

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

BARBADOS



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Barbados 2014

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

April 2014
(reflecting the legal and regulatory framework
as at February 2014)

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Please cite this publication as:

OECD (2014), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Barbados 2014: Phase 2: Implementation of the Standard in Practice*, OECD Publishing.
<http://dx.doi.org/10.1787/9789264209978-en>

ISBN 978-92-64-20995-4 (print)

ISBN 978-92-64-20997-8 (PDF)

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

ISSN 2219-4681 (print)

ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: www.oecd.org/publishing/corrigenda.

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Barbados as well as the practical implementation of that framework. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners. The assessment of effectiveness in practice has been performed in relation to a three year period (July 2009 through June 2012).

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 and tax information exchange agreements, the report identifies certain areas where improvements are needed to enable it to fully implement the international standards, in terms of both the legal and regulatory framework and the practice of exchange of information.

3. Obligations to ensure the availability of identity and ownership information for entities are in place although gaps were noted as regards the lack of penalties for maintaining share registers in the case of limited companies and societies with restricted liability. 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. These deficiencies have not resulted in difficulties when gathering information for exchange purposes, but it is still recommended that Barbados takes effective enforcement measures to ensure that all entities comply with their obligation to maintain ownership information. Legal obligations to ensure that banking information is available are also in place.

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 limit the Barbadian authority's access to information on some trusts. Barbados should review its laws and their interpretation to remove any uncertainties about its powers to obtain information.

5. As of February 2014, Barbados has EOI instruments with 42 partners, of which 29 meet the standard and another 6 will meet the standard once in force. Barbados has made progress in extending and updating its treaty network, in particular with the recent entry into force of a protocol that raises to the standards the relationship with Canada, Barbados' main EOI partner. However, this protocol, as well as a new DTC with the United Kingdom entered into force too late to have an impact on exchange of information in practice during the three years under review, and the impediments in the previous instruments prevented effective EOI in several cases.

6. Barbados is encouraged to continue updating its treaty network to ensure that its exchange of information arrangements that do not currently meet the international standard are quickly brought up to that standard. On the contrary, it appears that Barbados has not or not diligently enough answered invitations to sign tax information exchange agreements from some Global Forum members. Barbados should continue to enter into agreements for exchange of information, regardless of form, with all other relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

7. In practice, Barbados received 30 requests for information during the period from July 2009 to June 2012 from five partners, predominantly from Canada. Barbados answered 10% of the requests within 90 days, a cumulated 31% within 180 days and a cumulated 52% of the requests within a year, with other 30% answered within more than a year, whereas Barbados failed to answer 7% of the requests and a couple are still pending. The handling of the requests has been uneven, especially because of human resources constraints in 2011. The Barbadian authorities have taken corrective actions, and the situation has started to improve towards the end of the period under review. The Barbadian authorities are encouraged to continue in this direction, as the number of requests may increase in the future, with the continuous increase of treaty partners and improved quality of the EOI instruments. At all times the Barbadian competent authority preserved the confidentiality of the information exchanged.

8. Barbados has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Barbados legal

and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Barbados has been assigned the following ratings: Compliant for elements A3, B2, C3 and C4, Largely Compliant for elements A1, A2, B1 and C1, Partially Compliant for element C5 and non-compliant for element C2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Barbados is Partially compliant.

9. An intermediary follow-up report on the steps undertaken by Barbados to answer the recommendations made in this report should be provided to the PRG within six months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Barbados

10. 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 has been conducted in three stages: Phase 1, conducted in 2010, assessed Barbados’ legal and regulatory framework for transparency and the exchange of information, and was followed by a Supplementary assessment in 2011 of the improvements made by Barbados to this framework, while Phase 2, conducted in 2013, assesses the practical implementation of that framework over a three year period (July 2009 to June 2012), as well as any amendments made to the legal and regulatory framework since the Phase 1 and Supplementary review (a list of relevant laws and regulations is set out in Annex 3).

11. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 10 February 2014, other materials supplied by Barbados, and information supplied by partner jurisdictions. It reflects Barbados’ responses to the Phase 1 and Phase 2 questionnaires and supplementary questions, other materials supplied by Barbados during the Phase 2 on-site visit that took place on 16-18 April 2013 in Barbados, and information supplied by exchange of information partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance; Ministry of Industry, International Business, Commerce and Small Business Development; Inland Revenue Department; Solicitor General’s Chambers; Corporate Affairs and Intellectual Property Office; Financial Services Commission; Central Bank; Barbados Bar Association; Institute of Chartered Accountants of Barbados (see Annex 4).

12. 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 and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Barbados' practical application of each of the essential elements and a rating of either: (i) compliant, (ii) Largely Compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect Barbados' overall level of compliance with the standards.

13. The Phase 1, supplementary and Phase 2 assessments were conducted by an assessment team composed of two expert assessors and a representative of the Global Forum Secretariat: In 2010, these were 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. Merete Helle Hansen, from the Ministry of Taxation of Denmark joined the team for the Supplementary review. In 2013, the assessment team was comprised of Merete Helle Hansen, from the Ministry of Taxation of Denmark, Ram Mohan Singh, from the Income Tax Department of India, and Gwenaëlle Le Coustumer from the Global Forum Secretariat.

Overview of Barbados

14. Barbados is a Caribbean island of 277 000 inhabitants, situated northeast of Venezuela. The currency is the Barbadian dollar (BBD), with a fixed exchange rate of two Barbadian dollars for one US dollar. The GDP increased in 2011 by 1.6% compared with 2010, to an estimated BBD 8 626 million.

15. 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. Despite the impact of the continued global economic and financial downturn, the international business sector recorded in 2012 revenue of BBD 5.5 million from renewals, new licences, penalties, reinstatements and certified copies of entities regulated by the International Business Division. This figure

represents a 70% increase compared to 2011. The country enjoys one of the highest per capita income in the region. However, the public debt-to-GDP ratio rose to over 100% in 2009, largely because a sharp slowdown in tourism and international business and financial services led to a wide budget deficit. At December 2012, the stock of central government debt stood at an estimated BBD 9 521 million or 112.7% of GDP and the level of foreign debt stood at BBD 2 369 million or 26.7% of GDP.

16. The main trading partners of Barbados are other CARICOM¹ Single Market and Economy countries (in particular Trinidad and Tobago, and to a lesser extent St. Lucia and Jamaica), the United States and the United Kingdom. Barbados is a highly import dependent economy, with the import of goods accounting for approximately 37% of GDP during the past decade. Imports originate from the other CARICOM members (37.1%, predominantly Trinidad and Tobago), closely followed by the United States (30.8%), with a more distant United Kingdom (3.8%).² The export of goods has always been significantly smaller than that of imports. Exports in 2012 were directed predominantly to other CARICOM members (47%; mainly Trinidad and Tobago, St Lucia and Jamaica), followed by the United States (18.4%) and the United Kingdom (9.9%). Foreign direct investments in Barbados come mostly from Canada, the United States and the United Kingdom.

General information on Barbados' legal system

17. Barbados is an independent sovereign State within the Commonwealth since 1966. Queen Elizabeth II is the head of State and is represented locally by a Governor-General. In addition to the Commonwealth and the Caribbean Community (CARICOM), Barbados is a member of, amongst others, the Caribbean Court of Justice (CCJ) and the Caribbean Financial Action Task Force.

18. Barbados is a parliamentary democracy with a bicameral Parliament. 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 the discretion of the Governor-General. The 30 members of the Assembly are elected by direct popular vote to serve 5-year terms.

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: 2012 Economic and Social Report, www.economicaffairs.gov.bb; World Trade Organisation, 2008 Trade Policy Review of the Barbados; the US CIA World Factbook; and Central Bank of Barbados, Economic Review, December 2012.

19. The Barbados legal system is largely based on English common law. The Constitution of Barbados is the supreme law against which the validity of all other laws may be measured. Double tax conventions and tax information exchange agreements have the value of laws in Barbados.

20. The court system is composed of a network of Magistrate's Courts, which are courts of summary jurisdiction in civil, family and criminal matters; the Supreme Court, which consists of the High Court and the Court of Appeal. The Court of Appeal hears appeals from the decisions of the High Court; and the Caribbean Court of Justice, which is the island's final appellate court.

21. The High Court in particular hears appeals against the decisions of confirmation or re-assessment issued by the Commissioner of Inland Revenue or the Income Tax Appeal Board. The Commissioner and the taxpayers may appeal from the decision of the High Court to the Court of Appeal, and on a point of law to the Caribbean Court of Justice.

Barbados general tax system³

22. 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.⁴ The Barbadian tax system is a self-assessment system (section 52(5) of the Income Tax Act). Resident individuals and companies are required to calculate their taxable income and tax liability, and to pay the tax due at specified times. Pursuant to the Pay As You Earn System, employers are mandated to withhold tax at specified rates from their employees' salaries. For individuals, the 2009 income tax rates are 20% for taxable income up to BBD 24 200 and 35% above that amount. A threshold of BBD 25 000 exists for self-employed individuals, and individual employees (salaried workers), although employers still have to declare all salaries paid. From 1 August 2012, there was an increase in the tax threshold from BBD 24 200 to BBD 35 000 and a decrease in the lower rate of tax from 20% to 17.5%. Therefore, for income year 2012, the average rate of tax for individuals was 18.73% for taxable income up to BBD 28 700 and 35% above that amount. However, from income year 2013, the rates applicable are 17.5% for taxable income up to BBD 35 000 and 35% above that amount. No tax on capital gains is imposed in Barbados.

3. Barbados Inland Revenue Department, at www.barbados.gov.bb/ird/index.html.

4. 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.

23. For corporations, the place of management and control determines residence for tax purposes.⁵ External (foreign) companies carrying on business through a branch pay corporation tax on locally sourced income as well as a tax on branch profit remittances. Generally, corporation tax is paid on profits at the current rate of 25% of taxable income (section 43 of the Income Tax Act). However, based on specific criteria a lower rate of 15% applies to companies that operate as approved small businesses, and for companies engaged in manufacturing and the construction industry. There were no changes in the tax rates between 2009 and 2013. Corporate tax applies to companies and societies with restricted liability (SRLs).

24. In the offshore sector, locally incorporated international business companies and offshore banks pay corporation tax at rates between 0.5-2.5% in respect of the income year 2012. In respect of the income year 2013, and each subsequent income year the rates of tax range between 0.25% to 2.5%, and captive insurance companies are subject to tax at the rate of 8% of the first BBD 250 000 of taxable income and 0% on the balance. The rates of tax which apply to international business companies also apply to international trusts.

25. 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 17.5%-35%).

26. 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, to facilitate growth in the agricultural, manufacturing, hospitality, service and insurance sectors, and to enhance opportunities for increased exports and foreign currency earnings. Tax credits are offered 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.

27. 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. There are approximately 100 000 individual taxpayers in Barbados in 2013, of which 90% file their tax returns electronically. There are also approximately 6 000 corporate tax payers, of which approximately 75% file electronically. The balance file tax returns in paper format.

5. 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.

28. In the year 2012/2013, taxes on goods and services represented 50% of Barbados total revenue (with a general rate of 17.5%), taxes on income and profits almost 30%, taxes on property 6%, and taxes on international trade 9%.

Barbados and the standards

29. Barbados is committed to the OECD standards of transparency and exchange of information for tax purposes. As of February 2014, Barbados has exchange of information arrangements with 42 jurisdictions. It signed bilateral DTCs with Austria, Bahrain, Botswana, Canada, China, Cuba, the Czech Republic, Finland, Ghana, Iceland, Luxembourg, Malta, Mauritius, Mexico, the Netherlands, Norway, Panama, Portugal, Qatar, San Marino, Seychelles, Singapore, Spain, Sweden, Switzerland, the United Kingdom, the United States and Venezuela. Barbados is a party to the CARICOM Multilateral Tax Treaty, wherein the other 10 Parties are Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.⁶ Barbados has also signed tax information exchange agreements (TIEA) with Denmark, the Faroe Islands, Greenland, South Africa and the United States.

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

31. In practice Barbados received 30 requests for information during the period from June 2009 to July 2012 from five partners, predominantly from Canada. All requests were based on DTCs. Two partners indicated that Barbados is an important EOI partner to them as the jurisdiction is used for offshore activities, aggressive tax planning purposes and some suspected treaty shopping in relation to which EOI requests have been made. The situation of Canada as the first EOI partner of Barbados is explained by the existence of the DTC between the two jurisdictions since 1995 and the large amount of foreign direct investment from Canada to Barbados.

32. Although some delays and miscommunications have been noted, EOI partners today are globally satisfied with their relationship with Barbados, thanks to improvements noted at the end of the period under review. It is expected that the EOI activity of Barbados will grow with the continuous expansion of the Island's treaty network. The Barbadian Competent Authority explained that due to the low number of exporting companies in Barbados,

6. 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.

they have not sent any EOI requests to treaty partners during the period under review.

Overview of commercial laws, the financial sector and relevant professions

33. The main commercial law of Barbados 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 Business Companies Act, and international societies with restricted liability under the Societies with Restricted Liability Act (see Part A, section A.1.1). These offshore entities (called “international” entities) are supervised by the International Business Unit of the Ministry of Industry, International Business, Commerce and Small Business Development. Barbados also recognises trusts and international trusts (under the International Trusts Act). In the international business sector, the number of IBCs continued to grow, but more slowly than in the past. The number of licences issued in 2012 totalled 443 compared with 564 in 2011.

34. The 7 onshore commercial banks, 12 trust companies, finance companies, merchant banks, and similar financial institutions are regulated under the Financial Institutions Act (FIA). The 45 international banks and international financial services⁷ 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. In September 2013, total assets in the domestic banking sector were of BBD 13.9 billion and BBD 87.4 billion in the offshore banking sector.

35. 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. Since 2011, international service providers must be licensed pursuant to the International Corporate and Trust Service Providers Act. At present there is no formal registration, regulation or supervision of domestic service providers in Barbados.

36. The Financial Services Commission, established in April 2011, is responsible for supervising and regulating the non-banking financial services sector in Barbados. As an integrated regulatory body, the Commission has taken over the responsibilities and functions previously discharged by the

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

former Securities Commission, the Supervisor of Insurance and Pensions and the Co-operatives Department in so far as it relates to credit unions.

37. The insurance industry is governed by the Insurance Act and the Exempt Insurance Act, which are both administered by the Financial Services Commission since 2011. Barbados ranks in the top seven captive domiciles with Canada and the United States, with 91% of the Barbadian international insurance companies originating from these countries as there is a lot of investment from these two countries to Barbados. The 91 entities engaged in business related to securities and mutual funds are regulated by the Financial Services 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, the 35 credit unions are regulated by the FSC since 2011, under the Co-operatives Societies Act.

Recent developments

38. Barbados passed the Private Trust Companies Act 2012, which is not in force yet, as the necessary regulations have not been issued. This Act will introduce a new concept in Barbadian law: a company that would be the trustee of private trusts (mainly for the management of family assets). This structure allows the individuals founding the trust to control the administration of that trust as they can be the managers of the trust company acting as trustee.

39. Barbados also passed a Foundations Act in 2013 aimed at introducing in Barbadian law foundations for private purposes. This Act is not in force either, as the necessary regulations have not been issued.

40. The Barbadian authorities have advised that these new instruments will offer new tools of wealth management and aim at attracting civil law clients from Latin America, especially from countries with which Barbados has or is seeking to negotiate DTCs. (Barbados Economic and Social Report 2012)

41. No indication can be provided at this stage on the expected dates of enactment and entry into force of these proposed amendments.

42. The Barbadian authorities have advised that a Cabinet policy paper has been prepared to address a number of recommendations made in their Phase 1 report. These include the introduction of sanctions against companies or SRLs that do not appropriately maintain their register of shareholders or members; the identification of beneficial owners of SRLs, and the introduction of financial sanctions against companies that would not respect filing obligations. This Paper has now been approved by the Cabinet and

the recommendations made therein are at different stages. The Barbadian authorities expect the legislative work to be completed in 2014.

43. The Cabinet has also approved a paper recommending an amendment to the International Trusts Act to remove uncertainty as to whether the competent authority could access the confidential information required to be kept by international trusts. The same has also been done concerning the Mutual Funds Act.

Compliance with the Standards

A. Availability of Information

Overview

44. 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 authority⁸ may not be able to obtain and provide it when requested. This section of the report describes and assesses Barbados legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework in practice.

45. In respect of ownership and identity information, the obligations imposed by Barbados on companies and partnerships in the domestic and off-shore sectors are generally sufficient to identify their legal owners. Progress was made in 2011 on the availability of information related to nominees and trustees covered by a new anti-money laundering law. However, penalties to sanction non-compliance with obligations to maintain up-to-date share registers in the case of limited companies and SRLs are not available. In practice,

8. 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.

the enforcement of the obligations which exist to maintain ownership information in Barbados is performed efficiently enough to allow effective information exchange in respect of domestic companies. As for international entities, the Ministry in charge has not established any compliance department yet and the Barbados authorities should take effective enforcement measures to ensure that all entities comply with their requirements to maintain ownership information. Some information on international entities was exchanged in practice.

46. 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. In practice, enforcement of the accounting obligations is performed mainly by the tax authorities, and the requested information was provided to exchange of information partners most of the time.

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

48. In practice, Barbados has received 30 exchange of information requests during the period 1 July 2009 – 30 June 2012. Most of these covered elements of identity and ownership information. About half covered accounting information and one third banking information. Even if not all information has been exchanged, because of treaty restrictions or information gathering issues, it has not happened that the information was not available as required by Barbados' legal framework (see parts C and B for an analysis of these issues).

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.

49. The legal framework of Barbados provides for the possibility to establish different types of entities and arrangements that are relevant for the Global Forum's purposes. First, companies and SRLs can be created, and can be domestic entities or hold a licence to carry on international business activities and benefit from tax reductions or exemptions. General and limited partnerships can also be created. Being a common law jurisdiction, Barbados recognises trusts and allows for the creation of various types of trusts, including international trusts.

50. In practice, Barbados received exchange of information requests for identity and ownership information concerning companies, in particular on the shareholding, beneficial ownership and articles of incorporations of domestic, foreign and international business companies. It also received a few requests related to trusts (and no requests on partnerships).

Companies (ToR⁹ A.I.1)

51. The laws of Barbados provide for the creation of the following types of companies:¹⁰

- domestic companies – public and private companies with limited liability incorporated under the Companies Act and doing business in or from Barbados;
- non-profit companies – incorporated under the Companies Act, they operate for the benefit of a specified non-commercial purpose.¹¹ 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 (see below).

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

- international business companies (IBCs) – licensed under the International Business Companies Act to conduct international manufacturing or trade and commerce;
- International SRLs – organised and licensed under the Societies with Restricted Liability Act to transact business from Barbados with

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

10. 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. The 13 FSCs that remain licensed in 2013 no longer enjoy this tax benefit; they are involved in long-term leasing.

11. 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)

persons outside Barbados; the international SRL is designed primarily for use in international transactions and is prevented from doing business with residents of the Caribbean Community;

- 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.

53. In December 2012, there were 3 943 IBCs, 179 exempt insurance companies, 467 international SRLs registered in Barbados. As of 2012 45 off-shore banks, were licensed in Barbados.

Ownership and identity information held by the Barbadian authorities

54. In general, legal and beneficial ownership information on international entities is available with Barbadian regulatory authorities. Some information on the legal owners of domestic and international SRLs is also available with the Corporate Affairs and Intellectual Property Office (CAIPO, hereafter the Registrar), being the name and address of the persons who created the entity. Ownership information on domestic companies is not maintained by Barbadian authorities (but is otherwise maintained by the companies themselves).

Registration

55. All domestic and international companies and SRLs must be registered with the Registrar.

56. Domestic and international 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 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 and amendments to the articles must be notified to the Registrar as they occur.

57. The Barbadian authorities indicate that recommendations were made in 2010 for requiring the disclosure of ownership under the Companies Act.¹²

12. The CFATF First Follow-up Report on Barbados, dated 4 March 2009, indicates that the Registrar of Corporate Affairs and Intellectual Property Office is

The recommendations, which make provision for the maintenance of the records of a company with respect to its ownership structure, formed part of a Cabinet Paper which has now been approved by the Cabinet and referred to the Chief Parliamentary Council in the Office of the Attorney General with drafting instructions. The Barbadian authorities expect the legislative process to be completed in 2014.

58. The SRL Act requires all domestic and international SRLs to be organised under the act and registered with the Registrar (section 5). The articles of organisation 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). No information on the beneficial owners of a signatory that is another SRL or a company is required.

59. Changes to the above-mentioned information on SRLs must be notified to the Registrar, but the law does not specify any deadline within which this notification must be made (section 7).¹³ Additionally, the Barbadian authorities indicated that some amendments to the Companies Act are being drafted so that the obligations on the transfers of shares also apply to the transfer of quotas.¹⁴

60. “External” companies (or foreign companies, i.e. incorporated under the companies’ legislation of other jurisdictions) that wish to begin or carry on any undertaking in Barbados are subject to the same registration requirements as domestic companies 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. They must, in addition, file annual returns with the Registrar of Companies. External companies with an offshore licence have additional reporting requirements under other laws (see Regulated Entities section) as well as corporate service providers (see Anti-money laundering obligations).

61. “Overseas Societies” (i.e. foreign SRLs) may apply for a certificate of continuance in Barbados by providing the Registrar with the name of the

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.

13. A change of address of the Barbados registered office must be notified within 15 days (section 23).
14. The Companies Act reads: an instrument of transfer must be presented to the Registrar within 30 days of execution and until the instrument of transfer is so presented, the beneficial ownership of the shares does not pass to the transferee (section 179(4A)).

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).

62. In practice, when a new entity is registered, the Registrar assigns it a corporate number, to which additional digits will be added once the entity registers with the tax administration. This corporate number is used by the tax authorities and insurance companies for instance. An entity must register with both the Registrar and the tax authorities to start operating.

63. The online database of the Corporate Affairs Department (www.caipo.gov.bb) can be freely searched and is updated on a periodical basis. It can be used to confirm the registration of an entity and its date of registration. The rest of the registered information can be obtained upon request and after the payment of a fee.

Tax authorities

64. Every company or SRL in Barbados, except exempt insurance companies,¹⁵ 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”.¹⁶ The tax authorities indicate that the concept of “carry on business” is interpreted broadly and includes the management of assets. Companies that consider that they are not subject to the obligation to file a return must nonetheless file a nil return or send a letter explaining their position to the tax administration, unless they are exempted to do so by legislation (e.g. registered friendly or benevolent organisations, trusts administering exclusively funds of retirement plans or savings plans and life insurance companies).

15. Exempt insurance companies are not covered by section 52 but are nonetheless required to lodge financial statements with the Supervisor of Insurance.

16. 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.”

65. In general, no ownership information is provided to the tax administration at the time of registration or in the annual tax returns. When filing tax returns, corporate taxpayers 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.

66. Some information is gathered at some stages of the life of entities. For instance, transfers of shares in a private company are subject to taxes pursuant to section 4 of the Property Transfer Tax Act and the Stamp Duty Act. However, exemptions exist for transfers to non-resident persons and the information is not sufficient for the tax administration to reconstruct the full ownership structure of the entities.

67. As a result, the tax authorities of Barbados do not maintain any significant ownership information on Barbadian entities. In addition, with the introduction of an e-filing system in Barbados, the authorities no longer receive all underlying documents to the tax return, and in any event return the gathered documents to the entities at the end of an audit, and keep only the relevant extracts. The tax database would therefore rarely be a source of information for exchange of information requests targeting ownership information, and the competent authority has had to use its information gathering power in most of the cases when it was asked for ownership information. Since April 2012, the tax authority was granted direct access to the Registrar's electronic database.

68. Barbados also operates a tax identification number (TIN) system that may assist in locating an entity subject to an EOI request. As noted above, upon registration with the Registrar all entities receive an identification number which is finalised once the entity registers with the tax authorities to form the TIN.

Regulated/licenced entities

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

70. 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 Industry, International Business, Commerce and Small Business Development. The form (annexed to the IBC Regulations), requires applicants to provide: the name, residential

address, telephone, 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). 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. The Bar Association indicated that in practice it is not rare for lawyers to seek the identity of the ultimate individual shareholders, to avoid any risk of money laundering.

71. Changes should also be notified (pursuant to the annual renewal form). There are no sanctions applicable in case of failure to notify a change in ownership. The Barbadian authorities indicate that in practice, should they note a breach of the law, they would not renew the licence. However, under the period of review there were no cases where the Barbadian authorities have refused to renew a licence. Instead, the authorities confront the deficient entities, which either solve the issues raised or do not apply for a renewal of their licence. No statistics exist on the number of such confrontations.

72. In practice, IBCs are not necessarily identified as such, i.e. there is no obligation to include any identifier in the name of the licenced entities, even though some do insert “IBC” to their name. As a result, foreign tax authorities, when requesting information to the Barbadian authorities, do not necessarily know that the entity is a licenced IBC (which led to some authorities requesting information from Barbados even though IBCs are not covered by the EOI provision of the relevant DTC, see also section C.1.2 below).

73. International 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. International SRLs must renew their licence annually, and provide updated information as it arises during the course of the year for which the licence is current. In practice, the application and enforcement of the obligations of international SRLs are the same as for IBCs (see above).

74. The International Business Division of the Ministry has no comprehensive electronic database of IBCs or International SRLs but keeps all the received information in paper format. The competent authority must therefore systematically request the information from the Ministry and there is no possibility for sharing any electronic database, as is the case for the register of domestic companies.

75. 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. Transfers of shares in an international bank are not possible without the prior approval of the Minister of Finance (section 13 of the IFSA). The number of international banks is stable in Barbados at around 45 in the period and all have offices in Barbados. It is the supervisory department of the Central Bank of Barbados that is in charge of ensuring compliance of the international banks to their legal and regulatory obligations (see section A.1.6 on *Enforcement* below).

76. Exempt insurance companies are regulated by the Financial Services Commission which issues licences and monitors the compliance with the terms of the licences and other requirements. They have to nominate a resident representative and have a registered office pursuant to the Exempt Insurance Act, section 14. The Barbadian authorities confirmed that there is a requirement to know the legal owners of a company and the ultimate individual owners, as well as subsequent modifications and that the transfer of shares in exempt insurance companies must be reported to the FSC, as part of the licensing conditions in practice. In practice, exempt insurance companies do not operate from Barbados, and their presence is limited to a registered office and a resident representative (licensed individual or management company) which is charged to ensure that the regulatory requirements are met and to keep the required books and business records.

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

Information held by companies and other persons

78. By virtue of section 170 of the Companies Act, all companies, except external (i.e. foreign) companies,¹⁷ are required to maintain in Barbados a register of shareholders. Section 170(2) provides: “A company shall maintain a register of shareholders showing (a) the name and the latest known address of each shareholder; (b) a statement of the shares held by each shareholder; (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. No sanctions are applicable in case of non-compliance with section 170.

17. External companies must maintain a register of shareholders only when they are licensed to carry on offshore activities.

79. SRLs 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. No sanctions are applicable in case of non-compliance with section 24.

Anti-money laundering obligations and Nominee ownership in companies

80. Pursuant to the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (MLFTA), which entered into force on 11 November 2011, and the International Corporate and Trust Service Providers Act, 2011 which entered into force on 21 December 2011 (the ICTSPA) there are obligations for nominees and service providers to hold ownership information on domestic and international companies. However, the measures required to administer the ICTSPA have not been taken (see further part A.1.6).

81. Primarily, the MLFTA requires from nominees that they maintain information on the identity of their customers. The act includes in the category of non-financial business entities and professionals (NFBEP) "a corporate service provider ... engaged in acting or arranging for another to act as a nominee shareholder for another person" (Second Schedule, s. 4(e)). NFBEP are treated as financial institutions for all purposes of the Act (s. 4), and they must therefore establish and verify the true identity of their customers and keep record of the nature of evidence obtained (s. 15 and 18). The term "corporate service provider" is not defined in the law, but the Barbadian authorities confirm that all persons acting as nominees can be considered as corporate service providers and must therefore identify their customers. However, a non-professional nominee cannot, by definition, have "customers", and the application of the law to them remains uncertain. According to the Bar Association of Barbados, non-professional nominee shareholding is not part of the corporate practice in Barbados. Given the legal obligations concerning professional nominees and the fact that non-professional nominee shareholdings is not a part of the corporate practice in Barbados, and that no peer indicated that this might be an issue the gap is not considered to be material, but the effect of this on EOI in practice should be monitored by Barbados on an ongoing basis.

82. The new laws require maintaining ownership information not only from nominees themselves, but also from other corporate service providers, and in some instances the Ministry in charge of international business also maintains information on nominee ownership. First, financial institutions and NFBEP

must take reasonable measures to establish whether a customer is acting on behalf of another person, and if so, to establish the true identity of the person on whose behalf or for whose ultimate benefit the customer is acting, as well as the true identity of the beneficial owners of the non-individual customers (s. 15). The term “beneficial owner” is not defined in the law but is explained in the Central Bank’s revised Guidelines for its licensees.¹⁸ Section 7.2 on Corporate customers defines “beneficial owners” as the ultimate owners of the corporate structure, i.e. persons with a minimum of 10% shareholding in private companies.¹⁹ The Guidelines also specifically indicate that licensees should exercise care in conducting transactions with companies with nominee shareholders (section 7.4.7²⁰). A 2013 amendment to the Guidelines further specifies that when licensees establish a relationship with a professional service provider such as a lawyer or accountant acting as an intermediary, the licensee should obtain the identity of the beneficial owners of the client funds where it is not satisfied that the intermediary has in place due diligence procedures equivalent to the standard of the Guidelines. These measures should also assist in identifying persons on behalf of whom a legal owner may act as a nominee.

83. Second, the creation of international entities must be performed by licensed entities that also have the obligations to identify their clients and provide this information to the Ministry responsible for international business. The MLFTA has amended the International Business Companies Act and the Societies with Restricted Liability Act by introducing an express obligation for IBCs and international SRLs to make their applications for an international licence via a licensed international service provider. Correlatively, the ICTSPA provides for the licensing of international service providers acting for profit (ICTSPA, s. 6).²¹ A licensed international service provider is required to adhere to the code of conduct scheduled to the Act,

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18. Anti-Money Laundering/Combating Terrorist Financing Guideline for Financial Institutions Licensed under FIA and the IFSA revised at November 2011
 19. This information should extend to identifying those who ultimately own and control the company and should include anyone who is giving instructions to the licensee to act on behalf of the company. However, (i) If the company is publicly listed on a recognised stock exchange and not subject to effective control by a small group of individuals, identification on shareholders is not required; (ii) If the company is private, identity should be sought on persons with a minimum of 10% shareholding.
 20. “Where a licensee decides that companies with nominee shareholders represent an acceptable business risk, they should exercise care in conducting transactions. Licensees should ensure they can identify the beneficial owners of such companies and should immobilise bearer shares as a means of monitoring the identity of such companies ...”
 21. International services are defined as the licensing or registration of IBCs, FSCs, international SRLs, and international trusts (ICTSPA, s. 2).

which stipulates that he/she “shall know and be able to identify and verify the identity of each client and where his clients are companies or societies, the beneficial owners of the companies or societies” (ICTSPA, s. 21 and scheduled Code of Practice, s. 1). Further, licensed international service providers are required to maintain records on clients for at least five years from the end of their business relationship with the client (ICTSPA, s. 14).²² When applying for the annual renewal of the licence of its clients, the international service provider must attach to the form information on “any change(s) made to the information provided on the application form”. As for the new anti-money laundering law, the ICTSPA does not define the term “beneficial owners” but the Barbadian authorities assured that this would cover nominee ownership, i.e. it would require the disclosure of persons for whom nominees may be acting, in line with the above-mentioned Guidelines of the Central Bank.

84. In summary, (i) Barbadian nominees acting by way of business are corporate service providers that must identify their clients; (ii) Barbadian financial institutions and NFBEP must identify the ultimate individuals behind or beneficial owners of their clients, having a minimum of 10% shareholding (in private companies); and (iii) information on nominee ownership of IBCs and International SRLs is maintained by the Ministry and international service providers. It remains that there is no information available in Barbados on nominees who are not acting by way of business and hold less than 10% of the shares of a private company. This corresponds to a limited category of nominees and as a factual matter it is expected that they know the persons for whom they are acting as nominees. This limited gap has no impact on EOI in practice and is not considered as material.

85. In practice, the Central Bank indicates that its licensees apply a risk based approach in their CDD policies and procedures, and at minimum apply the Financial Action Task Force (FATF) recommendation. Some licensees check the identity of the beneficial owners of their clients up to the ultimate individual owners, especially in the international business sector. The Bar Association of Barbados also reported that many lawyers pay extra attention and make additional checks on their international licensee clients.

86. International service providers not otherwise supervised by the Central Bank are supervised by the Ministry in charge of international business. However, the Ministry has not yet established a compliance department and is considering delegating this task to the Financial Services Commission who have experience with compliance of licensees and could effectively ensure that the licensees of the Ministry are in compliance with the AML obligations.

22. This new law complements the existing obligations under the laws and regulations dedicated to IBCs and international SRLs, which already provide for the identification of the beneficial owners of the applicant entities.

Ownership information on companies exchanged in practice

87. In practice, Barbados received exchange of information requests for identity and ownership information concerning companies, in particular about shareholding information, beneficial ownership and articles of incorporations of domestic, foreign and international business companies from four EOI partners.

88. Although some requested ownership information was not provided, it was not because it was not available as required by Barbados' laws. Information on domestic, international and foreign companies was exchanged. On some occasions, information could not be exchanged because of limitations in the treaty, i.e. the exclusion of IBCs from the scope of the DTC between Barbados and Canada (see further discussion in C.1.2). In another case, the information gathering measures in Barbados have been the subject of an appeal that is still pending (see part B). On a couple of cases also information was provided that the suspected ownership or business activities did not exist in fact.

Bearer shares (ToR A.1.2)

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

Partnerships (ToR A.1.3)

90. 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.

91. 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.

92. Barbados has not received any EOI requests related to a general or limited partnership over the three years under review. The Barbadian Authorities explained that this may be due to the fact that general partnerships are usually small business companies carrying on business in Barbados and that there are only 23 limited partnerships.

Ownership and identity information held by the Barbadian authorities

Registration of partnerships

93. The Registrar maintains a register of limited partnerships pursuant to section 4 of the Limited Partnerships Act.²³ 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 principal 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).

94. 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 partner.

95. In practice, 23 limited partnerships were registered in Barbados as at April 2013. The Registrar noted no deficiencies in the registration or change forms received and no sanction has ever been applied in this respect. The register exists in paper format only and can be consulted by the public against a fee.

96. Should an EOI request be received concerning a limited partnership, the competent authority would have to ask the Registrar or the partnership to provide the requested ownership information.

97. 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 firms²⁴ (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

23. 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).

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

particulars. The law allows for extension to this deadline without setting an ultimate period (section 8). The registration system does not permit isolating the number of partnerships among the 37 600 individuals and partnerships registered.

98. There are no specific rules regarding the retention period of the information on legal ownership in the Registration of Business Names Act and the Limited Partnerships Act. However the Registrar indicates that information is kept indefinitely.

Tax authorities

99. 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.

100. 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 an information return, pursuant to section 52(3) of the Income Tax Act, indicating the assessable income of the partnership together with a statement of the names and addresses of all the partners in that income year and a statement of the share of the assessable income of the partnership to which each partner is entitled.²⁵ 404 general and limited partnership are thus registered with the tax authorities in Barbados. There is no obligation to disclose the name of the beneficial owners of a corporate partner in the return. A fine can be applied in case of non-compliance (section 67 of the Income Tax Act). The Barbadian authorities report no case of breach of law, and therefore no sanctions have been pronounced against partnerships that have not fulfilled their tax obligations.

25. Pursuant to section 52(3) of the Income Tax Act “Where a business is carried on by two 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”.

Information held by the partnership and other persons

101. 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.

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

103. In conclusion ownership information on limited partnerships and general partnerships is available in Barbados with public authorities and the application and enforcement of these obligations appear to be adequate in practice. Barbados has not received any EOI requests related to a general or limited partnership over the three years under review.

Trusts (ToR A.1.4)

104. Barbados laws provide for the creation of various 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), except if the beneficiaries are IBCs, exempt insurance companies, international banks or charities;
 - (iii) The trust deed must state that the International Trust Act of Barbados applies;
 - (iv) The trust property does not include any immovable property situated in Barbados or an interest in any property so situated; and

- (v) At least one of the trustees is resident in Barbados (section 2(1)(d)).
- an offshore trust may be created by a trust deed wherein the trustee must be 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 (section 96)), foreign personal property or foreign movable property, or foreign real property or foreign immovable property. The Central Bank considers that these trusts are no longer created in practice, being supplanted by international trusts but the number of such trusts is unknown;
 - 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 but none are registered in 2013.
 - the Charities Act²⁶ 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.

105. Barbados has received two exchange of information requests related to Barbados domestic and international trusts during the three years under review.

Information kept by administrative authorities

Registration of trusts

106. There is no registration requirement for domestic trusts or offshore trusts.

107. 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

26. 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.

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. 51 international trusts were registered for the year 2013.

108. Unit trusts²⁷ 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 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.

109. Most charities are required to be registered with the Registrar pursuant to section 5 of the Charities Act.²⁸ 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 and as of 30 November 2013, 1 091 charities were registered, although the register does not allow a breakdown to determine how many are trusts.

Taxation

110. The tax authorities hold identity information in relation to domestic and international trusts that are taxpayers. In April 2013, there are 310 trusts registered as taxpayers in Barbados, but the statistics of the Inland Revenue Department do not permit to know which types of trusts have registered. International trusts and offshore trusts which have no Barbadian-source income and for which no benefit

27. Registered unit trusts are mutual funds (which can also be a company, a society or a partnership).

28. 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.

from foreign-source income is derived in Barbados (the settlor and beneficiaries being non-residents) are not taxable in Barbados and do not file any tax returns. However, some questions were raised as to the tax registration of trustees of international and offshore trusts in Barbados. The Inland Revenue Department has advised that pursuant to the International Trust Act, Cap 245 at least one of the trustees must be resident in Barbados and that trustee who is resident and conducting business in Barbados must register the trust as a taxpayer. The Inland Revenue Department has also advised of its intention to issue a press release reminding service providers of their tax obligations to register and file tax Returns for the international trusts and offshore trusts that they manage.

111. 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), but only if it is taxable in Barbados. 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.²⁹ 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). As at December 2013 there were 347 International Trusts registered with the Ministry of Industry, International Business, Commerce and Small Business Development.

112. 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).

113. 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).

Information kept by the trustees and service providers

114. Resident trustees of domestic trusts do not appear to have a duty to maintain identity information under the Trustees Act. Domestic trusts are also governed by common law. According to the Barbadian authorities, trustees

29. 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/her 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.

of domestic trusts have an obligation to maintain identity information both on beneficiaries and the settlor. 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. No other duties existed over trustees in Barbados before the entry into force of the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (MLFTA).

115. 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 (International Trust Act, sections 5 and 27). The same applies with respect to offshore trusts.

116. Pursuant to the MLFTA, trustees of international trusts or offshore trusts and licensed trust companies³⁰ are now covered by the definition of financial institutions (MLFTA, s. 2), whereas the other trustees (i.e. individual trustees of domestic and foreign trusts) are now covered by the definition of trust service providers, and are therefore qualified as non-financial business entities and professionals (NFBEP, s. 2 and Second Schedule).

117. The trustees subject to the MLFTA must take reasonable measures to establish and verify the true identity of a customer and, where this customer is not an individual, its beneficial owners (anti-money laundering law, s. 15). The law does not define the concept of "beneficial owner", but the Central Bank's revised Guidelines contain a specific provision dedicated to trusts. Section 7.4.1 expressly requires from licensed trustees and licensees otherwise providing services to trusts that at a minimum they obtain the name and nature of the trust, its country of establishment, and "the identity of the trustee(s), settlor(s), protector(s)/controller(s) or similar person holding power to appoint or remove the trustee and where possible the names or classes of beneficiaries; the identity of person(s) with powers to add beneficiaries, where applicable; and the identity of the person providing the funds, if not the ultimate settlor". The Central Bank authorities add that the obligation to identify the beneficial owner of a customer extends to the beneficiaries in case of trusts.

118. These Guidelines note that "it may be impractical to obtain all of the above at the onset of the relationship, e.g. unborn beneficiaries". However, it is specified that "in all circumstances, the licensee should verify beneficiaries before the first distribution of assets". Furthermore, the manner in which

30. "Financial institutions" include trustees of international trusts, as well as persons who provide an international financial service within the meaning of the International Financial Services Act. In turn, this act includes in the definition of international financial services the international banking business of accepting in trust from persons resident outside Barbados or from prescribed persons some assets as defined in section 4.

a trustee is expected to fulfil the obligations to identify the beneficiaries and other parties is by obtaining a copy of the creating instrument and other amending or supplementing instruments.

119. The Guidelines apply to financial institutions, which include trustees of international trusts and offshore trusts as well as any person who invests and administers or manages funds or money on behalf of other persons or who provides any other service of a financial nature. They do not apply to trustees which are not financial institutions; however, professional trustees that are not financial institutions (for the most part trustees of domestic trusts) are nonetheless NFBEPs subject to the overriding AML requirement to identify the “beneficial owners” of their clients. It can be expected that in fulfilling their obligations under AML law they would consult relevant guidance applicable in other sectors.

120. In addition, international trust service providers, in the same manner as international companies, are now more strictly regulated and have the obligation to maintain identity information on international trusts (see above the section on money laundering). The ICTSPA provides for the licensing of a person in Barbados providing international services (ICTSPA, s. 6), which includes a service related to the registration of an international trust (ICTSPA, s. 2). Licensed service providers are required to adhere to a code of conduct which stipulates that they “shall know and be able to identify and verify the identity of each client” (ICTSPA, s. 21 and Code of Practice, schedule 1). Further, licensed service providers are required to maintain records on clients for at least 5 years from the end of their business relationship with the client (ICTSPA, s. 14).

121. All professional Barbadian trustees of domestic, international, offshore and foreign trusts have now a clear obligation to identify the settlors, trustees, and beneficiaries of these trusts.

122. Non-professional trustees are not covered by the AML obligations, since non-professionals do not have “customers”. They remain subject to the common law fiduciary duties and tax duties to identify the settlor and beneficiaries, as noted above. This gap has not had any impact on EOI in practice during the three years under review but the effect of this gap on EOI in practice should be monitored by Barbados on an ongoing basis.

Exchange of information about trusts in practice

123. Between July 2009 and June 2012, Barbados received two requests concerning trusts. One concerned a domestic trust and the other concerned two international trusts and both have been answered. The information provided included foundation documents of the trust, and identity of beneficiaries and trustees of international trusts and full information was exchanged in 5 months and 8 months, respectively.

Foundations (ToR A.1.5)

124. The concept of foundation does not exist in Barbadian law. However, the Barbadian authorities are planning to introduce the concept of foundations for private purposes. A Bill was passed by Parliament in 2013 but has not yet been proclaimed, which prevents it from entering into force. Some regulations must first be passed, and the Barbadian authorities are invited to report progress in their regular follow-up report.

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

125. 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 punished in practice. Questions linked to access are dealt with in Part B.

126. 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).

Registration

127. Two types of provisions aim at ensuring the compliance of the entities with the laws. First, sanctions against persons providing misleading information in legally required documents, and second, sanctions against persons that do not perform the required registrations.

128. The laws on relevant Barbados entities 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, imprisonment or both, the seriousness of which vary 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;³¹

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

- 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 international SRLs, IBCs and international trusts: the sanctions rise up to BBD 25 000 fine and 12 months imprisonment.³² 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).

129. Where an entity is required by the Companies Act or SRL Act to send any document to the Registrar and fails to do so, the Registrar may choose to strike it from the Register after having sent a notification of failure (section 412 of the Companies Act, section 62 of the SRL Act). 130.

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)).

130. The Registration of Business Names Act was enacted in 1940 and was last amended in 1988, more than 20 years ago. 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 firm. The law also provides for the non-enforceability of the rights of the 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).

Enforcement actions

131. The applicable laws do not provide the Registrar with the power to check the declarations made by the persons who register companies, to ascertain the accuracy of the information provided, notably as concerns

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

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.

132. In practice, the Registrar checks whether the required documents are provided but does not consider itself as having an enforcement role on the accuracy of the information provided, and relies on the tax administration and on shareholders themselves to make the appropriate checks, and to take appropriate enforcement actions or seek civil remedies. The Registrar can nonetheless 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, or that persons concerned with the affairs of a company have acted fraudulently, *inter alia* (section 420 of the Companies Act). No such investigations were performed during the three years under review. No entities have been struck off during the three years under review.

133. In contrast, the Registrar indicates that it does control whether entities file the due returns in a timely manner, and if not, refuses to issue “certificates of good standing”. The Registrar explained that this certificate, issued pursuant to section 409 of the Companies Act has over time grown to become an extremely critical document for companies conducting business in and outside the jurisdiction of Barbados as it is generally accepted as *prima facie* proof that the company in question is in good standing with its registration duties. In circumstances where these companies are engaged in loan facility arrangements, finalising contracts, tendering for contracts or other business ventures, the facilitating financial institutions and/or other entities involved in such business transactions, require that the companies furnish them with a Registrar’s Certificate. In the event that the corporate records of a company are not in compliance with the Companies Act, the Registrar does not issue a Registrar’s Certificate. No records are kept of the number of refusals to issue good standing certificates.

134. The Registrar does not apply financial sanctions in practice against partnerships or entities registered under the Business Names Act for failure to report changes of partners or failure of registration, and largely relies on the Commissioner of Inland Revenue to enforce the similar tax obligations of these entities.

Tax obligations

135. 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).

136. In practice, financial penalties are applied for failure to file a tax return by the due date. The persistent failures to file the returns are taken to Court for imposition of fines. There were financial penalties applied by the Tax authorities for failure to file a tax return by the due date on around 15 000 taxpayers in 2009 and 2010, and around 6 000 taxpayers in 2011 and 2012, with comparable levels of penalties applied despite the sharp decrease of cases. There were no taxpayers taken to court in 2009 and 2012 for failing to file returns. However, there were 26 in 2010 and 18 in 2011.

Licensing

137. As noted above under point A.1.1, there are no sanctions applicable in case of failure to notify a change in the ownership structure of an IBC or international SRL. However, the Barbadian authorities indicate that in practice, should they note a breach of the law, they would not renew the licence. No licence has been revoked in the period under review. The Ministry checks that the required documents are provided but does not check their correctness. In practice the authorities confront the deficient entities, which either solve the issues raised or do not apply for a renewal of their licence. No statistics exist on the number of such confrontations.

138. The supervisory department of the Central Bank ensures that international banks comply with their legal and regulatory obligations. This includes an in-depth review of all new licensees not only in terms of ownership structure but also in terms of AML policies and procedures. The supervisory department also performs a desk review on an ongoing basis of the licensees, on the basis of the monthly, quarterly and annual reports received. Licensees are also subject to onsite examinations by the Central Bank. During the period July 2009 through June 2012, 86 onsite inspections were carried out. Some deficiencies observed relate to the application of risk profiling for AML purposes and some outdated policies, for which corrective measures are taken by the licensees.

Other corporate obligations

139. There is no administrative or criminal penalty for failure to maintain a register of shareholders (or of members in the case of a SRL). In practice the tax administration checks records (when auditing companies), and shareholders themselves may ensure that information is kept and seek civil remedy where the dividends are not properly distributed because the register is not properly maintained.

140. The SRL Act gives the Minister of Finance powers to investigate the affairs of domestic and exempt societies, including power to access all documents of a society. Sanctions are available in case of non-cooperation (section 63). In practice, no such investigations appear to take place.

141. It does not appear that there is any proper enforcement of the obligation to maintain a register of shareholders or members in Barbados. Whereas in the international business sector this weakness is compensated by the obligation to provide and update ownership information with the regulatory authority and by the CDD obligations of service providers, there is no other source of ownership information as concerns domestic companies. This is therefore a gap and there are plans to correct this situation, even though the gap does not appear to have had any impact on EOI so far.

142. 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. In practice there has been no court case involving charitable trusts in Barbados.

143. Offshore trusts are regulated under the IFSA. Pursuant to section 61, “a director, officer, employee or agent of a licensee, who, with intent to deceive makes any false or misleading statement or entry in a book, account, record, report or statement of the licensee, or omits a statement or entry that should be made therein is guilty of an offence and is liable on conviction on indictment to a fine of BBD 25 000 or imprisonment for 5 years, or to both”.

Money laundering

144. The International Corporate and Trust Service Providers Act (ICTSPA) establishes sanctions, including for non-compliance with the requirements to maintain ownership information on international entities. These measures include issuing private warning; an order to take remedial measures; a pecuniary penalty of up to BBD 5 000 (USD 2 500) or higher in the case of repeated infractions; or to suspend or revoke the service provider’s licence. In practice,

no sanctions have been applied in relation to the ICTSPA, as the regulations required to administer the act have not been made. Barbados should pass appropriate regulations and measures to ensure that the obligations to maintain information on nominee ownership is enforced.

145. Persons subject to the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 that would not maintain business transaction records are guilty of an offence and liable on conviction on indictment to a fine of BBD 100 000 (USD 50 000; s. 18). The obligation to maintain business transaction records includes an obligation to maintain evidence of the identity of a person as required under the provisions on the identification of customers. No offence have been identified during the period under review.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
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.
Phase 2 Rating	
Largely compliant	Recommendations
Factors underlying recommendations	
The Ministry in charge of International Business does not have a system of monitoring the compliance with ownership and identity information keeping requirements in respect of all international entities and penalties for non-compliance are unenforced in practice. Whilst the international entities are regulated the Ministry has failed to take practical compliance measures to supervise and monitor the obligations placed on International entities.	Effective enforcement measures should be taken to ensure that all entities comply with their requirements to maintain ownership information.

A.2. Accounting records

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

146. 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

147. 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.³³

148. Companies must also prepare financial statements (section 147). All domestic public companies or private companies, the gross revenue or assets of which exceeds a certain threshold, must send to the Registrar the company’s financial statements and the reports of the auditor (section 152). This threshold was of BBD 1 million until 2011; it was raised to BBD 2 million in 2012 and will be raised to BBD 4 million from 2014, since this threshold had not been raised for the past 20 years. IBCs must submit their statements to the Ministry, in the same way as domestic companies (IBC Act, section 22).

149. 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, being the International Financial Reporting Standards (IFRS and IFRS for small and medium sized enterprises). 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.³⁴

33. 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”.

34. 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

150. 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 off a company from the register if it fails to send any document required to be filed under the Act (section 412). No such sanction was applied during the period under review.

151. Domestic and international 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 a certain threshold must be audited at least once in every financial year by an auditor appointed by the society. The threshold is being progressively raised in the same way as with companies. 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 financial sanction for the non-maintenance of records in conformity with section 26, but the Barbadian authorities indicate that this is part of the project above-mentioned concerning companies. No action to dissolve a SRL was applied during the period under review.

152. 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.

153. Pursuant to the International Corporate and Trust Service Providers Act, 2011 which entered into force on 21 December 2011 (the ICTSPA), there are obligations requiring licensed service providers to keep their “accounting records” and “records on clients” for a minimum of 5 years (ICTSPA, s. 14). The term “accounting records” is not defined or otherwise elaborated until regulations are taken for the application of the law. The regulations are still being prepared. However, service providers are taxpayers in Barbados and are therefore subject to the accounting requirements of the Income Tax Act outlined below.

154. Trustees of domestic trusts are subject to the common law obligations, supplemented by tax obligations in terms of accounting (see below), in the absence of specific provision in the Trustees Act.

companies are consolidated in the financial statements of the holding company, pursuant to section 149.

155. 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 but no sanction has been applied in practice. This section applies only to non-charitable purpose trusts.

156. Trustees of other international trusts are “accountable for the management and administration of the assets of the trust” pursuant to section 3(d) of the International Trust Act.

157. 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 and has not been applied in practice.

158. 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). No sanction was applied in practice as there is no unit trusts in Barbados.

159. 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 but these obligations are supplemented by tax obligations.

Tax law

160. 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 submitted in paper format, for past years, but now entities are encouraged to e-file their tax returns, in which case the financial statements are provided only upon request of a tax official. Under section 75(4) of the Act, the minimum retention period has been specified as 5 years.

161. The Barbadian authorities clarify that the record keeping obligations are applicable to all partnerships, and that the senior partner is the person responsible for keeping the accounts (pursuant to section 53(2) of the Income Tax Act).

162. External (i.e. foreign) 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.

163. 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). The Inland Revenue Department does not keep statistics on the number of sanctions applied to taxpayers pursuant to section 79 of the Income Tax Act, but to their recollection, none was applied, unless this led to a failure to file a tax return.

164. Trusts are taxed as individuals. 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 trusts and some international trusts, or to trusts administered in Barbados when they have no tax resident trustee.

Underlying documentation (ToR A.2.2)

165. 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.

166. 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)

167. Section 75(5) of the Income Tax Act on books and record keeping requirements indicates that every person required to deliver a tax return must keep adequate records for the purposes of the Income Tax Act and retain every such record, voucher or other record necessary to verify such record “for a period of up to five years after the end of the relevant income year, unless the Commissioner otherwise directs, before the disposal of the records”.

168. In addition, 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 (section 75(4)).

169. In practice, authorisation is in general given to individuals after five years concerning documents on their salary, and to others after seven or nine years. Only the general correspondence can be destroyed after two years (i.e. correspondence which is not relevant to the assessment of tax liability or which is not required under the Income Tax Act). The Barbadian authorities confirmed that no authorisation of destruction of records can be granted for partnership agreements, share records, minute books, fixed assets records, long term liabilities and related documentation, which must be kept indefinitely.

170. The Companies Act does not specify a retention period for accounting information.³⁵

171. 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.

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

Availability of accounting information in practice

172. The Registrar and the Inland Revenue Department do not in practice apply financial sanctions for breaches of the accounting obligations of registered entities. They rather rely on reminders to ensure that the books and records are kept and filed where required.

173. As noted above concerning ownership information, the Registrar does not check whether companies keep proper records, but controls whether entities file the due returns (including financial statements) in a timely manner, and if not, issues reminders and ultimately refuses to issue certificates of good standing requested by the entities or their trading partners (for instance when an entity applies for a loan or in view of signing important contracts). No records are kept of the refusals to issue good standing certificates.

174. The Inland Revenue Department similarly does not impose fines for accounting breaches but asks taxpayers to fix the problems noted during audits and follows up the matter. The financial sanction is considered as already covered when taxes are reassessed.

175. More than half of the requests received by Barbados from July 2009 to June 2012 included some accounting elements and most of the requests were directed at accounting firms holding the accounting books and records of their corporate or individual clients. The type of entities concerned were regular companies, IBCs, SRLs, reinsurance companies and banks, and one trust. No records were requested concerning partnerships.

176. The documents exchanged included contract, listing of loans made to and from the taxpayer and related parties, financial statements, employee contracts and listing of persons included in labour costs.

177. In three cases the accounting information requested could not be found in Barbados for reasons not related to any breach of Barbadian laws on the availability of information. In two cases, the request related to accounts of an individual of the requesting party. In the first case the Barbadian competent authority, after having consulted the immigration department, was able to answer that the individual was not resident in Barbados and in the second case it was determined that the business person concerned was not performing any business in Barbados. In a third case, the Barbadian authorities could only gather information on the payments made by an individual to its Barbadian accounting firm. The rest of the information was no longer available with the accountant because the retention period had expired. Barbados has explained that attempts were made to contact the taxpayer who was resident outside of Barbados, and these attempts were unsuccessful. In one case dating back to 2011 the accounting information could not be collected before the requesting authority closed the case.

178. Therefore, in all cases where accounting information could not be provided this was not due to a deficiency in the legal and regulatory framework or to a deficient implementation of this framework.

Determination and factors underlying recommendations

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

A.3. Banking information

Banking information should be available for all account-holders.

179. Onshore commercial banks, trust companies, finance companies, merchant banks, and similar financial institutions are regulated under the Financial Institutions Act (FIA). Offshore banks and international financial services³⁶ are regulated under the International Financial Services Act (IFSA). The Central Bank of Barbados is the regulatory authority of both onshore and offshore banks. Financial institutions are also subject to the anti-money laundering law.

Record-keeping requirements (ToR A.3.1)

180. 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 in Barbados from which to operate (section 6 IFSA). 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

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

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. Whereas these obligations relate in practice to the financial viability of the licensed institutions, they cover some financial information on their clients.

181. In addition, the MLFTA establishes customer identification obligations on financial institutions, as noted above under section A.1 of the report. Formerly, the MLFTA required 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). However, this threshold was eliminated with the entry into force on 11 November 2011 of the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (s. 18(1)). This gap, that existed during some part of the period under review, has not caused issues in EOI practice.

182. Business transaction records include, among others: (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). This 2011 law ensures that all transaction records are maintained by the financial institutions in Barbados, and ensures that licensees under the Financial Institutions Act and the International Financial Services Act are required to maintain all records pertaining to accounts.

Exchange of banking information

183. The obligations of financial institutions to maintain banking information is enforced by the anti-money laundering supervisors, which is the Central Bank in respect of commercial and offshore banks. The Central Bank's compliance department performs offsite and onsite controls over the Central Bank's licensees through sample checks on the identification of clients and the retention of documents. The main infringements noted related to failures in the application of risk profiling for AML/CFT purposes, the frequency and coverage of the training delivered to the personnel, and some outdated policies (even though the actual practice of the licensees is aligned on the latest FATF recommendations). There were also issues related to the

identification and definition of politically exposed persons. In practice, the Central Bank has taken several measures such as requiring action plans and increased frequency of prudential reporting for some licensees which was considered as efficient by the Central Bank.

184. In practice, Barbados has exchanged banking information during the three years under review, including copies of customer files, account application forms, ATM or debit card application forms, loan application forms, wire transfer receipts, transfer instructions, deposit and withdrawal transaction histories. Banking information was requested in about one third of the 30 requests received during the three years under review.

185. In particular, Barbados enquired on the existence of bank accounts for some individuals. Since Barbados has not introduced a unified bank account identification system, if they wish to know whether a particular person has a bank account, the Barbadian tax authorities would have to ask all banks individually whether that person is their client (see further under part B.1.5 below on Access to bank information).

186. Barbados answered simple questions on banking information but was also able to answer more complex cases. For instance, information was requested from a peer concerning a foreign debit card being used in the requesting party's jurisdiction. The Barbadian authorities requested information from the named bank incorporated in Barbados and were able to inform the requesting party that the account was issued by a branch of that bank in another jurisdiction. Since the card service department was located in Barbados, the bank also indicated that the card number was in another name with the tax payer appearing as principal and that the card in that other jurisdiction had been closed in 2009.

187. Although, there was limited EOI experience of Barbados concerning banking information there were no problems with Barbados obtaining and exchanging banking information with its peers.

Determination and factors underlying recommendations

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

B. Access to Information

Overview

188. 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. It also assesses the effectiveness of this framework in practice.

189. 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.

190. However, the report identifies some instances in which there are restrictions on, or uncertainties about, the competent authorities' powers to obtain information for exchange purposes. In particular, an issue was identified concerning the existence of competing confidentiality provisions contained in legislation concerning international trusts and unit trusts. Consequently, element B.1 was found to be in place, but in need of some improvement. 193. In practice the Barbadian competent authority has exercised its powers to gather ownership, accounting and banking information to answer EOI requests.

191. The report finds that the rights and safeguards available under Barbados law are compatible with the effective exchange of information and element B.2 is therefore in place. However, for the first time in 2012, a taxpayer challenged the ability of the competent authority to access and exchange information and the case is still pending.

192. As a result of the Phase 1 and Phase 2 recommendations made to Barbados, element B.1 is considered as largely compliant and element B.2 is considered to be compliant.

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

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

193. 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 nominates the Inland Revenue Department (IRD). In practice, the Minister of Finance has nominated as his authorised representative the Commissioner of the Inland Revenue Department, who is responsible for receiving and responding to EOI requests for tax purposes. She was supported in this task by the Deputy Commissioner and one person in 2009-11 and now by an EOI Unit established in early 2012. In practice, the gathering of information for EOI purposes is handled by the EOI Unit most of the time, in some instances supported by the Audit Division of the IRD.

194. 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.

195. The statutory powers of the Inland Revenue Department to obtain information are of a general nature. The same power applies irrespective of whom information is to be obtained from (e.g. individual, company, bank, service providers such as attorney-at-law, 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).

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

Ownership and identity information (ToR B.1.1)

197. 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.

198. 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 ownership of all entities, and on beneficial ownership when it is available within Barbados.

199. 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.

200. Notwithstanding the apparently broad scope of section 76, Barbados advises that where both parties have excluded from the treaty entities such as offshore entities, it does not exchange information in respect of those entities. In practice Barbados has therefore not exchanged information on IBCs on a couple of occasions. Barbados considers that this is the correct interpretation of its treaties, although that view is not shared by all of its treaty partners (see Section C on the updating of the concerned EOI provisions).

201. In addition, there is competing confidentiality legislation that may impede access to identity information in the case of international trusts and registered unit trusts and it is not unequivocally established that section 76 would override these confidentiality requirements (see Secrecy Provisions below).

Gathering of ownership information in practice

202. Barbados has received a number of requests for identity or residency information, shareholding information and articles of incorporations of entities, as well as information concerning trusts.

203. The information holders are most frequently the Corporate Affairs and Intellectual Property Office (Registrar), and third parties information providers. Taxpayers are also solicited, usually for shareholders' registers. The Land Tax Department and the Immigration Department are also sometimes solicited to gather information on land ownership and the travel details of individuals.

204. Since April 2012, the tax authorities have direct access to the electronic database of the Registrar concerning companies, and can exchange the information contained therein without the assistance of the Registrar. However, if the requesting authority wishes certified copies, the tax authorities would need the assistance of the Registrar.

205. Information is otherwise gathered by the EOI Unit, or by the Audit Division when the request is of a complex nature or an audit is in progress. No audit has been opened to gather ownership information during the period under review, but this has happened in the past.

206. At the initial stage, a written notice for information is sent to the information holder, which specifies which pieces of information are requested, and that failure to provide the information within two weeks is sanctioned pursuant to section 79 of the Income Tax Act. The notice is issued pursuant to section 76 of the Income Tax Act and does not specify that the information is sought for EOI purposes, but this is not considered as confidential information by the Barbadian authorities, and when the information holder asks the reason for the request, the competent authority indicates its EOI purpose.

207. Where the information is not provided and no request for extra time is made, a demand for the information may be served personally to the information holder by a member of the IRD staff. These two measures are routinely used by the EOI Unit and Audit Division. No specific template letters have been developed – as the person is not informed that the request relates to EOI purposes, no specific form is needed. If the information is not provided the next step would be the initiation of compulsory measures. EOI requests are monitored to ensure that third party information holders respond within the time period given for submission of the information. The Barbadian authorities indicate that in general when the taxpayer is informed that legal measures will be initiated in order to obtain the information, the request is complied with. No legal measures proved necessary during the three years under review.

208. In one case, the taxpayer refused to provide the requested information and has applied to the Court for an injunction against the information gathering powers of the tax administration. The case is still pending.

209. In this case in 2012, a corporate taxpayer subject to the EOI request made an application to the Barbados court seeking an injunction to, among other things, restrain the Commissioner of Inland Revenue, her agents or servants from (a) conducting a review of its corporate records within the possession of the bank (b) providing and/or exchanging information in respect of the company which may have been recovered from the review. The taxpayer also requested that the Commissioner provide it with a copy of all information that was received or gathered from the third party information provider. The application was made ex parte and an interim injunction was granted. The Crown (i.e. Attorney general office representing the competent authority) was able to successfully challenge the granting of the injunction. As a result, the interim injunction previously granted was discharged.

210. The company subsequently filed another claim which is seeking inter alia the restraining of the Commissioner, her agents or servants from (a) conducting a review of the company's records located at its registered office or any financial institution and (b) from providing and or exchanging information with any third party in Barbados or otherwise which may have been recovered from the review. Another application was also filed for an interim injunction in respect of the second claim. The Crown has given an undertaking for the status quo to remain the same pending the determination of the substantive hearing. The Crown is to file its defence and a Court date is to be obtained for the continuation of the matter.

211. As no new injunction has been issued, it appears that the Commissioner is legally empowered to obtain and provide the information to fulfil the request. However, the Crown has made an undertaking that the Commissioner would not exercise these powers until the litigation is resolved. The Barbadian authorities should report the outcome of the case in their follow-up report and take any necessary actions to ensure that its access powers can be exercised for all EOI requests meeting the standard.

Accounting records (ToR B.1.2)

212. The conditions of access to ownership and identity information described above apply to 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.

213. 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 requested by its treaty partners in the case of offshore entities that are specifically excluded from treaty benefits.

Gathering of accounting information in practice

214. More than half of the requests received by Barbados included some accounting elements. The gathering of accounting information is performed in the same way as the gathering of identity and ownership information, except that in practice the Audit Division is more often involved in the gathering of accounting information, as this may require its analytical expertise, or because some tax audits were underway. In that respect, the Barbadian authorities confirmed that they can ask for information even though a tax audit would have been closed for the period (nothing prohibits a reassessment either, in case the EOI request would reveal new facts interesting for domestic tax purposes).

215. The information holders are also different, with most of the requests directed at accounting firms holding the accounting books and records of their clients. It has happened on a few occasions that the no information was exchanged because the information did not exist or was no longer maintained in Barbados (without breaching the obligations on availability, see section A.2 above).

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

216. 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.

217. 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 her 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 and TIEAs (“an agreement ... with respect to the avoidance of double

taxation, the prevention of fiscal evasion or other matters relating to the taxation of income”). These powers are routinely used for EOI purpose. The Barbadian authorities indicate that in practice they have already exchanged information on the residence and bank information of entities which were not taxpayers in Barbados.

218. 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 (until a new DTC entered into force), 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.

219. In practice the EOI provision of the old DTC with the United Kingdom has been used during the three years under review (June 2009-June 2012) before a new DTC with the United Kingdom with a full EOI article entered into force in December 2012. In several instances the Barbadian authorities have used their information gathering powers to collect information not directly available in the tax databases or otherwise publicly available.

Compulsory powers (ToR B.1.4)

220. 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.

221. 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)). In practice this power is mainly used to collect bulk accounting or banking information, and routine visits are made to business premises to collect information in the framework of tax audits. This measure has been taken twice for EOI purposes during the period under review.

222. 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. This power has not been used for EOI purposes.

223. The Commissioner can also require any person to attend before her 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)). No taxpayer has been required to physically attend before the Commissioner or EOI Unit and give evidence on oath during the period under review.

224. 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). Sanctions have not been applied in practice. In general, the threat of initiating a legal action is sufficient to convince the person to provide the requested information. (The Barbadian authorities do not maintain statistics for domestic cases on the use of the various enforcement measures available to the Audit Division.)

225. In one EOI case, the taxpayer refused to provide the requested information but no sanction has been applied since the person has applied to the Court for an injunction against the information gathering powers of the tax administration (see above section B.1.1 and below section B.2 on the *Notification requirements and rights and safeguards*).

Secrecy provisions (ToR B.1.5)

226. 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

227. The laws dedicated to IBCs, international SRLs, and exempt insurance companies 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.³⁷ 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.

228. 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.³⁸

229. The Barbadian authorities consider that the existing laws do not prevent access to information by the competent authority. The confidentiality provision of the International Trust Act applies to the disclosure to “any other person not legally entitled”, which, the Barbadian authorities claim, does not cover the competent authority which has entitlement to access information under the Income Tax Act. Similarly, the secrecy provision of the Mutual Funds Act does not apply “to a disclosure necessary for the effective regulation of a mutual fund, or permitted or authorised by any other Act”. Again, the Barbadian authorities consider that the competent authority has access to information as a consequence of the general provisions of the Income Tax Act. The competent authority has accessed information on international

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

38. 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).

trusts twice for EOI purposes during the period under review, from two different service providers, and exchanged the information without the need for a court decision. Nonetheless, the Barbadian authorities should ensure that amendments are made to clarify their access powers in reference to information that is covered by the confidentiality provision in both the International Trust Act and the Mutual Funds Act.

Attorney-client privilege

230. 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 attorneys-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 privilege is attached to the document or it can be transmitted to the Commissioner. The Income Tax Act does not define attorney-client privilege in Barbados.

231. In practice, information was not gathered from a lawyer for EOI purposes during the three years under review. The Bar Association indicated that the privilege would be claimed only concerning documents produced by the attorney in his/her attorney capacity. For instance, the privilege could not be claimed concerning documents simply deposited in the attorney's office. It would not either cover information maintained by an attorney that would have acted as a trustee, or as a corporate service provider to assist a client establish a company. The privilege would not cover either any document relating to the law firm as a taxpayer, as clearly provided in section 77 of the Income Tax Act. The Bar Association also noted that in any event the scope of the privilege had reduced with the introduction of AML rules. It also indicated that most of the ownership information that lawyers would have on international entities is already at the disposal of some public authorities in Barbados, which reduces the interest of asking information from lawyers. The Bar Association finally indicated that in domestic cases, the tax administration approaches lawyers in limited circumstances, for instance in cases of dissolved corporate clients.

232. As concerns accountants, although no legislation establishes a duty of confidentiality, the Code of ethics of the profession does (i.e. IFAC's Code of Ethics for Professional Accountants). The Code of Ethics is binding but does not have the force of law. A representative of the accounting profession indicated that there is no hesitation on the part of the profession to cooperate

with the necessary authorities to provide information, in application of the provisions and requirements of national legislation. The Bar Association similarly indicated that a lawyer would not hesitate to give KYC information gathered for AML purposes to the tax administration.

Bank secrecy

233. The Barbadian authorities indicate that Barbados 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, including when their bank account is held with an offshore bank that is excluded from the ambit of a treaty.

234. 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 amount to any legal impediment to exchange of information for tax purposes. 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).

235. In practice, the Barbadian competent authority has answered 12 EOI requests from various treaty partners in relation to banking information over the three years under review. When gathering banking information, the competent authority sends a written notice to the bank with a two week deadline to answer, and no bank has refused to provide the requested information. Some banks have asked for prolonged deadlines; Barbados explained that this was when the information was stored in paper files, and the process of retrieving the information from these files may have taken more than a couple of weeks.

236. EOI requests involved gathering information from both domestic and offshore banks. In the case of two requests made by Canada for information from offshore banks, the information was not provided because of the exclusion provision in the DTC. This implementation of the treaty contradicts the interpretation provided by the Barbadian authorities during the Phase 1 of the review. This situation should no longer occur however, with the entry into force of a protocol to the DTC that brings the relationship to the standards (see recommendation in element C.1).

237. The Barbadian authorities indicate that in order to obtain bank information for treaty purposes any information requested via a DTC or TIEA

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. A date of birth is highly appreciated to sort homonyms and because this is part of the national identification number of Barbados individuals. 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.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Relevant laws are not unequivocally drafted as to whether trustees of international trusts and registered unit trusts are or not prohibited to disclose to any other person the name of the settlor or any beneficiary, or any information relating to or forming part of the accounts of an international trust.	The Barbadian authorities should continue working towards clarifying that the competent authority has power to access confidential information covered by the International Trust Act and the Mutual Funds Act.
Phase 2 Ratings	
Largely compliant	

B.2. Notification requirements and rights and safeguards

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

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

238. 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).

239. Barbados domestic laws do not require the notification of the person who is the object of a request for information. There is no anti-tipping-off provisions either. The Barbados authorities nonetheless indicate that when the competent authority approaches the taxpayer or information holder to gather the requested information, the taxpayer or third party is not aware of the purpose for which the information is to be used; in addition taxpayers are not aware that information is passed to the requesting party.

240. In practice, over the three years under review, it has happened that the person requested to provide information to the competent authority asked the reason for the request; mainly accountants enquiring on the reasons for a written notice. A representative of the accounting profession confirmed that accountants remain committed to notifying their clients of their actions in this regard as they act as agents and will honour that relationship as per their professional rules of conduct. In these instances, the competent authority informed the persons that the information was requested for EOI purposes.

241. The Barbadian authorities indicated that the taxpayer has the right to appeal to the Commission, the Income Tax Appeal Board and the court in both domestic and EOI cases.

242. In practice, a taxpayer went to court to challenge a written notice of the tax authorities related to an EOI case received by Barbados in 2010. In this particular case, as noted under section B.1.1 above, the taxpayer asked the court for an injunction to restrain the Commissioner from requesting information from the third party information holder (a bank) and from exchanging that information with any third party outside of the jurisdiction. The application was made *ex parte* and an interim injunction was granted. The Crown was able to successfully challenge the granting of the injunction. As a result, the interim injunction previously granted was discharged.

243. The company subsequently filed another claim which is seeking among others the restraining of the Commissioner, her agents or servants from (a) conducting a review of the company's records located at its registered office or any financial institution and (b) from providing and or exchanging information with any third party in Barbados or otherwise which may have been recovered from the review. Another application was also filed for an interim injunction in respect of the second claim. The Crown has given an undertaking for the status quo to remain the same pending the determination of the substantive hearing. The Crown has yet to file its defence and a Court date is to be obtained for the continuation of the matter.

244. The case being pending, the Barbadian authorities were not at liberty to discuss it. It is unclear whether it could raise issues in relation to the rights and safeguards of the taxpayers in Barbados, or also in relation to the use and extent of the access powers of the competent authority for EOI purposes.

Barbados received the EOI request in 2010 following which the written notice of the competent authority was challenged in court in 2012. As this request is being challenged by the taxpayer at the courts, information could not be provided to the requesting authority in practice. The Barbadian authorities are invited to report on the outcome of the case.

Determination and factors underlying recommendations

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

C. Exchanging Information

Overview

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

246. 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. As of February 2014, Barbados has EOI instruments with 42 partners, of which 36 are in force. 29 are in line with the standard and 6 others will meet the standard once in force.

247. Following the signing of a number of protocols, new treaties and TIEAs in 2011, the updating and expansion of the EOI network of Barbados has slowed in 2012-13, with the signature of four new DTCs, but signature of only one new TIEA despite the fact that some had been initialled in 2011. The new treaty with the United Kingdom and protocol to the DTC with Canada signed in 2011 have also entered into force, but after the period under review; EOI therefore took place on the basis of deficient instruments in the period July 2009 – June 2012.

248. The EOI instruments with 7 jurisdictions do not meet the standard either because of the deficient provisions in the treaty (e.g. exclusion of some entities, clause on domestic tax interest with 4 jurisdictions) or because of deficiencies in the domestic laws of the treaty partners that do not allow reciprocity in the implementation of the treaty (3 jurisdictions).

249. Barbados is encouraged to continue to renegotiate existing treaties, or enter into protocols or TIEAs where the existing treaties do not meet the international standard. (see section C.1 below)

250. Barbados is also strongly encouraged to continue negotiating new agreements, including TIEAs, with additional partners. Barbados should in particular enter into agreements for exchange of information with jurisdictions that have approached it to negotiate TIEAs (see section C.2 below).

251. 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. None of these aspects has triggered any issue in practice as Barbados exchanged information in instances of both civil and criminal tax matters (in the latter case without checking the existence of any dual criminality) and provided information in specific forms when requested. (see section C.1 below)

252. All EOI articles in Barbados DTCs have confidentiality provisions and its domestic legislation also contains relevant confidentiality provisions. The sanction for the breach of confidentiality is very low, but no offences have been noted in practice in Barbados (see section C.3 below). In practice, no issue was raised by any EOI partners and the Barbadian competent authority has taken concrete measures to prevent any breach of confidentiality.

253. 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. No such concern was raised in practice (see section C.4 below).

254. In addition to bilateral agreements, Barbados has introduced the Income Tax (Exchange of Information) Regulations, 2011 (the unilateral regulation) which was intended to allow Barbados to exchange information to the standard with all of the EOI partners with whom an initialled or signed agreement was not yet in force or was in force but not to the standard. While the unilateral regulation is an explicit attempt to remedy deficiencies identified in the EOI network of Barbados, there are concerns regarding its legal effectiveness, which may prevent it from being considered an effective mechanism under which information can be exchanged for tax purposes to the standard. In practice, none of the EOI partners of Barbados has tried to use this instrument. Conscious of the possible limits of this mechanism,

the Barbadian authorities have continued negotiating and signing bilateral instruments.

255. In practice, Barbados received 30 requests for information during the period from June 2009 to July 2012 from five partners, predominantly from Canada. The handling of the requests has been uneven, especially because of serious human resources constraints in 2011. The Barbadian authorities have taken corrective actions both in terms of human resources and processes, and the situation has started to improve at the end of the period under review. The renegotiation of some deficient EOI instruments should also increase the range of information that Barbados is able to exchange with two important partners – Canada and the United Kingdom. The Barbadian authorities are encouraged to continue in this direction, as the number of requests may increase in the future, with the continuous increase of treaty partners and improved quality of the EOI instruments (see section C.5 below).

C.1. Exchange of information mechanisms

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

EOI instruments and the Barbadian legal system

256. 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).³⁹

257. 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

39. 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.

with which an agreement has been made of the type described in subsection (l) any information that the agreement requires or contemplates will be so disclosed.

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

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

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

The development of Barbados' network of EOI instruments

261. Barbados had to revise a number of EOI instruments, notably as some of Barbados' DTCs limited exchange of information, and in certain cases Barbados did not exchange information in respect of entities (IBCs, offshore banks, etc.), which were not covered by the treaty.

262. Barbados took two types of action to remedy these deficiencies. First, it passed a regulation that introduces a unilateral exchange mechanism. Second, it started negotiating a number of protocols or new EOI instruments to bring its bilateral agreements to the standard.

Unilateral Mechanism

263. The Income Tax (Exchange of Information) Regulations, 2011 (the unilateral regulation) came into force on 17 March 2011 and applies to EOI requests made after that date for information related to tax periods that begin after that date. Therefore it might have been used from 2012, but in practice it has not been used. Section 3 of the unilateral regulation provides:

Where a double taxation agreement between Barbados and another country or territory to which section 83(2) of the [Income Tax] Act refers:

- a) no longer meets the international standard in respect of the exchange of information provision in the agreement;
- b) excludes certain international business entities from the benefits of its provisions resulting in the exclusion of those entities from the application of the exchange of information provision in the agreement; or

- c) has been initialled or signed by the parties to that agreement but the parties have not yet concluded that process of ratification of the agreement,

Barbados shall unilaterally exchange information under those agreements in accordance with that international standard.

264. However, the legal effectiveness of the unilateral regulation is uncertain with three fundamental issues identified.

265. First, in respect of the EOI agreements which are already in force (options (a) and (b)), it is not clear how a regulation will override the specific and sometimes conflicting provisions of a treaty given that a treaty has the force of law in Barbados (Income Tax Act, s. 83(1)). Whereas section 83(2) of the Income Tax Act provides the Minister with the authority to make regulations for the purpose of carrying out any EOI instrument,⁴⁰ section 83(3) provides that: “In the event of any inconsistency between an agreement and any regulations made under subsection (2), the terms of the agreement prevail to the extent of the inconsistency” Therefore, if a DTC expressly excludes certain entities from its scope, the application of the regulation to such entities would appear to be inconsistent with this exclusion.

266. Second, for option (c) of the unilateral regulation to be effective, Barbados should inform its future partners of their ability to request information on this basis until the bilateral agreement enters into force. The Barbadian authorities indicated that they notify their new partners.

267. Third, the unilateral regulation also refers to agreements that “no longer meet the standard” and not simply to agreements that do not meet the standard. This appears to be aimed at older agreements that may have been considered to have met the standard prior to the evolution of the standard (though it is not clear what stages are referred to here).⁴¹ Consequently, even if there was no doubt regarding the effectiveness of the mechanism, it would not apply to any agreement that never met the standard. As is indicated below, Barbados’ DTC with Panama contains unduly restrictive conditions regarding the information required to be provided to demonstrate the foreseeable relevance of a request. The unilateral regulation would not cure this deficiency.

40. The full provision reads: “The Minister may make regulations for the purpose of carrying out any agreement referred to in subsection (1) or for giving effect to any of the provisions thereof, and such regulations may be made and continue in force notwithstanding that no agreement is in effect for the purposes of subsection (1)”.

41. The Barbadian authorities consider that all their treaties could potentially meet criterion (a), given that they are unable to ensure that the domestic laws of the treaty partners permit EOI to the standard.

268. In addition to these three key issues, absent a bilateral international agreement, Barbados' EOI partners may be unable to provide the information to form the basis of a request under the unilateral mechanism. In particular, the competent authorities of some jurisdictions might not be able to use confidential information in their EOI requests to Barbados based on the unilateral regulation rather than a DTC or TIEA, as only the latter would be recognised as legal basis in their jurisdiction. This will be of particular concern in respect of EOI partners who have only an initialled or signed EOI agreement with Barbados. However the Barbadian authorities indicate that none of the jurisdictions informed of the availability of the unilateral regulation notified back that it would not be a valid basis for them to make an EOI request.

269. Section 3(b) of the unilateral regulation on excluded entities also raised some doubts, clarified by the Barbadian authorities. Indeed, one might read this provision as indicating that the DTCs that exclude some entities from their "benefit" do not meet the standard, which would be contrary to the interpretation of the treaties given by Barbados and its partners in 2010. However, the Barbadian authorities clarified that this provision should be interpreted as covering only the DTCs that exclude some entities from their application, the beginning of the clause being just an explanation of the reasons of the exclusion: so that these entities do not benefit from the application of the DTC. This provision would apply to the DTCs with Canada and the United Kingdom only.

270. Finally, the unilateral regulation applies only to "double taxation agreements", which excludes from its scope any TIEA that Barbados has or would sign. Even though it can be expected that any new TIEA would follow the standard, it remains that option (c) would not be applicable to TIEAs, contrary to what Barbados indicated to some of its new TIEA partners.

271. Barbados acknowledges that the unilateral regulation is an interim measure as it relates to implementing the standard on transparency and exchange of information and that there may be some uncertainty regarding the legal basis for its treaty partners to request information from Barbados in all cases. Barbados also indicates that it has informed a number of relevant treaty partners of the existence of the unilateral regulation via Diplomatic Notes dated 1 April 2011. Barbados informed them that it would exchange information with them in accordance with the standard on transparency and exchange of information pending the entry into force of the relevant protocol or DTC, where applicable. The same is done with new partners

272. The fundamental issues identified concerning the legal effectiveness of the unilateral regulation prevent it from being considered an effective means to exchange information upon request for tax purposes in line with the standard. In practice, the Regulation has never been applied as Barbados received no EOI

request that would fall within the ambit of the Regulation during the period under review. The Barbadian authorities are considering repealing it.

Bilateral EOI instruments

273. Barbados notes that it is continuing its efforts to improve its EOI network through negotiations to update older DTCs or negotiate new DTCs, as well as negotiations for further TIEAs in a number of cases.

274. Most importantly, Barbados' DTC with Canada, which is the most important EOI partner of Barbados, did not meet the standard during the period under review. It was therefore critical for Barbados to upgrade this treaty and a protocol has now been signed (and entered into force) and can be reviewed.

275. In addition, a new DTC entered into force with the United Kingdom in 2012. Barbados also signed protocols to the treaties of Finland, Norway and Sweden even though the existing treaties were considered as meeting the standard, in view of having the full text of Article 26 of the Model Tax Convention and lifting any possible doubt on their scope. The protocols with Finland and Sweden have entered into force in December 2012.

276. Finally, Barbados has continued expanding its EOI network. Barbados has 23 bilateral DTCs in force and 5 other signed DTCs. Barbados is also a party to the CARICOM agreement (1995), the other 10 parties to which are Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago⁴² (see Annex 2). The CARICOM is considering amending the EOI provision of the Agreement to bring it to the international standards, but no new text has been signed yet.

277. Barbados has signed a tax information exchange agreement (TIEA) with the United States in 1984 as well as with Denmark, the Faroe Islands and Greenland in 2011, and with South Africa in 2013. The Spanish treaty is also complemented by a Memorandum of Understanding that borrows provisions from the Model TIEA. Barbados is expected to sign further TIEAs with partners who requested the opening of negotiations.

42. 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.

278. All DTCs provide for the exchange of information on request. In addition, three 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”.⁴³ Such consultations have not taken place, as they were not felt necessary, either because no exchange takes place with the partner or because a TIEA also exists that complements the DTC.

Forms of exchange of information

279. Barbados received 30 requests for information during the period June 2009 to July 2012 from five partners, predominantly from Canada. The majority of requests were based on DTCs, a few on a TIEA and none on the CARICOM Agreement, or on the Barbados unilateral mechanism. Barbados has not sent EOI requests during the period under review.

280. Barbados has on a few occasions allowed foreign tax authorities to conduct audits in Barbados. Barbados does not exchange information automatically or spontaneously, but the authorities are not closed to developing such other ways to exchange information in future, or to joint audits and industry wide exchange of information. Some instruments such as the protocol to the DTC with Spain also include the possibility of assistance for notifications of decisions emanating from the partner’s tax administration.

Foreseeably relevant standard (ToR C.I.1)

281. 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.

43. See the DTCs with Botswana, the United States and Venezuela.

282. 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 EOI instruments signed since 2009 usually use the term “foreseeably relevant”.

283. 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 meet the “foreseeably relevant” standard.

284. 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. This interpretation has not yet been tested since the provision has not been used in practice. The Barbadian authorities indicated that they have agreed with the Panamanian authorities, through an exchange of letters, to an interpretation of the treaty that will be more in line with the standard. This exchange of letters, however, does not clarify the interaction between Article 25 and the “foreseeably relevant” standard. The compliance of the DTC between Barbados and Panama with the foreseeable relevance principle should be monitored.

285. 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.

286. In practice, no request was determined by the Barbadian competent authority as not relating to foreseeably relevant information, and no requests for clarifications were sent during the period under review.

In respect of all persons (ToR C.1.2)

287. For exchange of information to be effective it is necessary that a jurisdiction’s obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the

residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that EOI mechanisms will provide for exchange of information in respect of all persons. Article 26(1) of the OECD Model Tax Convention indicates that “The exchange of information is not restricted by Article 1”, which defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States.

288. Most of Barbados DTCs signed after 2000 and all the DTCs and protocols signed since October 2010 contain this sentence, as well as the DTC with the United States.⁴⁴ The TIEAs of Barbados also apply in respect of all persons. The DTCs that do not contain the sentence indicating that EOI is not restricted by Article 1 are the treaties with Cuba, Ghana, Switzerland and Venezuela. However, the EOI provision of most 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 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, but none of these provisions has been used in practice. 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”. Barbados and Switzerland have entered into discussions to negotiate the conclusion of a TIEA.

Exclusion of specific entities

289. Two of Barbados DTCs excluded specific entities – notably offshore entities – from their scope of application. While these treaties have been upgraded, the deficient EOI provision was in force during the period under review, which prevented a full exchange of information. In particular, the treaties with Canada and the United Kingdom indicated 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”. In practice, Barbados has not exchanged information concerning the excluded entities (IBCs, offshore banks, exempt insurance companies, international

44. 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.

SRLs, foreign sales corporations). It has happened that Canada asked for information on IBCs, not knowing the offshore nature of the company concerned. Barbados declined all these requests, as they were made before the adoption of the unilateral mechanism. The 2011 protocol to the DTC signed with Canada expressly provides that only some articles of the DTC – but not the EOI provision – do not apply to excluded entities and therefore EOI now fully covers the entities otherwise excluded from some benefits of the treaty. Barbados has also concluded a new DTC with the United Kingdom that came in force in December 2012, which contains a new EOI provision to the standard.

290. The treaty with the Netherlands and the 2012 treaty with the United Kingdom provide that “the benefits of this convention are not applicable to companies or other persons which are wholly or partly exempted from tax by a special regime under the laws of either one of the Contracting States”.⁴⁵ In the protocol to the DTC with Sweden, exclusion applies to any provision of the Convention conferring an exemption or reduction of tax, which is not the case of the EOI provision. Finally, the DTCs with Finland, Mexico and Portugal indicate that these companies receive the benefits of the DTC other than the benefits of enumerated articles (dividends, interest, royalties, etc.). The Barbadian authorities interpret all 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. None of these EOI provisions have been used to date, but the competent authority reiterates its interpretation, i.e. EOI would be provided on all types of entities.

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

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

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

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

292. All EOI instruments signed since 2009 and the protocol to the DTC with China include the provision contained in Article 26(5) of the OECD Model Tax Convention, which states that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. The treaties with Luxembourg and Panama and the protocol with the Netherlands also contain this paragraph.⁴⁶

293. 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 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. Barbados has in practice exchanged banking information on the basis of treaties that do not contain paragraph 5 in 12 cases.

294. Among Barbados' treaty partners, Austria, Botswana, Grenada and Switzerland are currently unable to access bank information for exchange purposes absent an explicit provision in the treaty. Therefore, Barbados treaties with these jurisdictions are not considered to meet the international standard. Barbados has reached an agreement on the text of a protocol with Botswana in 2010 (and awaits signature since then), is discussing protocols with two other jurisdictions and has just received a TIEA proposal from the last one.

295. The Barbadian authorities had indicated that exchange of bank information on account holders would be available even when the DTC excludes offshore banks from its scope. Therefore bank information would be available for exchange regarding persons in respect of whom information is held by an

46. Article 3(2) of the TIEA with the United States indicates "... The competent authorities of the Contracting States have authority to obtain and provide information from financial institutions. ..."

offshore bank, despite their exclusion from the scope of application of the DTC with Canada in force during the review period. The Barbadian authorities had confirmed that irrespective of whether information about the bank itself would be exchanged, information on bank accounts and account holders would always be exchanged. However, in practice, banking information was gathered from onshore banks only, to respond to EOI requests. Contrary to the interpretation provided by the Barbadian authorities in 2011, the competent authority did not gather information from offshore banks, considering that the provision of the treaty in force during the period under review did not allow for it. This issue has been solved in December 2013, with the entry into force of a protocol that meets the standard.

Information at the disposal of tax authorities only

296. Two 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 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, but nonetheless indicated their willingness to amend these agreements. Barbados invited Venezuela to negotiate a protocol to the existing DTC in November 2011 and received a TIEA proposal from Switzerland in 2013. The UK treaty which was in force during the period under review contained a similar provision, and the Barbadian competent authority has in practice used information gathering powers to answer EOI requests received from the UK, thus confirming its broad interpretation of this type of provisions (see above section B.1.3).

Absence of domestic tax interest (ToR C.1.4)

297. 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.

298. 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.

299. The treaties and TIEAs signed by Barbados since 2009 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 would not in theory create restrictions on exchange of information, provided there is no domestic tax interest impediment to exchange information in the case of either contracting party.

300. As previously indicated, three of Barbados DTCs (with Switzerland, United Kingdom (1970) 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 CARICOM Agreement, the tax authorities in Trinidad and Tobago can obtain information only from taxpayers under examination or being assessed. This requirement is tantamount to a domestic tax interest, which is an obstacle to the effective exchange of information. The legal frameworks of Dominica and Grenada do not allow them to exchange information with Barbados to the standard either.⁴⁷ As noted above, the provision in the old UK treaty has been interpreted broadly in practice and the Barbadian authorities have used their powers to gather some information not already held by the tax authorities (such as banking information). The Barbadian authorities have not yet received any EOI requests from jurisdictions, which would have a constraint of domestic tax interest, and therefore have not had to decide whether or not to apply reciprocity restrictions in these cases.

Absence of dual criminality principles (ToR C.1.5)

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

47. See Peer Review Report – Phase 1: Legal and Regulatory Framework – Trinidad and Tobago, 2011; Dominica, 2012 and Grenada, 2012; published on the Global Forum website (www.oecd.org/tax/transparency).

302. There are no dual criminality provisions in Barbados DTCs and TIEAs. The Barbadian authorities indicate that they have received EOI requests related to civil tax matters as well as some related to criminal tax matters. No dual criminality condition was applied in practice.

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

303. 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.

304. Most of the agreements signed by Barbados since 2009 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”. 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.⁴⁸ The Barbadian authorities indicate that they have received EOI requests related to civil tax matters as well as some related to criminal tax matters. The two types of requests are handled in a same manner.

305. 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

48. 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”.

is sought to prevent fiscal evasion. In practice, none of the concerned EOI partners made use of this possibility during the three years under review.

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

306. 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.

307. Barbados' TIEAs with Denmark, the Faroe Islands and Greenland as well as the Memorandum to the DTC with Spain contain an explicit provision requiring the requested state to provide information in the form of deposition of witnesses or authenticated copies of original records, if so requested and to the extent allowable under domestic laws of the parties.

308. The arrangements with the United States also 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”.

309. Whereas this aspect is not mentioned in the other new EOI instruments, 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.

310. In practice, Barbados has been requested to provide information in specific forms and has done so, for instance by issuing certified copies of documents.

In force (ToR C.1.8)

311. 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.

312. As of February 2014, Barbados has EOI instruments with 42 partners, of which 36 are in force (23 DTCs, 3 TIEAs and a regional agreement with 10 partners) Of the 6 instruments not yet in force, 4 have been signed in the last year and two are awaiting ratification by the treaty partners (Ghana and Portugal). Most of Barbados DTCs have entered into force less than a year after having been signed.

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

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

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Five DTCs limit exchange of information (i) to information for carrying out the provisions of the Convention, and/or (ii) by failing to provide for exchange of bank information.	Barbados should continue to revise its existing treaties in line with the international standard where they do not currently meet that standard.
Phase 2 Rating	
Largely compliant.	
Factors underlying recommendations	Recommendations
During the period under review, two of Barbados' treaties limited the scope of exchange for offshore entities. In the case of one treaty, these limitations led to Barbados not answering two requests (one declined for valid reasons and the other because of a restrictive interpretation of the treaty). Barbados already took action by upgrading the two relevant treaties, which entered into force after the period under review.	Barbados should continue to revise its existing treaties in line with the international standards where they do not currently meet that standard, and ensure that they are interpreted in accordance with the standard.

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

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

314. 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.

315. Barbados has bilateral DTCs signed with 42 jurisdictions. The oldest treaty was signed with Switzerland in 1963 (i.e. before independence) (see Annex 2).

316. 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.⁴⁹ EOI relationships exist with the main partners and some instruments are being revised, such as the CARICOM agreement.

317. Barbados has continued revising its existing DTCs where they do not meet the standard. The new DTC with the United Kingdom entered into force in December 2012 and a protocol to the DTC with Canada entered into force in December 2013. Barbados is also developing its exchange of information network with relevant partners. In particular, Barbados signed in 2010-11 four new DTCs with the Czech Republic, Iceland, Portugal and Spain, which meet the standard. Barbados signed other four new DTCs with Bahrain, Qatar, San Marino and Singapore in 2012-13, and two other DTCs were initialled in 2013.

318. However, the pace of concluding new TIEAs has slowed, with only one signature over the last two years. Barbados policy remains to negotiate DTCs rather than TIEAs. Barbados reiterates its commitment to implement

49. 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.

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. Barbados has nonetheless signed TIEAs in November 2011 with Denmark, the Faroe Islands and Greenland, and in September 2013 with South Africa.

319. Barbados initialled in 2011 two TIEAs with other Global Forum members that had indicated that they had approached Barbados for negotiations on such an instrument without success in the past. The agreements have not yet been signed.

320. 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. Five Global Forum members have indicated that they have approached Barbados for negotiations on a TIEA or EOI protocol to existing DTCs in 2011-13 without success. Some TIEA proposals were made at the initiative of the peer concerned (in 2011), and some as counter-proposals to a DTC offer from Barbados (in July and October 2013). Some progress was made during the Phase 2 review, with positive answers sent to two peers, to negotiate a TIEA and a protocol. No answers were provided to three other peers. In one case Barbados is considering waiting for being ready to sign the multilateral Convention on Mutual Administrative Assistance in Tax Matters, and thus avoid negotiating a TIEA with a signatory of the multilateral Convention. However, no timelines was provided. In the two other cases Barbados sticks to its position of negotiating a DTA. However, these two peers clearly indicated that they had informed the Barbadian authorities that they were no longer in agreement for negotiating a DTA (for reasons not related to EOI) but wanted to negotiate a TIEA. It is therefore considered that Barbados is deficient with these three peers, especially with the one which made the request two years ago. The non-signature of the two TIEA initialled in 2011 is also unsatisfactory, and the Barbadian authorities declared that they are ready to sign these TIEAs in 2014.

321. Barbados is not ready yet to sign the multilateral Convention on Mutual Administrative Assistance in Tax Matters, as this would require amending some domestic laws. However, the Barbadian authorities have indicated that they would explore signing on to the multilateral Convention on Mutual Administrative in Tax Matters rather than the TIEAs if it is that the TIEAs only deal with information on request and the new standard will be automatic exchange of information.

322. Finally, Barbados has enacted the unilateral regulation, even though, as analysed above under section C.1, there are a number of fundamental

issues and concerns, which prevent it from being considered an effective means to exchange information upon request for tax purposes in line with the standard.

323. Barbados should continue upgrading existing EOI provisions, and sign further EOI agreements when requested by relevant partners.

Determination and factors underlying recommendations

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

C.3. Confidentiality

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

324. 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.

*Information received: disclosure, use, and safeguards (ToR C.3.1)**EOI arrangements*

325. All EOI articles in Barbados DTCs and TIEAs 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.⁵⁰

326. 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 CARICOM Agreement and of the DTCs with Canada and Switzerland 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 and Switzerland 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 Agreement also refers to the assessment or collection of taxes but explicitly covers courts and other administrative bodies.

327. The unilateral regulation provides that the confidentiality requirements described in the Model Tax Convention will apply. However, given that they are contained in the domestic law, they cannot bind the requesting party in the same way as an international agreement would. In particular, the competent authorities of some covered jurisdictions might not be able to use confidential

50. The treaties with Seychelles and 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.

information in their EOI requests to Barbados based on the unilateral regulation rather than a DTC or TIEA, as only the latter would be recognised as legal bases in their jurisdiction. As a result, the regulation would not be able to compensate the weakness of or non-entry into force of the underlying EOI bilateral instrument. The Barbadian authorities have not indicated whether they have received any feedback from the covered jurisdictions. In any event, as noted earlier, no partner ever made use of the unilateral mechanism.

Barbados legislation

328. 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 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.”

329. 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.”⁵¹ 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.

51. 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.

330. 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. This provision has not been used in practice.

331. 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.

Confidentiality in practice

332. Barbadian public officials take an oath of secrecy when joining the public service and another one when joining the Inland Revenue Department. No breach of tax secrecy was experienced over the three years under review, whether or not in relation with an EOI request.

333. In practice, the competent authority has taken measures to ensure the confidentiality of the information exchanged: the members of the EOI Unit follow a clean desk policy; information received or to be sent (and copies of information already sent) is stored in a secure manner; and access to the files is restricted to the officers handling the request. Only the Deputy Commissioner of the IRD, the head of the EOI Unit and a senior official of the unit have a key of the fire proof cabinet where EOI files are stored. Since the information is stored separately from the tax files of the persons concerned, the information received from EOI partners is not used for domestic tax purposes. The competent authority has not developed any electronic archive system, as this was not felt necessary, but should information be received electronically, the safeguards of the IRD are applicable, i.e. password protected individual accounts and network security systems.

334. In instances where the competent authority needs to gather information from the taxpayer or a third party, it does not normally inform the person that the information is gathered for EOI purposes. On occasion, when the information holder enquires about the reason for a notice for information, the competent authority has indicated the EOI purpose of the notice, but none of the information contained in the letter received from the EOI partner is passed on to the information holder, in order to prevent any breach of confidentiality. However, as noted under section B.2 above, the tax authorities are

considering whether the third parties and taxpayers should be informed of the reason for the gathering of information. No further elaboration has been made at this stage, but close care should be given to not sharing confidential information with these persons. As noted in part B of the report, a corporate taxpayer subject to an EOI request made an application to the Barbados court seeking an injunction against the information gathering measures taken by the competent authority. The taxpayer also requested that the Commissioner provide it with a copy of all information that was received or gathered from the third party information provider. No date for hearing was set yet, and the Barbadian authorities should report the outcome of the case in their follow-up report.

335. The competent authority may consider introducing a chapter on confidentiality in its newly adopted EOI Manual, to ensure that communications with taxpayers and information holders do not amount to breaching the confidentiality obligation of Barbados.

336. In terms of communication with treaty partners, the Barbadian competent authority deals with only a handful of jurisdictions and the competent authorities usually know each other personally. The Barbadian authorities should nonetheless consider the opportunity to provide information to the Global Forum secure database of competent authorities to avoid any future miscommunications. The competent authority has also for some years a generic email account to which only four persons have access (the Commissioner, Deputy Commissioner, EOI manager and senior officer of the EOI Unit).

337. The competent authority is also considering additional safeguards that could be introduced, as advised in the Global Forum publication *Keeping it Safe*.⁵² In particular, the testing of an encryption software when communicating by email is under way.

All other information exchanged (ToR C.3.2)

338. 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.

339. As mentioned above, letters of request received from EOI partners are kept separately from domestic files and sealed under a lock.

52. *Keeping it Safe: Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes*, 2012

Determination and factors underlying recommendations

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

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

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

340. 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)

341. Most of Barbados DTCs and its TIEAs 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.

342. Barbados has not declined to provide requested information in application of these exceptions.

Determination and factors underlying recommendations

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

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

343. 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.

344. Barbados TIEAs and the Memorandum of Understanding integrated into the DTC with Spain require the provision of request confirmations, status updates and the provision of the requested information within the timeframes foreshadowed in Article 5(6)(b) of the OECD Model TIEA:

“6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall: [...]

b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.”

345. 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.

346. Barbados has developed in early 2013 an EOI Manual intended to provide officers of the EOI Unit with guidelines for processing EOI requests. However, the first version of this Manual does not set any deadlines, and the authorities may consider introducing internal and interim deadlines when revising the Manual.

Response time in practice

347. Barbados received 30 requests from five treaty partners over the three years under review (July 2009 – June 2012), almost all based on DTCs, and the number of requests received is stable over the years: 7 requests

received in the second half of 2009, 9 in 2010, 8 in 2011 and 5 in the first half of 2012. In practice, response time has varied a lot during the three years under review and important improvements are noted in 2012.

Number of requests received by Barbados during the review period

	2009 (from 01/07)		2010		2011		2012 (till 30/06)		total	average
	Number	%	Num.	%	num.	%	Num.	%	num.	%
Total number of requests received* (a+b+c+d+e)	7	100%	9	100%	8	100%	5	100%	29	100%
Full response**: ≤90 days	0	0%	1	11%	2	25%	0	0%	3	10.3%
≤180 days (cumulative)	3	43%	2	22%	2	25%	2	40%	9	31%
≤1 year (cumulative) (a)	3	43%	2	22%	5	62.5%	5	100%	15	52%
1 year+ (b)	3	43%	4	44%	2	25%	0	0%	9	31%
Declined for valid reasons (c)	1	14%	0	0%	0	0%	0	0%	1	3%
Failure to obtain and provide information requested (d)	0	0%	1	11%	1	12.5%	0	0%	2	7%
Requests still pending at date of review (e)	0	0%	2	22%	0	0%	0	0%	2	7%

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

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

348. Only 29 of the 30 requests are reported in the table, as the last one was withdrawn by the treaty partner.

349. In summary, Barbados was able to answer three requests within 90 days, about simple cases such as requests for contact details of taxpayers, but also some shareholding information. Almost a quarter of the requests have been answered after one year, even though they were not complex in nature and response time went up to four years in some cases.

350. The pending cases both date back to 2010. In one instance the case is pending in court (see above part B), and in the other instance the request has been partially answered in 2013 but one question is still pending.

351. The reasons for long response times and recent improvement are mainly linked to human resources issues within the Inland Revenue Department. Up until early 2012 there was no formal EOI Unit but rather a

senior tax officer in charge of handling requests under the supervision of the Deputy Commissioner. It happened that in 2011 this officer as well as his successor went on long term sick leaves while no electronic files or tracking systems existed at that time, which did not permit to efficiently follow up the pending cases. The EOI work suffered from this situation and the Barbadian authorities consider 2011 as a difficult year for EOI. As a result, in a 2010 case for instance part of the information was provided within 90 days and the rest two years later. The length of the response time did not so much relate to the content of the request, but rather to the date of reception of the letter and the availability or not of an officer to handle it. This situation has now been addressed with the appointment of a new EOI manager and the creation of a EOI Unit (see below). A new administrative process has also been put in place (see section C.5.2 below) Most peers acknowledged that response times improved recently, at the end of the review period.

352. Some responses which took a long time are also due to some communication problems. On three occasions the first letter was not received by Barbados. For instance in one case a treaty partner sent a request three times and the request was received eight months after the first letter was sent. It then took only two months to Barbados to provide the information that was maintained by public authorities, and since no one knows what has happened to the two first letters, it is impossible to know whether this is due to internal or external issues. The letters from this EOI partner took between one and eight months to reach the competent authority of Barbados. The calculation of the response time is therefore significantly different from the Barbados and other peer perspectives. It might be advisable that Barbados and this EOI partner consider exploring the possibility to use electronic or other communication and information technologies, including appropriate security systems, to improve timeliness and quality of EOI.

353. A letter also had to be resubmitted by another treaty partner for it to be received, eleven months after the first letter was sent. In the third case, the second letter was sent eight months after the first one. Communication with this EOI partner has improved since these cases dated to 2009 and early 2010.

Acknowledgements of requests and status updates

354. The practice of Barbados as concerns acknowledgement of EOI requests and status updates has improved towards the end of the period under review, with the establishment of a formal EOI Unit. The Barbadian authorities admit that the limited resources dedicated to EOI before 2012 did not allow them to send acknowledgements and status updates in all cases. Several peers had to send reminders to Barbados, more particularly one peer on several occasions sent more than 10 reminders, in the form of emails, fax and by telephone. Efforts are now being made to send acknowledgements and

status updates in a timely manner and peers noted a marked improvement, even though the practice is not yet systematised.

355. The EOI Manual issued in March 2013 asks the EOI manager to acknowledge receipt of new EOI requests, and she now systematically sends an acknowledgement email.

356. Status updates are not part of the new internal guidelines set in the Manual. The competent authority admits that during the period under review status reports have been issued only upon request of the requesting jurisdiction. Barbados should systematically provide an update or status report to its EOI partners within 90 days when the competent authority is unable to provide a substantive response within that time. The competent authority indicates that status updates will now be sent routinely where warranted. In addition, since the new EOI manager was appointed at the end of 2011, she pays attention to send interim replies when possible (rather than waiting for the full information to be gathered before answering the request). This has been confirmed by the main EOI partner of Barbados.

357. In terms of working relationship with treaty partners more generally, the Barbadian authorities consider that the Commissioner and EOI manager are well known to their EOI partners and easy to contact via email, phone, fax and regular mail. The Commissioner and the manager of the EOI Unit also attended an international meeting of competent authorities of the Global Forum in May 2012, which gave them the opportunity to meet partners in person. It might be advisable that the Barbadian authorities also consider the opportunity to insert information in the secure database of competent authority, as their EOI network grows and some new partners may wish to send requests to Barbados.

Organisational process and resources (ToR C.5.2)

Resources

358. With one exception, the DTCs and the TIEAs indicate that the competent authority for exchange of information for tax purposes is the Minister of Finance or his authorised representative.⁵³ Until 2012, a Deputy Commissioner of the Inland Revenue Department was responsible for

53. The treaty with Switzerland does not indicate expressly who the competent authority for Barbados is. This treaty is an extension of an old 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.

receiving and responding to EOI requests for tax purposes in practice, with the assistance of a single tax officer. Resources have been greatly increased in 2012 with the creation of a formal EOI Unit.

359. The Unit functions with three experienced officers: the manager, a principal inspector and a senior inspector. Two of them have a Bachelor of sciences in accounting and the manager is also a certified public accountant. The three persons have an in-depth experience in taxation of between 28 and 47 years.

360. The EOI Unit operates within the Technical and International Services Division of the IRD. Resources are also drawn from the Audit and Compliance Divisions of the IRD, and the Solicitor General's Chambers where warranted. Officers within the Audit Division have also received relevant training in areas related to exchange of information in November 2012.

361. The persons involved in the handling of EOI since 2011 attended international training seminars and meetings dedicated to EOI. In particular, in November 2012, a regional seminar was organised by the Global Forum in Barbados, which gave the opportunity to a large number of persons directly or indirectly involved in EOI to be exposed to best practices for handling EOI requests and drafting requests. Attendees included the Commissioner, the Deputy Commissioner and the three members of the EOI Unit, together with some members of the Audit Division. The Commissioner and the manager of the EOI Unit also attended an international meeting of competent authorities of the Global Forum in May 2012, where important issues were discussed such as confidentiality and the importance of effective communication between EOI partners. It is after this meeting that the decision was taken to draft an internal EOI Manual.

362. The Barbadian authorities assured that the competent authority is committed to the process of EOI and that resources will be increased again if so warranted by circumstances.

Organisational process

363. Since the EOI Unit has been set up, the handling of the requests has been better monitored, and the 2013 EOI Manual systematised the procedure to be followed. Pursuant to the new procedure, when the Commissioner receives an EOI request, she takes notice of it and passes it on to the Deputy Commissioner who also takes note of the content of the letter and gives it to the EOI manager. The EOI manager records the details of the letter in an electronic tracking system and assigns it a reference number before sending an email of acknowledgement to the requesting authority.

364. The EOI manager then checks the validity of the request or mandates one of the two officers of her unit to do so. The verification of the validity and conformity of the request with the EOI provision in the treaty and Barbados legislation consists of a review of the nature of the request, its content, the referenced treaty, and the required statements from the treaty partner that the information will be used in conformity with the treaty provisions and that the requesting authority tried first to gather the information domestically. The Barbadian authorities indicated that it never happened that a request failed this preliminary control. The officer then checks whether the letter contains enough details to gather the information and reports that on one occasion only have some more details been requested from the treaty partner (see section C.1.1 above).

365. The EOI Unit can consult the Solicitor General's Chambers to get some legal advice on a particular request. That has not happened during the period under review (but the Chambers are involved in the court case pending related to the access powers of the competent authority).

366. If the information requested is maintained by the IRD, the officers obtain a photocopy of the paper file from the filing clerk, stamp it and sign it. That can be done within two weeks. The EOI manager has also access to some of the electronic databases of the tax administration, such as the information returns filed by third parties, and "pay as you earn" database.

367. If the information is not maintained by the IRD, the officer drafts a letter to the attention of the information holder, with a two week deadline to answer (the same deadline applies to all, whether public institutions, taxpayers or third parties). Letters to banks are signed by the EOI manager or directly by the Commissioner if an audit is in progress.

368. No formal memoranda of understanding have been signed with the other public authorities of Barbados that may be involved in the gathering of information, such as the Immigration Department or the Registrar of companies. The authorities explain that the country is small and the competent authority has met with most of the persons that may be concerned, to sensitize them to exchange of information matters. When information is needed, the EOI unit calls the relevant office before sending the formal request that quotes the underlying legislation. In addition, since April 2012, the competent authority has a direct access to the electronic database of the Registrar, which allows it to gather information on companies directly (information on partnerships is still in paper format).

369. The private sector has been sensitized to the importance of exchange of information. In particular, representatives of the private sector (banks and service providers) attended a half a day seminar on the work of the Global Forum.

370. If the request is of a complicated nature or a tax audit of the person concerned is ongoing, the EOI Unit requests the assistance of the Audit Division of the IRD, the head and members of which have been sensitized to the importance of EOI.

371. When the requested information is not received within two weeks, reminders are sent and it is not rare that service providers in particular contact the EOI Unit to request an extension, which is usually granted.

372. When information is received, it is verified to ensure that it is complete and relates directly to the specific request. Where there are gaps, the missing information is requested again from the information holder. The competent authority now sends partial information when available.

373. All these measures are reported in the tracking system of the EOI Unit, an excel sheet with the main elements of the request, dates and deadlines. Performance is monitored by the EOI manager and the Commissioner on a monthly basis.

374. It is difficult to evaluate whether this process functions efficiently, since it was set up in 2012, at the end of the period under review (July 2009-June 2012). The Barbadian authorities are therefore encouraged to apply the new Manual and continue improving their procedures and practice to answer EOI requests in a timely manner.

375. As Barbados has not introduced a unified bank account identification system, to know whether a particular person has a bank account in Barbados, the Barbadian tax authorities would need to contact all 9 commercial banks and 52 offshore banks individually to ascertain whether that person is their client or not. In practice the competent authority does not contact all banks but only the main ones. On one occasion each of the 9 banks responded that the individual did not have an account in their bank, and the Barbadian competent authorities relayed to the requesting jurisdiction that the taxpayer has no bank account in Barbados. This was not accurate as the taxpayer may have had a bank account with one of the other banks in Barbados. The Barbadian authorities have confirmed that in the future they are not adverse to approaching all banks in Barbados if requested to do so by peers. In order for peers to accurately respond the Barbadian authorities should ensure that their process of collecting banking information is clearly outlined to their peers to facilitate the effective exchange of information.

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

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

Determination and factors underlying recommendations

Phase 1 Determination	
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly, no Phase 1 determination has been made.	
Phase 2 rating	
Partially compliant.	
Factors underlying recommendation	Recommendation
During the three years under review, Barbados rarely provided an update or status report to its EOI partners within 90 days when the competent authority was unable to provide a substantive response within that time. In some cases updates were also not provided despite repeated reminders from the EOI partner. The monitoring of requests has nonetheless improved more recently, with the creation of a dedicated EOI Unit.	Barbados should systematically provide an update or status report to its EOI partners within 90 days when the competent authority is unable to provide a substantive response within that time.
Barbados has experienced some difficulties during the review period to answer EOI requests in a timely manner. This was due to a lack of dedicated personnel in the EOI unit for over a year. The resources devoted to EOI and processes have been greatly improved towards the end of the period.	Barbados should ensure that answers to EOI requests are made in a timely manner in all cases.

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>)		
Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement	There are currently no penalties for non-compliance with obligations to maintain up to date share registers in the case of limited companies and SRLs.	In so far as penalties are not currently provided, effective sanctions should be introduced against companies and SRLs that fail to comply with requirements to maintain share registers.
Phase 2: Largely compliant	The Ministry in charge of International Business does not have a system of monitoring the compliance with ownership and identity information keeping requirements in respect of all international entities and penalties for non-compliance are unenforced in practice. Whilst the international entities are regulated, the Ministry has failed to take practical compliance measures to supervise and monitor the obligations placed on International entities.	Effective enforcement measures should be taken to ensure that all entities comply with their requirements to maintain ownership information.

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>		
Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement	Barbados legislation does not ensure that reliable accounting records or underlying documentation are kept for all trusts.	All relevant entities and arrangements should be required to maintain reliable accounting records including underlying documentation for a minimum of 5 years.
Phase 2: Largely compliant		
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
Phase 1: The element is in place.		
Phase 2: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(Tor B.1)</i>		
Phase 1: The element is in place, but certain aspects of the legal implementation of the element need improvement	Relevant laws are not unequivocally drafted as to whether trustees of international trusts and registered unit trusts are or not prohibited to disclose to any other person the name of the settlor or any beneficiary, or any information relating to or forming part of the accounts of an international trust.	The Barbadian authorities should continue working towards clarifying that the competent authority has power to access confidential information covered by the International Trust Act and the Mutual Funds Act.
Phase 2: Largely compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
Phase 1: The element is in place		
Phase 2: Compliant		

Determinations	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1)		
Phase 1: The element is in place	Five DTCs limit exchange of information (i) to information for carrying out the provisions of the Convention, and/or (ii) by failing to provide for exchange of bank information.	Barbados should continue to revise its existing treaties in line with the international standard where they do not currently meet that standard.
Phase 2: Largely compliant	During the period under review, two of Barbados' treaties limited the scope of exchange for offshore entities. In the case of one treaty, these limitations led to Barbados not answering two requests (one declined for valid reasons and the other because of a restrictive interpretation of the treaty). Barbados already took action by upgrading the two relevant treaties used for EOI, which entered into force after the period under review.	Barbados should continue to revise its existing treaties in line with the international standards where they do not currently meet that standard, and to ensure that they are interpreted in accordance with the standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2)		
Phase 1: The element is not in place	A number of DTCs of Barbados do not meet the international standard (see C.1).	Barbados should continue to revise its existing treaties in line with the international standard where they do not currently meet that standard.
	Barbados has been approached by five jurisdictions to negotiate TIEAs or protocols to DTCs, but has not been diligent in answering these requests, or persists preferring DTA negotiations. TIEA initialled two years ago have also not been signed yet.	Barbados should continue to enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) with all other relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.
Phase 2: Non compliant		

Determinations	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
Phase 1: The element is in place		
Phase 2: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
Phase 1: The element is in place		
Phase 2: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
Phase 1: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Phase 2: Partially compliant.	During the three years under review, Barbados rarely provided an update or status report to its EOI partners within 90 days when the competent authority was unable to provide a substantive response within that time. In some cases updates were also not provided despite repeated reminders from the EOI partner. The monitoring of requests has nonetheless improved more recently, with the creation of a dedicated EOI Unit.	Barbados should systematically provide an update or status report to its EOI partners within 90 days when the competent authority is unable to provide a substantive response within that time.

Determinations	Factors underlying recommendations	Recommendations
	Barbados has experienced some difficulties during the review period to answer EOI requests in a timely manner. This was due to a lack of dedicated personnel in the EOI unit for over a year. The resources devoted to EOI and processes have been greatly improved towards the end of the period.	Barbados should ensure that answers to EOI requests are made in a timely manner in all cases.

Annex 1: Jurisdiction’s response to the report⁵⁴

Barbados would like to express its appreciation for the work done by the assessment team particularly the Secretariat’s representative, for the manner in which she assisted and guided us during our Phase 1, Supplementary and Phase 2 Assessments. We also wish to express our appreciation to our colleagues in the Peer Review Group and our exchange of information partners for their contribution in the process.

Barbados is generally satisfied with the Report but for the concerns we had expressed about our rating for element C2 and what we believe may have been a misunderstanding of our policy regarding the negotiation of certain EOI instruments and our commitment to the standard of transparency and exchange of information.

We wish to make it clear that Barbados is committed and has been for many years to standards of transparency and exchange of information and has demonstrated this through both the signing of double taxation agreements and tax information exchange agreements. With a view to developments towards automatic EOI, Barbados has informed the Global Forum that consideration is being given to the country’s signing on to the Convention on Mutual Administrative Assistance in Tax Matters.

Barbados will continue to give serious consideration to all of the elements and the recommendations included in the Report especially those related to element C2 in order to ensure that it becomes fully compliant with international standards to which it is committed. Work is already in train on the recommendations and these are expected to be in place before the end of 2014.

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

Annex 2: List of all Exchange-of-Information Mechanisms

Multilateral agreements

Barbados is a Party to the Caribbean Community (CARICOM) Multilateral Tax Treaty (CARICOM regional Agreement) which is a double tax convention signed in 1994 between 11 of the 15 member States of the CARICOM.

Bilateral agreements

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

For jurisdictions with which Barbados has several agreements, a reference to all agreements is made. Exchange of information mechanisms signed by Barbados as of February 2014 are:

	Jurisdiction	Type of arrangement	Signed	Ratified/in force
1	Antigua and Barbuda	CARICOM regional agreement	6 July 94	7 July 95
2	Austria	DTC	27-Feb-06	1 April 07
3	Bahrain	DTC	3 Dec 2012	16-July-2013
4	Belize	CARICOM regional agreement	6 July 94	30-Nov-94 (effective 1-Jan-96)
5	Botswana	DTC	23-Feb-05	12 Aug 05
6	Canada	DTC	22-Jan-80	22-Dec-80
		Protocol to DTC	8-Nov-11	17-Dec-2013
7	China (People's Rep.)	DTC	15-May-2000	27 Oct 2000
		Protocol to DTC	10-Feb-10	9 June 2010

	Jurisdiction	Type of arrangement	Signed	Ratified/in force
8	Cuba	DTC	17-June-99	16 March 2000
9	Czech Republic	DTC	16 Oct 11	6 June 2012
10	Denmark	TIEA	3-Nov-11	14 June 2012
11	Dominica	CARICOM regional agreement	6 July 94	30-Nov-94 (effective 1-Jan-97)
12	Faroe Islands	TIEA	3-Nov-11	25-July-2013
13	Finland	DTC	15-June-89	20 Aug 92
		Protocol to DTC	3-Nov-11	1 June 2012
14	Ghana	DTC	22-April-08	Not ratified in Ghana
15	Greenland	TIEA	3-Nov-11	2-May-2012
16	Grenada	CARICOM regional agreement	6 July 94	In force
17	Guyana	CARICOM regional agreement	6 July 94	In force
18	Iceland	DTC	3-Nov-11	24 Feb 2012
19	Jamaica	CARICOM regional agreement	6 July 94	In force
20	Luxembourg	DTC	01-Dec-09	8-Aug-11
21	Malta	DTC	05-Dec-01	19 June 02
		Protocol to DTC	25-Sept-2013	Not ratified
22	Mauritius	DTC	28-Sep-04	28 Jan 05
23	Mexico	DTC	07-April-08	26 Jan 09
24	Netherlands	DTC	28-Nov-06	12 July 07
		Protocol to DTC	27-Nov-09	13 Nov 11
25	Norway	DTC	15-Nov-90	3 July 93
		Protocol to DTC	3-Nov-11	1 June 2012
26	Panama	DTC	21-June-10	18-Feb-11
27	Portugal	DTC	22-Oct-10	Not ratified in Portugal
28	Qatar	DTC	6 Dec 2012	Not ratified
29	San Marino	DTC	14 Dec 2012	Not ratified
30	Seychelles	DTC	19-Oct-07	21 April 08
31	Singapore	DTC	15-July-13	Not ratified

	Jurisdiction	Type of arrangement	Signed	Ratified/in force
32	South Africa	TIEA	17-Sept-2013	Not ratified
33	Spain	DTC	1-Dec-10	14-Oct-11
34	St. Kitts and Nevis	CARICOM regional agreement	6-July-94	30-Nov-94 (effective 1-Jan-98)
35	St. Lucia	CARICOM regional agreement	6-July-94	30-Nov-94 (effective 1-Jan-96)
36	St. Vincent and the Grenadines	CARICOM regional agreement	6-July-94	30-Nov-94 (effective 1-Jan-99)
37	Sweden	DTC	01 July 91	1 Dec 91
		Protocol to DTC	3-Nov-11	12 Dec 2012
38	Switzerland	DTC	20-Aug-63	1963
39	Trinidad and Tobago	CARICOM regional agreement	6-July-94	30-Nov-94 (effective 1-Jan-96)
40	United Kingdom	New DTC	26 April 2012 (1970)	19 Dec 2012
41	United States	DTC	31-Dec-84	28-Feb-86
		Protocol to DTC	14-July-04	20-Dec-04
		TIEA	03-Nov-84	03-Nov-84
42	Venezuela	DTC	11-Dec-98	01 Jan 01

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

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

Property Act

Securities Act

Mutual Funds Act

Property Transfer Tax Act

Stamp Duty Act

Annex 4: List of Authorities Interviewed

Inland Revenue Department

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

Ministry of Finance

Corporate Affairs and Intellectual Property Office (Registrar)

Solicitor General's Chambers

Securities Commission

Central Bank

Financial Services Commission

Barbados Bar Association

Institute of Chartered Accountants of Barbados (ICAB)

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: BARBADOS

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

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 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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