

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

DOMINICA



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Dominica 2012

PHASE 1

October 2012
(reflecting the legal and regulatory framework
as at May 2012)

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Table of Contents

About the Global Forum	5
Executive Summary	7
Introduction	9
Information and methodology used for the peer review of Dominica	9
Overview of Dominica	10
Recent developments	15
Compliance with the Standards	17
A. Availability of Information	17
Overview	17
A.1. Ownership and identity information	18
A.2. Accounting records	40
A.3. Banking information	46
B. Access to Information	49
Overview	49
B.1. Competent Authority’s ability to obtain and provide information	50
B.2. Notification requirements and rights and safeguards	57
C. Exchanging Information	59
Overview	59
C.1. Exchange of information mechanisms	60
C.2. Exchange of information mechanisms with all relevant partners	67
C.3. Confidentiality	68
C.4. Rights and safeguards of taxpayers and third parties	71
C.5. Timeliness of responses to requests for information	73

Summary of Determinations and Factors Underlying Recommendations. . . .	75
Annex 1: Jurisdiction’s Response to the Review Report	81
Annex 2: List of All Exchange of Information Mechanisms	82
Annex 3: List of all Laws, Regulations and Other Relevant Material	84

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 100 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 jurisdictions' legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The 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 the Commonwealth of Dominica (Dominica). 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 timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners.
2. Dominica is an island nation in the Eastern Caribbean and a parliamentary democracy. Since 2003, the main drivers of the economy have been agriculture, tourism, financial services, and construction.
3. The availability of ownership information is ensured in Dominica in relation to domestic companies, due to the requirement that these companies maintain share registers. A similar obligation to maintain share registers falls on international business companies. However, ownership information on external companies (*i.e.* those incorporated under a foreign law) that have sufficient nexus with Dominica is not ensured. Domestic companies are not allowed to issue bearer shares and legal requirements ensure that information on holders of bearer shares issued by international business companies is available. Partnerships must report information on partners to the Registrar of Companies. Dominica's legal and regulatory framework ensures availability of ownership information relating to domestic as well as foreign trusts consistent with the standard; however uncertainty remains about information on international exempt trusts.
4. With regards to obligations to maintain accounting records, including underlying documentation in compliance with the international standard, these obligations are in place for domestic companies, partnerships and domestic trusts. International business companies, foreign trusts and international exempt trusts are not explicitly required to maintain accounting records and underlying documentation consistent with the international standard.
5. As to bank information, the combination of the banking law and anti-money laundering rules generally impose appropriate obligations to ensure

that all records pertaining to account holders, as well as related financial and transaction information, are available.

6. In respect of access to information, the Comptroller of Inland Revenue is vested with broad powers to gather relevant information. These powers are complemented by powers, which are overseen by a court, to search premises and seize information as well as to compel oral testimony. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. However, the Comptroller is unable to obtain information from persons not subject to provisions of Tax Act and accordingly no information can be obtained from tax exempt entities, which include IBCs, international exempt trusts and entities operating in offshore sector.

7. Dominica's competent authority is not required to notify the person who is the subject of a request under the EOI Act. The appeal rights of taxpayers are compatible with the effective exchange of information. Neither domestic bank nor professional secrecy interferes with the Comptroller's access powers. However, confidentiality impediments in domestic laws with regard to international business companies, offshore financial institutions and international exempt trusts hinder the competent authority's ability to exchange information. Further, the scope of confidentiality provisions in the Exchange of Information Act is not consistent with the international standard.

8. Dominica committed to implementing the international standards of transparency and information exchange in 2002. In 2009, Dominica renewed its commitment and has since taken measures to quickly expand its EOI network.

9. Dominica's network for exchange of information comprises bilateral and multilateral mechanisms covering a total of 30 partner jurisdictions. Dominica's 19 TIEAs generally mirror the OECD Model taxation information exchange agreement, and meet the international standard. In addition, Dominica is a party to the multilateral Caribbean Community (CARICOM) agreement together with ten other members of that organisation. Due to impediments in its domestic laws, Dominica cannot give full effect to the provisions of the agreements.

10. As elements which are crucial to achieving effective exchange of information are not yet in place in Dominica, it is recommended that Dominica does not move to a Phase 2 Review until it has acted on the recommendations contained in the Summary of Determinations and Underlying Recommendations to improve its legal and regulatory framework. A follow-up report on the steps undertaken by Dominica to answer the recommendations made in this report should be provided to the Peer Review Group within six months after the adoption of this report. In addition, Dominica should provide a detailed written report to the Peer Review Group within 12 months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Dominica

11. The assessment of the legal and regulatory framework of the Commonwealth of Dominica (hereafter ‘Dominica’) was 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*, and was prepared using the Global Forum’s *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at May 2012, other materials supplied by Dominica, and information supplied by partner jurisdictions.

12. The Terms of Reference breaks down the standards of transparency and exchange of information into ten 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 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 on how certain aspects of the system could be strengthened. A summary of the findings against those elements is set out at the end of this report.

13. The assessment was conducted by a team consisting of two assessors: Ms. Evelyn Lio, Tax Director (International Tax), Inland Revenue Authority of Singapore and Mr. Jean-Marc Seigne, Legal Advisor, Ministry of Economy and Finances of France; and representatives of the Global Forum Secretariat: Mr. Sanjeev Sharma and Mr. David Moussali. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Dominica.

Overview of Dominica

14. Dominica is an island nation in the Eastern Caribbean with an area of 751 km² and a population of 71 293 (May 2011 estimate), of which roughly 21% resides in the capital, Roseau. It is divided into 10 parishes; Saint Andrew, Saint David, Saint George, Saint John, Saint Joseph, Saint Luke, Saint Mark, Saint Patrick, Saint Paul and Saint Peter. Dominica is situated in the centre of the islands known as the Lesser Antilles in the Caribbean Sea between the two French islands of Guadeloupe in the north and Martinique in the south. English is the official language. The currency is the East Caribbean dollar (XCD) which has been pegged to the US dollar since 1976 at a rate of XCD 2.70 to USD 1.00.

15. In 2011, the island of Dominica had a GDP of USD 482.27 million and a GDP per capita of USD 7 126.37.¹ In 2009, services contributed 57.3% to the GDP, whereas, industry and agriculture contributed 23.2% and 19.5% respectively.² In the past, the economy of Dominica has been largely driven by the agricultural sector – primarily bananas. With the decline of the banana industry resulting from the loss of preferential access for bananas to the European market, the government is seeking to diversify the island’s production base by promoting Dominica as an ecotourism destination and by attempting to develop an international financial services sector. It has also recently signed an agreement with the EU to develop geothermal energy resources. In 2003, the government began a comprehensive restructuring of the economy – including elimination of price controls, privatisation of the state banana company, and tax increases – to address an economic and financial crisis and to meet IMF requirements. This restructuring paved the way for an economic recovery – real growth for 2006 reached a two-decade high – and helped to reduce the debt burden, which remains at about 85% of GDP. Hurricane Dean struck the island in August 2007 causing damages equivalent to 20% of GDP. In 2009, growth slowed as a result of the global recession; it picked up slightly in 2010 and further increased in 2011.

16. The main trading partners of Dominica are the United States, the United Kingdom, Venezuela, Japan, China, France, and the Caribbean Community (CARICOM) countries³ (in particular, Antigua and Barbuda, as

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1. See: http://data.worldbank.org/country/dominica#cp_wdi.
 2. See: http://devdata.worldbank.org/PSD/dma_psd.pdf.
 3. The CARICOM Members States are Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The CARICOM Associate Members are Anguilla, Bermuda, the British Virgin Islands, Cayman Islands, and the Turks and Caicos Islands.

well as Trinidad and Tobago).⁴ Foreign direct investments in Dominica are mostly made by entities from Canada and the United States.

17. Growth of the economy of Dominica in 2006 was partly attributable to the growth of the international financial services sector. So far, a relatively small number of offshore banks and other international business companies have registered in Dominica, but the government is trying to attract more by making registration economical and easy. The legal framework permits the existence of international financial services entities such as banks, business companies, insurance companies and trusts, which have specific laws tailored for them which are different to regular commercial laws. Financial institutions have benefited from private sector deposits that have been increasing in part due to strong inflows from expatriates in North America and Europe.

18. Dominica offers fiscal incentives to businesses (domestic or foreign) involved in development projects in the manufacturing, tourism, agro-processing, information & communication technology, and any other approved sector. Incentives include tax holidays of up to 20 years, exemption from payment of import duty and value added tax on capital assets up to commencement of operations, withholding tax exemptions on dividends, interest payments, and other relevant external payments. Registration would be required to meet VAT legislation requirements. In addition, international business companies incorporated in Dominica are granted a tax exempt status for 20 years from the date of incorporation.

19. In addition to CARICOM, Dominica is a member of the Organisation of American States, the Organisation of Eastern Caribbean States, the International Monetary Fund, the United Nations and the World Trade Organisation. In 2002, Dominica committed to the principles of transparency and effective exchange of information for tax purposes and it joined the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2009.

Governance and legal system

20. Dominica is a common law jurisdiction and is one of the Caribbean's few republics. After periods of French and English colonial rule, it became an independent nation in 1978. The Constitution (Dominica Constitution

4. Based on trade information for 2009, Antigua and Barbuda is the main destination of exports from Dominica (19%), followed by Jamaica (14%), Guadeloupe (14%) and the United Kingdom (11%). For imports, the main trading partners are the United States (36%), Trinidad and Tobago (14%), Venezuela (8%), the United Kingdom (5%), and Japan (4%).

Order 1978) provides for the separation of powers between the Executive, the Legislature, and the Judiciary.

21. The head of state is the President who is elected for a 5-year term by the House of Assembly. Executive authority is vested in the President and is exercised on his behalf by the Prime Minister and Cabinet. The President appoints as Prime Minister the person who commands the support of the majority of elected members of the House. He also appoints, on the Prime Minister's recommendation, other Cabinet Ministers from among members of the House. The Cabinet is collectively responsible to the Parliament. Legislative power is vested in the House of Assembly and the President. The unicameral House of Assembly consists of 21 representatives elected for a five year term in single-seat constituencies, and 9 appointed senators, together with a Speaker, where the Speaker is not already an elected member or a senator. In addition, where the office of Attorney General is a public office, the Attorney General also becomes a member of the House.

22. The hierarchy of laws is as follows: (i) the Constitution, against which all other laws are subject and must be tested for legality; (ii) Acts of the House of Assembly; and (iii) Subsidiary Laws, Rules, Orders and Statutory Instruments, made in pursuance of Acts of Parliament. The Tax Information Exchange Act of Dominica provides that an agreement with the Government of another country will have the force of law in Dominica once that agreement is scheduled to the Tax Information Exchange Act. Accordingly, tax information exchange agreements become part of domestic law and have the same legal status as domestic law. By virtue of the Constitutional protection as to the role of each arm of government, treaties, which are concluded by executive action, cannot be implemented without the Legislature's sanction.

23. Dominica has three magistrate's courts, with appeals made to the Eastern Caribbean Court of Appeal and, ultimately, to the Judicial Committee of the Privy Council in London. The Eastern Caribbean Supreme Court (comprising of the High Court and the Eastern Caribbean Court of Appeal) is headquartered in Saint Lucia, but at least one of its 16 High Court judges must reside in Dominica and preside over the High Court. The competence over tax cases lies with High Court.

Taxation system

24. Dominica imposes both corporate and individual income tax. Employers are required to make social security contributions for their staff. Since 1 March 2006, Dominica has implemented a value added tax of 15% on imports and on goods and services supplied locally.

25. The administration of income tax is governed by the Income Tax Act (Chap.67:01) and the Collection of Taxes Act (Chap.66:01). Personal income

tax rates are progressive, between 16% and 36%. Taxes are payable on all earnings or profits, including employment income, rents, dividends, pension income, and income from overseas. All resident corporations (incorporated or with their place of management and control in Dominica) are taxed on their worldwide income at the rate of 30%, regardless of the amount (s. 61 Income Tax Act). External (foreign) companies which operate in Dominica must be registered with the Registrar of Companies and must pay corporation tax on locally sourced income at a tax rate of 30%, as well as a tax on branch profits remittances.

26. The International Business Companies Act (IBCA) which was passed in 1996 guarantees that international business companies (IBCs) incorporated in Dominica are exempted for a period of 20 years from the date of incorporation from domestic taxation, duties and similar charges.

27. Domestic trusts, foundations, partnerships and estates are taxed at the same rate as companies. In the international financial sector, international business companies, international exempt insurance companies, offshore banking banks and international exempt trusts are not required to pay taxes.

Exchange of information for tax purposes

28. The Tax Information Exchange Act (Act No.1 of 1988) designates the Minister of Finance as the Tax Co-operation Authority for the purposes of facilitating exchange of information requests submitted through scheduled Tax Information Exchange Agreements (TIEAs) and Double Taxation Conventions (DTCs). The Act also empowers the Comptroller of Inland Revenue to exercise all powers and authorities vested in him under the Income Tax Act to administer and process any request made pursuant to an agreement.

29. Dominica's oldest exchange of information (EOI) arrangement was signed with Switzerland in 1963 (*i.e.* before independence) and the most recent with Poland in July 2012. Its EOI network now encompasses 30 jurisdictions and continues to expand. In addition to its 19 TIEAs and 1 bilateral DTC, Dominica can share information in tax matters with 10 jurisdictions under the multilateral CARICOM agreement.⁵

5. The 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 allows for EOI between Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

Overview of the financial sector and relevant professions

30. As of January of 2012, Dominica’s financial sector was comprised of the following entities: 4 commercial banks (3 foreign owned branches and one local bank) serving the domestic market, 3 offshore banks, 20 insurance companies, 10 credit unions, 6 money services businesses, a government owned development bank, and a Building and Loan Association. The offshore banks had assets of USD 150 273 000, whereas the amounts of deposits in the total of 526 accounts were USD 117 878 000.

Size and Integration of the jurisdiction’s financial sector as at 1 January 2012

		Banks	Other Credit Institutions	Securities	Insurance (Dec 10)	TOTAL
Number of institutions	Total	7	11	Nil	20	38
Assets	USD 000	709 581	255 974	Nil	55 767	1 021 322
Deposits	USD 000	572 030	170 911	Nil	83 141	826 082
	% Non-resident	25%	n/a	n/a	n/a	25

31. There are three government bodies responsible for financial regulation in Dominica: the Eastern Caribbean Central Bank (ECCB), the Eastern Caribbean Securities Regulatory Commission (ECSRC) and the Financial Services Unit (FSU). The ECCB and the ECSRC are multi-jurisdictional regulators with responsibility for regulation in the Eastern Caribbean Currency Union (ECCU): Anguilla, Antigua and Barbuda, Dominica, Grenada, Montserrat, Saint Lucia, Saint Kitts and Nevis, and Saint Vincent and the Grenadines. The ECCB is responsible for the regulation of domestic banking business while the ECSRC is responsible for the regulation of domestic securities business within the ECCU. The FSU is responsible for the prudential regulation of all other financial institutions in Dominica.

32. The offshore sector, which is also regulated by FSU, currently comprises three offshore banks, four internet gaming companies, and approximately 16 483 international business companies. There are no offshore international insurance companies or any international exempt trusts currently registered in Dominica.

33. The Money Laundering Prevention Act No.8 of 2011 was enacted to provide for the prevention of money laundering and for related matters. This Act establishes the Financial Services Unit as the Money Laundering Supervisory Authority (MLSA) and the Financial Intelligence Unit as the investigative authority. The 2009 mutual evaluation report for Dominica,

conducted by the Caribbean Financial Action Task Force, found *inter alia* that there were a number of weaknesses in the customer due diligence obligations on financial institutions and service providers, including the availability of information on parties to trusts and also in the availability of information on holders of bearer shares.⁶

34. Professional service providers in Dominica include lawyers, accountants, and public notaries. Currently there are:

- approximately 80 legal professionals affiliated to the Dominica Bar Association;
- approximately 25 certified accountants affiliated to the Institute of Chartered Accountants of the Eastern Caribbean;
- approximately 30 registered notaries; and
- 17 licensed corporate or trust service providers.

Recent developments

35. Dominica signed 16 TIEAs between February and December 2010. These TIEAs were recently enacted into law through Statutory Rules and Order No.27 of 2011 which was gazetted on 24 November 2011.

36. In addition, Dominica recently signed TIEAs with South Africa in February 2012 and with Poland in July 2012. Both TIEAs are currently awaiting ratification in both countries and thus have not been enacted into law in Dominica.

37. Dominica has also been in communication with Spain, Ireland and Italy in relation to treaty negotiations.

6. [www.cfatf-gafic.org/downloadables/mer/Dominica_3rd_Round_MER_\(Final\)_English.pdf](http://www.cfatf-gafic.org/downloadables/mer/Dominica_3rd_Round_MER_(Final)_English.pdf), accessed 14 March 2012.

Compliance with the Standards

A. Availability of Information

Overview

38. 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, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report describes and assesses Dominica's legal and regulatory framework for availability of information.

39. Dominica's legal framework permits the creation of various entities: companies, partnerships, trusts as well as offshore entities such as international business companies, international trusts, offshore banks or international insurance companies. Ownership information in relation to companies incorporated under the Companies Act 1994 is available due to the requirement to maintain a share register where the identity of shareholders must be reported. International business companies incorporated under the International Business Companies Act 1996 are subject to a similar requirement. Only external companies (companies incorporated under a foreign law) do not have any legal obligations to make ownership information available.

40. 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. Partnerships have to report information on their partners to the Registrar of Companies. As regards trusts, Dominica has a number of avenues by which availability of information relating to domestic as well as foreign trusts is ensured, however, the same cannot be stated for international exempt trusts.

41. With regards to obligations to maintain accounting records, including underlying documentation in compliance with the international standard, these obligations are in place for domestic companies, partnerships and domestic trusts. International business companies, foreign trusts and international exempt trusts are not explicitly required to maintain accounting records and underlying documentation consistent with the international standard. Dominica should ensure that accounting records are available in all circumstances. Information on transactions and customers of banks is available pursuant to Dominica's banking law and AML/CFT framework.

A.1. Ownership and identity information

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

Companies (ToR⁷ A.1.1)

42. As at March 2012, there are approximately 2 700 domestic companies and 16 483 international business companies registered in the Companies Register. The registered domestic companies comprises of 386 non-profit companies and 2 513 companies limited by shares.

43. It is possible under Dominica's Companies Act 1994 (CA) to set up the following types of companies:

- ***companies limited by shares*** – sections 26 to 57 of the CA: This type of company has shareholders with limited liability. If it is private, a company can be formed with only one shareholder and one director. Public companies must have at least three directors and shares are freely transferable. The CA does not set any minimum level of capital. Different classes of shares are possible but bearer shares are prohibited; and
- ***companies without share capital (non-profit companies)*** – sections 326 to 337 of the CA: A company without share capital which must limit its activities to purposes that are religious, philanthropic, educational, *etc.* There must be at least three directors.

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

44. Prior to the enactment of the CA in 1994, the Law Relating to Companies governed the formation of all companies. Companies incorporated under the previous legislation had to apply to the Registrar of Companies for a certificate of continuance. Upon the expiration of the three year conversion period, these entities became regulated under the CA. Thus, all CA obligations now apply equally to companies established under the previous Act.

45. Under the International Business Companies Act 1996 (IBCA), it is possible to create international business companies (IBCs). Companies incorporated under the IBCA cannot: (i) carry on business in Dominica with persons domiciled or resident in Dominica; (ii) own an interest in real property in Dominica; (iii) accept banking deposits; or (iv) accept contracts of insurance (s. 5 IBCA). Companies limited by shares can be created under the IBCA. IBCs are supervised by the Registrar of Companies which may revoke or suspend the registration of the company (s. 14 IBCA). In addition, IBCs are required by law to disclose information on the company to the Financial Services Unit (s. 115 IBCA and Schedule V FSUA). The FSU is also empowered to perform regulatory, investigatory and enforcement functions in relation to the activities of the IBC in Dominica.

46. In Dominica there also exist: (i) co-operative societies, and (ii) friendly societies. Co-operative societies are self-help, collectively owned and democratically controlled enterprises that act for their members on a not-for-profit basis (s. 2 (1) Co-operative Societies Act 2011). Friendly societies are societies organised for mutual benefit, insurance of farm animals, charitable or social purposes (s. 5 Friendly Societies Act 1928). These are not dealt with further.

47. An *external company* is any firm or body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Dominica.

Companies incorporated under the Companies Act

Registration requirements

48. The registration authority for companies incorporated under the Companies Act is the Registrar of Companies (ROC) (ss.4 and 328 CA). Section 494 of the CA establishes that the ROC shall maintain a Register of Companies containing the name of every body corporate. Documents kept by the ROC are open for public examination, upon payment of a fee (s. 495 CA).

49. One or more persons may incorporate a company by signing and sending articles of incorporation to the ROC (s.4 CA). The articles do not

contain ownership information on the company.⁸ In addition, the ROC must be provided with the names of the director(s), the address of the registered office and the company's articles (s. 7 CA). Companies must at all time have a registered office in Dominica (s. 175 CA). Upon receipt of the articles of incorporation, the ROC issues a certificate of incorporation which provides proof of the incorporation of the company (s. 8 CA). A company comes into existence on the date shown on its certificate of incorporation (s. 9 CA). The ROC must maintain documents for six years from the date s/he received them (s. 507 CA).

50. Thus, companies are not required to make ownership information available as part of registration with the ROC, though the name of every incorporator must be entered in the company's register of members as soon as possible after the company's registration (s. 4 CA).

51. Companies are required to provide to the ROC before the first day of April of each year after their incorporation, an annual return detailing the number of shares issued or redeemed over the last financial period and the name of the persons holding shares in the company (including any persons who have held shares at any time since the provision of the last return) (s. 194 CA). Failure to do so is an offence under the CA and is punishable with a fine of XCD 5 000 (USD 182) (s. 533 CA).

Tax requirements

52. Pursuant to the Income Tax Act (ITA), every legal and natural person liable for the payment of income tax must register with the Comptroller of Inland Revenue and provide the Comptroller with such information as may be required to give effect to such registration (s. 7 ITA).

53. In order to register with the Inland Revenue Division, a business entity⁹ must present its certificate of incorporation from the ROC along with its articles of incorporation.¹⁰ The articles of incorporation contain the names

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8. The articles of incorporation of companies must follow a prescribed form and include: (i) the name of the company; (ii) the classes and any maximum number of shares that the company is authorised to issue; (iii) if the rights to transfer shares is to be restricted; (iv) the number of directors; and (v) any restrictions on the business that the company may carry on (s. 5 CA).
 9. "Business" is defined in section 2 of the Income Tax Act to include any business, profession, trade, venture or undertaking and includes the provision of personal services or technical and managerial skills and any adventure or concern in the nature of trade but does not include any employment.
 10. The articles of incorporation must contain the following: (i) name of the company; (ii) number (or minimum and maximum number) of directors (iii) names

of the incorporators of the company but not necessarily all its owners. There is no specific requirement under Dominica’s laws to provide ownership information upon registration with the Inland Revenue Division.

54. There is also a registration requirement under the VAT Act (VATA). Every legal or natural person who carries on taxable activity¹¹ and is not already registered for tax purposes is required to apply for VAT registration. In determining whether a person is required to apply for registration, the Comptroller may have regard to the value of taxable supplies made by another person where both persons are related (s. 11 VATA). An applicant must provide such further information as the Comptroller may require (s. 12). Entities which do not meet the registration threshold may apply for registration (s. 11(5) VATA) but approval and registration will be based on a number of conditions and is discretionary. There is no requirement to provide ownership information as part of VAT registration.

55. Any person liable to income tax must file an annual return of the income of their business to the Comptroller by 31 March of the year following the year to which the return relates (s. 66 ITA). The assessable income of a taxpayer resident in Dominica includes the gains or profits from any business; any employment; rentals or royalties; interest or discounts; premiums, commissions, fees and license charges; annuities and other periodic receipts including receipts by way of alimony or maintenance; dividends; and any other gains or profits accrued (ss.8(1)(a) and 33(1) ITA). A person is defined to include individuals, trusts, estates of deceased persons, companies, partnerships and every other legal person (s. 2 ITA). The tax return form is prescribed by the Comptroller (s. 127 ITA). There is no requirement to provide ownership information in annual tax returns.

Information held by companies

56. All companies must prepare and maintain registers of members at their registered offices on an on-going basis, containing: (i) the names and the latest known address of each person who is a member; (ii) a statement of the shares held by each member; and (iii) the date on which each person was entered on the register as a member and the date on which any person ceased to be a member (s. 177 CA). Failure to do so is punishable with a fine of XCD 5 000 (USD 1 852) (s. 533 CA).

of directors; (vi) address of the registered office. They are then signed by the incorporators.

11. Section 6 of the Value Added Tax Act, 2005 (“VATA”), defines “taxable activity” as activity which is carried on continuously or regularly by any person in Dominica or partly in Dominica whether or not for profit, that involves or is intended to involve, in whole or in part, the supply of goods or services.

Companies incorporated under the International Business Companies Act

Registration requirements

57. The ROC is also responsible for the registration of international business companies and maintains the Register of International Business Companies (s. 2(1) IBCA).

58. An international business company (IBC) must have a registered office and a registered agent in Dominica at all times (ss.38 and 39 IBCA). Only a barrister or a chartered accountant practising in Dominica, or a company licensed under the CA with authorised and paid up capital of not less than USD 250 000, an offshore bank licensed under the Offshore Banking Act 1996, or a management company registered under the Exempt Insurance Act 1997, may act as a registered agent. No person shall be a registered agent unless he/she has been authorised by the ROC (s. 39(3) IBCA). After the registered agent has been authorised he/she may obtain a license certificate from the Minister of Finance (s. 20 IBCA (Amendment) 2000).

59. All IBCs must have a memorandum of association, though it is not a requirement that this memorandum contains information on the owners of the company (s. 12 IBCA). In addition to the memorandum, international business companies must have articles of association (s. 13 IBCA) although the IBCA does not contain any requirements regarding the information that these articles must contain.

60. The memorandum and articles of association of an IBC must be submitted to the ROC who is to retain and register them in the Register of International Business Companies (s. 14 IBCA). Upon registration, the ROC issues a certificate of incorporation. A company incorporated under the IBCA must inform the ROC of all amendments made to its memorandum or articles of association within 14 days of alteration (s. 16 (2) IBCA). Any amendment takes effect from the date on which it is registered. There is no legislative requirement to submit any ownership information as part of registration.

Tax requirements

61. International business companies are generally not subject to any tax obligations as they are not liable to taxes in Dominica for a period of 20 years from the date of their incorporation (s. 109 IBCA). The authorities of Dominica state that after the period of exemption, IBC's are required to register for tax purposes and meet other tax obligations unless further exemptions are granted.

Information held by companies

62. International business companies are required to maintain share registers which contain full details on owners of registered shares including; the names and addresses of shareholders, when they became shareholders and the number of shares held (s.28 IBCA). Further, the share register must indicate the date when a person ceased to be a shareholder and to whom their shares were transferred. A company that does not make all required entries in its share register, and a director who knowingly permits such a contravention, is liable to a penalty of USD 25 per day during which the contravention continues (s.28 (6) IBCA). The company is not required to treat a transferee of a registered share as a shareholder until the transferee’s name is entered in the share register (s. 30 (3) IBCA).

63. This share register, commencing from the date of the registration of the company, must be kept at the IBC’s registered office in Dominica (the location of which must be reported in the company’s memorandum) (s.28 IBCA).

Foreign companies (External companies)

64. A firm or body of persons, whether incorporated or unincorporated, that is formed outside of Dominica, is known in Dominica as an “external company” and must register with the Registrar of Companies before it can carry on a business in Dominica¹². Section 338 of the Companies Act defines the following as ‘carrying on business’ in Dominica:

- the business of the company is regularly transacted from an office in Dominica established or used for the purpose;
- the company establishes or uses a share transfer or share registration office in Dominica; or
- the company owns, possesses or uses assets situated in Dominica for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in Dominica.

Registration requirements

65. To be registered, a company must file with the ROC a statement setting out, amongst other things: (i) the name of the company; (ii) the jurisdiction within which it has been incorporated; (iii) the date on which it intends to start its business in Dominica; (iv) the full address of the registered or head

12. Section 340 of the Companies Act.

office of the company outside Dominica; (v) the full address of the principal office of the company in Dominica; and (vi) the full names, addresses and occupations of the directors of the company. This statement must be accompanied by a copy of the corporate instruments of the company (s. 344 CA). Upon receipt of the documentation, the ROC issues a certificate of registration for the external company. No ownership information has to be provided upon registration unless this information is detailed in the company's articles of incorporation.

66. An external company must, no later than the first day of April each year after the day of its registration, send to the ROC an annual return containing the information outlined above as at the preceding 31 December (s. 356 (1) CA). The ROC may strike off the register an external company that neglects or refuses to file an annual return. Dominica indicates that 82 external companies are currently registered with the ROC.

Tax requirements

67. External companies having a place of management and control in Dominica are considered tax resident and are taxable on their worldwide income (s. 2(d)(ii) and s. 7 ITA). Tax requirements described above for domestic companies incorporated under the CA similarly apply to external companies that are tax resident (s. 7 ITA and s. 11 VAT Act). However, none of these obligations require the provision of ownership information to the tax authorities.

Information held by service providers

68. The Money Laundering (Prevention) Act 2011 (MLPA) obliges financial institutions¹³ and others involved in relevant business activities to conduct customer due diligence (CDD). The relevant business activities are: trust and other fiduciary services, company formation and management services, and services performed by barristers-at-law, solicitors, accountants and notaries (s. 3 MLPA). Due to the aforementioned, registered agents of IBCs are obliged to conduct CDD.

69. Section 3 of the Money Laundering (Prevention) Regulations (MLP Regulations) stipulates that these institutions and professionals must identify customers seeking to: (i) form a business relationship; (ii) enter into a one-off transaction above USD 5 000; (iii) carry out two or more transactions

13. The definition of “financial institution” includes a bank licensed under the Banking Act or the Offshore Banking Act, a registered agent licensed under the International Business Companies Act 1996 and a trust licensed under the International Exempt Trust Act 1997 (s. 2).

that appear to be linked which have a total value of USD 5 000 or more; or (iv) enter into a one-off transaction where the regulated institution knows or suspects money laundering. All identity information must be recorded and kept for seven years (s. 9 MLP Regulations).

70. Further, a financial institution is obliged to establish the true identity of each account holder (s. 7 (5) MLP Regulations). Where an account is held by a business, trust, fiduciary agent, nominee company or professional intermediary such as an attorney, chartered accountant, certified public accountant or auditor, the financial institution must have or obtain sufficient evidence as to the true identity of the beneficial owners of the account. However, neither the MLPA nor the MLP Regulations define who are considered to be the beneficial owners or what information is to be obtained on these persons but this is defined in the Guidance Notes.¹⁴ This Guidance Note is deemed to be part of the AML law by virtue of the Financial Services Unit (Amendment) Act, 10 of 2011.

Nominees

71. Dominica recognises the concept of nominee ownership, which is regulated under different acts depending upon whether domestic or international business companies are involved. Certain professionals and businesses, who may act as nominees, are also subject to AML/CFT requirements whereby they must obtain information identifying their customers (see above). These requirements cover fiduciary services provided by way of business.

72. The Registration of Business Names Act obliges every firm, individual or corporation, having a place of business in Dominica which carries on the business wholly or mainly as a nominee or trustee of another person, to register under the Act and must provide information to the Registrar of Corporations on the identification of the person on whose behalf a business is being carried on (s. 4 RBNA).

73. A person who is a substantial shareholder of a company limited by shares (*i.e.* a shareholder who holds at least 10% of the voting rights, either by himself or in the name of a nominee (s. 181 CA)) must within 14 days notify the company stating his/her name and address and giving full particulars of

14. This is defined in the Guidance Notes. Paragraph 66 of the Guidance Notes indicates that financial institutions should obtain a copy of the register of members or a list of names and addresses of shareholders holding a controlling beneficial interest. It also notes that at times it may be necessary to obtain identification documents from individual clients for the beneficial owners holding or controlling 5% of the issued shares of a company.

the shares held by him/her or his/her nominee¹⁵ (ss.182 and 183 CA). When this shareholder ceases to be a substantial shareholder, s/he must also inform the company within 14 days (s. 183 CA). A company must keep a share register where information on substantial shareholders is entered (s. 184 CA).

74. The Money Laundering (Prevention) Act 2011 requires the financial institutions and scheduled businesses to establish and maintain procedures prescribed in the MLP Regulations made under the Money Laundering (Prevention) Act 2000, Activities of financial institutions¹⁶ and other business activities¹⁷ conducted by persons¹⁸ are subject to these requirements. Other business activities include nominee services. Therefore, financial institutions and any persons engaged in providing nominee services as a business must conduct CDD (s.3 MLPA). These obliged persons are required to obtain satisfactory evidence of the identity of their customers, including where they act for the customer in a nominee arrangement (s.5 MLPA). Provisions of the Guidance Note discussed above also apply to obliged persons providing nominee services.

75. In addition, whenever a person (including a nominee) comes into contact with a financial institution or with one of these professionals, the obliged entity must take reasonable measures to identify any person on whose behalf the applicant for business is acting in addition to identification of the applicant (s.7 MLPA). However, persons performing nominee services on a non-business basis are not covered under the AML provisions and as these services will generally be performed for no consideration in the course of a purely private non-business relationship the deficiency is likely to be minor. It is recommended that Dominica should monitor this activity so as not to become an impediment in the effective exchange of information. This issue will be further examined in the course of Dominica's Phase 2 review.

Conclusion

76. Dominica's legal framework ensures the availability of the following ownership information in relation to domestic companies:

- all domestic companies must keep a register of members where details of all shareholders are recorded. This information must under the law be kept updated on an ongoing basis in relation to substantial

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15. Only the identity of the nominee must be provided although in practice, his(her) address will be provided as well.
 16. Part I of Schedule to the Money Laundering (Prevention) Act 2011.
 17. Part II of Schedule to the money Laundering (Prevention) Act 2011
 18. "Person" includes an entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations.

shareholders and further provided in relation to all shareholders, on an annual basis and under sanction, to registration authorities, ensuring ownership information in relation to these companies available in Dominica;

- international business companies must keep an updated register of shareholders or members where all particulars must be registered. This register must be kept by the company's registered agent at the company's registered office in Dominica

77. Information on nominee ownership is available, except when nominee services are performed on a non-business basis.

78. While external companies (*i.e.* foreign companies) must register with the ROC and the Inland Revenue Division, no ownership information has to be maintained by government authorities or by the external companies themselves. Therefore, in respect of foreign companies having their place of management and control in Dominica and thereby considered as tax resident in Dominica, ownership information is not ensured by Dominican legal and regulatory framework.

Bearer shares (ToR A.1.2)

79. In relation to domestic companies, section 29(2) of the CA expressly forbids the issuance of bearer shares.

80. International business companies incorporated under the IBCA are allowed to issue bearer shares and no ownership information in relation to such shares has to be reported in the share registers maintained by these companies. As mentioned previously, there were 16 483 international business companies in Dominica as of March 2012 which is approximately 86% of the total number of companies in Dominica. It is not known how many of these companies have issued bearer shares.

81. All international business companies must have a registered agent in Dominica (s. 39 IBCA). The International Business Companies (Amendment) Act 2000 introduced provisions relating to immobilisation of bearer shares in the IBC Act. This Amendment Act was Gazetted on 25 January 2001. Upon the issuance or transfer of bearer shares, the registered agent of IBC, must lodge the share certificates and a duly notarised letter containing the name and address of the person who holds the shares with an approved fiduciary (s. 27 IBCA). Section 3 of the IBC (Amendment) Act 2000, defines an approved fiduciary as a registered chartered accountant practising in Dominica or a financial institution domiciled in Dominica approved by the Minister (s. 2 IBCA). An approved fiduciary with whom a share certificate has been lodged shall keep a register containing: (i) the name and address of

the person who owns the shares; (ii) the identifying number of the share certificate; (iii) the total number of shares; and (iv) the date of issue or transfer of the shares (s. 27 IBCA). A bearer share is transferable by delivery of the certificate relating to the share (s. 31 IBCA). To effect the transfer of a bearer share, the registered agent must, two days prior to the transfer, by notice in writing containing: (i) the signature of the transferor, the transferee and a notary public; (ii) the name and address of the transferee; and (iii) the name and address of the new approved fiduciary, if applicable, notify the approved fiduciary with whom the certificate has been lodged, of the intended transfer (s. 31 (2) IBCA). Upon the receipt of the aforementioned notice, the approved fiduciary must submit the certificate to the registered agent and enter the name and address of the transferee and new approved fiduciary, if applicable, in his register (s. 31 (3) IBCA).

82. The International Business Companies Act was further amended¹⁹ to provide that the registered agent of a company which has issued or transferred shares issued to bearer prior to 25 January 2001 shall comply with the provisions of section 27(4) before 31 December 2001 and a person who contravenes these provisions is liable to a penalty of USD 25 in respect of each day during which contravention continues. Therefore, the provisions relating to immobilisation of bearer shares are also applicable to the period prior to 25 January 2001.

83. Dominican authorities have also indicated that, substantial shareholders must provide information on any changes in their holding to the company's share register and this requirement also applies to bearer shareholders of IBCs.

84. The MLP Regulations require company service providers to identify owners of companies with which they form a business relationship. A person who contravenes this requirement commits an offence and shall, on conviction, be liable to a fine not exceeding USD 40 000 or to imprisonment for a term not exceeding two years (ss.3 (1)(a) and(2) MLP Regulations).

85. Section 7(5) of the MLP Regulations establishes that all financial institutions in Dominica must establish the true identity of each account holder. In the case of an account held by a company, the financial institution must have or obtain sufficient evidence as to the true identity of the beneficial interests in the account (s. 7 (5) MLP Regulations). In the absence of not having established ownership identification, the business relationship shall not proceed.

Conclusion

86. The above mechanisms ensure the identification of owners of the bearer shares issued by IBCs.

19. International Business Companies (Amendment) Act No. 19 of 2001.

Partnerships (ToR A.1.3)

Registration requirements

87. The Registration of Business Names Act 1959 provides for registration of firms and persons carrying on business under business names. The Act defines “business name” as the name or style under which any business is carried on, whether in a partnership or otherwise (s. 2 RBNA). Section 3 of the RBNA obliges every firm and all individuals having a place of business and carrying on business under a business name to be registered. A firm is defined to mean an unincorporated body of (i) two or more individuals, or (ii) one or more individuals with one or more corporations, or (iii) two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit (s. 2 RBNA). Every firm or person required to be registered shall pay a registration fee and furnish to the ROC a statement in writing in the prescribed form containing: (i) the business name; (ii) the general nature of the business; (iii) the principal place of business; (iv) the identity information of all individuals or corporations who are partners; and (v) the date of commencement of business (s. 5 RBNA). The statement must be presented within fourteen days after the firm or person commences business (s. 7 RBNA).

88. Every firm or business registered under the Registration of Business Names Act shall submit an annual return to the ROC including the names of the partners of the firm or proprietors of the business; the residential and business addresses of the partners or proprietors of the firm or business, as well as their telephone, fax, and electronic mailing addresses, if any; and a statement of the assets and liabilities of the firm or business (s. 5 Registration of Business Names (Amendment) Act 2001). Section 3 of the Registration of Business Names Act obliges every firm having a place of business in Dominica and carrying on business under a business name to register with the Registrar. There is no requirement that the firm be formed or created under Dominica’s laws. The authorities of Dominica advise that these requirements would also apply to foreign partnerships wishing to carry on business in Dominica.

Tax requirements

89. In Dominica, ‘persons’ obliged to pay tax includes partnerships (s. 2(1) ITA). A partnership is not charged tax in its own name but all income accrued to it is charged to the partners (s. 21 ITA).

90. Domestic and foreign partnerships must register with revenue authorities under the ITA and the VATA if they are engaged in business in Dominica. Every partnership carrying on business in Dominica must at all times be represented by a resident individual who can be the precedent

partner (the first mentioned in the partnership agreement) or the agent of the partnership in Dominica (s. 75 (1) ITA). The partnership must notify the Comptroller of Inland Revenue of the name of the precedent partner or its agent and its address for service of notices within one month of commencement of business (s. 75(3) and (4) ITA). Amendments to this information must be notified within 15 days (s. 75 (5) ITA).

91. Every partnership must furnish a tax return in the form approved by the Comptroller of Inland Revenue on or before 31 March following the end of the income year or the last day of the third month following the end of the fiscal year (s. 66 (1) ITA). The precedent partner, first partner mentioned in the partnership agreement, or the registered agent of the partnership in the case none of the partners are resident in Dominica are required to file a tax return on behalf of the partnership. It is unclear whether these tax returns contain information on all partners. In addition, records related to tax returns must be maintained for at least seven years from the end of the tax period to which the records relate (s. 72 (4) ITA).

92. For foreign partnerships doing business in Dominica, the chargeable income of a non-resident partner shall, where s/he is not charged to tax directly, be charged on his agent in the same amount as would have been charged on the non-resident partner (s. 22 ITA).

Information held by service providers

93. As mentioned above with regards to other entities, the MLP Regulations require financial institutions and other service providers to identify their customers (s. 5 MLP Regulations), but they do not specifically detail what information is to be obtained when the customer is a partnership.²⁰

Conclusion

94. Information on the partners of a partnership, including a foreign partnership carrying on a business in Dominica, must be available with Registrar of Companies, pursuant to the provisions of the Registration of Business Names Act. In addition, partnerships are also subject to registration requirements with the Comptroller of Inland Revenue and have to provide the name of the partner representing the partnership and to keep this information updated, although information on all the partners is not provided.

20. This is defined in the Guidance Notes, however these are not binding. When financial institutions deal with unincorporated businesses or partnerships, paragraph 74 of the Guidance Notes indicates that they should obtain evidence of the identity of a majority of the partners, owners or managers and the authorised signatories.

Trusts (ToR A.1.4)

95. Dominica recognises the concept of trusts and trusts are usually created under the common law. Common law obligations on all trustees (see para. 102) in Dominica are supplemented by the Trustee Act 1877. The Trustee Act 1877 was enacted to extend the applicability of the United Kingdom Trustee Act 1850 to Dominica. It is also possible to create trusts under the International Exempt Trusts Act 1997 (IETA) which applies to trusts in which the settlors and beneficiaries are non-resident and trust property does not include any land situated in Dominica (s.2 IETA). At least one of the trustees of an international exempt trust must be either a company incorporated under the CA, a bank licensed under the Offshore Banking Act 1996, or a bank licensed under the Banking Act 1991, licensed to engage in trust business. Thus in Dominica there are common law and Trustee Act obligations on trustees of domestic trusts. However, the provisions of the Trustee Act 1887 do not apply to international exempt trusts (Art.48 IETA). Dominica resident trustees, other than trusts of international exempt trusts, are subject to the provisions of the Trustee Act. At present, there are no international exempt trusts registered in Dominica.

*Information held by government authorities*Registration of trusts

96. Only international exempt trusts have a registration obligation.

97. Section 6 of the IETA provides that an international exempt trust may only be created by an instrument in writing. All international exempt trusts must be registered with the FSU (FSU Act 2008 Schedule V) which maintains a Register of International Exempt Trusts (s. 36 (1) FSU Act).²¹ A certificate of registration is evidence that all the requirements of the IETA are met and is valid for a period of one year (ss.36(4) and 37(1) FSU Act). An application for renewal of registration must be made by filing with the FSU an application for renewal and the payment of the prescribed fee (s.37 (2) FSU Act). As a result of this registration, the FSU is aware of the details of the trustee who completed registration for the international exempt trust, but no information is made available to the FSU concerning the settlor, beneficiaries or other trustees of the international exempt trust.

21. An application for entry on the register shall be accompanied by: (i) the prescribed fee; (ii) a notice of the name and registered office of the international exempt trust; and (iii) a certificate from a barrister or solicitor certifying that the trust upon registration will be an international exempt trust (s.36(2)). The Registrar, on receipt of the trust instrument and fee, will: (i) enter on the register the name of the international exempt trust, and the address of the registered office of the trust; and (ii) issue a certificate of registration (s. 36(3)).

Tax requirements

98. International exempt trusts are exempt from tax and thus not required to file tax returns (s.42 IETA).

99. For other trusts, all persons liable to income tax must file annual returns of the income of their business to the Comptroller of Inland Revenue by 31 March of the year following that year to which the return relates (s.66 ITA). Person as defined under the ITA include trusts (s.2). Assessable income for tax purposes in Dominica is based on worldwide income for residents of Dominica; non-residents pay tax on income derived from sources in Dominica (s.8 ITA). There is no specific information on trustees, settlors, and beneficiaries required to be included in the trust's tax return. Section 69 of the ITA, however, empowers the Comptroller of Inland Revenue to request any information that he considers necessary.

100. For all trusts including foreign trusts except the international exempt trusts, any income accruing to a trust, where there is no beneficiary with immediate entitlement to the income, is included in the assessable income of the trust which is taxed in the name of the trustee²² (s.15 (1) ITA). Any income accruing to a trust, where there is a beneficiary entitled to the immediate benefit thereof, is deemed to have accrued to the beneficiary and is included in his assessable income (s.15 (2) ITA). Where a beneficiary of a trust is entitled to the benefit of the income at the discretion of the trustee, any income so applied for his benefit is deemed to have accrued to the beneficiary and is included in his assessable income (s.15 (3) ITA). Accordingly, in case of no beneficiaries with immediate entitlement to the income, the income is taxed in the case of trustee and if there are entitled beneficiaries, the income is taxable in the hands of such beneficiaries on an accrual basis, though no actual disbursements may have been made. Though, the tax records of trusts may not have information on beneficiaries, the trustees must know the beneficiaries and amount of income accrued to them. Otherwise all income is taxable in the case of a trustee and must pay tax. The tax authorities of Dominica would be able to identify disbursements of income from a trust to the beneficiaries and the identity of the beneficiaries through their information gathering powers by requesting such information from the trustee (s.69 ITA).

22. Section 2 of the ITA defines trustee to mean a person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law and includes any person having or taking upon himself the administration or control of any property subject to a trust.

Information maintained by trustees

101. The 1877 Trustee Act establishes that the United Kingdom Trustee Act of 1850 (UKTA) is applicable in Dominica. The UKTA determines that no more than four trustees may be appointed to a trust with the exception of: (i) land vested in trustees for charitable, ecclesiastical, or public purposes; (ii) where the net proceeds of the sale of the land are held for public purposes; or (iii) trustees of a lease limited by a settlement on trusts for raising money, or of a like term created under the statutory remedies relating to annual sums charged on land. The UKTA does not state who can be a trustee but it does govern the conduct of trustees. The UKTA does not explicitly provide that the trustee must maintain information on the identity of settlors and beneficiaries.

102. Trustees are also subject to common law fiduciary obligations. Under the common law of the United Kingdom which is followed by Dominica, for a non-charitable trust to be valid, the trust needs to meet the three certainties: certainty of intention, certainty of subject matter and certainty of object. In addition, trustees have a duty of care to act in accordance with the wishes of the settlor. Trustees should obtain “good receipt” from beneficiaries when they distribute trust property. The extent and manner in which these common law obligations apply in Dominica’s law could not be established during the Phase 1 review.

103. Section 16(1) of the MLPA requires a financial institution to keep business transaction records of all business transactions (including details of the parties to the transactions) for a period of seven years after the termination of the business transaction recorded. The term “financial institution” for this purpose means any person whose regular occupation or business is the carrying on of any activity listed in Part I of the Schedule (s. 2, MLPA 2001). This Schedule includes the carrying on of a trust business. Regulation 3(1)(a)(i) of the MLP Regulations requires service providers, including persons conducting trust business, to conduct customer due diligence (CDD). It does not however detail the CDD to be conducted and thus does not specify which parties to the trust the trustee needs to identify but this is defined in the non-binding Guidance Notes.²³ Section 16 of the MLPA sets forth the record keeping requirements for service providers of trusts; it establishes

23. This is further defined in the Guidance Notes, however these are not binding. With regards to trusts, paragraph 80 of the Guidance Notes requires the trustees to verify the identity of a settler/grantor or any person adding assets to the trust. In addition, the name, address, business, trade or occupation and other procedures relating to verification should be obtained for the settlor or any person transferring assets to the trust, the beneficiaries, and protector. The purpose of nature of trust, source of funds and bank references should be available.

that a financial institution or person carrying on a business relationship with a client shall keep business transaction records of all business transactions for a period of seven years after the termination of the business transaction recorded.

104. With respect to international exempt trusts, information obtained during this CDD process is to be kept in the international exempt trust's registered office, which must be the office of the person or bank licensed to engage in trust business (s. 41 IETA). International exempt trusts are required to maintain their registered offices in Dominica. Resident trustees, by virtue of maintaining the registered office of an international exempt trust, may hold documents in relation to the formation or management of the trust, but this not explicitly provided.

Information maintained by service providers

105. Financial institutions and other service providers are required to establish the true identity of each account holder (Regulation 7(5) MLP Regulations). In the case of an account held by a trust or a fiduciary agent, the financial institution must have or obtain sufficient evidence as to the true identity of the beneficial interests in the account. The nature of business and the source of funds of the account holder and beneficiaries should be verified. A person who contravenes the referenced regulation commits an offence and shall, on conviction, be liable to a fine not exceeding XCD 40 000 (USD 14 815) or to imprisonment for a term not exceeding two years (Regulation 3(2) MLP Regulations).

Conclusion

106. With respect to domestic trusts and those foreign trusts which do not qualify as international exempt trusts, obligations on trustees arise under the common law, the Trustee Act and the tax laws. For international exempt trusts, the registration requirement means that the FSU is aware of the details of the trustees who completed registration for each of these trust, but no information concerning the settlor, beneficiaries or other trustees is required to be provided to the Registrar. Obligations on all persons providing services to trusts in a professional capacity are such that these entities must conduct CDD, but the MLPA or the Regulation do not explicitly oblige the service providers to identify and keep information on the settlors and beneficiaries. It is recommended that Dominica provide explicit provisions that would ensure the information on the settlors and beneficiaries in case of international exempt trusts.

107. In respect of trusts that are not professionally managed (including foreign trusts), the obligations on the trustee to maintain information on the trust beneficiaries and settlors arise from the requirements of common

law and tax law. Tax laws may not ensure information in respect of all such trusts if income is not taxable as earned from sources out of Dominica. The common law places obligations on trustees to have full knowledge of all the trust documents, to act in the best interests of the beneficiaries and to only distribute assets to the right persons. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out his duties properly. If the trustees fail to meet their common law obligations they are liable to being sued. The extent of these common law obligations could not be established during the Phase 1 review. An in-depth assessment of the effectiveness of the common law requirements with respect to availability of identity information pertaining to settlors, trustees and beneficiaries of trusts will be considered as part of Dominica's Phase 2 review.

108. It is conceivable that a trust could be created which has no connection with Dominica other than that the settlor chooses the trust to be governed by Dominica's law. In that event, there may be no information about the trust available in Dominica.

Foundations (ToR A.1.5)

109. Dominica's laws does not allow for the creation of foundations.

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

Sanctions tied to registration requirements

110. A company that fails to register with the ROC would not have any legal existence and could not operate (s. 9 CA).

111. The ROC may strike off the register an external company that neglects or refuses to file an annual return (s. 351 CA).

112. If, in the opinion of the ROC, an international business company (IBC) is acting in a detrimental way to the interests of Dominica or its members or is contravening the law, it may require the company to take such steps as it considers necessary to rectify the matter or may make an order revoking or suspending the registration of the company and requiring its business in Dominica to be wound up (s. 14 (3) IBCA).

113. An IBC that fails to inform the ROC of any amendment made to its memorandum or articles of incorporation is liable to a penalty of USD 100 in respect of each day during which the contravention continues (s. 16 (4) IBCA). A director who knowingly permits the contravention is liable to the same sanction (s. 16 (4) IBCA). Also, an IBC that fails to notify the ROC that it has

changed the place of its registered office or that it changed its registered agent is responsible for a fine of USD 100 for each day during which the contravention continues (s. 41 IBCA).

114. In the case a registered agent under the IBCA does not pay the prescribed inscription fee or the renewal fee payable in January of each year or fails to register with the ROC, he will cease to be a registered agent and will not be listed in the annual list of registered agents published in February of each year in the Official Gazette (s. 39 IBCA).

115. Under the RBNA, if any firm or person required under the aforementioned law to furnish a statement of particulars or of any change in the particulars without reasonable excuse makes default in so doing in the manner and within the time specified, every partner in the firm or the person so in default is liable to a fine of USD 250 for every day during which the default continues (s. 9 RBNA).

116. The Cooperative Societies Act 2011 (CSA) determines that a person who makes or assists in making a report, return, notice or other document, required by the CSA or its regulations to be sent to the ROC or to any other person, that: (i) contains an untrue statement of a material fact; or (ii) omits to state a material fact required in the report; is liable to a fine not exceeding XCD 5 000 (USD 1 852) or to imprisonment for a term not exceeding six months, or both (s. 230 CSA).

117. Section 83 of the FSA establishes that any person who makes, or allows to be made, any entry, erasures in, or omission from a balance sheet, or a return or document required to be sent for the purposes of the FSA, with intent to falsify the same, or to evade any of the provisions of the FSA, is liable to a fine of XCD 3 000 (USD 1 111).

Sanctions tied to information to be kept by companies

118. General obligations to keep company registers and records are provided for in section 177 of CA. While no specific sanctions are attached to non-compliance with the obligation to keep registers and records, the general sanction provision in section 533 CA applies. A company who does not keep any registers and records commits an offence punishable with a fine of XCD 5 000 (USD 1 852) (s. 533 CA).

119. Every domestic company is required to keep a register of shareholders (s. 177(2) CA) and submit an annual return to the ROC which includes a list of shareholders. Non-compliance causes the company and every director and officer to be guilty of an offence (s. 194 CA). On summary conviction, every defaulter would be liable to a fine of XCD 5 000 (USD 1 852) (s. 533 CA).

120. It is further provided that any person who does not maintain a register of substantial shareholders in accordance with Section 184 of the CA is guilty of an offence and liable to a fine of XCD 5 000 (USD 1 852) (s. 533 CA). The same sanction would apply to a substantial shareholder who failed to notify the company of its position in the company (s. 185 CA). Every officer of the company permitting this default is liable to the same fine (s. 184(3) CA). A company incorporated under the former CA which has not filed for a certificate of continuance three years after the entry into force of the CA will be subject to the current CA and will be subject to the aforementioned sanctions (s. 368 CA).

121. In the event that a company fails to detail its shareholders in its annual return with the ROC, the company is liable to a fine of XCD 5 000 (USD 1 852) (s. 530 (1) CA). Directors and officers of the company permitting this default are liable to a fine of XCD 5 000 (USD 1 852) and to imprisonment for a term of six months (s. 530 (3) CA).

122. Under the CA, persons who fail to notify a company if they become or cease to be a substantial shareholder are guilty of an offence (s. 185 CA). The CA further provides in section 533 that the punishment for this offense is a fine of XCD 5 000 (USD 1 852).

123. An external company that is not registered under the CA may not maintain any action, suit or other proceeding in any court in Dominica in respect of any contract made in whole or in part within Dominica in the course of, or in connection with, the carrying on of any business by the company in Dominica (s. 357 CA).

124. International business companies are required to keep share registers which should contain the name and addresses of persons who hold shares in the company (s. 28 (1) IBCA). A company that does not comply is liable to a penalty of USD 25 per day during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty (s. 28 (6) IBCA).

125. When an approved fiduciary does not properly keep information on bearer shares he holds, he is liable to a fine of USD 1 000 (s. 15 IBCA (Amendment) 2000).

Sanctions tied to business name registration

126. Under the RBNA, if any firm or person required to furnish a statement of particulars or of any change in the particulars without reasonable excuse makes default in so doing in the manner and within the time specified, every partner in the firm or the person so in default is liable to a fine

of XCD 250 (USD 93) for every day during which the default continues (s. 9 RBNA).

Sanctions tied to registration of agents

127. An IBC that does not have a registered agent or a registered office in Dominica is liable to a penalty of USD 100 for each day during which the contravention continues (s. 41 IBCA).

Sanctions tied to registration of international trusts

128. A trust that is not registered under the IETA will not be exempt from all income tax, stamp duty or all exchange controls (s. 42 IETA).

Sanctions tied to tax requirements

129. A person required to be registered for VAT purposes who does not apply for registration within the required time, commits an offence and is liable for a penalty equal to double the amount of output tax payable from the time the person is required to apply for registration until the person files an application for registration (s. 81(1) VAT Act). In addition, any person who fails or neglects to furnish to the Comptroller any return or document as and when required under the ITA is guilty of an offence and liable to a fine of XCD 1 000 (USD 370) or to imprisonment for one year (s. 119 ITA). In the case of employers, any person who within the prescribed time, fails to register as an employer is also liable to a fine of to a fine of XCD 1 000 or to imprisonment for one year (s. 122 ITA).

130. Failure to file an annual income tax return results in sanctions. If a taxpayer fails to furnish a return on time he will incur a penalty not exceeding 10% of the amount of tax chargeable for that year of assessment (s. 111 ITA). Sanctions are also provided if the taxpayer fails to furnish a correct return (s. 112). For example, where the incorrectness of the return was not attributable to fraud or wilful default he is liable to a penalty not exceeding 50% of the amount of tax which would have been lost if he had been assessed on the basis of the incorrect return or information furnished by him (s. 112(2)(a) ITA).

131. Further criminal sanctions are provided in the most serious offences (s. 117-126 ITA). For example, if a return is not furnished, the penalty is a fine of XCD 1 000 (USD 370) or one year imprisonment (s. 119 ITA). For tax evasion, the penalty is a fine of XCD 2 000 (USD 741) or two years imprisonment (s. 120 ITA).

Sanctions provided by AML/CFT legislation

132. The MLP Regulations requires financial institutions, company service providers or any designated non-financial businesses and professionals who provide financial, management, nominee, car dealership or gaming services to identify owners of a company when forming a business relationship with the company (s. 3(1)(a) MLP Regulations). All the aforementioned activities are covered in the definition of the concept of relevant business defined in section 2 of the MLP Regulations. A person who contravenes this requirement commits an offence and shall, on conviction, be liable to a fine not exceeding XCD 40 000 (USD 14 815) or to imprisonment for a term not exceeding two years (s. 3(2) MLP Regulations).

Conclusion

133. When relevant entities are required to maintain ownership and identity information under Dominica’s laws, these requirements are supplemented by sanctions for non-compliance. The effectiveness of Dominica’s enforcement provisions will be considered in its Phase 2 Peer 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
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.
Availability of identity information of settlors and beneficiaries of international exempt trusts is not fully ensured in all circumstances.	Dominica should ensure that ownership information in relation to international exempt trusts is available in all circumstances.

A.2. Accounting records

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

134. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: (i) correctly explain all transactions; (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, *etc.* Accounting records need to be kept for a minimum of five years.

General requirements (ToR A.2.1)

Companies under the scope of the Companies Act

Companies Act

135. Section 149 of the CA provides that the directors of a company, non profit companies included, must present the company's financial statements to shareholders during the annual meeting as well as the report of auditor, if any, and further information in respect of the financial position of the company and the results of its operations as required by the articles of the company, its by-laws, or any unanimous shareholder agreement.

136. In accordance with section 187 of the CA, all companies must prepare and maintain adequate accounting records, which must be kept at the registered office of the Company in Dominica. Section 188 of the CA refers to the form of records. What constitutes adequate accounting records is not stated although they must be adequate to ascertain the financial position of the company. Further, a copy of the financial statements of each of its subsidiary bodies corporate the accounts of which are consolidated shall be kept at the company registered office in Dominica (s. 151 (1) CA). When these records are kept outside Dominica, accounting records that are adequate to enable the directors to ascertain the financial position of the company with reasonable accuracy on a quarterly basis must be kept at the company's registered office in Dominica or at some other place in Dominica designated by the directors (s. 187 (3) CA).

137. Dominica's authorities have advised that these requirements also apply to external companies. However, the CA does not contain any explicit obligations requiring external companies to keep accounting records.

Tax laws

138. Every person carrying on any business must keep records or books of accounts as are necessary to reflect the true and full nature of transactions of the business regard being had to the nature of activities concerned and the scale on which they are carried on (s. 72(1) ITA). These records must be kept in Dominica (s. 72 (3)) unless the Comptroller of Inland Revenue approves them being kept at some other place. Anyone who fails to keep a proper record of his transactions or to preserve any required books of account or documents is guilty of an offence and liable to a fine of USD 1 000 or to imprisonment for one year (s. 119 ITA).

139. For tax purposes, any business, whatever its form is liable to tax in Dominica and must file on an annual basis a tax return with the Inland Revenue Division before 31 March of the year following the year of assessment (s. 66 ITA). In addition to the annual return, businesses must provide a copy of the final accounts of the business together with a reconciliation of the income shown in the accounts with the assessable income disclosed in the return in relation to the accounts (s. 73(1) ITA).

International business companies

140. For companies registered under the IBCA, the company must keep such accounts and records as the directors consider necessary or desirable to reflect the financial position of the company (s. 66 IBCA). These books must be kept in English at the registered office of the company or at such other place as the directors determine (s. 66 (3) IBCA). A company that contravenes these requirements is liable to a penalty of USD 25 in respect of each day during which the contravention continues. Directors are liable to the same sanction (s. 66 (4) IBCA). These records are open to the members for inspection (s. 67 IBCA). The scope of keeping of accounts and records is dependent on the discretion of the directors, therefore, the keeping of reliable accounting records consistent with the standard is not fully ensured.

141. In addition to the obligations contained in the IBCA, exempt insurance companies are required, under section 16 of the Exempt Insurance Act (EIA), Act 14 of 1997, to maintain in Dominica, in addition to its registered office and a registered agent, such registers or policies, claims, registers, books and business records as the Supervisor of Insurance of Dominica requires. Also, not later than six months after the close of the financial year of an insurance licensee or such longer period as the Minister of Finance allows, a licensee shall submit to the Supervisor of Insurance two copies of its financial statements in a form that complies with generally accepted principles, and such other related information as may be prescribed (s. 19 (1) EIA). The financial statements must be accompanied by an auditor's report in

the prescribed form (s. 19 (2) EIA). A director, officer, employee or agent of a licensee who, with intent to deceive: (a) makes any false or misleading statement or entry in a book, account, record, report or statement or fails to make any entry that should be made therein; or (b) obstructs the carrying out by an auditor of his functions under the EIA, commits an offence and is liable to a fine of USD 2 500 and two years of imprisonment (s. 45 EIA).

142. In addition to the obligations in the IBCA, offshore banks are required under the Offshore Banking Act (OBA) 1996 to submit to the Financial Secretary, a statement of assets and liabilities at the close of the last business day of each quarter within thirty days of the end of each quarter (s. 22 (1) OBA). The Financial Secretary may require an offshore bank to submit such further information as he may deem necessary for the proper understanding of any statement or return furnished by that institution and such information shall be submitted within the period and in the manner the Financial Secretary requires (s. 22 (2) OBA). In addition, not later than four months after the close of each financial year, or such longer period as the Financial Secretary may in any particular case permit, the financial institution shall forward to the Financial Secretary, copies of its balance sheet and profit and loss account and the full correct names of the directors of the institution (s. 23 (1) OBA). The balance sheet and profit and loss account shall be certified by an approved auditor (s. 23 (1) OBA). Any offshore bank which contravenes this obligation commits an offence and is liable to a fine of USD 100 for each day the submission of the audited account is overdue (s. 23 (2) OBA).

Partnerships

143. Tax requirements previously described similarly apply to partnerships. Partnerships are therefore required to keep, under sanction, records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business regarding the nature of activities concerned (ss. 72(1) and 119 ITA). Further, partnerships are subject to the requirement to submit annual returns to the Inland Revenue Division (s. 66 ITA) and when doing so, partnerships have to attach a copy of the final accounts of the business (s. 73 ITA).

Trusts

144. Section 72(1) of the ITA also applies to trusts, which are relevant entities for tax purposes. Therefore, domestic trusts or foreign trusts earning Dominican source income are required to keep, under sanction, records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business regarding the nature of activities concerned (s. 72(1) and s. 119 ITA).

145. Also, under the common law, all trustees are under a fiduciary duty to keep accurate accounts and records, the extent of such requirements could not be ascertained during the Phase 1 Peer Review. The extent and manner in which these common law obligations could not be established and will be considered as part of Dominica's Phase 2 Peer Review. The International Exempt Trust Act does not prescribe any account keeping requirements.

146. As part of its duties, a trustee of an international trust must comply with Regulation 3(1)(a)(i) of the MLP Regulations that requires persons conducting a trust business to conduct CDD. A person who contravenes this commits an offence and is, on conviction, liable to a fine not exceeding XCD 40 000 or to imprisonment for a term not exceeding two years (Regulation 3(2) MLP Regulations).

Conclusion

147. The CA provides that domestic companies must prepare and maintain adequate accounting records, however the nature of records to be maintained are not specified. International business companies (with the exception of international insurance companies and offshore banks) are only required to keep records that directors consider necessary or desirable to reflect the financial position of the company. The ITA requires that every person carrying on business (including companies, partnerships and trusts) must keep records or books of accounts necessary to reflect the true and full nature of transactions of the business regard being had to the nature of activities concerned and the scale on which they are carried on. Thus, domestic companies are obliged to keep accounting records under commercial law and tax law, while partnerships and domestic trusts must keep accounting records to satisfy obligations under tax law. However it is not explicitly required that international business companies, foreign companies, foreign trusts or international exempt trusts maintain accounting records which enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time and allow financial statements to be prepared.

Underlying documentation (ToR A.2.2)

148. The CA does not provide for underlying documentation to be kept.

149. For income tax purposes, records or books of account as are necessary to reflect the true and full nature of the transactions of the business must be kept which requires documentation be kept to explain any entry in the books of account (ss.71 and 72 ITA). For VAT purposes, under section 64 of the VATA, businesses must maintain underlying documentation such as invoices, credit notes, and debit notes whether issued or received as well as customs documentation relating to imports and exports of goods by

the person. A person who contravenes section 64 commits an offence and is liable for a penalty of XCD 50 (USD 18.50) per day for each day or portion thereof that the failure continues (s. 86 VATA). International insurance companies must keep all business documents including working papers and other documents as are necessary to explain the methods and calculations by which annual accounts are made up.

150. Neither the International Business Companies Act nor the International Exempt Trusts Act provide that underlying documentation pertaining to accounting records of international business companies or international trusts must be kept in accordance with the international standard.

151. There is a common law duty on trustees of domestic trusts to keep accounting records which will be considered in Dominica's Phase 2 Peer Review.

Conclusion

152. Only entities that fall under Sections 71 and 72 of the ITA, or the VATA are clearly required to keep underlying documentation. The ITA requires that these entities keep underlying documentation with respect to the records or books of accounts necessary to reflect the true and full nature of transactions of the business regard being had to the nature of activities concerned and the scale on which they are carried on. It is not clear that this obligation extends to underlying documentation associated with the financial position of the entity or arrangement or with financial statements. IBCs, foreign trusts and international exempt trusts are not subject to Sections 71 and 72 of the ITA, and are thus not required to maintain underlying documentation in accordance with the international standard. Further, Part IV of the ITA exempts income of some persons or specific type of income from levy of taxes.

Document retention (ToR A.2.3)

153. The CA does not provide for any specific retention period for accounting records. Notwithstanding the aforementioned, section 189 of the CA requires that a company and its agents shall take reasonable precautions to prevent loss or destruction of the records required by the CA to be prepared and maintained in respect of a company.

154. Section 72(4) of the ITA requires that every person carrying on business shall preserve all books of account and other records which are essential to the explanation of any entry in the books of account of that business for a period of seven years after the end of the basis period to which the books of account or records relate. The Comptroller of Inland Revenue may require retention for such further period of time as he considers necessary for their

proper examination (s. 72 (5) ITA). In addition, the Comptroller may approve the disposal of any books of account or other records within such lesser period than seven years as he thinks fit where a body of persons has been terminated or in any other case where he is satisfied that it is reasonable to do so (s. 72(6) ITA).

155. For VAT purposes, any business subject to this tax must maintain accounts, documents and records for seven years after the end of the tax period to which they relate (s. 110 VATA).

156. Neither the IBCA nor the IETA provide that accounting records pertaining to international business companies or international exempt trusts must at least be kept for five years. No statutory requirements exist for local trusts. Therefore, keeping of accounting records for at least five years by entities other than those subject to tax law provisions is not ensured in Dominica.

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 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.

157. In Dominica, obligations for financial institutions to keep customer and transaction records are found in the anti-money laundering/combating the financing of terrorism (AML/CFT) framework, which consists of separate pieces of legislation: the Money Laundering (Prevention) Act 2011 (MLPA); the Proceeds of Crime Act 1993 (POCA); and the Money Laundering (Prevention) Regulations 2001 (MLP Regulations). These are supported by the non-binding Anti-Money Laundering Guidance Notes (Guidance Notes). The Money Laundering Supervisory Authority (MLSA) of Dominica is the authority in charge of implementing the AML/CFT framework, pursuant to Section 11(d) of the MLPA.

Customer identification records

158. Financial institutions must not do business with persons using obviously fictitious names and should not keep anonymous accounts or accounts where it is impossible or difficult to identify the client (s.29 Banking Act and s.10 Offshore Banking Amendment Act). In addition, where a financial institution commits an offence, in addition to any other penalty, its license may be suspended or revoked.

159. Financial institutions²⁴ and other obliged entities must identify their customers in the following circumstances: (i) formation of a business relationship or business transaction; (ii) carrying out any single transaction of USD 5 000 or equivalent and over; (iii) carrying out a series of transactions for the same person in the total amount of USD 5 000 or equivalent and over; and (iv) where there is suspicion that the person handling the transaction is engaged in money laundering or the transaction is carried out on behalf of another person engaged in money laundering (Regulation 5 MLP Regulations). These records should be kept for at least seven years (Regulation 9(2) MLP Regulations).

160. Offshore financial institutions must conduct full CDD in accordance with the MLP Regulations for all new and old customers and accounts.

24. The definition of “financial institution” includes a bank licensed under the Banking Act or the Offshore Banking Act, a registered agent licensed under the International Business Companies Act 1996 and a trust licensed under the International Exempt Trust Act 1997 (s.2). In addition, anyone involved in the following relevant business activities is an obliged entity under the MLPA: trust and other fiduciary services, company formation and management services, and services performed by barristers-at-law, solicitors, accountants and notaries (s.3).

161. Financial institutions and other obliged entities must also take reasonable measures to establish the identity of any person on whose behalf the customer is acting (Regulations 5(1) and 7(2)). Where such measures cannot be taken, the business relationship may only proceed if the financial institution or other obliged entity requires the customer to provide identity information on the person on whose behalf the customer acts as soon as reasonably practicable.

162. Regulation 7(5) of the MLP Regulations goes on to require financial institutions to establish the true identity of each account holder. For an account held by a business, trust, fiduciary agent, nominee company or professional intermediary such as an attorney, chartered accountant, certified public accountant or auditor, the financial institution must also obtain sufficient evidence of the true identity of the beneficial owners of the account.

163. All financial institutions (including those engaged in banking business and offshore banking business) must keep records of all business transactions for seven years following the termination of the transaction (s. 16 MLPA). MLPA defines business transaction record as: the identification of all persons that are a party to that transaction; a description of that transaction sufficient to identify its purpose and method of execution; the details of any account used for that transaction, including bank, branch and sort code; and the total value of that transaction. A record containing details relating to all business transacted (including any business transacted in the course of a business relationship) must be kept (s.9 MLP Regulations). A person who does not comply with the aforementioned law is liable to a fine of XCD 5 000 (USD 1 852) or to imprisonment for a term of six months or both (s.11 MLPA)

164. Record keeping requirements are also prescribed under the POCA. A financial institution shall retain, in its original form for the minimum retention period applicable to the document (s. 49(1) POCA):

- a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution; and
- a document that relates to a financial transaction carried out by the institution that is given to the institution by or on behalf of the person, whether or not the document is signed by or on behalf of the person.

165. Under the POCA, the minimum retention period for financial transaction documents is seven years (s. 49 (2)). A financial institution that does not keep these financial transaction records commits an offence and is liable, on summary conviction, to a fine of XCD 10 000 (USD 3 704) (s. 49 (5)). It is however provided that the retention obligation does not apply to a financial transaction document that relates to a single deposit, credit, withdrawal,

debit of transfer of an amount of money that does not exceed XCD 5 000 (USD 1 852) or such larger amount as may be prescribed (s. 49(3)). Provisions of Part II and Part III of the POCA apply to the MLPA 2011, to the extent that they are consistent to its provisions (s. 53 MLPA). Part II and Part III of the POCA deal with forfeiture orders, confiscation orders and related matters and investigations and these cover record keeping requirements.

Conclusion

166. The requirements set out in the Banking Act, MLPA, POCA and MLP Regulations ensure that financial institutions are required to keep records pertaining to bank accounts, including customer identity and transaction information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to Information

Overview

167. 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 Dominica's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information.

168. Dominica has enacted Tax Information Exchange Act 1988 (EOI Act) authorising the Minister of Finance to enter into an agreement for exchange of information with the Government of any country. The EOI Act provides that provisions of the agreement with the United States of America have force of law in Dominica. In addition to the US, 18 agreements providing for EOI with 27 jurisdictions are also scheduled to the EOI Act and have force of law in Dominica.

169. The EOI Act authorises the Comptroller of Inland Revenue to exercise all powers and authorities vested in him under the Income Tax Act 1982 (ITA), particularly section 69 to supply the information with regard to requests made pursuant to the scheduled agreements. The Comptroller of Inland Revenue can use its access powers to obtain a wide range of information requested by partners under these 19 agreements.

170. The Comptroller of Inland Revenue can obtain information from taxpayers and third parties, including banks. Information can be obtained in a variety of forms including taking of testimony or the production of books, papers, records and other tangible property. However, the Comptroller of Inland Revenue is not empowered to obtain information from persons not liable to tax and accordingly, the competent authority lacks access to information from

international business companies, international exempt trusts and other entities operating in offshore sectors which are not liable to pay tax. Additionally, confidentiality provisions in laws governing entities in offshore sector may prevent the supervisory authorities from sharing information with the tax authorities.

171. Under the EOI Act, Dominica's competent authority is not required to notify the person who is the subject of the request. Bank secrecy, except in respect of the offshore sector or professional privilege does not interfere with the Comptroller's access powers.

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)

172. Under section 3(3) of the EOI Act, the Minister of Finance may enter into an agreement of exchange of information with the Government of any country and the Minister may, by order subject to negative resolution of the House of Representatives, insert such an agreement in the schedule of the EOI Act. The Comptroller of Inland Revenue can exercise all powers and authorities vested in him under the ITA, particularly section 69 to obtain information with regards requests received under the scheduled agreements.²⁵

173. Pursuant to section 4 of the EOI Act, the Comptroller may exercise all powers and authorities vested in him under the EOI Act to: (i) administer and process any request made pursuant to an agreement; and (ii) for the rendering of reciprocal assistance to facilitate the administration of the EOI Act and relevant tax laws. The Comptroller is empowered to exercise these powers for the purpose of administering Agreements that are scheduled to the EOI Act. The DTC with Switzerland is not a scheduled agreement and the powers may not, therefore, be used for the purposes of that agreement. As a result, only information already in the hands of the Comptroller and/or information which is publicly available may be shared under the Swiss DTC.

25. Currently, the scheduled agreements encompass Australia, Belgium, Canada, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Iceland, the Netherlands, New Zealand, Norway, Portugal, Sweden, the United Kingdom and the United States. See further Part C of this report.

174. For the purposes of the administration or enforcement of the ITA, including obtaining full information in respect of the income of any person who is or may be liable to tax, the Comptroller may issue a notice to a taxpayer or a third party in order to make him (s. 69(1) ITA):

- furnish a return of income, statement of assets and liabilities or other information required by the Comptroller;
- produce any accounts, books of account, statement of assets and liabilities or other documents which the Comptroller may consider necessary; or
- attend, at such time and place as specified in the notice, for the purpose of being examined by the Comptroller in respect of the assessable or chargeable income of himself or any other person or any transaction or matters appearing to the Comptroller to be relevant thereto.

175. With regard to bank information, the Comptroller may require any bank to furnish details of any bank account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such bank account (s. 69 (2) ITA). This provision permits the Comptroller or any officer authorised by the Comptroller to inspect the records of the bank with respect to the bank account of any person. Further, the Comptroller may require the attendance of any officer of a bank before him to give evidence respecting any bank accounts or other assets which may be held by the bank on behalf of any person.

176. The Comptroller can also use the information gathering powers under section 70 of the ITA to obtain business records. Whether or not any person has been assessed to tax, the Comptroller or any officer authorised by him may, subject to prior notice, enter into any premises where any business is carried on or the records or books of account of a business is kept, and: (i) examine the records or books of account and examine any documents which relate to income accruing from the business; (ii) inspect any trading stock of the business and any assets of the business in respect of which allowances or deductions have been or may be claimed; or (iii) require the owner of the business, or any employee or agent to give him such reasonable assistance in connection with the examination and inspection as may be necessary and to answer orally or in writing any questions relating thereto. A notice is not required when in the opinion of the tax authorities there is fraud or wilful intent to evade liability to tax exists and search for any moneys or documents (s. 71 ITA).

Conclusion

177. 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 EOI Act. Under the ITA, the Comptroller is empowered to obtain banking information, ownership information and accounting information. However, such information can only be obtained in respect of any person who is or may be liable to tax.

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

178. While the EOI Act provides that the Comptroller may use the powers of section 69 to obtain information in order to respond to a request under a scheduled agreement, Dominica's authorities indicate that this power is nevertheless subject to the limitations on those powers in the ITA itself. Since the powers of section 69(1) refer to the administration and enforcement of the ITA, and specifically for the purpose of obtaining information from any person who is or may be liable to domestic tax, Dominica's authorities take the view that these powers cannot be used by the Comptroller to obtain information in respect of persons that are not liable to tax, including offshore entities. However, where a person is liable to tax in Dominica the powers can be used to obtain information, regardless of whether the information is needed for Dominica's own tax purposes. While this might not be said to be a domestic tax interest the effect on Dominica's ability to exchange information is analogous. The powers of the Comptroller to obtain bank information do not appear to be subject to the same limitations; however, secrecy provisions relating to offshore banks prevent the disclosure of information to the Comptroller (see *Secrecy Provisions*, below).

179. Dominica's authorities indicate that powers do reside with the Director of the Financial Services Unit to obtain information for exchange purposes from offshore entities absent a domestic tax interest. This power is based on the view that the competent authority for the purposes of the scheduled agreements is the Minister of Finance or his authorised representative. For this purpose, the Minister may designate the Director of the Financial Services Unit as his authorised representative to act as competent authority. In that case, the Director would then be subject to a duty under the EOI Act and under the scheduled agreement to obtain and provide information to respond to a request for information.

180. Section 9 of the FSU Act gives extensive powers to the Director for gathering information that can be used in the following situations:

“(2) Where reasonably required by the Director for the discharge of his functions under this *or any other Act* or, on being requested by the central authority of Dominica (it is specified

that this is the authority designated under the Mutual Assistance in Criminal Matters Act) for providing mutual assistance in criminal matters (emphasis added).”

181. The reference to the Director’s duties under this “or any other Act” is the basis for the conclusion that the Director has a duty under the EOI Act in a case where he is the competent authority for the purposes of a scheduled agreement. Finally, the Director of the FSU would have the power to lift any secrecy provisions in place for offshore entities.

182. However, it is not clear that acting as competent authority falls within the concept of the Director’s “functions under this or any other Act”. The functions of the Director under the FSU Act relate to supervision, monitoring compliance with the AML Act, taking action against unlicensed financial services, maintaining and supervising the offshore registry, and encouraging high professional standards within the financial services industry (s.9 FSU Act). The reference to functions under “any other Act” appears to refer to the various pieces of legislation where the Director has a specific, enumerated function. For example, the Director of the FSU is also the Registrar of Insurance and is responsible for the general administration of the Insurance Act 2012. It appears that where the Minister of Finance designates the Director of the FSU as competent authority for the purposes of a scheduled agreement, then the Director would be acting *qua* competent authority and not in his capacity as Director of the FSU. Conversely, the EOI Act clearly spells out the role of the Comptroller of Inland Revenue for the purposes of exchange of information, and clarifies that the powers available to the Comptroller under the ITA can be used to discharge these functions. A similar role for the Director of the FSU is not spelt out in the EOI Act.

183. Dominica’s authorities indicate that the Director of the FSU has used his powers to obtain information from offshore entities, including IBCs to meet information requests from the US. Nevertheless, the legal basis for this is not clear.

Conclusion

184. The competent authority is not empowered to obtain information from the entities not liable to tax, which includes offshore entities. The absence of a power to obtain information from such entities has a similar effect to a domestic tax interest requirement.

Compulsory powers (ToR B.1.4)

185. In addition to requiring the production of information and documents, the Comptroller has the power to require a taxpayer to attend to be examined in respect of the assessable or chargeable income of himself or any other person or any transaction or matters appearing to the Comptroller to be relevant thereto (s. 69(1) ITA). Similarly, the Comptroller can require the attendance of any officer of a bank before him to give evidence respecting any bank accounts or other assets which may be held by the bank on behalf of any person (s. 69(2) ITA). When an examination has been launched, the Comptroller also has search and seizure powers (s. 70 ITA). If the Comptroller believes that there is fraud or wilful intent to evade liability to tax exists, s/he or any authorised officer may enter any premises, with or without previous notice, and use its search and seizure powers (s. 70 ITA).

186. Any person who fails to comply with a notice issued under Section 69(1) is liable to a fine of XCD 500 (USD 185) (s. 115 ITA). In addition, the Director of Public Prosecutions may pursue criminal proceedings against any person who fails to provide information to the Comptroller. On being found guilty, the person may be liable to a fine of XCD 1 000 (USD 370) or one year imprisonment (s. 119 ITA).

187. In conclusion, the Comptroller of Revenue can use different types of powers to enforce compliance with requests for information from persons that are liable to tax.

Secrecy provisions (ToR B.1.5)

188. There are a number of secrecy provisions in place in Dominica's legislation, specifically in the context of offshore entities. These provisions can be overridden by access powers only in certain cases. Significantly, secrecy provisions cannot be overcome for IBCs, offshore banks, International Exempt Trusts, or Exempt Insurance Companies.

Confidentiality provisions for banks and some types of companies

189. No person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee or agent of a financial institution or as its auditor or receiver or official liquidator or as director, officer, employee or agent of the Central Bank, shall disclose to any person or government authority the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution except: (i) with the written authorisation of the depositor/customer or of his heirs or legal representatives; or (ii) when required to make disclosure by any court of competent jurisdiction within Dominica; or (iii) under the provisions of a

law of Dominica or agreement among the participating Eastern Caribbean Governments (s. 32(1) Banking Act).

190. However, as mentioned previously, the Comptroller may require any bank to furnish to him details of any bank account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such bank account (s. 69 (2) ITA). Consequently, a request made pursuant to the ITA would be covered by the third exception to the rule, because the Income Tax Act is a law of Dominica.

191. With regards to IBCs, no person who has acquired information in relation to an IBC can disclose information on these companies to any person or government authority except: (i) with the written consent of the company; or (ii) when required to make disclosure by a court (s. 112 IBCA). This confidentiality provision is also overridden where information is requested by the Attorney General in relation to domestic criminal matters (s. 113 IBCA). Dominican authorities are of the view that, as Section 69 of the ITA does not extend to IBCs, the information obtained by the Attorney General would only be disclosed to the Comptroller on the order of the Court. There is no similar exception for disclosure required pursuant to the EOI Act.

192. For exempt insurance companies, the companies and their employees shall not disclose any information relating to an application of a prospective insurance licensee or to the affairs of an insurance licensee other than information on the public record in the possession of the Registrar of Companies (s. 41 Exempt Insurance Act). Exceptions to this confidentiality rule are provided; when information is required under the Exempt Insurance Act or the ITA or by order of a court.

193. Confidentiality of the International Exempt Trust Register is provided for, except when a trustee authorises, in writing, a person to inspect the entry of that trust on the register (s. 39 IETA). The provisions of ITA do not apply to trustees of such trust, as those are not liable to tax.

194. It is also important to mention that section 26 of the Offshore Banking Act (OBA) states that secrecy of information will be preserved relating to any application by any person under the aforementioned law or to the affairs of an offshore financial institution or any customer of an offshore financial institution. This prohibition can only be lifted when the Financial Secretary realises his duties or when he is ordered by a competent court. Further, Sec 69 of the ITA does not extend to an offshore financial institution. The OBA does not permit the Comptroller to access information from the Financial Secretary.

Professional privilege

195. The OECS Bar Association’s Code of Ethics (of which Dominica is a party to) is silent on client privileges and duties of confidentiality. The general common law principle that a person cannot be required to provide information or produce documents to which a claim to privilege could be maintained in legal proceedings may still apply. Tax laws do not impose any restriction on the powers of comptrollers to obtain information from lawyers, and the Dominican authorities state that the tax administration can obtain information from lawyers when they are not acting in their professional capacity. There are no Dominican case laws on this issue and the English common law cases apply. The extent to which such a common law privilege is used in Dominica with respect to EOI matters will be considered during Dominica’s Phase 2 review.

196. There are no laws providing privileges to accountants, tax advisers or other professionals.

Conclusion

197. Banking secrecy is overridden for the purpose of the ITA; however, the secrecy provisions in the laws governing offshore sector entities prohibit disclosure of information to the competent authority. The scope of professional privilege is consistent with the international standard.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
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.

Phase 1 determination	
The element is not in place.	
Factors underlying recommendation	Recommendation
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.

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

198. 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).

199. Dominica's laws do not require the taxpayer to be notified about an EOI request or the fact that information exchange takes place. Indeed, when an examination is being conducted, the Inland Revenue Division can even exercise search and seizure powers without prior notice (s. 71 ITA).

200. The taxpayers or the persons from whom information is requested do not have any rights to challenge the information request from the Comptroller of Revenue.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging Information

Overview

201. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Dominica, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions and tax information exchange agreements) as well as domestic law. This section of the report examines whether Dominica has a network of agreements that allow it to achieve effective exchange of information in practice.

202. Dominica’s network for exchange of information is based on 20 bilateral and 1 multilateral agreement which together allow for exchange of information with 30 partner jurisdictions. In terms of bilateral agreements, Dominica is party to one longstanding (1963) double tax convention (DTC), with Switzerland²⁶ and a 1987 TIEA with the United States but its EOI network has developed rapidly since February 2010, with Dominica signing 18 TIEAs to the international standard (6 of these TIEAs are currently in force). Dominica is also a party to the multilateral Caribbean Community (CARICOM) agreement together with ten other members of that organisation.²⁷ 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 arrangement with it.

203. The CARICOM treaty and the DTC with Switzerland are not fully in line with the international standard.²⁸ The EOI provisions of the DTC with

26. The 1954 double tax convention between the United Kingdom and Switzerland was extended to Dominica, at that time an “associated state” of Great Britain, by an exchange of notes signed in 1963.

27. Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, and Trinidad and Tobago.

28. 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. Exchange is thus

Switzerland are restricted 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's authorities should approach the Swiss authorities in view of upgrading the EOI provision of the treaty. The DTC with Switzerland is not further considered in this section. Dominica's authorities indicate that CARICOM has started a review of its treaty, with a view to bring it to the standard for all its parties. Moreover, Dominica cannot effectively exchange information with its EOI partners due to limitations in its domestic law to obtain information from entities in the offshore sector, as described in Part B.1 of the report.

204. All EOI articles in Dominica's bilateral agreements and in its multilateral agreement have confidentiality provisions which meet the international standard, However its domestic legislation allows disclosure of information received to persons and authorities other than those authorised by its EOI agreements.

205. Dominica's EOI arrangements 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.

206. The Minister of Finance is the competent authority for negotiation of agreements and exchange of information. In practice, exchange of information is conducted by the Comptroller of Inland Revenue as provided in the EOI Act. There appear to be no legal restrictions on the ability of Dominica's competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

C.1. Exchange of information mechanisms

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

207. The EOI network of Dominica is based on 19 tax information exchange agreements (TIEAs) (7 of which are currently in force)²⁹, 1 double tax convention

possible in line with the international standard between Dominica and two of the CARICOM parties – Saint Kitts and Nevis and Saint Vincent and the Grenadines – but not with the other parties.

29. Australia, Belgium, Canada, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Iceland, the Netherlands, New Zealand, Norway, Portugal, Sweden, the United Kingdom and the United States. Dominica has finished its procedures for ratification of all agreements and is awaiting 12 partners to finalise their ratification procedures.

(DTC) (which is currently in force)³⁰ and a regional multilateral instrument (covering 10 other jurisdictions).³¹

208. The Income Tax Act 1982 (ITA) and the Tax Information Exchange Act 1998 provide powers to access and provide information for exchange of information purposes to a “scheduled country”. To be a scheduled country, a jurisdiction must be a party to: (i) a DTC for the avoidance of double taxation and the prevention of fiscal evasion with respect of taxes on income, profits or gains and capital gains and for the encouragement of regional trade and investment; or (ii) a TIEA to assure the accurate assessment and collection of taxes, to prevent fiscal fraud and evasion, and to develop improved information sources for tax matters (point 3(1)(1) of the Schedule). Currently, agreements covering 27 jurisdictions are attached to the EOI Act in schedules.³² These agreements are thus ratified and incorporated into Dominican law.

209. Most of the TIEAs signed by Dominica mirror the terms of the 2002 OECD Model Agreement on Exchange of Information on Tax Matters (2002 OECD Model TIEA), except the one with the United States (signed in 1987), which is also in line with the international standard.

210. In the case of the CARICOM signatories, that agreement only provides for exchange of information to the standard where no impediments to obtain and provide bank information exists and where no domestic tax interest is present in either jurisdiction. In addition to the impediments in Dominica’s laws, there might also be restrictions in the domestic laws of partner countries. It appears that there are such impediments in Barbados, Grenada, Jamaica, Saint Lucia and Trinidad and Tobago. Belize and Guyana have not yet been assessed by the Global Forum.

211. Dominica’s DTC with Switzerland is not scheduled to the EOI Act and accordingly the competent authority cannot access information to meet requests under this agreement. In any case this agreement is not consistent with the international standard.

30. Switzerland.

31. Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Trinidad and Tobago.

32. Australia, Belgium, Canada, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Iceland, the Netherlands, New Zealand, Norway, Portugal, Sweden, the United Kingdom, the United States and the 10 parties to the CARICOM agreement. Agreement with Switzerland is not scheduled to the EOI Act.

Foreseeably relevant standard (ToR C.1.1)

212. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions”, *i.e.* 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 Article 1 of the OECD Model TIEA, set out below:³³

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

213. All the TIEAs concluded by Dominica meet the “foreseeably relevant” standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA. The CARICOM agreement refer to the exchange of information where it is ‘necessary’ and refer to both applications of the treaty and domestic laws. The phrase ‘as is necessary’ is recognised in the commentary to Article 26 of the *OECD Model Tax Convention* as allowing the same scope of exchange as does the term ‘foreseeably relevant’.³⁴

In respect of all persons (ToR C.1.2)

214. For exchange of information to be effective it is necessary that a jurisdiction’s obligations 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 exchange of information mechanisms will provide for exchange of information in respect of all persons.

215. None of Dominica’s TIEAs is restricted to certain persons such as those considered resident in or nationals of one of the contracting jurisdictions, or precludes the application of EOI provisions in respect to certain types of entities.

33. Article 26(1) of the Model Tax Convention contains a similar provision.

34. See Article 1 of the *OECD Model TIEA*, para.5.4 of the Revised Commentary (2008) to Article 26 of the *UN Model Convention* and para.9 of the Commentary to Article 26 of the *OECD Model Convention*.

216. The CARICOM agreement does not contain the sentence indicating that EOI is not restricted by Article 1. However, its EOI provision 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 there under is not contrary to the Convention”. This agreement would not be limited to residents to the extent that 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 this agreement.

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

217. 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 Convention and the OECD Model TIEA, which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

218. Article 5 in the TIEAs concluded by Dominica (Article 4 of the US TIEA), indicate that parties should ensure that they have the power to obtain information which is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

219. The CARICOM agreement and the DTC with Switzerland do not contain a similar provision. The absence of this paragraph does not automatically create restrictions on exchange of bank information.³⁵ Except for the offshore sector where secrecy provisions prohibit disclosure of information to the competent authority (see Part B of this report), Dominica has access to bank information for tax purposes in its domestic law 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.

220. In respect of Dominica’s DTCs (bilateral and CARICOM), the obligation to exchange all types of information is clearly available with respect

35. 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.

to Antigua and Barbuda³⁶, Saint Kitts and Nevis and Saint Vincent and the Grenadines. The Global Forum assessments have found some deficiencies in the domestic laws of Barbados, Grenada, Jamaica, Saint Lucia and Trinidad and Tobago. Belize and Guyana have not yet been assessed by the Forum.

221. It is recommended that Dominica works with its EOI partners to ensure that full exchange of information to the standard can occur under relevant agreements.

Absence of domestic tax interest (ToR C.1.4)

222. 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. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

223. All of the TIEAs (usually under Article 5.2) explicitly permit the information to be exchanged, notwithstanding that it may not be required for a domestic tax purpose. However, as noted in Part B of this report, Dominica’s competent authority cannot obtain information from tax exempt entities; therefore, this deficiency prevents Dominica to exchange information consistent with standard with all its EOI partners.

224. The CARICOM DTC does not have a provision enunciating 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”. In addition to limitations in the Dominica’s authorities to obtain information, some problems concerning access to information have been assessed by the Global Forum in Dominica’s partners also. The Jamaican tax authorities can obtain information only from taxpayers under examination or being assessed. The same impediment applies in Grenada and Trinidad and Tobago.³⁷

Absence of dual criminality principles (ToR C.1.5)

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

36. See Supplementary review Report of Antigua and Barbuda, 2012, published on the Global Forum web site: www.eoi-tax.org/jurisdictions/AG.

37. See Phase 1 Peer Review Reports of Jamaica, 2010 and Trinidad and Tobago, 2011.

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

226. None of the EOI arrangements concluded by Dominica apply the dual criminality principle to restrict the exchange of information.

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

227. 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”).

228. Most of Dominica’s TIEAs are based upon the OECD Tax Information Exchange Model Agreement which provides for exchange of information in both civil and criminal tax matters for the administration and enforcement of domestic laws. The only TIEA with different text is the one signed with the United States but it explicitly establishes that exchange of information will be provided to administer and enforce domestic laws both in civil and criminal tax matters including for the determination of tax or the prosecution of tax crimes. Article 26 of the CARICOM DTC provides for exchange of information in civil tax matters. In addition, this treaty refers to fighting fiscal evasion as one of its objects and therefore allows for exchange of information in both civil and criminal tax matters to take place.

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

229. 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.

230. All of Dominica’s TIEAs expressly allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction’s domestic laws (Art. 5.3). In addition, there are no restrictions in Dominica’s 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.

In force (ToR C.1.8)

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

232. In Dominica, treaties are given effect through national legislation. Section 50 of the ITA grants authority to the Minister of Finance to give effect to a DTC by an order. The CARICOM agreement was given effect through the Statutory Rules and Regulation No.6 of 2008. The Tax Information Exchange Act also gives authority to the Minister of Finance to give effect to an EOI arrangement by an order (s.3(3) EOI Act). Such an order has been issued in November 2011, for all the signed TIEAs, except the recently signed TIEAs with Poland and South Africa. The DTC in effect between Dominica and Switzerland came into existence by an extension of the DTC signed between the United Kingdom and Switzerland and it was extended to Dominica on 1 January of 1961 as established in Part I of the Annex to the Notes of the treaty.

233. Dominica has signed EOI instruments covering 30 jurisdictions. Of these, currently 18 are in force. Dominica has completed its ratification process for all others, except for the agreements signed with Poland and South Africa.

234. The CARICOM agreement took seven years from signature to ratification. Apart from this unusual multilateral situation, Dominica has expeditiously ratified all of its agreements. Dominica has completed its ratification process in less than 18 months, and often in less than 1 year.

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

235. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

236. In Dominica, once an agreement is ratified it becomes part of the local law. This provides it with the same status as local law since it is incorporated into an act through its schedule. As noted previously, Dominica has scheduled the agreements relating to 27 of its partners.

237. Dominica has enacted legislation to comply with the terms of its agreements. The EOI Act and the ITA provide for the powers to access and provide information for exchange of information purposes. As noted in Part B of this report, Dominica's competent authority does not have access to information from entities not liable to tax and the authorities also cannot obtain

information due to confidentiality impediments in laws concerning IBCs, offshore financial institutions and international exempt trusts.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
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.	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.
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.	Dominica should continue its efforts to update its agreements to ensure that they provide for effective exchange of information in all cases.

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

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

238. 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.

239. Dominica has ratified EOI arrangements covering 28 jurisdictions, including 25 Global Forum members, out of which 16 are OECD member countries, encompassing 6 G20 economies. The oldest arrangement came into force with Switzerland in 1961 (*i.e.* before independence) and the most recent with Denmark in 2012 (see Annex 2). Its treaties with some CARICOM partners and Switzerland are not to the standard. Dominica's authorities indicated that the CARICOM has started a review of its double taxation agreement, including with a view to bring it to the standard for all its parties.

240. Although it does not appear that Dominica actively initiates negotiations to establish agreements, it actively and quickly negotiates EOI instruments, mainly TIEAs, with all jurisdictions that ask it to enter into an EOI arrangement. This includes almost all of Dominica's main trading partners, except Japan. Indeed, 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 such an arrangement.

241. Dominica has also been in communication with Ireland, Spain and Italy in relation to treaty negotiations.

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
Dominica has a network of EOI agreements with relevant partners but none of them have been given full effect through domestic law.	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.

242. 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.

243. The TIEAs concluded by Dominica meet the standards for confidentiality including the limitation on disclosure of information received and use of the information exchanged, which are reflected in Article 8 of the OECD Model TIEA. The TIEAs include a confidentiality provision (Art. 8, Art. 4 in the TIEA with the US) that conforms to the standard. The TIEAs with Belgium, the Netherlands and Portugal add that: “In case of exchange of information in respect of an identified or identifiable individual, the provisions of Chapter 6, in particular the Article 199, of the Economic Partnership Agreement between the CARIFORUM States and the European Community and its Member States of 15 October 2008 shall be applied accordingly”. Article 199 of that agreement outlines principles and general rules relating to information exchange. Importantly: (i) information should only be used as authorised by the sending party; and (ii) persons to whom the information concerns (e.g. the subject of an EOI request) have a right to receive all information related to them, except where it is in the public interest not to allow this.

244. Dominica’s DTC with Switzerland contains a confidentiality provision in Article 20 that establishes that any information exchanged between the parties shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are dealt with in the DTC.

245. The CARICOM agreement also has a confidentiality clause that determines that any information exchanged between the parties shall be treated as secret and shall only be disclosed to persons or authorities including Courts and other administrative bodies concerned with the assessment or collection of the taxes which are dealt with in the agreement. It also specifies that such persons or authorities shall use the information only for the assessment or collection of taxes and may only disclose the information in public court proceedings or judicial decisions.

246. As regards domestic law, the Comptroller of Inland Revenue and every person employed in carrying out the provisions of or having an official duty under an agreement or the EOI Act, must treat all documents and information which may come into his possession or to his knowledge in the

course of his duties, as secret (s. 5 EOI Act)³⁸. This secrecy provision is not considered to have been infringed however with regards to the disclosure of confidential information to any:

- person authorised by Cabinet, or by any other enactment, to receive such information;
- person if such disclosure is necessary for the purposes of that agreement or the EOI Act; or
- authorised officer of the government of a country with which a DTC exists, for the purposes of that international agreement.

247. The above mentioned provisions of disclosure of information received are broader than the scope prescribed in the EOI agreements which are also an integral part of EOI Act. It is unclear how the confidentiality of information received consistent with the standard is maintained in Dominica due to conflicting provisions in the same Act. It is recommended that the provisions concerning scope of disclosure of information contained in the EOI Act be aligned to the international standard.

248. The Tax Information Exchange Act does not require that the taxpayer be notified before information concerning him/her is provided to a requesting jurisdiction (see previous, Part B.2 of this report). In addition, where the Dominican tax authorities use their information gathering powers, there is no requirement that the taxpayer concerned be notified of the exercise of such a power.

All other information exchanged (ToR C.3.2)

249. 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.

250. The confidentiality provisions in Dominica's exchange of information agreements and domestic law do not draw a distinction between information received in response to requests and information forming part of the request themselves. The rules that apply are therefore the same as those described above.

38. These confidentiality provisions mirror similar provisions in Section 6 of the Income Tax Act.

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
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.

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

251. 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 listed secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by legal professional privilege, which is a feature of the legal systems of many jurisdictions. However, communications between a client and a lawyer or other admitted legal representative are, generally, only privileged to the extent that the lawyer or other legal representative acts in his or her capacity as a lawyer or other legal representative. Where legal professional privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that a lawyer acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of legal professional privilege.

252. The limits provided for in Article 7 of the OECD Model TIEA and Article 26 of the OECD Model Tax Convention on which information can be exchanged are included in each of the TIEAs concluded by Dominica. That is, information which is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or which would be contrary to public policy, is not required to be exchanged.

253. The reservation in the CARICOM treaty appears to apply when the disclosure of 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.

254. Article 4(4) of the TIEA with the United States provide that the competent authority will deny a request where an obligation would arise: (i) to carry out administrative measures at variance with the laws of Dominica; (ii) to supply particular items of information which are not obtainable under local laws; (iii) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process; (iv) to supply information, the disclosure of which would be contrary to public policy; and (v) to supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State. The restriction on supplying information which is not obtainable under local laws may impede effective exchange of information given restrictions in Dominica’s domestic law which prevent it from obtaining information in line with the standards (see section B.1 above).

255. In respect of rights and safeguards of persons, the OECD Model TIEA provides that they remain applicable “to the extent that they do not unduly prevent or delay effective exchange of information”. In contrast, the TIEAs with Australia, New Zealand and Poland provide that a requested party “shall use its best endeavours” to ensure that their application does not so unduly prevent or delay effective EOI. The variation in the language gives greater leeway to the parties since the text of the OECD Model TIEA provides a stricter point of view with regards to the timeliness of the answers to exchange of information requests.

256. The TIEA with Germany does not contain the model clause and therefore does not circumscribe rights and safeguards found in domestic law. Finally, the TIEA with Portugal is silent on the rights and safeguards of the persons concerned; it therefore neither guarantees that they remain applicable nor that the existing rights and safeguards should not unduly prevent or delay effective EOI. While it is unlikely that these variations will materially affect the exchange of information, they will be further reviewed in Dominica’s Phase 2 review.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

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

258. The CARICOM agreement does not specifically address the question of timeliness of responses or provision of status updates. Dominica's TIEAs 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.

259. The Dominica Tax Information Exchange Act, which has incorporated into local legislation the TIEA signed between Dominica and the United States, establishes that the competent authority of the requested State shall endeavour to provide requested information (Art. 4 (2) EOI Act Schedule of 7 April of 1998). If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall endeavour to take all available measures to provide the applicant State with the information requested. Privileges under the laws or practices of the applicant State shall not apply in the execution of a request but shall be preserved for resolution by the applicant State. The Tax Information Exchange Act does not comment on a specific time frame to inform the requesting State that it is unable to supply the requested information.

260. There appear to be no legal restrictions on the ability of Dominica’s competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. A review of the practical ability of the competent authority to respond to requests in a timely manner will be conducted in the course of Dominica’s Phase 2 review.

Organisational process and resources (ToR C.5.2)

261. The TIEAs and DTCs indicate that the competent authority is the Minister of Finance or his authorised representative. Article 4 of the EOI Act authorises the Minister of Finance to enter into agreement with any other country. Article 5 of the EOI Act authorises the Comptroller of Revenue to use all powers and authorities vested in him under the ITA to administer and process any request made pursuant to an EOI agreement and render reciprocal assistance to facilitate the administration of relevant tax laws. A review of Dominica’s organisational process and resources will be conducted in the context of its Phase 2 review.

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

262. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

263. There are no laws or regulations in Dominica that impose restrictive conditions on exchange of information that would be incompatible with the international standard.

Determination and factors underlying recommendations

Phase 1 Determination

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

Summary of Determinations and Factors Underlying Recommendations³⁹

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>)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	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.
	Availability of identity information of settlors and beneficiaries of international exempt trusts is not fully ensured in all circumstances.	Dominica should ensure that ownership information in relation to international exempt trusts is available in all circumstances.

39. The ratings will be finalised as soon as a representative subset of Phase 2 reviews is completed.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The element is not in place.	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 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.
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
The element is not in place.	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 only to 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 Acts regulating these 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).
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>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information (ToR C.1)		
<p>The element is not in place.</p>	<p>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.</p>	<p>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.</p>
	<p>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.</p>	<p>Dominica should continue its efforts to update its agreements to ensure that they provide for effective exchange of information in all cases.</p>
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (ToR C.2)		
<p>The element is in place, but certain aspects of the legal implementation of the element need improvement.</p>	<p>Dominica has a network of EOI agreements with relevant partners but none of them have been given full effect through domestic law.</p>	<p>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.</p>
		<p>Dominica should continue to develop its exchange of information network to the standard with all relevant partners.</p>

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

Annex 1: Jurisdiction’s Response to the Review Report⁴⁰

Reviewed jurisdictions may wish to use this annex to note recent changes made to their EOI framework or EOI mechanisms or to present future plans which impact on transparency and exchange of information for tax purposes.

Dominica thanks the assessment team of Ms. Evelyn Lio, Tax Director (International Tax), Inland Revenue Authority of Singapore, Mr. Jean-Marc Seignez, Legal Advisor, Ministry of Economy, Finance and Industry of France, Mr. Sanjeev Sharma and Mr. David Moussali of the Global Forum Secretariat for the Phase 1 assessment of Dominica’s legal and regulatory framework for the exchange of information on tax matters. We consider the report represents a fair assessment of Dominica’s position. Notwithstanding our limited technical resources, efforts will be made over the next months to implement the recommendations provided, the results of which will be reflected in our Supplementary Report.

Dominica reaffirms its commitment to implementing the international standards of transparency and exchange of information for tax purposes and looks forward to its scheduled Phase 2 peer review.

40. 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

Since 1 March 1996, Dominica is a signatory to the multilateral CARICOM Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion. The current status of the agreement is set out in the table below.⁴¹

Jurisdiction	CARICOM Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion	
	Date signed	Date ratified/Acceded
Antigua and Barbuda	06-Jul-1994	18-Feb-1998
Barbados ⁴²	07-Jul-1995	07-Jul-1995
Belize	06-Jul-1994	30-Nov-1994
Dominica	01-Mar-1996	19-Jun-1996
Grenada	06-Jul-1994	01-Mar-1996
Guyana	19-Aug-1994	26-Nov-1997
Jamaica	06-Jul-1994	16-Feb-1995
St. Kitts & Nevis	06-Jul-1994	08-May-1997
St. Lucia	06-Jul-1994	22-May-1995
St. Vincent	06-Jul-1994	12-Feb-1998
Trinidad & Tobago	06-Jul-1994	29-Nov-1994

41. www.caricomlaw.org.

42. Barbados is the only country which acceded to the CARICOM Agreement. It did not sign the treaty and therefore, the date of signature and ratification shown are the date of accession.

Bilateral agreements

	Jurisdiction	Type of arrangement	Date signed	Date in force
1	Australia	Tax information exchange agreement (TIEA)	31-Mar-2010	01-Jul-2010
2	Belgium	TIEA	26-Feb-2010	–*
3	Canada	TIEA	29-Jun-2010	10-Jan-2012
4	Denmark	TIEA	19-May-2010	01-Feb-2012
5	Faroe Islands	TIEA	19-May-2010	–*
6	Finland	TIEA	19-May-2010	–*
7	France	TIEA	07-Oct-2010	14-Dec-2011
8	Germany	TIEA Protocol	21-Sep-2010 21-Sep-2010	–*
9	Greenland	TIEA	19-May-2010	–*
10	Iceland	TIEA	19-May-2010	–*
11	Netherlands	TIEA	11-May-2010	–*
12	New Zealand	TIEA	16-Mar-2010	–*
13	Norway	TIEA	19-May-2010	22-Jan-2012
14	Poland	TIEA	10-July-2012	
15	Portugal	TIEA	29-Jul-2010	–*
16	South Africa	TIEA	7-Feb-2012	
17	Sweden	TIEA	19-May-2010	–*
18	Switzerland	DTC	20-Aug-1963	01-Jan-1961
19	United Kingdom	TIEA	31-Mar-2010	23-Dec-2011
20	United States	TIEA	01-Oct-1987	09-May-1988

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

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

Constitution of the Commonwealth of Dominica

Commercial Laws

Banking Act 2005 and amendments thereto

Co-operative Societies Act 2011

Companies Act, No.21 of 1994

Companies Regulations 1997, S.R.O.57 of 2002

Companies (Amendment) Regulations, S.R.O.57 of 2002

Partnership Act 1888

Financial Services Unit Act 2008

Financial Services Unit (Amendment) Act 2011

Friendly Societies Act 1928, Chapter 31:02

Insurance Act 1974, Chapter 78:49 and amendments thereto

Insurance Act 2012

Registration of Business Names Act 1959, Chapter 78:46 and amendments
thereto

Registration of Business Names (Amendment) Act 2001

Trustees Act 1877, Chapter 9:50

Offshore legislation

Exempt Insurance Act 1997 and amendments thereto

International Business Companies Act, 1996

International Business Companies (Amendment) Act 1997
International Business Companies (Amendment) Act 2000
International Business Companies (Amendment) Act 2001
International Business Companies (Amendment) Act 2008
International Exempt Trust Act 1997 and amendments thereto
Offshore Banking Act, 1996 and amendments thereto

Tax legislation

Income Tax Act 1982, Chapter 67:01 and amendments thereto
Value Added Tax Act 2005

Exchange of information

Tax Information Exchange Act (1988) Chapter 67:02
Tax Information Exchange Order, S.R.O.27 of 2011

Anti Money Laundering legislation

Money Laundering (Prevention) Act 2011
Money Laundering (Prevention) Regulations, S.R.O.14 of 2001
Money Laundering (Prevention) (Amendment) Regulations 2001
Proceeds of Crime Act 1993

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: DOMINICA

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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.

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