | | |
| Phase 2: Compliant | | |

| Determinations | Factors underlying recommendations | Recommendations |
|---|--|---|
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i> | | |
| Phase 1: The element is in place | | Barbados should continue to develop its exchange of information network with all relevant partners. |
| Phase 2: 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: The element is in place | | |
| Phase 2: Compliant | | |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i> | | |
| Phase 1: The element is in place | | |
| Phase 2: Compliant | | |
| The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i> | | |
| Phase 1: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review. | | |
| Phase 2: Partially compliant | During the three years under review, Barbados has not regularly provided status updates to its EOI partners within 90 days when the competent authority was unable to provide a substantive response or when further information from the requesting jurisdiction was needed. Further, the Barbadian tax authority was restructured in 2013, resulting in a period of unresponsiveness of more than a year, during which time no requests were answered and no status updates were provided. | Barbados should systematically provide an update or status report to its EOI partners within 90 days when the competent authority is unable to provide a substantive response within that time. |

| Determinations | Factors underlying recommendations | Recommendations |
|---|---|--|
| <p>Phase 2: Partially compliant <i>(continued)</i></p> | <p>Barbados has experienced some difficulties during the review period to answer EOI requests in a timely manner due to a variety of reasons, unrelated to the specific type of information requested. Due to organisational issues, two EOI requests were misplaced and had to be re-sent and delays occurred in a number of other cases. Finally, Barbados has still not answered one of the requests received in 2013 by the EOI unit.</p> | <p>Barbados should ensure that answers to EOI requests are made in a timely manner in all cases.</p> |

Annex 1: Jurisdiction’s response to the report¹⁰

Barbados takes this opportunity to thank the Global Forum’s Secretariat, and the Assessors for their invaluable assistance and guidance in helping us reach this stage. We also wish to express our appreciation to our colleagues in the Peer Review Group and our exchange of information partners for their contribution to the Review.

We welcome the Peer Review Group’s endorsement of the Supplemental Phase 2 Peer Review Report of Barbados and the recommended overall rating of Largely Compliant. We are satisfied that the Report is an accurate reflection of Barbados’ implementation of the standard having had frank and fruitful discussions with the Assessors.

As a result, we have gained a much better understanding of the standard and how we could implement the recommendations. To this end, we have begun to address the concerns.

In terms of the oversight of entities and service providers to ensure compliance with the requirement to maintain ownership information, the Ministry responsible for International Business has partnered with the Financial Services Commission to carry out onsite inspections of the entities and service providers.

With regard to responding to requests for information in a timely manner, the Barbados Revenue Authority has implemented measures and intends to use of all of its access powers, including compulsory powers to access information to ensure a timely response to requests. In addition, Barbados also endeavors to communicate more with requesting States by giving regular updates on the status of requests.

We wish to assure the Global Forum of Barbados’ continued commitment to the principles of transparency and exchange of information and to the work of the Forum. We take this opportunity to reiterate Barbados’ commitment to implement the recommendations of the Supplemental Report as quickly as possible, to become compliant while looking forward to our next review in 2018.

International Business Division, Barbados
September 5, 2016

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

Annex 2: Request for a supplementary report received from Barbados

This Report is to provide an update on the measures Barbados has taken to implement the recommendations of the Phase 2 Peer Review of Barbados to support Barbados' request for a Supplementary Report in keeping with the Methodology for Peer Reviews.

- 2) On April 24, 2014, the Global Forum published its Phase 2 Peer Review Report on Barbados. Barbados has been assigned the following ratings: Compliant for elements A3, B2, C3 and C4, Largely Compliant for elements A1, A2, B1 and C1, Partially Compliant for element C5 and non-compliant for element C2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Barbados is Partially Compliant.
- 3) This Report sets out the elements under consideration as taken from the Summary of Determinations and Factors Underlying Recommendations in the Phase 2 Report followed by an update on the actions taken in respect of the element.
- 4) Overall, Barbados has made significant progress in addressing all of the elements and continues to working diligently to address all issues in our efforts to reach overall compliance. Details on the progress made in the respective elements are set out below.

Elements A.1

| Determinations | 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: The element is in place, but certain aspects of the legal implementation of the element need improvement | There are currently no penalties for non-compliance with obligations to maintain up to date share registers in the case of limited companies and SRLs. | In so far as penalties are not currently provided, effective sanctions should be introduced against companies and SRLs that fail to comply with requirements to maintain share registers. |

| Determinations | Factors underlying recommendations | Recommendations |
|-----------------------------------|---|--|
| Phase 2: Largely compliant | <p>The Ministry in charge of International Business does not have a system of monitoring the compliance with ownership and identity information keeping requirements in respect of all international entities and penalties for non-compliance are unenforced in practice.</p> <p>Whilst the international entities are regulated, the Ministry has failed to take practical compliance measures to supervise and monitor the obligations placed on International entities.</p> | Effective enforcement measures should be taken to ensure that all entities comply with their requirements to maintain ownership information. |

- 5) With regard to element A1, Barbados amended the *Companies Act, Cap. 308* and the *Societies with Restricted Liability Act, 318B* through the *Corporate (Miscellaneous Provisions) Act, 2014* which was passed in Parliament on December 17, 2014 to ensure that there are effective sanctions against companies and societies with restricted liability (SRLs) that fail to comply with requirements to maintain share registers.

Limited Companies

- 6) In the case of limited companies, the *Corporate (Miscellaneous Provisions) Act, 2014* introduced, for example,
- (a) at Section 15(5) an obligation for a Director or an authorized officer of the company to certify in an annual return that information related to shareholders and beneficial ownership is maintained at the registered office of the company.
 - (b) at section 170(2)(d), a provision for a company to also maintain in a register a record of the beneficial ownership of companies incorporated or registered in Barbados.
 - (c) at section 175A, sanctions for contravention of record keeping. In this regard, a person could be found guilty of an offence and

liable on summary conviction to a fine of \$10,000 for contravening sections 170(1), (2) and (3) and section 172(1), (2) and (3). Section 170 deals with Records of companies and Section 172 with any other records.

- 7) It is also noted that the fines in Section 432(1) have been increased from Bds. \$5,000 to Bds. \$10,000. Section 432 reads as follows:

“432. (1) A person who makes or assists in making a report, return, notice or other document

(a) that is required by this Act or the regulations to be sent to the Registrar or to any other person, and

(b) that

(i) contains an untrue statement of a material fact, or

(ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, is guilty of an offence and liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 6 months, or to both.”

Societies with Restricted Liability

- 8) In the case of SRLs, the *Corporate (Miscellaneous Provisions) Act, 2014* makes it mandatory for a Society to prepare and maintain a record of the beneficial ownership of the society at its registered office, by including a paragraph (c) which states “a record of the beneficial ownership of the society”, in Section 24 (1) concerning Records.
- 9) In addition, the *Corporate (Miscellaneous Provisions) Act, 2014* also provides for sanctions for contravention of record keeping in Section 29A. Section 29A states that “a person who contravenes Section 24 and Section 26 is guilty of an offence and is liable on summary conviction to a fine of \$10,000.”

Phase 2 Recommendation of Element A.1

- 10) With regard to the Phase 2 recommendation that effective enforcement measures should be taken to ensure that all entities comply with the requirements to maintain ownership information, the Ministry is continuing to strengthen this area as it implements the *Corporate*

and Trust Service Providers (CTSPA) Act, 2015 and the Corporate (Miscellaneous Provisions) Act, 2014.

- 11) In addition to working closely with Corporate Affairs and Intellectual Property Office and Regulators, the Ministry is also enhancing its information technology systems support its enforcement efforts.

Element A.2

| Determinations | Factors underlying recommendations | Recommendations |
|---|--|--|
| Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. (ToR A.2) | | |
| Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement | Barbados legislation does not ensure that reliable accounting records or underlying documentation are kept for all trusts. | All relevant entities and arrangements should be required to maintain reliable accounting records including underlying documentation for a minimum of 5 years. |
| Phase 2: Largely compliant | | |

- 12) In the case of element A2 concerning the requirement to maintain reliable accounting records including underlying documentation for a minimum of 5 years, Barbados has also addressed this recommendation in the *Corporate and Trust Service Providers Act 2015 (CTSPA)* and the Ministry responsible for International Business' *Guidelines for the Detection and Prevention of Money Laundering and Financing of Terrorism and Proliferation in Barbados (AML Guidelines)* as provided for under Section 35 of the CTSPA. Section 35 of the CTSPA states

“The Director may issue guidelines in respect of the standards to be observed and measures to be implemented by a service provider in connection with his obligations under this Act; and the service provider shall comply with the guidelines.”

- 13) In this regard, it is noted that Section 17 of the Guidelines obligate licensees **to establish a retention policy to maintain a wide range of records for a period of at least five years after termination of accounts, or date on which the relevant transaction or series of**

transactions are completed, respectively, as it relates to the type of record. The records required to be kept include the following:

- a. Entry records: institutions must keep all account opening records, including verification documentation and written introductions, for a period of at least 5 years after termination or, where an account has become dormant, 5 years from the last transaction.
 - b. Ledger records: institutions must keep all account ledger records for a period of at least 5 years following the date on which the relevant transaction or series of transactions is completed.
 - c. Supporting records: institutions must keep all records in support of ledger entries, including credit and debit slips and cheques, for a period of at least 5 years following the date on which the relevant transaction or series of transactions is completed.
- 14) **It is also noted that** Records relating to transactions would generally comprise:
- (a) details of personal identity, including the names and addresses, of:
 - a. the customer;
 - b. the beneficial owner of the account or product;
 - c. any counter-party;
 - (b) details of securities and investments transacted including:
 - a. the nature of such securities/investments;
 - b. valuation(s) and price(s);
 - c. memoranda of purchase and sale;
 - d. source(s) and volume of funds;
 - e. destination(s) of funds;
 - f. memoranda of instruction(s) and authority(ies)
 - g. book entries;
 - h. custody of title documentation;
 - i. the nature of the transaction;
 - j. the date of the transaction;
 - k. the form (e.g. cash, cheque) in which funds are offered and paid out.

- 15) **Institutions** are also required to keep all relevant records in readily retrievable form and be able to access records without undue delay. A retrievable form may consist of:
- (a) an original hard copy;
 - (b) microform; or
 - (c) electronic data.
- 16) Records held by third parties are not regarded to be in a readily retrievable form unless the institution is reasonably satisfied that the third party is itself a regulated institution, which is able and willing to keep such records and provide same when required.
- 17) The Guidelines also mandate that “Institutions should ensure that records held by an affiliate, branch or subsidiary outside Barbados; or head office; that act as an introducer, at a minimum, comply with the requirements of Barbados law and this Guideline”.

Element B.1

| Determinations | 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: The element is in place, but certain aspects of the legal implementation of the element need improvement | Relevant laws are not unequivocally drafted as to whether trustees of international trusts and registered unit trusts are or not prohibited to disclose to any other person the name of the settlor or any beneficiary, or any information relating to or forming part of the accounts of an international trust. | The Barbadian authorities should continue working towards clarifying that the competent authority has power to access confidential information covered by the International Trust Act and the Mutual Funds Act. |
| Phase 2: Largely compliant | | |

- 18) With regard to element B1 concerning the competent authority’s power to access confidential information covered by the *International Trusts Act* and the *Mutual Funds Act*, it is noted that

the Barbados Revenue Authority had undertaken legislative reform to ensure that Barbados can automatically exchange information on all relevant entities under the *Foreign Account Tax Compliance Act* (FATCA). Relatedly, work is also continuing in relation to the Multilateral Convention.

- 19) 245. It is also noted that the Barbados Revenue Authority’s ability to access confidential information on international trusts has been enhanced by the introduction of the *Corporate and Trust Service Providers Act* and the Ministry responsible for International Business’ *Guidelines for the Detection and Prevention of Money Laundering and Financing of Terrorism and Proliferation in Barbados* (AML Guidelines). As noted above Section 35 of the CTSPA and Section 17 of the AML Guidelines provide for the retention of information and confidentiality regarding who can access the information on international trusts, respectively. In this regard, it is noted that Section 34(3) of the said Act provides for the Barbados Revenue Authority to access information from the Corporate Service Providers pursuant to the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011, the Income Tax Act, Cap. 73* or any other enactment or otherwise acting in pursuance of an international agreement to which Barbados is a party.

Element C.1

| Determinations | Factors underlying recommendations | Recommendations |
|--|---|--|
| Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1) | | |
| Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement | Five DTCs limit exchange of information (i) to information for carrying out the provisions of the Convention, and/or (ii) by failing to provide for exchange of bank information. | Barbados should continue to revise its existing treaties in line with the international standard where they do not currently meet that standard. |

| Determinations | Factors underlying recommendations | Recommendations |
|-----------------------------------|---|--|
| Phase 2: Largely compliant | Because of limitations in a number of DTCs in force during the period under review, several requests were not answered because the entities were excluded from the scope of the treaties or because of restrictive interpretation of the scope of the treaty concerning information held by offshore banks. Barbados already took action by upgrading the two relevant treaties used for EOI, which entered into force after the period under review. | Barbados should continue to revise its existing treaties in line with the international standards where they do not currently meet that standard, and monitor the implementation of the amended or new ones to ensure that they are interpreted in accordance with the standard. |

Status

- 20) Work is continuing on removing the limitations in the five DTCs with the five countries – Switzerland, Venezuela, Trinidad and Tobago, Dominica and Grenada – that are referred to in the factors underlying the recommendation in the table.
- 21) However, it is important to note that although the DTCs with Trinidad and Tobago, Dominica and Grenada are counted individually, they are actually parties to the CARICOM double taxation agreement. The CARICOM Secretariat is continuing work on revising this DTC to meet the international standard. In the case of Venezuela, Barbados is considering a proposal to amend the existing DTC. Finally, in the case of Switzerland, information would be exchanged pursuant to the provisions of the Multilateral Convention.
- 22) With regard to the Phase 2 aspect of element C.1 above, the Global Forum has acknowledged that Barbados had already upgraded the two treaties that the Report referred to where requests were not answered because the entities were excluded from the scope of the treaties or because of restrictive interpretation of the scope of the treaty concerning information held by offshore banks. The two treaties are with the United Kingdom and Canada.

Element C.2

| Determinations | Factors underlying recommendations | Recommendations |
|--|--|---|
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (<i>ToR C.2</i>) | | |
| Phase 1: The element is not in place | A number of DTCs of Barbados do not meet the international standard (see C.1). | Barbados should continue to revise its existing treaties in line with the international standard where they do not currently meet that standard. |
| | Barbados has been approached by five jurisdictions to negotiate TIEAs or protocols to DTCs, but has not been diligent in answering these requests, or persists preferring DTA negotiations. TIEA initialled two years ago have also not been signed yet. | Barbados should continue to enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) with all other relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it. |
| Phase 2: Non-compliant | | |

Status

- 23) To address the recommendation concerning element C.2, Barbados decided to sign on to the Multilateral Convention for Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement. Barbados signed the Multilateral Convention on October 28, 2015 and the Competent Authority Agreement on October 29, 2015. Barbados has published a copy of the Multilateral Convention in its Official Gazette of December 7, 2015 thus completing its internal procedures for ratification. Barbados will deposit its instrument of ratification with the OECD during this month of December 2015.
- 24) By virtue of being a party of the MC, Barbados will be able to exchange information with the five countries mentioned in the Phase 2 Peer Review Report that are also parties to the Convention. Barbados will further be in a position to exchange information with a larger number of countries thus easier facilitating the new standard of automatic exchange of information. As it relates to the two

initialled TIEAs, Barbados had notified the two countries – France and Germany, of its readiness to sign and had been awaiting their response.

Element C.5

| Determinations | Factors underlying recommendations | Recommendations |
|---|---|---|
| The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i> | | |
| Phase 1: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review. | | |
| Phase 2: Partially compliant. | During the three years under review, Barbados rarely provided an update or status report to its EOI partners within 90 days when the competent authority was unable to provide a substantive response within that time. In some cases updates were also not provided despite repeated reminders from the EOI partner. The monitoring of requests has nonetheless improved more recently, with the creation of a dedicated EOI Unit. | Barbados should systematically provide an update or status report to its EOI partners within 90 days when the competent authority is unable to provide a substantive response within that time. |
| | Barbados has experienced some difficulties during the review period to answer EOI requests in a timely manner. This was due to a lack of dedicated personnel in the EOI unit for over a year. The resources devoted to EOI and processes have been greatly improved towards the end of the period. | Barbados should ensure that answers to EOI requests are made in a timely manner in all cases. |

Status

- 25) With regard to element C.5 concerning the requirement to provide information in a timely manner, The Barbados Revenue Authority which was established on April 1, 2014 and brought together key tax revenue collection entities under one Authority, is continuing to give priority to exchange of information matters to ensure the timely response to requests.
- 26) During the period 2014 to 2016, the Barbados Revenue Authority received fourteen (14) Exchange of Information (EOI) requests from other Competent Authorities categorized as follows:

| Country | Number of Requests | No response to date | Partial Responses | Complete Responses |
|----------|--------------------|---------------------|-------------------|--------------------|
| China | 1 | | | 1 |
| Dominica | 1 | | | 1 |
| UK | 2 | 2 | | |
| Canada | 10 | 2 | 2 | 6 |

- 27) The majority of responses were provided within the legislative period of ninety (90) days. However, this timeframe was not met in other cases because of several factors which will be discussed below.

United Kingdom

- 28) 246. A person identifying himself as the delegated Competent Authority in the UK submitted a request for information to the BRA but this individual was unknown to the BRA. As a result, BRA officials consulted with the UK official known to their office. The UK responded but the matter was not resolved. Subsequently, on October 30, 2015 officials from BRA met with an official of HM Revenue and Customs who attended the Global Forum meeting held in Barbados. The UK official explained that the structure of the EOI Unit in the UK had changed. It was decided that an official letter from HM Revenue and Customs be forwarded to the BRA identifying all individuals who are the UK's delegated Competent Authorities. The BRA received the correspondence on November 27, 2015.

Canada

- 29) Some requests received from the Canada Revenue Agency (CRA) are in relation to submissions made in 2013 which was prior to the establishment of the BRA on April 1, 2014; Canada therefore was required to resubmit their requests; this occurred in 2015.
- 30) In addition, most requests received from Canada are in respect of information for earlier years 2004-08. The BRA tried to facilitate these requests, but had challenges doing so since companies had informed that the information was stored offsite and a considerable amount of time was needed to retrieve it. In some cases companies also indicated that documents had already been discarded. These issues have impacted on the BRA being able to respond to the CRA in a timely manner.
- 31) The BRA recently communicated to the CRA that in accordance with Section 75(4) of the *Income Tax Act*, the period of retention of records is five (5) years after the end of the income year; in this regard the BRA will be unable to provide information outside of this period.
- 32) Having addressed and resolved the issues mentioned above the BRA is better equipped to respond to requests within the ninety (90) day timeframe.

Ministry of Industry, International Business, Commerce and Small Business Development

December 8, 2015

Annex 3: List of all exchange of information mechanisms

Multilateral agreements

- Barbados is a Party to the Caribbean Community (CARICOM) Multilateral Tax Treaty (CARICOM regional Agreement) which is a double tax convention signed in 1994 between 11 of the 15 member States of the CARICOM.
- Barbados has also signed and ratified the Multilateral Convention, which will enter into force in Barbados on 1 November 2016.

Bilateral agreements

- Barbados is a Party to Double Tax Conventions (DTCs) and Tax Information Exchange Agreements (TIEAs).

For jurisdictions with which Barbados has several agreements, a reference to all agreements is made. Exchange of information mechanisms signed by Barbados as of August 2016 are:

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|---|-----------------------|----------------------------|-------------|------------------------------------|
| 1 | Albania | Multilateral Convention | Signed | In force in Albania ^a |
| 2 | Andorra | Multilateral Convention | Signed | In force in Andorra ^a |
| 3 | Anguilla ^b | Multilateral Convention | Signed | In force in Anguilla ^a |
| 4 | Antigua and Barbuda | CARICOM regional agreement | 6 July 1994 | 7 July 1995 |
| 5 | Argentina | Multilateral Convention | Signed | In force in Argentina ^a |
| 6 | Aruba ^c | Multilateral Convention | Signed | In force in Aruba ^a |
| 7 | Australia | Multilateral Convention | Signed | In force in Australia ^a |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|----|-------------------------------------|----------------------------|-----------------------------|---|
| 8 | Austria | DTC | 27 Feb 2006 | 1 April 2007 |
| | | Multilateral Convention | Signed | In force in Austria ^a |
| 9 | Azerbaijan | Multilateral Convention | Signed | In force in Azerbaijan ^a |
| 10 | Belgium | Multilateral Convention | Signed | In force in Belgium ^a |
| 11 | Bahrain | DTC | 3 Dec 2012 | 16 July 2013 |
| 12 | Belize | CARICOM regional agreement | 6 July 1994 | 30 Nov 1994 (effective 1 Jan 1996) |
| | | Multilateral Convention | Signed | In force in Belize ^a |
| 13 | Bermuda ^b | Multilateral Convention | Signed | In force in Bermuda ^a |
| 14 | Botswana | DTC | 23 Feb 2005 | 12 Aug 2005 |
| | | Protocol to DTC | 4 Sept 2014 | Not ratified in Botswana |
| 15 | Brazil | Multilateral Convention | Signed | In force in Brazil ^a |
| 16 | British Virgin Islands ^b | Multilateral Convention | Signed | In force in British Virgin Islands ^a |
| 17 | Bulgaria | Multilateral Convention | Signed | In force in Bulgaria ^a |
| 18 | Cameroon | Multilateral Convention | Signed | In force in Cameroon ^a |
| 19 | Canada | DTC/Protocol | 22 Jan 1980/ 8 Nov 2011 | 22 Dec 1980/17 Dec 2013 |
| | | Multilateral Convention | Signed | In force in Canada ^a |
| 20 | Cayman Islands ^b | Multilateral Convention | Signed | In force in Cayman Islands ^a |
| 21 | Chile | Multilateral Convention | Signed | In force in Chile ^a |
| 22 | China (People's Rep.) | DTC/Protocol | 15 May 2000/ 10 Feb 2010 | 27 Oct 2000/9 June 2010 |
| | | Multilateral Convention | Signed | In force in China (People's Rep.) ^a |
| 23 | Colombia | TIEA | 25 Nov 2014 | Not ratified in Colombia |
| | | Multilateral Convention | Signed | In force in Colombia ^a |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|----|----------------------------|----------------------------|---------------|--|
| 24 | Costa Rica | Multilateral Convention | Signed | In force in Costa Rica ^a |
| 25 | Croatia | Multilateral Convention | Signed | In force in Croatia ^a |
| 26 | Cuba | DTC | 17 June 1999 | 16 March 2000 |
| 27 | Curaçao ^c | Multilateral Convention | Signed | In force in Curaçao ^a |
| 28 | Cyprus ^e | Multilateral Convention | Signed | In force in Cyprus ^a |
| 29 | Czech Republic | DTC | 16 Oct 2011 | 6 June 2012 |
| | | Multilateral Convention | | |
| 30 | Denmark | TIEA | 3 Nov 2011 | 14 June 2012 |
| | | Multilateral Convention | Signed | In force in Denmark ^a |
| 31 | Dominica | CARICOM regional agreement | 6 July 1994 | 30 Nov 1994 (effective 1 Jan 1997) |
| 32 | Dominican Republic | Multilateral Convention | Signed | Not yet in force |
| 33 | El Salvador | Multilateral Convention | Signed | Not yet in force |
| 34 | Estonia | Multilateral Convention | Signed | In force in Estonia ^a |
| 35 | Faroe Islands ^d | TIEA | 3 Nov 2011 | 25 July 2013 |
| | | Multilateral Convention | Signed | In force in Faroe Islands ^a |
| 36 | Finland | DTC/Protocol | 15 June 1989 | 20 Aug 1992 |
| | | Multilateral Convention | Signed | 1 June 2012 |
| 37 | France | Multilateral Convention | Signed | In force in France ^a |
| 38 | Gabon | Multilateral Convention | Signed | Not yet in force |
| 39 | Georgia | Multilateral Convention | Signed | In force in Georgia ^a |
| 40 | Germany | Multilateral Convention | Signed | In force in Germany ^a |
| 41 | Ghana | DTC | 22 April 2008 | Not ratified in Ghana |
| | | Multilateral Convention | Signed | In force in Ghana ^a |
| 42 | Gibraltar ^b | Multilateral Convention | Signed | In force in Gibraltar ^a |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|----|--------------------------|----------------------------|-------------|--------------------------------------|
| 43 | Greece | Multilateral Convention | Signed | In force in Greece ^a |
| 44 | Greenland ^d | TIEA | 3 Nov 2011 | 2 May 2012 |
| | | Multilateral Convention | Signed | In force in Greenland |
| 45 | Grenada | CARICOM regional agreement | 6 July 1994 | In force |
| 46 | Guatemala | Multilateral Convention | Signed | Not yet in force |
| 47 | Guernsey ^b | Multilateral Convention | Signed | In force in Guernsey ^a |
| 48 | Guyana | CARICOM regional agreement | 6 July 1994 | In force |
| 49 | Hungary | Multilateral Convention | Signed | In force in Hungary ^a |
| 50 | Iceland | DTC | 3 Nov 2011 | 24 Feb 2012 |
| | | Multilateral Convention | Signed | In force in Iceland ^a |
| 51 | India | Multilateral Convention | Signed | In force in India ^a |
| 52 | Indonesia | Multilateral Convention | Signed | In force in Indonesia ^a |
| 53 | Ireland | Multilateral Convention | Signed | In force in Ireland ^a |
| 54 | Isle of Man ^b | Multilateral Convention | Signed | In force in Isle of Man ^a |
| 55 | Israel | Multilateral Convention | Signed | Not yet in force |
| 56 | Italy | DTC | 24 Aug 2015 | Not ratified in Italy |
| | | Multilateral Convention | Signed | In force in Italy ^a |
| 57 | Jamaica | CARICOM regional agreement | 6 July 1994 | In force |
| | | Multilateral Convention | Signed | Not yet in force |
| 58 | Japan | Multilateral Convention | Signed | In force in Japan ^a |
| 59 | Jersey ^b | Multilateral Convention | Signed | In force in Jersey ^a |
| 60 | Kazakhstan | Multilateral Convention | Signed | In force in Kazakhstan ^a |
| 61 | Kenya | Multilateral Convention | Signed | Not yet in force |
| 62 | Korea | Multilateral Convention | Signed | In force in Korea ^a |
| 63 | Latvia | Multilateral Convention | Signed | In force in Latvia ^a |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|----|-------------------------|-------------------------|-----------------------------|---------------------------------------|
| 64 | Lichtenstein | Multilateral Convention | Signed | In force in Lichtenstein ^a |
| 65 | Lithuania | Multilateral Convention | Signed | In force in Latvia ^a |
| 66 | Luxembourg | DTC | 1 Dec 2009 | 8 Aug 2011 |
| | | Multilateral Convention | Signed | In force in Luxembourg ^a |
| 67 | Malta | DTC/Protocol | 5 Dec 2001/ 25 Sept 2013 | 19 June 2002/ 30 April 2014 |
| | | Multilateral Convention | Signed | In force in Malta ^a |
| 68 | Mauritius | DTC | 28 Sept 2004 | 28 Jan 2005 |
| | | Multilateral Convention | Signed | In force in Mauritius ^a |
| 69 | Mexico | DTC | 07 April 2008 | 26 Jan 2009 |
| | | Multilateral Convention | Signed | In force in Mexico ^a |
| 70 | Moldova | Multilateral Convention | Signed | In force in Moldova ^a |
| 71 | Monaco | Multilateral Convention | Signed | Not yet in force |
| 72 | Montserrat ^b | Multilateral Convention | Signed | In force in Montserrat ^a |
| 73 | Morocco | Multilateral Convention | Signed | Not yet in force |
| 74 | Nauru | Multilateral Convention | Signed | In force in Nauru ^a |
| 75 | Netherlands | DTC/Protocol | 28 Nov 2006 /27 Nov 2009 | 12 July 2007/13 Nov 2011 |
| | | Multilateral Convention | Signed | In force in Netherlands ^a |
| 76 | New Zealand | Multilateral Convention | Signed | In force in New Zealand ^a |
| 77 | Nigeria | Multilateral Convention | Signed | In force in Nigeria ^a |
| 78 | Niue | Multilateral Convention | Signed | In force in Niue ^a |
| 79 | Norway | DTC/Protocol | 15 Nov 1990/ 3 Nov 2011 | 3 July 1993 /1 June 2012 |
| | | Multilateral Convention | Signed | In force in Norway ^a |
| 80 | Panama | DTC | 21 June 2010 | 18 Feb 2011 |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|----|---------------------------|-------------------------|---------------|--|
| 81 | Philippines | Multilateral Convention | Signed | In force in Philippines ^a |
| 82 | Poland | Multilateral Convention | Signed | In force in Poland ^a |
| 83 | Portugal | DTC | 22 Oct 2010 | Not ratified in Portugal |
| | | Multilateral Convention | Signed | In force in Portugal ^a |
| 84 | Qatar | DTC | 6 Dec 2012 | 5 June 2013 |
| 85 | Romania | Multilateral Convention | Signed | In force in Romania ^a |
| 86 | Russia | Multilateral Convention | Signed | In force in Russia ^a |
| 87 | Rwanda | DTC | 22 Dec 2014 | Not ratified in Rwanda |
| 88 | San Marino | DTC | 14 Dec 2012 | 6 August 2013 |
| | | Multilateral Convention | Signed | In force in San Marino ^a |
| 89 | Saudi Arabia | Multilateral Convention | Signed | In force in Saudi Arabia ^a |
| 90 | Senegal | Multilateral Convention | Signed | In force in Senegal ^a |
| 91 | Seychelles | DTC | 19 Oct 2007 | 21 April 2008 |
| | | Multilateral Convention | Signed | In force in Seychelles ^a |
| 92 | Singapore | DTC | 15 July 2013 | 25 April 2014 |
| | | Multilateral Convention | Signed | In force in Singapore ^a |
| 93 | Sint Maarten ^c | Multilateral Convention | Signed | In force in Sint Maarten ^a |
| 94 | Slovak Republic | DTC | 25 April 2016 | Not ratified in Slovak Republic |
| | | Multilateral Convention | Signed | In force in Slovak Republic ^a |
| 95 | Slovenia | Multilateral Convention | Signed | In force in Slovenia ^a |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|-----|-------------------------------------|----------------------------|----------------------------|---|
| 96 | South Africa | TIEA | 17 Sept 2013 | 19 January 2015 |
| | | Multilateral Convention | Signed | In force in South Africa ^a |
| 97 | Spain | DTC | 1 Dec 2010 | 14 Oct 2011 |
| | | Multilateral Convention | Signed | In force in Spain ^a |
| 98 | St. Kitts and Nevis | CARICOM regional agreement | 6 July 1994 | 30 Nov 1994 (effective 1 Jan 1998) |
| 99 | St. Lucia | CARICOM regional agreement | 6 July 1994 | 30 Nov 1994 (effective 1 Jan 1996) |
| 100 | St. Vincent and the Grenadines | CARICOM regional agreement | 6 July 1994 | 30 Nov 1994 (effective 1 Jan 1999) |
| 101 | Sweden | DTC/Protocol | 1 July 1991/ 3 Nov 2011 | 1 Dec 1991/12 Dec 2012 |
| | | Multilateral Convention | Signed | In force in Sweden ^a |
| 102 | Switzerland | DTC | 20 Aug 1963 | 1963 |
| | | Multilateral Convention | Signed | Not yet in force |
| 103 | Trinidad and Tobago | CARICOM regional agreement | 6 July 1994 | 30 Nov 1994 (effective 1 Jan 1996) |
| 104 | Tunisia | Multilateral Convention | Signed | In force in Tunisia ^a |
| 105 | Turkey | Multilateral Convention | Signed | Not yet in force |
| 106 | Turks & Caicos Islands ^b | Multilateral Convention | Signed | In force in Turks & Caicos Islands ^a |
| 107 | Uganda | Multilateral Convention | Signed | In force in Uganda ^a |
| 108 | Ukraine | Multilateral Convention | Signed | In force in Ukraine ^a |
| 109 | United Arab Emirates | DTC | 22 Sept 2014 | Not ratified in UAE |
| 110 | United Kingdom | New DTC | 26 April 2012 | 19 Dec 2012/28 Feb 1986 |
| | | Multilateral Convention | Signed | In force in United Kingdom ^a |

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|-----|---------------|-------------------------|------------------------------|----------------------------------|
| 111 | United States | DTC/Protocol | 31 Dec 1984/ 14 July 2004 | 20 Dec 2004 |
| | | Multilateral Convention | Signed | Not yet in force |
| | | TIEA | 3 Nov 1984 | 3 Nov 1984 |
| 112 | Uruguay | Multilateral Convention | Signed | In force in Uruguay ^a |
| 113 | Venezuela | DTC | 11 Dec 1998 | 1 Jan 2001 |

Notes: a. Agreement will enter into force on 1 November 2016.

b. Extension by the United Kingdom.

c. Extension by the Kingdom of the Netherlands.

d. Extension by the Kingdom of Denmark.

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

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

Annex 4: List of laws, regulations and other relevant material

1968 Income Tax Act and 1969 Income Tax Regulations
Income Tax (Exchange of Information) Regulations, 2011
Companies Act and Regulations
Societies with Restricted Liability Act and Regulations
Financial Institutions Act (FIA)
International Financial Services Act (IFSA)
Central Bank of Barbados Anti-Money Laundering/Combating Terrorist
Financing Guideline for Financial Institutions Licensed under FIA
and the IFSA revised at November 2011
International Corporate and Trust Service Providers Act, 2011-5 (the ICTSPA)
International Trusts Act
International Business Companies Act and Regulations
Exempt Insurance Act and Insurance Act
Money Laundering and Financing of Terrorism (Prevention and Control)
Act, 2011
Limited Partnerships Act
Partnership Act
Registration of Business Names Act
Trustees Act
International Trusts Act
Securities Act
Mutual Funds Act
Private Trust Companies Act
Foundations Act

Annex 5: People interviewed during the onsite visit

Barbados Revenue Authority

Ministry of Industry, International Business, Commerce and Small Business
Development

Ministry of Finance

Corporate Affairs and Intellectual Property Office (Registrar)

Solicitor General's Chambers

Central Bank

Financial Services Commission

Barbados Bar Association

Institute of Chartered Accountants of Barbados (ICAB)

For more information
**Global Forum on Transparency and
Exchange of Information for Tax Purposes**
www.oecd.org/tax/transparency
www.eoi-tax.org
Email: gftaxcooperation@oecd.org