



# SUPPLEMENTARY PEER REVIEW REPORT

Phase 1

## Legal and Regulatory Framework

DOMINICA



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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](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).



## Executive summary

1. This is a supplementary report on the legal and regulatory framework for transparency and exchange of information in Dominica. It complements the Phase 1 peer review report on Dominica which was adopted and published by the Global Forum in October 2012 (“2012 Report”).
2. This supplementary report reviews the legislative amendments made, including the exchange of information agreements signed and ratified, by Dominica since May 2012 (the date at which the legal and regulatory framework was previously assessed) to address a number of the recommendations made in the Phase 1 peer review report. These amendments pertain to the determinations and recommendations made in respect of availability of ownership and identity information (element A.1); availability of accounting information (element A.2); access to information (element B.1); exchange of information mechanisms (element C.1); Dominica’s exchange of information network (element C.2); and provisions to ensure the confidentiality of information received (element C.3). In view of the legislative amendments made, Dominica asked for a supplementary peer review report pursuant to paragraph 58 and 60 of the Revised Methodology for Peer Reviews and Non-member Reviews.
3. Updates to the anti-money laundering (AML) framework of Dominica improved the assessment of the availability of identity information of the trustees, settlors and beneficiaries of international exempt trusts, which was highlighted as a gap in element A.1 in the 2012 Report. The recommendation regarding trusts has thus been removed. There were no changes made to address the other gap under element A.1. which was the lack of ensuring the availability of ownership information of external companies. As this gap on its own does not present a significant deficiency to the legal framework to ensure availability of ownership information of all entities, the determination for element A.1. therefore changes to “in place”.
4. While the changes to the AML laws made reference to some accounting information keeping obligations, these requirements on their own are insufficient to be considered consistent with the accounting information requirements under the Terms of Reference (ToR). The two recommendations

for element A.2 therefore remain with the determination staying as “not in place”. There were no changes since the 2012 Report with respect to the legal framework concerning the availability of banking information and element A.3 remains the same.

5. Legislative amendments were also made to address the deficiencies highlighted in the 2012 Report regarding access powers of the competent authority to obtain and provide information relating to the offshore entities. The determination for elements B.1, C.1 and C.2 have been changed to “in place”. The amendments to the EOI Act also introduced notification requirements in limited circumstances which resulted in an updated analysis under element B.2 and while a recommendation has been made to introduce wider exceptions from prior notification the element remains “in place”.

6. There were also no changes made to the confidentiality provisions in Dominica’s laws which were assessed in the 2012 Report to be inconsistent with the standard and the recommendation remains with the determination for element C.3 as “in place but certain aspects of the legal implementation of the element need improvement”. There were no other changes since the 2012 Report that affect element C.4 and C.5 and the assessment remains the same.

7. The changes introduced by Dominica since the 2012 Report demonstrates its commitment to implementing the international standards for transparency and exchange of information. Dominica is encouraged to continue to review and update its legal and regulatory framework to address the remaining recommendations. Considering the steps undertaken by Dominica to remedy the deficiencies highlighted in the 2012 Report, Dominica can now move to Phase 2. As the Phase 2 review was originally scheduled to be launched in the first half of 2014 and this time has already passed, it is proposed to reschedule the review to the fourth quarter of 2015. Any further developments in the legal and regulatory framework, as well as the application of the framework to EOI practice in Dominica, will be considered in detail in the Phase 2 peer review.

## Introduction

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

8. The assessment of the legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 60 of the Global Forum’s *Methodology for Peer Reviews and Non-member Reviews*, and considers recent changes to the legal and regulatory framework of Dominica based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*. This supplementary report is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements signed or in force as at 11 August 2015, and information supplied by Dominica. It follows the Phase 1 peer review report on Dominica which was adopted and published by the Global Forum in October 2012 (“the 2012 Report”).

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

10. The assessment was conducted by an assessment team, which consisted of two expert assessors and a representative of the Global Forum Secretariat: Ms. Caroline Lavigne, Legal Advisor, Ministry of Economy and Finances of France; Ms. Evelyn Lio, Tax Director (International Tax), Inland Revenue Authority of Singapore; and Ms. Audrey Chua from the Global Forum Secretariat. The assessment team examined the legal and regulatory



framework for transparency and exchange of information and relevant exchange of information mechanisms in Dominica.

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

## Compliance with the Standards

### A. Availability of information

#### Overview

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

13. The 2012 Report concluded that there were many deficiencies under elements A.1 and A.2 which led to the determination of element A.1 to be "in place, but certain aspects of the legal implementation of the element need improvement", and element A.2 to be "not in place".

14. For element A.1 (ownership and identity information), the deficiencies identified in the 2012 Report pertained to the lack of legal obligations for external companies (companies incorporated under a foreign law) to make ownership information available. There were also no requirements to ensure the availability of identity information of settlors and beneficiaries of international exempt trusts in all circumstances.

15. Since the 2012 Report, there were no changes to the legal framework as regards external companies and the recommendation remains. There were updates to the anti-money laundering (AML) legal framework in 2013 and 2014 that clarify the obligations placed on international exempt trusts to keep identity information of all trustees, settlors and beneficiaries. Low value international exempt trusts are exempted from these obligations but the materiality of this gap may be considered limited and such trusts would also continue to be subjected to common law obligations to keep the information. There are also no international exempt trusts currently registered in Dominica. It will nevertheless be examined in the Phase 2 review if there are any arising issues from such entities. The recommendation on trusts has therefore been removed. The remaining recommendation on external companies on its own does not present a significant deficiency of the legal framework to ensure the availability of ownership information and the determination for element A.1 is therefore changed to “in place”.

16. For element A.2 (accounting information), the 2012 Report concluded that international business companies, foreign trusts and international exempt trusts were not explicitly required to maintain accounting records and underlying documentation consistent with the international standard. While updates to the AML legislation made reference to accounting information keeping obligations, these requirements on their own are insufficient to be considered consistent with the accounting information requirements under the ToR. The two recommendations for element A.2 therefore remain with the determination staying as “not in place”.

17. No relevant legislative changes have been made since the 2012 Report in respect of element A.3, which therefore remains “in place” without any recommendations.

## A.1. Ownership and identity information

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

### *Companies (ToR<sup>1</sup> A.1.1)*

18. The 2012 Report concluded that the availability of ownership and identity information in respect of companies formed under domestic law was ensured, but not for external companies (companies incorporated under a foreign law). While external companies must register with the Registrar

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

of Companies (ROC) and the Inland Revenue Division, no ownership information has to be maintained by government authorities or by the external companies themselves. It was determined that in respect of external companies having their place of management and control in Dominica and thereby considered as tax resident in Dominica, ownership and identity information was not ensured by Dominican legal and regulatory framework. There are currently 98 external companies registered in Dominica out of a total of 20 979 entities registered. A recommendation was made in this aspect and as there were no changes since the 2012 Report, the recommendation remains.

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

19. The 2012 Report concluded that bearer shares are prohibited in Dominica for domestic companies and legal requirements ensure that information on holders of bearer shares issued by international business companies is available. No changes have been made since.

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

20. The 2012 Report concluded that the legal framework ensured the availability of ownership and identity information as all partnerships have to report all information on their partners to the Registrar of Companies. No changes have been made since.

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

21. Dominica's legal framework ensures the availability of the identity information of the trustee, settlors and beneficiaries for all domestic trusts and foreign trusts which are not international exempt trusts. These obligations are provided under the common law, which is supplemented by the Trustee Act 1877, and the tax laws.

22. A gap was identified in the 2012 Report that international exempt trusts were not subjected to obligations to keep identity information of all parties of the trust. Such international exempt trusts were only obliged to provide information on the trustee to the Registrar during registration. There were no other obligations, even under AML laws and regulations, for information on settlors and beneficiaries to be kept. A recommendation was made in the 2012 Report that Dominica should provide explicit provisions that would ensure the availability of information on the settlors and beneficiaries in the case of international exempt trusts.

23. Since the 2012 Report, Dominica introduced changes to its AML laws and regulations. International exempt trusts are covered under the definition of "relevant business" which are subjected to the Proceeds of Crime

Act Code of Practice 2014 which took effect on 30 April 2014. With respect to international exempt trusts, there are now specific CDD rules to require the identification and verification of “identifying information in relation to any person appointed as trustee, settlor or protector of the trust” (s. 30(1)(e), Proceeds of Crime Act Code of Practice 2014). All international exempt trusts are registered in accordance to the International Exempt Trust Act (s. 2). There are currently no international exempt trusts registered in Dominica.

24. However, identity information of the beneficiaries is only required when the trust presents a “normal or a higher level of risk” (s. 30(2)), and thus there is no requirement under the Proceeds of Crime Act Code of Practice to keep identity information of beneficiaries of trusts that are deemed to be low risk. “Low risk” trusts may be determined through consideration of factors provided in the Proceeds of Crime Act Code of Practice (s. 21(6)), one of which being if the trust is subjected to other AML regulations that are consistent with the FATF standards (s. 21(6)(b)). Nevertheless, obligations also exist under the Trusts and Non-Profit Organisations Regulations 2014 that apply to all trusts which is described in the later paragraphs.

25. Failure to comply with the requirements under the Proceeds of Crime Act Code of Practice, such as obtaining identity information of the trustees, settlors and beneficiaries of international exempt trusts, will give rise to an offence and the persons who engage in the business of an international exempt trust may be liable to a fine of up to XCD 150 000 (EUR 50 625)<sup>2</sup> and/or imprisonment of up to two years (s. 60(5), Proceeds of Crime Act). This enforcement provision is imposed on all persons linked to the trust, including resident trustees, since the trust is considered “connected” to Dominica if it arises under Dominica’s law, entirely or partly governed by Dominica’s law, or where one or more of the trustees or beneficiaries are linked to Dominica (s. 7, Schedule V, Proceeds of Crime Act). Accordingly, a person who is “connected” would include a Dominican citizen, a body incorporated or constituted under Dominica’s law or a person domiciled, resident or present in Dominica (s. 6, Schedule V, Proceeds of Crime Act).

26. Another piece of legislation, the “Trusts and Non-Profit Organisations Regulations 2014” was introduced under the Proceeds of Crime Act which took effect on 30 April 2014, provides for the supervision and registration of trusts and non-profit organisations. This includes monitoring the effectiveness of legislation concerning trusts and non-profit organisations (s. 4(1)(c)) which also references the above-mentioned Proceeds of Crime Act Code of Practice 2014 (s. 2(1)) that is applicable to international exempt trusts. In addition, the registration requirement under this Regulation refers to all trusts that are

2. Dominica’s official currency is the East Caribbean Dollar (XCD) where 1 XCD = 0.3375 EUR as at 29 May 2015.

“incorporated, formed or otherwise established in Dominica; or administered in or from within Dominica” (s. 7(1)). Therefore, all international exempt trusts, regardless of the risk level, are covered under the obligations of the Trusts and Non-Profit Organisations Regulations 2014.

27. Under the Trusts and Non-Profit Organisations (NPO) Regulations 2014, all international exempt trusts have to register with the Financial Services Unit which is designated as the Trusts and Non-Profit Supervisor (s. 3). Failure to register is considered an offence and liable to a fine of up to XCD 50 000 (EUR 16 875) (s. 7(3)). Registration is made through an application to register with the Trusts and NPO Supervisor and in the “form specified by the Trusts and NPO Supervisor”, accompanied by “documents or information that may be specified by these Regulations or on the application form” (s. 8(1)-(3), Trusts and Non-Profit Organisations Regulations 2014). There are no further details on the “form” which is to be specified by the Trusts and NPO Supervisor explicitly listing the specific information to be submitted during registration. However, Dominica authorities advise that the information to be submitted during registration include identity information of all parties to the trusts. This is also supported by requirements for the Trusts and NPO Register to contain contact information of the trust (s. 6(2) (a)) and “identity of the persons who own, control or direct the trust...” (s. 6(2) (c)). The type of information submitted in practice will be examined during the Phase 2 review. Nevertheless, registered international exempt trusts are obligated to keep identity information of the trustees, settlors and beneficiaries. There is a specific obligation for registered international exempt trusts to keep records of “the identity of the beneficiaries of the trust and all persons who are relevant to the functioning of the trust” (s. 14(1)(a)(iii)). All information is to be kept for at least seven years (s. 14(2)). Failure to keep the information is considered an offence and liable to a fine of up to XCD 20 000 (EUR 6 750) (s. 14(3)).

28. However, a trust that has either a gross annual income of less than XCD 5 000 (EUR 1 689) or assets less than XCD 10 000 (EUR 3 375) is exempted from registration and such “low value” trusts are therefore not subjected to the obligations of the Regulations (s. 2(1) and 7(2)).

### *Conclusion*

29. The new AML regulations clarify the obligations for international exempt trusts to keep identity information of all trustees, settlors and beneficiaries.

30. While there may continue to be a gap where “low value” international exempt trusts are exempted from obligations under the Trusts and Non-Profit Organisations Regulations 2014 to register and keep identity

information of the parties to the trust, the materiality of this gap may be considered to be very limited and such trusts would also continue to be subjected to common law obligations to keep all identity information of all trustees, settlors and beneficiaries. There are also no international exempt trusts currently registered in Dominica. The recommendation from the 2012 Report concerning all international exempt trusts has been removed. Nevertheless, Dominica is recommended to ensure the availability of ownership information regarding “low value” international exempt trusts. It will be examined in the Phase 2 review if there are any arising issues from such entities.

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

31. The 2012 Report noted that Dominica’s laws do not allow for the creation of foundations. There has been no change to the laws since.

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

32. The 2012 Report concluded that when relevant entities are required to maintain ownership and identity information under Dominica’s laws, these requirements are supplemented by sanctions for non-compliance.

33. As regards the new AML regulations pertaining to international exempt trusts except those that are low value and exempted from registration under the Trusts and Non-Profit Organisations Regulations 2014,

- Failure to comply with the requirements under the Proceeds of Crimes Act Code of Practice 2014 to obtain the identity information of trustees, settlors and beneficiaries, where applicable, will give rise to an offence. The person who engages in the business of an international exempt trust may be liable to a fine of up to XCD 150 000 (EUR 50 625)<sup>3</sup> and/or imprisonment of up to two years (s. 60(5), Proceeds of Crimes Act Code of Practice 2014).
- Failure of any trust to register with the Financial Services Unit is considered an offence and liable to a fine of up to XCD 50 000 (EUR 16 875) (s. 7(3), Trusts and Non-Profit Organisations Regulations 2014).
- Failure to keep the information is considered an offence and liable to a fine of up to XCD 20 000 (EUR 6 750) (s. 14(3), Trusts and Non-Profit Organisations Regulations 2014).

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3. Dominica’s official currency is the East Caribbean Dollar (XCD) where 1 XCD = 0.3375 EUR as at 29 May 2015.

34. These provisions appear adequate to ensure the obligations are enforced. No other changes have taken place since. The effectiveness of Dominica's enforcement provisions will be considered in its Phase 2 Peer Review.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
External companies (foreign companies) carrying on business in Dominica are not obliged to keep or provide to any authority information on their ownership.	Dominica should ensure that ownership information is available in relation to foreign companies that have a place of management and control in Dominica.
<del>Availability of identity information of settlors and beneficiaries of international exempt trusts is not fully ensured in all circumstances.</del>	<del>Dominica should ensure that ownership information in relation to international exempt trusts is available in all circumstances.</del>

## A.2. Accounting records

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

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

35. The 2012 Report concluded that obligations were in place to maintain accounting records and underlying documentation for domestic companies, partnerships and domestic trusts. However, there were no explicit requirements for international business companies, foreign trusts and international exempt trusts. In addition, there was no requirement for entities, other than those subject to tax law provisions, to keep underlying documentation for at least five years. Two recommendations were made in this regard.

36. There have been no relevant changes to the various laws for the respective entities such as the International Business Companies Act, International Exempt Trust Act, or the Exempt Insurance Act as regards obligations to keep accounting information. The 2012 Report also noted that under common law, trustees are under a fiduciary duty to keep accurate accounts and records but the extent and manner of such obligations could not be established and will



be considered as part of the Phase 2 review. While recently introduced AML legislation provides some requirements in respect of accounting information, these requirements on their own are insufficient to be considered in line with the standard.

37. The Proceeds of Crime Act Code of Practice 2014 which took effect on 1 May 2014 only provides for entities subject to AML obligations, which include international business companies, foreign trusts and international exempt trusts, to keep “account files and business correspondence with respect to a transaction” and “sufficient details of the transaction for it to be properly understood” (s.46(h),(i)). These provisions may cover obligations for the accounting records kept to correctly explain all transactions. However, as there are no express provisions on obligations regarding the preparation or submission of financial statements, it is not clear if the accounting information kept would be sufficient to allow the financial position of the entity to be determined with reasonable accuracy at any time or financial statements to be prepared. There are also no obligations on the underlying documentation that must be kept. Under the Proceeds of Crime Act Code of Practice, information must be kept for at least seven years (s.47(1)). Failure to keep information is considered an offence and liable to a fine of up to XCD 150 000 (EUR 50 625) and/or imprisonment of up to two years (s.60(5)).

38. The Trusts and Non-Profit Organisations Regulations 2014 which came into force on 30 April 2014 require that trusts keep financial records that “show and explain its transactions,...and that are sufficiently detailed to show that its funds have been used in a manner consistent with its purposes, objectives and activities” and show the “sources of its gross income” (s. 14(1) (b)). These provisions are not precise as regards the accounting records that must be kept. Where the records must show that it has been “used in a manner consistent with its purposes, objectives and activities”, it does not equate to ensuring that the accounting information kept can correctly explain all transactions and enable the financial position of the entity to be determined with reasonable accuracy at any time. There are also no express obligations regarding the preparation or submission of financial statements, or the level of underlying documentation that must be kept. Under the Trusts and Non-Profit Organisations Regulations 2014, information must be kept for at least seven years (s. 14(2)). Failure to keep the information is considered an offence and liable to a fine of up to XCD 20 000 (EUR 6 750) (s. 14(3)).

### *Conclusion*

39. In the absence of express provisions regarding the accounting information and underlying documentation to be kept, the requirements under these two regulations are inadequate to be consistent with the accounting

information requirements under the ToR. The requirements may be sufficient to correctly explain all transactions but it is unclear if it is sufficient to enable the financial position of the entity to be determined with reasonable accuracy at any time and allow financial statements to be prepared. Further, there are no obligations as regards to the keeping of underlying documentation. As there were no other changes to the law, the two recommendations remain.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
It is not explicitly required that international business companies, foreign trusts and international exempt trusts maintain accounting records which enable the financial position of the entities or arrangements to be determined with reasonable accuracy at any time and allow financial statements to be prepared.	Dominica should introduce consistent obligations for all relevant entities and arrangements to maintain full accounting records in line with the Terms of Reference.
No <u>Inadequate</u> obligations exist for international business companies, foreign trusts and international exempt trusts to keep underlying documentation. Further, the keeping of underlying documentation by entities not subject to the provisions of the VAT Act is not fully ensured.	Dominica should ensure that all relevant entities are required to keep full underlying documentation and retain all accounting records for at least five years.

### A.3. Banking information

Banking information should be available for all account-holders.

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

40. The 2012 Report found that Dominica has a legal framework in place to ensure the availability of information on transactions and customers of banks. No relevant legislative changes have been made since the 2012 Report.

**Determination and factors underlying recommendations**

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

## B. Access to information

### Overview

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

42. The 2012 Report found significant deficiencies concerning the ability of the competent authority to access information for EOI purposes and three recommendations were made in respect of element B.1.

43. The deficiencies identified in the 2012 Report related to the restriction in accessing information from international business companies, international exempt trusts and offshore financial institutions as these entities are not liable to tax and the powers of the Comptroller of Inland Revenue only extend to entities liable to pay tax. In addition, confidentiality provisions in the laws regulating offshore entities are not overridden for EOI purposes. These restrictions have been overcome through amendments to the Tax Information Exchange Act (“EOI Act”) that entered into force on 28 July 2015 to allow the Comptroller broad access to information from any person in Dominica, whether or not the person is subject to tax. Access powers can be exercised in relation to EOI arrangements that are scheduled to the EOI Act. To date, all of Dominica’s EOI arrangements that are in line with the standard are scheduled to the Act (see section C.1 for more details). The Comptroller can exercise its access powers by issuing a notice requesting the production of information or by applying for a court order if the information is sought in relation to civil or criminal proceedings in the requesting jurisdiction. Search and seizure measures are also available and the non-compliance with a notice

or court order can be sanctioned with fines and imprisonment. The various laws governing the offshore entities have also been amended on 28 July 2015 to lift the secrecy provisions for purposes applicable to EOI. An amendment in the EOI Act also explicitly overrides any secrecy provisions restricting the provision of information that may be protected by confidentiality obligations. With these amendments, it is ensured in the legal and regulatory framework of Dominica that the competent authority can access information from all parties, including the international business companies, international exempt trusts and offshore financial institutions.

44. As the changes made address all three recommendations from the 2012 Report, these recommendations have been removed. The determination of element B.1 has been changed to “in place”.

45. Dominica also introduced provisions to the EOI Act to provide for a notification right to the subject of a request in quite limited circumstances, but no specific exceptions are provided for in line with the standard. Therefore a recommendation has been included for Dominica to permit wider exceptions and as the operation of the new rules is untested in practice they will be reviewed in the Phase 2 review. Element B.2 remains “in place”.

## **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).

### ***Bank, ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2.)***

46. The 2012 Report concluded that the EOI Act authorises the Comptroller of Revenue to exercise the powers vested in him under the Income Tax Act to obtain information to implement the provisions of the Tax Information Exchange Act (“EOI Act”). Under the then existing provisions of the ITA, the Comptroller was empowered to obtain banking information, ownership information and accounting information. However, such information could only be obtained in respect of any person who was liable to tax. This restriction was discussed under B.1.3 which resulted in a recommendation in the 2012 Report. Since then, the provisions added to the EOI Act provide wider powers for EOI purposes.

47. Further to legislative amendments to the EOI Act which entered into force on 28 July 2015, there is now added processes “where, under a request, the Comptroller considers it necessary to obtain specified information or

information of a specified description from any person” (s. 4A(1), EOI Act). “Person” is defined by reference to the Income Tax Act as including “an individual, a trust, the estate of a deceased person, a company, a partnership and every other juridical person” (s. 2(1), Income Tax Act) which expands the scope of the Comptroller’s access powers to obtaining information beyond persons who are or may be liable to tax. “Information” is also further defined with legislative amendments to the EOI Act to include “any fact, statement, document or record in whatever form” (s. 2). The law further specifies that this include –

- any fact, statement, document or record held by banks, other financial institutions or any persons, including nominees and trustees, acting in an agency or fiduciary capacity; and
- any fact statement, document or record regarding the beneficial ownership of companies, partnerships and other persons, including (i) in the case of a collective investment fund, information on any shares, units and other interests; and (ii) in the case of trusts, information on settlors, trustees and beneficiaries.

48. The procedure for collecting information will differ, depending on whether the information requested is required for proceedings in the requesting jurisdiction or related investigations (s. 4A(2)(a)). “Proceedings” are defined as “civil and criminal proceedings” (s. 2, EOI Act).

49. First, when the information requested does not relate to any proceeding or investigation in the requesting jurisdiction, and the Comptroller considers it necessary to obtain the information from a person (i.e. when the information is not already in the possession of the Comptroller), the Comptroller will issue a notice in writing requiring the production of the information specified in the notice. The notice may require the information to be provided within a specified time, in a specific form, and verified or authenticated in such manner as the Comptroller may require (s. 4A(1)(b), EOI Act). The Comptroller may take copies or extracts of any information (s. 4A(2), EOI Act). Although the law does not specify a timeframe for the information holder to produce the information, it is unlikely that this would impose any impediment for Dominica to reply to EOI requests or provide status updates within 90 days.

50. Second, when the information requested is required for civil or criminal proceedings in the requesting jurisdiction, the competent authority must apply to a Judge of the High Court for an order to produce such information (s. 4A(1)(a), EOI Act). Before making an order, the Judge must be satisfied that five conditions are fulfilled, i.e. that (a) the Comptroller has certified that the request is in compliance with the relevant agreement set out in the schedule; (b) the information is under the possession or control of a person in Dominica; (c) the information requested does not include items subject to

legal privilege or items subject to protection as secret, under the scheduled agreement; (d) the person subject to the request has been notified where possible in accordance with s. 4B; and (e) under the relevant agreement, there are no reasonable grounds for not granting the request. The term “items subject to protection as secret under the scheduled agreement” is not defined in the EOI Act but Dominican authorities advise that it is applied in accordance with Article 26(3) of the OECD Model Tax Convention and Article 7(2) of the OECD Model Tax Information Exchange Agreement. This will be further examined in the Phase 2 review.

51. The judge may then make an order that the person who appears to be in control of the information produces it to the competent authority to take away or give the competent authority access to it within a specified period, which in general would be 14 days, unless the judge considers that another period would be appropriate (s. 4A(4) and (5)). The time that a judge may take to issue an order is not specified in the law but Dominica authorities advise that in practical situations it is normally an immediate decision. This will be further examined in the Phase 2 review. Where the judge makes such an order in relation to information held on any premises he may also order that a police officer should be allowed to enter the premises to obtain access to the information (s. 4A(7)). Requested information maintained as an electronic record must also be produced in a form in which it can be taken away and in a form in which it is visible and legible (s. 4A(9)).

52. It should be noted that where the judge is satisfied that the conditions are met, he/she “may” rather than “shall” issue an order, pursuant to section 4A(4). The judge therefore does not appear to be bound to do so. In addition it is not clear what may constitute “reasonable grounds” for refusing to issue an order, particularly if the competent authority is satisfied that the request conforms with, and is therefore valid under, the relevant agreement. The practical impact of this potential restriction on the effectiveness of the Comptroller’s access powers will be considered as part of the Phase 2 review of Dominica.

53. The above legislative amendments to the EOI Act introduced in 2015 extend the powers of the Comptroller to obtain ownership, accounting and banking information from any person for purposes of responding to EOI requests. The process to obtain the information depends on whether the requested information relates to a civil or criminal proceeding in which case a court order would be required. The conditions to which the judge considers in making the order are on their face not restrictive and are in line with the standard. The practical implementation of the court procedure will be considered as part of the Phase 2 review of Dominica.

54. In addition, it was noted in the 2012 Report that the access powers of the Comptroller can only be exercised in respect of requests received under agreements which are enacted as schedules to the EOI Act. The 2012 Report

noted that access powers could only be exercised in respect of requests from 27 of Dominica's 30 EOI partners and a recommendation was made to this effect. In June 2015, Dominica enacted as schedules to the EOI Act the TIEAs with Poland, South Africa, as well as the TIEA with Ireland signed on 9 July 2013. The remaining agreement not scheduled to the EOI Act is the DTC with Switzerland which does not meet the standard (as discussed in C.1) but discussions between both parties are underway to ensure their EOI relationship meets the standard. Dominica is recommended to ensure that their revised EOI mechanism with Switzerland which meets the standard, once signed, is also scheduled to the EOI Act. With the scheduling to the EOI Act of the other three TIEAs, Dominica is able to exercise its access powers in respect of all of its agreements that are in line with the standard. Accordingly, the recommendation is removed.

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

55. As indicated in B.1.1 and B.1.2, the 2012 Report noted that the Comptroller can obtain all ownership, accounting and banking information. However, the access powers can only be exercised in respect of any person who may be liable to tax. Accordingly, the Comptroller will not be able to access information from international business companies, international exempt trusts, and other entities operating in offshore sectors as these entities are not liable to pay tax. The 2012 Report noted that while this might not be said to be a domestic tax interest the effect on Dominica's ability to exchange information is analogous. A recommendation was made in the 2012 Report that Dominica should explicitly provide that its competent authority has the power to access information held by international business companies, international exempt trusts and offshore financial institutions or any other entity not liable to pay tax.

56. The amendments introduced to the EOI Act on 28 July 2015 as described in B.1.1 and B.1.2 apply for the express purpose of responding to EOI requests under an agreement scheduled to the EOI Act, regardless whether the information is relevant for Dominica's tax purposes. As analysed in B.1.1 and B.1.2, the Comptroller can exercise its powers in respect of "any person", which includes any person in Dominica, whether or not the person is subject to tax in Dominica. Information can therefore also be obtained from international business companies, international exempt trusts and offshore financial institutions. Relevant amendments made to lift secrecy provisions in place for such offshore entities are analysed in B.1.5.



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

57. The 2012 Report concluded that Dominica had in place powers to enforce compliance with requests for information from persons that are liable to tax. With the amendments made to the EOI Act on 28 July 2015, various accompanying enforcement provisions have also been added.

58. The Comptroller is empowered, upon application to the High Court for a search warrant, to execute search and seizure measures in order to obtain information in response to EOI requests (s.4C(1)). Such a warrant may only be issued by the High Court if it is satisfied that (i) a notice or court order issued under section 4A to produce information was not complied with, (ii) the EOI request might be seriously prejudiced unless immediate access to the information can be secured; or (iii) where a High Court order is required to obtain the information (because of proceedings in the requesting jurisdiction) and it would not be appropriate to make such a court order because it is not practicable to communicate with the subject person, or another person entitled to grant access to the information, or because the EOI request might be seriously prejudiced unless a police officer is able to secure immediate access to the information (s.4C(2)). Dominica authorities advise that an EOI request would be considered “seriously prejudiced” if it is assessed that there is compromising circumstances or putting to a disadvantage or jeopardising the integrity of the EOI if the information is not secured immediately. The application of this will be examined in the Phase 2 review.

59. An enforcement measure has also been added to prohibit any person from disclosing information pertaining to an EOI request which may prejudice the proceedings or related investigation. Such prohibition applies in relation to any EOI request that concerns criminal proceedings or investigations, and where a court order or search warrant had been issued. A person would be found to have committed an offence if he/she makes a disclosure while knowing or suspecting that a request has been made or that an investigation is underway. Such persons are liable to a fine of XCD 10 000 (EUR 3 375) and imprisonment for three years (s.4A(10)).

60. The effectiveness of these enforcement provisions in practice in Dominica will be examined during the Phase 2 review.

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

61. The 2012 Report concluded that the scope of professional privilege is consistent with the international standard. It was also assessed that banking secrecy can be overridden for the purpose of the ITA. However, secrecy provisions in the laws governing offshore sector entities prohibited disclosure of information to the competent authority. The respective laws with the secrecy

provisions are the International Business Companies Act, International Exempt Trust Act, Offshore Banking Act and Exempt Insurance Act. Accordingly, information could not be obtained from IBCs, offshore banks, International Exempt Trusts or Exempt Insurance Companies. A recommendation was made for Dominica to ensure that confidentiality provisions in its laws regulating offshore entities are overridden for the purposes of EOI.

62. Legislative amendments to the EOI Act introduced on 28 July 2015 concern secrecy provisions that impact Dominica’s ability in responding to EOI requests. The first area of amendments concern the lifting of confidentiality obligations of offshore entities for the purposes of EOI, and the second area involves legal privilege.

63. As regards the lifting of confidentiality obligations of offshore entities, amendments were made to the relevant laws governing offshore entities, namely the Offshore Banking Act, International Business Companies Act, International Exempt Trust Act and the Exempt Insurance Act. The amendments to these laws all similarly allow exception to the secrecy provisions where disclosure of information is required “under the provision of any law of Dominica” (s. 26(c), Offshore Banking Act; s. 112(iii), International Business Companies Act; s. 39(b), International Exempt Trust Act; s. 41(c), Exempt Insurance Act).

64. These provisions are consistent with the exception rule in the Banking Act as analysed in the 2011 Report where information can only be disclosed if it is required “under the provisions of a law of Dominica” (s. 32(1)(iii), Banking Act). The 2012 Report concluded that the Comptroller is able to access information from the banks in response to a request as it would be made pursuant to the ITA which would be covered by this exception to the rule because the ITA is a law of Dominica.

65. Similarly, the amendments made to the various laws governing the offshore entities as described above would therefore allow the Comptroller to obtain information from these entities using its access powers under the Income Tax Act and the EOI Act. This is now possible in view of the amendment to the EOI Act, as assessed in B.1.3, which clarifies that the Comptroller can obtain information from any person through a court order or notice. The EOI Act also further lifts secrecy obligations by specifically stating that the access powers through the court order or notice “shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by law, including the common law” (s. 4A(3)(b), EOI Act). In addition, the EOI Act also provides that any person who divulges any confidential information required under the court order or notice from the Comptroller is deemed not to commit any offence under any law in Dominica. Furthermore, the disclosure is deemed not to be a breach of any confidential relationship between that person and any other

person, and protects that person making the disclosure from any civil claim or action by reason of the disclosure (s. 4D, EOI Act).

66. As regards the second area concerning legal privilege, provisions were added to the EOI Act to provide more specificity on the scope to which legal privilege applies for EOI purposes. As described in B.1.1 and B.1.2, the issuance of a court order or notice both expressly excludes access to “items subject to legal privilege” (s. 4A(3)(a) and 4A(6)(c), EOI Act). Such items include communications and items referred in such communications between an attorney-at-law and his client or any person representing his client made in connection with the giving of legal advice or in contemplation of legal proceedings. Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

67. Such definition of items subject to legal privilege for EOI purposes is in line with the standard in that it is strictly limited to communication made in connection with the giving of legal advice to the client or with judicial proceedings. However, the legal privilege appears to include not only information enclosed within a communication between an attorney and client but also within a communication between such attorney, or his client, and “any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings” (s. 2, EOI Act). This appears to go beyond the exemption for attorney-client privilege under the international standard. Notwithstanding, the scope of protection is restricted to the purpose of such communication and may therefore refer to a limited exception only for certain third parties engaged by the attorney who are essential to the provision of the legal advice. The definition of items subject to legal privilege also appears to go beyond the standard in that information covered is not expressly limited to confidential communications between an attorney and his client. The Phase 2 assessment will review the interpretation of the scope of legal privilege in practice and its impact on the access of information for EOI purposes.

### ***Conclusion***

68. There were three key sets of amendments made that impact the recommendations of the 2012 Report. First, the amendments to the EOI Act allow the Comptroller to access information from any person through a court order or notice, and it is not restricted to only persons liable to tax. Second, the amendments to the laws governing the offshore entities lift the secrecy provisions for purposes that would be applicable to EOI. With these amendments, it is ensured in the legal and regulatory framework of Dominica that the competent authority can access information from all parties, including the international business companies, international exempt trusts and offshore financial institutions. Third, the TIEAs of Ireland, Poland and South Africa

were also enacted as schedules to the EOI Act, therefore enabling Dominica to exercise its access powers in respect of all of its agreements that are in line with the standard. These address all recommendations made on element B.1. of the 2012 Report which have been removed.

69. The provisions introduced to the EOI Act on legal privilege seek to provide greater clarity on the scope to which legal privilege applies for EOI purposes and is in line with the standard. The extension of legal privilege to certain third parties in specific cases appears to go beyond the standard but will be part of the assessment in the Phase 2 review if the interpretation of the scope of legal privilege applied in practice would have any restrictions to the access of information for EOI purposes.

70. As significant improvements have been made to the legal and regulatory framework to ensure the competent authority's access to all relevant information, the determination of element B.1 has been changed to "in place".

#### Determination and factors underlying recommendations

Phase 1 determination	
The element is <b>not in place, but certain aspect of the legal implementation of the element need improvement.</b>	
Factors underlying recommendation	Recommendation
The competent authority cannot access information from international business companies, international exempt trusts and offshore financial institutions as these are not liable to tax and the powers of the Comptroller of Inland Revenue extend to only entities liable to pay tax.	Dominica should explicitly provide that its competent authority has the power to access information held by international business companies, international exempt trusts and offshore financial institutions or any other entity not liable to pay tax.
Confidentiality provisions in the laws regulating the offshore entities are not overridden for EOI purposes.	Dominica should ensure that confidentiality provisions in its laws regulating offshore entities are overridden for the purposes of EOI.
Dominica's access powers can only be used for agreements which are enacted as schedules to the EOI Act. Currently this allows for exercise of access powers in respect of 27 of Dominica's 30 EOI partners.	Dominica should ensure that its competent authority has the power to obtain all relevant information with respect to all exchange of information agreements (regardless of their form).

## 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.

71. The 2012 Report found that the rights and safeguards that apply to persons in Dominica are compatible with effective exchange of information. There were no notification requirements and the taxpayers or the persons from whom information is requested did not have any rights to challenge the information request from the Comptroller of Revenue. Amendments made to the EOI Act in July 2015 introduced notification requirements.

72. The amendments introduced notification rights for the person who is the subject of the request in some circumstances: (i) where a request for information is made that is not in connection with an (alleged) criminal matter, and (ii) if the person's whereabouts or address are made known to the Comptroller. In these cases, the person must be notified by the Comptroller of the existence of the request, and specifying the country making the request and the general nature of the information sought (s. 4B(1), EOI Act). The Comptroller is under no obligation to search for or conduct enquiries into the address or whereabouts of any person for this purpose (s. 4B(3)). Any person notified may, within 15 days from the date of receipt of the notice, make a written submission to the Comptroller specifying any grounds which he/she wishes the Comptroller to consider in making its determination as to whether or not the request is in compliance with the relevant EOI agreement, including any assertions that the information requested is subject to legal privilege (s. 4B(1)); the Comptroller shall consider the written submission but shall not be obliged to accept an oral submission (s. 4B(2)).

73. Therefore, the notification requirement only applies in limited circumstances, i.e. in civil tax matters and where the address or whereabouts of the person who is subject of the request are made known to the Comptroller. The time for making a written submission by the subject of the request is short (15 days for receiving the notification plus 15 days for contesting it) but there is no deadline for the Comptroller to make a decision, and in the case of civil proceedings this can be cumulated with the time for the judicial oversight of s.4A. However, unless the whereabouts of the persons are not made known, it does not appear that there is any possibility to do away with notification in a civil tax matter where, for example, the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction, including where a search warrant to obtain the information was deemed necessary instead of a court order in order not to prejudice the EOI request (as described in B.1.4) (s. 4C(2)(d)(iii)). It may be the case that such circumstances more often arise in criminal tax matters, where no notification is required. As these provisions entered into force

on 28 July 2015, just prior to the completion of this report, the Dominican authorities have indicated that they remain untested in practice. The extent of this potential restriction will be monitored in the Phase 2 assessment of Dominica. However, despite that the current notification requirements only applies in limited circumstances, it is recommended that wider exceptions from prior notification be permitted in civil tax matters (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 the success of the investigation conducted by the requesting jurisdiction).

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendation	Recommendation
<u>The prior notification procedure in civil tax matters only allows for an exception when the whereabouts of the taxpayer are not disclosed to the Comptroller.</u>	<u>It is recommended that wider exceptions from prior notification be permitted in civil tax matters (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 the success of the investigation conducted by the requesting jurisdiction).</u>



## C. Exchanging information

### Overview

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

75. In the 2012 Report, element C.1 was determined to be “not in place” and element C.2 was determined to be “in place but certain aspects of the legal implementation of the element need improvement”. These determinations arose mainly from the assessment that Dominica’s information exchange agreements had not been given effect due to the limitations of the access powers of Dominica’s competent authority to obtain information from offshore entities. As discussed in Part B of this supplementary report, Dominica has addressed the deficiencies regarding its access powers resulting in an upgrade of the determination of element B.1 to “in place”. Consequently, the determinations for elements C.1 and C.2 have also been upgraded to “in place”.

76. The other issues identified under element C.1. pertained to Dominica’s DTC with Switzerland and the multilateral Caribbean Community (CARICOM) agreement where EOI to the standard was not provided for some parties to the CARICOM agreement. The recommendation has been removed to reflect the improvement in the situation regarding EOI to the standard under the CARICOM agreement, and the steps taken regarding the DTC with Switzerland where both parties are under discussions to ensure that their EOI relationship meets the standard.

77. The 2012 Report also concluded that the confidentiality provisions in Dominica’s domestic law were not consistent with the standard and information received may be disclosed to persons not authorised by the EOI agreements. No changes have been made since the 2012 Report and the recommendation remains with the determination for element C.3 as “in place but certain aspects of the legal implementation of the element need improvement”.



78. The determination for element C.4 remains unchanged as “in place”. The additional TIEA entered into by Dominica following the 2012 Report contains language that meets the international standard and does not have any impact to the determination for element C.4.

79. The 2012 Report did not identify any issues relating to Dominica’s ability to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request or any restrictive conditions on exchange of information. Similar to the 2012 Report, this supplementary report does not address element C.5, as this involves issues of practice that will be examined in the Phase 2 review.

### C.1. Exchange of information mechanisms

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

80. Since the 2012 Report, Dominica has signed a TIEA with Ireland, expanding its EOI network to 31 jurisdictions. Dominica’s EOI network is based on 20 TIEAs, 1 double taxation convention and a regional multilateral instrument that covers 10 other jurisdictions. A listing of the EOI partner jurisdictions is at Annex 2.

***Foreseeably relevant standard (ToR C.1.1), In respect of all persons (ToR C.1.2), Obligation to exchange all types of information (ToR C.1.3), Absence of domestic tax interest (ToR C.1.4), Absence of dual criminality principles (ToR C.1.5), Exchange of information in both civil and criminal tax matters (ToR C.1.6), Provide information in specific form requested (ToR C.1.7), In force (ToR C.1.8) and Be given effect through domestic law (ToR C.1.9)***

81. There were two factors under element C.1 which led to two recommendations in the 2012 Report.

82. The first was that Dominica’s EOI arrangements had not been given full effect through domestic law as it was assessed under element B.1. that the competent authority did not have access to information from entities not liable to pay tax and authorities cannot access information relating to offshore entities due to confidentiality provisions in its laws. Due to this deficiency under B.1., a recommendation was made accordingly as regards element C.1. As discussed in Part B of this supplementary report, Dominica has addressed the deficiencies regarding its access powers, resulting in an upgrade of element B.1 to “in place”. Consequently, these amendments also remove the restrictions for agreements to be given effect through domestic law.

83. The second factor was that Dominica had EOI arrangements which did not provide for exchange of information to the standard in all cases. The two EOI arrangements were Dominica's longstanding 1963 DTC with Switzerland and the multilateral Caribbean Community (CARICOM) agreement.

84. The EOI provisions in the DTC with Switzerland restrict the exchange of information (being information which at their disposal under their respective taxation laws in the normal course of administration) as is necessary for the purposes of the convention. Dominica has advised that the authorities in Dominica and Switzerland are in discussions to address this issue and have an EOI mechanism that is in line with the international standard. It is recommended that Dominica continues working with Switzerland to ensure their EOI relationship meets the international standard and allows for effective EOI in all cases.

85. The CARICOM agreement only provides for exchange of information to the standard where no impediments to obtain and provide bank information exist and where no domestic tax interest is present in either jurisdiction. The 2012 Report noted that exchange under the CARICOM would not have been in line with the international standard between Dominica and most of the other parties except Saint Kitts and Nevis and Saint Vincent and the Grenadines. In addition to the impediments in Dominica's laws, most of the other parties to the CARICOM as reviewed by the Global Forum also had restrictions in their domestic laws to accessing all information for exchange.

86. However, since 2012, most of the parties to the CARICOM made legal changes that allowed for exchange of information to the standard under the CARICOM agreement. The only exception where exchange of information is still not to the standard is with Trinidad and Tobago due to serious deficiencies regarding access powers of the competent authority.<sup>4</sup> Guyana has not yet been assessed by the Global Forum. Information is not available as regards Guyana's competent authorities' powers to access banking information and to obtain ownership, identity and accounting information for purpose of EOI. It is therefore not possible to confirm that the CARICOM agreement with regard to Guyana meets the standard. It is recommended that Dominica works with its EOI CARICOM partners to ensure that its agreements with CARICOM partners allows for EOI to the standard.

87. Since the 2012 Report, Dominica signed a further TIEA with Ireland, expanding the total number of EOI arrangements signed to 22 and covering 31 jurisdictions. As noted in the 2012 Report, Dominica's ratification process was generally expeditious, completing the ratification in less than 18 months, and often in less than 1 year. An order was approved by parliament on 28 July

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4. As reviewed by the Global Forum in the Phase 1 Peer Review Report of Trinidad and Tobago, 2011.

2015 to enact as schedules to the Act the three TIEAs with Ireland, Poland and South Africa, thereby fulfilling all requirements by Dominica to bring into force all its EOI agreements that are in line with the standard.

### *Conclusion*

88. As described above, Dominica has substantially addressed the deficiencies regarding its access powers which thus consequently removed the recommendation in the 2012 Report under element C.1. There were no changes made to the DTC with Switzerland but discussions are underway between both parties to ensure that their EOI relationship meets the standard. The situation regarding EOI to the standard under the CARICOM agreement has also improved, although there remain parties where EOI to the standard cannot be ensured. In this regard, the second recommendation from the 2012 Report has been removed. Taking into consideration that the significant deficiencies regarding the access powers have been addressed and that the situation concerning the remaining deficiency of the agreements has improved, the determination for element C.1 has been changed to “in place”.

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

<b>Phase 1 Determination</b>	
<b>The element is <del>not</del> in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
<del>Dominica's arrangements providing for international exchange of information have not been given full effect through domestic law as its competent authority does not have access to information from entities not liable to pay tax and authorities cannot access information relating to international business companies, offshore financial institutions and international exempt trusts due to confidentiality provisions in its laws.</del>	<del>Dominica should ensure that its competent authority is empowered to obtain and provide information for EOI purposes in all cases notwithstanding that persons are not liable to pay tax or that the entities governing laws contain confidentiality provisions.</del>
<del>Dominica's agreement with Switzerland is not fully in line with the international standard, and its agreement with some of its CARICOM partners does not in all cases provide for exchange of information to the standard due to impediments to exchange of information.</del>	<del>Dominica should continue its efforts to update its agreements to ensure that they provide for effective exchange of information in all cases.</del>

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

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

89. The 2012 Report concluded that Dominica has a network of EOI arrangements with relevant partners but none of them have been given full effect through domestic law due to deficiencies to enable the Dominica competent authority to obtain all information. As discussed in B.1 of this supplementary report, Dominica has addressed the deficiency regarding its access powers, resulting in an upgrade of the determination of element B.1 to “in place”. All agreements that meet the standard have also been given full effect through domestic law and the recommendation given under element C.2 in the 2012 Report has therefore been removed.

90. There were no other deficiencies identified in the supplementary review. While Dominica had only signed one new TIEA since the 2012 Report, comments were sought from Global Forum members in the course of the preparation of this report, and no jurisdiction advised that Dominica had refused to negotiate or conclude an EOI arrangement. Nevertheless, Dominica should continue to develop its exchange of information network to the standard with all relevant partners.

91. As there are no other remaining deficiencies, the determination has been changed to “in place”.

### Determination and factors underlying recommendations

Phase 1 Determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
<del>Dominica has a network of EOI agreements with relevant partners but none of them have been given full effect through domestic law.</del>	Dominica should give full effect to the terms of its EOI agreements in its domestic law in order to allow for full exchange of information to the standard with all its relevant partners.
	Dominica should continue to develop its exchange of information network to the standard with all relevant partners.

### C.3. Confidentiality

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

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

92. The 2012 Report identified that confidentiality provisions in Dominica's domestic law were not consistent with the standard and information received may be disclosed to persons not authorised by the EOI agreements. No changes have been made since the 2012 Report. The recommendation therefore remains that Dominica should ensure that disclosure of information received pursuant to its agreements is consistent with the standard.

#### Determination and factors underlying recommendations

Phase 1 Determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
Confidentiality provisions in Dominica's domestic law are not consistent with the standard and information received may be disclosed to persons not authorised by the EOI agreements.	Dominica should ensure that disclosure of information received pursuant to its agreements is consistent with the standard.

### 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.

93. The 2012 Report found that the rights and safeguards applicable in Dominica did not unduly prevent or delay effective exchange of information.

94. All arrangements signed by Dominica, including the recent TIEA with Ireland, also contain wording consistent with Article 26 and Article 7 of the OECD Model Tax Convention, Model TIEA and their commentaries. As examined in the 2012 Report, any variations were considered unlikely to materially affect the exchange of information but nonetheless will be further reviewed in Dominica's Phase 2 review.

**Determination and factors underlying recommendations**

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

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

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

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

95. The 2012 Report did not identify any issues relating to Dominica's ability to respond to EOI requests within 90 days, organisational processes and resources, or any restrictive conditions on the exchange of information. All arrangements signed by Dominica adopt wording foreshadowing the timeframes in Article 5(6) of the Model TIEA regarding request acknowledgements, status updates and provision of the requested information. No issues have been identified in the preparation of this supplementary report. With regards to the actual timeliness for responses to requests for information, the assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review. A review of Dominica's organisational processes and resources will also be conducted in the context of its Phase 2 review.

**Determination and factors underlying recommendations**

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



## Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<b>The element is in place.</b>	External companies (foreign companies) carrying on business in Dominica are not obliged to keep or provide to any authority information on their ownership.	Dominica should ensure that ownership information is available in relation to foreign companies that have a place of management and control in Dominica.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>The element is not in place.</b>	It is not explicitly required that international business companies, foreign trusts and international exempt trusts maintain accounting records which enable the financial position of the entities or arrangements to be determined with reasonable accuracy at any time and allow financial statements to be prepared.	Dominica should introduce consistent obligations for all relevant entities and arrangements to maintain full accounting records in line with the Terms of Reference.
	Inadequate obligations exist for international business companies, foreign trusts and international exempt trusts to keep underlying documentation. Further, the keeping of underlying documentation by entities not subject to the provisions of the VAT Act is not fully ensured.	Dominica should ensure that all entities are required to keep full underlying documentation and retain all accounting records for at least five years.



Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>The element is in place.</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>The element is in place.</b>		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>The element is in place.</b>	The prior notification procedure in civil tax matters only allows for an exception when the whereabouts of the taxpayer are not disclosed to the Comptroller.	It is recommended that wider exceptions from prior notification be permitted in civil tax matters (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 the success of the investigation conducted by the requesting jurisdiction).
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>The element is in place.</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The element is in place.</b>		Dominica should continue to develop its exchange of information network to the standard with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Confidentiality provisions in Dominica's domestic law are not consistent with the standard and information received may be disclosed to persons not authorised by the EOI agreements.	Dominica should ensure that disclosure of information received pursuant to its agreements is consistent with the standard.

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>The element is in place.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner ( <i>ToR C.5</i> )		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		



## Annex 1: Jurisdiction’s response to the review report<sup>5</sup>

The Commonwealth of Dominica would like to express its support for its Phase 1 Supplementary Review Report and to thank the Global Forum Secretariat for the tireless efforts and assistance meted out to us during the preparation and review of the Supplementary Report and by extension our gratitude to the assessment team. The Government of the Commonwealth of Dominica would like to reiterate its continued commitment to the Global Forum’s international efforts to promote international tax transparency, and the effective and efficient exchange of information for tax purposes.

The Commonwealth of Dominica Phase 1 Report (“Phase 1 Report”) was adopted in mid-2012. Since then, Dominica has made several changes to its laws and regulations in order to address the various recommendations contained in the Phase 1 Report. The key changes made were:

- Updated our anti-money laundering regulations to clarify the obligations for international exempt trusts to keep identity information of all trustees, settlors and beneficiaries;
- Amended the Tax Information Exchange Act to ensure the competent authority can exercise its access powers to obtain information for EOI purposes from any person whether or not they are liable to tax;
- Amended the various pieces of legislation governing the offshore entities to remove the restrictions preventing access to information that was protected by confidentiality obligations; and
- Scheduled to the EOI Act the EOI agreements with the Republic of Ireland, South Africa and Poland, therefore allowing access powers to be exercised in respect of an EOI request under any of these agreements.

As demonstrated in the Supplementary Report, Dominica has worked hard to address the recommendations contained in its Phase 1 Report. The Commonwealth of Dominica would like to again express its gratitude to

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

the assessment team for the support and guidance it has received during this process, the PRG for its adoption of the Supplementary Report, and the Global Forum as a whole. Dominica remains dedicated to the development of international tax transparency, and looks forward to continuing this work as it moves on to Phase 2 of the review process.

## Annex 2: List of Dominica’s exchange-of-information mechanisms

### Multilateral and bilateral exchange of information agreements

- Since 1 March 1996, Dominica is a party to the multilateral CARICOM Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion. There are 11 parties to the multilateral CARICOM Agreement including Dominica. The current status of the agreement is set out in the table below.<sup>6</sup>
- Dominica has signed 1 DTC and 20 TIEAs. Dominica has completed ratification processes to bring into force all agreements that are in line with the standard.

### Table of Dominica’s exchange of information relations

The table below summarises Dominica’s EOI relations with individual jurisdictions. These relations allow for exchange of information upon request in the field of direct taxes.

No.	Jurisdiction	Type of arrangement	Date signed	Date in force
1	Antigua and Barbuda	CARICOM	06-Jul-1994	18-Feb-1998
2	Australia	TIEA	31-Mar-2010	01-Jul-2010
3	Barbados <sup>a</sup>	CARICOM	n/a	07-Jul-1995
4	Belgium	TIEA	26-Feb-2010	24 Nov-2014
5	Belize	CARICOM	06-Jul-1994	30-Nov-1994
6	Canada	TIEA	29-Jun-2010	10-Jan-2012
7	Denmark	TIEA	19-May-2010	01-Feb-2012

6. [www.caricomlaw.org](http://www.caricomlaw.org).

No.	Jurisdiction	Type of arrangement	Date signed	Date in force
8	Faroe Islands <sup>b</sup>	TIEA	19-May-2010	Not yet in force in the Faroe Islands
9	Finland <sup>b</sup>	TIEA	19-May-2010	Not yet in force in Finland
10	France	TIEA	07-Oct-2010	14-Nov-2011
11	Germany	TIEA and Protocol	21-Sep-2010	24-Nov-2014
12	Greenland	TIEA	19-May-2010	17-May-2012
13	Grenada	CARICOM	06-Jul-1994	01-Mar-1996
14	Guyana	CARICOM	19-Aug-1994	26-Nov-1997
15	Iceland	TIEA	19-May-2010	24-Nov-2014
16	Ireland	TIEA	09-Jul-2013	14-Nov-2013
17	Jamaica	CARICOM	06-Jul-1994	16-Feb-1995
18	Netherlands	TIEA	11-May-2010	24-Nov-2011
19	New Zealand	TIEA	16-Mar-2010	24-Nov-2014
20	Norway	TIEA	19-May-2010	22-Jan-2012
21	Poland	TIEA	10-July-2012	Not yet in force
22	Portugal	TIEA	29-Jul-2010	5-Oct-2010
23	Saint Kitts and Nevis	CARICOM	06-Jul-1994	08-May-1997
24	Saint Lucia	CARICOM	06-Jul-1994	22-May-1995
25	Saint Vincent and the Grenadines	CARICOM	06-Jul-1994	12-Feb-1998
26	South Africa	TIEA	7-Feb-2012	Not yet in force
27	Sweden	TIEA	19-May-2010	Not yet in force
28	Switzerland	DTC	20-Aug-1963	01-Jan-1961
29	Trinidad and Tobago	CARICOM	06-Jul-1994	29-Nov-1994
30	United Kingdom	TIEA	31-Mar-2010	24-Nov-2011
31	United States	TIEA	01-Oct-1987	09-May-1988

*Notes:* a. Barbados is the only country who acceded to the CARICOM Agreement. The date of entry into force shown is the date of accession.

b. These agreements were ratified by Dominica on 24 November of 2011 and were awaiting ratification by the partner jurisdictions.

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

### **Updates to Acts and Regulations since 2012**

Anti-Money Laundering and Suppression of Terrorist Financing Code of Practice, 2014

Exempt Insurance (Amendment) Act, 2015

International Business Companies (Amendment) Act, 2015

International Exempt Trust (Amendment) Act, 2015

Money Laundering (Prevention)(Amendment) Regulations, 2013

Money Laundering (Prevention)(Amendment) (No. 2) Act, 2013

Money Laundering (Prevention) Regulations, 2013

Proceeds of Crime (Amendment) Act, 2013

Proceeds of Crime (Amendment) Act, 2014

Tax Information Exchange (Amendment) Act, 2015

Trusts and Non-profit Organisations Regulations, 2014





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