



SUPPLEMENTARY PEER REVIEW REPORT

Phase 1

Legal and Regulatory Framework

NAURU



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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

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

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

Executive summary

1. This is a supplementary report on the legal and regulatory framework for transparency and exchange of information in Nauru. It complements the Phase 1 peer review report on Nauru which was adopted and published by the Global Forum in March 2013.

2. The Phase 1 peer review report concluded that only one of the ten essential elements was in place. Seven of the essential elements were determined to be “not in place”. These were the availability of ownership and identity information (Element A.1); availability of accounting records (Element A.2); access to information (Element B.1); exchange of information mechanisms allowing for effective exchange of information (Element C.1); network covering all relevant partners (Element C.2); adequate confidentiality provisions (Element C.3) and that exchange of information mechanisms respect rights and safeguards (Element C.4). Further, the assessment team was not in a position to evaluate whether the rights and safeguards that apply to persons were compatible with effective exchange of information (Element B.2). Another essential element concerning Nauru’s ability to provide information in a timely manner (Element C.5) involves practical issues that will be assessed at a later stage. Nauru was blocked from moving to Phase 2 until acting upon the recommendations from the 2013 Report.

3. In response to the letter from the Chair of the Global Forum on 28 November 2014 inviting all jurisdictions that were previously prevented from moving to Phase 2 to request a supplementary review, Nauru asked for a supplementary peer review report pursuant to paragraph 58 and 60 of the Revised Methodology for Peer Reviews and Non-member Reviews.

4. This supplementary report reviews the legislative amendments made to address a number of recommendations in the Phase 1 peer review report. These amendments respond to the determinations and recommendations made in respect of identity information on the owners of bearer shares and share warrants to bearer (Element A.1); availability of accounting records (Element A.2); access to information (Element B.1); notification requirements and rights and safeguards (Element B.2); exchange of information mechanisms allowing for effective exchange of information (Element C.1); network

covering all relevant partners (Element C.2); adequate confidentiality provisions (Element C.3); and that exchange of information mechanisms respect rights and safeguards (Element C.4). In Phase 1, Elements A.1, A.2, B.1, C.1, C.2, C.3, C.4 were determined to be “not in place” and element B.2 was not assessed as there was no basis to make a determination in the absence of powers to obtain information.

5. The Corporations Act was amended to include a provision which prohibits the issuance of bearer shares or share warrants to bearer. The transition period to convert bearer securities into ordinary (nominative) shares or debentures will end on 14 April 2017 after which securities not converted will be forfeited. All rights and privileges will be annulled in their entirety. Further, any securities cancelled will carry no right of reinstatement. The recommendation on availability of identity information on the owners of bearer shares and share warrants to bearer from the 2013 Report has been removed and as a result, element A.1 is now determined to be “in place”.

6. The Corporations Act and the Partnership Act were amended in May 2016 to include record-keeping requirements and five year retention periods for corporations and partnerships. In addition, new provisions were introduced by the Revenue Administration Act 2014 (RAA) which entered into force on 1 October 2014, requiring persons to keep records under a tax law in order to readily ascertain a person’s tax liability. Up until 1 July 2016, the only existing tax law in Nauru was the Employment and Services Tax Act which imposes a withholding tax on the provision of certain services by companies, partnerships and trusts. Pursuant to the RAA, companies, partnerships and trusts subject to the services tax were only required to keep records to readily ascertain the tax liability, which in such cases was not enough to fully comply with the international standard. However, Nauru introduced on 1 July 2016 a business tax for companies, partnerships and trusts and these are now fully covered by the RAA and record-keeping requirements are in line with the international standard. The Business Tax Act imposes a business profit tax for persons – including individuals, partnerships, trusts, companies (both domestic and foreign) or other body of persons – conducting business that has a taxable income. The self-assessment system is used for the business tax. Non-residents not subject to the business tax are subject to a withholding tax (known as the non-resident tax) on their Nauru-sourced income. The applicable rate for the business tax and the non-resident tax is 10%. A reduced rate of 1.5% applies to small businesses and a rate of 2% applies to international transportation.

7. However, companies, partnerships and trusts that do not conduct a business are not covered by the provisions in the RAA and in these cases underlying information might not always be available. Trusts that do not conduct business including foreign trusts with a Nauruan trustee, are only

subject to common law requirements as indicated in the 2013 Report. Except for the provisions introduced by the RAA, no amendments have been made in respect of the record-keeping requirements for trusts in Nauru. Considering that accounting records, including underlying information, might not always be available despite the amendments introduced in the Corporations and Partnership Acts and the new RAA provisions, Nauru is recommended to establish obligations and effective penalties for the maintenance of reliable accounting records, including underlying documentation, for companies, partnerships and trusts even when they do not conduct a business in Nauru.

8. Amendments introduced in respect of retention periods by the Corporations Act, the Partnerships Act and the RAA now ensure that companies and partnerships must retain accounting records, including underlying documentation, for at least five years. Trusts subject to business tax in Nauru must also retain accounting records and underlying documentation for at least five years. Trusts that are not subject to the business tax in Nauru, including foreign trusts with a Nauruan trustee, are not covered by any of these record-keeping provisions and are therefore not required to maintain accounting records and underlying documentation for a minimum retention period. Nauru should also ensure that the accounting information for trusts established in Nauru, or with a trustee in Nauru, is kept for a minimum 5 year period. Considering the improvements on availability of accounting records and underlying documentation, element A.2 was upgraded to “in place but certain aspects of the legal implementation of the element need improvement”.

9. With respect to access to information, new legislation has been introduced to address the recommendations in respect of element B.1 in the 2013 Report. The RAA contains provisions allowing the Secretary for Finance to obtain documents and information, through the production of notices or powers to enter and search. This new legislation addressed the gaps identified in the 2013 Report and the recommendations have therefore been removed leading to a change in element B.1’s determination to “in place”. And since Nauru now has provisions regulating the tax administration’s access powers it is possible to assess element B.2. Nauru’s law does not require the tax authorities to notify the taxpayer or third parties of an exchange of information request. Hence, element B.2 has now determined to be “in place”.

10. Since the 2013 Report, Nauru signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention) and deposited its ratification instrument. The Multilateral Convention will enter into force on 1 October 2016. Nauru now has powers to access information for EOI purposes and the Multilateral Convention provides for exchange of information mechanisms allowing for effective exchange of information, covers all relevant partners, provides for adequate

confidentiality provisions which are compatible with Nauruan law and the exchange of information mechanisms respect rights and safeguards. Therefore, the determinations for elements C.1, C.2, C.3 and C.4 have changed from “not in place” to “in place”.

11. The changes introduced by Nauru since the 2013 Report demonstrate its commitment to implementing the international standards for transparency and exchange of information on request. In light of the actions undertaken by Nauru to address the recommendations made in the 2013 Report, Nauru is in a position to move to the next round of peer reviews, which is scheduled to commence in the second half of 2018 for Nauru, in accordance with the PRG schedule of reviews for the next round. Any further developments in the legal and regulatory framework, as well as the application of the framework and practices in exchange of information (EOI) in Nauru will be reviewed in detail in the next round of reviews. Meanwhile, a follow-up report on the measures taken by Nauru to respond to the recommendations made in the present report will be provided to the Peer Review Group 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 Nauru

12. The assessment of the legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 60 of the Global Forum’s *Methodology for Peer Reviews and Non-member Reviews*, and the Note on Jurisdictions Prevented from Moving to Phase 2 – CTPA/GFTEI(2014)4. The assessment considers recent changes to the legal and regulatory framework of Nauru based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*. This report is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements signed or in force as at 5 August 2016, and information supplied by Nauru. It follows the Phase 1 peer review report on Nauru which was adopted and published by the Global Forum in March 2013 (“the 2013 Report”).

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

14. The assessment was conducted by an assessment team which consisted of four expert assessors: Mr. Yasuhiro Ishizaki and Mr. Hideo Yanase from the National Tax Agency of Japan; Ms. Audrey Christian, Treasury of Isle of Man; and a representative from the Global Forum Secretariat, Ms. Ana Rodriguez-Calderon.

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

Compliance with the Standards

A. Availability of information

Overview

16. 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 accounting 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 information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Nauru's legal and regulatory framework on availability of information.

17. The 2013 Report concluded that there were serious deficiencies with regard to the availability of ownership and accounting information which led to the determination for both elements A.1 and A.2 to be "not in place".

18. For element A.1 (ownership and identity information), the deficiencies identified in the 2013 Report related to the fact that corporations in Nauru may issue bearer shares/share warrants to bearer and there were not sufficient mechanisms to ensure that the owners of the bearer shares or share warrants to bearer are known in all circumstances. In addition, it was reported that identity and ownership information may not consistently be available in respect of all domestic and foreign trusts with Nauruan trustees. Nauru amended the Corporations Act to include a provision which prohibits the issuance of bearer shares or share warrants to bearer. The transition period to convert bearer securities into ordinary (nominative) shares or

debentures will end on 14 April 2017 after which securities not converted will be forfeited. All rights and privileges will be annulled in their entirety. The recommendation on availability of identity information on the owners of bearer shares and share warrants to bearer from the 2013 Report has been removed and as a result, element A.1 is now determined to be “in place”. No amendments were made to address the availability of identity and ownership information of domestic and foreign trusts with Nauruan trustees and therefore this recommendation from the 2013 Report remains accurate.

19. For element A.2 (accounting records), the 2013 Report concluded that although Nauruan legislation required companies to keep accounting records, retention periods were not specified in most cases and there were no requirements concerning underlying documentation. In addition, Nauruan law did not ensure that reliable accounting records or underlying documentation was kept for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru and domestic and foreign trusts with a Nauruan trustee. Amendments to the Corporations Act and the Partnership Act, and the provisions introduced through the RAA now ensure that accounting records, including underlying documentation, are kept in line with the standard for companies, partnerships and trusts conducting a business in Nauru. However, information might not always be available for companies, partnerships and trusts that are not subject to any tax law, including foreign trusts with a Nauruan trustee, since these are not covered by the provisions in the RAA. The recommendations from the 2013 Report have been adjusted to reflect the actual situation in Nauru and the determination for element A.2 upgraded to “in place but certain aspects of the legal implementation of the element need improvement.”

20. No relevant legislative changes have been made since the 2013 Report in respect of element A.3, which therefore remains “in place” without any recommendations.

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 (ToRI A.1.1)

21. The 2013 Report concluded that the availability of ownership and identity information in respect of companies was ensured. No recommendations were made except in the case of bearer shares.

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

Bearer shares (ToR A.1.2)

22. The 2013 Report noted that a corporation may issue (i) bearer shares, if authorised by the articles of association; (ii) share warrants to bearer. Only corporations could issue bearer shares or share warrants to bearer. The 2013 Report also found that there was no mechanism in place to ensure that the corporation knows the identity of the owner of the bearer shares and the share warrants holders until the warrant is cancelled or presented for registration. The lack of mechanisms to identify the ownership of bearer shares and share warrants to bearer constitutes a serious gap in the availability of ownership information.

23. Nauru amended the Corporations Act in 10 March 2016 and 12 May 2016 to prohibit corporations from issuing bearer shares or share warrants. Section 46 of the Corporations Act specifically states that a corporation may not issue bearer shares or share warrants.

24. As from 12 May 2016, all holders of bearer shares or debentures are required to convert their bearer securities to ordinary (nominative) shares or debentures. This must be done prior to the next renewal of the corporation's annual registration (s. 87). Pursuant to section 133 of the Corporations Act, the annual return shall be lodged with the Registrar at least once in each calendar year not later than twenty-eight days prior to the anniversary of the date of its incorporation. This means that the transition period to convert bearer securities into ordinary (nominative) shares or debentures will end on 14 April 2017.

25. The annual return/registration form currently being used includes a declaration that there are no bearer securities (shares or debentures) issued for the corporation. Nauru has reported that in case a corporation provides a positive declaration on the issuance of bearer securities, the Nauru Agency Corporation ("NAC") will delay the renewal of the corporation's annual registration until the issue is resolved; i.e. all bearer shares have been converted into nominative shares. The rendering of a false declaration is considered an offence and liable on conviction to a fine of AUD² 100 (s. 241). Nauruan authorities have confirmed that to date, they have not encountered any bearer share or debenture in the course of the corporation's registration or renewal.

26. The NAC is currently reviewing the annual returns of all corporations in Nauru to determine if bearer securities have been issued. As at 31 August 2016, the NAC has not encountered bearer securities issued in Nauru. In addition, Nauru has notified all corporations of the amendments to the law and the need to cancel the bearer securities to avoid forfeiture. As

2. The exchange rate averaged AUD 1.48 to the Euro during the time of the review based on rates listed on www.xe.com.

at June 2016 there are 42 corporations registered in Nauru of which three are Nauruan-owned, 15 are State-owned and 24 are foreign-owned corporations.

27. Securities not converted before 14 April 2017 will be forfeited (s.87(2B)). The corporation will have to cancel these bearer securities and issue statements of cancellation after their annual renewal date. All rights and privileges will be annulled in their entirety. Further, any securities cancelled will carry no right of reinstatement (s. 87(2C)). These newly introduced provisions are in line with Nauru's constitution which allows for compulsory deprivation of property by way of penalty for breach of law or forfeiture in consequence of breach of law (s. 8(2)(a)(ii)). The effectiveness of the application of these provisions will be considered in Nauru's next review.

28. To conclude, under the current legal framework, corporations are prohibited to issue bearer shares or share warrants to bearer. Further, all existing bearer shares will be converted to nominal shares by June 2017 at the latest. In addition, Nauru has confirmed that they have not encountered companies that have issued bearer securities. Therefore, the recommendation from the 2013 Report has been removed.

Partnerships (ToR A.1.3)

29. The 2013 Report noted that comprehensive, up-to-date ownership and identity information is available in respect of all partnerships having a place of business in Nauru, as well as those carrying on business under the name other than the name of its partners. Such information is kept with the Registrar. This is complemented by AML obligations where partnerships are established through a service provider or a legal practitioner. No changes have been made since the 2013 Report.

Trusts (ToR A.1.4)

30. The 2013 Report concluded that ownership information may not be consistently available in all cases. Nauru, as a common law jurisdiction, inherited the English concepts of trusts. There is no case law in Nauru addressing the extent of trustee duties. However, Nauru adopted England's common law, statutes of general application and the principles of equity as in force at 31 January 1968. English common law requires trustees to identify the settlor and beneficiaries of a trust; however its application in Nauru remains untested. With regards to foreign trusts with a resident trustee, it is unclear whether common law obligations would apply to those arrangements, giving rise to a potential gap concerning availability of ownership and identity information. In addition, there is no guidance in the Anti-Money Laundering Act concerning specific customer identification requirements in the case of domestic or foreign trusts. As there have been no changes since the Phase 1 Report, the recommendation from the 2013 Report remains unchanged.

Foundations (ToR A.1.5)

31. Since the 2013 Report there are no laws concerning the establishment of foundations in Nauru. This has not changed.

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

32. The 2013 Report concluded that enforcement provisions are in place to ensure relevant entities maintain ownership and identity information. The effectiveness of the enforcement provisions which are in place in Nauru will be considered as part of the next round of reviews, including those newly established for the abolition of bearer shares (i.e. forfeiture of shares, see A.1.2 above).

Conclusion

33. Under the current legal framework, corporations are prohibited to issue bearer shares or share warrants to bearer. All existing bearer shares will be converted to nominal shares by June 2017 at the latest. The recommendation regarding bearer shares and share warrant to bearer from the 2013 Report has been removed. Only recommendation relating to the availability of identity and ownership information on domestic and foreign trusts remains. As a result, element A.1 is determined to be “in place”.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The element is not in place. | |
| Factors underlying recommendations | Recommendations |
| Identity information on the owners of bearer shares and share warrants to bearer may not be available in relation to corporations. | Nauru should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares and share warrants to bearer in relation to corporations. |
| Identity and ownership information may not consistently be available in respect of (i) domestic trusts and (ii) foreign trusts with a Nauruan trustee. | Nauru should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases. |

A.2. Accounting records

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

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2), The 5-year retention standard (ToR A.2.3)

34. The 2013 Report concluded that although the Nauruan legislation required companies to keep accounting records, there were no retention periods specified in most cases and no requirements were provided concerning underlying documentation. In addition, it was concluded that Nauruan law does not ensure that reliable accounting records or underlying documentation are kept for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru and domestic and foreign trusts with a Nauruan trustee. At the time of the 2013 Report there were no tax laws in Nauru containing obligations to keep accounting records or underlying documentation. It was recommended that Nauru establish obligations for the maintenance of underlying documentation for all companies and that its laws ensure that accounting records and underlying documentations is kept for all relevant entities and arrangements for a minimum of five years. It was also recommended that Nauru should establish obligations for the maintenance of reliable accounting records, including underlying documentation, for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru and domestic and foreign trusts with a Nauruan trustee for a minimum of five years.

35. Nauru has amended the record-keeping requirements for corporations and partnerships. The Corporations (Amendment) Act 2016, which came into effect 12 May 2016 amended section 134(1) to require corporations to keep proper accounts and records with respect to:

- all sums of money received and expended by the corporation, specifying the items or matters in respect of which the receipt or expenditure took place;
- all sales and purchases of goods and services by the corporation;
- all assignments of rights or assumption of liabilities by the corporation
- all transactions of the corporation, or affecting the assets or liabilities of the corporation; and
- the assets and liabilities of the corporation.

36. The Corporations (Amendment) Act 2016 also requires that the documents, records and accounts be retained for a minimum of five years from the end of the reporting period to which it relates (s. 134(1)(f)). This applies

regardless of whether the company has been liquidated or dissolved. The liquidator will retain the records until its dissolution and shall thereafter deliver them to the Registrar who is required to keep them for no less than six years (s.206(2)). Failure to comply with the above record-keeping requirements is considered an offence and any person found guilty is liable on conviction to a fine of AUD 500 and to imprisonment for six months in respect of each offence (s.241(2)). The practical aspect of this obligation will be reviewed during the next round of reviews.

37. The Partnership (Amendment) Act 2016, which came into effect 12 May 2016, amended section 28 to introduce new record-keeping requirements. Every partnership must keep and maintain proper accounts and records with respect to:

- all sums of money received and expended by the partnership, specifically the items or matters in respect of which the receipt took place;
- all sales and purchases of goods and services by the partnership;
- all assignments of rights or assumption of liabilities by the partnership;
- all transactions of the partnership, or affecting the assets or liabilities of the partnership; and
- the assets and liabilities of the partnership.

38. The Partnership (Amendment) Act 2016 also requires that the documents, records and accounts be retained for a minimum of five years (s.28(3)). There are no specific provisions regarding penalties or sanction for partnerships that fail to comply with these record-keeping requirements.

39. Amendments introduced to the Corporations Act and the Partnership Act do not expressly require accounting records to include underlying documentation in Nauru. However, the RAA which came into effect 1 October 2014 introduced an obligation for every person – including individuals, partnerships, trusts, companies or other body of persons – to maintain any document as may be required under a tax law to readily ascertain the person’s tax liability under such tax law (s. 14). Up until 1 July 2016, the only tax that could have been imposed to companies, partnerships and trusts, was a withholding tax over the provision of certain services as set forth in the Employment and Services Tax Act. Companies, partnerships and trusts subject to such tax were only obliged to keep accounting records required to compute the tax liability. Consequently, despite being covered by the scope of the provisions in the RAA, the nature of the tax prevented the accounting requirements from being in line with the standard.

40. Nauru has since enacted a Business Tax Act, effective 1 July 2016, which imposes a business profit tax for persons – including individuals,

partnerships, trusts, companies (both domestic and foreign) or other body of persons – conducting business that has a taxable income for the year (s. 11). The self-assessment system is used for the business tax. A non-resident tax is imposed to non-resident persons who derive interest, royalties or insurance premiums from sources in Nauru (s. 13). The applicable rate for the business tax and the non-resident tax is 10%. A reduced rate of 1.5% applies to small businesses and a rate of 2% applies to international transportation (s. 11(2)).

41. The Business Tax Act specifies that the RAA applies for the purposes of administering the Business Tax Act (s. 37) and that persons must keep such accounts, documents and records to enable computation of any tax payable by the person (s. 38). Pursuant to the RAA documents include all accounting records and underlying documentation required under the standard such as “a book of account, record, paper, register, bank statement, receipt, invoice, voucher, contract or agreement or customs declaration as well as any information or data stored on an electronic data storage device” (s. 3(1)). Documents must be kept in English language and may be stored in hard copy or electronically. It can be expected that through the record-keeping provisions in the RAA, Corporations Act and Partnerships Act, records would correctly explain all transactions, enable the financial position of the entity to be determined with reasonable accuracy at any time and allow financial statements to be prepared for companies, trusts and partnerships conducting business in Nauru. However, this information might not be available if the companies, trusts and partnerships do not conduct a business in Nauru. Nauru authorities indicated that they are unable to confirm the exact number, if any, of entities that fall into this category. As of 31 August 2016, there are 20 companies (out of 42), one partnership and no trusts registered as taxpayers. The Nauru Revenue Office is currently engaged in a programme to ensure that all companies, partnerships and trusts conducting business in Nauru are registered for tax following enactment of the Business Tax Act.

42. Under the RAA, persons must retain accounting records and underlying documentation for a period of five years from the end of the reporting period to which the documents relate or for a shorter period when specified by a tax law. This record-keeping period extends beyond five years when the document relates to an amended assessment that may be the subject of a further amended assessment outside the 5-year period. The retention period can also be extended when the document is relevant to a proceeding commenced before the end of the five-year period. In this case the documents must be retained until all proceedings have been completed.

43. Penalties are imposed on a taxpayer who fails to comply with the record-keeping obligations. Such taxpayers may be liable for a penalty of 75% of the amount of tax payable under the tax law for the reporting period when failure to retain the documents is made deliberately or recklessly. In

the absence of a reasonable excuse to retain the document, the penalty will be 20% of the amount of tax payable by the person under the tax law for the reporting period to which the failure relates. If no tax is due by the person during the reporting period, the penalty will amount to AUD 100. Further, a person is considered to commit a tax offence when without reasonable excuse, the person fails to keep, retain or maintain a document for a reporting period as required under a tax law. A person convicted of an offence is liable for a fine not exceeding AUD 5 000 or to imprisonment for a term not exceeding 2-years, or to both a fine and imprisonment. However, according to the general provisions relating to administrative penalties and offences from the RAA, a person cannot be subject to both the imposition of a penalty and prosecution of an offence in respect of the same act or omission (s. 59). A person that is prosecuted will not be subject to an administrative penalty but may be subject to a fine or imprisonment, or to both a fine and imprisonment if convicted of the offence.

44. Since the 2013 Report, there have been no legislative amendments in respect of accounting requirements for trusts, other than the provisions introduced by the RAA. Therefore, the situation described in the 2013 Report remains the same for trusts that do not have taxable income in Nauru, including foreign trusts with a Nauruan trustee.

Conclusion

45. The Corporations Act, the Partnership Act and the RAA require persons to keep records in order to readily ascertain a person's tax liability. However, companies, partnerships and trusts that do not conduct a business are not covered by the RAA and in these cases underlying information might not always be available. In the case of partnerships, no specific penalties exist for failure to keep the accounting information as set forth in the Partnership Act. An in-depth assessment of the effectiveness of these legal requirements will be considered as part of Nauru's next review.

46. Amendments introduced in respect of retention periods by the Corporations Act, the Partnerships Act and the RAA now ensure that companies and partnerships must retain accounting records, including underlying documentation, for at least five years. Trusts conducting a business in Nauru must also retain accounting records and underlying documentation for at least five years. Trusts that do not conduct a business in Nauru, including those foreign trusts with a Nauruan trustee, are not covered by any of these record-keeping provisions and are therefore not required to a minimum retention period to maintain accounting records and underlying documentation.

Determination and factors underlying recommendations

| Phase 1 determination | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The element is not in place <u>but certain aspects of the legal implementation of the element need improvement.</u> | |
| Factors underlying recommendations | Recommendations |
| Nauru law does not ensure that reliable accounting records and underlying documentation are kept for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru or for domestic and foreign trusts with a Nauruan trustee, that do not conduct a business in Nauru. | Nauru should establish obligations <u>and effective penalties</u> for the maintenance of reliable accounting records, including underlying documentation, for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru and domestic and foreign trusts with a Nauruan trustee for a minimum of <u>5 year period.</u> |
| Companies and partnerships that do not conduct a business in Nauru are not required to retain underlying documentation in accordance to the international standard. Moreover, companies other than domestic holding companies, are not required to maintain accounting records for a minimum 5 year period. | Nauru should establish obligations for the maintenance of underlying documentation for all companies <u>and partnerships even if not conducting a business in Nauru.</u> Nauru should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of 5 year period. |

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

47. The 2013 Report found that Nauru has a legal framework in place to ensure the availability of relevant banking information for all account holders. No relevant legislative changes have been made since the 2013 Report. Therefore the determination of element A.3 remains as “in place” without any recommendation.

Determination and factors underlying recommendations

| Phase 1 determination |
|---------------------------------|
| The element is in place. |

B. Access to information

Overview

48. A variety of information may be needed in a tax inquiry 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 Nauru’s legal and regulatory framework gives to the authorities access powers that cover relevant persons and information, and whether the rights and safeguards that are in place would be compatible with effective exchange of information.

49. The 2013 Report found that Nauru’s authorities did not have the power to obtain and provide information that is the subject of a request under an EOI mechanism and a recommendation was issued in this respect. Nauru has since taken measures to address this recommendation through the enactment of the RAA which allows the Secretary for Finance to access information that may be required to administer any tax law in Nauru and to meet Nauru’s obligation under a tax treaty or an administrative assistance agreement having legal effect in Nauru. The improvements made are sufficient to remove the recommendation and change the determination of element B.1 to “in place”.

50. Element B.2 was not assessed in the 2013 Report since the Nauruan authorities did not have powers to obtain and provide information pursuant to an EOI mechanism. Following the legislative changes in relation to access powers introduced through the RAA it is now possible to undertake an assessment of B.1 and this report finds that the rights and safeguards are compatible with effective exchange of information. The procedures in place do not require any prior notification to fulfil an exchange of information and therefore element B.2 has been determined to be “in place” without any recommendations.

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

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

Ownership and identity information (ToR B.1.1), Accounting records (ToR B.1.2.), Use of information gathering measures absent domestic tax interest (ToR B.1.3)

51. The 2013 Report noted that Nauru’s authorities do not have the power to obtain and provide information that is the subject of a request under an EOI mechanism. Therefore, a recommendation was made for Nauru to enact legislation that would give it powers to access information pursuant to a request under an EOI mechanism in accordance with the international standards and that those powers were not unduly restricted by secrecy provisions. Enforcement provisions should also be provided for to compel the production of information.

52. The RAA introduced provisions relating to access powers for the Secretary for Finance. Pursuant to Part 9 of the RAA, the Secretary may, for the purpose of administering any tax law, exercise access powers in three ways. First, a notice may be served requiring a person to furnish any information included in such notice. Secondly, the Secretary may serve a notice requiring a person to attend and give evidence regarding the tax affairs of that person or any other person, regardless of whether the person is liable for tax under a tax law or not. Thirdly, the Secretary may serve a notice requiring the person to produce any document in the person’s custody or under the person’s control (s. 45). According to the Technical Notes, the notice can be served on a person whether liable for tax under a tax law or not. Technical Notes in Nauru are support documents presented to the Nauruan Parliament to explain each of the specific sections of a Bill and although non-binding, can be consulted when implementing the legislation.

53. The RAA also provides the Secretary with power to enter and search premises so that the Secretary has full and free access to any premises, place, goods, property, documents or data storage devices for administering any tax law (s. 46(1)). A police officer must be present when the Secretary seeks access to residential premises (s. 46(2)). As in the case of access powers, the scope of this power is broad as its sole limitation is that they be exercised for administering a tax law. The term “document” has the same meaning as for purposes of record-keeping obligations (see section A.2 of this report).

54. Both the access power and the power to enter and search have effect despite any contractual duty of confidentiality, any law relating to privilege

– including legal professional privilege – or the public interest with respect to access to premises or places, or the production of any property, documents, or computed-stored information. Under these powers, the Secretary can obtain information directly for administering tax laws and there is no express restriction that the information be required for domestic purposes (s. 46(7) RAA). The sole limitation relates to the powers being exercised to administer a tax law.

55. Further, the RAA (s. 46 A) provides that the Secretary must use the powers available under the RAA or any other law to meet Nauru’s obligations under a tax treaty or an administrative assistance agreement having legal effect in Nauru. The limitation that powers be exercised to administer a tax law will not apply in these cases since the RAA specifically indicates that the word “tax” will also include a foreign tax to which the exchange of information or reciprocal assistance relates and the terminology “tax law” will include the law under which the foreign tax is specified (s. 46A(3)).

56. Further, the RAA provides that in case of conflict between the terms of an administrative assistance agreement that has force of law and any law, the administrative assistance agreement will prevail (s. 46A(2)). The term “administrative assistance agreement” is defined under the RAA as a tax information exchange agreement (TIEA) or other international agreement for mutual administrative assistance in relation to tax matters. Tax treaties are defined as international agreements relating to the avoidance of double taxation and the prevention of fiscal evasion (s. 46A(4)). Nauru has reported that tax treaties that contain and EOI clause are considered to be administrative assistance agreements and thus will prevail when in conflict with Nauruan law.

57. All documents and information coming into the possession or knowledge of a tax officer in connection with the performance of duties under a tax law can be disclosed to the competent authority of a government of a foreign country with which Nauru has entered into an agreement providing for EOI, to the extent permitted under such agreement (s. 8 RAA). The Technical Notes expand on what an agreement providing for EOI is, mentioning an EOI article in a tax treaty, TIEA or an agreement for mutual administrative assistance.

Enforcement provisions to compel production and access to information (ToR B.1.4)

58. The 2013 Report concluded that Nauru did not have in place compulsory powers to obtain information in response to a request under an EOI mechanism and a recommendation was given in this respect.

59. Under the recently introduced RAA, a person who fails to comply with a notice for the production of documents is guilty of an offence when the person without reasonable excuse fails to furnish information, answer questions, produce documents, or appear before the Secretary as required

under the information gathering powers. A person also commits an offence when without reasonable excuse, the person fails to provide reasonable facilities and assistance as required under the powers to enter and search. These offences are considered as serious offences under section 82(2) of the RAA. A convicted person is liable to a fine not exceeding AUD 10 000 or imprisonment for a term not exceeding 3 years, or both a fine and imprisonment.

60. The effectiveness of these enforcement provisions in practice will be examined during the next round of reviews.

Secrecy provisions (ToR B.1.5)

61. The 2013 Report discussed the provisions related to disclosure of the following:

- banking information as contained in the Banking Act 1975;
- information in relation to holding companies in proceedings in any Court of Nauru where one of the parties is a government of a foreign State, department or agency as contained in the Nauru Evidence Act 1976;
- information received by the Registrar of Companies, Registrar of Banks or the Nauru Trustee Corporation as contained in the Nauru Evidence Act 1976;
- identity of the creator or beneficiary of any trust unless under specific circumstances, pursuant to the Nauru Trustee Corporations Act 1972.

62. Legal professional secrecy was not discussed in the 2013 Report as there are no statutory provisions for legal professional privilege under Nauruan legislation. Further, Nauru has reported that there are no private attorneys in Nauru.

63. The 2013 Report concluded that Nauru's authorities could access information pursuant to its Mutual Assistance in Criminal Matters Act 2004 (MACMA) but this information was limited to information in criminal matters and would not include information requested pursuant to an EOI arrangement for tax purposes. The 2013 Report could not determine if the information was accessible to the competent authority and it was therefore recommended that Nauru enact legislation that would provide the government with powers to access information pursuant to a request under an EOI mechanism.

64. Nauru has since enacted the RAA which includes provisions on access powers for the Secretary to obtain documents and information required to administer tax laws through the production of notices or powers to enter and search (see section B.1 of this report). It is expressly provided by the RAA that

the provisions relating to production of documents and access to enter and search will override any rule of law relating to privilege – including professional legal privilege – or to the public interest. It also overrides any contractual duty of confidentiality, such as a bank’s duty of confidentiality in relation to customer records. The only limits on the exercise of the power are that they are exercised for the purposes of administering a tax law and the more general legal requirement that any administrative power is to be exercised in good faith.

65. The Secretary has sufficient powers to obtain information for the purposes of exchanging it with another jurisdiction (s.46) and no secrecy shall be observed to exchange such information with the requesting jurisdiction. The next round of reviews should assess if there is any restriction encountered in practice.

Conclusion

66. Nauru has taken measures to address the serious deficiencies identified in the 2013 Report through the introduction of its access powers and the power to enter and search, which have effect despite any contractual duty of confidentiality, any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property, documents, or computer-stored information. The new provisions in the RAA allow the competent authority to exercise access powers in respect of requests under future EOI agreements and no secrecy provision should prevent Nauru’s competent authority from exchanging this information with a jurisdiction with which Nauru has an international agreement providing for EOI. The recommendation from the 2013 Report has therefore been removed and the determination for element B.1 has changed to “in place”.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The element is not in place. | |
| Factors underlying recommendations | Recommendations |
| Nauru’s authorities do not have the power to obtain and provide information that is the subject of a request under an EOI mechanism. | Nauru should enact legislation that would give the government powers to access information pursuant to a request under an EOI mechanism in accordance with the international standards. Nauru should ensure that its access powers are not unduly restricted by secrecy provisions and that effective enforcement provisions are in place to compel the production of information. |

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.

67. The 2013 Report did not assess this element as there were no powers to access information in Nauru’s legislation that would allow it to reply to a request made pursuant to a tax treaty. Since it was not possible to conduct the assessment it was determined that element B.2 was “not in place”.

68. Nauru introduced powers to access information in the RAA enacted in 2014 (see element B.1 in this report) which now makes it possible to assess element B.1. Nauru’s legislation does not require the tax authorities to notify taxpayers or third parties of an exchange of information request, or when the tax authority collects information from a third party to fulfil an exchange of information request. There are also no specific legal provisions allowing taxpayers to appeal the exchange of information. Therefore, element B.2 has been upgraded to “in place”.

Determination and factors underlying recommendations

Phase 1 determination

~~The element is in place. The assessment team is not in a position to evaluate whether this element is in place, as there is no basis upon which to make this determination.~~

C. Exchanging information

Overview

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

70. In the 2013 Report, elements C.1, C.2, C.3 and C.4 were determined to be “not in place”. These determinations arose from Nauru not having entered into any instruments providing for exchange of information. In addition, at the time of the 2013 Report, Nauru did not have powers to access information in order to reply to a request made under EOI instruments.

71. Nauru signed the Multilateral Convention and deposited its ratification instrument on 28 June 2016. The Multilateral Convention will enter into force on 1 October 2016. Nauru now has powers to access information for EOI purposes (see B.1 above) and the Multilateral Convention provides for exchange of information mechanisms allowing for effective exchange of information, covering all relevant partners, providing for adequate confidentiality provisions which are compatible with Nauruan law and these exchange of information mechanisms respect rights and safeguards. Therefore, the determinations for elements C.1, C.2, C.3 and C.4 have changed from “not in place” to “in place”.

72. As in the 2013 Report, this supplementary report does not address element C.5, as this involves issues of practice that will be dealt with in the next round of reviews (see section C.5 below).

C.1. Exchange of information mechanisms

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

73. It was noted in the 2013 Report, that Nauru has not signed any agreements providing for exchange of information. Since the 2013 Report, Nauru has signed the Multilateral Convention, expanding its EOI network to

97 treaty partners and covering its main trading partners. The Multilateral Convention will enter into force on 1 October 2016.

74. Whilst this report is focused on the terms of its EOI agreements and practices concerning EOI on request, it is noted that the Multilateral Convention signed by Nauru, explicitly provides for spontaneous and automatic exchange of information as well. Nauru has committed to the standard on automatic exchange of information (AEOI) and to undertake its first exchanges by 2018.

75. As a result of these developments, the recommendation for Nauru to develop its exchange of information network with all relevant partners has been removed and the determination of element C.1 changed from “not in place” to “in place”.

Foreseeably relevant standard (ToR C.1.1)

76. To date, Nauru has not signed any double tax convention (DTC) or tax information exchange agreement (TIEA). Nauru’s EOI network is fully based in the Multilateral Convention, which conforms in its totality to the exchange of information on request standard.

77. Article 4 of the Multilateral Convention sets forth the Parties to the Multilateral Convention shall exchange any information “that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention”. This meets the “foreseeable relevant “standards as described in the Commentary to Article 1 of the OECD Model TIEA.

In respect of all persons (ToR C.1.2)

78. Article 1 of the Multilateral Convention provides that the parties to the Convention shall provide administrative assistance (covering exchange of information) whether the person affected is a resident or national of a Party to the Convention or any other state. Accordingly, it is not restricted to certain persons nor does it preclude the application of the exchange of information provisions in respect to certain types of entities or arrangements.

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

79. Article 21 of the Multilateral Convention provides that no provision in the Convention shall be construed to permit a requested jurisdiction to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in agency or fiduciary capacity.

Absence of domestic tax interest (ToR C.1.4)

80. The Multilateral Convention contains a provision similar to that of Article 5(2) of the OECD Model TIEA, which obliges the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic interest in the requested information.

Absence of dual criminality principles (ToR C.1.5)

81. The Multilateral Convention does not limit the exchange of information on whether 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.

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

82. The Multilateral Convention provides for the exchange of information in both civil and criminal matters.

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

83. Article 18 of the Multilateral Convention expressly allows for information to be provided in the specific form in which the requesting jurisdiction wishes the information to be supplied in order to meet its needs. Further, Article 19 provides that if the requesting jurisdiction has specified the form in which it wished the information to be supplied and the requested jurisdiction is in a position to do so, the requested jurisdiction shall supply in the form requested.

In force (ToR C.1.8)

84. There are no specific provisions in the Nauruan constitution or elsewhere regarding approval of international agreements. Nauru has reported that the procedure followed requires making a submission to Cabinet for them to agree to enter into and ratify the international agreement. This has then to be vetted by all concerned parties. Concerned parties are usually the Ministers that would be involved in the implementation of the international agreement. The Cabinet consists of the President and the Ministers and so the vetting process is usually done at the same Cabinet sitting. Upon completion of the vetting process, Cabinet will grant a formal approval for Nauru to enter into and immediately ratify the agreement. Parliament approval of the agreement will only be required when the agreement expressly requires so or when

there is the need to enact enabling legislation. For the case of the Multilateral Convention, the Revenue Administration Act was already in place and no further enabling legislation was needed.

85. Nauru signed the Multilateral Convention and deposited its ratification instrument on 28 June 2016. Accordingly, Nauru has completed all of its internal procedures for the Multilateral Convention to enter into force on 1 October 2016.

86. Nauru does not have any other signed agreements pending ratification for entry into force.

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

87. Nauru enacted the RAA in 2014 allowing for the Secretary to access information required to administer tax laws, which includes international instruments providing for EOI (see section B.1 of this report). The access powers are broad in scope and the only limitation is that it is exercised for the purposes of administering a tax law. This means that Nauru has the legislative and regulatory framework in place to give effect to its agreements.

Determination and factors underlying recommendations

| Phase 1 determination | |
|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| The element is not in place. | |
| Factors underlying recommendations | Recommendations |
| To date, Nauru has not entered into any instruments providing for exchange of information to the standard. | Nauru should develop its exchange of information network with all relevant partners. |

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

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

88. The 2013 Report concluded that Nauru did not have a network of EOI arrangements with relevant partners that would allow for effective exchange of information. Even if Nauru would have had such a network in place in 2013, EOI arrangements would have not been given full effect through domestic law due to deficiencies in the access powers of the Nauruan competent authority to obtain the information. As discussed in B.1 of this supplementary report, Nauru has addressed these deficiencies regarding access powers.

89. Since the 2013 Report, Nauru signed the Multilateral Convention and deposited its ratification instrument on 28 June 2016. The Multilateral Convention will enter into force on 1 October 2016. At the time of the 2013 Report, Nauru had been approached by its main trading partner to negotiate a TIEA. To date, the TIEA is not yet concluded. However, the Multilateral Convention now covers Nauru’s main trading partner as well as other relevant partners. Further, during the course of this supplementary review, peer input was sought from all Global Forum members and no jurisdiction indicated that Nauru has refused to enter into an EOI agreement.

90. Taking into account that Nauru’s EOI network expanded to 97 treaty partners, covering all relevant partners, the determination of element C.2 changed from “not in place” to “in place”.

Determination and factors underlying recommendations

| Phase 1 determination | |
|-------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| The element is not in place. | |
| Factors underlying recommendations | Recommendations |
| In 2008, Nauru was approached by its main trading partner to negotiate a TIEA. To date, this agreement has not been concluded. | Nauru should <u>continue to develop</u> its exchange of information network with all relevant partners. |

C.3. Confidentiality

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

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

91. The 2013 Report concluded that Nauru’s laws prevent in general, any person employed in the public service from revealing information or materials which comes to his knowledge by virtue of his office and which is his duty to keep secret being so that there were adequate provisions in Nauru to ensure confidentiality of the information received. However, since at the time of the 2013 Report Nauru had not concluded any bilateral or multilateral instruments providing for exchange of information the element was determined to be “not in place”.

92. Nauru introduced additional provisions on confidentiality through the RAA that deal specifically with tax information (s. 8). All documents and

information coming into the possession or knowledge of a tax officer in connection with the performance of duties under a tax law must be kept secret. This however, does not prevent the officer from disclosing information to the following:

- Another tax officer for the purposes of carrying out any duty, power or function under a tax law;
- A Customs officer for the purposes of carrying out any duty, power, or function under the Customs Act;
- A court to the extent necessary for the purposes of any proceedings under a tax law;
- The Director of the Bureau of Statistics or any person authorised by the Director but only when such disclosure is necessary for the performance of the official duties;
- The Auditor-General or any person authorised by the Auditor-General but only when such disclosure is necessary for the performance of official duties;
- The requesting competent authority of a foreign country with which Nauru has entered into an agreement providing for the exchange of information, to the extent permitted under the agreement;
- Any other person with the written consent of the person whom the document of information relates.

93. The authority to disclose information pursuant to section 8 of the RAA is general in nature and not solely in respect of information obtained from another jurisdiction under an EOI mechanism. Nauru has advised that this has never come up as an issue since Nauru had not entered into EOI arrangements. Nauru has reported that they cannot envisage a situation whereby the Director of the Bureau of Statistics or Auditor-General would require to access information that was obtained from another jurisdiction through EOI. Further, it advised that taxpayer specific information will not be disclosed. Information provided to these agencies could only be disclosed in aggregate form as required to prepare national reports in relation to consumer price index, trade indices, industry trends and similar statistics. The effectiveness of the application of these confidentiality provisions will be considered in Nauru's next review.

94. In any case, the RAA provides that if there is any conflict between the terms of an administrative assistance agreement having legal effect in Nauru and any law, the administrative assistance agreement will prevail (s.46A(2)). Administrative assistance agreement is defined under the RAA as a TIEA or other international agreement for mutual administrative assistance

in relation to taxation matters. Tax treaty is defined under the RAA as an international agreement relating to the avoidance of double taxation and the prevention of fiscal evasion (46A(4)). Nauru has reported that tax treaties that contain an EOI clause are considered to be administrative assistance agreements and thus will prevail when in conflict with a Nauruan law.

95. Since the 2013 Report, Nauru signed the Multilateral Convention and deposited its ratification instrument. The Multilateral Convention will enter into force on 1 October 2016. The Multilateral Convention contains a provision consistent with Article 8 of the OECD Model TIEA, ensuring the confidentiality of information exchanged and limiting the disclosure and use of the information received.

96. Nauru’s domestic legislation and EOI agreements contain adequate provisions to ensure the confidentiality of the information received in the process of receiving an EOI request from its treaty partners. Therefore, the recommendation from the 2013 Report has been removed and the determination for element C.3 has changed to “in place”.

Determination and factors underlying recommendations

| Phase 1 determination | |
|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| The element is not in place. | |
| Factors underlying recommendations | Recommendations |
| To date, Nauru has not entered into any instruments providing for exchange of information to the standard. | Nauru should develop its exchange of information network with all relevant partners. |

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.

97. The 2013 Report found that the domestic provisions on the professional privilege were not in accordance with the international standard, for example privilege applicable to trustees. In addition, at the time of the 2013 Report Nauru had not concluded any EOI agreements. Therefore, element C.4 was determined to be “not in place”.

98. Nauru introduced through the RAA provisions on powers to access information (see section B.1 of this report). Pursuant to Part 9 of the RAA, access powers are effective despite any contractual duty of confidentiality,

any law relating to privilege – including legal privilege – or the public interest with respect to premises or places, production of documents and computer-stored information. Therefore, any existing privilege provisions are no longer applicable for EOI purposes. Further, Nauru’s legislation does not require the tax authorities to notify taxpayers or third parties of an exchange of information request, or when the tax authority collects information from a third party to fulfil an exchange of information request. In addition, there are no specific legal provisions allowing taxpayers to appeal the exchange of information.

99. Since the 2013 Report, Nauru signed the Multilateral Convention and deposited its ratification instrument. The Multilateral Convention will enter into force on 1 October 2016. Article 21 of the Multilateral Convention ensures that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy (*ordre public*).

Determination and factors underlying recommendations

| Phase 1 determination | |
|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| The element is not in place. | |
| Factors underlying recommendations | Recommendations |
| To date, Nauru has not entered into any instruments providing for exchange of information to the standard. | Nauru should develop its exchange of information network with all relevant partners. |

C.5. Timeliness of responses to requests for information

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

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

100. The 2013 Report did not identify any issues relating to Nauru’s ability to respond to EOI requests within 90 days, organisational processes and resources, or any restrictive conditions on the exchange of information. However, it was pointed out that Nauru’s domestic legislation did not provide for access to information pursuant to an exchange of information request. Furthermore, the 2013 Report also noted that Nauru had not entered into any EOI bilateral or multilateral instruments to date.

101. No further issues have been identified in the preparation of this supplementary report. With regards to the actual timeliness for responses to requests for information, the assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are not dealt with in the Phase 1 review. A review of Nauru’s organisational processes and resources will also be conducted in the context of its next peer review.

Determination and factors underlying recommendations

| Phase 1 determination |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the <u>next round of reviews</u>Phase 2 review. |

Summary of determinations and factors underlying recommendations

| Determination | Factors underlying recommendations | Recommendations |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>) | | |
| Phase 1 determination: The element is not in place. | Identity information on the owners of bearer shares and share warrants to bearer may not be available in relation to corporations: | Nauru should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares and share warrants to bearer in relation to corporations: |
| | Identity and ownership information may not consistently be available in respect of (i) domestic trusts and (ii) foreign trusts with a Nauruan trustee. | Nauru should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases. |
| Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>) | | |
| Phase 1 determination: The element is not in place <u>but certain aspects of the legal implementation of the element need improvement.</u> | Nauru law does not ensure that reliable accounting records and underlying documentation are kept for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru or for domestic and foreign trusts with a Nauruan trustee, <u>that do not conduct a business in Nauru.</u> | Nauru should establish obligations <u>and effective penalties</u> for the maintenance of reliable accounting records, including underlying documentation, for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru and domestic and foreign trusts with a Nauruan trustee for a minimum of 5 year <u>period.</u> |

| Determination | Factors underlying recommendations | Recommendations |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Phase 1 determination: The element is not in place <u>but certain aspects of the legal implementation of the element need improvement.</u> <i>(continued)</i></p> | <p>Companies and partnerships that do not conduct a business in Nauru are not required to retain underlying documentation in accordance to the international standard.- Moreover, companies other than domestic holding companies, are not required to maintain accounting records for a minimum 5 year period.</p> | <p>Nauru should establish obligations for the maintenance of underlying documentation for all companies <u>and partnerships even if not conducting a business in Nauru.</u> Nauru should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of <u>5 year period.</u></p> |
| <p>Banking information should be available for all account-holders (<i>ToR A.3</i>)</p> | | |
| <p>This element is in place.</p> | | |
| <p>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>)</p> | | |
| <p>The element is not in place.</p> | <p>Nauru's authorities do not have the power to obtain and provide information that is the subject of a request under an EOI mechanism.</p> | <p>Nauru should enact legislation that would give the government powers to access information pursuant to a request under an EOI mechanism in accordance with the international standards. Nauru should ensure that its access powers are not unduly restricted by secrecy provisions and that effective enforcement provisions are in place to compel the production of information.</p> |

| Determination | Factors underlying recommendations | Recommendations |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (B.2.) | | |
| The element is in place. The assessment team is not in a position to evaluate whether this element is in place, as there is no basis upon which to make this determination. | | |
| Exchange of information mechanisms should allow for effective exchange of information (ToR C.1) | | |
| Phase 1 determination: The element is not in place. | To date, Nauru has not entered into any instruments providing for exchange of information. | Nauru should develop its exchange of information network with all relevant partners. |
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners (ToR C.2) | | |
| Phase 1 determination: The element is not in place. | In 2008, Nauru was approached by its main trading partner to negotiate a TIEA. To date, this agreement has not been concluded. | Nauru should <u>continue to</u> develop its exchange of information network with all relevant partners. |
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (ToR C.3) | | |
| Phase 1 determination: The element is not in place. | To date, Nauru has not entered into any instruments providing for exchange of information. | Nauru should develop its exchange of information network with all relevant partners. |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (ToR C.4) | | |
| Phase 1 determination: The element is not in place. | To date, Nauru has not entered into any instruments providing for exchange of information. | Nauru should develop its exchange of information network with all relevant partners. |

| Determination | Factors underlying recommendations | Recommendations |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|-----------------|
| The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>) | | |
| The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the <u>next round of reviews</u> Phase 2-review. | | |

Annex 1: Jurisdiction’s response to the review report³

Nauru would like to thank the assessment team and the Secretariat of the Global Forum for the excellent work they have done in evaluating Nauru for its supplementary Phase 1 peer review. Nauru would also like to express its appreciation to the Peer Review group for their valuable input throughout the process but specifically in the final review stages to ensure compliance in all areas was presented precisely.

Nauru is satisfied that the report reflects Nauru’s legislative regime. In addition, Nauru is very pleased to have most elements in place allowing the move on to the next stage.

Since the cut-off date for the review, Nauru has and will continue to address gaps and shortfalls as set out in the various sections of the review document. These to date have included: passing in September 2016 additional legislation to amend the Corporations Act to specifically include the ‘underlying’ documentation of records and substantially increasing penalties for any breaches. The Partnership Act was amended to make registration mandatory and introduced among other changes penalties in line with the Corporations Act and the ‘underlying’ records terminology. The AEOI Bill has been presented to Parliament in September sitting and will be approved and become an Act in November 2016 with the Regulations for this currently being drafted. Therefore, Nauru is on schedule to meet its AEOI commitments.

Further and immediate changes are in process in the form of drafting of the regulations for the recently introduced Business Tax Act by the end of October and in place by the end of November 2016 which will address some of the deficiencies set out in the review including record keeping (A2).

In addition, funding and support through the Asian Development Bank is now in place for the drafting of Nauru’s Trust Bill in early 2017 along with a Financial Services Commission Bill. This will ensure Nauru continues to address weakness in our legislation framework highlighted in the

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

supplementary review. This will include the increased transparency for trusts by linking trusts to the RAA regime with mandatory registration, introduction of penalties and robust compliance. The Financial Services Commission will incorporate our current Financial Intelligence Unit (FIU) which monitors and police's our AML/KYC regime along with the strengthening of compliance in the developing financial services industries in the country.

Finally, Nauru will like to reiterate its commitment to the work done by the Global Forum and with the international standard on tax transparency. We will continue working with the Global Forum on improving the international standard going forward.

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

Nauru ratified the Convention on Mutual Administrative Assistance in Tax Matters as amended (Multilateral Convention), which will enter into force in Nauru on 1 October 2016. The status of the Multilateral Convention as at August 2016 is set out in the table below. The table also includes jurisdictions to which the Multilateral Convention applies based on territorial extension declared by a state party.

| No. | Jurisdiction | Type of EOI agreement | Date signed | Date in force |
|-----|-------------------------------------|-------------------------|-------------|-------------------------------------|
| 1 | Albania | Multilateral Convention | Signed | In force for Albania |
| 2 | Andorra | Multilateral Convention | Signed | Not in force |
| 3 | Anguilla ^a | Multilateral Convention | Extended | In force for Anguilla |
| 4 | Argentina | Multilateral Convention | Signed | In force for Argentina |
| 5 | Aruba ^b | Multilateral Convention | Extended | In force for Aruba |
| 6 | Australia | Multilateral Convention | Signed | In force for Australia |
| 7 | Austria | Multilateral Convention | Signed | In force for Austria |
| 8 | Azerbaijan | Multilateral Convention | Signed | In force for Azerbaijan |
| 9 | Barbados | Multilateral Convention | Signed | Not in force |
| 10 | Belgium | Multilateral Convention | Signed | In force for Belgium |
| 11 | Belize | Multilateral Convention | Signed | In force for Belize |
| 12 | Bermuda ^a | Multilateral Convention | Extended | In force for Bermuda |
| 13 | Brazil | Multilateral Convention | Signed | Not in force |
| 14 | British Virgin Islands ^a | Multilateral Convention | Extended | In force for British Virgin Islands |
| 15 | Bulgaria | Multilateral Convention | Signed | In force for Bulgaria |
| 16 | Cameroon | Multilateral Convention | Signed | In force for Cameroon |
| 17 | Canada | Multilateral Convention | Signed | In force for Canada |
| 18 | Cayman Islands ^a | Multilateral Convention | Extended | In force for Cayman Islands |

| No. | Jurisdiction | Type of EOI agreement | Date signed | Date in force |
|-----|------------------------------|-------------------------|-------------|-----------------------------|
| 19 | Chile | Multilateral Convention | Signed | Not in force |
| 20 | China (People's Republic of) | Multilateral Convention | Signed | In force for China |
| 21 | Colombia | Multilateral Convention | Signed | In force for Colombia |
| 22 | Costa Rica | Multilateral Convention | Signed | In force for Costa Rica |
| 23 | Croatia | Multilateral Convention | Signed | In force for Croatia |
| 24 | Curacao ^b | Multilateral Convention | Extended | In force for Curacao |
| 25 | Cyprus ^d | Multilateral Convention | Signed | In force for Cyprus |
| 26 | Czech Republic | Multilateral Convention | Signed | In force for Czech Republic |
| 27 | Denmark | Multilateral Convention | Signed | In force for Denmark |
| 28 | Dominican Republic | Multilateral Convention | Signed | Not in force |
| 29 | El Salvador | Multilateral Convention | Signed | Not in force |
| 30 | Estonia | Multilateral Convention | Signed | In force for Estonia |
| 31 | Faroe Islands ^c | Multilateral Convention | Extended | In force for Faroe Islands |
| 32 | Finland | Multilateral Convention | Signed | In force for Finland |
| 33 | France | Multilateral Convention | Signed | In force for France |
| 34 | Gabon | Multilateral Convention | Signed | Not in force |
| 35 | Georgia | Multilateral Convention | Signed | In force for Georgia |
| 36 | Germany | Multilateral Convention | Signed | In force for Germany |
| 37 | Ghana | Multilateral Convention | Signed | In force for Ghana |
| 38 | Gibraltar ^a | Multilateral Convention | Extended | In force for Gibraltar |
| 39 | Greece | Multilateral Convention | Signed | In force for Greece |
| 40 | Greenland ^c | Multilateral Convention | Extended | In force for Greenland |
| 41 | Guatemala | Multilateral Convention | Signed | Not in force |
| 42 | Guernsey ^a | Multilateral Convention | Extended | In force for Guernsey |
| 43 | Hungary | Multilateral Convention | Signed | In force for Hungary |
| 44 | Iceland | Multilateral Convention | Signed | In force for Iceland |
| 45 | India | Multilateral Convention | Signed | In force for India |
| 46 | Indonesia | Multilateral Convention | Signed | In force for Indonesia |
| 47 | Ireland | Multilateral Convention | Signed | In force for Ireland |
| 48 | Isle of Man ^a | Multilateral Convention | Extended | In force for Isle of Man |
| 49 | Israel | Multilateral Convention | Signed | Not in force |

| No. | Jurisdiction | Type of EOI agreement | Date signed | Date in force |
|-----|-------------------------|-------------------------|-------------|---------------------------|
| 50 | Italy | Multilateral Convention | Signed | In force for Italy |
| 51 | Jamaica | Multilateral Convention | Signed | Not in force |
| 52 | Japan | Multilateral Convention | Signed | In force for Japan |
| 53 | Jersey ^a | Multilateral Convention | Extended | In force for Jersey |
| 54 | Kazakhstan | Multilateral Convention | Signed | In force for Kazakhstan |
| 55 | Kenya | Multilateral Convention | Signed | Not in force |
| 56 | Korea | Multilateral Convention | Signed | In force for Korea |
| 57 | Latvia | Multilateral Convention | Signed | In force for Latvia |
| 58 | Liechtenstein | Multilateral Convention | Signed | Not in force |
| 59 | Lithuania | Multilateral Convention | Signed | In force for Lithuania |
| 60 | Luxembourg | Multilateral Convention | Signed | In force for Luxembourg |
| 61 | Malta | Multilateral Convention | Signed | In force for Malta |
| 62 | Mauritius | Multilateral Convention | Signed | In force for Mauritius |
| 63 | Mexico | Multilateral Convention | Signed | In force for Mexico |
| 64 | Moldova | Multilateral Convention | Signed | In force for Moldova |
| 65 | Monaco | Multilateral Convention | Signed | Not in force |
| 66 | Montserrat ^a | Multilateral Convention | Extended | In force for Montserrat |
| 67 | Morocco | Multilateral Convention | Signed | Not in force |
| 68 | Netherlands | Multilateral Convention | Signed | In force for Netherlands |
| 69 | New Zealand | Multilateral Convention | Signed | In force for New Zealand |
| 70 | Nigeria | Multilateral Convention | Signed | In force for Nigeria |
| 71 | Niue | Multilateral Convention | Signed | Not in force |
| 72 | Norway | Multilateral Convention | Signed | In force for Norway |
| 73 | Philippines | Multilateral Convention | Signed | Not in force |
| 74 | Poland | Multilateral Convention | Signed | In force for Poland |
| 75 | Portugal | Multilateral Convention | Signed | In force for Portugal |
| 76 | Romania | Multilateral Convention | Signed | In force for Romania |
| 77 | Russia | Multilateral Convention | Signed | In force for Russia |
| 78 | San Marino | Multilateral Convention | Signed | In force for San Marino |
| 79 | Saudi Arabia | Multilateral Convention | Signed | In force for Saudi Arabia |
| 80 | Senegal | Multilateral Convention | Signed | Not in force |
| 81 | Seychelles | Multilateral Convention | Signed | In force for Seychelles |

| No. | Jurisdiction | Type of EOI agreement | Date signed | Date in force |
|-----|-------------------------------------|-------------------------|-------------|-------------------------------------|
| 82 | Singapore | Multilateral Convention | Signed | In force for Singapore |
| 83 | Sint Maarten ^b | Multilateral Convention | Extended | In force for Sint Maarten |
| 84 | Slovak Republic | Multilateral Convention | Signed | In force for Slovak Republic |
| 85 | Slovenia | Multilateral Convention | Signed | In force for Slovenia |
| 86 | South Africa | Multilateral Convention | Signed | In force for South Africa |
| 87 | Spain | Multilateral Convention | Signed | In force for Spain |
| 88 | Sweden | Multilateral Convention | Signed | In force for Sweden |
| 89 | Switzerland | Multilateral Convention | Signed | Not in force |
| 90 | Tunisia | Multilateral Convention | Signed | In force for Tunisia |
| 91 | Turkey | Multilateral Convention | Signed | Not in force |
| 92 | Turks & Caicos Islands ^a | Multilateral Convention | Extended | In force for Turks & Caicos Islands |
| 93 | Uganda | Multilateral Convention | Signed | Not in force |
| 94 | Ukraine | Multilateral Convention | Signed | In force for Ukraine |
| 95 | United Kingdom | Multilateral Convention | Signed | In force for United Kingdom |
| 96 | United States | Multilateral Convention | Signed | Not in force |
| 97 | Uruguay | Multilateral Convention | Signed | Not in force |

Notes: a. Extension by the United Kingdom

b. Extension by the Kingdom of the Netherlands

c. Extension by the Kingdom of Denmark

d. Note 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 living on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Commission: 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 3: List of laws, regulations and other relevant material

New or updates to Acts, Orders, Regulations and other material

Business Tax Act 2016

Corporations (Amendment) Act 2016

Employment and Services Tax Act 2014

Partnership (Amendment) Act 2016

Revenue Administration Act 2014

Revenue Administration (Amendment) Act 2015

Revenue Administration (Amendment) Act 2016

Detailed Technical Notes of the Business Tax Act 2016

Detailed Technical Notes of the Revenue Administration Act 2014

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