GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

ARUBA

2018 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Aruba 2018 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

October 2018
(reflecting the legal and regulatory framework as at July 2018)

Please cite this publication as:
OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Aruba 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris.
https://doi.org/10.1787/9789264306042-en

ISBN 978-92-64-30602-8 (print)
ISBN 978-92-64-30604-2 (pdf)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. the implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. the implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. 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 reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbrevations and acronyms

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010.
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
4th AMLD	EU Fourth Anti-Money Laundering Directive
AEOI	Automatic Exchange of Information
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
AVV	Aruba exempt companies (*Aruba vrijgestelde vennootschap*)
BBO	Turnover Tax (*Belasting op Bedrijfsomzetten*)
CBA	Central Bank of Aruba
CDD	Customer Due Diligence
CLG	Company Limited by Guarantee
CRS	Common Reporting Standard
DNFSP	Designated Non-Financial Service Provider
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
EU	European Union

FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FIOT	Financial Intelligence and Fraud Unit of the Department of Taxes
FIU	Financial Intelligence Unit of Aruba, i.e. Reporting Centre for Unusual Transactions (*Meldpunt Ongebruikelijke Transacties*)
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
GTO	National Ordinance of 28 February 2004, regarding the implementation of tax legislation (General Tax Ordinance)
ISD	Integrity Supervision Department of the Central Bank of Aruba
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NOIAM	National Ordinance of 13 December 2017 on International Assistance in Tax Matters
NV	Limited liability companies (*naamloze vennootschap*)
PRG	Peer Review Group of the Global Forum
PSD	Prudential Supervision Department of the Central Bank of Aruba
Regulated Entity	Financial services providers or designated non-financial service providers as defined in Article 1, paragraph 1, of the AML/CFT State Ordinance State
SOSTSP	State Ordinance on Trust Service Providers
TSP	Trust and Corporate Service Provider
TIEA	Tax Information Exchange Agreement
VAT	Value Added Tax
VBA	Aruba limited liability companies (*vennootschap met beperkte aansprakelijkheid*)

Executive summary

1. This report analyses the implementation of the international standard on transparency and exchange of information on request in Aruba on the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 31 July 2018 and the practical implementation of this framework, in particular in respect of EOI requests processed during the period of 1 July 2014 to 30 June 2017. This report concludes Aruba to be rated Largely Compliant overall. In 2011 the Global Forum evaluated Aruba's legal framework (Phase 1 Report).

2. In 2015 the practical implementation of the legal framework was reviewed (Phase 2). The report of that evaluation (the 2015 Report) concluded Aruba to be rated as Largely Compliant overall.

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report (2015)	Second Round EOIR Report (2018)
A.1	Availability of ownership and identity information	PC	**PC**
A.2	Availability of accounting information	LC	**PC**
A.3	Availability of banking information	C	**LC**
B.1	Access to information	LC	**LC**
B.2	Rights and Safeguards	LC	**C**
C.1	EOIR Mechanisms	C	**C**
C.2	Network of EOIR Mechanisms	C	**C**
C.3	Confidentiality	C	**C**
C.4	Rights and safeguards	C	**C**
C.5	Quality and timeliness of responses	LC	**LC**
	OVERALL RATING	**LC**	**LC**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

3. Since the 2015 Report Aruba continues to perform reasonably well in all aspects of transparency and exchange of information barring the availability of legal and beneficial ownership of information (Element A.1). Peers have generally been satisfied with the quality and timeliness of the information provided under Aruba's EOI mechanisms except for the adverse peer input on two requests related to accounting information which met with avoidable delays.

4. The 2015 Report made recommendations in respect of Element A.1 to monitor availability of ownership information for all entities, including in respect of bearer shares, and supervision of the obligation to keep accounting records (Element A.2). In terms of access to information by the competent authority (Elements B.1 and B.2), Aruba was also recommended to monitor the then recently introduced amendments to a number of provisions having an impact on the process of collecting information for EOI purposes, in relation to was recommended to use its compulsory powers in all EOI cases to ensure banking information for exchange of information purposes is obtained in a timely manner to legal professional privilege and the role of the Minister of Justice in criminal tax matters, and amendments to the "subjective test" by the Minister of Finance before processing the requests, and the repealing of a notification procedure.

5. In the current review period, Aruba did not receive any requests that could test the newly introduced amendment in respect of the role of the Minister of Justice, however there was no demonstrable progress in supervision of the bearer shares. Further it appears that the amendments of Article 51(3) of the General Tax Ordinance (GTO), to clarify the scope of legal professional privilege, needs wider dissemination and awareness among the lawyers and notaries.

6. In respect of practice of exchanging information, Element C.5, Aruba had been recommended to monitor its internal procedures to ensure timeliness of EOI responses and to systematically provide status updates. Progress was made in timeliness and organisation of exchange of information, even though some weaknesses remain and further progress is possible.

Key recommendation(s)

7. As noted by the 2015 report, Limited liability companies (NVs) are not required to keep identity information on the owners of bearer shares issued prior to 2012. Furthermore, the custodian arrangement for Aruba exempt companies (AVVs) may not be sufficient. Aruba should ensure that identity information on the owners of bearer shares in NVs and AVVs issued prior to 2012 is available.

8. Some other key recommendations relate to the strengthening of the Terms of Reference of the peer reviews in 2016 in relation to the availability of beneficial ownership information. Beneficial Ownership information on companies is available wherever a company engages with a service provider having obligations under the anti-money laundering framework. While AVVs and VBAs are required to engage an AML obligated service provider, there is no such requirement in respect of NVs. Even in cases where such a requirement exists, there may be situations where the AML/CFT agent is not replaced, in the event of disengagement by the AVV or the service provider, and the entity is then without any AML obligated person in Aruba to provide the updated beneficial ownership information. Aruba is recommended to ensure that all the legal entities are adequately covered by either AML, commercial or tax laws to ensure the availability of beneficial ownership information for all entities at all times. In respect of trusts and foundations, since the definition of beneficial owner sets the threshold at 25% ownership, the requirements under the standards are not met in terms of identifying all the beneficial owners in all cases below this 25% threshold. Aruba should ensure that beneficial ownership information is available for trusts and foundations in all cases.

9. In addition, to ensure continuity of effective exchange of accurate and up-to-date beneficial ownership information, Aruba is recommended to design and implement adequate supervisory programmes in all cases.

10. In respect of the oversight is mainly carried out by the tax administration which could be more rigorous in its application. Aruba is recommended to ensure adequate supervision as well as enforcement provisions to ensure the availability of accounting information at all times with all relevant entities and arrangements.

11. In its exchange practice, Aruba did not use its compulsory powers to access and provide the accounting information sought by a partner which has adversely impacted the exchange of information. Aruba is recommended to use its compulsory powers and make use of dissuasive sanctions in the GTO to ensure effective exchange of information.

Overall rating

12. Aruba is overall rated Largely Compliant with the EOIR standard. Aruba has had only two EOIR partners but this includes a significant EOI relationship with the Netherlands, Aruba being part of the Kingdom of the Netherlands, from where came most of the 9 requests received over the period under review (1 July 2014 to 30 June 2017). Aruba has responded to more than 40% of its requests in 90 days and the peer feedback from the Netherlands showed an overall positive EOI relationship with Aruba, but this was not wholly reflected in the input from the other peer. Aruba also sent 35 requests during the period under review and there were no adverse inputs from peers on the same.

13. The report was approved by the PRG at its meeting on 10-13 September 2018 and was adopted by the Global Forum on 12 October 2018. A follow up report on the steps undertaken by Aruba to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvements.	NVs are not required to keep identity information on the owners of bearer shares issued prior to 2012. Furthermore, the custodian arrangement for AVVs may not be sufficient.	Aruba should ensure that identity information on the owners of bearer shares in NVs and AVVs issued prior to 2012 is available.
	In the case of foreign trusts administered by Aruban trustees/service providers, the beneficial owners to be identified are those with 25% or more of the capital of a trust or who can exercise effective control over such a legal arrangement (article 1, AML/CFT State Ordinance).	Aruba is recommended to ensure that legal and beneficial ownership information not limited to the 25% threshold is available in all cases in respect of foreign trusts, where Aruban trustees/service providers are involved.
	Only VBAs and AVVs are required to engage an AML obligated service provider and there is no such requirement in respect of NVs. Further there may be situations where the agent for AVVs is not replaced in the event of disengagement by the AVV or the TSP, and the AVV is then without any AML obligated person in Aruba to provide the updated beneficial ownership information.	Aruba is recommended to ensure that all the legal entities are adequately covered by either AML, commercial or tax laws to ensure the availability of legal and beneficial ownership information for all entities at all times.

Determination	Factors underlying recommendations	Recommendations
EOIR Rating: Partially Compliant	Aruba continues to not have a regular system of oversight to monitor compliance with the requirements on NVs, VBAs, partnerships, foundations and trusts to keep and file ownership and identity information. During the review period the inspections/verifications were not adequate to come to any conclusion on whether Aruba ensures the availability of accurate and updated beneficial ownership in practice, particularly in the cases of companies, partnerships and trusts. It is also noted that there are more than 90% inactive AVVs and more than 60% inactive NVs as per the records of the Chamber of Commerce and Industry. Further, the definition in the AML guidance is not fully in line with the standard, indicating a preference for treating managers as the beneficial owners.	Aruba should ensure compliance by all entities with ownership and identity information-keeping and filing requirements.To ensure continuity of effective exchange of accurate and up-to-date beneficial ownership information, Aruba is recommended to design and implement adequate supervisory programmes to ensure that updated ownership information is available in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but needs improvement	There are no legal obligations for retention of accounts of liquidated, dissolved or struck-off companies.	Aruba is recommended to ensure that accounting records of liquidated, dissolved or struck-off companies are retained for 5 years.

Determination	Factors underlying recommendations	Recommendations
EOIR Rating Partially Compliant	In the current review period, adverse peer input has been received in respect of the two requests for accounting information sought from Aruba, whereby it could not be provided at all in one case and an avoidable delay occurred owing to lack of compliance by the registered agent in the other case. Further, in the review period there has been only a limited supervision by the Tax Authority as well as the Chamber of Commerce and Industry to ensure the availability of accounting information with all entities (including the dormant companies) and arrangements at all times.	Aruba is recommended to ensure adequate supervision as well as enforcement provisions to ensure the availability of accounting information at all times with all relevant entities and arrangements.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement.	In respect of trusts, since the definition of beneficial owner sets the threshold at 25% ownership, the requirements under the standards are not met in terms of identifying all the beneficial owners in all cases. Further, the definition in the AML guidance is not fully in line with the standard, indicating a preference for treating managers as the beneficial owners.	Aruba should ensure that beneficial ownership information is available for trusts in all cases.
EOIR Rating Largely Compliant		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
EOIR Rating Largely Compliant	In the current review period Aruba did not use its compulsory powers to access and provide the accounting information sought by a partner which has adversely impacted the exchange of information.	Aruba is recommended to use its compulsory powers and make use of dissuasive sanctions in the GTO to ensure effective exchange of information.
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 *(ToR B.2)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The jurisdiction's network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction's mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework determination:	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
Largely Compliant	Delays have been experienced in answering some EOI requests received during the period under review. In addition, Aruba has not consistently provided status updates to all its treaty partners in relation to requests that cannot be replied within 90 days.	Aruba should systematically provide an update or status report to its EOI partners in situations when the competent authority is unable to provide a substantive response within 90 days.

Overview of Aruba

14. This overview provides some basic information about Aruba that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Aruba's legal, tax or regulatory systems.

15. Aruba is an island located at the southern part of the Caribbean Sea, surrounded by Curacao and Venezuela to its south. It forms part of the Kingdom of the Netherlands, along with the Netherlands, Curacao and Sint Maarten. Aruba's economy is primarily dependent upon tourism. With a population of 102 484, it has a per capita income of USD 28 924.

Legal system

16. The legal system of Aruba is based on the Dutch legal system with some modifications due to local and/or regional circumstances and the substantially smaller scale of Aruba compared to the Netherlands. The basic rights of citizens, the institution and separation of the judiciary, legislative and executive branches, the organisation of government and its tasks and obligations, along with related subjects are regulated in the Constitution of Aruba. Aruba has its own parliament and the legislative power is vested in both the parliament and the Governor.

17. The authority to legislate is in the hands of both the Government and the Staten (parliament) and is exercised via National Ordinances or Acts. The authority to further regulate a subject can be delegated to the Government and is exercised through State decrees and Ministerial regulations. In terms of hierarchy of laws, the Acts are at the top, followed by the National Ordinances, State decrees and ministerial regulations in that order.The judiciary is made up of independent judges who are appointed by the King upon recommendation of the Common Court of Justice of the Netherlands Antilles and Aruba (Common Court). Cases are heard in first instance by the Court in First Instance and can be appealed to the Common Court as court of second instance, including in tax cases. Further appeal is possible at the Supreme Court of the Netherlands, however only for civil and penal cases (and not for example for administrative or tax cases). In this case only the application of the law by the previous instance is the subject of the judgment.

Tax system

18. In matters of taxation, Aruba has its own tax system independent of the Netherlands. The responsible minister is the Minister in charge of Finance. All taxation matters are handled by the Tax Department (which is a part of the Ministry of Finance). Auditing and collection of taxes form an integral part of the Inspectorate of Direct Taxes. Aruba's direct tax regime is based on two different systems regulated under the General Tax Ordinance, each with their own conditions for filing and payment of the taxes due, as follows: assessment taxes, such as corporate and individual income taxes, where the taxpayer has to file an annual return based on which the tax authorities will issue an assessment; and filed return taxes, such as wage tax, turnover tax (BBO), social security premiums and dividend withholding tax, where the taxpayer has to file a return and pay taxes on a monthly basis or upon dividend distribution.

19. All individuals residing in Aruba are subject to income tax at progressive rates (up to 58.95%, and lowered to 25% if some conditions are met) on their worldwide income. Non-residents are subject to the individual income tax for income derived from some specific sources, such as real estate situated in Aruba and employment performed in Aruba. Wage tax is an advance levy to the income tax, withheld by the employer in Aruba or foreign employer with a permanent establishment in Aruba. The Tax Department may however appoint a foreign employer as a withholding agent (even if there is no permanent establishment).

20. Corporate income tax is due if an enterprise is carried out through a resident entity (i.e. incorporated under Aruban law or effectively managed in Aruba) or a permanent establishment or representative of a foreign entity in Aruba. NVs, AVVs and VBAs are subject to profit taxation at the rate of 25% (except where established in a free zone, in which case they are subject to a profit tax rate of 2% on profit achieved with free zone activities), in accordance with the State Ordinance on Corporate Income Tax. Different special tax regimes may apply upon election and provided that certain conditions are met (see more details under section A.1. below), as follows: NVs, AVVs and VBAs can elect to be treated as fiscally transparent; NVs and VBAs could opt for the imputation payment (IPC) regime of flat 10% tax rate for specified activities (shipping, aviation etc.) which ceased to exist with effect from 9 December 2015. However, a transitional arrangement is in place that allows companies to apply the old IPC regime for the years through 2025 if they had applied for the old IPC regime before 9 December 2015. AVVs and VBAs can also choose to be exempt from profit taxation and dividend withholding tax if they perform certain qualified activities.

21. Aruba imposes a dividend withholding tax on all dividend distributions by Aruba based companies. The tax rate is: 10% of the dividend distribution, as a rule; 5% of the dividend distribution if the shares of the distributing company or the receiving company are (for at least 50% of the shares and the voting rights) directly or indirectly listed at a qualified stock exchange; or 0% if the participation exemption is applicable.

Financial services sector and other relevant professions

22. The Central Bank of Aruba (CBA) is the sole supervisory authority in Aruba with respect to the financial sector. The CBA's supervision seeks to safeguard the confidence in the financial system of Aruba by promoting the (financial) soundness and integrity of the supervised sectors and institutions. In this respect, the CBA, pursuant to the sectoral supervisory State Ordinances, is responsible for the regulation and supervision of the credit system, insurance sector, company pension funds, money transaction companies (including bureaux de exchange), trust service providers and companies that fall under the scope of the State Ordinance of the supervision of the securities business. In addition, the CBA is entrusted with the execution of the AML/CFT State Ordinance and the Sanction State Ordinance. Subsequently, the CBA also has AML/CFT oversight responsibility over all sectors subject to the AML/CFT State Ordinance and the Sanction Decree to Combat Terrorism and Financing Terrorism. These include, besides the financial institutions, the so-called Designated Non-Financial Service Providers or DNFSPs. The DNFSPs include lawyers, notaries, tax advisors, accountants, and real estate agents, dealers in goods of high value, trust service providers (TSPs) and casinos.

23. The financial sector consists of regulated financial businesses, currently, (i) 11 credit institutions registered in Aruba (5 commercial banks, 1 offshore bank (solely engaged in banking activities with non-residents), 1 mortgage bank, 2 credit unions and 2 other financial institutions); (ii) 22 insurance companies (life, non-life and captive), (iii) 3 money transfer companies (iv) 12 TSPs and (v) 8 pension funds companies.[1] Under Aruban law, all banks operating in or out of Aruba must be licensed.

24. The only other relevant professions currently regulated under Aruban law are lawyers and civil notaries. The tax advisors have a representative body which regulates their professional conduct. Legislation for the regulation of accountants is pending for approval of the Aruban parliament. Pursuant to the sectoral supervisory state ordinances, only auditors registered at the "*nederlandse beroepsorganisatie voor accountants*" (nba), the

1. Website reference: www.cbaruba.org/cba/getPage.do?page=SUPERVISION_LIST.

professional body for accountants in the Netherlands, are allowed to certify the annual financial statements of supervised credit institutions, insurers and company pension funds.

FATF Evaluation

25. The most recent FATF (3rd round)-assessment of Aruba was finalised in 2009 (www.fatf-gafi.org/documents/documents/fur-aruba-2014.html). In February 2014, the FATF recognised that Aruba had made significant progress in addressing the deficiencies identified in the 2009 mutual evaluation report and could be removed from the regular follow-up process. Aruba was rated LC for recommendation 10, NC for recommendation 24 and PC for recommendation 25. With respect to recommendation 10 (LC), the deficiencies determined by FATF in their 3rd round report (2009) were in the area of record keeping requirements.[2] With respect to recommendation 24 (NC), the deficiencies determined by FATF in their 3rd round report (2009) were around lack of guidance to adhere to the AML/CFT obligations by FIs, DNFSPs and Casinos.[3] With respect to recommendation 25 (PC) the deficiencies were largely related to guidance on reporting obligations.[4]

2. R10: The full scope of financial services is not covered by records keeping requirements; No specific requirements for financial institutions to record transactions in a manner to permit reconstruction of individual transactions, in particular for occasional customers; No requirement to make this information available on a timely basis to competent authorities.
3. R24: The FIU does not issue feedback on ML/TF methods and trends nor sanitised cases; Of the range of DNFBPs, only casinos have been given any feedback or guidance; The guidance issued to casinos is limited to quarterly newsletters, compliance officers sessions and liaison; The MOT has not issued any guidelines to assist FIs or DNFBPs to comply with their respective AML/CFT requirements; The AML/CFT directives for banks and insurance companies, although very useful, are limited to CDD requirements and do not establish links with reporting obligations; The scope of the Operational and AML/CFT guidelines for money transfer companies is to narrow and does not really address AML/CFT provisions; The scope of this guidance does not clarify the scope of financial activities subject to AML/CFT requirements.
4. R25: The FIU does not issue feedback on ML/TF methods and trends nor sanitised cases. Of the range of DNFBPs, only casinos have been given any feedback or guidance; The guidance issued to casinos is limited to quarterly newsletters, compliance officers sessions and liaison. MOT (as a supervisor): The MOT has not issued any guidelines to assist FIs or DNFBPs to comply with their respective AML/CFT requirements. CBA: The AML/CFT directives for banks and insurance companies, although very useful, are limited to CDD requirements and do

26. The February 2014 follow-up report contains a detailed description and analysis of the actions taken by Aruba in respect of the core and key Recommendations rated PC or NC in the 2009 mutual evaluation report. In particular, the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (AML/CFT State Ordinance) remedied many important deficiencies and inconsistencies in relation to preventive measures and the allocation of supervisory duties to the Central Bank of Aruba. Aruba also conducted an AML/CFT National Risk Assessment. Aruba has not yet been reviewed against the 2012 FATF Recommendations The on-site visit of the Caribbean FATF (4th round)-assessment is scheduled to take place in third quarter of 2020.

Recent developments

27. As compared to the previous review period (from 1 July 2010 to 30 June 2013), there have not been many significant changes to the legal framework of Aruba. The few relevant changes include the enactment of the National Ordinance of 13 December 2017 on International Assistance in Tax Matters (NOIATM)) to address the requirements of both AEOI as well as EOIR. The new provisions have replaced the provisions of the General Tax Ordinance which allowed for providing assistance in respect of EOIR, using the access powers in the GTO.

not establish links with reporting obligations. The scope of the Operational and AML/CFT guidelines for money transfer companies is to narrow and does not really address AML/CFT provisions. The scope of this guidance does not clarify the scope of financial activities subject to AML/CFT requirements.

Part A: Availability of information

28. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

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

29. The 2015 Report found that the legal and regulatory framework on the availability of identity and legal ownership was in place, but certain aspects needed improvement and the practice was rated Partially Compliant to the EOIR standard. The 2015 report noted in detail the several changes made by Aruba in its legal and regulatory framework to ensure obligations were imposed on domestic and foreign companies, partnerships, trusts and foundations for keeping ownership and identity information. It concluded that they were generally sufficient to meet the international standards, but found them to be inadequate with respect to ensuring ownership information for NVs and AVVs with bearer shares issues prior to 2012. No progress was made by Aruba since 2015 in this respect. The 2015 report also noted that supervision of availability of ownership information needed to be strengthened since Aruba did not have a regular system of oversight to monitor compliance with the requirements on NVs, VBAs, partnerships and foundations to keep and file ownership and identity information and it is not ensured always that AVVs and NVs have a representative in Aruba. Further, the then newly introduced obligations for Limited Partnerships and Foundations to maintain their ownership information in a register had not been sufficiently tested in practice to enable it to be assessed.

30. In respect of those new aspects of the 2016 ToR that were not evaluated in the 2015 Report, particularly with respect to the availability of beneficial ownership information, this information is available where any relevant entity or arrangement engages a person obliged to conduct customer due diligence (CDD) under the anti-money laundering law (AML/CFT law).

The records are required to be maintained for at least ten years and there are penalties and enforcement provisions in place.

31. However, the AML/CFT law definition of "beneficial owner" under the review period is not identical with that which applies for the purpose of the ToR indicating a preference for treating managers as the beneficial owners, although it would guarantee that information tracing the chain of ownership is available.

32. Although Aruba has a multi-agency supervisory framework in place for oversight of legal and beneficial ownership information (the CBA, Tax Office, Chamber of Commerce), in the review period there did not seem to be adequate/sufficient number of inspections/verifications by all these oversight agencies, to come to any conclusion on the effectiveness of these supervisory activities to ensure the availability of accurate and updated beneficial ownership in practice, for all legal entities and arrangements. It is also noted that there is no legal obligation for all legal entities to necessarily engage an AML obligated service provider. Further, it is also noted that there are more than 90% inactive AVVs and more than 60% inactive NVs as per the records of Chamber of Commerce and Industry, where availability of accurate ownership information may not be available.

33. To ensure continuity of effective exchange of accurate and up-to-date beneficial ownership information, Aruba is to update the AML guidance in line with the international standards and design and implement adequate supervisory programmes, to ensure that updated ownership information is available in all cases.

34. In the previous review period, Aruba received one EOI request from one jurisdiction concerning ownership information. The 2015 report noted that the information in that one case was available and provided in a timely manner to the requesting jurisdiction.

35. During the current peer review period, none of the nine requests Aruba received related to legal and beneficial ownership information.

36. The new table of recommendations, determination and rating is as follows:[5]

5. The tables of determinations and ratings shown in this report display all recommendations that have been made in the previous report in strike-through and replaced, if necessary, with recommendations based on the current analysis in all cases where the circumstances have changed. If circumstances have not changed then the factor underlying the recommendation and the recommendation remain unchanged. New recommendations and factors underlying those recommendations are shown as underlined. On publication, the box will displayed as a clean version.

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	NVs are not required to keep identity information on the owners of bearer shares issued prior to 2012. Furthermore, the custodian arrangement for AVVs may not be sufficient.	Aruba should ensure that identity information on the owners of bearer shares in NVs and AVVs issued prior to 2012 is available
	While it is not possible to form a Trust under Aruban civil law in the case of foreign trusts administered by Aruban trustees/service providers, the beneficial owners to be identified are only those with 25% or more of the capital of a trust for whom the TSP performs its work (article 1, AML/CFT State Ordinance), which is not in line with the standards	Aruba is recommended to ensure that legal and beneficial ownership information not limited to the 25% threshold is available in all cases in respect of foreign trusts, where Aruban trustees/ service providers are involved.
	Only VBAs and AVVs are required to engage an AML obligated service provider and there is no such requirement in respect of NVs. Further there may be situations where the agent for AVVs is not replaced in the event of disengagement by the AVV or the TSP, and the AVV is then without any AML obligated person in Aruba to provide the updated beneficial ownership information. Further the definition in the AML guidance is not fully in line with the standard indicating a preference for treating managers as the beneficial owners.	Aruba is recommended to ensure that all the legal entities are adequately covered by either AML, commercial or tax laws to ensure the availability of legal and beneficial ownership information for all entities at all times.
In place but needs improvement		

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
	Aruba continues to not have a regular system of oversight to monitor compliance with the requirements on NVs, VBAs, partnerships, foundations and trusts to keep and file ownership and identity information. During the review period the inspections/ verifications were not adequate to come to any conclusion on whether Aruba ensures the availability of accurate and updated legal and beneficial ownership in practice, particularly in the cases of companies, partnerships, foundations and trusts. It is also noted that there are more than 90% inactive AVVs and more than 60% inactive NVs as per the records of Chamber of Commerce and Industry, where availability of accurate ownership information may not be available.	Aruba should ensure compliance by all entities with ownership and identity information-keeping and filing requirements. To ensure continuity of effective exchange of accurate and up-to-date beneficial ownership information, Aruba is recommended to design and implement adequate supervisory programmes to ensure that updated ownership information is available in all cases.
Rating: Partially Compliant		

ToR A.1.1. Availability of legal and beneficial ownership information for companies

37. The 2015 Report analysed the legal framework with regard to company formation in Aruba (see 2015 Report, parags57-60). There have been no amendments to that legal framework since then. The main piece of legislation that governs companies in Aruba is the Commercial Code and State Ordinance on VBAs, referred together as Commercial Laws in this report.

38. Generally, companies formed under the Commercial Code can be limited liability companies (*naamloze vennootschap*, NVs) (articles 33-155, Commercial Code); Aruba exempt companies[6] (*Aruba vrijgestelde vennootschap*,

6. The Aruba exempt company ("*Aruba vrijgestelde vennootschap*") is a legal person with an authorised capital divided into shares. The Aruba Exempt Company Regime was one of the four Aruba tax regimes listed in the 1999 report of the Code of Conduct Group/Primarolo Group. The regime was changed effective 1 January 2006 in order to meet the requirements of the EU and OECD concerning harmful tax competition. The general exemptions from corporate income tax

AVVs) (articles 155a-155tt, Commercial Code); and Aruba limited liability companies (*vennootschap met beperkte aansprakelijkheid*, VBAs), introduced on 1 January 2009 (State Ordinance on the VBA). There are 14 031 (active: 6 810) NVs, 8 903 (active: 643) AVVs and 1 850 (active: 1 690) VBAs registered in Aruba. Also Aruba has reported that there are 2 320 foreign companies in Aruba. It is noted that there are more than 90% inactive AVVs and more than 60% inactive NVs. However, these companies could have economic activities and yet be considered as inactive for the purposes of updating ownership and accounting information annually at the Chamber of Commerce and Industry. Therefore this presents a potential gap in availability of accurate legal ownership information in respect of companies in Aruba.

Types of companies and status

	Total	Active	Inactive	Percentage of inactive companies
AVV	8 903	643	8 260	90%
VBA	1 850	1 690	160	8%
NV	14 031	6 810	7 221	60%

Legal ownership and identity information requirements

39. As described in the 2015 Report in section A.1 (see 2015 Report, paras. 68-76, 89), legal ownership and identity requirements for companies are mainly found in Aruba's Commercial Laws and AML/CFT Law. The following table[7] shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

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and dividend withholding tax for Aruba Exempt Companies ("AVV's") were abolished, and a revised tax regime for AVV's was introduced (which similarly applies to Limited Liability Companies: VBA's). Currently, four possible tax treatments exist for AVVs (and VBAs): the AVV pays corporate income tax at the regular rate; the AVV opts for tax treatment as a partnership (i.e. becoming transparent for Aruba corporate income tax and dividend withholding tax purposes), which is subject to procedural requirements; the AVV's profits are subject to a reduced corporate income tax rate of 10% and distributions of its profits are exempt from dividend withholding tax if the AVV has one or more activities that qualify for "the new IPC regime"; the AVV's profits are exempt from corporate income and distributions of its profits are exempt from dividend withholding tax if the AVV has one or more qualifying activities: holding, financing, investment (not including real estate), or licensing intellectual property.

7. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All"

Type	Commercial laws	Tax law	AML/CFT law
NVs (Limited liability companies)	All	All	Some
AVVs (Exempt companies)	All	All	All (as long as a legal representative is acting)
VBAs (Aruba Limited Liability Companies)	All	All	All (at the stage of incorporation)
Foreign companies	All	All	Some

Commercial laws

40. As noted in the 2015 Report, a notary is required by law to register the VBA with the Chamber of Commerce and Industry and the notary also often offers this service for the NV and the AVV as well. There are four notaries at present in Aruba. It is mandatory to register a company with the Chamber of Commerce and Industry within seven days after incorporation. When incorporated, these entities are required to disclose information on the managing directors, supervisory board directors and legal owners (individuals and legal persons), within a week following the company's establishment (article 8(1) of the Commercial Code). In the event of changes, information required to be filed at the Trade Register must be updated within seven days after the fact has taken place (article 4(2)). In addition, the relevant registration form must be completed (depending on the type of entity being created). The files are kept as paper copies. The Chamber of Commerce and Industry does not destroy records of companies. This Registry information is to be safeguarded indefinitely according to the law.

41. Amendments made to the Commercial Code in 2012 require AVVs and NVs to maintain a shareholder register and AVVs must keep a copy at the office of the company or its legal representative. Under the State Ordinance on the VBAs, the management directors are required to maintain at all times, at the company's office, an up-to-date shareholder register with the names and addresses of all shareholders (legal owners) and of any parties with a right of usufruct and pledge on the shares (article 30(1), 30(2), and 30(3)). All companies (AVVs, NVs and VBAs) must deposit a copy of the register with the Chamber of Commerce and Industry on an annual basis within eight months after the end of the fiscal year. Failure to comply with this obligation

in this context means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. "Some" in this context means that an entity will be required to maintain information if certain conditions are met.

to deposit a copy of the shareholder register is punishable with a maximum fine of AWG 5 000 (USD 2 793).

42. Foreign companies carrying on a business in Aruba are required to register with the Trade Register in the same way as domestic companies. In respect of nominees, as noted by the 2015 Report (see paras 101-104), according to information provided by Aruba, neither the concept of nominee shareholding nor fiduciary owner is recognised under Aruban law and to date the Aruban authorities have no experience with nominees. This has been reconfirmed at the onsite visit for the current review period. However, although the concept of nominee shareholding is not recognised in Aruba, the AML/CFT legislation establishes an obligation regarding the identification of clients by all service providers. In particular, Article 11 requires service providers to perform enhanced customer due diligence in certain situations including with companies that have bearer shares or where the shares are kept by nominee shareholders.

43. As further noted by the 2015 Report (see paras 70-71), companies involved in regulated activities have to disclose to the CBA information on the identity of directors, members of the supervisory board and qualified owners, i.e. holding or exercising, directly or indirectly, more than 10% of the share capital or voting powers. A change of directors, members of supervisory board or qualified ownership of a credit institution, electronic money institution, money transfer company, TSP, insurance company or company pension fund requires prior written authorisation by the CBA.

44. In terms of retention requirements, in the case of AVVs, NVs and VBAs ceasing to exist through liquidation/dissolution or strike-off the record retention requirements for such entities to ensure the availability of ownership information is met under the requirement of AML/CFT legislation, Commercial Code and the GTO wherein the retention period is 10 years. Further, the trade register at the Chamber of Commerce and Industry keeps all registrations archived therein for an indefinite period of time.

Tax law

45. As found by the 2015 Report (see paras 72-77), the tax law ensures that Companies formed under Aruban law (NVs, AVVs 22 or VBAs) will be subject to various disclosure requirements. On an annual basis, those companies are required to file a corporate income tax return where they have to disclose the identity of each shareholder (legal owner). In addition, any legal entity that applies for a tax ruling will be required to disclose the identity and address of all shareholders, including direct shareholding and ultimate beneficial owners. Aruba has clarified that in practice the definition of ultimate beneficial owner as under the AML/CFT law is referred to for this purpose.

In the current review period the number of companies that have applied for tax rulings could not be ascertained. Under Article 49(4)(a) of GTO, within six months after the end of the fiscal year, transparent companies must provide the Inspector with a list of third parties that were shareholders of the fiscally transparent company during the past fiscal year. Transparent companies are NV, AVVs and VBAs that choose to be exempt from profit taxation and dividend withholding tax if they perform certain qualified activities but are also required to disclose the legal ownership information annually. The fiscally transparent company's income, assets and liabilities will be allocated to the participants (i.e. the shareholders) on a pro rata basis. Every year a fiscally transparent entity must provide information on the shareholders, an opening balance, final balance and a profit and loss account. However, it is not required to file a corporate income tax return.

State Ordinance on TSPs

46. The Commercial Code mandates that AVVs must have a legal representative, which can only be a limited liability company incorporated and established in Aruba (article 155a(6),). Such legal representation is provided by a TSP, which must hold a licence and be supervised by the CBA under the SOSTSP. VBAs are also required to have a licensed TSP as legal representative in Aruba, unless the company has one or more natural persons resident of Aruba as managing director(s) or has a legal entity as managing director which, directly or indirectly, has one or more natural persons resident of Aruba as managing director(s). Non-compliance with these obligations regarding the legal representative can result in the dissolution of the AVV (article 155b (3), Commercial Code) or the VBA (article 108, State Ordinance on the VBAs). Managing directors require a director's licence from the department of economic affairs. Pursuant to the business licensing ordinance (*vestigingsverordening bedrijven*) only locals and the individuals pertaining to "category A"[8] (i.e. persons with (long-standing) ties to Aruba and residing in Aruba) are permitted to act as managing directors of N.V., V.B.A or A.V.V.

8. A person is considered a "category A" person if:

a) he is a foreign born Dutch national residing in Aruba for at least 5 years and can provide proof by means of a Statement of Registration issued by the Population Register of Aruba, and is also in possession of an admission permit for an indefinite period of time or a statement of admission pursuant to the "*Landsverordening toelating, uitzetting en verwijdering*" (Admittance, deportation and removal ordinance).

b) he is a foreign born to at least one parent who is an Aruban born Dutch citizen and can provide proof by means of official documents.

47. A TSP, whether acting as director or legal representative of a company, must have at its disposal at all times information recorded in writing or on other data carriers on the identity, assets and background of the ultimate beneficial owners (UBOs) for whom the TSP performs its work. This includes knowledge of (i) the origin of the assets of the ultimate beneficial owner of the body used, and (ii) the purpose for which the group was formed (article 8(1), SOSTSP). This information must be stored for at least ten years (article 8(4)). The ultimate beneficial owner[9] implies identification of the

c) he is a foreigner residing in Aruba for at least 10 years and can provide proof by means of a Statement of Registration issued by the Population Register of Aruba and is also in possession of an admission permit for an indefinite period of time pursuant to the Admittance, deportation and removal ordinance.

d) he is a foreign born Dutch national residing in Aruba for at least 3 years and can provide proof by means of a Statement of Registration issued by the Population Register of Aruba, and is also married to an Aruban born Dutch citizen for at least 1 year and can provide proof by means of official documents, and is in possession of a valid admission permit without a work ban or are of legal residence pursuant to the Admittance, deportation and removal ordinance.

e) he is a foreign born Dutch national residing in Aruba for at least 1 year and can provide proof by means of a Statement of Registration issued by the Population Register of Aruba, and is also married to an Aruban born Dutch citizen for at least 3 years and can provide proof by means of official documents, and are in possession of a valid admission permit without a work ban or are of legal residence pursuant to the Admittance, deportation and removal ordinance.

f) he is a foreigner residing in Aruba for at least 5 years and can provide proof by means of a Statement of Registration issued by the Population Register of Aruba, and is also married to an Aruban born Dutch citizen for at least 3 years and can provide proof by means of official documents, and is in possession of a valid admission permit without a work ban or are of legal residence pursuant to the Admittance, deportation and removal ordinance.

g) he is a foreigner residing in Aruba for at least 3 years and can provide proof by means of a Statement of Registration issued by the Population Register of Aruba, and is also married to an Aruban born Dutch citizen for at least 5 years and can provide proof by means of official documents, and is in possession of a valid admission permit without a work ban or are of legal residence pursuant to the Admittance, deportation and removal ordinance.

9. A natural person: someone who holds an interest of more than 25% of the capital interest or can exercise more than 25% of the voting rights in the shareholders meeting of a customer, or can in another way exercise effective control over such a customer; who is beneficiary to 25% or more of the assets of a legal arrangement, including a foundation and a trust, or can exercise effective control over a such a legal arrangement.

natural person according to the definition in Article 1 of the AML/CFT legislation who exercises control over the company. Please see para 62 below for discussion on definition of UBOs in terms of beneficial ownership requirements under ToR A.1.1.

AML/CFT Law

48. As discussed in the 2015 Report (see paras 94 – 96) the AML/CFT State Ordinance covers financial and designated non-financial service providers (lawyers, notaries, tax advisors, accountants, TSPs etc.). All these service providers are required to determine whether the client is acting for him/herself or a third party and take reasonable measures to establish and verify the identity of the third party. Furthermore, the ordinance introduces specific requirements for service providers to carry out customer due diligence (articles 3-19). This includes the identification and verification of the identity of (i) the client, (ii) the ultimate beneficial owner(s) and (iii) any third parties on whose behalf the client is acting, the establishment of the purpose and intended nature of the business relationship and the exercise of ongoing monitoring of the business relationship and transactions throughout the relationship to ensure that they correspond with the knowledge the service provider has of the client and the ultimate beneficiary.

Legal ownership information – Enforcement measures and oversight

49. It is mandatory to register a company with the Chamber of Commerce and Industry within seven days after incorporation and to provide details of any updated information within seven days. The Aruba authorities advise that these two obligations are complied with in practice by companies that were considered "active" within the register. Nevertheless, there does not appear to be a regular system of oversight in place at the Chamber of Commerce and Industry to monitor compliance with the requirements on companies to keep and file ownership and identity information. The Chamber does not cross-check the changes submitted, nor are there any checks of registered entities in the form of desktop audits or onsite examinations conducted, including in respect of foreign companies. Therefore, this may not ensure that updated ownership information is being kept and filed by all registered entities or that all entities are duly registered. The 2015 report noted that the Chamber of Commerce and Industry did not exercise any oversight in respect of foreign companies and recommended to introduce the same. However, the position of lack of specific oversight in respect of 2 320 foreign companies continues in the present review period also. Accordingly, Aruba is recommended to implement adequate oversight in respect of foreign companies with sufficient nexus to Aruba, to ensure availability of legal ownership information at all times.

50. It is unclear whether the large number of companies identified as "inactive" in the Trade Register are still operating in practice, although they are meant to be dormant. There were no sanctions applied, no strike-offs of inactive/non-compliant companies initiated in the current review period by the Chamber of Commerce and Industry against the 63.1% of companies considered as inactive (they represent 51.5% of NVs, 92.8% of AVVs and 8.6% of BVAs and are reckoned on the basis of the lack of annual filings with the Chamber of Commerce and Industry), although the Chamber clarified that if they were to receive any contrary information they would inform the Department of Economic Affairs.

51. In respect of supervision by the Tax Office, details of the directors and shareholders of companies are stored along with the entity number and information about the company location. Each month the Tax Department receives an email from the Chamber of Commerce and Industry which updates all details on their internal database. In regards to the monitoring of compliance with the obligations under the tax law, the Tax Department engages in both desktop monitoring and also onsite inspections in the form of regular audits. However it not clear as to how the information received by email from the Chamber is cross verified with that in the Tax Department's database. All tax returns are examined upon submission and if concerns about accuracy arise, the taxpayer can be invited to explain the details or a tax audit can be launched. During the period under review, the tax filing compliance rates based on tax returns either filed or filed late by AVVs, NVs and VBAs on average over the three-year period were 65% in 2014, 60% in 2015, 52% in 2016. The compliance rate for 2017, and administrative penalties for failure to file, late filing or incorrect filing of profit tax returns could not be provided by Aruba except for clarifying that in 2017, penalties have been applied to companies for not filing or late filing over the year 2016 in respect of 1 566 companies. Aruba explained that the absence of penalty for a couple of years. was due to a change in the corporate tax and payment system (from a self-assessment system to a declaration with payment system) in combination with the development of a new automated system.

52. During the current review period, the tax administration carried out a total of 124 audits (which include on-site visits). During an audit, a copy of the shareholder register is usually requested and examined. While the details of the risk model adopted for audits could not be ascertained, it was stated by Aruban authorities that tax assessments are sometimes based on information received on a person or a company that is not registered with the tax department but is economically active and as such is liable to tax in Aruba. It is not entirely clear that Aruba have adequately policed the tax filing system to ensure the existence and accuracy of documents. Aruba has however clarified that no breaches with respect to shareholder registers have been identified in the tax audits. Given the low number of audits in comparison to the active

(and the total registered) number of companies, Aruba is recommended to ensure that the oversight by the Tax Authorities is strengthened to ensure adequate monitoring of availability of updated and accurate legal ownership of companies.

53. The CBA Supervision Department is split into a Prudential Supervision Department (PSD; 10 full time staff members) responsible for ensuring financial safety and soundness of the financial sector and an Integrity Supervision Department (ISD; 8 full-time staff members) responsible for integrity-related matters including AML/CFT oversight. In practice, the ISD performs onsite examinations of the regulated entities on a regular basis along with ongoing off site monitoring. The CBA follows a risk-based approach and has a regular cycle of visits in place for the banking sector in particular. Over the current review period, the CBA has carried out a total of 40 onsite examinations in the area of AML/CFT across the various sectors subject to AML/CFT oversight as set out in the table below.

CBA AML/CFT oversight onsite inspections

	2014	2015	2016	2017	Total
Credit institutions/Banks (11)	3	1	2	8	14
Money transfer Companies (3)	0	2	0	0	2
Insurance companies (22)	3	0	1	0	4
TSPs (12)	2	1	1	5	9
DNFSP(400+)	1	1	3	4	9
Pawn shop	0	1	0	0	1
Pension fund	0	0	1	0	1

54. The CBA is also responsible for supervising compliance by the TSPs with the requirements of the SOSTSP, the AML/CFT State Ordinance and the AML/CFT Handbook. The Aruban authorities confirmed that as at 31 December 2017, the 12 licensed TSPs in Aruba serviced 523 client companies. It is noted that the DNFSP group is also subject to off-site supervision (e.g. questionnaires, information letters and information sessions). In 2017, the CBA undertook several activities as part of its offsite surveillance. Surveys were sent out to financial institutions as well as some specific sectors that form part of the so-called DNFSPs to enhance the CBA's information position regarding specific topics. The surveys conducted among the domestic commercial banks were aimed at gathering information on, among other things, the risk assessments conducted vis-à-vis supermarkets and free-zone companies. The CBA also sent out questionnaires to lawyers, real estate companies, jewellers, and car dealers in 2017 to inquire about their adherence to AML/CFT framework. The information received from said surveys concluded in onsite examinations and information sessions among other things.

55. The Central Bank of Aruba requires service providers (including TCSP's) to report annually about: (1) the clients name; (2) the line(s) of business of the client; (3) the type(s) of service that the TCSP renders to the client; (4) the name of the UBO(s) of the client; (5) the residence(s) of the UBO(s) of the client. The compliance rate with this annual filing requirement is 100%. The information provided is inter alia used by the Central Bank of Aruba as one of the sources for the supervisory AML/CFT Risk-Based-Approach. During the period under review, the CBA conducted 7 on-site examinations at the licensed TSPs and found approximately 10 deficiencies which resulted in 3 normative conversations and 7 administrative fines (in the range between Afl. 50 000 (USD 27 933) and Afl. 300 000 (USD 167 598)). Aruba clarified that the deficiencies were based on amongst others, non or late reporting of unusual transactions, incomplete CDD and inadequate policies, procedures and measures in the area of AML/CFT.

56. The number of DNFSPs (TSPs are included in the DNFSPs-group) covered under onsite inspections is significantly less in proportion (2%) than other sectors. Aruba has further reported that the CBA increased the number of on-sites in 2018 for DNFSPs (up to June 2018, 11 on-sites and 4 information sessions were held). Aruba is recommended to strengthen the supervision of DNFSPs to ensure availability of accurate ownership information at all times.

Availability of legal ownership information in exchange of information practice

57. In the current review period, Aruba did not receive any requests related to ownership information. Aruba received only one such request in the previous review period.

Availability of beneficial ownership information

58. Under the 2016 ToR, a new requirement of the EOIR standard is that beneficial ownership information on companies should be available. In Aruba, this aspect of the standard is met through the State Ordinance on the Supervision of Trust Service Providers and AML/CFT law provisions. There is neither a procedure nor an obligation to register beneficial ownership information with the Tax Administration.

Legislation regulating beneficial ownership information of companies

Type	Commercial law	Tax law	AML/CFT law
NVs (Limited liability companies)	None	None	Some
AVVs (Exempt companies)	None	None	All (as long as a legal representative is acting)
VBAs (Aruba limited liability companies)	None	None	All (at the stage of incorporation)
Foreign companies	None	None	Some

SOSTSP (State Ordinance on Trust Service Providers) and AML/CFT law requirements

59. First, the scope of the SOSTSP and AML/CFT law does not cover all relevant legal entities and arrangements as required under the EOIR standard. Only VBAs and AVVs are required to engage an AML obligated service provider – a notary in the case of formation of VBAs and an TSP agent in the case of AVVs (engaged constantly) – and there is no such requirement in respect of NVs. Notaries are not involved for subsequent changes in ownership after formation, unless the company itself requires one for any purpose. There is no obligation for companies to have a local bank account. The Aruban authorities explain that in practice, 82% of N.V.'s active in Aruba hold a bank account with a local bank and subsequently the beneficial ownership information has to be compiled by the local bank involved. The CBA further advises that local banks would close the accounts of inactive NVs for lack of activity. It remains that not all NVs have a bank account in Aruba. Further there may be situations where the agent for AVVs is not replaced, in the event of disengagement by the AVV or the TSP, and the AVV is without any AML obligated person in Aruba to provide the updated beneficial ownership information. It is noted that in practice it is normally the legal representative/agent's responsibility to do the annual filing of updated ownership information with the Chamber of Commerce and Industry and of tax returns with all the annual accounts.

60. At the end of the review period, there were a total of 8 903 AVVs registered with the Trade Register of which 643 are active. Aruba has further clarified that as of June 2018, there are 447 AVVs in Aruba without a legal representative.

61. In the requirements under AML/CFT Law, TSPs, pursuant to Article 3, paragraph 1, subsection b, of the AML/CFT State Ordinance, must identify all the UBOs and take reasonable measures to verify the identity of all the UBO's in such way that the Regulated Entity is convinced of the UBO's identity. Pursuant to Article 19, paragraph 5, of the AML/CFT State

Ordinance, a TSP must verify the identity of the UBO using reliable and internationally accepted documents, data, or information or on the basis of documents, data, or information that have been recognised by law in the state of origin of the UBO as a valid means of identification, in such manner that it is convinced of the identity of the UBO.

62. Under the AML/CFT ordinance the ultimate beneficiary is defined as a natural person: who holds an interest of more than 25% of the capital interest or can exercise more than 25% of the voting rights in the shareholders meeting of a customer, or can in another way exercise effective control over such a customer. Further, the guidance to identify ultimate beneficial owners of a legal entity is specified in the AML/CFT Guidance Handbook (Section 3.6.2.2, para 63) as natural persons holding an interest in the capital of the legal person of 25% or more or 25% or more of the voting rights in the legal person, those directors (or equivalent) who have authority to operate a relationship or to give the Regulated Entity instructions concerning the use or transfer of funds or assets, natural persons with ultimate effective control over the legal person's assets, including the natural persons comprising the mind and management of the legal person, e.g. directors.

63. The guidance is not fully in line with the method of identifying the beneficial ownership of a legal person, as per international standards required to be applied to arrive at the correct beneficial owner, and seems to consider the director/senior managing official on equal footing as (one of) the ultimate beneficial owners, in most cases.

64. In conclusion, since there is no legal requirement for all the companies to necessarily engage an AML obligated service provider at all times, the scope of application of the requirement to identify beneficial owners does not cover all relevant domestic companies, and further since the definition in the AML guidance is not fully in line with the standard, Aruba is recommended to ensure that updated beneficial ownership information as per international standards is available at all times in respect of all companies in Aruba.

Beneficial ownership information of foreign companies

65. Under ToR A.1, where a foreign company has sufficient nexus, including being resident there for tax purposes (for example by reason of having its place of effective management) then the availability of beneficial ownership information is also required, to the extent the company has a relationship with an AML-obligated service provider. Aruba has reported that there are 133 foreign companies at the end of the review period. However, the number of such companies having sufficient nexus in terms of ToR A.1 by virtue of place of effective management in Aruba and having the legal obligation or as a matter of practice engaging an AML obligated service provider was not available. However, in view of the general availability of beneficial

ownership information under the AML/CFT law (as discussed above), it is likely that beneficial ownership information in respect of foreign companies in general, may be available in Aruba in line with the standards, although as noted by the 2015 Report, the Chamber of Commerce and Industry did not exercise any oversight in respect of foreign companies then, and this continues to be the case in this review period also. Further, there does not appear to be any specific compliance strategy designed and implemented by the Tax Office in respect of foreign companies with nexus to Aruba. Aruba is recommended to implement adequate oversight in respect of foreign companies with sufficient nexus to Aruba, to ensure availability of beneficial ownership information at all times.

Beneficial ownership information – Enforcement measures and oversight

66. If an obligated service provider does not keep beneficial ownership, the CBA may impose a cease and desist order. The CBA may also impose an administrative fine of not more than Afl. 1 million (EUR 473 958) for each individual violation. If less than five years have expired since the imposition of an administrative fine to the offender in respect of the same infringement, the maximum amount of the administrative penalty, for each separate violation is Afl. 2 million. Aruba explained that the following administrative fines were imposed by the CBA for not keeping beneficial ownership information: in the year 2014: Afl. 400 000 (USD 223 464) in one case; none in the year 2015; in the year 2016: Afl. 100 000 (USD 55 866) in once case; in the year 2017: Afl. 300 000 (USD 167 598) in one case.

67. The enforcement and oversight measures in respect of ensuring availability of beneficial ownership information of companies are the same as that discussed above, in respect of oversight of legal ownership information.

Availability of beneficial ownership information in Practice (Peer Experience)

68. During the current review period, Aruba was not asked to provide beneficial ownership information in any of the nine requests received from its EOI partners.

ToR A.1.2. Bearer shares

69. The possibility for AVVs and NVs to issue bearer shares was repealed in 2012 (VBAs had no such possibility) and companies were required to convert existing bearer shares into registered shares or to organise that they be managed by a custodian who is a TSP (including a foreign branch or foreign TSP) and AML obligated person or a licensed financial institution (art. 51 and 155i of the Commercial Code). The deadline to do so was 1 February 2015,

i.e. after the period covered in the 2015 Report. Whilst, it is still possible for the holders to subsequently revive the rights associated with what were previously bearer shares, those shares will have had no rights in the interim period and the revived rights will only exist as rights in a registered share. It is noted that there is no formal legal obligation for foreign TSPs to regularly update the company's representative in Aruba so as to update the shareholder register. However that bearer shares do not have any shareholder's rights until they are converted into registered shares.

70. The 2015 Report noted (para 111) that various regimes existed even prior to 2012 with the effect of immobilising bearer shares or preventing their use to some extent. In particular if a TSP acted as director or legal representative of an AVV with bearer shares, it must have either kept them in custody or be informed of the place where they are kept, but the obligation to have a TSP was not well respected in practice. It was also noted that companies with bearer shares could not open a bank account or make use of any other services of a bank in Aruba without disclosing the identity of the beneficial owner(s) of the shares, which should be an incentive to convert existing shares (or open an account abroad). During the on-site visit, the Chamber of Commerce and Industry indicated that with the introduction of the VBA, the Chamber no longer accepts bearer shares, and has not done so since 2008. Thus, bearer shares have practically been abolished for a decade. The Department of Economic Affairs of Commerce and Industry of Aruba does not allow companies to have bearer shares in their statutes.

71. Aruba was recommended to ensure that identity information on the owners of bearer shares in NVs and AVVs issued prior to 2012 is available. Aruba has not provided any information on the remedial measures taken in this regard for e.g. whether the authorities are certain that all the NVs and AVVs have either converted existing bearer shares into registered shares or provided for custodial arrangements and if it is in process, by when it is likely to be concluded. It remains also unknown how many companies created before February 2012 have issued bearer shares and for which value, even though the authorities consider these to be very few. It is also not certain as to how many companies in total have issued bearer shares and what is the position in respect of inactive companies.

72. The 2015 Report noted that during an onsite examination of a TSP, the CBA will select a number of TSP clients with bearer shares to determine whether the TSP complies with the requirements of article 9 of the SOSTSP (custody of bearer shares). It was also noted that if the TSP does not comply, the CBA will instruct the TSP to obtain the required information within a given timeframe and inform the CBA accordingly or if it is not possible for the TSP to comply with the requirements of article 9, it will be instructed to terminate the relationship with the particular client. In the current review period, the CBA did not encounter any bearer shares during its on-sites,

which supports the legal position that, unless held in a custodial arrangement, they should only now exist in registered form.

73. Although there have been no requests received in the previous as well as the current review period, in respect of bearer shares, the volume of EOI in Aruba is insufficient to determine whether there is a gap. Aruba is thus again recommended to monitor this situation and take appropriate measures to ensure that bearer shares issued prior to 2012 do not present any impediments to effective exchange of information with peers.

ToR A.1.3. Partnerships

74. A partnership is a legal form in which several so-called partners perform the same profession, such as lawyers or accountants. They do this under a common name. All the partners of a partnership bring something in, such as money, labour or property. The co-operation between the partners is more or less equivalent. A partner can only enter into obligations for themselves and not for other partners, unless other arrangements are made in advance. There are 3 types of partnerships in Aruba and they do not have legal personality. The partners (whether they are natural or legal persons) are therefore personally liable for the obligations incurred by the partnerships. The following types of partnerships exist in Aruba:

- Open partnerships (*maatschap*): The partners within this partnership, characterised as a contract without legal personality, practice a common profession and are personally liable for the obligations incurred by the firm (articles 1630-1664, book 7A, Civil Code).
- General partnerships (*vennootschap onder firma*): The partners are jointly and severally liable for the debts resulting from the enterprise of the general partnership (articles 1630-1664, book 7A, Civil Code in conjunction with articles 11-31, Commercial Code).
- Limited partnerships (*vennootschap en commandite, LPs*): The partners are separated into two groups: general (or managing) partners are jointly and severally liable for the debts of the LP, they manage the LP and represent the LP in dealings with third parties; the liability of the limited (or silent) partners is limited to the amount of capital they contribute to the LP, they are prohibited from directly managing the affairs of the LP (articles 1630-1664, book 7A, Civil Code in conjunction with articles 15-18 and 27, Commercial Code 31).

75. General partnerships and LPs are always required to register with the Trade Register kept by the Chamber of Commerce and Industry. The Aruban authorities explained that partnerships are in practice often created by professionals like lawyers and accountants that wish to perform their profession under a common name. At the end of the review period, there were 70 open

partnerships (active: 26), 621 general partnerships (active: 121) and 68 limited partnerships (active: 16). The Aruban authorities indicate that an inactive partnership is most often in practice one that no longer participates in the course of trade as a partnership because the partners either stopped their profession or business, became independent again or have continued their profession/business in a different form.Upon establishment, a general partnership is required to disclose to the Trade Register, in respect of each partner:

- name
- domicile
- place and date of birth (including a copy of the birth certificate)
- and nationality, substantiated with all relevant documents like passport or ID card(for locals)
- Original certificate of good behaviour of the partners and a copy of the marriage certificate, if applicable. In both cases not older than three months.

76. LPs are required to provide information on the identity of general partners and to disclose only limited information concerning limited partners, i.e. number, nationalities, countries of residence, and invested amount. Any modification of the information submitted for registration must be reported to the Trade Register the person having the function of director in the partnership. These modifications have to be registered within a week after they occurred (Article 4(2) Trade Registry Ordinance). The maximum applicable penalty for non-compliance is Afl. 10 000 (USD 5 586.60). By virtue of article 9 of the Trade Registry Ordinance, articles 6 and 7 also apply respectively to foreign general partnerships and foreign LPs. However, it is not clear whether chain of ownership information is duly recorded in the case of non-natural persons being partners and Aruba is accordingly recommended to ensure that there is no adverse impact on effective exchange of information in respect of partnerships with corporate partners.

77. The Chamber also retains the records in perpetuity in case of dissolution of the partnerships.

78. If a service provider renders services to a partner or partnership, information on partner(s) and ultimate beneficial owner(s) must be available would be available by virtue of the obligation to ascertain whether a natural person which appears before him/her on behalf of a client is acting for him/herself or a third party (Article 4 AML/CTF State Ordinance) the service provider is required to conduct customer due diligence requirements as set out in Chapter 2 of the AML/CTF State Ordinance and identify both the client and its beneficial owners. However, it is not mandatory for a partnership in Aruba to engage an AML obligated service provider.

79. Under Aruban tax law, partnerships that have income, credits or deductions (including those foreign partnerships that are carrying on business in Aruba) must keep records of all information that is relevant for the enforcement of tax laws, both to the partnership itself and to third parties, such as the partners (article 48(1)(c) and (2), GTO). Aruba is not in a position to provide the number of partnerships with non-individuals as partners, but consider that they would be less than 40. The record retention period is ten years under the GTO.

80. Furthermore, qualifying partners who exercise control over the partnership, or who hold at least 50% of the share capital, are required to have all information that is relevant for the enforcement of tax legislation and may be compelled to provide it to the Tax Inspector upon request (article 45(4) in conjunction with article 2(b) and (i), GTO). Article 48(7) of the GTO requires limited partnerships to hold a register containing the name and address of their limited partners.

Oversight and enforcement

81. The 2015 Report noted that Aruba then had recently amended the General Tax Ordinance requiring Limited Partnerships to maintain a register of their limited partners and accordingly Aruba was recommended to monitor the practical implementation of these amendments to ensure their effectiveness in practice. However in the current review period Aruba has not organised any specific supervision programme, in view of other priorities, to verify the compliance of partnerships in maintaining updated information that identifies the partners in, and the beneficial owners of partnerships as per international standards at all times.

82. Therefore, Aruba is recommended to implement a programme of supervision to ensure the availability of ownership information in respect of partnerships in Aruba at all times.

Availability of partnership information in exchange of information practice

83. During the review period Aruba did not receive any requests on partnerships.

ToR A.1.4. Trusts

84. It is not possible to form a trust under Aruban civil law and there is no domestic trust legislation. Aruba does not recognise foreign trusts and it has not ratified the Hague Convention on the Law Applicable to Trusts and their Recognition. Under Aruban law, there are no restrictions for a resident

of Aruba to act as trustee, protector or administrator of a trust formed under foreign law. However, in order to carry on a business as a TSP, a licence is required from the CBA in accordance with article 2 of the SOSTSP, there must also be compliance with the AML/CFT laws and regulations and the Sanctions State Ordinance. Aruba has reported that there are 12 licensed TSPs at the end of review period or an Aruban resident to be a trustee of a foreign trust, it is not necessary to be a licensed TSP.

85. In terms of availability of ownership information with the trustee, the GTO mandates an Aruban resident trustee or administrator of a foreign trust (whether a natural person conducting a business or profession or a legal entity), to keep records of any information that is relevant for the enforcement of tax laws, both in respect of the person and of third parties (article 48(1)(c) and 48(2)). This may include information about settlors, trustees and beneficiaries, since a trustee residing in Aruba, who owns assets and/or earns income in his/her own name but on behalf of the trust, would be taxed for all the assets and/or income as being his/her own unless the trustee declares the income of the trust separately (which may be sufficiently dissuasive for anyone to act in such a capacity). However, only if the trust performs a business in Aruba a tax return should be filed. Aruba has reported that currently there are no such trustees registered with the tax administration.

86. In addition to the requirements under tax law, if a service provider (financial or designated non-financial entity which includes TSPs) was to be used as an administrator of a foreign trust, information on the settlors and beneficiaries of a foreign trust would be available by virtue of the obligation regarding the identification of clients established under the AML/CFT legislation. This information must be stored for at least ten years (article 8(3) SOSTSP).

87. Under the AML/CFT ordinance the ultimate beneficiary is defined as a natural person who is a beneficiary to 25% or more of the assets of a legal arrangement, including a foundation and a trust, or can exercise effective control over such a legal arrangement. Since the beneficiaries to be identified are only those with 25% or more of the capital of a trust for whom the TSP performs its work (article 1, AML/CFT State ordinance), which is not in line with the standards, Aruba is recommended to ensure that beneficial ownership information not limited to the 25% threshold is available in all cases.

Oversight and enforcement

88. Non-compliance with the AML mandate can lead to the application of administrative sanctions (a penalty charge order or an administrative fine not exceeding AWG 1 000 000 (USD 558 659) and/or the revocation of the licence (articles 11 and 18(2)(b) SOSTSP).

89. The CBA requires TSPs to submit to the CBA on an annual basis a list of the names of the ultimate beneficial owner(s) of all their clients. In the event the CBA detects non-compliance, based on their verification of all documents, formal or informal enforcement measures are considered. Aruba's Central Bank also carries out on-site and off-site supervision of financial intermediaries acting as professional trustees. In the review period, the CBA did not encounter any domestic or foreign trusts being administered by TSPs.

90. The lawyer and accountant interviewed at the on-site demonstrated reasonably good knowledge of the CDD procedures to determine beneficial ownership which would enable Aruba to respond if a request were to be received in future in respect of trusts.

Availability of trust information in exchange of information practice

91. During the review period Aruba did not receive any EOI requests on trusts.

ToR A.1.5. Foundations

92. The different legal forms in which non-profit organisations can operate in Aruba are associations (articles 1665-1684 of the Civil Code) and foundations, which can also conduct business, as regulated under the State Ordinance on Foundations. Foundations are legal persons which have no members, shareholders or owners. Like associations, foundations aim to achieve idealistic, social, charitable or other non-profit goals through working capital given for that purpose (article 1(3), State Ordinance on Foundations). At the end of the review period, Aruba reported that there are a total of 1 627 (active: 1 481) charitable foundations and 2 foundations which conduct business. Inactive foundations are foundations which have been de-registered by a registered representative at the Chamber of Commerce and therefore ceased to exist. The foundation is not removed from the registry but is marked as inactive.

93. Foundations have to be registered in the special public register called the Foundations Register kept by the Chamber of Commerce and Industry. The foundation, as it is a legal entity, has to be registered with the tax authorities. If a foundation is engaged in regulated activities, it has to be registered with the CBA. Foundations are to maintain information on the name and address of their beneficiaries in a register as per Article 48(7) of the GTO (see 2015 Report, paras 149-152). Foundations that are engaged in regulated activities (e.g. pension funds) are required to disclose information regarding the identity of founders, board members, and beneficiaries to the CBA and to the Ministry of Labour Affairs.

94. There is no obligation under the State Ordinance on Foundations or the GTO which would ensure that any of the members, founder, and beneficiaries are resident in Aruba or the register itself is located in Aruba. However, Aruban authorities explain that whenever an AML obligated service provider is engaged by the foundation or whenever asked by the Tax Authorities under the GTO, the foundation has to provide the register even if maintained outside of Aruba. Further, changes in the status, among the members or the board have to be entered in the register. It is noted that, only those foundations that are performing a business are obligated to file a tax return. However, it is not clear whether these cases of registers of foundations maintained outside Aruba are effectively supervised for availability of accurate information in line with ToR A.1.5.

95. Under the AML ordinance, the following identity information on beneficial owners is obtained: identification information for all council members who have authority to operate a relationship or to give the Regulated Entity instructions concerning the use or transfer of funds or assets, identification information for the founder, a person (other than the founder of the foundation) who has endowed the foundation, and, if any rights a founder of the foundation had in respect of the foundation and its assets have been assigned to some other person, that person – in line with guidance for natural persons and legal persons, identification information for all council members and, identification information on any beneficiary entitled to a benefit under the foundation in accordance with the charter or the regulations of the foundation, identification information on any other beneficiary and person in whose favour the council may exercise discretion under the foundation in accordance with its charter or regulations.

96. It is further noted that there is neither a legal requirement nor is it a matter of practice for all foundations to engage an Aruban AML obligated service provider at all times. Accordingly, the availability of beneficial ownership information as well as the chain of ownership information in Aruba in not ensured as per the international standards in respect of foundations at all times. Aruba is recommended to take necessary measures to ensure availability of chain of ownership information including beneficial ownership information in line with the international standards.

97. No information is available in respect of the supervision of foundations by the Chamber of Commerce and Industry or the Tax Authority for ensuring the availability of updated information on Founder(s), Board of Members, particularly in case of any changes thereof.

98. As in the past review period, there no EOI requests were received by Aruba in respect of foundations.

A.2. Accounting records

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

99. The 2015 Report concluded that the combination of requirements set out in the Civil Code, Commercial Code, the GTO and the regulatory ordinances require that reliable accounting records are held by all entities in Aruba for a period of ten years. Such accounting records correctly explain all transactions, 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. The legal and regulatory framework was therefore in place.

100. However it was also noted that the supervision was not adequately frequent, comprehensive and rigorous to ensure availability of information at all times. Element A.2, in the 2015 Report, was rated Largely Compliant.

101. During the current review period Aruba received two requests for accounting information. As confirmed by a peer's input, Aruba could not provide the response in one case because the registered agent had severed the contract with the non-resident AVV concerned. However, there were no enforcement actions taken in respect of the failure to provide the information. In the other case, the peer reported that Aruba took about 10 months to respond, with initial feedback about non-compliance by the registered agent. Aruba is recommended to ensure adequate supervision as well as enforcement measures to ensure the availability of accounting information at all times with all relevant entities and arrangements. There are no legal obligations in Aruba for retention of accounts of liquidated, dissolved or struck-off companies. Aruba is accordingly recommended to ensure that accounting records of liquidated, dissolved or struck-off companies are retained for 5 years.

102. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	There are no legal obligations for retention of accounts of liquidated, dissolved or struck-off companies.	Aruba is recommended to ensure that accounting records of liquidated, dissolved or struck-off companies are retained for 5 years.
Determination: in place but needs improvement		

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
	In the current review period, adverse peer input has been received in respect of the two requests for accounting information sought from Aruba, whereby it could not be provided at all in one case and an avoidable delay occurred owing to lack of compliance by the registered agent in the other case. Further, in the review period there has been only a limited supervision by the Tax Authority as well as the Chamber of Commerce and Industry to ensure the availability of accounting information with all entities (including the dormant companies) and arrangements at all times.	Aruba is recommended to ensure adequate supervision as well as enforcement provisions to ensure the availability of accounting information at all times with all relevant entities and arrangements.
Rating: Partially compliant		

ToR A.2.1. General requirements

103. The Standard is met by a combination of requirements set out in the Civil Code, Commercial Code, the GTO and the regulatory ordinances, which require that reliable accounting records are held by all entities in Aruba for a period of ten years. Such accounting records correctly explain all transactions, 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. There are sanctions for not keeping the records or underlying documentation in terms of reversal of the burden of proof in terms of the tax assessment. Criminal penalties may also be imposed, such as a fine of AWG 25 000 (USD 13 966) and/or detention for a maximum of six months as set out in article 68 of the General Tax Ordinance. Sanctions for non-compliance of accounting requirements in the case of regulated entities is administered by the CBA with penalties ranging from monetary penalties to revocation of the license or cancellation of the registration. The various legal regimes are analysed below.

104. Article 15a(1), book 3 of the Civil Code states that everybody that operates a business or independently exercises a profession must keep such records of their financial condition and of anything related to their business or independent profession, in accordance with the requirements of such business or independent profession. The accounts, records and other information

carriers must be kept in such a manner that at all times the rights and obligations of the aforementioned (legal) person can be known. It is required that the accounts give a true and fair view of the financial position of the persons who are subject to the accounting requirement. The Aruban authorities informed that, in practice, accounts are typically drawn up in accordance with Dutch or US Generally Accepted Accounting Principles (GAAP) and nowadays also the International Accounting Standards (IAS).

105. The management directors of an NV, AVV or VBA are required to submit within eight months after closing of the company's fiscal year a balance sheet and a profit and loss statement accompanied by an explanation to the general shareholders meeting for approval. An expert (usually an auditor) can or, in the event that the articles of incorporation so require, must be appointed by the general shareholders meeting to examine the books of the company and to report on the balance sheet and profit and loss statement as presented by the management.

106. Most entities engaged in regulated activities must have their annual accounts audited by an external auditor and must file their annual accounts with the CBA (articles 22 and 23 SOSCS, article 15, SOSMTC, and articles 11 and 12, SOSIB). As an exception, TSPs must submit annual reports to the CBA but auditing by an external auditor is not required (article 7, SOSTSP) as they are not allowed to have third party funds under their management.

107. VBAs have always been required to file their annual accounts with the Chamber of Commerce and Industry. In February 2012, new provisions entered into force requiring board members of AVVs and NVs to deposit (from 2013) the annual financial statements with the Chamber of Commerce and Industry within eight months following approval. Failure to comply with this obligation to deposit a copy of the shareholder register is punishable with a maximum fine of AWG 5 000 (USD 2 793). The 2015 Report noted that as these were recent provisions, their enforcement could not be assessed and therefore Aruba was recommended to monitor their implementation. The oversight and enforcement experience in the current review period is discussed further below.

108. For tax purposes, individuals conducting any business or profession, individuals liable to withholding taxes and other bodies (companies, foundations, partnerships, etc.) must keep sound accounting records of their financial condition and anything related to their business (article 48GTO).

109. Such record keeping obligations are equally applicable to any persons, including trustees, who administer a foreign trust with respect to their business. They must also supply to the tax authorities each year a statement concerning third parties (not being employees) that rendered services to the company (article 49(3) GTO).

110. A company opting to become a transparent company will remain a body within the meaning of article 48 of the General Tax Ordinance, and thus subject to the record keeping obligations under this provision, in spite of its transparent status for tax purposes.

111. In addition, partnerships have the obligation to keep records of all information that is relevant for the enforcement of tax laws, both to the partnership itself and to third parties, such as the participating partners (article 49(4) GTO). Furthermore, the tax authorities may request qualifying partners to provide all information that is relevant for the enforcement of tax legislation. "Qualifying partners" are partners that exercise control over the partnership, or hold at least 50% of the share capital (article 45(4) GTO).

112. If a foundation is engaged in a business activity, it must keep accounts (article 15a, book 3, Civil Code). Under the General Tax Ordinance, a foundation is always required to keep books and accounting records, regardless of whether or not it conducts a business. These books and accounting records must provide a proper insight into the assets and liabilities, rights and obligations of the foundation at all times (article 48 GTO). The Aruban authorities advised that, in practice, this means that Dutch or US GAAP will be followed, and nowadays also the International Accounting Standards (IAS).

113. The provisions of Tax Law mandate that accounting records for the purposes of tax law shall be kept for 5 years, after the tax period to which they refer and, in any case, until completion of the assessments relating to that tax period (Article 100 of Law no. 166/2015). This applies to companies, partnerships, foundations and trusts, whether resident or not as long as they are taxable in Aruba. In addition, the Commercial Code requires that companies are required to keep their annual financial statements and any records belonging to them at the office of the company for a period of ten years.

Foreign companies

114. Under the ToR A.2, foreign companies with sufficient nexus to a jurisdiction (e.g. having a place of effective management and thereby being tax resident in Aruba) are required to maintain accounting information in Aruba. While the general requirements under the GTO apply to foreign companies carrying on business in Aruba, it is not clear as to how many of the tax resident foreign companies out of thee 133 foreign companies are regular tax filers and further how many of them are subject to tax audits to ensure the availability of accounting information in line with ToR A.2. Further there does not appear to be any specific compliance strategy designed and implemented by the Tax Office in respect of foreign companies with nexus to Aruba. Aruba is recommended to ensure adequate supervision over the foreign companies with sufficient nexus to Aruba in respect of availability of reliable accounting information and underlying documentation.

Liquidated companies and inactive companies

115. The Chamber of Commerce and Industry receives the annual statements of NVs, AVVs, VBAs from all those who file them annually. However, it is unclear as to who maintains these records in the case of liquidation. Aruba is recommended to ensure that record keeping obligations regarding liquidated companies (including those that are struck-off or dissolved) to ensure that records are kept for a minimum period of five years in all cases. In the case of companies under the process of liquidation they are required to file annual accounts until the year of liquidation. Similarly, in respect of inactive companies (a company that did not pay the annual tuition or informed the Chamber that it is not active anymore), since they do not deposit their annual financial statements with the Chamber of Commerce and Industry, the tax audits are currently the only means to ensure and verify the existence of reliable accounting information, in case they are pursuing business activities. However, as noted earlier, at present the tax audits are in limited numbers and Aruba has been recommended to strengthen the same. Aruba is accordingly recommended to ensure that record keeping obligations regarding inactive companies also are met in line with the international standards.

ToR A.2.2. Underlying documentation

116. The 2015 Report (see paras 184 to 186) found that the requirements under company law and the Delegated Decree No. 51/2010 require that the underlying documentation relevant to accounts needs to be maintained for companies, partnerships, foundations and trusts. There have been no changes to the legal framework in this respect and Aruba has answered two requests for accounting information in the current review period which included underlying documentation. However Aruba could not provide accounting information in one case.

Oversight and enforcement of requirements to maintain accounting records

117. As noted by the 2015 Report, the availability of accounting records and underlying documentation of companies, partnerships, trusts and foundations is subject to oversight and enforcement measures by the Tax Office, the Chamber of Commerce and Industry and in the case of regulated entities by the CBA, although it was found to be inadequate and Aruba was recommended to ensure oversight of the obligation to hold accounting records in all cases and to monitor the implementation and operation of the new obligation for NVs and AVVs to file financial statements with the Chamber of Commerce and Industry. The 2015 Report also noted that while there are criminal sanctions (see paras 188-189) the oversight is mainly carried out by

the tax administration which could be more rigorous in its application. There was no specific monitoring activity performed by the Chamber in the review period to ensure that all the NVs and AVVs file financial statements with them, apart from sending emails and letters to the companies.

118. Aruba reported that in the current review period, for an average of 7 600 tax returns issued, the submission/compliance rate was around 60% across all types of entities. Further, in the current review period, the tax audit details (covering individuals as well as entities) are as follows:

Year	Number of cases selected for audit	Number of cases which involved verification of accounting information
2015	37	37
2016	75	75
2017	12	12

119. An average tax filing rate (of around 60%) and a relatively low and continuously decreasing number of audits (explained on account of personnel constraints by Aruba), in comparison to the total number of active companies, partnerships and trusts in Aruba, raise concerns that the tax obligations may not give effective assurance of whether entities are keeping accounting records in accordance with the standard.

Availability of accounting information in exchange of information practice

120. In the previous review period, there have been no instances where accounting information could not be provided (there was one request which was successfully responded to from information held in the tax office records). However, in the current review period, a peer reported that Aruba could not provide accounting information in view of the registered agent having severed the contract with the Aruban company, which was the subject of the EOI request and further that there was no tax return filed which could have allowed Aruba to provide the accounting information requested by the peer. The same peer further stated that in respect of their second request for accounting information, in a partial reply the Competent Authority of Aruba informed that the legal representative of the company had not complied with their request. The Competent Authority of Aruba explained to the peer that the legal representative was not refusing but trying to entangle them into a legal discussion which resulted in an avoidable delay. The peer reported that it took 10 months to receive a final reply. Aruba explained that the usual approach of FIOT of the Aruba Tax Department is to reach a solution in consultation with the information holder, as it normally leads to a more

satisfactory result for both sides. Further, the use of compulsory powers has to take place under the supervision of the public prosecutor's office, whose services were not readily available due to personnel constraints and competing priorities.

121. In view of the above peer experience and the limited supervision by the Tax Authority as well as the Chamber of Commerce and Industry, Aruba is recommended to ensure adequate supervision as well as application of enforcement provisions to ensure the availability of accounting information at all times with all relevant entities and arrangements.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

122. The 2015 Report concluded that the legal and regulatory framework for element A.3 on the availability of banking information was in place and that the practice of Aruba was rated Compliant to the EOIR standard. The 2015 Report noted that CBA had carried-out on-site and off-site inspections, applying sanctions where appropriate, to ensure that banks apply identification measures. At that time, Aruba had received two EOI requests for banking information which were answered albeit in delayed manner (See Element B.1 for more discussion) since Aruba had not used its compulsive powers to obtain this banking information.

123. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) in respect of account holders be available. In this regard, although the AML framework of Aruba does capture important elements of the Beneficial Ownership definition, it is not fully in line with the international standards since it is not entirely clear whether beneficial ownership is appropriately captured when ultimate effective control is exercised by senior management or officials of the legal entity/arrangement. Further, in respect of trusts, since the definition of beneficial owner sets the threshold at 25% ownership, the requirements under the standards are not met in terms of identifying all the beneficial owners in all cases. Aruba should ensure that beneficial ownership information is available for trusts and foundations in all cases. Finally, as noted above (in Element A.1), the availability of beneficial ownership information as per the standards should be available in Aruba subject to the effective supervision measures for the same in all cases.

124. During the current review period Aruba has received one request for banking information.

125. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	In respect of trusts, since the definition of beneficial owner sets the threshold at 25% ownership, the requirements under the standards are not met in terms of identifying all the beneficial owners in all cases. Further, the definition in the AML guidance is not fully in line with the standard, indicating a preference for treating managers as the beneficial owners.	Aruba should ensure that beneficial ownership information is available for trusts and in all cases.
Determination: in place but needs improvement		
Practical implementation of the standard		
Deficiencies identified in the implementation of EOIR in practice		
Rating: Largely Compliant		

ToR A.3.1. Record-keeping requirements and beneficial ownership information

Transactional information and identification of account holders

126. Aruba's banking record-keeping requirements are provided under the Aruban AML/CFT framework. Article 33 of the AML/CFT State Ordinance specifies that the nature and date of the transaction, the type and quantity of the currency involved in the transaction, the type and number of the account used during the transaction, all account files and business correspondence, the nature and date of the transaction, the type and quantity of the currency involved in the transaction, the type and number of the account used during the transaction and all account files and business correspondence are to be obtained and maintained for ten years.

127. The service providers are required to perform customer due diligence including the establishment and verification of the customer's identity and the

person on whose behalf a customer is acting, before establishing a business relationship, conducting transactions above certain amounts, or performing any payment in or outside Aruba (article 4 of the AML/CFT State Ordinance). This identification data must be retained for ten years from the date of the termination of the agreement under which service was provided or after the execution of a payment. The customer due diligence (CDD)-requirements are set out in Chapter 2 of the AML/CFT State Ordinance (articles 3-19).

128. As indicated under section A.1.1 above, the identification of the customer, either natural or legal persons, must be based on official identification documents, a deed of incorporation or extract from the Chamber of Commerce and Industry or other competent authority (article 19, AML/CFT State Ordinance). Anonymous accounts are strictly forbidden.

129. In accordance with Article 5 of the AML/CFT State Ordinance, with regard to a client that is a legal entity, service providers are required to determine if the natural person purporting to act on behalf of this client is so authorised, establish the identity of that natural person and verify that identity before providing the service. Furthermore, the ordinance states that the service provider must take reasonable measures which in any case must lead to the service provider acquiring an understanding of the ownership and the effective control structure of the client. This second provision applies equally to clients acting as trustee of a trust with the understanding that the reasonable measures will lead to the identity of the settlor and the ultimate beneficiary to the assets of the trust being established and verified.

130. With regards foreign trusts, article 19(3) and (4) indicate that the identities of the trustee, or the person who otherwise exercises effective control, the settlor of the trust and the ultimate beneficiary must be verified based on reliable and internationally accepted documents, data or information, or on the basis of documents, data or information that have been recognised by law in the state of origin of the client as a valid means of identification. As a result of these requirements, companies with bearer shares and foreign trusts cannot open a bank account nor make use of any other services of a bank in Aruba without disclosing the identity of their owners. Under article 33 of the AML/CFT State Ordinance, the service provider is obliged to keep the data and information required pursuant to the performance of customer due diligence in an accessible way for a period of ten years to include for natural persons:

- the surname, given names, date and place of birth, address, and domicile and/or place of business of the client and the ultimate beneficiary and of the person acting on behalf of this natural person, or a copy of the document containing a number identifying a person, and based on which identification took place

- the nature, number, and date and place of issue of the document used to verify the identity.

131. Similarly, for legal persons in respect of the persons acting on behalf of the legal person and of the ultimate beneficiary:

- the legal form, name under the Articles of Incorporation, the trade name, address, and, if the legal person is listed with the Chamber of Commerce and Industry, the registration number of the Chamber of Commerce and Industry, and the manner in which the identity has been verified of the persons acting on behalf of the legal person and of the ultimate beneficiary
- the surname, given names, and date of birth.

132. In addition, for all accounts, the service provider must keep a record of the nature and date of the transaction, the type and quantity of the currency involved in the transaction, the type and number of the account used during the transaction and all account files and business correspondence.

133. Under chapter three of the AML/CFT State Ordinance, financial institutions and designated non-financial service providers are required to report to the FIU a number of unusual transactions taking into account various monetary thresholds or certain circumstances, defined by indicators issued by ministerial decree (article 25). To this end, financial institutions are implicitly required to monitor accounts and to have systems to detect these types of unusual transactions with suspicious patterns.

134. With respect to retention requirements, it may be noted that according to AML-CFT legislation:

- Recording and retention of customer due diligence information and documents throughout the entire duration of the relationship and for at least 10 years from the date of its termination
- Recording/retention of information and documents relating to transactions conducted by customers for at least 10 years from the date of execution
- In case of revocation, termination or lapse of the authorisation to carry out a reserved activity, the financial party, even if still undergoing ordinary or compulsory administrative liquidation, must appoint a competent person who retains, for the fulfilment of AML-CFT obligations, documents and electronic archives for at least five years or for a longer period, if required by the Agency.

135. As already mentioned above, the aforementioned retention periods may be extended in accordance with other provisions on retention of documents and information related to banking/financial or commercial/tax discipline.

Beneficial ownership information on account holders

136. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. The identification process of beneficial owners is an integral part of the customer due diligence procedure. Current provisions provide that banks must apply CDD measures (including the identification of beneficial owners) when establishing a business relationship or executing an occasional transaction. They must also monitor and update such information over time, with a frequency determined by a risk-based approach. For documents and information on customers, relationships and transactions, the retention obligations described above apply also to beneficial owners.

137. In this regard, although the AML framework of Aruba does capture important elements of beneficial ownership definition under the 2016 ToR, it is not fully in line with the international standards since it is not entirely clear whether beneficial ownership is appropriately captured when ultimate effective control is exercised by senior management or officials of the legal entity/arrangement. Further, in respect of trusts since the definition of beneficial owner sets the threshold at 25% ownership, the requirements under the standards are not met in terms of identifying all the beneficial owners in all cases (those with less than 25% ownership or not having effective control). In addition, as noted above (in Element A.1.1), the availability of beneficial ownership information as per the standards will be available in Aruba subject to the effective supervision measures for the same in all cases.

138. The banking professionals interviewed at the on-site displayed a good understanding of international standards and obligations to carry out effective due diligence procedures to maintain accurate beneficial ownership information. It was explained that, where a proposed structure has layers of ownership, usually the legal representative of the future client comes ready prepared with the information on what who is the beneficial owner of the legal entity/arrangement as there is a good understanding that banks have to obtain this information.

139. Aruban banks verify the beneficial ownership information by requesting all the relevant documents, such as the certificate of establishment of companies (and for documents issued abroad with an apostille) and further verify from the book of shareholders, from databases and by checking the antecedents of the persons identified as beneficial owner(s). Further, Aruban banks review the beneficial ownership information on a risk based approach (irrelevant, low, medium and high). The CBA has clarified that periodicity of review to update beneficial ownership information varies per bank, but it is typically once per year for "high risk customers" and once every two years for medium risk clients, and when trigger events occur for any client. However, this implies that in the case of low-risk customers the beneficial

ownership information may not always be updated by the Bank proactively (after a certain number of years), except in the case of a trigger event.

140. In respect of introduced business, Article 15 of the AML/CFT State Ordinance and paragraph 3.13 of the AML/CFT Handbook include provisions in this regard. While the ultimate responsibility for CDD remains with the service provider relying on the introducer (Article 15 of the AML/CFT State Ordinance), an institution may rely on introducers, provided that the CDD requirements set out in Article 3[10] of the AML/CFT State Ordinance are complied with by the introducer. In accordance with Article 15 and 16 of the AML/CFT State Ordinance, a service provider should only rely on introducers being (i) regulated entities (i.e. banks, insurance companies, TSPs, MTCs and company pension funds), (ii) an Aruba-based designated non-financial service providers as defined in Article 1, paragraph 1, of the AML/CFT State Ordinance (i.e. lawyers, notaries, tax advisors and accountants); or (iii) service providers based in a country or jurisdiction designated by the Minister of Finance which have broadly equivalent AML/CFT regime and are supervised by a regulator in that jurisdiction similar to the CBA. The foreign countries that are designated by the Minister of Finance (State Gazette 2011 no. 65) are deliberately limited and currently are only: the Netherlands, Curaçao, Sint Maarten (Countries of the Kingdom of the Netherlands), the United States of America and Canada. This choice was prompted by the close ties and the fairly large degree of equality of AML/CFT systems. According to the explanatory notes of State Gazette, in general, it can be assumed that service providers from these countries are subject to comparable AML/CFT regulations and are under effective supervision.

141. . According to Article 15 (a) and (b) of the AML/CFT Ordinance, the Aruban service provider has to ensure that copies of all data and information regarding the customer due diligence performed by the introducer can be made available promptly by the introducer upon request of the Aruban service provider and the Aruban service provider has to ensure that the introducer has procedures and measures in place that enable the introducer to perform customer due diligence and keep the data and information collected

10. Article 3 AML/CFT State Ordinance includes the following requirements for service providers: identify the customer and verify the customer's identity; identify the UBO and take reasonable measures to verify the UBO's identity in such way that the service provider is convinced of the UBO's identity; establish the purpose and intended nature of the business relationship; conduct on-going monitoring of the business relationship and the transactions undertaken throughout the course of that relationship to ensure that they are consistent with the service provider's knowledge of the customer, the UBO, their risk profile, including, where necessary, an assessment of the funds that are involved in the transaction or business relationship.

as a consequence of the customer due diligence. In order to demonstrate that a Regulated Entity has obtained sufficient information about the introduced customer, a Regulated Entity must: (a) obtain customer information profiles from the introducer on each of the introduced customers in line with guidance for natural persons, legal persons (including foundations) and trustees (set out in Sections 3.6 and 3.7 of AML Guidance). The information provided in the customer information profile will depend upon the Regulated Entity's assessment of the risk presented by a particular customer or UBO; (b) be satisfied that the introducer will notify the Regulated Entity of any material changes to the customer information profile provided. All relevant data, documents and information relating to the CDD conducted by the introducer passed by the introducer to a Regulated Entity (on request) must be confirmed by the introducer as being a true copy of either an original or copy document held on its file.

Enforcement and oversight to ensure availability of banking information

142. All financial institutions and DNFSP's that fall within the scope of the AML/CFT State Ordinance need to maintain and disclose to the CBA on request information with regard to the identification and verification of their clients, including their Ultimate Beneficial Owners (ultimate beneficial owner(s)).

143. The CBA carries out its supervisory duties mainly through on-site and off-site activities, including surveys to assess compliance with the relevant provisions. The CBA has published a Handbook for the financial institutions and DNFSPs, which, amongst others, contains specific guidance on the topic of CDD. In addition to the abovementioned, the CBA requires TSPs to submit to the CBA on an annual basis a list of the names of the ultimate beneficial owner(s) of all their clients. In the event the CBA detects non-compliance, formal or informal enforcement measures are considered.

144. Pursuant to Article 19, paragraph 5, of the AML/CFT State Ordinance, a Regulated Entity must verify the identity of the ultimate beneficial owner using reliable and internationally accepted documents, data, or information or on the basis of documents, data, or information that have been recognised by law in the state of origin of the ultimate beneficial owner as a valid means of identification, in such manner that it is convinced of the identity of the ultimate beneficial owner. The CBA verifies whether the Regulated Entity has applied reasonable measures to verify the client and ultimate beneficial owner's identity. The verification documentation needs to be valid and up to date at the date of entering into the business relationship; signed, dated and in some cases legalised/notarised. If an Aruban service provider relies on the CDD of a service provider located outside of Aruba in one of the countries mentioned in the State Gazette 2011 no. 65, the Aruban service provider

remains responsible for the CDD performed (AML/CFT State Ordinance, Article 15). The Aruban service provider has an obligation under Article 46[11] to have a policy describing how it applied Article 16 (introducer mechanism) and the CBA, as part of its AML/CFT supervision, in such cases may verify if the Aruban service provider complies with the CDD-requirements of the AML/CFT State Ordinance (and hence is able to provide the CBA on request with the CDD-information required in Article 3 AML/CFT) including its obligation under Article 46. If that appears not to be the case, this may result in enforcement actions taken by the CBA against the Aruban service provider. The CBA advised that the introducer regime is not very common, further in the current review period it has not encountered any non-compliance with respect to introducer regime.

145. For medium and high risk clients the CBA requires a minimum of two verification methods. A Regulated Entity may demonstrate that it has taken reasonable measures to verify the ultimate beneficial owners of the legal person where it verifies the identity of the following: natural persons holding an interest in the capital of the legal person of 25% or more, or 25% or more of the voting rights in the legal person – in line with guidance for natural persons and trustees. Those directors (or equivalent) who have authority to operate a relationship or to give the Regulated Entity instructions concerning the use or transfer of funds or assets – in line with guidance for natural persons. The CBA expects to see in file an up to date

11. 1. Service providers shall carry out an adequate policy and have in writing procedures and measures, in particular for the application of the Chapters 2, 3 and 4 of this state ordinance, which are aimed at the prevention and combat of money laundering and terrorist financing.

2. The procedures and measures, meant in the first section, shall in any case regard the internal organisation and internal control of the service provider, the recruitment, background, education, guidance and ongoing training of the relevant staff, the application of the customer due diligence, the recording of data and information, the internal decision making process for the reporting of unusual transactions, as well as the periodical evaluation of the effectiveness of those procedures and measures.

3. Service providers shall carry out periodical evaluations in order to assess if and to what extent they are vulnerable to money laundering and terrorist financing because of their activities and operations.

4. The findings of the periodical evaluations, meant in the second and the third section, shall be recorded in writing.

5. If the limited size of the service provider gives reason to that effect, the activities, meant in the first and third section, may be outsourced. Such an outsourcing shall be recorded.

corporate structure and confirmatory evidence (from reliable and independent source(s)) that the corporate structure and ultimate beneficial owner's identity are correctly verified (i.e. shareholders register, annual reports, company registry extract, notarial deed of incorporation, memorandum and articles of association, verified passport/ID document etc.).

146. The interaction at the onsite with the banking professionals indicated a good level of knowledge and awareness with respect to CDD procedures and determination of BO. The officials of CBA explained that a majority of TSPs have offshore clients, and further most ultimate beneficial owners are non-residents. The CBA official explained that on-site inspections are mostly announced and the client files are pre-selected to verify the knowledge of CDD procedures. It was also stated that one of the focus areas at onsite visits is to verify the availability of updated ultimate beneficial owner information. It was further mentioned that any issues/deficiencies identified at the onsite visit will be followed-up for remedial action.

On-site examinations conducted by the CBA (2014-17)

147. Over the period 2014-17, the CBA has conducted 70 on-site examinations: 40 on-sites were conducted by the Integrity Supervision Department (ISD) in the area of AML/CFT-requirements and 30 on-site examinations were conducted by the Prudential Supervision Department (PSD) in the area of prudential requirements. Both Departments may also include a verification of the correctness of the provided information regarding the directors, shareholders, members of the supervisory board and qualified owners, i.e. those holding or exercising, directly or indirectly, control or voting powers of a financial institution.

Period	ISD	PSD
2014	9	8
2015	6	6
2016	8	8
2017	17	8
Total	**40**	**30**

148. With respect to the entity wise onsite inspections of various regulated entities by CBA, the distribution is as follows, which indicates a satisfactory coverage of the banking sector.

CBA AML/CFT oversight onsite inspections

	2015	2016	2017	Total
Credit institutions/Banks (11)	1	2	8	11
Money transfer companies (3)	2	0	0	2

Enforcement

149. In instances of non-compliance, the CBA may decide to impose, depending on the seriousness of the violation, formal measures including a penalty charge order, an administrative fine (in the range of Afl. 50 000 (USD 27 933) – Afl. 300 000 (USD 167 598)), the issuing or publishing of a formal instruction, the imposition of silent receivership and the revocation of the licence. The measures that can be imposed depend on the applicable State Ordinance. The CBA can also take informal measures such as sending so-called "warning letters" or having an "intrusive" conversation with the management and/or supervisory board of the institution. The CBA has imposed 7 enforcement measures which are relevant to this review, all concerning non-compliance with the CDD-requirements of the AML/CFT State Ordinance, which indicates a satisfactory enforcement regime:

Period	Measures
2014	5
2015	-
2016	1
2017	1
Total	**7**

Availability of bank information in exchange of information practice

150. As noted by the 2015 Report, there were two banking requests in the past review period. In the current review period, there was one banking request which related to statements for an account. It was answered within 180 days.

Part B: Access to information

151. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

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).

152. Aruba's competent authority for exchange of information is the Minister of Finance and, as of March 2014, this authority has been delegated to the Director of the Department of Taxes. Within the Department of Taxes, the Financial Intelligence and Fraud Unit (FIOT), made up of the Head of the FIOT and four members of staff, is responsible for responding to requests for information.

153. Under Aruban law, the powers to access information do not vary depending on the type of information sought. That is, the powers can be consistently applied regardless of whether the information is ownership, identity, banking or accounting information.

154. In 2015, it was determined that the legal and regulatory framework of Aruba for the competent authority to access relevant information was in place. The implementation of this framework in practice was rated Largely Compliant with the EOIR standard. The 2015 report also noted that Aruba made amendments to the General Tax Ordinance in respect of the role of the Minister of Justice in criminal tax matters and to clarify the scope of legal and professional privilege. Since those amendments were only enacted in November 2014, they could not be tested in practice and Aruba was recommended to monitor the practical implementation of these amendments to ensure their effectiveness in practice. No requests pertaining to criminal tax

matter have been received to date and there has been no indication the provision would be implemented contrary to the standard either. Therefore, the monitoring recommendation is deleted.

155. Aruba's Tax Inspector has powers to obtain relevant information on ownership, identity, accounting records and financial data from any person or entity within its jurisdiction who has relevant information in its possession, custody or under its control. The Tax Inspector has powers to search premises and seize information for the purpose of exercising his/her investigation powers. Any secrecy obligations to which a person would otherwise be subject in respect of the information sought are overridden where provision of the information is in relation to an EOI request or AML/CFT matters.

156. In practice, the Aruban tax department will utilise information held in the databases of the land and civil registries, to which it has access, along with information held in the database of the Chamber of Commerce and Industry, which is made available in an internal version to the tax authorities. When the authorities require information in respect of a service provider or regulated entity, the Aruban authorities will serve a formal notice on the entity, requesting the information required.

157. In the current review period Aruba did not use its compulsory powers to access and provide accounting information sought partner. Aruba is recommended to use its compulsory powers and make use of dissuasive sanctions in the GTO to ensure effective exchange of information.

158. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
	In the current review period Aruba did not use its compulsory powers to access and provide the accounting information sought by a partner which has adversely impacted the exchange of information.	Aruba is recommended to use its compulsory powers and make use of dissuasive sanctions in the GTO to ensure effective exchange of information.
Rating: Largely Compliant		

ToR B.1.1. Ownership, identity and bank information

159. The 2015 Report (see paras 211-231) analysed the procedures applied for obtaining information. Generally, the same rules continue to apply in the current review period.

160. Aruba's competent authority for exchange of information is the Minister of Finance and this authority has been delegated to the Director of the Department of Taxes. Within the Department of Taxes, the Financial Intelligence and Fraud Unit (FIOT) is responsible for gathering information and responding to EOI requests.

Accessing Information Generally

161. As noted by the 2015 Report (see para 213), the procedure with respect to access to information is established by articles 38 – 40 of the General Tax Ordinance (GTO) which allow a Tax Inspector to make inquiries in the context of an international EOI request. The procedure did not change since the last report and provides access to information through broad powers, applicable to any type of information. However, the National Ordinance of 13 December 2017, containing provisions on international assistance in international tax matters (National Ordinance on International Assistance in Tax Matters (NOIATM)) has replaced the provisions of the General Tax Ordinance which allowed for using the access powers for providing assistance in respect of EOIR. The previous provisions under GTO are carried into the NOIATM in substance as follows:

Correspondence between GTO and NOIATM provisions

Articles in GTO	Articles in NOIATM	Remarks
38	3	Providing information for EOIR
39	3 and 15	Use of EOIR information for non-tax purposes
40	7	Information gathering powers
41	14	Limits to assistance
42	14, 15 and 22	Confidentiality of EOIR information
43	4	Providing information for EOIR group requests
44	5	Spontaneous exchange of information

162. The Competent authority can either access information from the (i) databases of the government administration, (ii) directly from taxpayers or from third parties as required, (iii) and from banks.

163. The FIOT, apart from having access to the tax administration's database, also has direct access to the databases of the civil registry and the land registry, and the database managed by the Chamber of Commerce and Industry, and can request information from the immigration department (DIMAS) when needed to establish the presence of an individual. In practice, these are currently the main sources of information for the FIOT to effectively access information on legal ownership. For beneficial ownership information, FIOT would generally have to contact the relevant AML/CFT service providers.

164. Information obtained from the taxpayer itself or third parties are the main source of access to accounting information and banking information (access to banking information is more specifically described below). As reported by Aruba, third party investigation is a commonly used gathering power of the FIOT.

165. FIOT's gathering powers include the right to request documents, make enquiries and inspections as well as search and seizures. These powers target either the person under enquiry or relevant third parties. As noted in the 2015 Report (see paras 217-225), the FIOT can obtain information from any person in charge of keeping information according to Articles 48 and 49(1) of the GTO, for the purposes of levying taxes with regard to this person or third parties (Art 45 GTO). Aruba has further clarified that there are no limitations for the FIOT to access the beneficial ownership information obtained under the AML/CFT law by TSPs.

166. The 2015 Report also noted that Aruba made amendments to the General Tax Ordinance in respect of the role of the Minister of Justice in criminal tax matters and to clarify the scope of legal and professional privilege. Since those amendments were only enacted in November 2014, they could not be tested in practice and Aruba was recommended to monitor the

practical implementation of these amendments to ensure their effectiveness in practice. There have been no requests pertaining to criminal tax matters since then and there has been no indication the provision would be implemented contrary to the standard either. Therefore, the monitoring recommendation is deleted. The analysis with respect to practice in the review period in respect of the amendments to legal and professional privilege is discussed below.

167. In the current review period 6 out of the 9 requests received by Aruba pertained to information other than ownership, accounting and banking information (such as tax domicile, income tax paid, address of the taxpayer, and tax returns). In all these cases, the information was found within the Tax Department or the digital database of the Civil Registry; in the remaining cases notices were sent to 2 banking institutions and the Chamber of Commerce and Industry (to obtain accounting information) as well as the TSPs of two companies.

Information obtained from banks or other financial institutions

168. Requesting information from banks is part of the normal administrative procedure by the FIOT by means of a third party investigation described above.

169. Even if banking information can also be obtained by directly requesting the taxpayer itself, the competent authorities will more generally require the banks to provide such information. In practice, a notice containing the minimal information required and the mention of a two weeks deadline will be sent to the bank (2015 Report, para 228-229).

170. Delays in gathering information from banks were experienced during the previous review period (2010-13). Aruba stated that they have held discussions with the banks since then, and that no further delays have occurred in the provision of information by the banks. Compulsory powers would be used, should any issue occur. Aruba added that it was agreed that the Central Bank of Aruba, acting as supervisor of banks and financial institutions, would be informed if banks do not co-operate.

171. In practice, Aruba indicated that, for the purpose of the current review, it generally required a longer period than the two weeks provided in the notice, to access to the requested information. Normally the information is expected by Aruban authorities to be received within a period of less than three months.

172. Aruba was requested to give bank information in one case. The request was sent in May 2017, and the peer indicated that it received the information within 180 days. There were no adverse inputs on the quality of the information received. Nevertheless, since the Aruba authorities explained that

the bank took a longer time in this case, as it was its first request for information and the internal legal consultations have led to longer response time, Aruba is recommended to ensure that all banks in Aruba are made aware of the obligations under international treaties and to ensure that information is provided in a timely manner.

ToR B.1.2. Accounting records

173. The powers described in section B.1.1 can be used to obtain accounting information. There are no particular rules that apply to accounting records that would impede the use of these powers.

174. The access powers of the Tax Inspector also cover (i) third parties which hold in custody (e.g. a bookkeeper) data carriers belonging to the person under investigation (article 45(3)) and (ii) third parties whose affairs are regarded as "affairs of the person presumed to be liable to pay taxes". During the current review period Aruba received two requests for accounting information and responded to these requests within 360 days in one case and could not provide accounting information in another case, as the taxpayer in question did not submit returns.

175. However, Aruba could not provide the accounting information in one case since the resident agent of the company involved indicated that he had severed his contract with the company. Although Aruba provided the contact details of the new TSP resident in another jurisdiction (in respect of the Aruban company which had the obligation to make its accounting records available, wherever they are kept, whenever requested to do so in Aruba under the Tax Law (GTO)) to the requesting peer, Aruba has not used any of the administrative/criminal sanctions available under Article 68 of the GTO in this case, for failure on the part of the TSP to have retained all the relevant information both under the obligations of Tax Law as well as AML requirements. In appropriate cases, therefore, Aruba is recommended to use its compulsory powers and make use of dissuasive sanctions in the GTO to ensure effective exchange of information

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

176. As referenced in the 2015 Report (see para 232), there are no provisions in Aruban laws that restrict the information gathering powers of FIOT for lack of domestic tax interest. The legal framework in this regard has not changed since the 2015 report, Aruba has indicated that none of the requests received during the current review period concerned a person that was not a taxpayer in Aruba so whilst these provisions cannot be tested, no issue was raised by peers.

ToR B.1.4. Effective enforcement provisions to compel the production of information

177. As stated in the 2015 Report, the General Tax Ordinance provides for compulsory measures, to the extent so permitted under Aruban legislation and administrative practices (article 41(1)(c)).The corresponding provision is in the Article 14 of the new NOIATM. FIOT's gathering powers include the right to request documents, make enquiries and inspections as well as search and seizures (Article 45, 46 and 47 of the GTO). To that end, Tax Inspectors and experts can enter any premises. While the previous provisions under GTO (Articles 38 through 44c) were repealed by the new ordinance (NOIATM), the penal provision in S.68 of the GTO remains in force. This means that the legal basis for criminal sanction against non-compliance with the obligation to provide information is in S. 68 of the GTO. This was confirmed by Aruba during the on-site. Aruba is recommended to ensure that this does not pose any impediments to effective enforcement in the cases of non-compliance.

178. Non-compliance by a person under investigation or a third party (e.g. a bank) can be adequately sanctioned with fines/penalties that did not change since the last report (see para 235).

179. In respect of one case where peer input indicated that Aruba initially informed the peer about the non-co-operation of the TSP to provide the accounting information sought, and which led to an overall delay of about two months in providing the final response to the peer, it is seen that Aruba has not considered the option of invoking any sanctions for non-compliance of the TSP to the duly legal and valid notice issued by FIOT.

180. Aruba is recommended to use its compulsory powers and make use of dissuasive sanctions in the GTO to ensure effective exchange of information.

181. Nonetheless, the 2015 Report pointed out an exemption from punishment for failure to comply with the obligation to provide information in the possession of the controlling non-resident shareholders or body of an Aruban domiciled entity due to a legal or judicial prohibition imposed on the non-resident shareholders or body, or due to a refusal, not attributable to him, of the non-resident shareholders or body to provide the information requested (see para 236). This provision, as interpreted by Aruban authorities in practice, was considered in line with the standard but an in-text recommendation was given to Aruba in order to monitor the application of such exemption. This was not tested in practice in the current review period and there is no peer input in the review period to indicate that this has resulted in any impediment in practice.

ToR B.1.5. Secrecy provisions

182. There are three types of secrecy or confidentiality provisions that are relevant for the purposes of this section: corporate secrecy (VBAs only), bank secrecy and professional secrecy. The rules in respect of each of these are analysed below.

Corporate secrecy

183. Under article 30(4) of the State Ordinance on the VBAs, the Trade Register and information contained therein may not be made available to third parties, unless this is done by or with the approval of the company. Furthermore, the legal representative of a VBA is obliged to observe secrecy in respect of all information entrusted to him or her by the company, its shareholders or managing directors or their representatives regarding the activities of the company and the persons involved in the company (article 20(6), State Ordinance on the VBAs). This obligation would not be a barrier to the tax administration obtaining ownership or accounting information from a VBA (Article 51 of the GTO). During the period under review, one request was received by Aruba relating to VBAs, which was successfully responded to.

Bank secrecy

184. The provisions of bank secrecy in Aruba do not prohibit or restrict disclosure of information to the FIOT (art. 51(1) GTO; see 2015 Report, paras 238-240). The Aruban authorities also explained that the privacy protection in the 2011 data protection ordinance does not affect EOI requests since they are based on international agreements which take precedence over domestic provisions. In practice, bank secrecy has not been raised to object to the gathering of information for EOI purposes and no peers reported an issue in this regard.

Professional secrecy

185. With regard to attorney client privilege, as noted by the 2015 Report (see paras 241-244), the provisions in the GTO (Article 51(3)) were amended in 2014 to bring it in line with the international standard, whereby professional secrecy can only be claimed with respect to the purpose of seeking or providing legal advice, or produced for use in existing or potential judicial proceedings.

186. However, the representatives from the legal profession and notaries met with at the on-site did not indicate a good awareness of the legal position on attorney-client privilege in Aruba with respect to information requests

under exchange of information mechanisms for tax purposes. It was not clear whether they were aware of article 51(3) of the GTO which clearly laid out the scope of legal privilege and whether they would be willing to provide the legal/beneficial ownership information to FIOT, if a request were to require a notice to be issued to them to provide the same. However, it was mentioned at the onsite that if a lawyer acts as a director of a company she/he cannot refuse to give the information because of professional secrecy, since she/he is being asked for the information as a director not as a lawyer.

187. As in the past review period, during the current review period also, in practice, there have been no such cases where lawyers/notaries had to be served a notice to supply information in respect of an EOIR request.

B.2. Notification requirements, 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.

188. The 2015 report concluded that the legal and regulatory framework on notifications, rights and safeguards was in place and the practice was rated Largely Compliant, Aruba being recommended to monitor the practical implementation of legal amendments made in 2014 to clarify the subjective test of the Minister of Finance when deciding to answer an EOI request.

189. Notification requirements were repealed in Aruba in 2014. Aruba also confirmed that they stopped sending notification letters after the amendments were passed.

190. The appeal right in respect of the decision by the Minister to proceed with an EOI request was also repealed in 2014. The 2015 Report also found that there were no issues regarding appeal rights. Under Aruba legislation, it is possible to initiate proceedings before an ordinary judge to protect subjective rights. In case of violation of legitimate interests, the person concerned may also start proceedings before administrative judges. In both cases, the commencement of proceedings is not an obstacle to exchange of information and the FIOT may in any case transmit data to the requesting jurisdiction.

191. The 2015 report also noted that Aruba made amendments to the GTO to clarify the language regarding the subjective test of the Minister of Finance. The subjective test concerned the two month stand-by period after the notification of persons concerned. This notification was however not to be sent if the Minster was of the opinion that there are reasons of urgency as demonstrated in the request. The amendment abolished the obligation to send a notification to the taxpayer concerned and the subjective test by the

Minister. Since the amendment was only enacted in November 2014, it could not be tested in practice. Aruba was recommended to monitor the practical implementation of this amendment to ensure its effectiveness in practice. Since these amendments amount to verification of foreseeable relevance by the Head of FIOT, and in the current review period there was no adverse peer input in respect of Aruba's interpretation of foreseeable relevance, the recommendation is deleted.

192. There are no changes to the legal framework in the current review period on pre-notification in the current review period and there are also no post-notification requirements under Aruba's legal framework. As in the previous review period, Aruban authorities report that there have been no cases of appeals in EOI matters in the current review period also.

193. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

Part C: Exchanging information

194. Sections C.1 to C.5 evaluate the effectiveness of Aruba's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Aruba's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Aruba's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Aruba can provide the information requested in a timely manner.

C.1. Exchange of information mechanisms

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

195. The 2015 Report concluded that Aruba's network of EOI mechanisms was "in place" and was rated Compliant to the EOIR standard. At that time, Aruba had 23 Tax Information Exchange Agreements (TIEAs) in force and 2 TIEAs signed but awaiting entry into force. All of these agreements except the one concluded with the United States in 2003 generally followed the terms of the OECD Model TIEA. Since the last report, Aruba has concluded a further 2 new TIEAs, with the Czech Republic and with Germany.

196. In addition, a multilateral instrument was concluded in 1964 among the three former parts of the Kingdom of the Netherlands – the Netherlands, Aruba and the Netherlands Antilles (now succeeded by Curacao and Sint Maarten) – for the avoidance of double taxation and the prevention of fiscal evasion (*Belastingregeling voor het Koninkrijk* or BRK).

197. Most importantly, the Protocol amending the Convention on Mutual Administrative Assistance on Tax Matters (already applicable to Aruba) was extended to Aruba by the Kingdom of the Netherlands with entry into force on 1 September 2013.

198. To date, Aruba has EOI relationships to the standard with 124 jurisdictions.

199. Neither Aruba's EOI instruments nor its domestic law exclude the possibility of making and responding to group requests.

200. Therefore, as was the case at the time of the 2015 Report, element C.1 remains determined to be "in place" and rated "Compliant". The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

Other forms of exchange of information

201. Besides exchanging information on request, Aruba is also involved in spontaneous exchange of information (which happened three times during the period under review) and automatic exchange of information in application of the EU Directive 2003/48/EC regarding taxation of income from savings in the form of interest payments (automatically) which is in force since 2005. Aruba is also set to exchange under the Common Reporting Standard from September 2018 (which replaces the EUSD exchanges).

ToR C.1.1. Foreseeably relevant standard

202. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

203. The 2015 Report found that Aruba's network of TIEAs was in line with Article 5 of the Model Agreement and thus contained the foreseeably relevant standard, except for three of them (with Bermuda, the British Virgin Islands and the Cayman Islands) (see para 263-271). The deviation with respect to the three TIEAs was considered as compensated by the application of the Multilateral Convention.

204. An exchange of official correspondence with Bermuda clarified the interpretation of the TIEA concerned

205. The requirements contained in the TIEA with the Cayman Islands were considered as disproportionate. On 17 December 2015, Aruba sent a letter to the Cayman Authorities in which a broader interpretation, in line with the Commentary to Article 5(5) of the OECD Model TIEA (paragraph 73), had been proposed. By letter of 22 January 2016 the Cayman Authorities sent a letter of understanding confirming the broader interpretation. Therefore, the agreement can be considered as to the standard.

206. In any event, exchange of information can also take place between Bermuda, the British Virgin Islands and the Cayman Islands and Aruba, under the Multilateral Convention.

207. Since the last report, Aruba concluded two TIEAs, with the Czech Republic and with Germany. The TIEA with the Czech Republic was signed on 29 June 2015 and entered into force on the 1 August 2016. Article 5(5) uses the term "foreseeably relevant" as in the OECD Model and conforms to the wording of the standard. The TIEA with Germany was signed on 29 June 2017 but it is not in force yet. Article 5(5) does contain the term "foreseeably relevant" and conforms to the wording of the standard.

208. In practice, Aruba requires that the requesting jurisdictions provide sufficient information to demonstrate the foreseeable relevance of their request, such as the applicable international instruments, identity information, the taxation interest and elements demonstrating reciprocity. Aruba does not use a specific EOI request template to receive the requests from partners but indicated that it would refer to the template recommended by the OECD should a jurisdiction request a template. The 2015 Report noted that the Aruban authorities' practices were in line with the standard. The position has not changed since the last report.

209. During the period under review, no request was declined because it did not meet the foreseeable relevance criteria and the FIOT did not make any requests for clarification to the requesting jurisdictions. No negative input was received from peers in this regard.

Group requests

210. The EOIR standard now includes a reference to group requests in line with paragraph 5.2 of the Commentary to the OECD Model Tax Convention. The foreseeable relevance of a group request should be sufficiently demonstrated, and the requested information would assist in determining compliance by the taxpayers in the group.

211. Aruba's procedures to deal with group requests are the ones used for dealing with an individual request. Aruba simply indicated that some information identifying the group was needed in order to comply with the request, such as bank account numbers, tax identification numbers and other possible identifiers that may be available. During the review period, Aruba has not received any group requests but should it receive such requests in the future, Aruba's competent authority advised that it is in a position to process group requests and they would interpret foreseeable relevance in line with the international standard.

ToR C.1.2. Provide for exchange of information in respect of all persons

212. All of Aruba's agreements were in line with the standard and none of them restricts the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties (see 2015 Report, para 198-199).

213. The newly concluded TIEAs with the Czech Republic and Germany also include Article 2 of the OECD Model TIEA. Hence, they are in line with the standard.

214. In practice, Aruba indicated that none of the requests received in the current review period concerned a person that was not a taxpayer in Aruba. Whilst these provisions could not be tested, no issue was raised by peers.

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

215. The 2015 Report did not identify any issues with Aruba's network of agreements in terms of ensuring that all types of information could be exchanged.

216. The other additional agreements that Aruba has entered into since the 2015 Report all include paragraph 5(4) of the OECD Model TIEA. In practice, Aruba has exchange various types of information: ownership, accounting, banking and tax information, and no peers reported issues in this area.

ToR C.1.4. Absence of domestic tax interest

217. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. Such obligation is explicitly contained in the OECD Model Tax Convention Article 26(4) and the Model TIEA Article 5(2).

218. The 2015 Report did not identify any issues with Aruba's network of agreements regarding a domestic tax interest and no issues arose in practice. All Aruba's instruments either contain explicit provisions or do not provide any restrictions regarding domestic tax interest.

219. The additional agreements that Aruba has entered into since the 2015 Report include Article 5(2) of the OECD Model TIEA which provides that the requested jurisdiction should not decline to supply the information requested, notwithstanding that it may not, at that time, need such information for its own tax purposes.

220. In practice, peers have not raised any issues during the current review period. Still, it may be noted that, as reported by Aruba, none of the requests concerned a person that was not a taxpayer in Aruba during the review period.

ToR C.1.5. Absence of dual criminality principles

221. The 2015 Report did not identify any issues with Aruba's network of agreements in respect of dual criminality and no issues arose in practice (see para 285-286). None of the TIEAs concluded by Aruba applies the dual criminality principle to restrict exchange of information. These TIEAs contain explicit language under Article 5(1), except for the Aruba-United States TIEA.

222. The additional agreements that Aruba has entered into since then also explicitly include Article 5(1) of the OECD Model TIEA. Hence, they are in line with the standard.

223. In practice, Aruba has not received EOI requests related to a criminal tax matter.

ToR C.1.6. Exchange information relating to both civil and criminal tax matters

224. Aruba's network of agreements provide for exchange in both civil and criminal matters (see 2015 Report, para 287-290). All Aruba's agreements, usually under Article 1(1), provide that the information exchange would occur for civil matters (e.g. recovery and enforcement of tax claims) and criminal matters (e.g. investigation, prosecution).

225. The additional agreements that Aruba has entered into since then also explicitly include Article 1(1) of the OECD Model TIEA. Hence, they are in line with the standard.

226. In practice, Aruba indicated that to date no requests for information concerning criminal tax matters have been received by Aruba. Peer inputs have not indicated anything to the contrary.

ToR C.1.7. Provide information in specific form requested

227. The 2015 Report noted that Aruba applies its EOI mechanisms consistent with the OECD Model and so is prepared to provide information in the specific form requested to the extent such form is known or permitted under Aruba's law or administrative practice (see para 291-294).

228. First, Aruba's law requires information to be produced orally or in writing, in the form and within the period determined by the Tax Inspector (Article 46, GTO).

229. All EOI agreements concluded by Aruba allowed for information to be provided in the specific form requested, usually under Article 5(3), or did not contain any restrictions.

230. The additional agreements that Aruba has entered into also explicitly include Article 1(1) of the OECD Model TIEA. Hence, they are in line with the standard.

231. In practice, Aruba indicated that there was one request which resulted in a very voluminous response (pertaining to banking information), requiring it to be sent in an encrypted CD, with the password being provided to the peer by email, upon acknowledgement of receipt of the CD.

ToR C.1.8. Signed agreements should be in force

232. In 2015, Aruba had signed 26 EOI agreements, comprising 25 TIEAs, among which 23 were in force, the Agreement with other parts of the Kingdom of the Netherlands, and the multilateral Convention on Mutual Assistance in Tax Matters, extended to Aruba. Aruba had thus 89 partners' jurisdictions for exchange of information (2015 Report, para 295-300).

233. Since then Aruba concluded 2 further TIEAs (Czech Republic and Germany) and ratified 2 TIEAs (Belgium and Grenada), which are still not in force because Aruba's partners have not completed the ratification procedure yet. In respect of the TIEA with Grenada (signed on 21 June 2012), Aruba indicated that many reminders had been sent. With regard to the TIEAs with Belgium and Grenada, Aruba noted that exchange of information is/will shortly be also possible under the Multilateral Convention.

234. As reported by Aruba, the process of signing and ratification of TIEA's takes an average of two years. Regarding the agreements signed since the last report, they have been ratified in more than 1 year for the TIEA with Czech Republic, and the TIEA with Germany did not enter into force since its signature in June 2017.

235. Since the Mutual Convention covers 123 jurisdictions (excluding Aruba), and Aruba also has a TIEA with Antigua and Barbuda, Aruba has now a total number of 124 EOI partners, including 27 TIEAs out of which only 3 are not in force (Belgium, Germany, Grenada). All of Aruba's TIEAs are complemented by the Multilateral Convention except the one with Antigua and Barbuda.

Bilateral EOI mechanisms

			Total	Bilateral EOI mechanisms not complemented by the MAC
A	Total Number of DTCs/TIEAs	A = B+C	27	1
B	Number of DTCs/TIEAs signed but not in force	B = D+E	3 (Belgium, Germany, Grenada)	0
C	Number of DTCs/TIEAs signed and in force	C = F+G	24	0
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard	D	3 (Belgium, Germany, Grenada)	0
E	Number of DTCs/TIEAs signed (but not in force) and not to the Standard	E	0	0
F	Number of DTCs/TIEAs in force and to the Standard	F	24	0
G	Number of DTCs/TIEAs in force and not to the Standard	G	0	0

ToR C.1.9. Be given effect through domestic law

236. 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.

237. No limitation specifically related to the procedure to implement international treaties exists in Aruban domestic law (see 2015 Report, para 301-303). Aruba has ratified all its treaties except the most recent one (with Germany). Therefore, treaties can be given effect through domestic law.

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

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

238. 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, in particular with those jurisdictions that have a reasonable expectation of requiring information in order to properly administer and enforce its tax laws, it may indicate a lack of commitment to implement the standards.

239. Aruba's network of TIEAs covers jurisdictions across Europe, Asia, the Americas and Caribbean and Pacific islands. Aruba currently has EOI relationships with 124 partners by virtue of 27 TIEAs, the BRK and the Multilateral Convention.

240. The 2015 Report found that element C.2 was "in place" and rated Compliant. It still included an in-text recommendation regarding the absence of response from Aruba following a request sent by two jurisdictions (Czech Republic and India) in order to begin negotiations for a TIEA. However, by the time the report was published, negotiations were already underway.

241. Since then, negotiations with the Czech Republic resulted in a TIEA which entered into force on 1 August 2016. Aruba also indicated that the TIEA sent by India has been reviewed and sent back with Aruba's comments (26 March 2014) but there has been no contact ever since. However exchange of information with India is also possible under the Multilateral Convention. With respect to Grenada, Aruba indicated that numerous reminders were sent to Grenada, however with no success. Nevertheless Grenada has signed the Multilateral Convention in May 2018 and the Convention will enter into force in September 2018.

242. With respect to negotiations underway, Costa Rica and the Dominican Republic approached Aruba for the purpose of entering into a TIEA. Costa Rica informed Aruba afterwards that negotiations were no longer needed because information can be exchanged under the Multilateral Convention. Regarding the Dominican Republic, Aruba indicated that now that the Dominican Republic has also signed the Multilateral Convention continuing the negotiations was less relevant.

243. None of the Global Forum members has indicated that Aruba had refused to negotiate or sign an EOI agreement. On this basis and given its large EOI network, the recommendation made in 2015 to Aruba to continue to develop its network can be removed from the box below. Even though Aruba is participating in the MAC, Aruba is recommended to continue to conclude EOI agreements with any new relevant partner who would so require.

244. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

C.3. Confidentiality

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

245. The 2015 Report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in Aruba regarding confidentiality were in accordance with the standard (see paras 309-312). The legal framework and administrative practices continue in the current review period also. No issues arose and there was no adverse peer input in the current review period in respect of the nine requests handled by Aruba.

246. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

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

247. All the agreements entered into by Aruba meet the confidentiality standard (See 2015 report paras 309 to 310). The new treaties entered into by Aruba also include the restrictions on the disclosure of the information received and also use thereof by a contracting party to comply with the requirements of the international standards. The agreements provide that any information received by a Contracting Party under the Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by the Contracting Party.

248. The 2016 Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the authority supplying the information authorises the use of information for purposes other than tax purposes, in accordance with the amendment to Article 26 of the OECD Model Tax Convention introducing this element, which previously appeared in the commentary to this Article. The Multilateral Convention contains similar language. All The TIEAs of Aruba contain similar language except the TIEA with USA. Aruba is recommended to ensure that the TIEA with USA provides for utilisation of non-tax purposes when authorised by the supplying

State. In the period under review Aruba reported that there were no requests in respect of which the requesting partner sought Aruba's consent to utilise the information for non-tax purposes (and Aruba has not made any such request to its EOI partners).

249. As a part of the on-site interviews, the FIOT also clarified that there are no rights under the freedom of information laws to see EOI related files and the taxpayer has no rights to see his/her/her EOI file at any stage.

ToR C.3.2. Confidentiality of other information

250. Confidentiality provisions in Aruba's agreements use the standard language of Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA and do not draw a distinction between information received in response to requests and information forming part of the requests themselves.

251. There are no notification requirements in Aruba and the information holder is not informed of the identity of the requesting jurisdiction, or the name of the taxpayer, unless required in view of the nature of the information to be obtained from the information holder.

Confidentiality in practice

252. The 2015 Report did not raise any issue with regard to confidentiality procedures of Aruba to deal with information in respect of a request from a treaty partner in practice (see 2015 Report, paras 309 to 315). During the current review period also, the same procedures continue to operate and all the public officials are also bound by secrecy obligations in respect of information to be provided to a treaty partner. During the current review period also, Aruba did not report any breaches with regard to confidentiality and there were no adverse peer inputs in this regard.

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

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

ToR C.4.1. Exceptions to requirement to provide information

253. Aruba's information exchange mechanisms allow the parties to decline to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*). The

new EOI mechanisms entered into by Aruba contain the same provisions. In practice, during the current review period, Aruban authorities confirmed that they did not experience any practical difficulties in responding to EOI requests due to the application of rights and safeguards in Aruba.

254. The table of determination and rating therefore remains unchanged as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

255. In order for exchange of information to be effective, jurisdictions should request and provide information under their network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or providing an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

256. The 2015 Report concluded that Aruba had a generally satisfactory system for exchanging information and element C.5 was rated Largely Compliant, with recommendations to improve timeliness and providing status updates. The FIOT is responsible for the exchange of information under all of Aruba's EOI mechanisms. The FIOT is made up of the Head of the FIOT and four full time members of staff. Peer input provided by both of Aruba's exchange-of-information partners who sent requests in the review period, reflected that they had a good relationship with Aruba's FIOT staff and were in general satisfied with the quality of the responses provided. Overall, response times are satisfactory although some delays occurred due to internal delays and errors. A majority of requests pertain to tax returns, tax status, identification (individuals' addresses, contact details, copy of identity

papers). Final answers were provided within 90 days in more than 40% of requests and interim responses and updates were also provided.

257. The 2015 Report made a recommendation for Aruba to monitor its resources and procedures so that its competent authority continues to provide complete and quality information to its partners in time, along with timely status updates. Taking into account the internal delays and errors referred to above, Aruba has nevertheless provided 40% of responses within 90 days and 80% under 180 days with a good quality of responses to the satisfaction of its peers. However, in view of the straightforward nature of many of the requests, this could have been improved upon if the delays and errors had not occurred. In addition, only one status update was sent in the review period. Accordingly, the recommendation in the 2015 Report with respect to timeliness of responses is continued (as in-text) and Aruba is also recommended to send status updates in all cases where the response takes more than 90 days to provide to the requesting partner.

258. In all other respects Aruba continues to perform to the standard in terms of responding to requests, which totalled nine during the period under review. The organisation and procedures are complete and coherent. Similarly, Aruba's system for sending requests is well developed and peers raised no issues with the quality of these requests.

259. The new table of determinations and ratings is as follows:

This element involves issues of practice. Accordingly no determination has been made.		
	Delays have been experienced in answering some EOI requests received during the period under review. In addition, during the period under review Aruba has not consistently provided status updates to all its treaty partners in relation to requests that cannot be replied within 90 days.	Aruba should systematically provide an update or status report to its EOI partners in situations when the competent authority is unable to provide a substantive response within 90 days.
Rating: Largely Compliant		

ToR C.5.1. Timeliness of responses to requests for information

260. Over the period under review (1 July 2014 to 30 June 2017), Aruba received nine requests for information. The information requested[12] related to (i) accounting information (2 cases), (ii) banking information (1 case) and (iii) other types of information (6 cases). Ownership information was not requested. The entities for which information was requested[13] is broken down to (i) companies (20 entities, covering NVs, VBAs and AVVs), (ii) individuals (12 persons). No requests related to trusts, foundations or other entities.

261. Aruba received requests from 2 EOI partners for the period under review: the Netherlands and Spain, and the most significant EOI partner (by virtue of the number of exchanges with them) is the Netherlands. For these years, the number of requests where Aruba answered within 90 days, 180 days, one year or more than one year, are tabulated below.

Statistics on response time

	1 July 2014-30 June 2015		1 July 2015-30 June 2016		1 July 2016-30 June 2017		Total	
	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	3	33%	2	22%	4	44%	9	100%
Full response: ≤90 days	0	0%	2	100%	2	50%	4	44%
≤180 days (cumulative)	1	33%	2	100%	4	100%	7	78%
≤1 year (cumulative)	1	33%	2	100%	4	100%	8	89%
>1 year	0	0%	0	0%	0	0%	0	0%
Status update provided within 90 days (for responses sent after 90 days)*	0	0%	0	0%	1	50%	1	11%
Declined for valid reasons	0	0%	0	0%	0	0%	0	0%
Failure to obtain and provide information requested	1*	33%	0	0%	0	0%	1*	11%
Requests withdrawn by the requesting jurisdiction	0	0%	0	0%	0	0%	0	0%
Requests still pending at date of review	0	0%	0	0%	0	0%	0	0%

* This is a partial failure. Except accounting information, other information was provided by Aruba.

262. Aruba has provided 4 responses within 90 days and a further 3 under 180 days and it took up to one year for the remaining two. In the review period the time for processing accounting and banking information were 300 days and 120 days respectively. Aruba explained that one request that took longest to reply related to complex queries covering a variety of types of information. A peer was, in general, satisfied with the timeliness of responses

12. Please note that some requests entailed more than one information category.
13. Please note that some requests entailed more than one entity type.

by Aruba whereas the other was not but both expressed satisfaction as to the good quality of responses.

263. In view of the straightforward nature of many of the requests, timeliness could have been improved upon if the delays and errors had not occurred.

Internal process for status updates

264. Aruba has reported that if it is unable to provide the requested information within 90 days, the FIOT endeavours to send to the requesting jurisdiction, if possible, a significant part of the information, and internal procedures refer to the provision of an update on the status of the request, within 90 days. However Aruba has sent only 1 status update out of 5 requests that were responded to in more than 90 days.

265. It was noted by one peer that, in the cases Aruba did not provide the information within 90 days, there has been contact on the progress in processing content of the requests at the initiative of the partner.

ToR C.5.2. Organisational processes and resources

266. The Competent Authority for Aruba is the Minister in charge of Finance, who delegated his/her authority to the Director of the Department of Taxes. Within the Department of Taxes, the Financial Intelligence and Fraud Unit (FIOT), made up of the Head of the FIOT and six members of staff, functions as the EOI Unit. Apart from investigation of domestic tax cases, the FIOT is responsible for responding to requests for information and day to day activities related to processing of EOIR. Out of the 6 staff members of FIOT, 4 members are vested with investigative powers, who are supported by a tax recovery officer and an administrative person. The name of the Director of Taxes as the Competent Authority is published on the secure website of the Global Forum for consultation by partner jurisdictions. Also, Aruba's most significant EOI partner has mail access via an email address that can only be accessed by two staff members of the FIOT. Contact with EOI partners takes place through mail and sometimes by telephone by staff members of the FIOT. However, a peer provided input that the post service has not worked properly and their request letters have taken a lot of time to reach the Competent Authority of Aruba. Aruba has indicated during the onsite visit a willingness to reach out to this peer regarding the possibility of sending requests by encrypted email.

267. The current staffing is an additional 2 officers, compared to the previous review period. The FIOT may collect information directly or may request the collaboration of other authorities to carry out its functions. The FIOT's staff speak English, Dutch and Spanish.

268. The FIOT staff have been trained on EOI related legislation and confidentiality procedures related to EOI.

Incoming requests

269. When a request for information is received at the Tax Department the process is that it is registered in the mailroom (DECOS) before being sent directly to the Director of the Department of Taxes who sends it to the FIOT. When a request for information arrives at the FIOT, it is date stamped and logged in an excel spreadsheet which is only accessible by members of the FIOT. Aruba also explained that receipt of every request is acknowledged at the earliest, although there are no set timelines for the same. The FIOT then verifies the identity of the sending Competent Authority and whether an EOI agreement is in place with that Authority. The staff of FIOT also verifies whether the request meets the "foreseeable relevance" standard (see C.1.1). The request is validated by the Head of FIOT on the basis of the provisions of the relevant international agreement. Once the request is determined to be valid, information is accessed via the automated system of the Tax Department, online access at the Chamber of Commerce and Industry, the civil registry or the land registry. If information from third parties is needed, a notice is sent to the third party.

270. During the onsite visit, it was established that in some cases (including some requests where the information was held in the tax database, and so should be relatively easy to extract and send to the EOI partner) where a request had not been responded to within 90 days, this was attributable, in part, to the fact that the above process had not been followed in practice, or that errors had occurred which delayed the time taken to initially process the incoming request, and thus the final response also. Given the limited experience of Aruba in handling EOIR, and the lack of specific timelines (e.g. in the form of an EOI Manual) for internal processing steps (like issuance of acknowledgement of receipt). Aruba is recommended to design and implement adequate internal supervisory systems to ensure that FIOT processes the requests in an effective and efficient manner.

Procedure for obtaining requested information

271. The FIOT does not have any EOI Manual to refer to in respect of the procedure to follow to handle the incoming requests. The FIOT staff members can access directly the taxpayers' information from the databases of the tax administration and, if needed, the paper file in the administration (with the assistance of the head of administration). The FIOT is able to check the databases of the civil registry and the land registry in Aruba to verify personal details such as the name, date of birth and address of a taxpayer. In addition, the tax department has access to the database managed by the

Chamber of Commerce and Industry. If these sources of information are not sufficient, the FIOT will contact any other relevant government authority: a letter will be sent to request the information, a telephone call will be made or a staff member of the FIOT will go to the government authority in person.

272. If information is required to be furnished by third parties outside the tax administration or other government department (such as the taxpayer/person that is the subject of the enquiry, or a service provider, e.g. a TSP or bank) then a notice will be served to the relevant entity with a deadline of two weeks for provision of the information. This is carried out in writing by registered post. Such requests are then followed up by the staff members of the FIOT following a period of 10 days (i.e. 4 days before the deadline). Once the information is received, The FIOT staff member will check if the information correlates with the information that has been requested.

273. If the FIOT were to receive a request relating to a criminal investigation, a strict procedure has to be followed. In essence, a FIOT staff member, who has to be a tax official as well as a criminal investigator, is required to contact the public prosecutor, in order to utilise his/her powers with regards a criminal tax matter. The formalities include a requirement for him/her to make a sworn statement to accompany the response which would clearly set out how the information was obtained. This is to ensure that the information provided could be used in court proceedings if so required by the requesting jurisdiction. Since, on criminal matters, the Minister of Justice remains responsible for international legal assistance, even though the EOI request is addressed to the Minister of Finance, the information can only be exchanged after the authorisation of the Minister of Justice (article 39(2), GTO). However, this article allows for tacit approval from the Minister of Justice once a period of one month has passed from the date the consent was requested and thereby does not impact the timeliness of responses significantly. In practice Aruba has not received a request related to a criminal tax matter and this procedure has therefore not been implemented.

Practical difficulties Aruba experienced in obtaining requested information

274. Aruba advised that they have not faced any significant difficulty in responding to any particular type of request or with respect to requests from any particular partner.

275. However, as discussed in Elements A.2 and B.1, one peer has not received the accounting information requested from Aruba in one case since the resident agent of the company concerned had terminated its contract with the resident agent in Aruba, and in another case Aruba experienced delays on account of initial non-compliance by the TSP concerned. Except these, there have been no other practical difficulties faced in obtaining information.

Outgoing requests

276. In the current review period, Aruba has sent 35 EOI requests mainly from Curacao and Netherlands. A partner indicated that the requests received from Aruba were complete, sufficiently detailed and effectively communicated. The FIOT sends a request to a jurisdiction if this is requested by a tax office employee, who has to provide the information in order for the FIOT to prepare the request. The FIOT can also send a request because they themselves need information in connection with an investigation carried out by the FIOT. The requests are sent by means of registered postal mail. The FIOT requests to its partner competent authority specify:

- the identity of the person under examination or investigation
- a statement of the information sought including its nature and the form in which the requesting jurisdiction wishes to receive the information
- the tax purpose for which the information is sought
- grounds for believing that the information requested is held in the requested jurisdiction or is in the possession or control of a person within the requested jurisdiction
- a statement that the request is in conformity with the law and administrative practices of Aruba, that if the requested information was within the jurisdiction of Aruba, then the competent authority would be able to obtain the information under Aruban laws or in the normal course of administrative practice and that is in conformity with the EOI agreement
- a statement that Aruba has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

277. The FIOT ensures that the Tax Office has exhausted all domestic means available in Aruba before sending the request to other partners.

278. Outgoing requests were sent by registered postal mail (traceable) and/or by encrypted email.

279. Peer input received by the main EOI partner of Aruba has confirmed that the requests sent by Aruba meet the foreseeable relevance standard and do not lead to any need for clarifications.

ToR C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

280. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI by Aruba. No peer input was received which suggested otherwise.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these "in text" recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- Element A.1: It is also noted that the number of DNFSPs covered under onsite are significantly less in proportion (2%). Aruba is recommended to strengthen the supervision of DNFSPs to ensure availability of accurate ownership information at all times.
- Element A.1: Aruba is recommended to ensure that the oversight by the Tax Authorities is strengthened to ensure adequate monitoring of availability of updated and accurate legal ownership of companies.
- Element A.1: The 2015 report noted that the Chamber of Commerce did not exercise any oversight in respect of foreign companies and recommended to introduce the same. However, the position of lack of specific oversight in respect of 2 320 foreign companies continues in the present review period also. Accordingly, Aruba is recommended to implement adequate oversight in respect of foreign companies with sufficient nexus to Aruba, to ensure availability of legal ownership information at all times.
- Element A.1: It is further noted that there is neither a legal requirement nor is it a matter of practice for all foundations to engage an Aruban AML obligated service provider at all times. Accordingly, the availability of beneficial ownership information as well as the chain of ownership information in Aruba in not ensured as per the international standards in respect of foundations at all times. Aruba is recommended to take necessary measures to ensure availability of chain of ownership information including beneficial ownership information in line with the international standards.

- Element A.2: Aruba is recommended to ensure adequate supervision over the foreign companies with sufficient nexus to Aruba in respect of availability of reliable accounting information and underlying documentation.
- Element B.1: Aruba was requested to give bank information in one case. While the information was provided to the partner, the Aruba authorities explained that the bank took a longer time in this case, as it was its first ever request for information and the internal legal consultations have led to longer response time, Aruba is recommended to ensure that all banks in Aruba are made aware of the obligations under international treaties and to ensure that information is provided in a timely manner.
- Element C.2: Aruba is recommended to continue to conclude EOI agreements with any new relevant partner who would so require.
- Element C.3: Aruba is recommended to ensure that the TIEA with USA provides for utilisation of non-tax purposes when authorised by the supplying State.

281. Element C.5: Given the limited experience of Aruba in handling EOIR, Aruba is recommended to design and implement adequate internal supervisory systems to ensure that FIOT processes the requests in an effective and efficient manner.

Annex 2: List of Aruba's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Antigua and Barbuda	TIEA	30/08/2010	01/12/2013
2	Argentina	TIEA	30/09/2013	31/05/2014
3	Australia	TIEA	16/12/2009	17/08/2011
4	Bahamas	TIEA	18/08/2011	01/10/2012
5	Belgium	TIEA	24/04/2014	Not in force
6	Bermuda	TIEA	20/10/2009	01/12/2011
7	British Virgin Islands	TIEA	11/09/2009	01/07/2013
8	Canada	TIEA	20/10/2011	01/06/2012
9	Cayman Islands	TIEA	20/04/2010	01/12/2011
10	Czech Republic	TIEA	29/05/2015	01/08/2016
11	Denmark	TIEA	10/09/2009	01/06/2011
12	Faroe Islands	TIEA	10/09/2009	01/10/2011
13	Finland	TIEA	10/09/2009	01/06/2011
14	France	TIEA	14/11/2011	01/04/2013
15	Germany	TIEA	29/06/2017	Not in force
16	Greenland	TIEA	10/09/2009	01/05/2012
17	Grenada	TIEA	21/06/2012	Not in force
18	Iceland	TIEA	10/09/2009	01/01/2012
19	Mexico	TIEA	18/07/2013	01/09/2014
20	Norway	TIEA	10/09/2009	01/08/2011
21	Saint Kitts and Nevis	TIEA	11/09/2009	19/10/2011
22	Saint Lucia	TIEA	10/05/2010	01/01/2012
23	Saint Vincent and the Grenadines	TIEA	01/09/2009	20/10/2011

	EOI partner	Type of agreement	Signature	Entry into force
24	Spain	TIEA	24/1/2008	27/01/2010
25	Sweden	TIEA	10/09/2009	02/06/2011
26	United Kingdom	TIEA	05/11/2010	01/01/2012
27	United States	TIEA	21/11/2003	13/09/2004

Agreement with the other parts of the Kingdom of the Netherlands

The Tax Arrangement of the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, BRK) of 28 October 1964 (in force as of 1 January 1965) is a multilateral agreement concluded among the three former parts of the Kingdom – the Netherlands, Aruba, and the Netherlands Antilles (now succeeded by Curacao and Sint Maarten) – for the avoidance of double taxation and the prevention of fiscal evasion. Under articles 37 and 38, it includes an EOI provision which generally follows the old wording of Article 26 of the OECD Model Tax Convention, i.e. before the inclusion of paragraphs 4 and 5 in the 2005 update.

Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[14] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

14. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

The Kingdom of the Netherlands extended to Aruba the application of the original multilateral Convention on Mutual Administrative Assistance in Tax Matters with entry into force on 1 February 1997, and of the Protocol amending it, with entry into force on 1 September 2013.

Currently, the amended Convention is in force for Aruba in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Cyprus,[15] Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Aruba, Saudi Arabia, Senegal, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force: Armenia, Bahamas (entry into force on 1 August 2018), Bahrain (entry into force on 1 September 2018), Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Former Yugoslav Republic of Macedonia,

15. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Gabon, Grenada (entry into force on 1 September 2018), Hong Kong (China) (extension by China, with entry into force on 1 September 2018), Jamaica, Kenya, Kuwait, Liberia, Macau (China) (extension by China, with entry into force on 1 September 2018), Morocco, Paraguay, Peru (entry into force on 1 September 2018), Philippines, Qatar, United Arab Emirates (entry into force on 1 September 2018) United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010) and Vanuatu.

Annex 3: Methodology for the Review

The reviews are based on the 2016 Terms of Reference, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015and the 2016-21 Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 31 July 2018, Aruba's EOIR practice in respect of EOI requests made and received during the three year period from 1 July 2014 to 30 June 2017, Aruba's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Aruba's authorities during the on-site visit that took place from 11-13 April 2018 in Aruba.

List of laws, regulations and other materials received

Civil and commercial laws

Civil Code of Aruba, articles 1665-1684

Commercial Code of Aruba, articles 1-76 and 155a-155tt

Trade Register Ordinance

State Decree Activities Aruba Exempt Company

State Ordinance on the Private Liability Company (VBA)

State Ordinance on Foundations

State Ordinance on the Establishment of Businesses

Guidelines for the Establishment of Companies

Regulated activities and AML/CFT laws

State Ordinance on the Supervision of Trust Service Providers (SOSTSP)

State Ordinance on the Supervision of the Credit System (SOSCS)

State Ordinance on the Supervision of Money Transaction Companies (SOSMTC)

State Ordinance on the Supervision of Insurance Business (SOSIB)/State Decree on the Supervision of Insurance Brokers (SDSIB)

State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (AML/CFT State Ordinance)

State Ordinance on the Supervision of the Securities Business (SOSSB)

State Ordinance on Company Pension Funds (SOCPF)

Sanctions State Decree

Tax laws

General Tax Ordinance (GTO)

Decree for enforcement of Article 3B (3) General Tax Ordinance

National Ordinance on International Assistance in Tax Matters (NOIAM)

State Ordinance on Dividend Withholding Tax and Imputation Payments

Authorities interviewed during on-site visit

Representatives of the Ministry of Foreign Affairs

Representatives of the Department of Taxes

Representatives of the Chamber of Commerce and Industry

Representatives of the Central Bank of Aruba

Representatives of the Reporting Centre for Unusual Transactions

Representatives of the Aruba Bankers Association

Representatives of the Aruba Financial Center

Representatives of the Department of Economic Affairs, Commerce and Industry

Representatives of the Legislative Department

Representatives of the Association of Accountants

Representatives of the Lawyers Association

Current and previous reviews

This report is the third review of Aruba conducted by the Global Forum. Aruba previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2011 and a review of the implementation of that framework in practice (Phase 2) in 2015.

The Phase 1 and Phase 2 reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of (date)	Date of adoption by Global Forum
Round 1 Phase 1	Mr John Goldsworth, Chairman of the Seychelles International Business Authority and Mr Neil Cossins, Manager of the Exchange of Information Unit, Australian Taxation Office; and Ms Renata Fontana from the Global Forum Secretariat.	not applicable	January 2011	April 2011
Round 1 Phase 2	Ms Angelique Antat, Policy Analyst, Ministry of Finance, Trade and Investment, Seychelles and Mr Neil Cossins, Director – Transparency Practice International, Australian Taxation Office; and Ms Kathryn Dovey from the Global Forum Secretariat.	1 July 2010 to 30 June 2013	December 2014	March 2015
Round 2	Ms Patricia Checa, Head of the Mutual Administrative Assistance in Tax Matters Office, Tax Administration of Peru; Mr Rob Gray, Director of International Tax Policy, Guernsey; Mr Bhaskar Eranki from the Global Forum Secretariat	1 July 2014 to 30 June 2017	31 July 2018	12 October 2018

Annex 4: Aruba's response to the review report[16]

Aruba is committed to give a swift follow-up to the recommendations mentioned in the Peer Review report and to eliminate the shortcomings and/or gaps identified as soon as possible.

Aruba welcomes the recommendations of the assessment team and has or will take the following steps to ensure the implementation of the (key) recommendations:

- With respect to the identification of (ultimate) beneficial owners, a revision of the AML/CFT State Ordinance has been drafted and is expected to be submitted to Parliament no later than February 2019.
- New legislation containing new and comprehensive rules on all private legal persons in Aruba through a separate Book of the Civil Code has been submitted to Parliament that will not only regulate all private legal persons, but will also lead to the elimination of the so-called Aruba Exempt Company ("AVV's") and will address the concerns about the identity information on the owners of bearer shares in NVs and AVV's issued prior to 2012.
- A revision of the Trade Register and introduction of a designated Register for Ultimate Beneficial Owners of private legal persons established in Aruba will be introduced.

To conclude Aruba will proceed to carefully evaluate and monitor the impact of the implementation of the recommendations given and will improve areas as needed to continue to ensure effective exchange of information for tax purposes.

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

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(23 2018 39 1 P) ISBN 978-92-64-30602-8 – 2018

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request ARUBA 2018 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This report contains the 2018 Peer Review Report on the Exchange of Information on Request of Aruba.

ISBN 978-92-64-30602-8
23 2018 39 1 P

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