

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

DOMINICA



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Dominica 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2016
(reflecting the legal and regulatory framework
as at May 2016)

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About the Global Forum

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

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

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

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

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

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

Abbreviations

AML	Anti-Money laundering
CARICOM	Caribbean Community and Common Market
CDD	Customer due diligence
DTC	Double Tax Conventions
ECCB	East Caribbean Community Bank
EOI	Exchange of information
FIU	Financial Intelligence Unit
FSU	Financial Services Unit
IBC	International Business Company
IBCA	International Business Companies Act
IRD	Inland Revenue Division
ITA	Income Tax Act
MLPA	Money Laundering Prevention Act No.8 of 2011
OECD	Organisation for Economic Co-operation and Development
TIEA	Tax Information Exchange Agreements
VAT	Value-Added Tax

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Commonwealth of Dominica (Dominica) as well as the practical implementation of that framework over a three-year review period. The international standard, 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, as well as one of the region’s few republics. Since 2003, the main drivers of the economy have been agriculture, tourism, financial services, and construction. Dominica imposes both corporate and individual income tax and has levied, since 2006, a value added tax on imports and goods and services supplied locally.

3. Dominica committed to implementing the international standards of transparency and information exchange in 2002. Dominica’s network for exchange of information comprises bilateral and multilateral mechanisms covering a total of 31 partner jurisdictions. Dominica’s 20 tax information exchange agreements (TIEAs) generally mirror the OECD Model taxation information exchange agreement, and meet the international standard. Additionally, Dominica is a party to the multilateral Caribbean Community (CARICOM) agreement together with 10 other members of that organisation.

4. The availability of ownership information is ensured in Dominica in relation to domestic companies and international business companies (IBCs), due to the requirement that these companies maintain share registers. However, ownership information on external companies (i.e. those incorporated under a foreign law. Partnerships must also report information on partners to the Registrar of Companies. However, the lack of a comprehensive system of monitoring by the Registrar may not ensure that complete ownership information is being maintained in respect of all companies and

partnerships. Consistent with the international standard, Dominica's legal and regulatory framework ensures availability of ownership information relating to domestic as well as foreign trusts, and, since April 2014, this includes ownership information relating to international exempt trusts. Finally, Dominican officials advise that no bearer shares have been issued in Dominica, but Dominican legislation still allows for their issuance. Only IBCs are permitted to issue bearer shares. Legal requirements ensure that information on holders of bearer shares issued by IBCs would be available in the event that they are issued.

5. 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. IBCs, foreign trusts and international exempt trusts are not explicitly required to maintain accounting records and underlying documentation consistent with the international standard. Therefore, Dominica is recommended to introduce consistent record-keeping obligations for all relevant entities and arrangements. Dominica is recommended to ensure that all companies, partnerships and arrangements are required to retain accounting records, including underlying documentation, for at least five years and are subject to adequate oversight.

6. 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.

7. In respect of access to information, although the Comptroller of Inland Revenue is vested with broad powers to gather relevant information, such procedures have not been applied. EOI staff are not familiar of all provisions and procedures relevant to the exercise of their duties, such as the need to first obtain a court order where the requested information is required for civil or criminal proceedings in the requesting jurisdiction. In addition to powers to access information, the Comptroller also has compulsory powers (with court authorisation) to search premises and seize information, as well as to compel oral testimony. Enforcement of the aforementioned provisions is secured by the existence of significant penalties for non-compliance. Since July 2015, the Comptroller is also able to obtain information from persons not subject to provisions of Tax Act and accordingly information can since then be obtained from tax exempt entities, which include IBCs, international exempt trusts and entities operating in offshore sector.

8. Since July 2015, Dominica's competent authority is required to notify the person who is the subject of a request under the Tax Information Exchange Act (Act No.1 of 1988) (EOI Act) in limited circumstances (in civil tax matters where the whereabouts of the person are known) although the

competent authority has not yet developed procedures for implementing such notification requirements. Further, even where the competent authority has no obligation to notify (i.e. where the EOI request relates to criminal proceedings), the taxpayer may be notified as part of the procedure to obtain a court order to compel production of the information. Court procedures allowing for an application of an order to be made without notice do exist, but have not been tested with respect to EOI requests. Neither domestic bank nor professional secrecy interferes with the Comptroller's access powers.

9. The scope of confidentiality provisions in the EOI Act is not consistent with the international standard and information received by Dominica may be disclosed to persons not authorised by the EOI agreements. Further, prior to the current review, EOI staff were not informed of the need to seal sensitive documents submitted to a court as part of an application to obtain a court order to compel production of information under an EOI agreement. Although safeguards to protect confidential information appear to exist in Dominican law, their effectiveness has not yet been demonstrated in practice, nor are they certain to protect the confidentiality of EOI materials submitted to a court.

10. Dominica has been assigned a rating for each of the ten essential elements, as well as an overall rating, based on the analysis contained in the text of the report, and taking into account the Phase 1 determinations and any recommendations made in respect of Dominica's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Dominica has been assigned the following ratings: Compliant for elements A.3, C.1, C.2, and C.4, Partially Compliant for elements A.1, B.1, B.2, C.3 and C.5, and Non-Compliant for element A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Dominica is Partially Compliant.

11. A follow up report on the steps undertaken by Dominica to answer the recommendations made in this report should be provided to the PRG within six months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Dominica

12. This report assesses the legal and regulatory framework for transparency and exchange of information in the Commonwealth of Dominica (hereafter “Dominica”) as well as Dominica’s implementation of such framework in practice. This assessment 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 conducted in two phases and was based on Dominica’s laws, regulations, and exchange of information mechanisms (EOI) in force or effect as at 19 August 2016, as well as other materials supplied by Dominica and information supplied by partner jurisdictions. The Phase 1 assessment was based on all such materials in force or effect, or available, as of May 2012. A supplementary Phase 1 assessment similarly assessed all relevant materials that were available up to 11 August 2015. The Phase 2 assessment examines the practical implementation of Dominica’s legal framework during the three-year review period of 1 July 2012-30 June 2015, as well as any changes made to the legal and regulatory framework since the Phase 1 review. It included an on-site visit to Roseau from 22-25 March 2016, during which the assessment team met with officials and representatives of several divisions and subdivisions of Dominica’s tax administration service, the financial regulators, and others (a full list of participants is attached to this report as Annex 4). The Phase 2 assessment is based on the laws, regulations, and EOI mechanisms in force or effect as at 19 August 2016. It also reflects Dominica’s responses to the Phase 2 questionnaire, explanations and materials supplied by Dominica during and after the on-site visit and information supplied by partner jurisdictions.

13. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under 3 broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. The Phase 1 review

assessed Dominica's legal and regulatory framework against these elements and each of the enumerated aspects. Therefore, each essential element has a determination that: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened. The Phase 2 components are reflected in the ratings of Dominica's practical application of each of the essential elements. The following ratings are assigned: (i) Compliant, (ii) Largely Compliant, (iii) Partially Compliant, or (iv) Non-compliant. An overall rating is also assigned to reflect Dominica's overall level of compliance with the international standard. A summary of the findings and recommendations, as well as underlying factors, relating to all 10 elements is annexed to this report.

14. At each phase, the assessment team comprised two expert assessors and members of the Global Forum Secretariat. The Phase 1 assessment was conducted by two assessors, Ms. Evelyn Lio, Tax Director (International Tax), Inland Revenue Authority of Singapore and Mr. Jean-Marc Seignez, Legal Advisor, Ministry of Economy and Finances of France, and two representatives of the Global Forum Secretariat, Mr. Sanjeev Sharma and Mr. David Moussali. The supplementary assessment consisted of two assessors, Ms. Caroline Lavigne, Legal Advisor, Ministry of Economy and Finances of France and Ms. Evelyn Lio, Inland Revenue Authority of Singapore, and a representative of the Global Forum Secretariat, Ms. Audrey Chua. The Phase 2 assessment team was composed of two expert assessors, Ms. Caroline Fitamant, Legal Advisor, Ministry of Economy and Finances of France and Ms. Evelyn Lio, as well as two representatives of the Global Forum Secretariat, Ms. Kathleen Kao and Ms. Renata Teixeira.

Overview of Dominica

15. Dominica is an island nation in the Eastern Caribbean with an area of 751 km² and a population of 73 607 (July 2015 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.

16. In 2014, the island of Dominica had a GDP of USD 524.1 million and a GDP per capita of USD 6 930.¹ In 2014, services contributed 69.3% to the GDP, whereas, industry and agriculture contributed 14.8% and 15.9% 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 has sought to diversify the island’s production base by promoting Dominica as an ecotourism destination and encouraging the development of an international financial services sector, including company and bank registration and internet gambling. Dominica also 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 78.6% of GDP. However, Hurricane Dean struck the island in August 2007 causing damages equivalent to 20% of GDP. In 2010-2013, growth slowed as a result of the global recession. Despite a slight improvement in 2011, the economy further contracted after the damage caused by Tropical Storm Erika in 2015, making Dominica one of the currently slowest growing economies in the Caribbean region.

17. In 2013, Dominica’s export destinations were Jamaica (USD 10.4 million), Saudi Arabia (USD 8.12 million), Guatemala (USD 5.38 million), Guyana (USD 5.25 million) and France (USD 3.49 million). Dominica’s top import origins were the United States (USD 62.6 million), China (USD 22.9 million), Vietnam (USD 17.4 million), the United Kingdom (USD 8.67 million) and Canada (USD 4.51 million).³ Foreign direct investments in Dominica are mostly made by entities from Canada and the United States.

18. In addition to CARICOM, Dominica is a member of the Organisation of American States, the Organisation of Eastern Caribbean States (OECS), 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.

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1. See: <http://data.worldbank.org/country/dominica>.
 2. See: <http://data.worldbank.org/country/dominica>.
 3. See: <http://atlas.media.mit.edu/en/profile/country/dma/>.

Governance and legal system

19. Dominica is a common law jurisdiction and, as a parliamentary democracy, one of the Caribbean's few republics. After periods of French and English colonial rule, it became an independent nation in 1978. Dominica's Constitution (Dominica Constitution Order 1978) provides for the separation of powers between the Executive, the Legislature, and the Judiciary.

20. The Head of State is the President who is elected for a five 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 the 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.

21. 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 another Government will have the force of law in Dominica once that agreement is scheduled to the 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.

22. 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 the High Court.

Taxation system

23. 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 (VAT) of 15% on imports and on goods and services supplied locally.

24. 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 15%, 25%, and 35%. 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 25% (effective as of January 2016), 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.

25. Dominica offers fiscal incentives to a number of businesses (domestic or foreign). The International Business Companies Act (IBCA), passed in 1996, guarantees that IBCs incorporated in Dominica are exempted for a period of 20 years from the date of incorporation from domestic taxation, duties and similar charges. Additionally, businesses involved in development projects in the manufacturing, tourism, agro-processing, information and communication technology, and any other approved sector also benefit from incentives, including 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.

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

Exchange of information for tax purposes

27. The Tax Information Exchange Act (Act No.1 of 1988) (EOI Act) 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) and under article 4 of the EOI Act, the Minister of Finance may enter into agreement with any other jurisdiction. 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.

28. Dominica's oldest exchange of information (EOI) arrangement was signed with Switzerland in 1963 (before independence) and the most recent with Ireland in July 2013. Its EOI network now encompasses 31 jurisdictions. In addition to its 20 TIEAs and 1 bilateral DTC, Dominica can share information in tax matters with 10 jurisdictions under the multilateral CARICOM agreement.⁴

Overview of the financial sector and relevant professions

29. 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 IBCs 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. Dominica also offers an economic citizenship programme based on a contribution to the state (by way of a real estate purchase or other investment) as a means of further developing the country. The names of those receiving economic citizenship are published in the official Gazette.

30. The financial sector in Dominica is primarily served by commercial banks and insurance companies. As of August 2016, 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, 7 offshore banks, 17 insurance companies, 8 credit unions, 6 money services businesses, a government owned development bank, and a Building and Loan Association. As of January 2012, offshore banks were reported to hold assets of USD 150 273 000, whereas the amounts of deposits in the total of 526 accounts were USD 117 878 000.

4. 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.

Size and integration of the jurisdiction's financial sector as at 31 December 2014

		Other credit			Insurance	Total
		Banks	institutions	Securities	(Dec 10)	
Number of institutions	Total	7	11	Nil	17	35
Assets	USD '000	717,242	271,413	Nil	61,489	1,050,144
Deposits	USD '000	590,817	181,852	Nil	88,681	861,350
	% Non-resident	18%	n/a	n/a	n/a	18

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 (see section A.3 for a more detailed discussion of the oversight of the financial sector).

32. The offshore sector, which is also regulated by FSU, currently comprises 7 offshore banks, one internet gaming company, 8 credit unions and approximately 19 068 IBCs. There are no international exempt trusts currently registered in Dominica.

33. Professional service providers in Dominica include lawyers, accountants, and public notaries. As of December 2014, there were:

- approximately 90 legal professionals affiliated to the Dominica Bar Association;
- approximately 31 certified accountants affiliated to the Institute of Chartered Accountants of the Eastern Caribbean;
- approximately 30 registered notaries; and,
- 15 licensed corporate service providers.

Recent developments

34. Dominica has completed the ratification processes to bring into force all agreements that are in line with the standard. Dominica is currently negotiating a TIEA with Italy and considering negotiations with India.

Compliance with the Standards

A. Availability of information

Overview

35. 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, as well as the implementation and effectiveness of this framework in practice.

36. Dominica's legal framework relating to the retention and maintenance of ownership and identity information is largely in place, excepting external companies (those incorporated in a foreign jurisdiction) but managed and controlled in Dominica. Domestic companies and partnerships (both domestic and foreign) are required to file annual returns with ownership information. Domestic companies and IBCs are required to maintain shareholder registers. Only external companies do not have any legal obligations to maintain ownership information in Dominica. 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.

37. Following amendments to Dominica’s AML regime in April 2014 clarifying the obligations of international exempt trusts to maintain ownership information, Dominican law now ensures the availability of information relating to domestic as well as most foreign trusts. Although certain “low value” international exempt trusts are not required by the 2014 amendments to keep any ownership information, this gap is not considered material given that there are at present no international exempt trusts registered in Dominica.

38. Dominican law permits the issuance of bearer shares by IBCs, but not by domestic companies. The International Business Companies Act ensures that information on bearer shares issued by IBCs would be available by requiring the registration of the name and address of the person who holds the shares with an approved fiduciary. Dominican officials advise that to date, no bearer shares have been issued in Dominica.

39. Where an obligation exists to keep relevant records, enforcement provisions are generally in place to address instances of non-compliance. Enforcement measures consist of fines, imprisonment, and suspension or revocation of licenses. In practice, however, Dominica does not have in place an effective system of oversight to monitor and enforce the compliance of all entities with their obligations to maintain ownership and identity information. The only system of oversight in place in Dominica is through the financial services regulator, which supervises service providers under Dominica’s AML framework. This system of monitoring comprises regular on-site inspections to review the information service providers are obliged to keep, including ownership and identity information. Currently, only service providers, and not IBCs, are subject to the enforcement powers of the financial services regulator for breaches relating to the maintenance of relevant records. Moreover, the financial services regulator has not yet exercised any of its enforcement powers with respect to the aforementioned obligations. Therefore, Dominica is recommended to implement a system of oversight and enforcement to ensure compliance with the obligations to maintain or provide ownership information for all relevant entities.

40. Obligations to maintain accounting records, including underlying documentation in compliance with the international standard, are in place for domestic companies, partnerships and domestic trusts. IBCs, foreign trusts and international exempt trusts are not required to maintain accounting records and underlying documentation in a manner consistent with the international standard. Dominica is therefore recommended to introduce consistent obligations for all relevant entities and to ensure that all relevant entities are required to keep accounting records, including underlying documentation for at least five years.

41. During the review period, Dominica generally had in place adequate oversight of the compliance of domestic companies, external companies and partnerships with their accounting obligations under the tax law. However, a significant number of companies registered with the Register of Companies are not registered with the tax administration. Although Dominica indicated that the vast majority of these companies are inactive, there would also be a risk that they would be carrying on business that do not require local registration and would thus be undetected by the tax administration. The monitoring of IBCs revealed that such companies did not always maintain at the office of their registered agents the accounting records required under the IBCA. Although the FSU has sensitised registered agents concerning the IBC accounting obligations, the effectiveness of the sensitisation efforts could not be verified. Dominica is recommended to closely monitor the compliance of IBCs with the accounting requirements in the IBCA and ensure that its enforcement powers are effective in deterring non-compliance with the accounting requirements in the IBCA.

42. Information on transactions and customers of banks is available pursuant to Dominica's banking law and AML/CFT framework. Dominica's financial services regulator has in place an active monitoring and enforcement programme to ensure that financial institutions are in compliance with their AML obligations, including keeping customer and transaction records and conducting customer due diligence.

43. Dominica did not receive any EOI requests during the current three year review period (1 July 2012-30 June 2015). However, Dominica did receive one EOI request (relating to company identity and ownership information) outside of the review period that related to company identity and ownership information, as well as bank information (the circumstances of this request are explained more in detail below in section C.5). While the review was ongoing, Dominica was able to provide a partial response (with information on company ownership), but the bank information requested remains outstanding.

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.

44. Dominican law permits the creation of various entities: companies (including offshore entities, such as IBCs) (*ToR A.1.1*), partnerships (*ToR A.1.3*), and trusts (*ToR A.1.4*). Foundations (*ToR A.1.5*) are not allowed under Dominican law. Bearer shares (*ToR A.1.2*) may be issued by certain types of companies. This section will examine the availability of ownership information with respect to relevant entities and arrangements, as well as the enforcement provisions in place to ensure compliance (*ToR A.1.6*).

Companies (ToR 5 A.1.1)

45. The primary piece of legislation governing the establishment of companies is the Companies Act. Companies incorporated under the Companies Act 1994 (CA), may be formed as either:

- ***Companies limited by shares*** (sections 26 to 57 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 Companies Act does not set any minimum level of capital. Different classes of shares are possible but bearer shares are prohibited; or,
- ***Companies without share capital (non-profit companies)*** (sections 326 to 337 CA): A company without share capital which must limit its activities to purposes that are, for instance, religious, philanthropic, or educational. Non-profit companies must have a minimum of three directors.

46. The Companies Act also covers the registration of external companies in Dominica (ss. 338 to 359 CA). An external (or foreign) company is any firm or body of persons, whether incorporated or unincorporated, formed under the laws of a country other than Dominica that carries on business in Dominica.

47. Prior to the enactment of the Companies Act 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 within three years of the commencement of Companies Act (s.362 CA). Upon the expiration of the three year conversion period, these entities became regulated under the Companies Act, the provisions of the Companies Act would apply to these “former-Act companies” as if they had been incorporated under the Companies Act. Under section 368 of the Companies Act, former-Act companies that did not apply for certificates of continuance were equally deemed to be continued under the Companies Act at the expiration of the conversion period. Thus all Companies Act obligations now apply equally to companies established under the previous Act.

48. The International Business Companies Act 1996 (IBCA) governs the creation of international business companies (IBCs). Pursuant to the IBCA, IBCs 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.

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

49. 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 entities are not dealt with further in this report.

50. As of 31 December 2015, there are approximately 3 350 domestic companies and 19 068 IBCs registered in the Companies Register. The registered domestic companies comprises of 402 non-profit companies and 2 998 companies limited by shares.

Domestic companies

51. In Dominica, the incorporation and registration of domestic companies is governed by the Companies Act. 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. A company that fails to register with the ROC would not have any legal existence and could not legally operate (s.9 CA). Documents kept by the ROC are open for public examination, upon payment of a fee (s.495 CA). Domestic companies are not required to provide ownership information at the time of registration, but they are obligated to file annual returns containing ownership information with the ROC. Domestic companies are also required to maintain shareholder registers at their registered offices.

Information submitted to the Registrar of Companies

52. Domestic companies are not required to make ownership information available as part of registration with the ROC. To register a company, an application detailing the name and contact details of the applicant as well as the name of the proprietor(s) of the business (including those who are partners) must be filed with the Companies and Intellectual Property Office (CIPO) of the Registrar of Companies. 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). One or more persons may incorporate a company by signing and sending articles of incorporation to CIPO (s.4 CA). The articles, however, do not contain ownership information on the company.⁶ At the time

6. 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

of submitting the articles of incorporation, the incorporator(s) must also furnish the address of the registered office, which must be maintained at all times in Dominica (s. 175 CA). Upon receipt of all of the required documentation, the ROC will issue a certificate of incorporation providing 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 retain documents for six years from the date they are received (s. 507 CA).

53. Since October 2012, the ROC’s database of registered companies has been digitised and is now available in the form of an online portal. The portal is maintained by CIPO, which processes information submitted electronically by companies in the process of incorporating and registering their business names. As described above, ownership information is not among the type of information required to be submitted for incorporation. Once CIPO is satisfied that all the required information has been submitted, the information is also shared with other relevant agencies, including the Inland Revenue Division for its own registration purposes (see below section on “information submitted to the tax authority”). Once the Inland Revenue Division has issued a tax identification number, CIPO will then issue the certificate of incorporation to the company, at which point the company is officially incorporated. This “one-stop shop” approach was intended to streamline the registration and incorporation process in Dominica by requiring entities to input the required information only once, rather than submitting such materials to the relevant agencies individually, as was done in the past. The “one-stop shop” method has thus far also harmonised the two registration proceedings; as of October 2012, the numbers of entities registered with the ROC and the IRD have been identical (597 in both cases).

54. After incorporation, companies are required to provide to the ROC before the first of April each year 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). The Registrar is entitled to strike from the register any company that fails to send any return, notice, document, or fee as required by the Act (s. 511 CA). Moreover, to remain in good standing, a company needs to file its annual return, pay its annual fee and submit a statement of solvency. Failure to file an annual return constitutes an offence under the Companies Act and is punishable with a fine of XCD 5 000 (USD 182) (s. 533 CA).

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).

Oversight by the Registrar of Companies

55. The ROC mainly functions as a repository of information and provides extremely limited supervision of companies under its purview. By law, the ROC is also empowered to strike off the registrar a company or other body corporate that fails to send any return, notice, document or prescribed fee as required by the Companies Act (s. 511(1)(a) CA). In the event of a default of this nature, the Companies Act stipulates that the ROC shall send a notice to the company advising it of the default. The company then has 30 days to remedy the default or shall be struck off the register (s. 511(2) CA). However, the ROC admits that no active supervision of annual return filing (e.g. in the form of issuing of default notices or striking off) is currently taking place. With the exception of cases of voluntary dissolution, however, no companies have been struck from the register since 2007. No reason was provided for why striking off has not occurred in the past nine years. The ROC was not present at the on-site visit; thus its processes and procedures relating to the above could not be clarified or discussed in-depth. After the on-site visit, the ROC explained that the current system does not allow for it to easily identify non-compliant companies. Thus it does not systematically monitor whether companies are meeting registration or filing requirements. Rather, the ROC relies on third parties to bring to its attention instances of non-compliance. Purportedly, improvements are being made to the system to allow the ROC to distinguish companies that are not meeting filing or annual fee requirements. No enforcement measures have been taken against non-compliant companies to date.

Information submitted to the tax authority

56. The responsibility for administering the Income Tax Act is vested in the Comptroller of Inland Revenue (s. 3 ITA). However, the ITA does not contain any express obligations for companies to register with the Inland Revenue Division.

57. The only law containing a registration requirement for tax purposes is the VAT Act (VATA), under which every legal or natural person who carries on taxable activity⁷ 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

7. 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.

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.

58. 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.

59. Despite the absence of any provisions mandating the registration of taxpayers under the ITA, the IRD explained that, in practice, taxpayers (who are required to file annual tax returns) are registered by the IRD in order for their tax returns to be processed. The procedure for registration in this manner is not codified in any law or regulation. In practice, the IRD explains that it has access to the online database of companies maintained by CIPO. Once all of the required information has been received and processed by CIPO, it is made available to the IRD. The IRD reports checking the online portal on a regular basis – at least once a day – to identify new taxpayers. When a new company has been identified, the details submitted to CIPO through the online portal are transferred into the IRD’s internal tax system, at which point a tax identification number (TIN) is generated and also uploaded to the online portal. Only once CIPO has received the TIN, will the ROC issue a Certificate of Incorporation to the company. Depending on the type of business conducted by the company, the tax registration process may be two-fold, the second stage involving the creation of a Corporate Income Tax Account. For the last two years, the IRD reports 1 627 registered companies, of which 1 168 are active accounts.

60. Although there is no requirement to provide ownership information in annual corporate income tax returns, the IRD does verify company’s ownership information in the course of tax audits, in particular in cases where companies have distributed dividends to their shareholders. The distribution of dividends to foreign shareholders is subject to a 15% withholding tax (WTH) and the IRD verifies shareholder information to determine whether WTH have been duly paid by the company. Companies are required to file WTH returns when making distributions.

Oversight by the tax authority

61. In 2013, the large and medium taxpayers division of the tax authority created a compliance department to identify non-fliers. Since the inception of this programme, the compliance department follows up with companies that are in default of their filing obligations or have failed to pay any prescribed fees. To determine whether a company is still active, the compliance department will first send out a notice to the company in question and, if the notice is unanswered, make a field visit to the company's registered address. In the event a company is determined to be no longer active, the IRD will make a note in its internal system, but this information is not shared with other agencies, such as the Registrar.

Information held by companies

62. All companies incorporated under the Companies Act 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). A transfer of registered shares is effectuated by an instrument of transfer signed by the transferor and accompanied by either the transferor's share certificate or certified by the company or the East Caribbean Stock Exchange (s. 195(4) CA). A transfer of shares will not be recognised by a company until the transfer, along with the details of the new shareholder, has been registered (s. 195(6) CA). Only after such registration is a person named in the share certificate entitled to the shares mentioned therein (s. 200(2) CA).

63. The ROC is the body responsible for supervising obligations under the Companies Act. However, as discussed above, in practice, the ROC does not conduct any form of monitoring (aside from the limited monitoring of the filing of annual returns). Therefore, the obligation to maintain share registers by domestic companies is generally not monitored by any government body, with the exception of the limited oversight by the IRD in case companies make distributions to non-residents. No penalties for failure to maintain share registers have been imposed to date as the ROC does not monitor this obligation and would not register any instances of non-compliance.

International Business Companies

64. IBCs are required to register with the ROC (s. 2(1) IBCA). IBCs are also subject to supervision by the Financial Services Unit (FSU) (s. 115 IBCA and Schedule V FSUA). The FSU is empowered to perform regulatory,

investigatory and enforcement functions in relation to the activities of the IBCs in Dominica.

65. An 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 Companies Act 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).

Information submitted to the Registrar of Companies

66. To register, an IBC must submit to the ROC a memorandum of association and its articles of association. The IBCA does not require that either the memorandum or articles of association contain information on the owners of the company (ss. 12 and 13 IBCA). The memorandum of association must contain the address of the IBC's registered office. Upon receipt of the memorandum and articles of association, the ROC registers the documents in the Register of International Business Companies (s. 14 IBCA) and 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.

67. Under the IBCA, IBCs do not have any obligation to submit annual returns to the ROC.

Oversight by the Registrar of Companies

68. Under the IBCA, the Registrar is empowered to strike an IBC from the register if he/she has reasonable cause to believe that an IBC no longer satisfies the requirements prescribed by the IBCA (s.99 IBCA). In such circumstances, the company is entitled to receive two notices informing it of its default and the consequence of such default. If the IBC does not respond to either notice (within 30 days of each), the Registrar must publish a notice to the same effect in the Gazette. At the expiration of 90 days following the publication of the notice in the Gazette, if the IBC still has not responded to the notice, its name shall be struck off the register (ss. 2-4 IBCA). However, as noted above, in practice, the ROC has not issued any notices for

non-compliance with registration requirements or struck off any IBCs for a reason other than voluntary dissolution of the company.

Information submitted to the tax authority

69. IBCs 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, IBCs would be required to register for tax purposes and meet other tax obligations unless further exemptions were granted under the Income Tax Act. The IBC Act entered into force in December 1996; thus the earliest incorporated IBCs would be reaching the end of their exemption period in December 2016. Dominica has indicated that it is currently working on legislation to lay out the obligation and procedures for such registration by IBCs.

Information held by companies

70. IBCs are required to maintain share registers containing 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). 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). The share register must also indicate the date when a person ceases to be a shareholder and to whom their shares were transferred. A transferee of a registered share is only considered a shareholder once his/her name is entered in the share register (s. 30 (3) IBCA). 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 each day the contravention continues (s. 28 (6) IBCA).

Oversight by the Financial Services Unit

71. Oversight of IBCs is carried out under Dominica's AML framework. For more detailed information on the system of monitoring conducted by Dominica's financial services regulator, please see the below section on service providers.

In practice

72. Dominica received no requests for ownership information during the period under review. However, as explained more in detail below (in sections B.1 and C.5). One request for company ownership information was received outside of the review period and the requested information was provided.

Foreign companies (external companies)

73. 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 Dominica⁸. 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.

Information submitted to the Registrar of Companies

74. To carry on business in Dominica, an external company must be registered under the Companies Act. An external company that is not registered under the Companies Act 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). To be registered, an external 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 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.

75. 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). As described above, information on the owners of the company is not guaranteed and will not be submitted unless it was required

8. Section 340 of the Companies Act.

upon registration in the country of the company's incorporation. Neither are external companies required to hold such information themselves. The ROC may strike off the register an external company that neglects or refuses to file an annual return (s. 356(2) CA), although this has not yet happened to date. The ROC was unable to provide any reason for why no striking off has occurred. As at March 2016, there were 105 external companies out of a total of 21 375 entities registered in Dominica.

Information submitted to the tax authority

76. 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 Companies Act similarly apply to external companies that are tax resident (s. 11 VAT Act). As discussed above, none of these obligations require the provision of ownership information to the tax authorities.

Service providers

77. As part of Dominica's AML regime, the Money Laundering (Prevention) Act 2011 (MLPA) and the Money Laundering (Prevention) (Amendment) No. 2 Act 2013 obliges financial institutions⁹ 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.

78. Section 8 of the Money Laundering (Prevention) Regulations of 2013 (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 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. 24(2) MLP Regulations).

79. Further, a financial institution or other obliged entity is obliged to establish the true identity of each account holder (s. 15(6) MLP Regulations).

9. 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).

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. Although 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, the Guidance Note instructs 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. The Guidance Note also mentions 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.¹⁰ This Guidance Note is deemed to be part of the AML law by virtue of the Financial Services Unit (Amendment) Act, 10 of 2011.

Oversight by the Financial Services Unit

80. The Financial Services Unit (FSU) is the body responsible for monitoring the compliance of licensed entities with AML requirements. Established in March 2008 by the FSU Act, the FSU acts as both the money laundering supervisory authority and the financial sector supervisor. Oversight of IBCs was also delegated to the FSU. At present, the FSU has one Director, one senior examiner, and three examiners. It is currently seeking to employ one additional senior examiner. One examiner is assigned to cover the IBC portfolio, although all examiners participate in all reviews.

81. The FSU's oversight programme for services providers began in 2009. Since 2012, the FSU has conducted annual inspections of all 15 registered agents of IBCs in Dominica. The programme commences with a "sensitisation workshop" and comprises both a desktop review as well as an on-site inspection. The sensitisation workshop covers legislative developments since the last round of inspections and as well as areas of weakness previously identified or trends in practice. The first step of the inspection programme is the desktop review (or "pre-scope exam"), which takes place prior to the on-site visit. The FSU will ask the service provider about new IBCs registered and developments to existing files previously examined. During an on-site inspection, the regulator will ask for a sample of approximately a third of the registered agent's files. The percentage will vary depending on the number of non-operational companies managed by the service provider and the number of files previously examined. Files with previously identified deficiencies may also be re-examined to ensure that defects have been remedied. Once the files have been selected, the officers from the FSU will examine whether the

10. Para. 66 of the Guidance Notes.

service provider has complied with all of its legal and regulatory requirements, such as its obligation to carry out due diligence pursuant to AML requirements. The examiners will inspect documents regarding shareholders and directors, constitutional files, and financial statements. FSU officers reported that, depending on the particular IBC, the examination of a file, on average, takes between 30-45 minutes. The entire on-site visit generally takes about three to four days.

82. After the conclusion of the on-site inspection, the examiners will prepare a report of findings, including recommendations, which will be provided to the service provider. Following the report, the FSU will send a letter detailing the deadline for the resolution of defects and the applicable penalties. The service provider has forty days to remedy any defects. A few weeks before the expiration of the deadline, the FSU will follow up a second time with a reminder. If the registered agent does not respond to the FSU with a status update describing actions taken by the deadline, penalties would apply. The FSU also describes performing spot checks following on-site inspections to ensure that services providers have implemented recommendations. Registered agents interviewed during the on-site visit confirmed the nature of the on-site inspections, the numbers of files examined and the types of recommendations issued.

83. The FSU is empowered under section 22 of the FSU Act to take certain enforcement actions, which are of an administrative nature. The FSU shall take enforcement action only if the licensee fails to take corrective action for problems identified by the unit (s. 22 (2) FSU Act). Among the enforcement actions the FSU is permitted to take is recommendation to the Minister of Finance (or other relevant licensing body under an applicable law) to revoke or suspend a licensee's license (s. 22(3) FSU Act). At the on-site visit, FSU officials confirmed that they may impose administrative penalties against non-compliant licensees. To date, the FSU has not imposed any penalties for non-compliance with AML obligations, although in one instance an offshore bank was penalised for late submission of audited financial statements.

84. Thus far, the FSU considers that it has been in an “educational” phase, the primary objectives of which have been to raise the awareness of service providers and to improve compliance. The FSU has not yet applied penalties since the majority of service providers have been co-operative. For instance, the FSU reports that many service providers have been in contact following their inspections to verify that they have indeed rectified their deficiencies and are compliance with the law. The most common deficiency identified by the FSU was failure to maintain the financial statements of IBCs represented, which stems from the fact that Dominica's laws currently provide for the maintenance of accounts and records only as directors see fit (see more discussion below in section A.2 on accounting requirements).

Dominica reports that accounting regulations are currently under review by the government and will be amended in the near future. A second deficiency that was identified among registered agents with the highest volume of IBC clients was the failure to maintain ownership records. The FSU explained that the obstacle to compliance often lies with the IBC (in refusing or neglecting to provide the necessary information). The FSU reports that it is currently working towards strengthening its compulsory powers to ensure they are dissuasive enough to ensure compliance.

85. The FSU reports that it has now inspected all registered agents in Dominica. The FSU aims to inspect a third of all IBCs each year (approximately 6 356 entities in 2015). By the time of the review, some of the smaller registered agents have had all of their records inspected. The registered agents representing a larger number of IBCs will undergo subsequent rounds of review for remaining records to be inspected. As of April 2016, the FSU estimates that approximately 25% of IBCs (approximately 4 767) have been examined. In the years 2012-2015, approximately 4 000 IBCs were examined.

Nominees

86. 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.

87. The Registration of Business Names Act (RBNA) 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).

88. 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 the shares held by him/her or his/her nominee¹¹ (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).

11. Only the identity of the nominee is required by law to be provided although in practice, his(her) address will be provided as well.

89. The Money Laundering (Prevention) Act 2011 requires financial institutions and scheduled businesses to establish and maintain procedures prescribed in the MLP Regulations. Activities of financial institutions¹² and other business activities¹³ conducted by persons¹⁴ 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.

90. Persons performing nominee services on a non-business basis are not covered under the AML provisions, but as these services generally would be performed for no consideration in the course of a purely private non-business relationship, the deficiency is likely minor. It is recommended that Dominica continue to monitor this activity so as not to become an impediment in the effective exchange of information.

In practice

91. As discussed above, pursuant to Know Your Customer requirements, nominee shareholders are obliged to know the true identity of the party for whom they act as the legal owner. Generally, this information is maintained in the indemnity agreement between the beneficial owner of the shares and the nominee. Further, nominee shareholders are listed as such in the shareholder register. Dominican authorities report that they have never come across a nominee acting in a non-professional capacity.

92. To date, no requests involving nominee shareholders have been received by Dominica. Neither have any peers indicated any particular issues with relation to nominee ownership.

Conclusion

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

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12. Part I of Schedule to the Money Laundering (Prevention) Act 2011.
 13. Part II of Schedule to the money Laundering (Prevention) Act 2011.
 14. "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.

- All domestic companies must keep a register of members where details of all shareholders are recorded. This information must be kept updated on an ongoing basis in relation to substantial shareholders and further provided in relation to all shareholders, on an annual basis and under sanction, to the registration authority. However, although ownership information is ensured by Dominica's legal framework, in practice, the obligation to maintain a share register is not monitored and penalties have not been enforced for non-compliance with registration or annual filing requirements.
- International business companies must keep an updated register of shareholders or members. This register must be kept by the company's registered agent at the company's registered office in Dominica. The financial services regulator monitors the maintenance of the register of shareholders of IBCs by their registered agents in Dominica although its enforcement powers appear to be limited.

94. External companies, on the other hand, must register with the ROC, but ownership information is not submitted to government authorities in all cases, nor is it held by the external companies themselves in all cases. Therefore, in respect of external 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. Therefore, Dominica is recommended to ensure that ownership information relating to foreign companies that have a place of management and control in Dominica is ensured.

95. Although Dominica's legal framework is largely in place, Dominica does not have in place a rigorous system of monitoring. The financial regulator is the only government body conducting oversight of obligations to maintain identity information as required under the law. Dominica is thus recommended to implement a regular and comprehensive system of oversight to ensure compliance by all relevant entities with obligations to maintain ownership information under Dominican law.

96. Information on nominee ownership is available, except when nominee services are performed on a non-business basis, which Dominica advised has not occurred in Dominica during the period under review.

Bearer shares (ToR A.1.2)

97. Bearer shares are permitted under Dominican law, but only by IBCs. In relation to domestic and external companies, section 29(2) of the Companies Act expressly forbids the issuance of bearer shares. IBCs. In the case of IBCs, although no ownership information in relation to such shares has to be reported in the share registers maintained by these companies,

provisions in the International Business Companies (Amendment) Act 2000 ensure the maintenance of ownership information on bearer shareholders. The International Business Companies (Amendment) Act 2000, Gazetted on 25 January 2001, requires that upon the issuance or transfer of bearer shares, the registered agent of an 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).

98. In Dominica, 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). A chartered accountant does not need to obtain any additional certification to become a fiduciary as currently, there is no licensing process for any individual to become a fiduciary or provide fiduciary services. A 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). Dominica currently has no licensed fiduciaries.

99. The IBC Act was further amended¹⁵ 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 the registration of issuance and transfer of bearer shares are also applicable to the period prior to 25 January 2001.

100. Dominican authorities have also indicated that, substantial shareholders (those holding more than 10%) 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. Moreover, under section 181(1) of the Companies Act, companies must notify the FSU when they issue a bearer share.

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

101. Further, under the AML Guidance, financial institutions must establish whether their customers have issued bearer shares and if so, any beneficial ownership right attached to such shares and the true identity of each account holder (ss. 71 and 72).

102. During the on-site visit, Dominican officials emphasised that, to date, they are not aware of any bearer shares being issued by any IBC. The FSU confirmed that it has never received a notice of the issuance of a bearer share. As part of its oversight process, the FSU routinely asks registered agents and IBCs whether they register bearer shares, and if so, the total number of each class and series are issued to bearer, the date each bearer certificate was issued, whether any bearer shares have been cancelled, and whether this information is maintained in a database. To date, no bearer shares have been reported to be issued. As the issuance of bearer shares does not appear to be a practice in Dominica, Dominican officials recognise that legal provisions relating to bearer shares are arguably outdated. They report that the legislative provisions pertaining to bearer shares have been earmarked for amendment, but have no timeline for such amendments. Therefore, at the moment, the law, as it stands, does not accord with actual practice.

Conclusion

103. Under Dominican law, only IBCs may issue bearer shares. The aforementioned mechanisms ensure the identification of owners of the bearer shares issued by IBCs. In practice, according to Dominican officials, no bearer shares have been issued by IBCs. However, the existence of provisions permitting bearer shares in Dominican law does not provide assurance that bearer shares will not be issued in the future. Therefore, while legal provisions still exist in Dominican law allowing for the issuance of bearer shares, Dominica is recommended to monitor the situation with respect to bearer shares to ensure that if such shares are issued in the future, its current framework is sufficient to provide for the identification of the owners of such shares.

Partnerships (ToR A.1.3)

104. In Dominica, a partnership (or 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). Partnerships do not need to register with the ROC as they register directly with the IRD. As of September 2016, Dominica currently has 414 domestic partnerships, of which 379 are active and 35 are inactive. There are no foreign partnerships in Dominica.

Registration requirements

105. 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 with the ROC. 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). Any changes to any of the particulars submitted to the ROC must be notified to the ROC within 14 days (s. 8 RBNA); however, as described above, the ROC does not perform any kind of monitoring of registration obligations.

106. 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 RBNA (Amendment) Act 2001).

107. Dominican authorities advise that the same registration and filing requirements under the Registration of Business Names Act apply equally to foreign partnerships wishing to carry on business in Dominica. There is no requirement that the firm be formed or created under Dominica’s laws.

Tax requirements

108. 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).

109. Domestic and foreign partnerships must register with revenue authorities if they carry out a taxable activity and meet the required threshold of gross sales or income. Partnerships are only required to register under the ITA as employers if they employ staff. 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).

110. 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. Dominica maintains that these tax returns must contain information on all partners in addition to their percentage share of profits and losses. 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). As with companies, the IRD monitors the tax filing obligations of partnerships. The compliance rate with filing obligations among partnerships is 9.23%. The IRD provides that the reason for the low compliance is that the majority of partnerships registered are likely inactive (or no longer operational) although by Dominica's own figures, only 8.5% of registered partnerships are inactive.

111. 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

112. As mentioned above with regards to other entities, the MLP Regulations require financial institutions and other service providers to identify their customers (s.9 MLP Regulations), but they do not specifically detail what information is to be obtained when the customer is a partnership.¹⁶

Conclusion

113. Information on the partners of a partnership, including a foreign partnership carrying on a business in Dominica, must be available with the 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

16. 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.

name of the partner representing the partnership and to keep this information updated, although information on all the partners is not provided.

114. In the three year period under review, Dominica has not received any EOI requests relating to the identity of partners in a partnership.

Trusts (ToR A.1.4)

115. Dominica recognises the concept of trusts, although in practice, Dominican tax and regulatory authorities reported having only seen the establishment of trusts to dispose of the estate of a deceased person. Trusts of this nature are generally created under the common law, which imposes obligations on all trustees (see para. 102). These common law obligations are supplemented by the Trustee Act 1877, which was enacted to extend the applicability of the United Kingdom Trustee Act 1850 to Dominica. The Trustee Act 1877 applies only to trusts resident in Dominica. Trusts can also be created under the International Exempt Trusts Act 1997 (IETA), which applies to trusts for 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.

116. Thus in Dominica common law and the Trustee Act impose obligations on trustees of domestic trusts, but the provisions of the Trustee Act 1887 do not apply to international exempt trusts (Art.48 IETA). However, at present, no international exempt trusts are registered in Dominica and none of the Dominican officials interviewed during the on-site visit could recall encountering such a trust. Officials advised that the legal framework governing international exempt trusts was put in place as a pre-emptive measure to prevent the misuse of such arrangements in Dominica.

117. A gap was identified in Dominica's 2012 Phase 1 Report that international exempt trusts were not subject to obligations to keep identity information of all parties of the trust. Such international exempt trusts were only obliged to provide information on the trustee to the Registrar during registration. Trusts failing to register under the IETA would not be exempt from all income tax, stamp duty or all exchange controls (s.42 IETA). In April 2014, new AML regulations were issued to clarify the obligations for international exempt trusts to maintain identity information of all trustees, settlors and beneficiaries. While "low value" international exempt trusts remain exempted from obligations to register and keep identity information of the parties to the trust, the materiality of this gap is considered very limited given that no trusts other than those formed to dispose of a deceased's estate have been established in Dominica as advised by Dominican tax and

regulatory authorities. In any case, “low value” international exempt trusts would also continue to be subjected to common law obligations to keep all identity information of all trustees, settlors and beneficiaries. Nevertheless, Dominica is recommended to ensure the availability of ownership information regarding “low value” international exempt trusts if such trusts are created in the future.

Information held by government authorities

Registration of trusts

118. Only international exempt trusts have a registration obligation.

119. 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).¹⁷ A certificate of registration demonstrates that all the requirements of the IETA are met and is valid for a period of one year (s. 36(4) and s. 37(1) FSU Act). An application for renewal of registration could only 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 would be aware of the details of the trustee who completed registration for the international exempt trust, but no information concerning the settlor, beneficiaries or other trustees of the international exempt trust would be made available to the FSU.

Tax requirements

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

121. 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 and s. 42 IETA). 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

17. 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)).

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.

122. For all trusts, including foreign trusts, except the international exempt trusts, any income accruing to a trust, where no beneficiary has an immediate entitlement to the income, is included in the assessable income of the trust, which is taxed in the name of the trustee¹⁸ (s. 15(1) ITA). Any income accruing to a trust, where a beneficiary is 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 the trustee and where 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. Although 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. Therefore, with the exception of international exempt trusts, 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).

Information maintained by trustees

123. 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.

18. 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.

124. 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.

125. After legislative revisions in 2014, Dominica’s AML regime establishes obligations for all trusts, including international exempt trusts (MLPA s.2(1)(b)). The Proceeds of Crime Act Code of Practice 2014 (POCA), which took effect on 1 May 2014, requires the verification of “identifying information in relation to any person appointed as trustee, settlor, or protector of the trust” (s.30(1)(e) POCA). 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 CDD. The Regulation does not detail the CDD to be conducted and thus does not specify which parties to the trust the trustee needs to identify, but this is information is contained in the non-binding Guidance Notes.¹⁹ Section 16 of the MLPA sets forth the record-keeping requirements for service providers of trusts; it establishes 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.

126. However, identity information of beneficiaries is only required when the trust presents a “normal or a higher level of risk” (s.30(2) POCA). The POCA imposes no requirement to keep identity information of beneficiaries of trusts that are deemed to be low risk. “Low risk” trusts may be determined

19. 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.

through a consideration of factors, one of which is whether the trust is subject to other AML regulations consistent with the FATF standards (s. 21(6)(b) POCA). Nevertheless, obligations also exist under the Trusts and Non-Profit Organisations Regulations 2014 that apply to all trusts (see below for further discussion).

127. Failure to comply with POCA's requirement to obtain identity information of the trustees, settlors and beneficiaries of international exempt trusts is an offense punishable by a fine of up to XCD 150 000 (USD 55 210) and/or imprisonment of up to two years pursuant to section 60(5) of the Proceeds of Crime Act 1993. This enforcement provision is imposed on all persons linked to the trust, including resident trustees, since the trust is considered "connected" to Dominica if it arises under Dominica's law, is entirely or partly governed by Dominica's law, or where one or more of the trustees or beneficiaries are linked to Dominica (s. 7, Schedule V, POCA). Accordingly, a person who is "connected" would include a Dominican citizen, a body incorporated or constituted under Dominica's law or a person domiciled, resident or present in Dominica (s. 6, Schedule V POCA).

128. The Trusts and Non-Profit Organisations Regulations 2014 (Trusts Regulation 2014), introduced under the POCA, provides for the supervision and registration of trusts and non-profit organisations. Such supervision includes monitoring the effectiveness of legislation concerning trusts and non-profit organisations in compliance with the FATF recommendations (s. 4(1)(c) Trusts Regulation 2014).

129. The registration requirement under the Trusts and Non-Profit Organisations Regulations applies to all trusts that are "incorporated, formed or otherwise established in Dominica; or administered in or from within Dominica" (s. 7(1) Trusts Regulation 2014), thus including all international exempt trusts, regardless of the risk level. As such, all international exempt trusts have to register with the FSU, which is designated as the Trusts and Non-Profit Supervisor (s. 3 Trusts Regulation 2014). Failure to register is considered an offence and liable to a fine of up to XCD 50 000 (USD 18 518) (s. 7(3) Trusts Regulation 2014). Registration includes completing an application form with the Trusts and NPO Supervisor, accompanied by "documents or information that may be specified by these Regulations or on the application form" (s. 8(1)–(3) Trusts Regulation 2014). No further details on the form or the information required are contained in the Trusts and Non-Profit Organisations Regulations, but Dominican authorities advise that to successfully register, identity information of all parties to the trust must be submitted. The Trusts and NPO Register contains a similar requirement to submit contact information of the trust (s. 6(2)(a)) and "identity of the persons who own, control or direct the trust..." (s. 6(2)(c)). "Low value" international exempt trusts (trusts having a gross annual income of less than XCD 5 000

(USD 1 852) or assets less than XCD 10 000 (USD 3 703)) are exempt from registration and are not subjected to the obligations of the Regulations (s. 2(1) and 7(2) Trusts Regulation 2014). Dominica is recommended to ensure the availability of ownership information regarding “low value” international exempt trusts, although it is recognised that the materiality of this type of arrangement is extremely low at the present stage given that there are currently no international exempt trusts registered in Dominica.

130. Registered international exempt trusts are obligated to keep identity information of the trustees, settlors and beneficiaries. There is a specific obligation for registered international exempt trusts to keep records of “the identity of the beneficiaries of the trust and all persons who are relevant to the functioning of the trust” (s. 14(1)(a)(iii) Trusts Regulation 2014). All information is to be kept for at least seven years (s. 14(2) Trusts Regulation 2014). Failure to keep the information is considered an offence and liable to a fine of up to XCD 20 000 (EUR 6 750) (s. 14(3) Trusts Regulation 2014).

Information maintained by service providers

131. Financial institutions and other service providers are required to establish the true identity of each account holder (s. 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 (s. 3(2) MLP Regulations).

Conclusion

132. Dominica’s new AML regulations contain obligations for all trusts, including international exempt trusts, to keep identity information on all trustees, settlors and beneficiaries except for “low value” international exempt trusts.

133. “Low value” international exempt trusts (those that are exempt from obligations under the Trusts and Non-Profit Organisations Regulations to register and keep identity information of the parties to the trust) are not covered by Dominica’s AML regulations, but the materiality of this gap is very limited, particularly considering the fact that no trusts other than those created to dispose of a deceased’s estate have been created in Dominica. Further, such trusts would still be subject to common law obligations to keep all identity information of all trustees, settlors and beneficiaries. Nevertheless, Dominica is recommended to ensure the availability of ownership information regarding “low value” international exempt trusts.

134. In the three year period under review, Dominica has not received any EOI requests relating to the identity of settlors or beneficiaries of trusts.

Foundations (ToR A.1.5)

135. Dominica's laws do not allow for the creation of foundations.

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

Sanctions tied to registration requirements

136. The ROC may strike off the register a company that fails to send any return, notice, document or prescribed fee to the Registrar as required by the Companies Act (s. 511 CA). An external company that fails to comply with any of the provisions applicable to it under the Companies Act may be suspended from the register or have its registration revoked (s. 351(1) CA). Where the Registrar is of the opinion that a company is in default under section 511, he/she shall send the company a notice of its default. If the company does not remedy the default within 30 days, it shall be struck off the registrar (s. 511(2) CA).

137. 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).

138. 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).

139. 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).

140. 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

141. General obligations to keep company registers and records are provided for in section 177 of Companies Act. While no specific sanctions are attached to non-compliance with the obligation to keep registers and records, the general sanction provision imposing a fine of XCD 5 000 (USD 1 852) for an offence not otherwise penalised applies (s. 533 CA). 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).

142. 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).

143. It is further provided that any person who does not maintain a register of substantial shareholders in accordance with Section 184 of the Companies Act 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).

144. 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).

145. Under the Companies Act, 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 Companies Act further provides in section 533 that the punishment for this offense is a fine of XCD 5 000 (USD 1 852).

146. IBCs that fail to keep share registers containing the name and addresses of persons who hold shares in the company are 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 similar penalty (s. 28 (6) IBCA).

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

Sanctions tied to business name registration

148. 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

149. 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 tax requirements

150. A person who is required to be registered for VAT purposes and 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 (USD 370) or to imprisonment for one year (s. 122 ITA).

151. 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).

152. 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

153. 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

154. Dominican law provides sanctions for failure to maintain ownership and identity information by relevant entities and service providers. In practice, however, no penalties have been applied for failure to comply with any obligations to submit or maintain ownership or identity information as required under the law. As such, Dominica is recommended to exercise its enforcement powers where necessary.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
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.

Phase 2 rating	
Partially compliant	
Factors underlying recommendations	Recommendations
The Registrar of Companies conducts no monitoring of requirements under the Companies Act to maintain ownership and identity information and only very limited monitoring of annual return filing by entities under its purview, despite the fact that the large majority of companies and partnerships are not operational. Further, even among active companies and partnerships, compliance with filing obligations is low. However, the financial regulator does have a system of supervision covering IBCs. The Inland Revenue Department also reviews shareholder information in the course of tax audits where such information is relevant for the purpose of the audit.	Dominica should implement a regular and comprehensive system of oversight to ensure compliance by all relevant entities and partnerships with obligations to maintain ownership information under Dominican law.
During the review period, no sanctions have been imposed by any Dominican authority for non-compliance with any obligations pertaining to the maintenance of ownership or identity information. Likewise, no companies have been struck off the register for any reason other than voluntary dissolution.	Dominica should sufficiently exercise its enforcement powers when needed to ensure the availability of ownership and identity information in all cases.

A.2. Accounting records

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

155. 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.

156. Dominica's tax law provides for adequate accounting requirements for all entities and arrangements subject to tax, including domestic companies, external companies and partnerships as well as trusts having Dominican sourced income. IBCs, foreign trusts not having Dominican sourced income, and international exempt trusts do not have adequate obligations to keep accounting records and underlying documentation. In practice, not all IBCs maintained the accounting records required by law during the review period.

157. Dominica did not receive a request for accounting information during the review period. Dominica has recently received a request outside the review period for exchange of a company's financial statements connected to its tax filings (if any) or the reasons for no tax filings. Dominica informed its treaty partner that the request related to an IBC, which is exempt from tax filing obligations for 20 years and the Competent Authority was unable to obtain the financial statements of as they were not made available to the IBC's registered agent in Dominica.

General requirements (ToR A.2.1)

Companies under the scope of the Companies Act

Companies Act

158. Section 149 of the Companies Act 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.

159. In accordance with section 187 of the Companies Act, 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 Companies Act 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 subsidiaries 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).

160. Dominica's authorities have advised that these requirements also apply to external companies. However, the Companies Act does not contain any explicit obligations requiring external companies to keep accounting records. External companies carrying on business in Dominica are nonetheless subject to accounting requirements under tax law as described later in this section.

In practice

161. The Registrar of Companies is the government authority in charge of administering the Companies Act in Dominica. However, during the review period, the Registrar did not conduct any monitoring activity concerning whether companies comply with the obligations to maintain adequate accounting records. The compliance of Dominican and external companies (except IBCs) with accounting obligations is nonetheless checked by the IRD in the course of tax audits, to the extent that they are relevant for Dominican taxes, including income tax and value-added tax (please see the section below).

Tax laws

162. 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 another location. 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).

163. 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 IRD 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).

In practice

164. As discussed in section A.1.1, the ITA does not contain specific provisions requiring companies to register. Registrations provisions are nonetheless provided under the VAT Act. In practice, the Dominican authorities reported that the IRD does register taxpayers who are required to file income tax returns in order to process these returns. In order to do so, the IRD checks CIPO's online database for new companies registered and contacts those companies to check if they have commenced operations. Additionally, depending on the nature of the business, companies will need to have registered first with the IRD before commencing certain types of operations. For instance, the IRD receives information from some agencies (such as the Customs and Excise Division) on a regular basis as companies having goods or other items that need to be cleared through customs will not be able to do so without a TIN. Other examples of agencies that require a TIN for processing a license, permit or other certification or concession required by a business include licenses under the Hotel Aids Act, concessions from VAT on capital equipment, and applications for liquor licenses.

165. Domestic and foreign companies carrying on business are required to file income tax returns. The filing requirements apply in practice only to taxpayers that are actively carrying on a business. Dominican authorities explained that companies that have not commenced or have ceased operations are not required to file a return even if they are registered with the IRD. While the number of domestic companies registered with the Register of Companies is approximately 3 350, only 50% (1 671 companies) are registered with the IRD. From the 1 671 companies registered with the IRD, approximately 980 (59%) are considered to be active (i.e. carrying on business). Among the 980 active companies, approximately 28% are filing returns. As such, approximately 8% of the domestic companies registered with the Register of Companies are filing tax returns.

166. As there is no automatic required tax registration and that taxpayers can cease filing returns once they stop business, it appears to be difficult for the IRD to administer its tax filing requirements as it is not immediately evident when a company has failed to file a return whether it has simply failed to comply with its tax obligations or has stop carrying on business altogether. Also, there would also be a risk that taxpayers would be carrying on business that do not require local registration and would thus be undetected by the tax administration. The IRD reports that the IRD conducts interviews to assess the taxpayer specific situation.

167. It remains that a significant number of companies registered with the Register of Companies (approximately half) are not registered with the IRD. Although Dominica indicated that the vast majority of these companies are inactive, there would also be a risk that they would be carrying on business

that do not require local registration and would thus be undetected by the tax administration. Dominica is recommended to ensure that there is adequate oversight of the compliance of all relevant entities and arrangements with their accounting obligations.

168. The IRD has 21 auditors who are responsible for ensuring that taxpayers file tax returns and for conducting audits. During the review period, approximately 30 field audits were conducted per year. The IRD explained that every year the audit programme is modified to cater for groups of taxpayers that require the most attention. Essentially, the IRD's audit programme is based on the estimated number of returns filed by each taxpayer group and the total number of returns that can be audited with the available IRD staff. Variations in coverage are influenced by the degree of non-compliance within various taxpayer groups (such as small businesses, large taxpayers) as measured by results from previous audit programmes.

169. The “field audit” is the main tool in the Inland Revenue Division's audit programme. This action can require from a few hours to several weeks depending on the nature of the examination and/or the size and complexity of the taxpayer's operations. The “field audit” is usually a detailed but sometimes restricted examination of books and records normally conducted at the taxpayer's place of business. The field audit can be conducted by one auditor or a team of auditors. Another form of audit is the industry-wide audit, which involves the co-ordinated audits of a number of corporations within one industry.

170. Before beginning a field audit, the auditor will contact the taxpayer to arrange a convenient date to commence the audit and will then begin a review of the taxpayer's file. In this preliminary review, the auditor examines the return selected for audit, the attached financial statements for prior years, audit reports from previous audits and any other information on file. Before beginning the examination of books and records, the auditor may want to discuss with the taxpayer the general nature of the business or tour the premises to gain a better understanding of the transactions recorded in the books.

171. The scope of the audit is determined by the auditor with the advice and direction of an audit supervisor. They decide which records should be examined and what audit techniques should be employed. The audit might extend to examination of the taxpayer's ledgers, journals, bank accounts, sales invoices, shipping and receiving records, purchase vouchers, expense accounts, inventories, investments, agreements, contracts, appointment books, share records and minutes, etc. Throughout the audit, the auditor may need to obtain information and assistance from the employees of the taxpayer, particularly those on the accounting staff.

172. The IRD reports that in most instances, the factual audit method is used to support reassessments. The features of a factual audit are: examination of, and selected audit techniques on, the accounting records maintained by the taxpayer; discussions with the taxpayer; observations; third party information. In a very small number of cases (for example, when the records are inadequate) the auditor may have a source and application of funds or a net worth statements prepared to determine income, or to confirm income established by other audit approaches.

173. In the determination of the correct tax, the auditor will not challenge generally accepted accounting principles as observed by the taxpayer unless: (a) the taxpayer has been inconsistent in their application; (b) a certain practice is specifically prohibited by the ITA; VAT Act; or Regulation, (c) it appears the principle is being applied only as part of a scheme for tax evasion or tax avoidance.

174. When an audit is completed, the auditor may propose to adjust the tax payable by reassessing the taxpayer's return. During year 2014 the following audits have been conducted and the following amounts assessed: two audits were conducted, which resulted in penalties of XCD 14 833 (USD 5 494) and an additional XCD 91 327 (USD 33 825) in additional tax collected.

Audit type	Number of cases	Amount assessed
Value Added Tax	22	ECD 2 362 539.24
Corporation Income Tax	5	ECD 5 574 730.47
Comprehensive (VAT, CIT, other)	10	ECD 778 089.09
Other (tax on wages, WTH etc.)	11	ECD 1 207 116.51
Total	48	ECD 9 922 475.31

International business companies

175. 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.

176. 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 accounting 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).

177. 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).

178. Finally, the POCA, which took effect on 1 May 2014, contains obligations for entities subject to AML obligations, including IBCs, to maintain accurate accounting records. Under section 46(h)(i), such entities are required to keep “account files and business correspondence with respect to a transaction” and “sufficient details of the transaction for it to be properly understood”. This provision may cover obligations for the accounting records kept to correctly explain all transactions. However, as there are no express provisions on obligations regarding the preparation or submission of financial statements, it is not clear if the accounting information kept would be

sufficient to allow the financial position of the entity to be determined with reasonable accuracy at any time or financial statements to be prepared. There are also no obligations on the underlying documentation that must be kept.

In practice

179. IBCs are exempt from income tax for 20 years and during this time they are not subject to tax registration and tax filings. Since the IBCA is from 1996 all IBCs incorporated pursuant to that Act currently benefit from exemption. In addition to that, the IBC Act provides that additional exemptions may be granted companies after the first 20 years of exemption.

180. The FSU is therefore the only government authority with oversight over the IBCs' and offshore banks' compliance with their accounting obligations under the IBCA and OBA, respectively. The FSU is also responsible for monitoring the insurance companies' compliance with the EIA and the registered agents' compliance with the POCA. The FSU is allocated the staff of six: one director, two senior examiners (although one senior examiner position is currently vacant) and three examiners.

181. As noted above, the FSU reports having conducted on-site inspections in relation to all the 15 registered agents of IBCs during the review period, having inspected approximately 4 000 IBCs in this process (see section on service providers). The FSU reports that, in many instances, particularly with respect to IBCs (which are required to maintain only "accounts and records as the directors consider necessary or desirable to reflect the financial position of the company"), accounting information was frequently unavailable in the file. According to the FSU, registered agents were often not aware that they were expected to keep accounting records/financial statements of the IBCs they manage (even though such records would be limited to the ones that as the IBCs directors consider necessary or desirable to reflect the financial position of the company). The assessment team interviewed registered agents who confirmed that there was a problem in awareness of the accounting obligations, but also that occasionally their IBC customers failed to provide them with accounting records/financial statements when requested to do so or argued that the IBCA would not require accounting information to be kept. The registered agents also referred to the fact that many IBCs for which they act as registered agent are no longer carrying on business or activities, even though they remained registered with the ROC.

182. As discussed in section A.1, during the current review period, the FSU has not applied any sanctions in the course of its inspections of registered agents, as it was focused on educating, rather than penalising them. Dominica is recommended to closely monitor the compliance of IBCs with the accounting requirements in the IBCA, as well as monitor the effective of its enforcement powers to ensure they are adequate to promote compliance.

Further, the FSU appears to be presently understaffed to perform its regulator's role and as reported by the FSU, the review of one IBC file takes in average 30 minutes and that may not in all instances allow for a detailed examination of the IBC accounting records and financial statements required under the IBCA. Dominica is therefore recommended to ensure that the regulator for IBCs is adequately resourced to perform the monitoring of the accounting obligations of IBCs.

183. Dominica currently has no exempt insurance companies and thus no monitoring of relating to these entities has taken place.

184. In relation to the offshore banks, the FSU reports having inspected each one of them and verified their compliance with the accounting requirements under the OBA. Those banks are also required to submit audited financial statements.

Partnerships

185. 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 IRD (s. 66 ITA) and when doing so, partnerships have to attach a copy of the final accounts of the business (s. 73 ITA).

In Practice

186. As described above, partnerships file annual returns, but income tax is assessed at the level of the partners as partnerships have no tax liability in Dominica. Partnerships are subject to the same tax audit procedure applicable to companies described earlier in this section. However, as noted above in section A.1, the compliance rate with filing obligations among partnerships is very low (only 9.23%). For the years 2014-15, eight audits covering partnerships were undertaken. The main deficiency identified was the understatement of income. In one instance, VAT penalties were applied.

Trusts

187. 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). In April 2014, the Trusts and Non-Profit

Organisations Regulations came into force obligating trusts to keep financial records that “show and explain [their] transactions...and that are sufficiently detailed to show that [their] funds have been used in a manner consistent with its purposes, objectives and activities”. Under this regulation, a trust must also show the “sources of its gross income” (s. 14(1)(b)). However, it is questionable whether the language of section 14(1)(b) is sufficiently precise to ensure that accounting information would correctly explain all transactions. Further, neither the ITA nor the Trusts and Non-Profit Organisations Regulations contain any express obligations regarding the preparation or submission of financial statements, nor do they contain provisions requiring that maintained accounting information enable the financial position of the entity to be determined with reasonable accuracy at any given time.

188. Trustees are also under a common law fiduciary duty to keep accurate accounts and records, although the extent of such requirements could not be ascertained during the Phase 1 Peer Review. This duty arises from English common law, which has been applied in Dominica by a 1763 proclamation by England. The International Exempt Trust Act does not prescribe any account keeping requirements.

189. 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, upon conviction, 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). Additionally, under the POCA, entities subject to AML obligations (including foreign trusts and international exempt trusts) must keep accounting records that accurately reflect all transactions. However, it is unclear whether the accounting information required to be kept under s. 46(h)(i) would be sufficient to allow for a reasonably accurate determination of the entity’s financial position at any given time.

In practice

190. As noted earlier in this report, there were no international exempt trusts registered in Dominica during the review period, nor are there any at present.

191. In practice, the tax authorities explained that the type of trusts they encounter are those to dispose of estate of a deceased person. The registered agents interviewed by the assessment team also confirmed that trusts are not commonly used in Dominica. The tax authorities explained that trust benefits are normally taxed at the hands of the beneficiaries or, if there is no distribution, at the hands of the trust. There are no special tax returns applicable to trusts.

Conclusion

192. The Companies Act provides that domestic companies must prepare and maintain adequate accounting records, however the nature of records to be maintained are not specified. IBCs (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 external companies, partnerships and domestic trusts must keep accounting records to satisfy obligations under tax law. However, no legislative provisions are in place explicitly requiring IBCs, foreign trusts or international exempt trusts to maintain accounting records that 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.

In practice

193. During the review period, the IRD had in place a system of oversight of domestic companies, external companies and partnerships with their accounting obligations under the tax law, but a significant number of companies registered with the Register of Companies (approximately 50%) are not registered with the IRD. Further, compliance rates are low. Dominica has theorised that the discrepancy between the number of companies registered with the Registrar and the number registered with the tax authority is due to the fact that the vast majority of companies on the public registry are inactive (i.e. not operational). However, there remains a risk that such companies are carrying on business that do not require local registration and would thus be undetected by the tax administration. The monitoring of IBCs revealed that such companies did not always maintain at the office of their registered agents the accounting records required under the IBCA. Although the FSU have sensitised registered entities concerning the IBC accounting obligations, the effectiveness of the sensitisation efforts could not be verified. Moreover, the FSU, with a staff of five employees, appears to be understaffed to perform adequate oversight of the compliance of Dominica's offshore entities and arrangements (in particular the approximately 19 000 registered IBCs) with accounting and other obligations, in addition to its other activities. Dominica is recommended to closely monitor the compliance of IBCs with the accounting requirements in the IBCA and ensure that its enforcement powers are effective in deterring non-compliance with the accounting requirements in the IBCA. In relation to trusts, Dominican authorities

advised that they are not commonly set up in Dominica and that most trusts refer to statutory trusts to dispose of estate of a deceased person. There are currently no international exempt trusts registered in Dominica.

Underlying documentation (ToR A.2.2)

194. Aside from the ITA and the VATA, Dominica's legal framework does not contain explicit obligations regarding the maintenance of underlying documentation. The Companies Act, the IBC Act, the POCA, the IETA and the Trusts and Non-Profit Organisations Regulations of 2014 are all silent on the issue of keeping underlying documentation in accordance with the international standard.

195. 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.

Conclusion

196. 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 as required by the international standard. Further, Part IV of the ITA exempts income of some persons or specific type of income from levy of taxes.

In practice

197. In relation to the entities and arrangements subject to tax in Dominica, underlying documentation is checked in the course of tax audits and are required

to be maintained in practice. In the case of IBCs, underlying documentation was often not found to be available in the inspections conducted by the FSU.

Document retention (ToR A.2.3)

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

199. 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). During the period under review, no request for disposal of books or account or other records before the expiration of the seven-year period were made.

200. 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).

201. Neither the IBCA nor the IETA provide that accounting records pertaining to IBCs 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.

202. Under the Trusts and Non-Profit Organisations Regulations 2014, information must be kept for at least seven years (s. 14(2)). Failure to keep the information is considered an offence and liable to a fine of up to XCD 20 000 (USD 7 404) (s. 14(3)).

203. The POCA requires that information be kept for at least seven years (s. 47(1)); failure to do so is considered an offence and liable to a fine of up to XCD 150 000 (USD 55 556) and/or imprisonment of up to two years (s. 60(5)). However, these provisions do not describe any express obligations to maintain accounting records that would allow for a reasonably accurate determination of the financial position of the entity at any given time or support the preparation or submission of financial statements.

In practice

204. During the period under review, in practice, no penalties have been applied, nor have any breaches been identified.

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.
Inadequate obligations exist for international business companies, foreign trusts and international exempt trusts to keep underlying documentation. Further, the keeping of underlying documentation by entities not subject to the provisions of the VAT Act is not fully ensured.	Dominica should ensure that all relevant entities are required to keep full underlying documentation and retain all accounting records for at least five years.

Phase 2 rating	
Non-Compliant	
Factors underlying recommendations	Recommendations
During the review period, not all IBCs maintained the accounting records required under the IBCA. Although the Financial Services Unit have sensitised registered entities concerning the IBC accounting obligations, the results of such sensitisation could not be verified.	Dominica should ensure that all international entities and arrangements are subject to adequate oversight of their compliance with the accounting requirements and enforcement powers are exercised in practice.

Phase 2 rating	
Non-Compliant	
Factors underlying recommendations	Recommendations
<p>Dominica's Inland Revenue Department (IRD) is the government authority mainly responsible for ensuring the compliance of domestic companies with their accounting obligations by means of its audit program. However, a significant number of companies registered with the Register of Companies (approximately 50%) are not registered with the IRD. Although Dominica indicated that the vast majority of these companies are inactive, there would also be a risk that they would be carrying on business that do not require local registration and would thus be undetected by the tax administration. Further, the compliance rate of partnerships is extremely low (only 9.23%). It is therefore uncertain whether partnerships in Dominica are subject to adequate oversight in terms of maintaining accounting records as required by the international standard.</p>	<p>Dominica is recommended to ensure that there is adequate oversight of the compliance of domestic companies and partnerships with their accounting obligations.</p>

A.3. Banking information

Banking information should be available for all account-holders.

205. Banking information should be available for all account-holders and should include all records pertaining to the accounts as well as to related financial and transactional information. In Dominica, financial institutions have full identity information on their clients, pursuant to AML laws. They are also obliged to keep full records of their financial transactions.

Recording-keeping requirements (ToR A.3.1)

206. The banking sector in Dominica includes domestic and offshore banks. Domestic commercial banks and similar domestic financial institutions are regulated by the Banking Act 2015. Offshore banks and other offshore financial institutions are regulated by the Offshore Banking Act and the FSU Act. Both domestic and international financial institutions are subject to AML law. Obligations for financial institutions to keep customer and transaction records are found in Dominica’s AML framework, which consists of separate pieces of legislation: the MLPA, the Proceeds of Crime Act 1993, the POCA, and the MLP Regulations. These laws are supported by the non-binding Anti-Money Laundering Guidance Notes (Guidance Notes).

207. No person or institution may carry on banking business or offer financial services in Dominica without a license. Onshore commercial banks are required by the Banking Act to obtain a license from the ECCB (s.3 Banking Act). Failure to obtain a license before operating is an offence that is punishable by a fine of XCD 1 000 000 (USD 370 370) and a daily penalty of XCD 100 000 (USD 37 037) for continuing offences (s. 5(a) Banking Act). Offshore banks must likewise, before commencing business, obtain a license from the FSU (s. 11 FSU Act). Contravention of this requirement is an offence and punishable by a fine of XCD 500 000 (USD 185 185) and a penalty of XCD 5 000 (USD 1 852) for each day the default continues (s. 11(3)(a) FSU Act). The supervisory authority for international financial institutions is the FSU (s.4(c) FSU Act).

Customer identification records

208. Prior to the development of Dominica’s AML framework in 2001, Dominican law did not address unnamed, or numbered, accounts. Presently, under Dominica’s AML law, financial institutions²⁰ 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

20. 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).

is carried out on behalf of another person engaged in money laundering (s. 8 MLP Regulations). Further, financial institutions must not do business with persons using obviously fictitious names and are not permitted to keep anonymous accounts or accounts where it is impossible or difficult to identify the client (s. 36 POCA, s. 36 (1) of the Anti-Money Laundering Counter Financing of Terrorism Code of Practice No. 10 of 2014 and Part III of the MLP Regulations S.R.O. 4 of 2013.). Officials at the on-site advised that the current regulatory framework applies to new as well as pre-existing customers, the information for which was required to be updated in accordance with the law.

209. Financial institutions and other obliged entities must also take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the customer is acting (ss. 15 and 16 MLP Regulations). 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.

210. Section 7(5) of the MLP Regulations goes on to require that “all financial institutions in Dominica must 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. The AML Guidance Notes requires obliged entities to identify the true or beneficial owners in an ownership chain.

211. Where a financial institution relies on an intermediary or third party to undertake any of its obligations under AML or to introduce business to it, it must be satisfied that the third party is able to provide copies of identification data and other documents relating to the obligation of due diligence (s. 13(a) MLP Regulations).

212. All financial institutions (including those engaged in banking business and offshore banking business) must conduct ongoing customer due diligence measures with respect to every business relationship (s. 11 MLP Regulations).

213. Financial institutions must keep records of all business transactions for seven years following the completion of the relevant business (s. 24 MLPA Regulations). The 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. 24(1)(b) 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. 51 MLPA)

214. 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.

215. Under the POCA, the minimum retention period for financial transaction documents is seven years (s. 49(2) POCA). 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) POCA). 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 or 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) POCA). 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.

Availability of banking information in practice

216. The FSU, as the Money Laundering Supervisory Authority of Dominica, is the authority in charge of implementing the AML/CFT framework, pursuant to Section 11(d) of the MLPA. The ECCB is the regulatory body responsible for the prudential compliance of the domestic banking sector, although the FSU will also periodically conduct inspections of onshore commercial banks to ensure compliance with AML. The FSU is the sole body responsible for the regulation of international banks.

Oversight of onshore banking sector

217. The Banking Act 2015 establishes the ECCB as the supervisory authority for onshore banks. The ECCB, as the Central Bank, is mandated to examine all financial institutions licensed to conduct banking business

under the Banking Act to ensure compliance with the Act. The ECCB has discretion to inspect financial institutions as it sees fit within its judgment, provided that each licensed financial institution is examined at least once every 36 months (s. 70 Banking Act). The ECCB has disciplinary powers and may impose administrative penalties or remove staff (including directors) from banks. Although the ECCB is a standard setting body, it is not a dedicated AML body and has no role in developing AML policy; thus it does not issue specific guidance on issues such as CDD. For aspects of its supervision overlapping with AML, the ECCB is guided by the AML Guidance Notes. As of March 2016, the ECCB reports having approximately 20 staff specifically assigned to banking supervision in the East Caribbean region.

218. As part of its prudential supervision, the ECCB conducts either a full scope exam, usually spanning two weeks, or a targeted exam, focusing on one particular area. Inspections include on-site inspections. Representatives from the ECCB confirmed during the on-site that they try to conduct a full-scope exam of every domestic bank once every three years as required by the Banking Act. In the course of its inspections, the ECCB will check whether a financial institution has properly identified its customers, is maintaining records as required under the Banking Act and performing CDD; however, its supervision is largely prudential. Compliance with AML/CFT rules is carried out by the FSU. At the conclusion of an inspection, the ECCB requires banks to sign a Memorandum of Understanding confirming their commitment to rectifying the deficiencies identified by the ECCB. Financial institutions are liable to fines of up to XCD 50 000 (USD 18 520) for failure to take the required remedial actions. The ECCB has not yet imposed any penalties as it has not seen any major deficiencies during the course of its examinations and banks reportedly have readily agreed to take remedial action. During the review period, the ECCB reports that it performed one on-site visit as part of a targeted exam of one of the four commercial banks in Dominica. Main breaches identified by the ECCB relate to failure to maintain customer information on Declaration of Source of Funds forms.

219. The FSU supervises the AML/CFT compliance of onshore banks. The FSU reports that it conducts audits of domestic banks approximately one every two years. The last on-site examination of a commercial bank took place in 2013, but off-site surveillance is ongoing. The next on-site examination is anticipated to take place in 2016. Common deficiencies include outdated references to older laws that have since been repealed. Previously, banks did not consistently maintain identity information on file, but the FSU reports that since it began its programme of on-site inspections in 2011, compliance with CDD and Know Your Customer (KYC) rules has improved.

Oversight of offshore banking sector

220. The FSU supervises both the prudential and AML compliance of offshore entities. Similar to its inspections of corporate service providers, the FSU will contact the Director of the bank in advance indicating its intent to perform an on-site inspection. It may ask for specific information prior to the on-site visit. From the AML perspective, the inspection team will check the institution's CDD and KYC policies, as well as conduct random examinations of files to ensure that such policies were followed. As Dominica's AML regime is based on a risk-based approach, the depth of CDD measures depend on the risk level of the account. At the end of an on-site inspection, the FSU will prepare a report detailing its findings and remedial actions to be taken by the institution, including timeframes for action plans. To ensure that such actions are taken by the institution, the FSU will conduct spot checks without advance notice. The FSU may impose penalties of up to XCD 500 000 (USD 185 185) for non-compliance or revoke or suspend an institution's license. During the review period, in one instance, the FSU has imposed a fine of XCD 139 000 (51 481) for late submission of its annual audited financial statements, which carries a penalty of XCD 500 (USD 185) each day the default continues. The FSU has also revoked the licenses of three entities (two insurance companies and one offshore bank), which failed to commence operations within the statutory timeframe. To date, the FSU has inspected all nine offshore banks in Dominica. The last on-site inspection took place in December 2015 and the next on-site inspection of offshore banks is planned for December 2016. Since then, the FSU has not conducted another full scale examination, but continues to carry out spot checks.

Conclusion

221. 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. The oversight carried out by the FSU and the ECCB also appear to be effective, although, as noted above, the FSU may be understaffed for its dual role as financial sector regulator and AML supervisor.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

B. Access to information

Overview

222. 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.

223. Dominica's competent authority is the Minister of Finance or his authorised representative. The Minister's designated representative for the purpose of exchanging information is the Comptroller of Inland Revenue. The EOI Act, as amended in July 2015, provides the Comptroller broad access to all types of information from any person or entity in Dominica, regardless of whether that person or entity is liable to tax. New provisions introduced in July 2015 require a court order when the requested information is required for civil or criminal proceedings in the requesting jurisdiction. Information can be obtained in a variety of forms, including witness testimony or the production of books, papers, records and other tangible property. The Comptroller is empowered to obtain information from taxpayers and third parties, including banks, by issuing a notice requesting the production of information only if the information sought is not in relation to civil or criminal proceedings in the requesting jurisdiction. Where the information sought relates to civil or criminal proceedings in the requesting jurisdiction, an application must be made to the court. Dominica's powers to access information were brought in line with the international standard only in July 2015, after the review period and Dominican authorities are still unfamiliar with new provisions governing access to information and the relevant court procedures. Dominica is thus recommended to monitor the application of its access powers under the July 2015 amendments and ensure that EOI staff are aware of all relevant procedures.

224. Dominican legislation also provides for a number of compulsory powers. Search and seizure measures are available and non-compliance with a notice or court order can be sanctioned with fines and imprisonment.

225. In July 2015, the various laws governing offshore entities were also amended to lift the secrecy provisions for purposes applicable to EOI. An amendment in the EOI Act explicitly overrides any secrecy provisions restricting the provision of information that may be protected by confidentiality obligations. These amendments ensure that the competent authority can access information from all parties, including IBCs, international exempt trusts and offshore financial institutions.

226. Pursuant to the recent amendments to the EOI Act, Dominica's competent authority is required to notify the person who is the subject of a request in limited circumstances. A recommendation has been made to introduce wider exceptions from prior notification.

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)

227. Pursuant to Dominica's EOI instruments, the Competent Authority for Dominica is the Minister of Finance or his authorised representative. The Minister's designated representative for the purpose of exchanging information is the Comptroller of Inland Revenue, who, under article 4 of the EOI Act, may process requests for a number of government agencies, including, *inter alia*, the Accountant's General's Office, the FSU, the IRD and the Treasury. 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.

228. 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 can exercise all powers and authorities vested in

him under the ITA, particularly section 69, to obtain information relating to requests received under scheduled agreements.²¹

229. The Comptroller is authorised to obtain ownership, accounting and banking information from any person (either directly, or through a court order, depending on the nature of the request) for purpose of responding to EOI requests. Pursuant to section 4(A.)(1) of the EOI Act, as amended in July 2015, “[w]here, under a request, the Comptroller considers it necessary to obtain specified information or information of a specified description from any person”, the Comptroller is authorised to obtain the information or compel its production depending on the nature of proceedings at the time of the request (described below). “Person” is defined by reference to the ITA as “an individual, a trust, the estate of a deceased person, a company, a partnership and every other juridical person” (s. 2(1), ITA). “Information” is defined by recent amendments to the EOI Act (s. 2) as “any fact, statement, document or record in whatever form”, including –

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

230. Under the EOI Act, the procedure for collecting information will differ, depending on whether the information requested is required for proceedings in the requesting jurisdiction or related investigations (s. 4A(2)(a)). “Proceedings” refers to both civil and criminal proceedings (s. 2).

231. When the information requested is not already in the possession of the Comptroller and does not relate to any proceeding or investigation in the requesting jurisdiction, the Comptroller must issue a notice to the relevant party in writing requiring the production of the information described in the notice. The notice may require the information to be provided within a specified time, in a specific form, and verified or authenticated in such manner as the Comptroller may require (s. 4A(1)(b), EOI Act). The Comptroller may take copies or extracts of any information (s. 4A(2), EOI Act). Although the

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

law does not specify a timeframe for the information holder to produce the information, in practice, the Comptroller provides a two-week deadline for submission of the requested information. Dominican officials explain that pursuant to section 128(3)(a) of the Income Tax Act, a notice served by post is deemed to have been served seven days after the date it was posted. The IRD's internal procedures grants an additional seven days for the production of the information contained in the notice. An extension of this deadline can be obtained by the information holder upon request.

232. When the requested information is required for civil or criminal proceedings in the requesting jurisdiction, the Comptroller must apply to a Judge of the High Court for an order to compel the information-holder to produce such information (s. 4A(1)(a), EOI Act). As the High Court has not yet issued any specific rules or guidelines on applications of this nature, Dominica clarified that the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 govern the making of such applications. Pursuant to the Eastern Caribbean Supreme Court's Rules, a notice of application must be accompanied by an affidavit and draft order. The application must be supported by documentation including the EOI request itself and other materials as required to verify the information contained in the request (e.g. authenticated copies of original documents or witness testimonies from the requesting country). As generally, all court documents in Dominica are made public, a request to seal the documents contained in the application for production of information is required to ensure that EOI materials are not publicly disclosed. Sealed documents are available to be viewed only by the parties to a proceeding. For a more detailed discussion of the sealing procedure, please see section C.3 on confidentiality.

233. To grant an order to produce information, the Judge must be satisfied that five conditions are fulfilled – that: (a) the Comptroller has certified that the request is in compliance with the relevant agreement set out in the schedule; (b) the information is under the possession or control of a person in Dominica; (c) the information requested does not include items subject to legal privilege or items subject to protection as secret, under the scheduled agreement; (d) the person subject to the request has been notified where possible in accordance with section 4B; and (e) under the relevant agreement, there are no reasonable grounds for not granting the request. The EOI Act does not define “items subject to protection as secret under the scheduled agreement”, but Dominican authorities advise that it is applied in accordance with Article 26(3) of the OECD Model Tax Convention and Article 7(2) of the OECD Model Tax Information Exchange Agreement. This provision was instituted as part of the amendments to the EOI Act in July 2015 and therefore came into force after the period under review (1 July 2012 – 30 June 2015). It therefore remains untested in Dominica's EOI practice. The time that a judge may take to issue this order is not specified in the law as the timeline will depend on the calendar of the court. However, state attorneys advised that

time-sensitive applications may be made by means of a certificate of urgency. Section 26.1(2)(k) of the Civil Procedure Rules empowers courts to handle urgent matters as a matter of priority.

234. Where the judge is satisfied that the aforementioned conditions are met, he/she *may* [emphasis has been added] then issue an order compelling production of the information to the competent authority, or give the competent authority access to the information in a specified period, generally, of 14 days, unless the judge considers another period to be appropriate (ss.4A(4) and (5)). Where the judge issues such an order, he or she may also order that a police officer should be allowed to enter the premises where the information is held to obtain access to the information (s.4A(7)). An order compelling production of information will contain a “penal notice” provision stating that failure to comply with the order shall qualify as contempt of court. Requested information maintained as an electronic record must be visible and legible and produced in a form in which it can be taken away (s.4A(9)). The EOI Act does not stipulate what constitutes “reasonable grounds” for refusing to issue an order, but state attorneys indicate that a possible example is any fact or circumstances that makes the request appear to be fishing expedition. As the practical impact of this provision could not be assessed during the review period, Dominica is recommended to monitor its implementation to ensure that it does not unduly restrict the effectiveness of the Comptroller’s access powers.

235. 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.

236. 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.

237. 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).

238. Currently, Dominica's access powers are applicable in respect of all of its agreements that are in line with the standard. 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.

Gathering of information in practice

239. Dominica has very limited experience in the gathering of information for tax purposes as it has received only one EOI request to date. The request was originally sent by the treaty partner in March 2012. Due to circumstances explained below in section C, the initial request was not answered and re-sent only in December 2015. As both transmissions of the request fall outside the current review period (1 July 2012 – 30 June 2015), the request cannot be officially considered for the purpose of evaluating Dominica's EOI practice. However, as Dominica has no EOI experience outside of this request, the circumstances surrounding the request serve to provide some context for the application of Dominica's laws.

240. Although Dominica's legal framework empowering the Competent Authority to gather information from any person or government authority has been in place since the amendments to the EOI Act came into force in July 2015, it became apparent during the on-site visit that Dominica has no significant experience with the new procedures to access information and

that such rules (including the application for a court order to compel production of information relating to civil or criminal proceedings in the requesting jurisdiction) were not followed in practice in the one request received outside the review period. Moreover, officials responsible for handling EOI requests did not appear to be fully familiar with the July 2015 amendments to EOI procedure, in particular, with respect to new provisions requiring a court order as a pre-requisite to seeking information from a taxpayer or third party when the requested information is required for civil or criminal proceedings in the requesting jurisdiction. For instance, during the on-site visit, EOI staff indicated that upon receiving an EOI request relating to an IBC, their current protocol is still to seek the information from the corporate service provider directly without first applying for an order from the High Court. Further, relevant officials demonstrated a lack of awareness of the applicable court procedures for obtaining such an order, including whether the EOI request that would have to be submitted in the application for a court order could be sealed, and if so, the procedure for sealing sensitive documents.

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

241. 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.

242. Prior to July 2015, Dominica’s access powers could only be exercised in respect of a person liable to tax. Accordingly, the Comptroller was not able to access information from IBCs, international exempt trusts, and other entities operating in offshore sectors as these entities are not liable to pay tax. Since July 2015, the information-gathering powers of the Comptroller are not subject to the existence of a domestic tax interest. The Comptroller may exercise the relevant powers upon receipt of a valid request pursuant to an EOI agreement. The subject of such a request need not implicate Dominican tax laws.

Compulsory powers (ToR B.1.4)

243. Jurisdictions should have in place effective enforcement provisions to compel the production of information. Under the EOI Act, as amended in July 2015, the Comptroller of Revenue can use different types of powers to enforce compliance with requests for information. The Comptroller is empowered, upon application to the High Court for a search warrant, to execute search and seizure measures in order to obtain information in response to EOI requests (s. 4C(1)). Such a warrant may only be issued by the High Court if it is satisfied that (i) a notice or court order issued under section 4A to produce

information was not complied with, (ii) the EOI request might be seriously prejudiced unless immediate access to the information can be secured; or (iii) where a High Court order is required to obtain the information (because of proceedings in the requesting jurisdiction) and it would not be appropriate to make such a court order because it is not practicable to communicate with the subject person, or another person entitled to grant access to the information, or because the EOI request might be seriously prejudiced unless a police officer is able to secure immediate access to the information before it may be compromised (s. 4C(2)).

244. Failure of any person to comply with a court order will result in contempt of court, the penalties for which include a fine of XCD 1 500, imprisonment for a term of up to one month, or, in the case of legal persons, seizure of property (Chap. 5:01, s. 3 Contempt of Court Act).

245. The ITA also grants the Comptroller a number of compulsory powers. 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). 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). The Comptroller also has search and seizure powers under the ITA when an examination has been launched. 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).

246. The EOI Act also prohibits any person from disclosing information pertaining to an EOI request that may prejudice the proceedings or related investigation. This prohibition applies in relation to any EOI request that concerns criminal proceedings or investigations and where a court order or search warrant has been issued. If a person makes a disclosure while knowing or suspecting that a request has been made or that an investigation is underway, he/she may be punished with a fine of XCD 10 000 (USD 3 704) and imprisonment for three years (s. 4A(10)).

247. As no requests were received during the review period, the application of the enforcement measures described above were not required.

Secrecy provisions (ToR B.1.5)

248. A number of secrecy provisions exist in Dominica’s legislation, specifically in the context of offshore entities. Since July 2015, these provisions can be lifted for the purpose of EOI.

Confidentiality provisions for banks and some types of companies

249. The relevant laws with secrecy provisions are the IBCA, International Exempt Trust Act, Offshore Banking Act and Exempt Insurance Act. However, amendments to these laws and the EOI Act in 2015 allow as an exception to the secrecy provisions disclosure of information when required “under the provision of any law of Dominica”²² (codified in s.26(c), Offshore Banking Act, s. 112(iii), IBCA, s. 39(b), International Exempt Trust Act; s.41(c), Exempt Insurance Act). These amendments allow the Comptroller to obtain information from these entities using its access powers under the ITA and the EOI Act. The EOI Act specifically states that the access powers through the court order or notice “shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by law, including the common law” (s. 4A(3)(b)).

250. The EOI Act also provides that any person who divulges confidential information required under the court order or upon notice from the Comptroller is deemed not to have committed any offence under Dominican law. Such a disclosure will not be considered a breach of any confidential relationship between that person and any other person, and protects the person making the disclosure from any civil claim or action (s. 4D).

Professional privilege

251. Amendments to the EOI Act in July 2014 define the scope of legal privilege applicable to EOI requests. The EOI Act excludes access to “items subject to legal privilege” (ss.4A(3)(a) and 4A(6)(c)). Such items include communications and the subject of such communications between an attorney and his client (or any person representing his client) in connection with the provision of legal advice or in contemplation of legal proceedings. Legal privilege also applies to communications between an attorney, or his client, and “any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings” (s. 2, EOI Act). This additional element may go beyond the exception for attorney-client privilege under the

22. These amendments would be in accord with the Banking Act, which allows disclosures to be made if required “under the provisions of a law of Dominica” (s.32(1)(iii)). Thus if a request is made pursuant to the ITA or the EOI Act, it would be covered under this exception.

international standard. Items held with the intention of furthering a criminal purpose are not subject to legal privilege. A taxpayer, if notified, may also invoke privilege. He/she must, within 15 days from the date of receipt of the notice, make a written submission to the Comptroller specifying any grounds which he/she wishes the Comptroller to consider in making its determination as to the validity of the request, including any assertions that the information requested is subject to legal privilege (s.4B(1)) (see section B.2 below for more details on notification). If the taxpayer's assertion of privilege is not accepted by the Comptroller, this is one ground for appealing a court order to produce the information (see section B.2 below on appeal rights).

252. Legal professionals met with during the on-site visit confirmed that any communications or items that are the subject of communications arising in the context of an attorney-client relationship (i.e. pertaining to the provision of legal advice or for use in legal proceedings), including information on corporate ownership or tax-related issues, would be privileged. Should an attorney act in a dual role (for instance, as a registered agent, a nominee or a trustee), however, information received from the client in his or her capacity as a corporate service provider would not be privileged. Attorneys interviewed at the on-site visit advised that, regardless of the application of privilege, an attorney would furnish the requested information that is the subject of a court order.

253. In practice, Dominica advised that no person has ever invoked legal privilege, or made a secrecy claim, to refuse the production of information for EOI purposes or in relation to domestic tax matter. It is noted, however, that Dominica's EOI experience is very limited and no requests were received during the review period. No issues were raised by peers in this regard.

254. The extension of privilege to communications between an attorney, his client and a third party in contemplation of or regarding legal proceedings potentially could be interpreted in a manner that frustrates EOI. Although Dominican officials maintain that this concern is mitigated by the fact that attorneys will in all circumstances provide information that is mandated by court order, a court order will not be required in all instances for EOI (only where the information requested is part of civil or criminal proceedings in the requesting jurisdiction). Further, where legal privilege has been invoked, the court would have to first decide on the applicability of privilege. If the court determines that legal privilege applies, it would not issue an order compelling the production of information. Although English common law cases should apply, Dominica does not have any case law to date on the interpretation of the scope of privilege. Accordingly, Dominica is recommended to monitor the application of legal privilege to ensure that it is interpreted in a manner consistent with the international standard.

Conclusion

255. Although the legal framework for the Comptroller to access all types of information for EOI purposes from an information holder, regardless of whether he/she is liable to tax in Dominica, is in place, new procedures requiring a court order to obtain such information have not yet been tested. Amendments to the EOI Act in 2015 require the Comptroller to obtain a court order where the information requested is part of civil or criminal proceedings in the requesting jurisdiction.

256. In practice, officials responsible for EOI did not appear to be familiar with the relevant provisions of the law. The EOI unit's procedures to access information do not reflect the recent amendments to the EOI Act. Further, the granting of an order by the High Court, even in cases where all threshold requirements are met, is still discretionary and as yet untested in practice, cannot be guaranteed to uphold the competent authority's access powers. Further, no official guidance exists to clarify what constitutes "reasonable grounds" for denial of an application made by the Comptroller. Consequently, Dominica is recommended to monitor the application of its access powers and to ensure that EOI staff are aware of all relevant provisions and procedures.

257. Finally, the scope of privilege in Dominica is broader than that conceived by the international standard and could potentially frustrate EOI in practice. Dominica is thus recommended to ensure that the scope of legal privilege in its EOI arrangements is consistent with the international standard.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Phase 2 rating	
Partially Compliant	
Factors underlying recommendation	Recommendation
EOI officials in Dominica appear to be unfamiliar with new provisions requiring a court order when the requested information is required for civil or criminal proceedings in the requesting jurisdiction and court procedures for sealing sensitive documents.	Dominica should monitor the application of its access powers provided under the 2015 amendments to the EOI Act and ensure they are effective to gather information for EOI purposes in accordance with the international standard. Dominica should also ensure that EOI officials are kept aware of all relevant procedures.

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)

258. 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).

259. Prior to July 2015, Dominica's laws did not require the taxpayer to be notified about an EOI request or the fact that information exchange takes place. When an examination was being conducted, the Inland Revenue Division could exercise search and seizure powers without prior notice (s.71 ITA). Further, taxpayers or the persons from whom information is requested did not have any rights to challenge the information request from the Comptroller of Revenue.

260. Notification rights were introduced in Dominica as of 28 July 2015 for the person who is the subject of the request in some circumstances: (i) where a request for information is made that is not in connection with an (alleged) criminal matter, and (ii) if the person's whereabouts or address are made known to the Comptroller. The Comptroller is under no obligation to search for or conduct enquiries into the address or whereabouts of any person for this purpose (s.4B(3)). In the above circumstances, the Comptroller must notify the person of the existence of the request, and specify the country making the request and the general nature of the information sought (s.4B(1), EOI Act). Any person notified may, within 15 days from the date of receipt of the notice, make a written submission to the Comptroller specifying any grounds which he/she wishes the Comptroller to consider in making its determination as to whether or not the request is in compliance with the relevant EOI agreement, including any assertions that the information requested is subject to legal privilege (s.4B(1)). The EOI Act does not provide a deadline for the Comptroller to make a decision.

261. The notification requirement under the EOI Act would thus apply in limited circumstances (i.e. in civil tax matters and where the address or whereabouts of the person who is subject of the request are made known to the Comptroller). However, unless the whereabouts of the persons are not made known, it does not appear that there is any possibility to do away with notification in a civil tax matter where, for example, the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. It was thus recommended at the time of the

supplementary Phase 1 review that wider exceptions from prior notification be permitted in civil tax matters (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

Notification requirements and rights and safeguards in practice

262. Given Dominica's limited EOI experience, the notification provisions of the amended EOI Act have not yet been applied in practice. Dominica received no EOI requests during the period under review. In the one request (relating to a criminal matter in the requesting jurisdiction) Dominica received outside of the review period, the Comptroller did not notify the taxpayer. As with other elements of information exchange described above, development of EOI practice in Dominica is still at a nascent stage. At the on-site visit, IRD officials explained that the IRD has been in contemplation of the new notification requirements, but has not yet developed procedures for implementing such provisions. For instance, the IRD does not yet have any notification letter template. Consequently, at present, Dominica could not provide any information on the type of information (e.g. the requesting Competent Authority, the nature of the request, etc.) that would be included in a notification letter.

263. Certain court procedures governing the application for a court order to compel production of information must also be considered. State attorneys from the High Court advised that as a general rule, parties to a proceeding are to be notified. As such, where the Comptroller applies to the High Court for an order to produce information, it is not clear whether the implicated taxpayer or information holder are considered parties to a proceeding and thus would be informed about the EOI request even prior to the granting of such an order. In certain circumstances, such as urgent applications or where notification would put the information at risk, a "without notice" application is possible, although in the absence of any practice or case law, the application of this exception remains to be seen. Further, it is not clear what kind of evidence or additional information is required to demonstrate urgency or to support a claim that information would be put at risk in the case of notification.

264. Although the 2015 amendments to the EOI Act do not contain any references to taxpayer appeal rights, under the Eastern Caribbean Supreme Court (Dominica) Act, a taxpayer has a right of appeal against an order of the High Court. The timeframe for filing such an appeal is 21 days from the date of the order (Eastern Caribbean Supreme Court Civil Procedure Rules 2000). Where a taxpayer appeals an order, it remains valid and can still be served upon the taxpayer (or third party information holder) unless the taxpayer applies for a stay of execution.

Conclusion

265. Notification rights were introduced in Dominica after the current review period and have not yet been tested in practice. Notification rights as codified in the amended EOI Act contain no exceptions from prior notification in civil tax matters where the whereabouts of the taxpayer are known and, therefore, a recommendation was made to introduce wider exceptions. At present, the IRD has not developed procedures for implementing the notification requirements contained in the EOI Act.

266. Moreover, certain court procedures for an application to compel production of information may require the disclosure of information to parties of the proceeding. It is unclear whether the implicated taxpayer or information holder are considered parties to a proceeding and thus would be informed about the EOI request even prior to the granting of such an order. The Comptroller can make an application to the High Court for an order to compel production of information “without notice” only in certain circumstances; it remains to be seen whether these circumstances will suffice to cover all situations where notification may be detrimental to the execution of a request or to an investigation in a requesting jurisdiction. As a result, Dominica is recommended to monitor its new notification procedure under the amended EOI Act to ensure that such procedure does not unduly prevent or delay effective exchange of information.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendation	Recommendation
The prior notification procedure in civil tax matters only allows for an exception when the whereabouts of the taxpayer are not disclosed to the Comptroller.	It is recommended that wider exceptions from prior notification be permitted in civil tax matters (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

Phase 2 rating	
Partially Compliant	
Factors underlying recommendation	Recommendation
<p>The notification provisions of the amended EOI Act came into force only after the current review period and have not yet been applied in practice. Neither has the IRD developed internal procedures or processes to be followed when a taxpayer must be notified. Finally, the Comptroller can make an application to the High Court for an order to compel production of information “without notice” only in certain circumstances; it remains to be seen whether these circumstances will suffice to cover all situations where notification may be detrimental to the execution of a request or to an investigation in a requesting jurisdiction.</p>	<p>Dominica should monitor implementation of its new procedure to ensure that it does not unduly prevent or delay effective exchange of information.</p>

C. Exchanging information

Overview

267. 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.

268. Dominica’s network for exchange of information is based on 21 bilateral agreements and 1 multilateral agreement, which together allow for exchange of information with 31 partner jurisdictions. In terms of bilateral agreements, Dominica is party to two longstanding agreements: a 1963 DTC with Switzerland²³ and a 1987 TIEA with the United States. Dominica signed 20 TIEAs to the international standard, 16 of which are currently in force. Dominica is also a party to the multilateral Caribbean Community (CARICOM) agreement together with ten other members²⁴ of that organisation. 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.

269. The DTC with Switzerland is not in line with the international standard and 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.²⁵

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23. The 1954 DTC 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.
 24. Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, and Trinidad and Tobago.
 25. Exchange is currently possible in line with the international standard between Dominica and most parties to the CARICOM. The only exception where exchange

The EOI provisions of the DTC with 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. However, Dominica and Switzerland are in discussions to address this issue (please see below section C.1). 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.

270. All EOI articles in Dominica's bilateral agreements and in its multi-lateral agreement have confidentiality provisions that meet the international standard. 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. However, its domestic legislation allows disclosure of information received to persons and authorities other than those authorised by its EOI agreements. Further, although safeguards exist in Dominica's legal framework to protect sensitive documents, it is not clear how these safeguards will be applied in practice and EOI staff were not even aware of the procedures necessary to apply such safeguards, in particular in cases where a court order was required to access information.

271. The Minister of Finance is the competent authority for negotiation of agreements and exchange of information. In practice, exchange of information is delegated to the Comptroller of Inland Revenue as by 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.

272. Dominica received only one request for exchange of information, but outside the three year review period. EOI practice in Dominica is still nascent and has not yet been formalised. In particular, the IRD has not yet developed an EOI manual or other written guidance clarifying the internal processes and procedures for responding to EOI requests or providing status updates. Further, EOI staff appear to be unfamiliar with many legal provisions applicable to access to information for EOI purposes. It is thus uncertain whether Dominica has the organisational capacity to respond to requests in a timely fashion. Dominica should further develop the organisational processes of the EOI unit, including developing internal guidelines or materials, to ensure that they are sufficient for effective EOI in practice.

of information is still not to the standard is with Trinidad and Tobago. Guyana has not yet been assessed by the Global Forum and, it is therefore not possible to confirm that the CARICOM agreement with regard to Guyana meets the standard.

C.1. Exchange of information mechanisms

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

273. In Dominica, the responsibility for negotiation of exchange of information agreements (TIEAs and DTCs) lies with the Ministry of Foreign Affairs and the Minister of Finance. Requests for negotiations by interested jurisdictions must be channelled through the Ministry of Foreign Affairs, which transmits the request to the Ministry of Finance to commence negotiations. Once a treaty has been concluded with the other jurisdiction, the Minister of Finance will seek Cabinet approval before the treaty can be signed. After the Cabinet has approved the treaty and it has been signed by Dominica and the other jurisdiction, the Attorney General’s Office will prepare a SRO (subsidiary regulation order) to be tabled at the next sitting of Parliament. As SROs are adopted by negative resolution, they are automatically approved absent any objections from members of the House. Once the SRO has passed and the requisite tabling period of 40 days has expired, the SRO will be gazetted and the treaty enters into force.

274. Dominica’s EOI network is based on 20 TIEAs (15 of which are currently in force)²⁶, 1 DTC (which is currently in force)²⁷ and a regional multilateral instrument (covering 10 other jurisdictions).²⁸ Dominica’s EOI network has not changed since the Phase 1 review.

275. The ITA and the EOI Act 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 31 jurisdictions are attached to the EOI Act in schedules. These agreements are thus ratified and incorporated into Dominican law. A full list of EOI partner jurisdictions is contained in Annex 2.

26. Australia, Belgium, Canada, Denmark, Finland, France, 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.

27. Switzerland.

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

276. All of the TIEAs signed by Dominica are in line with the international standard. Further, all of Dominica's TIEAs, with the exception of the one signed with the United States in 1987, mirror the terms of the 2002 OECD Model Agreement on Exchange of Information on Tax Matters (2002 OECD Model TIEA).

277. 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. Currently, most parties to the CARICOM that had impediments in their domestic laws have made legal changes that allow for exchange of information to the standard under the CARICOM agreement. The only exception where exchange of information is still not to the standard is with Trinidad and Tobago due to serious deficiencies regarding access powers of the competent authority.²⁹ As Guyana has not yet been assessed by the Global Forum, information regarding Guyana's competent authorities' powers to access banking information and to obtain ownership, identity and accounting information for purpose of EOI is not available. It is therefore not possible to confirm whether the CARICOM agreement with regard to Guyana meets the standard. It is recommended that Dominica works with its CARICOM EOI partners to ensure that its agreements with them allows for EOI to the standard.

278. 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. The EOI provisions in the DTC with Switzerland restrict the exchange of information to information at the disposal of authorities under their respective taxation laws in the normal course of administration. Dominica has advised that the authorities in Dominica and Switzerland have been in discussions to address this issue by implementing an EOI mechanism in line with the international standard. However, more recently, Dominica has proposed to Switzerland to resolve the issue by signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention), as Switzerland is already a member of the Multilateral Convention. It is recommended that, until such time Dominica signs and ratifies the Multilateral Convention, Dominica should continue working with Switzerland to ensure their EOI relationship meets the international standard and allows for effective EOI in all cases.

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

Foreseeably relevant standard (ToR C.1.1)

279. 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:³⁰

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.

280. 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 refers 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”.³¹

In respect of all persons (ToR C.1.2)

281. 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.

282. 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.

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

31. 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*.

283. 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)

284. 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.

285. 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 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.

286. The CARICOM agreement and the DTC with Switzerland do not contain similar provisions. The absence of this paragraph does not automatically create restrictions on exchange of bank information.³² 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.

287. In respect of Dominica’s DTCs (bilateral and CARICOM), the obligation to exchange all types of information is clearly available with respect to all of the parties to the CARICOM except Trinidad and Tobago. Guyana has not yet been assessed by the Forum.

32. 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.

288. 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)

289. 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.

290. 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.

291. 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”.³³ Most parties to the CARICOM that had impediments in their domestic laws have made legal changes that allow for exchange of information to the standard under the CARICOM agreement, the exception being Trinidad and Tobago. Guyana has not yet been assessed by the Global Forum and it is therefore not possible to confirm that the CARICOM agreement meets the standard with regard to Guyana.

Absence of dual criminality principles (ToR C.1.5)

292. 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 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.

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

33. See Phase 1 Peer Review Report of Trinidad and Tobago, 2011.

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

294. 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”).

295. 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.

296. In practice, the processes involved in the collection of information are the same regardless of whether the request relates to a civil or criminal investigation. None of Dominica’s peers have raised any issue in this respect, although no requests were received during the review period.

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

297. 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.

298. 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)

299. 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.

300. 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 EOI 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 was issued in July 2015 for the TIEAs with Ireland, Poland and South Africa, thereby fulfilling all requirements by Dominica to bring into force all of its EOI agreements that are in line with the standard. 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.

301. Dominica has signed EOI instruments covering 31 jurisdictions. Of these, currently 16 are in force (4 are not yet in force in the treaty partner). Dominica has completed the ratification processes to bring into force all agreements that are in line with the standard

302. 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)

303. 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.

304. 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 all 30 of its partners, except for Switzerland.

305. 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.

Determination and factors underlying recommendations

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

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

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

306. 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.

307. Dominica has ratified EOI arrangements covering 31 jurisdictions, including 28 Global Forum members, out of which 18 are OECD member countries, encompassing 7 G20 economies. The oldest arrangement came into force with Switzerland in 1961 (i.e. before independence) and the most recent with Ireland in 2014 (see Annex 2). Its treaties with a small minority of CARICOM partners and with 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.

308. Although it does not appear that Dominica actively initiates negotiations to establish agreements, it 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.

309. Dominica has also been in communication with Italy and India in relation to treaty negotiations.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Dominica should continue to develop its exchange of information network to the standard with all relevant partners.
Phase 2 Rating	
Compliant.	

C.3. Confidentiality

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

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

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

311. The EOI agreements concluded by Dominica meet the standards for confidentiality reflected in Article 8 of the OECD Model TIEA, including the limitation on disclosure of information received and use of the information exchanged. All of Dominica's TIEAs include a confidentiality provision (Art. 8, Art. 4 in the TIEA with the US) that conforms to the standard. In addition to the confidentiality provision, the TIEAs with Belgium, the Netherlands and Portugal also provide 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 the Economic Partnership Agreement outlines principles and general rules relating to information exchange, notably, (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.

312. 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.

313. The CARICOM agreement also has a confidentiality clause, which states 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 relevant to the assessment or collection of the taxes which are dealt with in the agreement. The clause 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.

314. In Dominica’s domestic law, the secrecy of information exchanged under an EOI arrangement is protected by the EOI Act. Under section 5 of the EOI Act, the Comptroller of Inland Revenue and every person employed in carrying out the provisions of, or having an official duty under, an agreement of the EOI Act, must treat all documents and information coming into his/her possession or to his/her knowledge in the course of his/her duties as secret³⁴. Any person who discloses or divulges information or produces any document in contravention of the EOI Act is liable upon summary conviction to a fine of XCD 1 000 (USD 370) and imprisonment for one year (s. 5 EOI Act). However, the 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.

34. The confidentiality provisions in section 5 of the EOI Act mirror similar provisions in Section 6 of the Income Tax Act.

315. The abovementioned provisions relating to the disclosure of information received are broader than the scope prescribed in Dominica's EOI agreements and consequently may not ensure the confidentiality of information received in a manner consistent with the standard. Information received may be disclosed to persons in circumstances not provided for by the EOI agreements, such as where Cabinet or another enactment would authorise such disclosure. Although the Cabinet has never before authorised such a disclosure and to date, EOI matters have been dealt with only by IRD officers subject to confidentiality obligations, it is recommended that the provisions concerning scope of disclosure of information contained in the EOI Act be aligned to the international standard.

316. It is also unclear from the language of section 5 whether the secrecy provisions would apply to non-official staff without any EOI responsibilities (e.g. contractors or freelancers for IT purposes). This question is currently under consideration in Dominica, although the materiality of this potential gap may be, at present, fairly low, as the IRD currently does not employ third party contractors. The IRD indicates that any person engaged by the IRD is required to sign an oath of secrecy (discussed in more detail below in the section on practice). Nonetheless, it is recommended that Dominica monitor the application of secrecy provisions to persons hired by the IRD in a non-staff capacity.

317. Confidentiality rules also apply to notifications to information holders to produce the requested information. Correspondence of this nature from the Competent Authority should include the minimum information necessary for the requested State to be able to obtain or provide the requested information to the requesting State, without frustrating the efforts of the requesting State. Towards this end, Dominica has not yet developed a template notice to the information holder so cannot confirm the level of detail that would be disclosed. However, no legal requirement exists in Dominican law to disclose specific details of the EOI request.

318. Since July 2015, the EOI Act requires that the taxpayer be notified before information concerning him/her is provided to a requesting jurisdiction in limited circumstances (see previous, section B.2). As Dominica has not yet developed a notification template, officials cannot confirm which elements of the EOI request would be divulged in the notification of the taxpayer (although there is no legal requirement for any details of the EOI request to be disclosed).

319. Further, certain elements of the court procedure for obtaining an order to compel production of information that is the subject of an EOI request may impact the confidentiality of the request (see also section B.2). As described above, the EOI request and supporting documentation must be submitted to the court as part of the Comptroller's application to access

information held in the hands of a taxpayer or third party. As all court documents in Dominica are a matter of public record, to prevent their disclosure, the Comptroller must contemporaneously apply for the documents to be sealed. If documents are not sealed, they may be accessed by any member of the public. Dominica reports that sealing is a matter of a court's "inherent jurisdiction", but could not provide any additional clarification on the procedure followed by courts in sealing documents or the criteria applied in determining whether documents should be sealed... Where documents are sealed, they will only be made available to the parties to a proceeding. An application may be made "without notice" (see also section B.2 above), and in those circumstances the taxpayer would not be notified of the court procedure for obtaining the information production order. However, EOI staff at the on-site visit were not familiar with the aforementioned court procedures on sealing, or indeed even the necessity to apply them. It is therefore recommended that Dominica make officials responsible for handling EOI requests aware of all relevant legal provisions and processes for the protection of sensitive information.

Confidentiality in practice

320. Although Dominica does not yet have in place any formalised policies on the handling of EOI requests, the EOI unit has established some internal protocols aimed at ensuring the confidentiality of requests received and information collected. EOI requests are received by either the Ministry of Finance (which would forward to the Comptroller) or directly by Comptroller. In either case, the Comptroller will then delegate the request to the EOI officer. The request will be made available only to staff directly working on it. Hard copies of requests are kept in a locked filing cabinet in the Comptroller's office and can be accessed only by the Comptroller. Documents received electronically are stored on a network drive that is password protected. Access is granted only to the EOI officer. Dominica notes that the EOI unit intends to develop a secure filing system.

321. Information received or collected under an EOI request may also bear interest to other parts of the IRD or other agencies, such as the FIU. In such situations, limited information-sharing is allowed. For instance, the secrecy provisions of the EOI Act permit the disclosure of "information of a statistical nature, but any such information shall be supplied in such manner as not to disclose the identity of any person in relation to his income" (s. 5(3) EOI Act). Accordingly, staff from the IRD's statistics department may be allowed to view industry-specific information related to an EOI request, but are not allowed to copy or remove files. Statistics staff are not permitted to view information specific to individual taxpayers. Although the EOI unit shares domestic information (not received in relation to an EOI request) with the

IRD customs department, as well as the Financial Intelligence Unit, it does not share information related to an EOI request with either agency.

322. The IRD also indicates that any person engaged by the IRD is required to sign an oath of secrecy (s. 6(4) ITA). The oath of secrecy applies to all information acquired in the course of duties with the exception of statistical information. Dominican authorities confirm that it applies to every person appointed under or employed by the IRD to carry out the provisions of the Income Tax Act. The oath also applies to every person to whom confidential information is disclosed, including persons authorised to receive confidential information by the Cabinet under section 5 of the Income Tax Act (discussed above). A breach of the oath of secrecy is considered a criminal offence under section 118 of the Income Tax Act punishable by a fine of XCD 1 000 or imprisonment for one year, although Dominica reports that, to date, no such breaches have been identified.

All other information exchanged (ToR C.3.2)

323. 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.

324. 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.

Conclusion

325. Dominica has sufficient provisions in its EOI agreements to ensure the confidentiality of information exchanged, but provisions in its domestic legal framework may not meet the international standard. The exceptions to confidentiality contained in section 5 of the EOI Act are broader than that envisioned by the international standard and may, at times, contradict protections granted by its agreements. Although safeguards are in place to protect from the public sensitive documents that comprise an application to the High Court for the production of information for EOI purposes, EOI staff interviewed at the on-site visit were not familiar with such procedures. Additionally, court procedures to seal sensitive documents are not clearly laid out and remain untested with respect to requests arising from EOI agreements. Dominica is recommended to ensure that EOI staff are fully aware of all legal provisions to ensure that Dominica can meet its confidentiality obligations as provided for under the international standard.

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.

Phase 2 Rating	
Partially Compliant.	
Factors underlying recommendations	Recommendations
All documents submitted by the Comptroller to the High Court to obtain an order to compel production of information, including an EOI request, will become a matter of public record. Procedures exist in Dominican law to seal sensitive documents. However, to date, these procedures have not been applied by a court. Therefore, it is uncertain whether such sealing procedures would be effective in practice to ensure the confidentiality of EOI requests submitted to a court.	Dominica should monitor the application of provisions to seal court documents to ensure that the confidentiality of EOI requests forming part of an application for a court order is protected.
To prevent the disclosure of EOI requests submitted to a court, the Comptroller must apply for such documents to be sealed. Although legal provisions to seal sensitive documents exist in Dominican law, EOI staff were unaware of this process or legal provisions surrounding such court procedure.	Dominica should also ensure that officials responsible for handling EOI requests are aware of all relevant legal provisions and court procedures for the protection of sensitive information so that it can meet its confidentiality obligations as provided for under the international 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)

326. 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 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. As noted above, the scope of privilege in Dominica is potentially broader than that conceived by the international standard; as a result, Dominica is recommended to monitor the application of legal privilege to ensure that it is interpreted in a manner consistent with the international standard (see section B.1 for an in-depth discussion).

327. 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.

328. 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.

329. 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).

330. 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 variations 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.

331. 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.

332. Dominica received no EOI requests during the three years under review. No issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice (in domestic matters), nor have they been raised by any of Dominica’s exchange of information partners.

Determination and factors underlying recommendations

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

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

333. 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.

334. 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.

335. The EOI 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 EOI Act does not comment on a specific time frame to inform the requesting State that it is unable to supply the requested information.

336. 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.

Response times in practice

337. During the three-year review period, Dominica received no requests for information. One request was received prior to the review period, but was never answered as it was channelled through the Ministry of Finance. The Competent Authority gathered the requested information, but it was never forwarded to the requesting party by the Ministry. The request was re-sent, but after the conclusion of the review period. Therefore, all actions taken to fulfil this request could not be considered for the purpose of assessing the timeliness of Dominica's EOI practice.

338. As Dominica has only received one request (outside of the review period) since the formation of its EOI unit, its EOI practice is still nascent and has not yet been formalised. Although provisions exist in Dominican law establishing the procedures for accessing information and notifying taxpayers, Dominica has not yet laid the groundwork to carry out these procedures in practice. For example, the IRD has not yet developed an EOI manual or other written guidance clarifying the internal processes and procedures for responding to EOI requests or providing status updates. Nor has the IRD developed any letter templates to notify taxpayers in accordance with the law. Further, as described above, EOI staff appear to be unfamiliar with many legal provisions and court procedures relevant to EOI, including regulations governing the Competent Authority's access powers. At present, the little EOI experience that Dominica has had has been carried out in an ad hoc manner. It is thus uncertain whether Dominica would have the organisational capacity to respond to requests in a timely fashion.

Organisational process and resources (ToR C.5.2)

339. 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 jurisdiction. As the Minister of Finance's designated representative, the Comptroller of Revenue is authorised under article 5 of the EOI Act 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.

340. The Inland Revenue Department is the sole agency involved in the collection of information to respond to EOI requests. It currently has one

officer staffed on EOI matters. The IRD does not yet have any internal guidelines or protocols with respect to EOI. To date, Dominica reports that the EOI officer has received no specific training on EOI, but that such training is envisioned for the future.

341. However, although Dominica’s organisational processes appear to be quite scant, Dominica has demonstrated a willingness to develop the necessary tools to improve its EOI practice. Additionally, Dominica has been in communication with its treaty partner in the instance of the one request received outside of the review period.

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

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

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

Conclusion

344. Over the three year review period, Dominica received no requests for exchange of information. Given the dearth of requests, Dominica has not yet fully developed or formalised its EOI procedures. Although Dominica now has a formal EOI unit, the IRD has not developed any manuals or other internal guidance on how to conduct EOI. Moreover, EOI staff have not received any relevant training and do not appear to be familiar with all rules and regulations relevant to effective EOI. As explained above, EOI staff were not aware of recent changes to procedures relating to the Competent Authority’s access powers or notification requirements. Although no aspect of Dominica’s legal framework appear to impose restrictive conditions on exchange of information, in light of the foregoing, it does not appear that Dominica’s EOI staff is prepared to conduct EOI in an effective manner. Therefore, Dominica is recommended to further develop the organisational processes of the EOI unit to ensure that they are sufficient to enable effective EOI in practice.

Determination and factors underlying recommendations

Phase 1 Determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly, no Phase 1 determination has been made.

Phase 2 Rating	
Partially Compliant.	
Factors underlying recommendations	Recommendations
<p>Dominica has in place only minimal organisational processes for handling incoming EOI requests. The IRD has neither developed any internal manuals or guidelines on EOI nor provided training to its staff. The organisational processes do not appear adequate to conduct EOI in an effective and timely manner.</p>	<p>Dominica should further develop the organisational processes of the EOI unit, including developing internal guidelines or materials and training EOI staff, to ensure that they are sufficient for effective EOI in practice.</p>

Summary of determinations and factors underlying recommendations

Overall rating		
PARTIALLY COMPLIANT		
Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
Phase 1: The element is in place.	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.
Phase 2: Partially Compliant	The Registrar of Companies conducts no monitoring of requirements under the Companies Act to maintain ownership and identity information and only very limited monitoring of annual return filing by entities under its purview, despite the fact that the large majority of companies and partnerships are not operational. Further, even among active companies and partnerships, compliance with filing obligations is low. However, the financial regulator does have a system of supervision covering IBCs. The Inland Revenue Department also reviews shareholder information in the course of tax audits where such information is relevant for the purpose of the audit.	Dominica should implement a regular and comprehensive system of oversight to ensure compliance by all relevant entities and partnerships with obligations to maintain ownership information under Dominican law.

Determination	Factors underlying recommendations	Recommendations
<p>Phase 2: Partially Compliant <i>(continued)</i></p>	<p>During the review period, no sanctions have been imposed by any Dominican authority for non-compliance with any obligations pertaining to the maintenance of ownership or identity information. Likewise, no companies have been struck off the register for any reason other than voluntary dissolution.</p>	<p>Dominica should sufficiently exercise its enforcement powers when needed to ensure the availability of ownership and identity information in all cases.</p>
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)</p>		
<p>Phase 1: The element is not in place.</p>	<p>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.</p>	<p>Dominica should introduce consistent obligations for all relevant entities and arrangements to maintain full accounting records in line with the Terms of Reference.</p>
	<p>Inadequate obligations exist for international business companies, foreign trusts and international exempt trusts to keep underlying documentation. Further, the keeping of underlying documentation by entities not subject to the provisions of the VAT Act is not fully ensured.</p>	<p>Dominica should ensure that all entities are required to keep full underlying documentation and retain all accounting records for at least five years.</p>

Determination	Factors underlying recommendations	Recommendations
<p>Phase 2: Non-Compliant</p>	<p>During the review period, not all IBCs maintained the accounting records required under the IBCA. Although the Financial Services Unit have sensitised registered entities concerning the IBC accounting obligations, the results of such sensitisation could not been verified.</p>	<p>Dominica should ensure that all international entities and arrangements are subject to adequate oversight of their compliance with the accounting requirements and enforcement powers are exercised in practice.</p>
	<p>Dominica's Inland Revenue Department (IRD) is the government authority mainly responsible for ensuring the compliance of domestic companies with their accounting obligations by means of its audit program. However, a significant number of companies registered with the Register of Companies (approximately 50%) are not registered with the IRD. Although Dominica indicated that the vast majority of these companies are inactive, there would also be a risk that they would be carrying on business that do not require local registration and would thus be undetected by the tax administration. Further, the compliance rate of partnerships is extremely low (only 9.23%). It is therefore uncertain whether partnerships in Dominica are subject to adequate oversight in terms of maintaining accounting records as required by the international standard.</p>	<p>Dominica is recommended to ensure that there is adequate oversight of the compliance of domestic companies and partnerships with their accounting obligations.</p>

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
Phase 1: The element is in place.		
Phase 2: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
Phase 1: The element is in place.		
Phase 2: Partially Compliant	EOI officials in Dominica appear to be unfamiliar with new provisions requiring a court order when the requested information is required for civil or criminal proceedings in the requesting jurisdiction and court procedures for sealing sensitive documents.	Dominica should monitor the application of its access powers provided under the 2015 amendments to the EOI Act and ensure they are effective to gather information for EOI purposes in accordance with the international standard. Dominica should also ensure that EOI officials are kept aware of all relevant procedures.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
Phase 1: The element is in place.	The prior notification procedure in civil tax matters only allows for an exception when the whereabouts of the taxpayer are not disclosed to the Comptroller.	It is recommended that wider exceptions from prior notification be permitted in civil tax matters (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

Determination	Factors underlying recommendations	Recommendations
Phase 2: Partially Compliant	The notification provisions of the amended EOI Act came into force only after the current review period and have not yet been applied in practice. Neither has the IRD developed internal procedures or processes to be followed when a taxpayer must be notified. Finally, the Comptroller can make an application to the High Court for an order to compel production of information “without notice” only in certain circumstances; it remains to be seen whether these circumstances will suffice to cover all situations where notification may be detrimental to the execution of a request or to an investigation in a requesting jurisdiction.	Dominica should monitor implementation of its new procedure to ensure that it does not unduly prevent or delay effective exchange of information.
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
Phase 1: The element is in place.		
Phase 2: Compliant		
The jurisdictions’ network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
Phase 1: The element is in place		Dominica should continue to develop its exchange of information network to the standard with all relevant partners.
Phase 2: Compliant		

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>)		
Phase 1: 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.
Phase 2: Partially Compliant	All documents submitted by the Comptroller to the High Court to obtain an order to compel production of information, including an EOI request, will become a matter of public record. Procedures exist in Dominican law to seal sensitive documents. However, to date, these procedures have not been applied by a court. Therefore, it is uncertain whether such sealing procedures would be effective in practice to ensure the confidentiality of EOI requests. submitted to a court.	Dominica should monitor the application of provisions to seal court documents to ensure that the confidentiality of EOI requests forming part of an application for a court order is protected.
	To prevent the disclosure of EOI requests submitted to a court, the Comptroller must apply for such documents to be sealed. Although legal provisions to seal sensitive documents exist in Dominican law, EOI staff were unaware of this process or legal provisions surrounding such court procedure.	Dominica should also ensure that officials responsible for handling EOI requests are aware of all relevant legal provisions and court procedures for the protection of sensitive information so that it can meet its confidentiality obligations as provided for under the international standard.
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
Phase 1: The element is in place.		
Phase 2: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
Phase 1: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Phase 2: Partially Compliant	Dominica has in place only minimal organisational processes for handling incoming EOI requests. The IRD has neither developed any internal manuals or guidelines on EOI nor provided training to its staff. The organisational processes do not appear adequate to conduct EOI in an effective and timely manner.	Dominica should further develop the organisational processes of the EOI unit, including developing internal guidelines or materials and training EOI staff, to ensure that they are sufficient for effective EOI in practice.

Annex 1: Jurisdiction’s response to the review report³⁵

The Government of Dominica places on record, its continued support for the OECD Global Forum’s work on Transparency and Exchange of Information for Tax Purposes. We thank in particular our assessment team of Assessors: Evelyn Lio from Singapore and Caroline Fitamant from France and from the Global Forum Secretariat: Renata Teixeira and Kathleen Kao as well as our colleagues in the Peer Review Group for their invaluable comments. We are particularly pleased that the Global Forum has recognized Dominica’s actions with regard to implementing the Phase 1 recommendations. In doing so, Dominica continues to demonstrate its commitment in order to ensure that the legislative framework to meet the international standard is implemented.

Dominica accepts the findings of the assessment team in the Phase 2 report. Further, the continued participation of Dominica in the Peer Review process demonstrates our commitment to meeting the international standard on transparency in the exchange of tax information. We will ensure that the recommendations emanating from the report are acted upon with all deliberate speed. In that regard the Technical Working Group comprising of representatives of the Inland Revenue Division, the Financial Services Unite, the Attorney General’s Chambers and the Ministry of Foreign Affairs will continue to engage and work with work with all stakeholders We look forward to continued engagement with the Global Forum and other members of the PRG.

35. 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

The tables below summarise Dominica’s EOI relations allowing for exchange of information upon request in the field of direct taxes. Dominica has signed 20 TIEAs, 1 DTC, and 1 regional multilateral agreement. Dominica has completed the ratification processes to bring into force all agreements that are in line with the standard.

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.³⁶

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 ^a	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

Note: a. 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.

36. <http://caricom.org/treaties>.

Bilateral agreements

	Jurisdiction	Type of arrangement	Date signed	Date in force
1	Australia	TIEA	31-Mar-2010	01-Jul-2010
2	Belgium	TIEA	26-Feb-2010	24 Nov-2014
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	Not yet in force in the Faroe Islands
6	Finland	TIEA	19-May-2010	Not yet in force in Finland
7	France	TIEA	07-Oct-2010	14-Dec-2011
8	Germany	TIEA Protocol	21-Sep-2010 21-Sep-2010	Not yet in force in Germany
9	Greenland	TIEA	19-May-2010	17-May-2012
10	Iceland	TIEA	19-May-2010	24-Nov-2014
11	Ireland	TIEA	09-Jul-2013	14-Nov-2013
12	Netherlands	TIEA	11-May-2010	24-Nov-2011
13	New Zealand	TIEA	16-Mar-2010	24-Nov-2014
14	Norway	TIEA	19-May-2010	22-Jan-2012
15	Poland	TIEA	10-July-2012	Not yet in force
16	Portugal	TIEA	29-Jul-2010	5-Oct-2010
17	South Africa	TIEA	7-Feb-2012	Not yet in force
18	Sweden	TIEA	19-May-2010	Not yet in force
19	Switzerland	DTC	20-Aug-1963	01-Jan-1961
20	United Kingdom	TIEA	31-Mar-2010	23-Dec-2011
21	United States	TIEA	01-Oct-1987	09-May-1988

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

Constitution of the Commonwealth of Dominica

Commercial laws

Banking Act 2015

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) (Amendment) (No.2) Act 2013
Money Laundering (Prevention) Regulations, S.R.O.14 of 2013
Proceeds of Crime Act 1993
Proceeds of Crime Act (Code of Practice) 2014

Annex 4: List of participants

Attorney General’s Chambers
Inland Revenue Department
East Caribbean Community Bank
Financial Intelligence Unit
Financial Services Unit
Ministry of Finance
Registered Agents and Trustees

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: DOMINICA

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

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

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

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

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

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

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 visit www.oecd.org/tax/transparency and www.eoi-tax.org.

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