

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 1**  
**Legal and Regulatory Framework**

**BARBADOS**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Barbados 2011**

PHASE 1

January 2011  
(reflecting the legal and regulatory framework  
as at October 2010)



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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 90 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, which has been incorporated in the UN *Model Tax Convention*.

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

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

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

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).





## Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Barbados. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners.
2. Barbados is an independent nation since 1966, with a legal system based on common law. International services and financial services in particular are a major contributor to the island’s economy. While Barbados has a developed legal and regulatory framework, and an ever developing network of double taxation agreements containing arrangements for the exchange of information, the report identifies a number of areas where improvements are needed to enable it to fully implement the international standards.
3. Obligations to ensure the availability of identity and ownership information for entities are in place although gaps exist as regards the requirements for nominees to hold information, lack of penalties for maintaining share registers and in relation to information on some express trusts. There are also inconsistent obligations on relevant entities that are not subject to tax obligations in Barbados to maintain reliable accounting records, including underlying documentation for a minimum five year period.
4. Regarding access to information, the Barbadian competent authority generally has the same powers to obtain information for domestic and exchange purposes. However, secrecy provisions may also limit the Barbadian authority’s access to information on some trusts. Barbados should review its laws to remove any impediments or uncertainties about its powers to obtain information.
5. A number of serious deficiencies have also been identified in Barbados exchange of information treaties and in the interpretation made of some of these treaties by the authorities. Most importantly:

- Barbados does not exchange information on certain entities such as international business companies, which are excluded from treaty benefits, with four jurisdictions, including two major trading partners;
- Barbados cannot exchange bank information with a quarter of its treaty partners, for a variety of reasons; and
- the terms of three of its treaties appear to be limited by a domestic tax interest requirement.

6. Barbados has made progress in extending and updating its treaty network in order to address these deficiencies. It is therefore encouraged to continue this progress to ensure that its exchange of information arrangements with historical partners that do not currently meet the international standard are quickly brought up to that standard. It is also encouraged to negotiate new agreements with other significant trading partners.

7. However, as elements which are crucial for achieving effective exchange of information are not yet in place in Barbados, it is recommended that Barbados does not move to a Phase 2 review until it has acted on the recommendations contained in the Summary of Factors and Recommendations to improve its legal and regulatory framework. Barbados' position will be reviewed when it provides a detailed written report to the Peer Review Group within 12 months of the adoption of this report. The report also includes recommendations to address other shortcomings.

## Introduction

### Information and methodology used for the peer review of Barbados

8. The assessment of the legal and regulatory framework of Barbados was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at October 2010, other materials supplied by Barbados, and information supplied by partner jurisdictions.

9. The assessment was conducted by an assessment team composed of two expert assessors and a representative of the Global Forum Secretariat: Monica Bhatia, from the Income-Tax Department of India; Jesper Leth Vestergaard, from the Ministry of Taxation of Denmark; and Gwenaëlle Le Coustumer from the Global Forum Secretariat. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Barbados.

10. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Barbados' legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of findings against those elements is set out on pages 67-70 of this report.

### Overview of Barbados

11. Barbados is a Caribbean island of 285 000 inhabitants, situated northeast of Venezuela. The currency is the Barbadian dollar (BBD), with a fixed rate exchange of two Barbadian dollars for one US dollar. The GDP of Barbados for 2009 was BBD 1 077 billion.

12. Historically, the Barbadian economy was dependent on sugarcane-related activities. Since the 1990s, the economy has diversified into light industry, tourism and other services. Today, about 75% of GDP and 80% of exports are attributed to services, mainly finance activities, wholesale and retail trade, and tourism. Offshore finance is an important foreign exchange earner and benefits from having the same time zone as eastern North American financial centres and a relatively highly educated workforce. The country enjoys one of the highest per capita incomes in the region. However, the public debt-to-GDP ratio rose to over 100% in 2009, largely because a sharp slowdown in tourism and financial services, which led to a wide budget deficit.

13. The main trading partners of Barbados are other CARICOM<sup>1</sup> countries (in particular Trinidad and Tobago, and to a lesser extent St. Lucia and Jamaica), the United States and the United Kingdom. The United States continues to be the main source of imports into Barbados, accounting for a 38% share in 2006, followed by Trinidad and Tobago (22.5%), and the United Kingdom (5.8%).<sup>2</sup> Foreign direct investments in Barbados come mostly from Canada, the United States and the United Kingdom.

### ***General information on Barbados' legal system***

14. Barbados is an independent sovereign State within the Commonwealth since 1966.<sup>3</sup> Queen Elizabeth II is the head of State and is represented locally by a Governor-General. Barbados is a parliamentary democracy with a bicameral Parliament.<sup>4</sup>

15. The Barbados legal system is largely based on English common law. The Constitution of Barbados is the supreme law against which the validity

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1. The Caribbean Community (CARICOM) is an organisation of 15 Caribbean jurisdictions. CARICOM's main purposes are to promote economic integration and cooperation among its members, to ensure that the benefits of integration are equitably shared, and to coordinate foreign economic policy.
  2. Economic data are taken from: World Trade Organisation, 2008 Trade Policy Review of the Barbados; the US CIA World Factbook; and Central Bank of Barbados, Economic Review, April 2010.
  3. In addition to the Commonwealth and the Caribbean Community (CARICOM; see [http://en.wikipedia.org/wiki/Caribbean\\_Community](http://en.wikipedia.org/wiki/Caribbean_Community)), Barbados is a member of, amongst others, the Caribbean Court of Justice (CCJ; see [http://en.wikipedia.org/wiki/Caribbean\\_Court\\_of\\_Justice](http://en.wikipedia.org/wiki/Caribbean_Court_of_Justice)) and the Caribbean Financial Action Task Force.
  4. The 21 members of the Senate are appointed by the Governor-General – 12 on the advice of the Prime Minister, 2 on the advice of the opposition leader, and 7 at his discretion. The 30 members of the Assembly are elected by direct popular vote to serve five-year terms.

of all other laws may be measured. Double tax conventions have the value of laws in Barbados.

16. The court system is composed of a network of Magistrate Courts, which are courts of summary jurisdiction in civil, family and criminal matters; the High Court; and the Court of Appeal, which hears appeals from the decisions of the High Court and the Magistrates' Courts (the High Court and the Court of Appeal form together the Supreme Court).<sup>5</sup> Finally, the Caribbean Court of Justice acts as the island's ultimate court of appeal.

### ***Barbados general tax system***<sup>6</sup>

17. The administration of income tax is governed by the 1968 Income Tax Act and the 1969 Income Tax Regulations. Resident individuals and corporations are taxed on their worldwide income.<sup>7</sup> For corporations, the place of management and control determines residence for tax purposes. External companies carrying on business through a branch pay corporation tax on locally sourced income as well as a tax on branch profits remittances. Corporation tax is paid on profits at the current rate of 25% of taxable income (section 43 of the Income Tax Act). In the offshore sector, locally incorporated international business companies and offshore banks pay corporation tax at rates between 1-2.5% and a recent amendment to the tax laws renders captive insurance companies subject to tax at the rate of 8% of the first BBD 250 000 of taxable income and 0% on the balance. Previously captive insurers were tax exempt.

18. In addition to corporation tax, companies carrying on life insurance business and general insurance business must pay a tax on premium income. Domestic trusts and estates are taxed at the same rates as individuals (between 20-35%).<sup>8</sup>

19. Over time various amendments have been made to the 1968 Act. Some of these amendments were incentive-based, designed to encourage improvements in the island's infrastructure, to promote investment,

5. Barbados Supreme Court website: [www.lawcourts.gov.bb/Aboutus.html](http://www.lawcourts.gov.bb/Aboutus.html).

6. Barbados Inland Revenue Department, at [www.barbados.gov.bb/ird/index.html](http://www.barbados.gov.bb/ird/index.html).

7. A resident but not domiciled person is taxed on Barbados income and any income remitted to Barbados. A non-resident person is taxed only on Barbados income. Income Tax Act, sections 5, 16 and 17.

8. The Barbadian tax system is a self-assessment system (Section 52(5) of the Income Tax Act). Resident individuals and companies calculate their taxable income and tax liability and pay the tax due at specified times. For individuals, the 2009 income tax rates are of 20% for taxable income up to BBD 24 200 and 35% above that amount. No tax on capital gains is imposed in Barbados.

to facilitate growth in the agricultural, manufacturing, hospitality, service and insurance sectors, and to enhance opportunities for increased exports and foreign currency earnings. In April 2010, the government of Barbados announced that it intends to offer appropriate tax credits to companies that pursue research and development of innovative projects targeted towards manufacturing or agro-processing activities, in a plan to create a new production enterprise culture.<sup>9</sup>

20. The Administration of the income tax system (including tax assessment and collection) is carried out by the Commissioner of Inland Revenue, assisted by a staff of approximately 170 persons.

### ***Barbados and the standards***

21. Barbados is committed to the OECD standards of transparency and exchange of information for tax purposes.<sup>10</sup> As of October 2010, Barbados has exchange of information arrangements with 30 jurisdictions. It signed bilateral DTCs with Austria, Botswana, Canada, China, Cuba, Finland, Ghana, Luxembourg, Malta, Mauritius, Mexico, the Netherlands, Norway, Panama, Seychelles, Sweden, Switzerland, the United Kingdom, the United States and Venezuela. Barbados is a party to the CARICOM Multilateral Tax Treaty, wherein the other 10 members are Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.<sup>11</sup> Barbados has also signed one tax information exchange agreement (TIEA) with the United States.

22. The exchange of information provisions in the Barbados tax treaties are generally based on Article 26 of the OECD Model Tax Convention but not all of them are up to the standard (see part C).

### ***Overview of commercial laws, the financial sector and relevant professions***

23. The main Barbados commercial law is the Companies Act, supplemented by specific laws dedicated to particular forms of companies or activities such as international business companies (IBC) under the International

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9. *The Barbados Advocate*, 13 April 2010 ([www.barbadosadvocate.com/newsitem.asp?more=local&NewsID=9858](http://www.barbadosadvocate.com/newsitem.asp?more=local&NewsID=9858)).

10. Tax Co-operation 2010: Towards a Level Playing Field – 2010 Assessment by the Global Forum on Transparency and Exchange of Information, at [www.oecd.org/ctp/http/cooperation](http://www.oecd.org/ctp/http/cooperation).

11. The CARICOM agreement is a double tax convention between member states of the Caribbean Community. Only the Bahamas, Haiti, Montserrat and Surinam have not signed the agreement.

Business Companies Act, and international societies with restricted liability under the Societies with Restricted Liability Act (see Part A, section A.1.1). Offshore companies are supervised by the International Business Unit of the Ministry of International Business and International Transport. Barbados also recognises trusts and international trusts (under the International Trusts Act), partnerships and societies. A company is resident in Barbados where it is managed and controlled.<sup>12</sup>

24. Onshore commercial banks, trust companies, finance companies, merchant banks, and similar financial institutions are regulated under the Financial Institutions Act (FIA). Off-shore banks and international financial services<sup>13</sup> are regulated under the International Financial Services Act (IFSA). The Central Bank of Barbados is the regulatory authority of both onshore and offshore financial institutions.

25. Other service providers offer primarily trust and corporate services to local and international clients, including company formation services, registered offices, corporate secretarial services, day to day management and administration, accounting, the provision of directors and officers, the creation of trusts and acting as trustee, mutual fund administration, and investment management. At present there is no formal registration, regulation or supervision of all service providers in Barbados.

26. The insurance industry is governed by the Insurance Act and the Exempt Insurance Act, which are both administered by the Supervisor of Insurance and Pensions. Entities engaged in business related to securities and mutual funds are regulated by the Securities Commission under the Securities Act and the Mutual Funds Act, respectively. Persons participating in the securities industry include securities companies, brokers, dealers, traders, underwriters and investment advisers. Finally, credit unions are regulated by the Registrar of Co-operatives under the Co-operatives Societies Act.

## Recent developments

27. Within the last year, Barbados has signed DTCs with Luxembourg and Panama, and a protocol with the Netherlands (see further Annex 2). Barbados is continuing to work to develop its EOI network and has also initialled four new DTCs. It is currently negotiating 9 further DTCs and protocols. Barbados signed a new DTC with Portugal on 22 October 2010, which

12. Barbados cites *De Beers Consolidated Mines Ltd. V. Howe* (1906) 5 TC 198 (United Kingdom) and *The King v. British Columbia Electric Railway Co. Ltd.* (1946) AC 527 2 DTC 839 (Canada) for this standard.

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

Barbados advises contains an exchange of information provision based on Article 26 of the OECD Model Tax Convention.

28. Over the last few years, the IBC Act and the SRL Act have been amended to permit the disclosure of confidential information.

29. Some service providers are regulated under the IFSA or the FIA, others are self-regulated (*i.e.* by their own professional bodies), but the Government, as well as many service providers, have recognized the need for the regulation of the financial services sector in its totality. The International Corporate and Trust Service Providers Bill, 2010 seeks to provide for the registration and regulation of service providers in the international business sector. As of April 2010, it is expected to be enacted before the end of this financial year.



## Compliance with the Standards

### A. Availability of Information

#### Overview

30. Effective exchange of information requires the availability of reliable information. In particular it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority<sup>14</sup> may not be able to obtain and provide it when requested. This section of the report describes and assesses Barbados legal and regulatory framework on availability of information.

31. In respect of ownership and identity information, the obligations imposed by Barbados on companies and partnerships are generally sufficient to identify their legal owners. However, there is no legal obligation on nominees to keep information regarding the identity of the person on whose behalf the shares are held. In addition, penalties to sanction non-compliance are not available in some cases. The obligations of maintenance of identity information as concerns the various types of express trusts are not sufficient

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14. The term “competent authority” means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange agreement.

to permit full exchange of information; this issue will be examined further in the Phase 2 of the peer review process.

32. Accounting records must be kept pursuant to the Income Tax Act for most of the relevant entities. However, the accounting obligations of some categories of trusts, in particular non-taxable trusts, remain unclear.

33. As regards banking information, banks and other financial institutions are required to keep documents underlying the financial transactions of their clients when these are above a determined threshold.

## A.1. Ownership and identity information

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

### *Companies (ToR<sup>15</sup> A.1.1)*

34. The laws of Barbados provide for the creation of the following types of companies:<sup>16</sup>

- domestic companies – Public and private companies with limited liability incorporated under the Companies Act and doing business in and from Barbados;
- non-profit companies – incorporated under the Companies Act, they operate for the benefit of a specified non commercial purpose.<sup>17</sup> The company has no authorised share capital and its activities are to be carried on without pecuniary gain to its members. They are typically created to establish a club, professional association, *etc.*; and
- societies with restricted liability (SRLs) – organised under the Societies with Restricted Liability Act; they have a full corporate liability and are similar to limited liability companies in other jurisdictions. They may be either exempt or non-exempt. The exempt

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

16. Foreign Sales Corporations (FSCs) were previously established in Barbados by United States export-oriented corporations and allowed US exporters to permanently exempt a portion of their profits derived from export sales from US taxes. Since 1999 no new FSCs have been created and the five FSCs that remain no longer enjoy this tax benefit.

17. A non-profit company may operate an undertaking that is patriotic, religious, philanthropic, charitable, educational, scientific, historical, artistic, social, professional, etc. (Part II, Division A, sections 312-323).

or international SRL is designed primarily for use in international transactions and is prevented from doing business with residents of the Caribbean Community.

35. Companies or societies incorporated under the Companies Act or SRL Act can obtain a licence to conduct specific off-shore activities from Barbados (offshore companies):

- international business companies (IBCs) – licensed under the International Business Companies Act to conduct international manufacturing or trade and commerce;
- exempt SRLs – organised and licensed under the Societies with Restricted Liability Act to transact business from Barbados with persons outside Barbados;
- international banks – regulated under the International Financial Services Act; and
- exempt insurance companies – licensed under the Exempt Insurance Act. Their risks and premium must originate outside Barbados.

36. In June 2006, there were 3 488 IBCs, 178 exempt insurance companies, 391 SRLs and 91 FSCs registered in Barbados. As of 2009, 15 trusts companies, finance and merchant banks, 9 commercial banks and bank holding companies, and 52 offshore banks, were licensed in Barbados.

### *Ownership and identity information held by the Barbadian authorities*

37. In general, legal and beneficial ownership information on offshore entities is available with Barbadian regulatory authorities. Information on the legal owners of domestic and exempt SRLs is also available with the Registrar. Only ownership information on domestic companies is not maintained by Barbadian authorities (but is otherwise maintained by the companies themselves).

### Registration

38. All domestic and offshore companies and SRLs must be registered with the Registrar of Corporate Affairs and Intellectual Property (hereafter the Registrar).

39. Domestic and offshore companies do not have to disclose their legal or beneficial ownership on registration. Instead, the Registrar must receive a notice of the names of the original directors of all the domestic, non-profit

and foreign<sup>18</sup> companies, the address of the registered office of the company and any subsequent change of office (sections 4-7 and 326-330 of the Companies Act). The articles of incorporation submitted to the Registrar must include the classes and any maximum number of shares that the company is authorised to issue, any restriction to the right to transfer shares, and any restrictions on the business that the company may carry on.

40. The Barbadian authorities indicate that recommendations have recently been made for requiring the disclosure of ownership under the Companies Act.<sup>19</sup> Currently, the recommendations form part of a Cabinet Paper which has been submitted for approval of the Cabinet.

41. The SRL Act requires all domestic and international SRLs to be incorporated under the act and registered with the Registrar (section 5). The articles of incorporation submitted to the Registrar must include the name and (residential) address of each person who signed the articles of organisation, *i.e.* legal owners, and the registered office of the SRL in Barbados (section 6).

42. No information on the beneficial owners of a signatory that is another SRL or a company is required. Changes to the above-mentioned information must be notified to the Registrar, but the law does not specify any deadline within which this notification must be made (section 7).<sup>20</sup>

43. Foreign SRLs may apply for a certificate of continuance in Barbados by providing the Registrar with the name of the overseas society, the name under which it is being continued, signatures of all of the members and managers of the society, the jurisdiction under which it is organised and the date on which it was organised (sections 51 and 52).

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18. Foreign companies (*i.e.* incorporated under the companies' legislation of other jurisdictions) that wish to begin or carry on any undertaking in Barbados must register under the Barbados Companies Act (Part II, Division B, sections 324-346). They must provide information on their jurisdiction and date of incorporation, particulars of their corporate instruments, etc. but not on their ownership structure. However, foreign companies with an offshore license have additional reporting requirements under other laws (see Regulated Entities section).
  19. The CFATF First Follow-up Report on Barbados, dated 4 March 2009, indicates that the Registrar of Corporate Affairs and Intellectual Property Office is formulating a policy proposal as it relates to the Companies Act and the IBC Act to address concerns about compliance with the FATF's Recommendation 33 to improve the system of access to beneficial ownership information.
  20. A change of address of the Barbados registered office must be notified within 15 days (section 23).

## Tax authorities

44. Every company or SRL in Barbados, except exempt insurance companies,<sup>21</sup> must register with and submit a return to the Commissioner of Inland Revenue. Pursuant to section 52(1) of the Income Tax Act: “Every company and every other person who has carried on a business in an income year, whether or not an assessable income has been derived by that person in that income year, shall deliver to the Commissioner a return of his assessable income for that income year, together with such additional information as is prescribed, all in the prescribed form”.<sup>22</sup>

45. When filing tax returns, corporate tax payers must disclose their legal ownership structure to benefit from group relief: what is required are financial statements which identify other companies which may be part of the same group, *e.g.* holding companies and subsidiaries together with associated companies. The group relief provisions are not available to IBCs, exempt insurance companies, SRLs and companies established under the IFSA.

## Regulated entities

46. Every entity (company or SRL) conducting off-shore business must have a licence. Ownership information (including beneficial ownership information) is required to be filed with the relevant licensing/regulatory authority.

47. International Business Companies must disclose the identity of the legal and “ultimate” owners when filling their licence application form with the International Business Division of the Ministry of International Business and International Transport. The form (annexed to the IBC Regulations), requires applicants to provide: the name, residential address, telephone,

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21. Exempt insurance companies are not covered by section 52 but are nonetheless required to lodge financial statements with the Inland Revenue Department and the Supervisor of Insurance. The Barbadian authorities have not indicated whether these statements cover identity information on legal owners, and ultimate owners in case of body corporate owners, but section 76(2) of the Income Tax Act would allow the Commissioner to access information from any person and would apply to exempt insurance companies.
22. Section 85(1) indicates that “For purposes of this Act, the expression... ‘business’ includes a profession, vocation, trade, manufacture or undertaking of any kind whatsoever and includes an adventure or concern in the nature of trade but does not include an office or employment;... ‘company’ means any body corporate whether incorporated in Barbados or elsewhere and includes a society and an association other than an association of underwriters but does not include a local or public authority.”

facsimile of the proposed shareholders and percentage shareholding; a profile of each proposed shareholder (academic qualifications, training, experience, corporate status and description of business where relevant); contact details of the ultimate beneficial shareholders (name, address, telephone; if different from legal owners). Changes should also be notified (pursuant to the application form). The term “ultimate beneficial shareholder” is not defined and does not appear to reach the ultimate owner at the end of the ownership chain but rather the intermediate of a company such as a holding company or the person for whom a nominee holds shares, *e.g.* a trust. There does not appear to be any sanction applicable in case of failure to notify a change in ownership.

48. International Banks must disclose the names and addresses of the shareholders and the number of shares directly or indirectly held by them in their licence application with the Bank Supervision Department of the Central Bank, pursuant to section 7 of the International Financial Services Act.

49. Exempt SRLs must obtain a licence from the International Business Division, pursuant to section 40 of the SRL Act. Pursuant to the SRL Regulations, service providers are required to apply due diligence procedures and know-your-customer policies before submitting a licence application. They must disclose the identity of the quota owners/members, and ultimate beneficial owners of the applicant SRL. Exempt SRLs must renew their licenses annually and provide updated information as it arises during the course of the year for which the license is current.

50. Exempt insurance companies are regulated by the Office of the Supervisor of Insurance who issues licences and monitors the compliance with the terms of the licences and other requirements. They have to nominate a registered office pursuant to the Exempt Insurance Act, section 14. The Barbadian authorities indicate that there is a requirement to know the legal owners of a company and the ultimate individual owners, as well as subsequent modifications.<sup>23</sup>

51. The Barbadian authorities indicate that a licence will not be provided unless the required information is provided.

### *Information held by companies and other persons*

52. By virtue of section 170 of the Companies Act, all companies, except external companies,<sup>24</sup> are required to maintain in Barbados a register of shareholders. Section 170(2) provides: “A company shall maintain a register

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23. See exempt insurance (forms and fees) regulations: [www.sice.oas.org/investment/NatLeg/Bar/Insur\\_FF\\_reg.pdf](http://www.sice.oas.org/investment/NatLeg/Bar/Insur_FF_reg.pdf).

24. External companies must maintain a register of shareholders only when they are licensed to carry on off-shore activities.

of shareholders showing (a) the articles and the by-laws, and all amendments thereto, and a copy of any unanimous shareholder agreement and amendments thereto; (b) a statement of the shares held by each shareholder (legal owners); (c) the date on which each person was entered on the register as a shareholder, and the date on which any person ceased to be a shareholder”. An agent can be appointed to maintain the register. The law does not specify the level of details required as concerns the identity of shareholders. The Barbadian authorities have not indicated whether sanctions are applicable in case of non-compliance with section 170.

53. There is no requirement in Barbados for nominees or service providers to hold any ownership information on companies. Barbados authorities explain that attorneys and company incorporators may have ownership information as a matter of course, but this is not a legal obligation. To the extent that banks or other financial institutions are regarded as ‘relevant service providers’, anti-money laundering know-your-customer principles and guidelines apply (on a risk-assessment basis) (see Money laundering law below). The Barbadian authorities nonetheless indicate that the Government is making arrangements for the introduction of legislation to provide for the registration of service providers in the international business sector. They have not indicated whether this project will include obligations for service providers to maintain ownership information on their corporate clients, including nominees.

54. As regards SRLs, they maintain the information they submit to the Registrar, including the identity of their partners. In addition, the society register must contain a statement of each member’s capital contribution (section 24 of the SRL Act). When a member transfers quotas to another person, change of membership is dependent upon the unanimous consent of all the other members, and if refused, the transferee will only be entitled to receive the dividends on his/her quotas (section 14). The law does not require that the list of such persons that are entitled to receive dividends without being members be maintained. In addition, the Barbadian authorities have not indicated whether sanctions are applicable in case of non-compliance with section 24.

### Money Laundering Law

55. The Money Laundering and Financing of Terrorism (Prevention and Control) Act (MLFTA) establishes customer identification obligations on financial institutions. They must take “all reasonable measures” to obtain the “true identity” of a person seeking to enter into a business relationship with them or of any person on whose behalf or for the ultimate benefit that person acts (section 7). The Anti-Money Laundering/Combating Terrorist Financing Guidelines (the Guideline) for financial institutions licensed under the Financial Institutions Act and the International Financial Services Act clarifies that “reasonable measures should include, where appropriate:

- taking reasonable measures to understand the ownership and control structure of the customer;
- obtaining information on the purpose and intended nature of the business relationship, the source of funds and source of wealth, where applicable; and
- discontinuing the transaction, if customer documentation information is not forthcoming at the outset of the relationship. (section 7.0(ii))

56. Financial institutions must keep records of the evidence of a person's identity for five years, including the name, address and occupation or business of these persons (section 8).

### ***Bearer shares (ToR A.1.2)***

57. No company may issue bearer shares or bearer share certificates, pursuant to section 29(2) of the Companies Act.

### ***Partnerships (ToR A.1.3)***

58. A partnership is the relationship that subsists between persons carrying on a business in common with a view of profit. Barbados legal system provides for two types of partnerships: limited partnerships and partnerships *simpliciter*, which are respectively governed by the Limited Partnerships Act and the Partnerships Act. Limited partnerships are composed of limited partners, whose liability for the debts or obligations of the partnership is limited to a certain pre-determined amount but who cannot manage the entity, and general partners, who are liable for all debts and obligations of the partnership and have power to bind the entity. By contrast, general partnerships are composed exclusively of general partners.

59. There is no international/foreign partnership law. Barbados has advised that foreign partnerships operating in Barbados have to comply with the same tax rules as Barbadian partnerships.



## *Ownership and identity information held by the Barbadian authorities*

### Registration of partnerships

60. The Registrar maintains a register of limited partnerships pursuant to section 4 of the Limited Partnerships Act.<sup>25</sup> A limited partnership is registered when the Registrar receives a statement signed by the partners containing, in particular, the full name of each of the partners. It must also contain the firm [*i.e.* partnership] name; the general nature of the business; the principle place of business; the term, if any, for which the partnership is entered into and the date of its commencement; a statement that the partnership is limited and the description of every limited partner as such; and the sum contributed by each limited partner and whether paid in cash or how otherwise (section 7).

61. Any changes made to the above particulars are required to be filed with the Registrar within seven days (section 8). The identity of the partners in a limited partnership (legal owners), including ongoing changes, is a matter of public record. A body corporate may be a limited partner (section 3(4)), in which case there is no requirement to disclose the identity of the ultimate owners of that partners.

62. There is no formal registration procedure for creating a general partnership under the Partnership Act, but the Registration of Business Names Act sets an obligation of registration with the Registrar of any business persons and business firms<sup>26</sup> (section 3). The Registrar must receive the following elements: business name and address of the partnership; name and surname, nationality, occupation and usual residence of individual partners; corporate name and registered or principal office of corporate partners (section 5). Partners have 14 days to register a partnership or changes to the listed particulars. The law allows for extension to this deadline without setting an ultimate period (section 8).

63. There are no specific rules regarding the retention period of the information on legal ownership in the Registration of Business Names Act and the Limited Partnerships Act.

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

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

### Tax authorities

64. Partnerships are not subject to taxes under the Income Tax Act but partners are. Up-to-date information on legal ownership of limited partnerships and general partnerships is available to the tax authorities. There is no requirement to disclose the ultimate owners of partnerships when a partner is a corporate body.

65. All partners who share in the profits of a partnership (*i.e.* that derive incomes from a partnership) are required to file a tax return. Section 8 of the Income Tax Act provides that amounts that are income of a person from a partnership are included when calculating the assessable income of that person, whether or not they have been withdrawn during the income year. In addition, since general and limited partnerships carry on a business in Barbados, they must deliver to the Commissioner of Inland Revenues a return of their assessable income. Section 52(3) of the Income Tax Act specifies that the partnership itself must submit a tax return indicating the assessable income of the partnership together with a statement of the names and addresses of all the partners in that income year and a statement of the share of the assessable income of the partnership to which each partner is entitled.<sup>27</sup> There is no obligation to disclose the name of the beneficial owners of a corporate partner in the income tax return. According to the Barbadian authorities a fine can be applied in case of non-compliance.

### *Information held by the partnership and other persons*

66. The Barbadian authorities also indicate that general partners are required to maintain legal ownership information in their books and records. Section 75 of the Income Tax Act requires that every person carrying on business keeps records and books of account in Barbados, in such form and containing such information as will enable the taxes payable under this Act to be determined. Since the full list of all partners is necessary to determine the share of profit of each partner, legal ownership information must be maintained in the partnership.

67. There is no rule (either in partnership laws or tax laws) that directly requires service providers to keep ownership information concerning their

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27. Pursuant to section 52(3) of the Income Tax Act “Where a business is carried on by 2 or more persons jointly, the partner who is resident in Barbados... shall deliver to the Commissioner a return of the assessable income of the partnership for an income year together with such additional information as is prescribed and including a statement of the names and addresses of all the partners in that income year and a statement of the share of the assessable income of the partnership to which each partner is entitled, all in prescribed form”.

general or limited partnership clients. However, the Barbadian authorities explain that, in dealing with the partnership tax records (and to comply with anti-money laundering legislation for some of them), service providers must keep records identifying the partners and the income attributable to each partner. Therefore in practice service providers must have information on legal ownership but not beneficial ownership of their partnership clients.

### *Trusts (ToR A.1.4)*

68. Barbados laws provide for the creation of six types of trusts:
- common law (and the Trustees Act) governs domestic trusts. There is no registration requirement for domestic trusts but one trustee must be resident in Barbados;
  - the International Trusts Act provides for the creation and regulation of international trusts which may be non charitable purpose trusts. Their international nature derives from the following features, the absence of which would make the trust lose its international nature and be deemed to be resident:
    - (i) The settlor is resident outside Barbados at the time of the creation of the trust (and at such times the settlor adds new property to the trust);
    - (ii) No beneficiary is a resident of Barbados at the time of the creation of the trust (and at such times as the settlor adds new property to the trust);
    - (iii) The trust property does not include any immovable property situated in Barbados or an interest in any property so situated;
    - (iv) At least one of the trustees is resident in Barbados. (section 2(1)(d));
  - an offshore trust may be created when the trustee is licensed under the IFSA (section 4(2)(c)). The settlor and beneficiaries must be resident outside Barbados and the trust assets must consist solely of foreign currency or securities (in which case the trust is exempted from all Barbados taxes or duties pursuant to section 96), foreign personal property or foreign movable property, or foreign real property or foreign immovable property. There is no specific form that the offshore trust must take;
  - the Property Act makes provision for a settlement upon statutory trusts. Property includes anything in action and any interest in land, chattels or rights which are treated commercially as property;

- the Mutual Funds Act allows for the creation of registered unit trusts and exempt mutual funds.
- the Charities Act<sup>28</sup> allows for the creation of charitable trusts, *i.e.* any institution established for charitable objects or purposes, *and* which is intended to and does operate for the public benefit. They are subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

### *Information kept by administrative authorities*

#### Registration of trusts

69. There is no registration requirement for domestic trusts.

70. International (including non-charitable purpose) trusts are also exempted from the requirement of registration under any law (section 32 of the International Trust Act). However, trustees of purpose trusts must keep in Barbados: a) a copy of the instrument creating the trust (as well as amendments and supplements); b) a register containing the name of the settlor, a summary of the purposes of the trust, the name of the protector of the trust, and c) such documents as are necessary to show the true financial position of the trust. The documents indicated at b) must be filed with the Director of International Business for issue of a certificate of registration. The trust register is confidential and is not available to the public. (Section 13 of the International Trust Act) The law does not set a retention period for identity information.

71. Unit trusts<sup>29</sup> must register with the Ministry of Finance and obtain a licence from the Securities Commission to carry on mutual fund business or securities activities. A registered unit trust must provide information on the promoters of the mutual fund and changes in respect of its registered office or operator (sections 8 and 13 of the Mutual Funds Act). Administrators must be registered in Barbados and have obtained an administration licence with the Securities Commission (section 16); directors must be approved by the

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28. Charitable purposes include the relief and prevention of poverty and sickness, the relief of old age and natural disasters, the advancement of education, religion and sciences, the promotion and publication of research, the promotion of arts and sports, the provision of social welfare services and housing, the advancement and improvement of the standards of efficiency of industry, commerce and agriculture, the maintenance and improvement of the efficiency of the armed forces and the police force.
29. Registered unit trusts are mutual funds (which can also be a company, a society or a partnership).

Commission (section 24). Mutual funds incorporated in a foreign jurisdiction (*i.e.* exempt funds) must appoint an agent (section 30). The content of the constitutive documents of a mutual fund is prescribed in regulations.

72. Most charities are required to be registered with the Registrar pursuant to section 5 of the Charities Act.<sup>30</sup> The registration form requires disclosure of the full names, addresses and occupations or descriptions of the trustees, secretary, treasurer and auditor, as well as the name and address of the bank(s) at which the account of the charity is kept and the list of properties owned by the charity. Changes to the mentioned particulars should be notified to the Registrar. The register of charities is open to the public.

## Taxation

73. The tax authorities hold identity information in relation to domestic and international trusts that are taxpayers. Offshore trusts as well as international trusts which have no Barbadian-source income and for which no benefit from foreign-source income is derived in Barbados (the settlor and beneficiaries being non residents) are not taxable in Barbados.

74. For the purposes of the Income Tax Act, a trust, other than a unit trust, is deemed to be a separate person (section 40(1) of the Income Tax Act) and must deliver to the Commissioner a return of its assessable income (section 52). A trust can deduct payments made to its beneficiaries in calculating its income (section 40(2)). Barbados authorities indicate that in practice the trustee must supply information on the beneficiaries for the deduction to be accepted.<sup>31</sup> In addition, Barbados residents who derive income from a domestic or international trust are taxable on this income (section 8(1)(k) of the Income Tax Act and section 29(4) of the International Trust Act).

75. Non-resident beneficiaries of international trusts are not subject to income tax in Barbados on amounts allocated or distributed by trustees out of trust income (section 29(1) of the International Trust Act).

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30. The charities that are not required to be registered are the listed exempt charities, charities excepted by order made by the Attorney-General, and charities that do not have a permanent endowment or any income from property amounting to more than BBD 100 a year.

31. Otherwise the tax authorities would have difficulty knowing what a beneficiaries' assessable income is for the year as the tax is different for resident and non-resident persons under section 40(2) of the Income Tax Act. The maximum charge for a resident individual is 35% where his taxable income is over BDS 24 200 and 20% if below that, whereas tax charged on a non-resident beneficiary ranges between 0-15%, depending on whether the trust is resident or non-resident.

76. Under the Mutual Funds Act (section 2), a registered unit trust must be registered in accordance with the Income Tax Act. Under the Income Tax Act, a registered unit trust is deemed to be a company resident in Barbados and the persons having an interest in the registered unit trust are deemed to be shareholders in that company (section 41(1) of the Income Tax Act).

77. Trustees of offshore trusts covered by the IFSA do not appear to have any duty to provide identity information to any public authority, including the tax authorities.

### *Information kept by the trustees and service providers*

78. Domestic trusts are governed by the common law. According to the Barbadian authorities, trustees of domestic trusts have an obligation to maintain identity information both on beneficiaries and the settler. This duty stems from the trustee's fiduciary duties as a trustee, as well as a duty to comply with the tax laws. The precise extent of this duty could not be ascertained in Phase I of this review, but will be a subject of review in Phase 2.

79. An international trust may only be created by an instrument in writing, but the law does not specify what information the trust deed must contain (sections 5 and 27). In particular, it does not indicate the level of detail concerning the purpose of an international non-charitable purpose trust. International trusts must have at least one resident trustee, who can be anyone, and not only service providers (such as an IFSA or FIA licensee) (section 2(1)(d) of the International Trust Act). The trustees must maintain the same information as they send to the Director of International Business (section 13).

80. A Barbadian resident can act as a trustee or otherwise in a fiduciary capacity, administer, or act as a protector in relation to a trust formed under foreign law. However, trustees (licensed under the IFSA) of offshore trusts do not appear to have a duty to maintain identity information under IFSA. Similarly resident trustees of domestic trusts do not appear to have a duty to maintain identity information under the Trustees Act.

### Money Laundering Law

81. The MLFTA establishes customer identification obligations on financial institutions, including trust companies licensed under the FIA to perform functions as trustee, administrator or executor (section 23 of FIA). As mentioned above, the entities subject to the MLFTA must take "all reasonable measures" to obtain the "true identity" of a person seeking to enter into a business relationship with them or of any person on whose behalf or for the ultimate benefit that person acts, and keep the details for five

years (sections 7 and 8). The Anti-Money Laundering/Combating Terrorist Financing Guidelines apply and the definition of “reasonable measures” would be the same as in the case of companies to which the MLFTA applies, *i.e.* taking reasonable measures to understand the ownership and control structure, source of funds and source of wealth. It would also include a guideline to discontinue the transaction if customer documentation information is not forthcoming (section 7.0(ii)).

82. Individual trustees are not subject to the MLFTA. IFSA licensees (including trustees of offshore trusts) do not appear to be subject to the MLFTA, but are subject to the Guideline (section 2.0).

### ***Foundations (ToR A.1.5)***

83. The concept of foundation does not exist in Barbadian law.

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

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

### ***Registration and licensing***

85. Under Barbados laws, in some cases there are penalties to sanction non-compliance whilst in other instances there is no applicable penalty. However serious the applicable sanctions are, in order to be dissuasive, they must be accompanied with enforcement powers, *i.e.* the administration should be able to investigate whether the entities have sent them or have maintained in their office the required information (independently of whether the entity committed a tax offence).

86. The laws on companies and trusts provide for sanctions against a person who knowingly or negligently makes or assists in making a legally required report, return, notice or other document that contains an untrue or misleading statement or that omits to state a material fact. The sanctions are always a fine or imprisonment or both, the seriousness of which varying depending on the entity in relation to which the offence has been committed:

- general partnerships: the fine is up to BBD 200 and imprisonment is up to 3 months;<sup>32</sup>
- companies (including non-profit companies): the fine is up to BBD 5 000 and imprisonment is up to 6 months;
- limited partnership: no fine but imprisonment up to 2 years;
- domestic and exempt SRLs, IBCs and international trusts: the sanctions rise up to BBD 25 000 fine and 12 months imprisonment.<sup>33</sup> The trustee of a non-charitable purpose trust is liable to a fine of BBD 10 000 and exclusion from trustee functions for 2 years (section 13 of the International Trust Act).
- registered unit trusts: a fine up to BBD 100 000 or imprisonment up to 3 years or both (sections 8 and 18 of the Mutual Funds Act). A person providing misleading information about directors, managers, trustees, advisers or auditors or a mutual fund are punishable on indictment to a fine of BBD 250 000, up to 5 years imprisonment or both (section 14).

87. Where a company is required by the Companies Act to send any document to the Registrar and fails to do so, the Registrar may choose to strike a company from the Register. However, there does not appear to be a penalty for failure to maintain a register of shareholders or of members in the case of a SRL.

88. A limited partnership in default of registration is deemed to be a general partnership and limited partners become general partners, with full liability (section 4 of the Limited Partnership Act). The absence of notification of changes results in each of the general partners being liable on summary conviction to a fine of BBD 5 for each day during which the non-compliance continues (section 8(2)).

89. The Registration of Business Names Act was enacted in 1940 and was last amended in 1988, more than 20 years ago. Its effectiveness will be reviewed during the Phase 2 of the review process. The non-respect of the registration obligation is punishable by a fine of BBD 50 (USD 25) per day of default (section 9). This fine applies to each and every partner in the company or firm. The law also provides for the non-enforceability of the rights of the

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32. Section 11 of the Registration of Business Act, on persons making false statements.

33. Section 432 of the Companies Act, section 28A of the IBC Act, section 63 of the SRL Act (on domestic and exempt SRLs), section 33 of the International Trust Act, section 10 of the Limited Partnership Act.



defaulters arising out of any contract made or entered into by or on behalf of the defaulter, unless a relief is granted by a judge (section 10).

90. It does not appear from the applicable laws that the Registrar checks the declarations made by the persons who register companies, to ascertain the accuracy of the information provided, notably as concerns the legal ownership (when it is required to be disclosed). The only power of verification of the Registrar is to require that a document or a fact stated in a document be subject to an affidavit or affirmation (section 407). This does not include the production of copies of the underlying documents supporting the declaration made or the cross-checking with other institutions.

91. While it has no real enforcement powers on registered companies, the Registrar can apply to the court for an order directing that an investigation be made of the company and any of its affiliated companies, and the court may order an investigation if it appears that a business has been carried on with intent to defraud any person, *inter alia*.

92. Similarly, the SRL Act gives the Minister of Finance powers to investigate the affairs of domestic and exempt societies, including power to accede to all documents of a society. Sanctions are available in case of non-cooperation (section 63).

93. Charitable trusts are subject to the control of the High Court in the exercise of its jurisdiction with respect to charities. The Registrar has enforcement powers as concerns the registration of charities since it can decide to not register a charity, to delete a charity from the register, or require by order any person who makes default in carrying out any of the registration duties to make good that default.

94. Failure to send any prescribed return, notice, document or fee is punishable by the striking off the register of the entity after a certain period following notification of failure (section 412 of the Companies Act, SRL Act).

### *Tax obligations*

95. The Income Tax Act provides for sanctions against persons who either fail to file a return of income or wilfully or knowingly make any false or deceptive return or gives any false or deceptive information. They are liable on summary conviction to a fine between BBD 500 and BBD 10 000 or imprisonment up to 6 months or both. As regards charitable trusts in particular, when a trustee fails to register a charity in accordance with section 5 of the Charities Act, the charitable trustee shall not be entitled to claim any tax exemptions under any enactment in respect of that charity for the income year during which it remained unregistered (section 6).

### Determination and factors underlying recommendations

<b>Phase 1 Determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Nominees that are not financial institutions for anti-money laundering purposes are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.
Identity and ownership information may not be consistently available in respect of all express trusts, particularly as regards the beneficiaries and all trustees of offshore trusts. The requirements in the case of domestic trusts are unclear.	An obligation should be established for all trustees resident in Barbados to maintain information on the settlor, trustees and beneficiaries of their trusts.
There are currently no penalties for non-compliance with obligations to maintain up to date share registers in the case of companies and SRLs.	In so far as penalties are not currently provided, effective sanctions should be introduced against companies and SRLs that fail to comply with requirements to maintain share registers.

## A.2. Accounting records

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

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

### *General requirements (ToR A.2.1)*

#### Relevant entities' governing laws

97. The Barbados Companies Act provides that all companies are required to prepare and maintain adequate accounting records (section 172). This requirement applies irrespective of the type of company involved – onshore or offshore.<sup>34</sup>

98. Companies must also prepare financial statements (section 147). All public or private, the gross revenue or assets of which exceeds BBD 1 million must send to the Registrar the company's financial statements and the reports of the auditor (section 152). The Companies Regulations specify that the financial statements and the auditor's report must, unless otherwise stated, be prepared in accordance with standards approved by the Institute of Chartered Accountants of Barbados. Further, the financial statements must contain at least: a balance sheet, a statement of retained earnings, a statement of income and a statement of changes in financial position.<sup>35</sup>

99. No sanctions are applicable in case of breach of sections 172 or 147 of the Companies Act either against the company itself or its directors except, in the case where the company is required to send the financial statements and reports of the auditor to the Registrar. In this case, the Registrar may choose to strike a company from the register if it fails to send any document required to be filed under the Act (section 412).

100. Domestic and exempt SRLs are subject to accounting rules as well. They must prepare and maintain adequate accounting records (section 26 of SRL Act) and annual financial statements. The financial statements of the SRLs whose gross revenue or assets exceed BBD 1 million must be audited by a member of the Institute of Chartered Accountants of Barbados. Domestic SRLs must send their financial statements to the Registrar; the persistent non-filing can trigger the dissolution of the SRL (sections 25, 35 and 47). There is no sanction for the non-maintenance of records in conformity with section 26.

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34. Section 17 of the IBC Act: "Notwithstanding any enactment to the contrary, an international business company may keep in a foreign currency such books, records and financial statements as it is required to keep under the Companies Act and the Income Tax Act".

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

101. If the records of a company or SRL are not kept in Barbados, accounting records that are adequate to enable the directors or managers to ascertain on a quarterly basis the financial position of the entity must be maintained in Barbados. This requirement is important since the authorities should be able to gain access to records in a timely fashion, which is more difficult when they are not kept onshore.

102. Trustees of international non-charitable purpose trusts must keep in Barbados such documents as are necessary to show the true financial position of the trust (section 13 of the International Trust Act). The presence of a trustee in Barbados is important, since this facilitates the collection of accounting information. The non-compliance with this requirement and the making of a false statement are punishable to a fine of BBD 10 000 and possibly the prohibition to act as a trustee of an international trust for 2 years. This section applies only to non-charitable purpose trusts.

103. Charitable trusts must, pursuant to section 41(1) of the Charities Act, keep proper books of account, and at least prepare periodical statements of account consisting on each occasion of an income and expenditure account relating to a period of not more than 15 months, and a balance sheet relating to the end of that period. Statements of accounts are sent to the Registrar and open to public; the failure to send the accounts is punishable by a fine of BBD 1 000 and up to six months imprisonment. This requirement does not apply to exempt charities.

104. Registered unit trusts must submit to the Securities Commission their audited accounts. They must also deliver to the Commission, upon request, all accounts and records relating to the sale and redemption of shares of the mutual fund in Barbados to the Securities Commission, who can inspect the books without prior notice (sections 30-37 of the Mutual Funds Act). Failure to prepare accounts is punishable with a fine up to BBD 25 000 and up to two years imprisonment (section 54).

105. The Partnership Act and Limited Partnership Act mention the maintenance of “partnership’s books” without defining them (sections 26(10) and 5 respectively). It is uncertain whether partnership agreements, fixed assets records, long term liabilities and other documentation (*e.g.* letters, contracts, etc.) must be kept and for how long.

### Tax law

106. The Income Tax Act contains books and records keeping requirements that apply to companies, societies, partnerships and some trusts. Section 75 mandates that every person carrying on business or who may be required to pay a tax keeps records and books of accounts, including an annual inventory, in Barbados, in such form and containing such information

as will enable the tax payable under this Act to be determined. In addition, every person carrying out a business in which a service is provided must make a separate record of every transaction made in the course of that business. The Barbadian authorities add that the Income Tax Act requires all entities to keep accounts that enable the company's financial position to be determined with reasonable accuracy at any time. They further indicate that the Income Tax Department keeps copies of all financial statements of taxable companies. Under section 75(4) of the Act, the Commissioner has the authority to direct for how long certain records should be kept.

107. External companies are required to keep records in respect of income earned or from operations carried out in Barbados, unless the company is managed and controlled in Barbados, in which case records should be maintained of its world-wide income.

108. Failing to keep or retain records or books of account is an offence subject to summary conviction to a fine between BBD 10 and 10 000 (section 79).

109. The Barbadian authorities state that book keeping obligations apply to trusts within the ambit of the Income Tax Act: essentially, trusts created under Barbados law and trusts in respect of which a trustee is resident in Barbados. However, it is not clear that these obligations apply to trusts outside the scope of the Act. Specifically, these obligations would not seem to apply to offshore and some international trusts or to trusts administered in Barbados when they have no resident trustee.

### ***Underlying documentation (ToR A.2.2)***

110. The Companies Act, SRL Act, International Trust Act and Charity Act do not set any general requirement to maintain particular underlying documentation (e.g. invoices, contracts) in support of the accounting records.

111. The Income Tax Act on the contrary requires that every person required to keep records and books of account retains every account, voucher or other record necessary to verify such record or book of account (section 75(4)). However, some trusts are not subject to the record keeping requirements of the Income Tax Act.

### ***5-year retention standard (ToR A.2.3)***

112. Section 75 of the Income Tax Act on books and record keeping requirements does not set a retention period. However, pursuant to section 54 of the Income Tax Act, after an assessment has been made in respect of a person for an income year, the Commissioner may make a re-assessment of the amount of tax payable by that person in respect of that income year (a) at any time, where the person has made any misrepresentation or has failed to disclose any

material fact in making the return or in supplying information required to be supplied; or (b) within nine years in any other case. Persons filing tax returns must therefore keep such information at least for nine years, but preferably indefinitely, unless they obtain written permission from the Commissioner of Inland Revenue to destroy them after nine years (section 75(4)).

113. The Barbadian authorities indicate that no authorisation of destruction of records can be granted for partnership agreements, fixed assets records, long term liabilities and other documentation (e.g. letters, contracts, etc.), which must be kept indefinitely.

114. The Companies Act does not specify a retention period for accounting information.<sup>36</sup> Charitable trusts must keep books of account and statements of account relating for at least seven years (unless the Registrar permits the destruction of documents relating to a trust having ceased to exist). There is no minimum requirement for other trusts, but the Barbadian authorities indicate that when a bank carries on the business of a trust, it retains the information for five years in practice.

#### Determination and factors underlying recommendations

Phase 1 Determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
Barbados legislation does not ensure that reliable accounting records or underlying documentation are kept for all partnerships and trusts.	All relevant entities and arrangements should be required to maintain reliable accounting records including underlying documentation for a minimum of 5 years.

### A.3. Banking information

Banking information should be available for all account-holders.

116. Onshore commercial banks, trust companies, finance companies, merchant banks, and similar financial institutions are regulated under the Financial Institutions Act (FIA). Off-shore banks or international financial

36. However, when a company is dissolved, its accounts must be kept for six years (section 383).

services<sup>37</sup> are regulated under the International Financial Services Act (IFSA). The Central Bank of Barbados is their regulatory authority. Financial institutions are also subject to the anti-money laundering law.

### ***Record-keeping requirements (ToR A.3.1)***

117. Financial institutions licensed under the FIA and the IFSA are required as part of the Central Bank of Barbados licensing requirements to establish a principal office/place of business (section 6 IFSA) from which to operate. Pursuant to specific guidance on records management, IFSA licensees, when examined by the Central Bank pursuant to section 53 of the IFSA, must be capable of producing complete and accurate financial, management, and regulatory reports, allow review and monitoring of all transactions, and provide sufficient information to permit an external audit or an on-site examination at its principal office in Barbados. Primary records include: (i) information that substantiates the nature and the value of all assets, liabilities and off-balance sheet activities and transactions and ordinary and extraordinary income and expenses (e.g. client credit files and documentation, investment account files and statements, files on assets under management/trusts, etc.); (ii) accounting records necessary to produce summary trial balances of assets, liabilities, and off-balance sheet activities, and profit and loss statements.

118. It is unclear whether FIA licensees require the maintenance of all records pertaining to accounts as well as to related financial and transactional information. It is also unclear whether the IFSA guidance requires the maintenance of all records pertaining to accounts.

119. The MLFTA establishes customer identification obligations on financial institutions, as noted above under section A.1. The MLFTA also requires financial institutions to establish and maintain for a period of 5 years business transaction records of all business transactions exceeding BBD 10 000 or its equivalent in foreign currency (USD 5 000) (section 8). Business transaction records include: (a) the identification records of all the persons who are a party to the transaction; (b) a description of the transaction sufficient to identify its purpose and method of execution; (c) the details of any account used for the transaction, including bank, branch and sort code; and (d) the total value of that transaction (section 2).

120. A Bill currently in Parliament would amend the money laundering law and a new section 18(1) would state: “A financial institution shall establish and maintain (a) business transaction records of all business transactions” etc.

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

### Determination and factors underlying recommendations

<b>Phase 1 Determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Under the anti-money laundering law, transactional information is required to be maintained in Barbados banks only in relation with transactions above a certain threshold and the requirements to maintain records under banking legislation is unclear.	Barbados should ensure that banking information is available for all transactions, whatever their amount.



## B. Access to Information

### Overview

121. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Barbados legal and regulatory framework gives the authorities access powers that cover all relevant people and information, and whether rights and safeguards would be compatible with effective exchange of information.

122. Barbados has powers to obtain information, whether or not it is required to be kept, and has measures to compel the production of such information. Information gathering measures granted initially for domestic purposes apply also for the purpose of exchanging information in respect of ownership, identity and accounting of companies, societies and partnerships.

123. However, the report identifies a number of instances in which there are restrictions on, or uncertainties about, the tax authorities' powers to obtain information for exchange purposes. These include restrictions based on:

- the tax authorities interpretation of Barbados powers legislation in so far as it applies to obtaining information on the ultimate owners of companies;
- the existence of competing secrecy provisions contained in legislation concerning international trusts and unit trusts; and
- the narrow wording of the exchange of information article in three of Barbados older tax treaties.

124. Barbados should review its laws and their interpretation in these areas to remove any uncertainty about its powers to obtain and willingness to exchange information.

125. Finally, the level of sanctions for failing to provide the information upon request of the tax authorities should be closely reviewed in Phase 2.

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

126. Most DTCs indicate that the competent authority for the exchange of information (EOI) for tax purposes is the Minister of Finance or his authorised representative. As an exception, the DTC with the United Kingdom nom-

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).

inates the Inland Revenue Department. In practice, the Minister of Finance has nominated as his authorised representative a Deputy Commissioner of the Inland Revenue Department, who is responsible for receiving and responding to EOI requests for tax purposes.

127. As the Inland Revenue Department, headed by the Commissioner of Inland Revenue, is the government agency in charge of administering the Income Tax Act and collecting taxes, the same administrative authority is in charge of gathering information for domestic and international tax purposes. Barbados tax authorities use information gathering measures granted to them initially for domestic purposes (*i.e.* for “any purpose related to the administration or enforcement of the Income Tax Act”) to obtain information for exchange purposes. There is no legal provision in Barbados granting powers specifically to collect the information for EOI purposes.

128. The statutory powers of the Inland Revenue Department to obtain information are of a general nature. The same power applies irrespective of who information is to be obtained from (*e.g.* individual, company, bank, service providers such as attorney-at-law,<sup>38</sup> and other governmental agency) or the nature of the information sought (identity or accounting information). Barbados has powers to obtain information, whether or not it is required to be kept, with more invasive powers available when the information sought is required to be kept for tax purposes (see Compulsory Powers below).

129. Powers to obtain information are conferred by section 76 of the Income Tax Act. Section 76(2) gives the Commissioner the right to require from any person any information or additional information in the form of a return of income or a return of information or otherwise, and production of

38. Subject to attorney-client privilege (see Part C below).

any books, letters, accounts, invoices, statements or other documents within a reasonable period of time stipulated in the request. This power applies to all entities in Barbados, whether liable for taxes or not.

### ***Ownership and identity information (ToR B.1.1)***

130. Some ownership and identity information is publicly available with the Registrar, for instance information on the identity of partners of registered general partnerships. On the other hand, information filed with the Director of International Business by international trusts is not available to the public. In other cases information is available only with the relevant entity or third parties.

131. Irrespective of where information is held, section 76(2) gives access powers to the competent authority, including the power to require “any information” and production of “any” books, letters, accounts, invoices, statements or other documents, whether or not these documents are required to be kept pursuant to the Income Tax Act. In principle therefore, the Inland Revenue Department appears to have power to obtain information on the legal and ultimate ownership of all entities.

132. In addition, Barbados Inland Revenue Department information gathering powers apply to “any person”, including third parties such as banks, service providers, nominees and agents, as well as other administrative authorities. Therefore, as a general rule, information requests can be sent to “any person” and the Commissioner may require any person to attend before him and give evidence on oath, and to produce all books, letters, accounts, invoices, statements or other documents in his/her possession or control.

133. Notwithstanding the apparently broad scope of section 76, Barbados advises that in treaties where both parties have excluded from the treaty entities such as offshore entities, it will not exchange information in respect of those entities. Barbados considers that this is the correct interpretation of its treaties, although that view is not shared by all of its treaty partners. In addition, it has indicated that it is taking steps to amend the agreements concerned (see Section C).

134. In addition, there is competing secrecy legislation that may impede access to identity information in the case of international trusts and registered unit trusts (see Secrecy Provisions below) and it is not clear to the assessment team that Section 76 would override these secrecy requirements.

***Accounting records (ToR B.1.2)***

135. The conditions of access to ownership and identity information described above apply to the access to accounting records as well. Pursuant to the same provision, section 76 of the Income Tax Act, the competent authority may require “any information” and production of “any” books, letters, accounts, invoices, statements or other documents, whether or not these documents are required to be kept pursuant to the Income Tax Act. Thus, as a general rule, the Inland Revenue Department has power to obtain any accounting information as well as underlying documents kept in Barbados.

136. As already indicated however, there is competing secrecy legislation that may impede the Commissioner’s access in the case of international trusts and registered unit trusts (see Secrecy Provisions below). Moreover, Barbados is unable to obtain accounting information where it is requested by its treaty partners, in the case of offshore entities that are specifically excluded from treaty benefits.

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

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

138. Section 76 of the Income Tax Act indicates that the powers of the Commissioner relate to the “administration or enforcement of this Act”, *i.e.* Barbados Income Tax Act. Section 76 does not mention exchange of information but the Barbadian authorities have confirmed that the Commissioner can equally use his powers to obtain information for the purpose of responding to a specific request for exchange of information in tax matters, by virtue of section 83 of the Income Tax Act, which gives the force of law to Barbados DTCs. They indicate that these powers are routinely used for this purpose.

139. In the case of three DTCs, however, there appears to be limits on the use of Barbados domestic information gathering measures. The agreements with the United Kingdom, Switzerland and Venezuela restrict the exchange of information to information that is already “at the disposal” of the tax authorities. This wording introduces considerable uncertainty regarding the applicability of Barbados information gathering powers for the purposes of exchanging information with these treaty partners as it may be interpreted as restricting exchange of information to information that is already held by the tax authorities.

*Compulsory powers (ToR B.1.4)*

140. Section 76 of the Income Tax Act on information gathering powers confers the power to require information from a taxpayer and from third parties. It also gives the Inland Revenue Department the power to enter premises to audit and seize documents, and the power to question a person.

141. The Commissioner may enter into any premises where any business is carried on or anything is done in connection with any business or any books and records are or should be kept pursuant to the Income Tax Act and (i) audit and examine the books and records and any account, voucher... or other document which relates or may relate to the information that is or should be in the books and records; (ii) examine property described in an inventory; (iii) require the owner or manager of the business and any other person in the premises to give him reasonable assistance with this audit or examination (section 76(1)).

142. When it appears during the course of an audit or examination that there has been a violation of the Income Tax Act, the Commissioner can seize and take away any records, books accounts, vouchers, letter and other documents that may be relevant. More invasive powers of search and seizure with the help of the police force are restricted to cases when this may afford evidence of a violation of the Income Tax Act (section 76(4)). These powers are therefore available in cases of enforcement of tax laws but not in cases of mere administration of taxes. This condition entails that search and seizure to reply to an EOI request might depend on a dual criminality requirement / criminal tax nature of the request.

143. The Commissioner can also require any person to attend before him and require him/her to give evidence on oath and produce the above-mentioned documents in his/her possession or control, with a seven day notice (section 76(2)(b)).

144. If a person refuses to comply with a request for information, or fails to do anything required to be done under section 76 (including pursuant to an EOI request), he/she is punishable by a fine between BBD 10 and 10 000 on summary conviction. The same penalty is applicable against any person who hinders, molests, impedes or interferes with any person doing anything that is authorised under section 76, or against any person who destroys or alters records or books of accounts. Sanctions may also include imprisonment up to 6 months when a person wilfully and knowingly gives any false or deceptive information or makes false or deceptive entries in books of accounts (section 79 of the Income Tax Act).

***Secrecy provisions (ToR B.1.5)***

145. Barbados laws do not contain any secrecy or confidentiality provisions regarding domestic companies, external companies, non-profit companies, domestic societies and general and limited partnerships. However, there are a number of specific provisions in various laws relating to the secrecy or confidentiality of ownership, identity or accounting information. In order for information protected by these provisions to be exchanged, the relevant secrecy provisions must be overridden by the Income Tax Act, so that the Inland Revenue Department can access the information.

**Confidentiality rules – corporate secrecy**

146. The laws dedicated to IBCs, exempt SRLs, and exempt insurance companies do contain a confidentiality obligation as well as derogation to this obligation in respect of persons carrying out duties imposed by the Income Tax Act or otherwise acting in pursuance of international agreements to which Barbados is a party.<sup>39</sup> The Barbadian authorities indicate that, in general, the competent authority does not need to invoke special procedures, whether administrative, judicial or otherwise, to exercise its powers to access information.

147. Other laws contain secrecy provisions that do not provide for derogation for persons carrying out duties imposed by the Income Tax Act. In the case of international (including non-charitable purpose) trusts and registered unit trusts, the competent authority appears to need to obtain a court order to obtain information. Indeed, section 28 of the International Trust Act prevents trustees or other persons from disclosing to any other person the name of the settlor or any beneficiary, or any information relating to or forming part of the accounts of an international trust. Only the court may, in civil and criminal proceedings, allow the disclosure of such information. The law does not refer to access powers of the Commissioner of Inland Revenue or to international agreements such as DTCs or TIEAs. The same applies to registered unit trusts pursuant to the Mutual Funds Act.<sup>40</sup>

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39. Section 25 of the IBC Act, section 49 of the SRL Act and sections 35 and 18(1C) of the Exempt Insurance Companies Act.

40. Section 50 imposes a confidentiality duty on the Securities Commission and mutual funds administrators, unless the disclosure is “lawfully required or authorised by a court” (or permitted by any other Act).

## Bank secrecy

148. The Barbadian authorities indicate that its DTCs allow information held by banks or other financial institutions to be exchanged for either civil or criminal tax purposes in response to a specific request for such information. They have confirmed that they are able to access and exchange bank information on individuals and entities covered by the EOI provisions of a treaty, whether or not their bank account is held with an offshore bank that is excluded from the ambit of a treaty.

149. Barbados has no restrictions on access to bank information for EOI purposes. The duty of confidentiality of banks in respect of their clients derives from common law. This duty is overridden by section 76(7) of the Income Tax Act, which provides that section 76 described above “applies to banks..., their employees and offices as it applies to any other business, persons and premises”. Therefore bank secrecy does not appear to be an impediment to exchange of information for tax purposes in principle. Non compliance triggers the same sanctions as set in section 79 for any other person not answering an Inland Revenue Department information request (see Compulsory Powers above).

150. The Barbadian authorities indicate that in order to obtain bank information for treaty purposes any information requested via a DTC must be specific, otherwise there may be problems obtaining the information. They cite as an example the case where banks have persons with the same name at the same branch, so it would be necessary to identify the correct person. However, they indicate that an account number would also be specific enough. There is no list of details that a foreign authority should provide when requesting banking information. This issue will be reviewed during the Phase 2 of the review process.

### Determination and factors underlying recommendations

Phase 1 Determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
Trustees of international trusts and registered unit trusts are prohibited to disclose to any other person the name of the settlor or any beneficiary, or any information relating to or forming part of the accounts of an international trust.	The competent authority should have power to access confidential information covered by the International Trust Act and the Mutual Funds Act.

## B.2. Notification requirements and rights and safeguards

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

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

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

152. According to the Barbados authorities, Barbados domestic laws do not require the notification of the person who is the object of a request for information. They nonetheless indicate that in some cases where information is requested, the competent authority notifies the taxpayer but the taxpayer is not aware of the purpose for which the information is to be used; in addition taxpayers are not aware of the information that is passed to the requesting party.

153. The Barbadian authorities indicate that the taxpayer has no right of appeal of the decision to exchange information. The only right of appeal that the taxpayer has under the Income Tax Act is where it relates to his/her domestic tax affairs.

### **Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place.</b>



## C. Exchanging Information

### Overview

154. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Barbados, the legal authority to exchange information derives from bilateral or multilateral mechanisms (double tax conventions, tax information exchange agreements, regional mechanism) as well as from domestic law to a lesser extent. This section of the report examines whether Barbados has a network of information exchange that would allow it to achieve effective exchange of information in practice.

155. Section 83 of the Income Tax Act provides the power to establish agreements with foreign countries or territories with respect to the avoidance of double taxation, the prevention of fiscal evasion or other matters relating to the taxation of income. Barbados has EOI mechanisms in force with 30 jurisdictions, including with its main trading partners, and continues to negotiate new treaties. So far Barbados policy is to negotiate DTCs rather than TIEAs. While Barbados' existing treaty network covers most of its relevant partners, some of these arrangements do not meet the international standard.

156. A number of deficiencies have been identified in Barbados EOI provisions:

- Barbados does not exchange information on certain entities (such as IBCs) which are excluded from treaty benefits, with four jurisdictions, including two major trading partners.
- Barbados cannot exchange bank information with a quarter of its treaty partners, for a variety of reasons.
- the terms of the treaties in three cases may also be limited by a domestic tax interest requirement.

157. Barbados is therefore encouraged to renegotiate existing treaties, or enter into protocols or TIEAs with historical partners where the existing treaties do not meet the international standard. Barbados is also encouraged

to continue negotiating new agreements, including TIEAs, with additional partners. (see section C.2 below)

158. Other aspects of Barbados EOI provisions appear to meet the standard. There is no distinction drawn in Barbados DTCs between civil and criminal matters as far as taxation is concerned. There are no dual criminality provisions in its DTCs. There are no restrictions in the EOI provisions in Barbados DTCs that would prevent Barbados from providing information in a specific form, as long as this is consistent with its own administrative practices. (see section C.1 below)

159. All EOI articles in Barbados DTCs have confidentiality provisions and its domestic legislation also contains relevant confidentiality provisions. However, the sanction for the breach of confidentiality is very low. (see section C.3 below)

160. Most of Barbados DTCs ensure that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. (see section C.4 below)

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

## C.1. Exchange of information mechanisms

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

162. The Income Tax Act grants Barbados the power to establish with foreign countries or territories agreements “with respect to the avoidance of double taxation, the prevention of fiscal evasion or other matters relating to the taxation of income” (section 83).<sup>41</sup>

41. Section 83(1): Notwithstanding any other provisions of this Act, where an agreement has been made between Barbados and another country or territory with respect to the avoidance of double taxation, the prevention of fiscal evasion or other matters relating to the taxation of income, whether that agreement is made by the Government of Barbados or otherwise and by whatever name the agreement is known or designated, the agreement has the force of law in and for Barbados and is effective in accordance with its terms throughout and in relation to the duration of the agreement.

163. Treaties do not override laws, but have the same value. The Income Tax Act provides that in the event of inconsistency between itself and an agreement, the terms of the agreement prevail (to the extent of the inconsistency). Section 83(6) specifically allows exchange of information for tax purposes:

Notwithstanding any other provision of this Act, the Commissioner or a person authorised by the Commissioner may disclose to an authorised officer of the Government of a country or territory with which an agreement has been made of the type described in subsection (1) any information that the agreement requires or contemplates will be so disclosed.

164. On the other hand, DTCs do not prevail over other laws, which must contain an express provision allowing exchange of information.

165. Pursuant to the terms of its treaties, the Minister of Finance has nominated as authorised representative a Deputy Commissioner of the Inland Revenue Department, who is responsible for receiving and responding to EOI requests for tax purposes in practice, and for the follow-up of the DTCs in general.

166. The same provision allows the Minister of Finance to make regulations for the purpose of carrying on any of Barbados agreements.

167. Barbados has 17 bilateral DTCs in force with: Austria (2007),<sup>42</sup> Botswana (2005), Canada (1980), China (2000, 2009), Cuba (2000), Finland (1992), Malta (2002), Mauritius (2005), Mexico (2009), the Netherlands (2007), Norway (1993), Seychelles (2008), Sweden (1991), Switzerland (1963), United Kingdom (1970), United States (2004), Venezuela (2000). Barbados is also a party to the CARICOM agreement (1994), the other 10 members of which are Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.<sup>43</sup> (see Annex 2)

168. Barbados has signed DTCs with Ghana (2008), Luxembourg (2009) and Panama (2010). Barbados is also actively negotiating a number of new

42. The dates in parenthesis are the dates of entry into force of the treaties.

43. This agreement is a double tax convention between member states of the Caribbean Community (CARICOM); its full title is: Agreement among the Governments of the member states of the Caribbean Community for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Profits or Gains and Capital Gains and for the Encouragement of Regional Trade and Investment. Only the Bahamas, Haiti, Montserrat and Surinam, within the Caricom, have not signed the Caricom agreement.

treaties or protocols since 2009 (see section C.2 below). Barbados has signed one tax information exchange agreement (TIEA) with the United States.

169. All DTCs provide for the exchange of information on request. In addition, five DTCs provide for the possibility to consult with a view to “develop appropriate conditions, methods and techniques concerning the matters in respect of which exchanges of information shall be made, including where appropriate, exchanges of information regarding tax avoidance”.<sup>44</sup> Barbados has not indicated whether such consultations have taken place nor indicated what implications this stipulation has on its EOI practices.

### *Foreseeably relevant standard (ToR C.1.1)*

170. The international standard for exchange of information envisages exchange of information upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions”, that is to say speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in paragraph 1 of Article 26 of the OECD Model Tax Convention set out below:

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

171. Barbados agreements generally provide for the exchange of information that is “necessary” for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States. The protocol with China uses the term “relevant” and the treaty with Seychelles “necessary relevant”. The signed protocol to the DTC with the Netherlands and the signed DTCs with Luxembourg and Panama instead use the term “foreseeably relevant”.

172. The commentary to Article 26 of the OECD Model Tax Convention, paragraph 5, refers to the standard of “foreseeable relevance” and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing “foreseeably relevant” with “necessary” or “relevant”. In view of this recognition, all the agreements appear to meet the “foreseeably relevant” standard.

44. See the DTCs with Botswana, Norway, Sweden, the United States and Venezuela.

173. The protocol contained in the newly signed DTC with Panama states, among other things, that the assistance provided for in Article 25 (Exchange of Information) “does not include (i) measures aimed only at the simple collection of pieces of evidence, or (ii) when it is improbable that the requested information will be relevant for controlling or administering tax matters of a given taxpayer in a Contracting State (“fishing expeditions”).” It is unclear how these provisions would interact with the “foreseeably relevant” standard although Barbados indicates that they are not expected to interact negatively. In addition, the information required to be provided by the Protocol to demonstrate the foreseeable relevance of a request is unduly restrictive.

174. The Barbadian authorities have indicated that they have not developed a checklist of items that a requesting jurisdiction should provide in order to demonstrate that the information sought is foreseeably relevant. They rather make this determination on a case-by-case basis.

***In respect of all persons (ToR C.1.2)***

175. For exchange of information to be effective it is necessary that a jurisdiction’s obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that EOI mechanisms will provide for exchange of information in respect of all persons and the paragraph 1 of Article 26 of the OECD Model Tax Convention indicates that “The exchange of information is not restricted by Article 1”, which defines the personal scope of application of the Convention.<sup>45</sup>

176. Most of Barbados DTCs signed after 2000 contain this sentence, as well as DTCs with the United States and Norway.<sup>46</sup> The eight DTCs that do not contain the sentence indicating that EOI is not restricted by Article 1 are the treaties with Canada, Cuba, Finland, Ghana, Sweden, Switzerland, the United Kingdom and Venezuela. However, the EOI provision of seven of them applies to “carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention”. These treaties would not be limited to residents because all

45. Article 1 of DTCs defines the personal scope of the treaties and all indicate that the treaties apply to persons who are residents of one or both of the Contracting States.

46. The TIEA with the United States specifically indicates that information shall be exchanged without regard to whether the information relates to, or is held by, a resident or national of a Contracting State.

taxpayers, resident or not, are liable to the domestic taxes listed in Article 2 (e.g. domestic laws also apply taxes to the income of non-residents). Exchange of information in respect of all persons is thus possible under the terms of these treaties. In contrast the treaty with Switzerland provides for exchange of information only for the purposes of “carrying out the provisions of the present Convention in relation of the taxes which are the subject of the Convention”. The Barbadian authorities have indicated that they have commenced negotiations on 9 DTCs and protocols that will seek to remedy some of these deficiencies.

### Exclusion of specific entities

177. Of particular concern, however, are two treaties that completely exclude certain entities from their scope of application. The treaties with Canada<sup>47</sup> and the United Kingdom indicate that “This agreement shall not apply to companies entitled to any special tax benefit under the IBC Act or to companies entitled to any special tax benefit under any similar law enacted by Barbados in addition to or in place of that law”. Barbados has indicated that it would not exchange information concerning the excluded entities (IBCs, offshore banks, exempt insurance companies, exempt SRLs, international trusts, foreign sales corporations). Barbados would nonetheless exchange information if the requesting party can prove that the information is sought to prevent fiscal evasion (see C.1.5 and C.1.6 below).

178. The treaty with Sweden indicates that “A company entitled to any special tax benefit under the Exempt Insurance Act, the Off-shore Banking Act, the International Business Companies (Exemption from Taxes) Act, or any substantially similar law enacted in Barbados shall not be entitled to ‘any benefits of this Convention’”.<sup>48</sup> The treaty with the Netherlands contains similar wording.<sup>49</sup> The DTCs with Finland and Mexico indicate that these companies receive the benefits of the DTC other than the benefits of enumerated articles

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47. Barbados initialled a protocol to its 1980 DTC with Canada earlier this year which, Barbados advises, complies with the OECD standard and covers all entities, both domestic and international. It has not, however, supplied the text of this agreement.
  48. Barbados has agreed to renegotiate protocols to its DTCs with Sweden and Finland to reflect the international standard on transparency and exchange of information.
  49. The treaty with the Netherlands contains another particularity, in that the excluded companies are decided by mutual agreement of the competent authorities. As of June 2010, the entities excluded from the benefit of the treaty are the one wholly or partly exempt from tax by the following laws: International Financial Services Act, Exempt Insurance Act, International Business

(dividends, interest, royalties, etc.). The Barbadian authorities interpret these provisions as allowing for exchange of information on these entities. In any event, the exchange of information is not a “benefit” and therefore information on the exempted companies will be exchanged.

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

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

**Bank information**

180. Apart from the recent treaties with Mexico and Seychelles, and the protocols to the DTC with China and the United States, none of Barbados DTCs currently in force include the provision contained in paragraph 26(5) of the OECD Model Tax Convention, which states that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. The treaties signed with Luxembourg and Panama and the protocol signed with the Netherlands also contain this paragraph.<sup>50</sup>

181. However, the absence of this paragraph does not automatically create restrictions on exchange of bank information. The commentary on Article 26(5) indicates that whilst paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not

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Companies Act, Societies with Restricted Liabilities Act, International Trust Act, Foreign Sales Corporation Act.

50. Article 3(2) of the TIEA with the United States indicates “... If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take all relevant measures to provide the applicant State with the information requested. The competent authorities of the Contracting States have authority to obtain and provide information from financial institutions. ...”

authorise the exchange of such information. Barbados has access to bank information for tax purposes in its domestic law (see section B), and is able to exchange this type of information when requested, on a reciprocal basis, *i.e.* where there are no domestic impediments to exchange of bank information in the case of the requesting party. Among Barbados' treaty partners, Austria, Botswana,<sup>51</sup> Grenada and Switzerland are currently unable to access bank information for exchange purposes absent an explicit provision in the treaty. Similarly, the competent authorities of Belize, St. Lucia and St. Vincent and the Grenadines appear to have access to bank information in criminal tax matters only. Therefore, Barbados treaties with these jurisdictions are not considered to meet the international standard. For treaties with some other jurisdictions, the peer review process of these jurisdictions will assess whether their domestic law permits effective exchange of information, including with Barbados. These include Dominica and Guyana.

182. The Barbadian authorities have indicated that exchange of bank information on account holders is available even when the DTC excludes offshore banks from its scope. Therefore bank information is available for exchange regarding persons in respect of whom information is held by an offshore bank, under the DTCs with Canada and the United Kingdom. The same would apply with the DTCs with the Netherlands and Sweden. The Barbadian authorities confirmed that irrespective of whether information about the bank itself is exchanged, information on bank accounts and account holders would be exchanged.

#### Information at the disposal of tax authorities only

183. Three DTCs contain a restrictive EOI provision. Exchange of information covers only the information already at the disposal of the tax authorities in the case of Switzerland, United Kingdom and Venezuela. One interpretation of this provision would restrict EOI to information already held by the tax authorities. This would exclude exchange of information when the information is not part of the tax returns, such as information on ultimate owners of Barbadian entities. Similarly no exchange would be possible as regards information available to or in the control of persons within the territory of Barbados such as agents, nominees and service providers. The Barbados authorities consider that they would be able to access all information to respond to a request although it is unclear whether this has ever occurred in practice. This will be the subject of further study in Phase 2 of this review. Moreover, it indicated its willingness to amend these agreements through protocols.

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51. Barbados advises that a protocol which addresses this concern has been agreed with Botswana in 2010 and awaits signature and ratification.



*Absence of domestic tax interest (ToR C.1.4)*

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

185. The treaty with the United States provides that the requested party “shall endeavour to obtain the information to which the request relates in the same manner and to the same extent as if the tax of the [requesting] state were the tax of that other state and were being imposed by the other state”. The TIEA with the United States contains a similar provision.

186. The latest treaties of Barbados (with Seychelles, Mexico, and the protocol with China), the signed treaties with Ghana, Luxembourg and Panama and the signed protocol to the DTC with the Netherlands provide that the requested party “shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes”. However, the absence of a similar provision in other treaties does not create restrictions on exchange of information, provided there is no domestic tax interest impediment to exchange information in the case of either contracting party.

187. As previously indicated, three of Barbados DTCs (with Switzerland, United Kingdom and Venezuela) contain a very restrictive EOI provision which covers only the information already at the disposal of the tax authorities. One interpretation of this provision would restrict information exchange to information already held by the tax authorities and thus implies a domestic tax interest requirement. In addition, as concerns the treaty with Jamaica, the Jamaican tax authorities can obtain information only from taxpayers under examination or being assessed. [The same impediment applies in Trinidad and Tobago.] This requirement is tantamount to a domestic tax interest, which is an obstacle to the effective exchange of information.<sup>52</sup>

*Absence of dual criminality principles (ToR C.1.5)*

188. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction

52. See Peer Review Report – Phase 1: Legal and Regulatory Framework – Jamaica, 2010, and Trinidad and Tobago, 2011; published on the Global Forum website ([www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency)).

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

189. There are no dual criminality provisions in Barbados DTCs.

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

190. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”). The EOI articles in all double taxation conventions signed by Barbados may be used to obtain information to look into both civil and criminal tax matters.

191. The most recent agreements of Barbados contain the explicit wording of paragraph 1 of Article 26 of the OECD Model Tax Convention, which refers to information foreseeably relevant “for carrying out the provisions of this Convention or to the administration and enforcement of the domestic [tax] laws” (Mexico, Seychelles; TIEA with the United States;<sup>53</sup> Luxembourg and Panama (not in force)). Most other treaties refer more broadly to information necessary for carrying out the provisions of the Convention or of the domestic laws, without excluding either civil nor criminal matters.<sup>54</sup>

192. Barbados is also able to exchange information in serious criminal tax matters (i) linked to money laundering with all jurisdictions, pursuant to its anti-money laundering law; (ii) with Commonwealth jurisdictions, pursuant to its mutual legal assistance legislation; (iii) with jurisdictions with which a bilateral treaty with respect to mutual criminal assistance exists. Although these laws and treaties do not meet the standard, they are interesting instruments for jurisdictions that have not entered into an exchange of tax information mechanism with Barbados. They may also be used by jurisdictions with whom Barbados excluded the exchange of information related to specific entities under their DTC. These jurisdictions can still obtain information for criminal tax matters, if they can prove that the information is sought to prevent fiscal evasion.

53. The TIEA with the United States similarly provides that the competent authorities shall exchange information to administer and enforce the domestic laws of the Contracting States.

54. The provision of the treaty with the United Kingdom is slightly different although it would cover both civil and criminal matters. Information is exchanged when necessary for “carrying out the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes subject to this Convention”.

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

193. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

194. The arrangements with the United States expressly address this question. Article 2 of the DTC and article 3(3) of the TIEA indicate that “if specifically requested, the competent authority shall endeavour to provide information in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of the [requested] state with respect to its own taxes”.

195. There are no restrictions in Barbados other DTCs or laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. Barbados authorities specify that copies of documents exchanged to be used by a court are notarised. This issue is more relevant to Phase 2 of the review process.

***In force (ToR C.1.8)***

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

197. Barbados has bilateral DTCs in force with 27 jurisdictions as of 31 August 2010. Most of Barbados DTCs have entered into force less than a year after having been signed. DTCs with Ghana and Luxembourg, as well as the protocol with the Netherlands are not in force but Barbados appears to have taken all steps necessary to bring them into force expeditiously. Barbados has completed the ratification procedure for Ghana and the Netherlands arrangements and awaits its counter-parts to do the same.

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

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

199. This report raises a number of issues concerning the availability of certain information in Barbados and the Barbadian competent authority's capacity to use its powers to obtain the information needed to give effect to the terms of arrangements that it has entered into.

**Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>	
<b>The element is not in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Some DTCs limit exchange of information (i) to information for carrying out the provisions of the Convention, or (ii) by failing to provide for exchange of bank information.	Barbados should continue to revise its existing treaties in line with the international standard where they do not currently meet that standard.
In certain cases Barbados does not exchange information in respect of entities (IBCs, offshore banks, etc.), which are not covered by the treaty.	Barbados should remove any impediments to exchange of information on Barbadian entities that are not covered by its treaties.

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

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

200. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

201. Barbados has bilateral DTCs signed with 30 jurisdictions (27 of which are in force). The oldest treaty was signed with Switzerland in 1963 (*i.e.* before independence) and the most recent with Panama in 2010 (see Annex 2).

202. Barbados has arrangements with its main trading partners: CARICOM, in particular Trinidad and Tobago and to a lesser extent St. Lucia and Jamaica; the United States and the United Kingdom. Foreign direct investments in Barbados come mainly from Canada, followed by the US, the UK, Germany, Malaysia, and to a lesser extent Colombia, China and Korea.<sup>55</sup>

203. Unfortunately, the analysis of Barbados treaties made in section C.1 above shows that the DTCs with most of these partners are not up to the standard, and there are no EOI arrangements in place with others. Only the arrangements with the United States are up to the standard. The treaties with Trinidad and Tobago and Jamaica do not meet the standard because of domestic tax interests in these partner jurisdictions, whereas the treaties with Canada and the United Kingdom contain restrictive conditions.<sup>56</sup> Finally, Barbados has no DTC or TIEA with Germany, Malaysia, Colombia and Korea.

204. Barbados indicates that it is negotiating or discussing the possibility to open negotiations with a number of jurisdictions since 2005. In particular, Barbados indicates that it has recently either initialled or reached agreement on 9 protocols. However, discussions with other jurisdictions seem to have stalled, including with some G20 jurisdictions.

205. Barbados policy is to negotiate DTCs rather than tax information exchange agreements (TIEAs). It has also indicated that its requests to an existing partner to conclude a protocol to a DTC or its request to consider the negotiation of a DTC in response to a proposal to negotiate a TIEA does not indicate a lack of commitment to implement the standards. It has never refused to enter into a DTC when requested to do so. However, when invited to negotiate a TIEA, Barbados indicates its preference to enter into a DTC because this type of instrument will also enhance the investment framework of both jurisdictions and stimulate trade and investment. Barbados considers that a TIEA does not contribute to Barbados development agenda. A

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55. Central Bank of Barbados. The other jurisdiction with which Barbados signed a treaty for the protection of investments are Canada, China, Cuba, Ghana, Mauritius, Switzerland, the UK and Venezuela. Barbados has entered into DTCs with almost all jurisdictions with which it signed an investment treaty, except Germany and Italy.

56. Barbados's DTC with Austria, Botswana, Canada, Jamaica, the Netherlands, Sweden, Switzerland, the United Kingdom and Venezuela are not fully to the standard. The conformity to the standard of the DTCs with Belize, Grenada, Finland, St Lucia, and St Vincent and the Grenadines is also uncertain.

number of Global Forum members have indicated that they have approached Barbados for negotiations on a TIEA without success. Barbados indicates that it is still open to negotiations, but the priority of the authorities is given to the potential partners that agree to sign a DTC.

### Determination and factors underlying recommendations

Phase 1 Determination	
<b>The element is not in place.</b>	
Factors underlying recommendations	Recommendations
Some DTCs with major relevant partners do not meet the international standard (see C.1).	Barbados should revise its existing treaties in line with the international standard where they do not currently meet that standard.
Barbados has been approached by a number of jurisdictions to negotiate TIEAs but has not done so.	Barbados should enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

### C.3. Confidentiality

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

206. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

## Double Tax Conventions

207. All EOI articles in Barbados DTCs have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the treaties. While each of the articles might vary slightly in wording, these provisions generally take the following form, which contains all of the essential aspects of paragraph 2 of Article 26 of the Model Tax Convention:

Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.<sup>57</sup>

208. Many of the treaties also require the information exchanged to be treated as secret “in the same manner as information obtained under the domestic law of the Contracting States”. Barbados domestic legislation contains relevant confidentiality provisions under section 51 of the Income Tax Act. The confidentiality provisions of the DTC with Caricom partners, Canada, Switzerland and the United Kingdom do not refer to the confidentiality provision of the domestic laws of the Contracting States. In addition, the confidentiality provision of the DTC with Canada, Switzerland and the United Kingdom rely on the 1963 wording of the Model Tax Convention and therefore restrict disclosure of confidential information to persons concerned with the assessment and collection of taxes. The Caricom treaty also refers to the assessment or collection of taxes but explicitly covers courts and other administrative bodies.

## Barbados legislation

209. Barbados domestic legislation contains relevant confidentiality provisions under section 51 of the Income Tax Act. Section 51(1) of the Income Tax Act provides: “The Commissioner, the members of the Income Tax Appeal Board, and the officers and other persons employed to administer and enforce this Act and other laws relating to income tax shall (a) maintain and aid in

57. The treaty with Seychelles and the treaty signed with Luxembourg and the protocols to the treaties with the Netherlands and China use the current wording of the Model Tax Convention and therefore encompass persons performing oversight activities and refer to taxes even though not covered by the Convention.

maintaining the secrecy of all matters relating to this Act and other laws relating to income tax which come to their knowledge, and shall not communicate any such matters to any person except for the purpose of administering or enforcing this Act or any other law of Barbados; and (b) before they begin to perform any duty in relation to their office or employment, take and subscribe the prescribed oath of fidelity and secrecy.”

210. The confidentiality duty of tax officials is lifted in a limited number of situations. Section 51(2) provides that: “The Commission may communicate confidential information (a) to relevant authorities solely for the purpose of the administration or enforcement of this Act or any other laws relating to income tax, or for the purpose of legal proceedings under those enactments; (b) to the Director of Finance and Economic Affairs or the Permanent Secretary in the Ministry of Finance solely for the purpose of the formation, evaluation or implementation of fiscal policy; (c) to any person who is otherwise legally entitled to that information under this Act or any other enactment; or (d) to any person with the consent of the person to whom the confidential information relates.”<sup>58</sup> This provision is somewhat broader than the circumstances contemplated in some of Barbados treaties in that it allows disclosure to persons legally entitled to the information under the Income Tax Act or any other enactment. However, treaties have the force of law notwithstanding anything in any other enactment; their terms therefore prevail over other provisions of the Income Tax Act. Nevertheless, the discrepancy between the treatment of information obtained pursuant to a treaty and information otherwise obtained in the course of a tax official’s duties may cause difficulties in ensuring the appropriate level of confidentiality.

211. The DTC with the United States specifies that information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting State originally furnishing the information.

212. The duty of confidentiality is enforceable against tax officials. Section 79(3) of the Income Tax Act rules that “every person who has communicated or allowed to be communicated to a person not legally entitled thereto any information obtained under [the Income Tax] Act or a regulation or who has allowed any person not legally entitled to do so to inspect or have access to any written statement furnished under this Act or a regulation is guilty of an offence and is liable on summary conviction to a fine of BBD 100”. The Barbadian authorities add that any person convicted of a breach of confidentiality offence is liable to dismissal, pursuant to his/her contract of employment. The Phase 2 of the review process will address the issue of the adequacy of these sanctions.

58. Foreign tax officials are “persons otherwise legally entitled to that information under the Income Tax Act” pursuant to section 83(6) of the Income Tax Act.



***All other information exchanged (ToR C.3.2)***

213. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests. The Barbadian authorities indicate that under the existing rules, any information received from a requested jurisdiction cannot be communicated unless the other party agrees that the information be released.

**Determination and factors underlying recommendations**

Phase 1 Determination
The element is in place.

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

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

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

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

215. Most of Barbados DTCs ensure that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. The DTCs with Switzerland and the United Kingdom do not cover commercial secret and the DTC with the United Kingdom does not cover public policy. The DTC with Switzerland includes a reservation for the sovereignty and security in addition to public order. The reservation in the CARICOM treaty appears to apply when the disclosure of the information would cumulatively be contrary to public policy and disclose certain secrets such as trade secrets. As such the grounds for declining to provide information in response to a request appear to be narrower than those contemplated in the OECD Model Tax Convention.

216. An information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege (*i.e.* professional secret). Whereas, section 76(7) of the Income Tax Act (power to obtain information) provides that the section applies to attorney-at-laws, their employees and offices as it applies to any other

business, persons and premises, section 77 protects attorney-client privilege. Before a document is examined or seized, the attorney-at-law can claim that a named client of his/her has an attorney-client privilege in respect of that document. The document is then sent to the registrar of the court until the judge decides on whether the privilege is attached to the document or can be transmitted to the Commissioner. The Income Tax Act does not define attorney-client privilege in Barbados.

### Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

## C.5. Timeliness of responses to requests for information

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

### *Responses within 90 days (ToR C.5.1)*

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

218. Nothing in the Barbadian law seems to prevent the Barbadian authorities to respond to EOI requests within 90 days of receipt by providing the information requested or providing an update on the status of the request. The Income Tax Department has not issued either any instruction on the timeliness of the response to its staff. A review of the practical ability of Barbados tax authorities to respond to requests in a timely manner will be conducted in the course of its Phase 2 review.

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

219. Most DTCs indicate that the competent authority for the exchange of information for tax purposes is the Minister of Finance or his authorised representative. As an exception, the DTC with the United Kingdom nominates

the Inland Revenue Department (United Kingdom).<sup>59</sup> Barbados authorities indicate that an officer has been nominated by the Ministry of Finance as an authorised representative for the follow-up on the DTC and particularly the provision of exchange of information. A Deputy Commissioner of Inland Revenue Department is responsible for receiving and responding to EOI requests for tax purposes in practice.

220. A review of Barbados organisational process and resources will be conducted in the context of its Phase 2 review.

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

221. There are no aspects of Barbados laws that appear to impose additional restrictive conditions on exchange of information.

222. The treaty provision on exchange of information with Switzerland is restricted to information necessary for carrying out the provisions of the treaty. Therefore Barbados and Switzerland cannot exchange information that would be not necessary for carrying out the treaty but would be necessary to carrying out domestic tax laws.

223. In absence of provisions similar to Article 26(4) of Model Convention, the treaty with Jamaica does not meet the standard, due to the inability of Jamaican authorities to access information in all cases. The Jamaican authorities may not be able to respond to all the requests from the Barbadian authorities and on reciprocal basis Barbados may not honour all the requests.

**Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>

59. The treaty with Switzerland does not indicate expressly who the competent authority for Barbados is. This treaty is an extension of the Switzerland–UK treaty and the provisions relating to the UK are deemed to relate to Barbados. The competent authority for the UK was the Commissioners of Inland Revenue or their authorised representatives. Thus the competent authority for Barbados is Barbados’s Commissioner of Inland Revenue.



## Summary of Determinations and Factors Underlying Recommendations

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement</b>	Nominees that are not financial institutions for anti-money laundering purposes are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.
	Identity and ownership information may not be consistently available in respect of all express trusts, particularly as regards the beneficiaries and all trustees of offshore trusts. The requirements in the case of domestic trusts are unclear.	An obligation should be established for all trustees resident in Barbados to maintain information on the settlor, trustees and beneficiaries of their trusts.
	There are currently no penalties for non-compliance with obligations to maintain up to date share registers in the case of limited companies and SRLs.	In so far as penalties are not currently provided, effective sanctions should be introduced against companies and SRLs that fail to comply with requirements to maintain share registers.

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement</b>	Barbados legislation does not ensure that reliable accounting records or underlying documentation are kept for all partnerships and trusts.	All relevant entities and arrangements should be required to maintain reliable accounting records including underlying documentation for a minimum of 5 years.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement</b>	Under the anti-money laundering law, transactional information is required to be maintained in Barbados banks only in relation with transactions above a certain threshold and the requirements to maintain records under banking legislation is unclear.	Barbados should ensure that banking information is available for all transactions, whatever their amount.
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>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement</b>	Trustees of international trusts and registered unit trusts are prohibited to disclose to any other person the name of the settlor or any beneficiary, or any information relating to or forming part of the accounts of an international trust.	The competent authority should have power to access confidential information covered by the International Trust Act and the Mutual Funds Act.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
<b>The element is in place</b>		

Determinations	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1)		
<b>The element is not in place</b>	Some DTCs limit exchange of information (i) to information for carrying out the provisions of the Convention, or (ii) by failing to provide for exchange of bank information.	Barbados should continue to revise its existing treaties in line with the international standard where they do not currently meet that standard.
	In certain cases Barbados does not exchange information in respect of entities (IBCs, offshore banks, etc.), which are not covered by the treaty.	Barbados should remove any impediments to exchange of information on Barbadian entities that are not covered by its treaties.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2)		
<b>The element is not in place</b>	Some DTCs with major relevant partners do not meet the international standard (see C.1).	Barbados should revise its existing treaties in line with the international standard where they do not currently meet that standard.
	Barbados has been approached by a number of jurisdictions to negotiate TIEAs but has not done so.	Barbados should enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) with all other relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. (ToR C.3)		
<b>The element is in place</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. (ToR C.4)		
<b>The element is in place</b>		
The jurisdiction should provide information under its network of agreements in a timely manner. (ToR C.5)		

<b>Determinations</b>	<b>Factors underlying recommendations</b>	<b>Recommendations</b>
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		



## Annex 1: Jurisdiction’s Response to the Review Report\*

1. Barbados considers that a country’s preference for one vehicle over another vehicle, both of which have been deemed equally appropriate means to codify the international standard should not be dismissed out of hand especially when its arguments involve issues related to the attraction of investment and the continued viability of its development. However where there is disagreement between potential or existing treaty partners about which form of agreement – TIEA or DTA – is the more appropriate to reflect the international standard, in the spirit of the newly configured Global Forum and the to enhance cooperation and dialogue between and amongst its members, Barbados believes it unsatisfactory for a requesting country to refuse to discuss the possibility of the alternate vehicle.

2. The application of transparency principles between countries in pursuit of the global standards cannot start and end on the signing of a TIEA or a DTA. Rather the tax diplomacy that is a necessary precursor to any sustainable tax relationship between two or more countries must begin with a willingness to communicate and not preclude discussion merely because one partner offers an alternative approach to the codification of a standard that the product of its own tax diplomacy clearly evidences.

3. It is true that after the dialogue both countries may conclude that a DTA is not an appropriate means or the both countries may agree that the TIEA is not the preferred avenue. This conclusion cannot be arrived at, in the view of the government of Barbados, in a vacuum and with an unwillingness to communicate.

4. Barbados has demonstrated no refusal to apply the global standard – which it endorses – with any member of the global community. What Barbados has consistently maintained that a TIEA is not in the first instance in its view the preferred means of implementing the standard in the context of other factors vital to its continued economic viability. Obviously a country unable to continue to make its own way in the world as has been Barbados’

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

tradition is decidedly less able to support and reinforce the standards of transparency and exchange of information which it espouses.

5. Furthermore, Barbados maintains that the exploration of which vehicle as between two potential treaty partners is the most appropriate cannot be had unilaterally from the confines of one taxing authority's office to the exclusion of the other.

6. To this end, Barbados wishes to note that Mexico, Chile, Italy, Spain, Czech Republic and Belgium originally approached Barbados about TIEA talks. In light of Barbados' counter-proposal and request to engage in preliminary discussions to consider the merits of concluding a DTA rather than a TIEA agreement was reached that a DTA was not only appropriate to codify the international standard. Moreover, engaging in tax treaty talks would not only serve to improve relations between the two countries but reduce impediments to cross border trade and investment. As a small economy not responsible for but deeply affected by the economic recession the opportunity to secure its economic future is not one that can be disregarded even as it continues to meet its obligations in respect of the application and effective implementation of the global standard.

7. Unlike larger economies of the Global Forum, Barbados cannot approach the exercise of universal implementation of the standard either through rose-tinted spectacles or using 'blinkered' vision. Put differently the pursuit of the global standard for Barbados cannot be executed in isolation from other related issues which, alongside the multi-lateralization of the OECD-standard, remain the legitimate preoccupation of sovereign developing states.

8. The Barbados-Panama DTA, ratified by Barbados will be ratified by Panama in January 1, 2011

9. Protocols to the Barbados-Botswana, Barbados-Seychelles and the Barbados-Canada treaties have been agreed and are awaiting signature. These protocols reflect the OECD standard on transparency and information exchange for tax purposes.

10. A protocol to the Barbados-Netherlands DTA reflected the OECD standard is awaiting ratification by the Netherlands.

11. The Barbados-Luxembourg DTA is awaiting ratification by Luxembourg. This treaty reflects the OECD standard

12. Having proposed the negotiation of a Protocol to the Barbados-United Kingdom DTA in order to reflect the OECD standard Barbados is awaiting the confirmation of dates.

13. Barbados and the Nordic countries with whom it has existing DTAs expect to negotiate protocols to these agreements to reflect the global standard before the end of 2010.

14. Barbados has made significant progress towards the conclusion of a new DTA with Chile reflecting the OECD standard.

15. New treaties reflecting the global standard were initialled in 2008 with Italy, Vietnam and Italy and Barbados are awaiting the completion of these countries internal process for signature and ratification.

16. Agreement has been reached with Iceland to conclude DTA talks before the end of this year. The agreement will include the global standard.

17. Barbados has initialled new treaties this year which include the global standard with Belgium, Czech Republic and Portugal. The signature of the Barbados-Portugal DTA took place on October 22, 2010.

## Annex 2: List of All Exchange-of-Information Mechanisms in Force

### Double Taxation Conventions signed by Barbados as of 29 October 2010, in chronological order

	Jurisdiction	Type of arrangement	Signed	Ratified/in force
1	Switzerland	DTC	20 Aug 63	1963
2	United Kingdom	DTC	26 March 70	26 Nov 70
3	Canada	DTC	22 Jan 80	22 Dec 80
4	United States	DTC	31 Dec 84	28 Feb 84
		Protocol to DTC	14 July 04	20 Dec 04
		TIEA	03 Nov 84	03 Nov 84
5	Finland	DTC	15 June 89	20 Aug 92
6	Norway	DTC	15 Nov 90	3 July 91
7	Sweden	DTC	01 July 91	1 Dec 91
8	Antigua and Barbuda (Caricom)	Multilateral	6 July 94	7 July 95
9	Belize (Caricom)	Multilateral	7 July 95	30 Nov 94
10	Dominica (Caricom)	Multilateral	7 July 95	30 Nov 94
11	Grenada (Caricom)	Multilateral	7 July 95	30 Nov 94
12	Guyana (Caricom)	Multilateral	7 July 95	30 Nov 94
13	Jamaica (Caricom)	Multilateral	7 July 95	30 Nov 94
14	St. Kitts and Nevis (Caricom)	Multilateral	7 July 95	30 Nov 94
15	St. Lucia (Caricom)	Multilateral	7 July 95	30 Nov 94
16	St. Vincent and the Grenadines (Caricom)	Multilateral	7 July 95	30 Nov 94
17	Trinidad and Tobago (Caricom)	Multilateral	7 July 95	30 Nov 94

	<b>Jurisdiction</b>	<b>Type of arrangement</b>	<b>Signed</b>	<b>Ratified/in force</b>
18	Venezuela	DTC	11 Dec 98	Jan 01
19	Cuba	DTC	17 June 99	16 March 00
20	China (People's Rep.)	DTC	15 May 00	27 Oct 00
		Protocol to DTC	10 Feb 10	9 June 10
21	Malta	DTC	05 Dec 01	19 June 02
22	Mauritius	DTC	28 Sep 04	28 Jan 05
23	Botswana	DTC	23 Feb 05	12 Aug 05
24	Austria	DTC	27 Feb 06	1 April 07
25	Netherlands	DTC	28 Nov 06	12 July 07
		Protocol to DTC	27 Nov 09	Not ratified in the Netherlands
26	Seychelles	DTC	19 Oct 07	21 April 08
27	Mexico	DTC	07 April 08	26 Jan 09
28	Ghana	DTC	22 April 08	Not ratified in Ghana
29	Luxembourg	DTC	01 Dec 09	Not ratified
30	Panama	DTC	21 June 10	Not ratified

### **Annex 3: List of Laws, Regulations and Other Relevant Material**

- 1968 Income Tax Act and 1969 Income Tax Regulations
- Companies Act and Regulations
- Societies with Restricted Liability Act and Regulations
- Financial Institutions Act
- International Financial Services Act
- International Trusts Act
- International Business Companies Act and Regulations
- Exempt Insurance Act and Insurance Act
- Money Laundering and Financing of Terrorism (Prevention and Control) Act
- Limited Partnerships Act
- Partnership Act
- Registration of Business Names Act
- Trustees Act
- International Trusts Act
- Charities Act
- Property Act
- Securities Act
- Mutual Funds Act

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# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, PHASE 1: BARBADOS

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

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

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

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

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

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