

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

NIUE

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

PHASE 1

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

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Niue.
2. Located in the South Pacific Ocean, Niue is a very small island State with a population of approximately 1 600 inhabitants and a tiny economy. Formerly a New Zealand territory, Niue chose to become a self-governing state in 1974. Under the terms of the constitutional agreement between the two countries, New Zealand provides substantial economic and administrative assistance to Niue, in the form of both direct budget support and project-related aid. Geographic isolation, limited natural resources and a small population hamper the development of an independent economy. Cyclones occasionally devastate the island's infrastructure, including housing and tourist facilities.
3. In 1994, Niue introduced a series of measures designed to promote the island as an offshore financial centre. The offshore legislation was repealed in 2006 and the Government of Niue closed all offshore operations. Niue does not appear to have any functioning international financial centre or to have the capacity to establish such a centre in the immediate future.
4. Niue has committed to the standards of transparency and effective exchange of information. This review found that Niue has the legal framework for the availability of information in place, but certain aspects of the legal implementation need improvement. Ownership and identity information is generally available for all relevant entities. Identity and ownership information may not consistently be available in respect of all domestic trusts and foreign trusts with Niuean trustees. Enforcement provisions are in place to enforce most requirements.
5. Requirements to maintain accounting records in Niue generally meet the international standard. Niue's Companies Act requires that reliable accounting records are kept for all domestic companies. Moreover, the Income Tax Act requires accounting records and underlying documentation to be maintained by taxpayers. Niuean law does not ensure that reliable accounting records or underlying documentation are kept for (i) all trusts which are administered in Niue or in respect of which a trustee is resident in Niue, and (ii) limited liability partnerships and special partnerships in all circumstances.

6. In respect of access to information, Niue’s tax authority has broad powers to obtain bank, ownership and accounting information and has measures to compel the production of such information for domestic tax purposes. The ability of Niue’s tax authority to use these powers for exchange of information with other jurisdictions under a Tax Information Exchange Agreement (TIEA) or Double Taxation Convention (DTC) is specifically provided in the Income Tax Act.

7. While Niue’s authorities can exchange some information pursuant to its Mutual Assistance in Criminal Matters Act 1998, this act only provides for exchange of information in criminal (tax) matters on a discretionary basis.

8. In August 2012, Niue signed its first TIEA with New Zealand, which is Niue’s main trading partner. This agreement meets the foreseeably relevant standard; however, it is not in force yet. As a result, Niue is not able to effectively exchange information in accordance with the international standard. TIEA negotiations have commenced with four jurisdictions, and these are expected to conclude shortly.

9. As an element which is crucial to achieving effective exchange of information is not yet in place in Niue, it is recommended that it does not move to a Phase 2 Review until it has acted on the recommendations contained in the Summary of Factors and Recommendations to improve its legal and regulatory framework. Niue’s position will be reviewed when it provides a detailed written report to the Peer Review Group within 12 months of the adoption of this report. It should also provide an intermediate report within 6 months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Niue

10. The assessment of the legal and regulatory framework of Niue was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at August 2012, other materials supplied by Niue, and information supplied by partner jurisdictions.

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

12. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mr. Sergio Luis Pérez Cruz, Administrator at the Mexican Tax Administration Service; Mr. Huw Shephard, Attorney General of the Turks and Caicos Islands; and Ms. Renata Teixeira from the Global Forum Secretariat.

Overview of Niue

13. Niue is a raised coral atoll in the centre of a triangle of Polynesian islands, which comprises Tonga to the east, Samoa to the North and the Cook Islands to the south west. Niue is located 2 400 km north-east of New Zealand. Niue stretches 19km from north to south and its population is around 1 600 inhabitants according to a census conducted in September 2006.¹ Alofi is the country's capital. Official languages spoken in Niue are Niuean and English, and the currency used is the New Zealand dollar (NZD), with one NZD equal to 0.636 EUR as at 16 February 2012.²

14. Niue's economy is based mainly on tourism, fishing and subsistence or small scale agriculture. Tourism, noni and taro farming are the most important activities. Other agricultural commodities produced include honey and small amounts of vanilla. The government is the main employer on the island with approximately 400 employees. Niue's Gross Domestic Product (GDP) in 2006 amounted to NZD 20.54 million.³ The economy is fragile and faces constraints such as limited access to air services, shortages of professionals, limited land and poor soil quality. Natural disasters, especially cyclones, have long lasting impact. Geographic isolation, limited natural resources and a small population hamper the development of an independent economy.

15. Niue's declining population has been a concern to successive governments. Despite government attempts to encourage Niueans to remain in Niue and for those overseas to return, the population has been continuously declining. Over 20 000 Niueans currently live in New Zealand and a smaller number also live in Australia.

16. Niue is a member of the Pacific Islands Forum and the Asia-Pacific Group on Money Laundering. It committed to the international standards for transparency and exchange of information in tax matters in 2002.

General information on legal system

17. On 19 October 1974, Niue chose to become a self-governing state in free association with New Zealand. Under its constitutional arrangements with New Zealand, New Zealand remains responsible for Niue's defence. The

1. Source: www.spc.int/prism/Country/NU/stats/Social/Population/Popstats.htm, accessed on 12 March 2012.

2. www.xe.com/

3. Source: www.spc.int/prism/Country/NU/stats/Economics/GDP/gdp.htm, accessed on 12 March 2012.

Niue Cabinet of Ministers exercises the executive authority on behalf of the Queen Elizabeth II.

18. Niue is a parliamentary democracy. Its Parliament (Legislative Assembly) consists of 20 members – 14 constituency or village seats, and 6 common roll seats – elected every three years by universal suffrage. The Legislative Assembly Speaker is appointed from outside the elected members. The Cabinet of Ministers has four members of which the Premier, who is elected by the members, is the leader of Niue. The Premier selects the Ministers of the Cabinet and also acts as Minister of Finance.

19. Niue’s legal system is based on English common law. The Niue Constitution came into force in 19 October 1974 when both the Niue and New Zealand parliaments passed the Niue Constitution Act 1974. The statutes that apply in Niue include Acts of the New Zealand Parliament extended to Niue before 1974 that have not been repealed by the Niue Assembly since 1974, Niue ordinances (pre-1974) and Acts of the Niue Assembly (post-1974). The sources of Niuean law are, in order of priority, the Constitution, Acts of the Assembly, Regulations, Niuean custom, and the common law of Niue.⁴

20. Treaties including Double Taxation Conventions (DTCs) appear to have the same legal status as other Niue’s statute. An exception appears to exist for Tax Information Exchange Agreements (TIEAs), as they are brought into force by way of a cabinet regulation. A TIEA does not require approval from Niue Assembly to enter into force.

21. The High Court of Niue is the court of general jurisdiction for Niue. The High Court consists of a Chief Justice (based in New Zealand) and other judges and commissioners. The commissioners of the High Court are local lay persons. The High Court sits twice a year and also hears any urgent matters via teleconference. All civil matters are listed for hearing before the Chief Justice. The Niue Court of Appeal has five judges who have professional judicial experience in New Zealand (both current and former judges). There is a local court presided over by Commissioners that sits once a month depending on the number of criminal cases and its jurisdictional limits. The Civil Division of the High Court hears tax related matters.

The tax system

22. The current taxation system was established and evolved from the New Zealand system. Income tax, customs duty, manufactured goods tax, consumption tax and license fees apply in Niue. The assessment and collection of taxes is administered by the Financial Secretary of Niue, assisted by the Collector of Inland Revenue.

4. Please also see paragraph 96.

23. Individuals and companies are subject to income tax in Niue. The Income Tax Act 1961 and subsequent amendments established the taxation system and the taxable income rates.

24. An individual is deemed to be resident in Niue if his or her domicile is in Niue or if he or she is present in Niue for a period of 183 days in any 12 month period. Resident individuals are subject to income tax on their worldwide income. Non-resident individuals are subject to income tax on income derived from sources in Niue. Individual income tax applies at progressive rates from 10% to 30%.

25. A company is deemed to be resident in Niue if it is incorporated in Niue or if its central administrative management is in Niue. Non-resident companies are subject to income tax in Niue if they derive income from Niuean sources. The term ‘permanent establishment’ is not defined in Niuean law. Resident and non-resident companies are subject to tax at a fixed rate of 30% applied on their taxable income.

26. Individuals and legal entities carrying on business in Niue must file annual tax returns.

27. Niue was reluctant to conclude negotiations for EOI without having the necessary powers to give effect to such treaties. With the recent amendments to the Income Tax Act, Niue expects to be able to conclude agreements shortly.

Overview of the commercial laws, the financial sector and other relevant professions

28. Niue introduced a series of measures in 1994 designed to promote the island as an offshore financial centre. In 2006 the offshore legislation was repealed and the Government of Niue closed all offshore operations. This commenced with the repeal of the International Banking Act 1997 in 2002 and subsequent closure of the International Banking Registry in 2002 and the revocation of all licences granted under that act. The final act of closure of the offshore financial centre was on 31 December 2006 when, as a result of the repeal of the International Business Companies Act 1994, all international business companies registered thereunder were effectively dissolved (or restored if they requested for restoration under the new framework established by Companies Act 2006). Under the Companies Act 2006, the Niue Companies Registry was established. The New Zealand Companies Registry undertakes the company registration services for the Niue Companies Registry and records are held both in Niue and New Zealand.

29. The Niue Companies Registry registers Niue resident companies and overseas companies and has re-registered less than 10 former International

Business Companies (IBCs) since the IBC Registry closure in 2006 and only four are currently active. Pursuant to the Companies Act 2006, all applications for re-registration are made to the High Court before the Niue Companies Registrar can accept such applications. The Niue Companies Act 2006 is based on the New Zealand and Samoa legislation.

30. Niue does not appear to have any functioning international financial centre or the capacity to establish such a centre in the immediate future.

31. There is no evidence of Niue promoting itself as an international financial centre.⁵ The Niue government website (www.gov.nu) does not make any reference to international finance or banking, neither does the website Invest in Niue (www.investniue.com). There are a number of non-Niuean government sanctioned websites⁶ that continue to promote Niue as a potential jurisdiction to establish an offshore entity. However, the references to Niue in these websites do not appear to take into account the repeal of Niue's offshore legislation. There is only one bank providing services in Niue – Bank South Pacific, which is headquartered in Papua New Guinea – and one money remittance business in Niue. Bank South Pacific, which has one branch, offers only domestic facilities on the island. The remittance business sends and receives normally small amounts to and from overseas, mainly between relatives living in Niue and New Zealand.

32. Cash plays a very important role as Niue is a small economy. Cash is the main form of currency in the country. Payments are usually made by cash or cheque with a few retailers (the bank, travel agency and hotels) offering credit card services for tourists. There is no EFTPOS (electronic funds transfer at point of sale) and any other electronic transactions are made at the bank.

33. There is one lawyer in private practice in Niue and one accountancy firm that also offers tax advice. Notaries are the staff of the Niuean Crown Law Office. Currently, Niue does not have trust and company service providers. In order to operate as a business in Niue, all legal entities are required to apply for a licence to the Licensor of Businesses pursuant to the Business License Act 1997.

34. New Zealand lawyers, accountants and tax advisors and other company service providers can act in Niue; however, they must register first.

5. See paragraph 28 of this report.

6. See Coldwell Company Formation Services – www.offshore-professional.com; Tax Haven Co – <http://taxhavenco.com> ; and First advisor Limited – www.firstadvisor.com.

AML law

35. The Financial Transactions Reporting Act 2006 (FTRA) details Niue’s framework for combating money laundering and terrorist financing. A division of the Niue Crown Law Office acts as the Financial Intelligence Unit (FIU). The following government agencies are also involved in AML/CFT control measures: the Police (including Immigration and the Transnational Crimes liaison post); Treasury (including Tax and Customs), the Niue Bank and Monetary Board; other departments upon request.

36. The FTRA obliges banks, trustees acting by way of business, trust companies, company service providers, insurers, among others, to perform customer due diligence and maintain transactions records. The same obligation applies to lawyer, notaries, independent legal professionals and accountants when they act, for instance in managing client money, securities, or other assets or organising contributions for the creation, operation or management of companies, legal persons or arrangements.

37. Niue was admitted as a member of the Asia Pacific Group on Money Laundering (“APG”) in May 2001. Niue’s first APG Mutual Evaluation assessing its compliance with the international standards for anti-money laundering and counter-terrorist financing has been completed and the report is currently available on APG’s website.

Recent developments

38. On 10 August 2012, legislation came into force enabling information to be obtained and exchanged under TIEAs. Niue has started TIEA negotiations with Australia, France, the Republic of Korea and the Netherlands.

Compliance with the Standards

A. Availability of Information

Overview

39. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority⁷ may not be able to obtain and provide it when requested. This section of the report describes and assesses Niue's legal and regulatory framework for availability of information.

40. Regarding ownership and identity information, the comprehensive obligations consistently imposed on companies and partnerships ensure that updated information is available either in the hands of public authorities or the entity itself. Tax law requires companies, partnerships, partners of partnerships, and trustees (of non-exempt trusts) to file annual returns. Those obligations are complemented by the customer due diligence requirements imposed by Niue's anti-money laundering (AML) law on obligated entities. Identity and ownership

7. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange.

information may not consistently be available in respect of all domestic trusts and foreign trusts with Niuean trustees.

41. Enforcement provisions are in place to ensure the availability of ownership and identity information and their effectiveness will be considered as part of the Phase 2 peer review of Niue. For the reasons above, element A.1 is found to be in place, but in need of improvement.

42. Requirements to maintain accounting records in place in Niue generally meet the international standard. Niue commercial law imposes sufficient record keeping requirements on domestic companies. Moreover, all persons carrying on business in Niue are subject to the obligations to keep accounting records, including underlying documentation, pursuant to the Income Tax Act 1961 (ITA). Moreover, Niuean law does not ensure that reliable accounting records or underlying documentation are kept for all trusts which are administered in Niue or in respect of which a trustee is resident in Niue, limited liability partnerships and special partnerships in all circumstances. Hence, element A.2 is found to be in place, but certain aspects of the legal implementation need improvement.

43. Banks and other financial institutions have to comply with detailed customer due diligence obligations and must keep all records pertaining their customers' identity, as well as the nature and amount of financial transactions of account holders, for at least six years. Element A.3 is therefore found to be in place.

A.1. Ownership and identity information

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

Companies (ToR⁸ A.1.1)

44. In Niue, companies can be private or public companies and are incorporated and managed in accordance with the Companies Act 2006 (CA).

45. A company is a private company if (CA s. 9(1)):

- its rules prohibit it from offering its securities to the public;
- its rules restrict the number of shareholders in the company to not more than 100; and
- it has not more than 100 shareholders.

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

46. A company that is not registered as a private company is a public company (CA s. 9(2)).

47. As at 3 April 2012, there were 46 domestic companies (45 private and 1 public) and 1 overseas company⁹.

48. Prior to 2006, Niue provided for a special regime pertaining to International Business Companies (IBCs). On 31 December 2006 the International Business Companies Act 1994 was repealed and all existing IBCs were dissolved by operation of law. However, prior to dissolution those companies were given the opportunity to re-register as domestic companies, subject to all requirements of the CA. Pursuant to the CA, the applications for restoration can be made to Registrar or the High Court (ss. 272 and 276). The Niuean authorities advised that, in practice, all applications for re-registration are made to the High Court before the Niue Companies Registrar can accept such applications. The Niue Companies Registry registers Niue resident companies and has re-registered less than 10 former IBCs since the IBC Registry closure in 2006. Six of those are listed as struck off the Registry.

49. Also prior to 2006, Niue did not have domestic companies legislation. Niuean resident companies were therefore typically incorporated in New Zealand under the New Zealand companies legislation.

Information held by government authorities

50. All domestic companies must lodge an application for incorporation with the Niue Companies Registry (the Registrar) (CA s. 6). The New Zealand Companies Registry undertakes the company registration services on behalf of the Niue Companies Registry and records are held both in Niue and New Zealand.

51. The application for incorporation of a company must specify, *inter alia*, the full name of every shareholder of the proposed company and the number of shares to be issued to every shareholder (s. 6(1)(e)).

52. Companies must file annual returns with the Registrar (s. 124). The Companies Regulations 2006 provides a form according to which annual returns must be filed (Form 10 contained in Schedule 1 of Companies Regulations). Changes in shareholders must be included, together with their addresses, in Form 10.

53. Company information, including a company's annual returns, is publicly available at the Registrar's website.¹⁰

9. Please see section on foreign companies.

10. www.companies.gov.nu/cms

Tax law

54. The Income Tax Act 1961 (ITA) requires taxpayers to file income tax returns (s. 5). “Taxpayer” is a person chargeable with income tax, meaning a person who derives assessable income (ITA s. 2). Companies that are incorporated or have a centre of administrative management in Niue are tax residents (ITA s. 2, as amended by the Income Tax Amendment Act 2009) and are taxable on their worldwide income (s. 80). Taxpayers that are companies must include the names of shareholders, their address, number of shares and amount of dividends received by each shareholder in their tax return (Company Income Tax Return Form) regardless of whether dividends are paid in the year.

Information held by companies

55. Pursuant to the CA, a company must maintain a share register that records the shares issued by the company and states, among others, the names, alphabetically arranged, and the last known address of each person who is, or has within the last seven years been, a shareholder (s. 40).

56. The share register must be kept at the registered office of the company in Niue (ss.40(2) and 17). The share register of the company may be maintained by an agent on behalf of the company (s. 40(3)).

Foreign companies

57. All overseas companies intending to carry on business in Niue are obliged to register with the Registrar within 20 working days of commencing business (CA s. 281(1)). Failure to register is an offence and subjects the overseas company, on conviction, to a fine not exceeding 50 penalty units (NZD 5 000 or EUR 3 180) (s. 281(4)). As at 3 April 2012, there was only 1 overseas company registered with the Niuean Registrar. Information required to be registered includes: the address of the place of business in Niue; full name and address of one or more persons in Niue authorised to accept service of documents on behalf of the company; and the full name and residential address of each director of the company. Ownership information does not have to be provided as part of the registration process, however.

58. A foreign company having a centre of administrative management in Niue becomes a resident for tax purposes and has to submit ownership information when filing tax returns (ITA ss.2 and 5 and Company Income Tax Return Form).

Information held by service providers

59. Niue has an AML regime, established under the Financial Transactions Reporting Act 2006 (FTRA).

60. The FTRA places obligations on financial institutions, defined by the Act to include (among others) (s. 3):

- a bank;
- a person carrying on the business as: (i) a trustee in respect of funds of other persons; or (ii) a trust or company service provider;
- A person carrying on a business of: (i) exchanging money; or (ii) collecting, holding, exchanging, or remitting funds, or otherwise negotiating funds transfers, on behalf of other persons; or (iii) preparing pay-rolls on behalf of other persons, in whole or in part, from funds collected; or (iv) delivering funds;
- a person carrying on the business of an insurer, insurance intermediary, securities dealer or futures broker; and
- a lawyer, notary, independent legal professional or accountant when providing services to a client relating to any or all of the following: (i) buying or selling real estate, businesses or business entities; (ii) managing money, securities or other assets; (iii) managing bank, savings or securities accounts; (iv) organising contributions for the creation, operation or management of companies, legal persons or arrangements.

61. These obligated persons must identify their customers and verify the customers' identity, when performing transactions such as opening an account or entering into a fiduciary relationship (FTRA ss.4 and 15). Where a person conducts or attempts to conduct a transaction through or by using the financial institution and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of another person, the financial institution must, in addition to identifying the customer, identify the person for whom, or for whose ultimate benefit, the transaction is being conducted (s. 15(4)). For purposes of the FTRA, a transaction means any deposit, withdrawal, exchange or transfer of funds and includes the opening of an account and the beginning of a fiduciary relationship or the use of trust or company services (s. 4).

62. The FTRA requires that financial institutions keep records of evidence of a person's identity and a record of all correspondence between the identified person and the financial institution for a minimum period of six years after the evidence was obtained (s. 17). The FTRA does not provide for where records must be kept – whether within or outside Niue.

63. There is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date by undertaking reviews of existing records. It is, therefore, possible that CDD at the time a transaction was conducted with a customer (e.g. when a fiduciary relationship was established) and that a later point in time there is a change in the ownership of that customer without triggering an obligation for the FTRA obligated person to update its files. The Niue FIU Guidelines for Financial Institutions issued in July 2009 merely refers to “*in a situation where there has been a significant time lapse between dealing with a particular customer, it may be sensible to renew the verification to ensure that the financial institution is dealing with the same person*”.

64. Moreover, CDD obligations may be waived in the following cases (FTRA s. 15(6)):

- if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity or if the transaction is considered low risk or if it is a regular transaction of institutions like utilities, pension funds and treasury, unless the financial institution has reason to suspect that the transaction is suspicious or unusual, or if the financial institution has reason to doubt the accuracy or veracity of previously obtained information about the identity of the person; or
- if the transaction is an occasional transaction not exceeding 1000 penalty units (NZD 100 000 or EUR 63 600) its equivalent in foreign currency or any other amount that may be prescribed, unless the financial institution has reason to suspect that the transaction is suspicious or unusual. Occasional transaction is defined as any transaction involving cash that is conducted by any person otherwise than through an account in respect of which the person is the holder (s. 15(7)).

65. If the customer is a legal entity, the financial institution must adequately verify its legal existence and structure, including: the customer’s name, legal form, address and its directors; the principal owners and beneficiaries; and provisions regulating the power to bind the entity and the authorisation of any person purporting to act on behalf of the customer (FTRA s. 15(2)(a)).

Nominees

66. The Companies Act does not require nominees to have information regarding the identity of the person on whose behalf the shares are held. No indication needs to be given in the share registers or information filed with the Registrar when shares are held by nominees either.

67. Notwithstanding the above, under the Niuean AML regime, obligated persons must, when they have reason to believe a customer is undertaking the transaction on behalf of another person, identify both the customer and the person for whom, or for whose ultimate benefit, the transaction is being conducted (FTRA section 15(4)). The Niuean AML regime covers trust and company service providers and also lawyers, accountants and notaries when managing securities and trustees in respect of funds of other persons (FTRA s. 3). The scope of professionals covered by AML seems reasonably broad covering most nominees acting by way of business and in particular those who manage securities. However, there is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date. The impact of the absence of a requirement to update the CDD information in the case of a nominee relationship is not clear. For example, where the nominee acts for a legal person, there is no requirement under the Terms of Reference for the nominee to know who the shareholders of that company are. Consequently, the failure to update the CDD information (such as business address, ownership structure or identity of directors) would not affect the reliability of information pertaining to the identity of the customer itself. Where the customer itself does change, then this should trigger a new obligation to conduct CDD in respect of the new customer. The assessment team is also of the view that the issue appears to be not material at this stage as there are very few companies in Niue. A follow up of this issue will take place in the Phase 2 peer review of Niue.

Conclusion

68. The Companies Act requires filing of information on the legal ownership of companies with the Registrar. It also requires companies to maintain a register of their shareholders. Companies that are resident in Niue for tax purposes, including companies incorporated in Niue or abroad, are obliged to provide information identifying their shareholders in their tax returns. Financial institutions and some service providers are required under anti-money laundering legislation to perform customer due diligence and identify the owners of corporate customers, including cases where shares are held by nominees. There is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date, however.

Bearer shares (ToR A.1.2)

69. The ability of companies to issue bearer shares in Niue is precluded by the requirements relating to the issue and transfer of shares and the requirement that companies maintain share registers containing the names of

shareholders (ss.38-44). In particular, shares in a company may only be transferred by entry of the name of the transferee on the share register (s. 38(2)). Entry of the name of a person in the share register as holder of a share is *prima facie* evidence that legal title to the share vests in that person (s. 41(1)). A company may treat the registered holder of a share as the only person entitled to: exercise the right to vote attaching to the share; receive notices; receive a distribution in respect of the share; and exercise the other rights and powers attaching to the share (s. 41(2)).

70. Bearer shares were previously provided for in section 28 of the International Business Companies Act 1994 (IBCA). The IBCA has been repealed as of 31 December 2006 and all companies which were incorporated according to the act were dissolved, though with the option of re-registering as domestic companies under the Companies Act 2006. The re-registration of a company must follow all requirements established in the Companies Act, as previously described in this section.

Partnerships (ToR A.1.3)

71. Partnerships in Niue are governed primarily by a New Zealand law,¹¹ the Partnership Act 1908 (PA). That Act defines a partnership as *the relation which subsists between persons carrying on a business in common with a view to profit* (PA s.4(1)). Partnerships in Niue are also governed by the Partnership Application Act 1994 (PAA).

72. Niuean law provides for the creation of three types of partnerships: general partnerships; limited liability partnerships; and special partnerships. As at 3 April 2012, 3 special partnerships and no limited liability partnerships were registered with the Niuean Registrar. It is not known exactly how many general partnerships exist in Niue. The Niuean Licensor of Business advised that 34 general partnerships have been issued with a business license for the period 2011-2012.

General partnerships

73. A general partnership is not a legal entity nor is it separate from the individual partners that comprise the partnership. However, a general partnership is a distinct commercial entity for accounting purposes, with each partner jointly and severally liable for the liabilities of the partnership. A partnership relationship is typically formalised by a partnership agreement, but a written agreement is not essential and the existence of a partnership

11. Niue became independent of New Zealand in 1974. Any amendments performed by New Zealand after 1974 will only apply in Niue if approved by the Niuean Legislative Assembly.

can be determined based on facts and a consideration of all of the surrounding circumstances. A business license is required to carry on a business in Niue (Business Licence Act 1997, s. 8). The Niuean Licensor of Business has information on the partners of general partnerships that applied for a business license (Business License Act 1997, s. 8).

74. All partnerships carrying on business in Niue must furnish joint returns of income, stating the amount of taxable income and the entitlement of each partner to a share of it (ITA s.8). The partners are also obliged to include their allocable share of partnership income on their own separate returns of income, and tax is assessed on the partners rather than on the partnership (ITA s. 8). Partners are, therefore, required to disclose their identity upon filing tax returns. Moreover, the ITA provides that all persons in business must file a tax return irrespective if a profit has been made or a loss incurred.

Limited liability partnerships

75. A limited liability partnership (LLP) is a partnership that is registered under section 12 of the Partnership Application Act (PAA). Pursuant to section 11 of the PAA, the Registrar of LLPs is required to maintain a register of limited partnerships. However, in practice this register is not operational as there are no LLPs in Niue.

76. The application for registering a LLP must be signed by all partners and must specify a partner of the partnership or a duly appointed attorney thereof such that the registered office of the partnership shall be the address in Niue of that partner or duly appointed attorney (PAA s.12(3)). Pursuant to Section 19 of the PAA, as part of the registration application, the partners must also lodge a guarantee in a prescribed form concerning the amount nominated by each partner as guarantee to all creditors of the partnership (s. 12(4)).

77. The registration is valid for the period of one year (s.13(1)). Therefore, partners must apply every year for a renewal of the LLP registration (s. 13(1)). The Niuean authorities advised that, in the absence of LLPs registered in Niue, the renewal form has not been created yet. Moreover, the Niuean authorities confirmed that the renewal form can include a requirement for identification of the partners. It is recommended that the renewal form include such a requirement to ensure that ownership is available for LLPs that are created in Niue in the future. The issue appears not to be material at this stage as there are no LLPs in Niue. A follow up will take place in the Phase 2 peer review of Niue.

78. LLPs are subject to the same tax reporting requirements applicable to general partnerships (see above). As a result, information on all the partners

is provided in annual tax returns and each partner must also submit a return, which indicates their allocated share of the partnership (ITA s. 8).

Special partnerships

79. The Partnership Act (PA) makes provision for a type of partnership known as a special partnership. Special partnerships may be formed for the transaction of agriculture, mining, mercantile, mechanical, manufacturing or other business (s. 49(1)). These partnerships cannot be used for banking and insurance businesses (s. 49(2)).

80. Special partnerships typically comprise a general partner that carries on the partnership business and several special partners who contribute capital. Special partners are only liable for the debts of the partnership to the extent of their capital contribution (s. 50).

81. Before commencing a special partnership, partners must sign a certificate including, *inter alia*, the names and places of residence of all the partners, distinguishing the general from the special partners, the amount of capital which each special partner contributes, and also (if any) the amount contributed by the general partners to the common stock (s. 51). A special partnership is not deemed formed until such certificate is acknowledged by each partner before the Court, and registered in the office of the Court in a book to be kept for that purpose by the Registrar open to public inspection (s. 54). Moreover, a copy of the above-reference certificate must be published in the Niuean Gazette and in some newspaper published at the intended principal place of business of the special partnership (s. 56(1)). If the publication is not so made, the partnership shall be deemed to be a general partnership (s. 56(2)).

82. A special partnership cannot be entered into for a longer period than seven years. However, it may be renewed by means of the signature of a renewal certificate. The renewal certificate must be acknowledged, registered and published in like manner as the original certificate (s. 57).

83. Special partnerships are subject to the general taxation rules applicable to general partnerships and LLPs (see above). As a result, information on all the partners is provided in annual tax returns and each partner must also submit a return, which indicates their allocated share of the partnership (ITA s. 8).

Foreign partnerships

84. If a foreign partnership carries on business in Niue its partners are subject to tax in Niue. Partnerships must make a joint tax return of the income of the partnership, setting forth the amount of that income and the

shares of the several partners therein and every such return must be signed by all partners (ITA s. 8). Also, each partner is separately assessed and liable for the tax payable on his total income, including his share of the income on any partnership in which he is a partner (s. 8). Partners are, therefore, required to disclose their identity upon filing tax returns.

Information held by service providers

85. The FTRA requires financial institutions and designated businesses (including lawyers, legal professionals, notaries and accountants) to identify their customers (see section A.1.1 of this report).

86. There is no legal requirement for the establishment of a partnership through a service provider or a legal practitioner. If a service provider or a legal practitioner is involved, however, the general CDD requirements under the FTRA will apply (FTRA s. 15). There is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date.

Conclusion

87. In relation to general partnerships, a combination of tax law and business licensing requirements ensure that information identifying partners is available in the circumstances required under the ToR. LLPs and special partnerships must provide information on the identity of their partners when registering. No LLPs are registered in Niue and the form for registry renewal has not been issued yet. Partners in all partnerships carrying on business in Niue must make a joint tax return of the income of the partnership, setting forth the amount of that income and the shares of the several partners therein and every such return must be signed by all partners (ITA s. 8). Also, each partner is separately assessed and liable for the tax payable on his total income, including his share of the income on any partnership in which he is a partner (s. 8). Partners are, therefore, required to disclose their identity upon filing tax returns.

Trusts (ToR A.1.4)

88. This section deals with domestic and foreign trusts. Trusts can be created under the laws of Niue. Moreover, there are no obstacles that prevent a Niuean resident from acting as a trustee or administrator of a foreign trust.

Domestic Trusts

89. Niue, as a common law jurisdiction, inherited the English concept of trusts. This includes express, discretionary, implied, and many other forms of trusts. In addition to case law, the legal framework applicable to trusts in Niue includes the Trustee Act 1956, a New Zealand enactment, the Trusts Act 1994 and the Trustee Companies Act 1995.

90. The Trusts Act 1994 does not apply to a trust which substantially provides benefits to (i) an individual ordinarily resident in or domiciled in Niue; or (ii) any corporation or other entity owned by an individual ordinarily resident or domiciled in Niue (s. 5(7)). The Trustee Act 1956 would still apply to these trusts. The Trusts Act 1994 provides for an exemption from tax reporting obligations to trusts having all settlors, beneficiaries and property outside Niue.

91. The Trustee Companies Act 1995 is listed for repeal. The Niuean authorities confirmed that with the repeal of the offshore legislation the Trustee Companies Act 1995 has little relevance. Moreover, the Niuean authorities confirmed that this act has not been used or implemented and that the Registrar of Trustee Companies as provided in the act has never been appointed. There are no trustee companies currently registered in Niue.

92. Trust law in Niue does not require a written instrument in order to establish an express trust, except in case of unit trusts (Trusts Act 1994 s. 6). A unit trust is defined in the Trusts Act as “a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust in any profits or income arising from the acquisition, holding, management or disposal of property” (s. 2).

93. It is, however, the normal practice to identify the trustees, settlor(s) and beneficiaries in a written instrument. Identity information concerning beneficiaries would normally be known to the trustees, but is not required to be kept in a register or disclosed publicly. Often, trust deeds merely identify a class of persons who can benefit, at the discretion of the trustees, *e.g.* “any of the children of X and Y”.

94. Generally, there are no limitations or requirements for persons who can act as trustees in Niue. The Trustee Act 1956 provides for the appointment or substitution of new trustees if an existing trustee is “unfit” or “incapable” of acting (s. 43). Further, the Courts are authorised to appoint or substitute new trustees when it is “expedient” to do so (s. 51). A company may not act as trustee of a testamentary trust (s. 48). The same person may act as settlor, trustee and beneficiary in relation to a particular trust.

95. Niue is a common law jurisdiction and as such has inherited the English concept of trusts. This means the acceptance of the common law institution of trusts in all its various forms and as it responds to changing circumstances. The Niue Interpretation Act 2004 indicates that Niuean common law is a source of law in Niue, The “common law of Niue” refers to the case law developed by the courts of Niue. There is, however, no specific case law in Niue addressing the extent of the duties of a trustee. Because Niue has a very limited set of precedents and because the judges in the superior courts are recruited from the New Zealand judiciary, the development of the common law of Niue appears to be heavily influenced by the case law of New Zealand, which is treated as highly persuasive. According to the Niuean authorities, the courts have to decide Niue cases on the basis of Niue law and, given its current limited domestic jurisprudence, decisions primarily use New Zealand judgments adapted to any specific Niue circumstances and by this means develop the common law of Niue through Niue precedents.

96. Moreover, the Niuean authorities have explained that when Niue became an autonomous state in 1974, its Constitution was drafted to expressly provide that “*The existing law shall continue in force*”. In this regard, the “*existing law*” applicable in Niue before 1974 was the law of New Zealand and it would be reasonable to infer that all of New Zealand’s precedents as at 1974 were applicable directly in Niue.

97. The assessment team was not able to confirm the precise application of the relevant New Zealand case law developed prior to 1974 and whether it sets out the fiduciary duties of trustees concerning keeping and maintaining information identifying the settlor(s) and beneficiaries of a trust. However, even if New Zealand case law developed prior to 1974 would address this matter, it remains unclear how this case law would interact with specific statutory provisions enacted by Niue later in time. One of the Niue statutes on trusts, the Trusts Act 1994, was enacted twenty years after the independence from New Zealand, and provides for specific rules and (tax) exemptions applicable to certain trusts. Again, in the absence of specific precedents in Niue, there is still uncertainty concerning the extent of the trustee duties under the common law of Niue. The case law developed by New Zealand (whether prior or after the independence) appears to provide very persuasive guidance to the Niuean courts, but it is not binding as Niue is an autonomous state and has an independent legal system.

98. Moreover, some Niuean statutes contain a savings clause providing that rules of equity and of common law shall continue in force except so far as they are inconsistent with the relevant act. Neither the Trustee Act 1956 nor the Trusts Act 1994 contain such savings clause. Therefore, it remains unclear what the extent of common law obligations in Niue is and how they interact with express statutory provisions.

Registration of trusts

99. There is no general obligation to register a trust. Pursuant to section 64 of the Trusts Act 1994, the Registrar of the Court does maintain a register of trusts and settlors or trustees may apply to register the trust; however, registration is not compulsory. The Niuean authorities confirmed that, as at 6 August 2012, there is one trust registered in Niue in addition to the Niue International Trust Fund¹² created under the Niue Trust Fund Act 2004. In order to register a trust, the name of the trust (if any), the name of the settlor, the name of the beneficiary or the purpose for which a trust is established must be notified to the Registry (s. 64(4)). Amendments to the terms of a registered trust must be notified to the Registry (s. 64(6)). The Niuean authorities confirmed that the Registrar holds trust records indefinitely.

Tax filing and disclosure requirements for trusts

100. Trustee(s) of a trust are, in principle, required to furnish a return of income if the trust derives taxable income (ITA s. 86). If the income is attributable to the beneficiary of the trust, the trustee is deemed to be the agent of that beneficiary, and shall be assessable and liable for income tax thereon according to the provisions applicable to agents (s. 86(a)). A trustee is required to file a tax return of the whole income so derived by him as trustee, and each such return shall be separate and distinct from any return of income derived by him under any other trust or in his own right (s. 86(c)). It is not required in the ITA that the trustee must identify the beneficiaries of the trusts when filing tax returns.

101. There is no requirement for a trustee to furnish a return if the trust meets the requirement to be an exempted trust (Trusts Act 1994, s. 65(2)). Pursuant to the Trusts Act 1994, a trust is an exempted trust if it meets the following requirements in any year (s. 65(1)): (i) the settlor is not resident in Niue during that year; (ii) none of the beneficiaries are resident in Niue during that year; and (iii) the trust property does not include any land situated in Niue. The Niuean Tax Office confirmed that to the best of their knowledge no trusts have been exempted in accordance with this provision.

Information maintained by service providers

102. The Niuean AML law, the FTRA, places CDD obligations on financial institutions and designated businesses and professionals, including on all persons carrying on the business as: (i) a trustee in respect of funds of other persons; or (ii) a trust or company service provider (ss.3, 4 and 15). The

12. The Niue International Trust Fund is a trust settled by the Niue Government in the benefit of the Niue Government and ultimately the people of Niue.

provision seems broad enough to cover Niuean trustees of domestic or foreign trusts. Therefore, all trustees acting by way of business are required by the FTRA to retain identity and ownership information on their customers.

103. However, there is no guidance in the FTRA concerning specific customer identification requirements in the case of trusts. Section 15(1) of the FTRA establishes that AML obligated persons must, *when establishing a business relationship or conducting a transaction, verify the identity of the person*. It is reasonable to expect that based on this provision trustees are required to identify the settlor of the trust. It is unclear whether the obligation under section 15 of the FTRA would cover the beneficiaries of the trust. Section 15(3) requires *reasonable measures to be taken to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in that transaction*. However, this provision deals with the parties of the financial transaction (e.g. the the transfer of funds) and there is no guarantee that the actual beneficiaries of the trust are going to always be identified. Moreover, there is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date.

Conclusion

104. Trusts having all settlors, beneficiaries and property outside Niue are exempt from tax reporting obligations in Niue. Registration of trusts is not compulsory. AML obligations do not sufficiently ensure that the identity of the beneficiaries of a trust will be known in all cases. It remains unclear what the extent of common law obligations in Niue is. Therefore, a gap appears to exist in relation to the identification of trust beneficiaries.

Foreign trusts

105. Under Niue's laws, there are no obstacles that prevent a Niuean resident from acting as a trustee or administrator of a foreign trust. Foreign trusts will be typically governed by foreign law, so it is unclear whether and which common law duties would apply with respect to these arrangements.

106. Resident trustees of foreign trusts and beneficiaries of foreign trusts deriving income sourced in Niue are, in principle, subject to the same general tax requirements applicable to domestic trusts. No tax return needs to be filed, however, if (i) the settlor is not resident in Niue during that year; (ii) none of the beneficiaries are resident in Niue during that year; and (iii) the trust property does not include any land situated in Niue.

107. Furthermore, resident trustees who qualify as “reporting institutions” under section 2 of the FTRA (e.g. a trustee in respect of funds of

other persons or a trust or company service provider) are required to identify their customers. However, as mentioned above, there is no guidance in the FTRA concerning specific customer identification requirements in the case of trusts. It is reasonable to expect that trustees are required to identify the settlor of the trust. It is unclear whether the obligation under section 15 of the FTRA would cover the beneficiaries of the trust. There is no express requirement under the FTRA for obligated persons to ensure that documents, data or information collected under the CDD process is kept up-to-date. It is conceivable that a trust could be created which has no connection with Niue other than that the settlor chooses the trust to be created under or governed by Niue's common law, with the settlors, beneficiaries, trustees and trust assets all located outside of Niue. In that event, there may be no information about the trust available in Niue.

Conclusion

108. It remains unclear whether trustees of foreign trusts are required to maintain information on beneficiaries in all cases. Niue is recommended to ensure that information is kept.

Foundations (ToR A.1.5)

109. There are no laws or common law principles that permit the establishment of foundations in Niue.

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

110. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information.

Companies

111. Under the Companies Act (CA), a company is deemed incorporated only after being duly registered with the Niuean Registry (s.6). If the registration procedure is not properly concluded, legal personality is not acquired and, therefore, shareholders are fully liable in their own name for any liability incurred.

112. Failure to furnish an annual return including shareholder information is an offence and, on conviction, a director can be liable to a fine of up to 50 penalty units (NZD 5 000 or EUR 3 180) (CA s.124(9)).

113. Niuean companies are obliged to maintain a share register that reflects the legal ownership of the company. Failure to correctly maintain a share register is an offence and, on conviction, a company can be liable to a fine of up to 50 penalty units (NZD 5 000 or EUR 3 180) and a director can also be liable to a fine of up to 50 penalty units (NZD 5 000 or EUR 3 180) (CA s. 40(4)).

114. All overseas companies intending to carry on business in Niue must register with the Registrar within 20 working days of commencing business (CA s. 281(1)). Failure to register is an offence and subjects the overseas company and every director, on conviction, to a fine not exceeding 50 penalty units (NZD 5 000 or EUR 3 180) (s. 281(4)). Likewise, failure to furnish an annual return is an offence and, on conviction, an overseas company and every director can be liable to a fine of up to 50 penalty units (NZD 5 000 or EUR 3 180) (s. 287(6)). However, no ownership information concerning the overseas company has to be provided in the annual return.

115. The Companies Act also sanctions egregious offences with large monetary fines or imprisonment. In particular, section 339 provides that every director, employee, or shareholder of a company who, with the intent to defraud or deceive a person, destroys, alters, or falsifies any register, accounting records, or other document belonging to the company or makes a false entry in any of the above commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1 000 penalty units (NZD 100 000 or EUR 63 600), or both (s. 339(4)). More generally, section 337 provides that every person, who with respect to a document required by or for the purpose of the Companies Act, knowingly makes a statement that is false or misleading or omits any matter knowing that the omission makes the document false or misleading commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1 000 penalty units (NZD 100 000 or EUR 63 600), or both (s. 337(3)).

Partnerships

116. Limited partnerships are obliged to register ownership information with the Registrar, and update that information on an annual basis upon requesting the renewal of its LLP certificate. If registration is not made or renewed the partnership loses its limited liability status and the partners become fully liable for all debts incurred without limitation. Moreover, the PAA provides that any person who: (i) does anything which is forbidden by or under the act; or (ii) omits to do something required or directed by or under the act; or (iii) contravenes or fails to comply with this Act commits an offence and is liable on conviction to a fine not exceeding 50 penalty units

(NZD 5 000 or EUR 3 180) or to imprisonment for a term not exceeding one year or to both (s. 7).

117. Special partnerships that fail to register with the Registrar are deemed to be general partnerships and, therefore, partners do not have their liability limited and are liable as general partners.

Trusts

118. Resident trustees of domestic and foreign trusts are required to furnish a return of income if the trust derives taxable income. If they fail to do so, the tax laws provide for a penalty (see below). No tax return needs to be filed, however, if (i) the settlor is not resident in Niue during that year; (ii) none of the beneficiaries are resident in Niue during that year; and (iii) the trust property does not include any land situated in Niue.

119. Trustees are also subject to the FTRA and the penalties provided in that act (see below).

120. Failure to fulfil any of his/her duties under common law by the trustee may lead to a risk of being sued by the settlor and/or the beneficiaries of the trust.

Tax laws

121. Pursuant to the Income Tax Act, all taxpayers, including companies, partnerships, partners of partnerships and trustees, must file tax returns. If they fail to do so, they are subject to, on conviction, a penalty not exceeding 2 penalty units (NZD 200 or EUR 127.20) (s. 127). A taxpayer that evades or attempts to evade default in the performance of any duty imposed by the ITA with intent to evade the assessment or payment of any sum which is or may become chargeable against him by way of tax, he is liable, on conviction, to additional tax (penal tax) not exceeding an amount equal to the amount of the deficient tax (s. 130).

AML

122. Under the FTRA, if an obligated entity contravenes the record keeping requirement, does not comply with requirements to identify a customer or fails to retain the records it collects of a person's identity, the obligated entity is guilty of an offence punishable on conviction: in the case of an individual – by a fine not exceeding 250 penalty units (NZD 25 000 or EUR 15 900) or imprisonment for a term not exceeding 2 years, or both; or in the case of a body corporate – by a fine not exceeding 1 000 penalty units (NZD 100 000 or EUR 63 600).

123. The effectiveness of the enforcement provisions which are in place in Niue will be considered as part of the Phase 2 Peer Review.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Identity and ownership information may not consistently be available in respect of (i) domestic trusts and (ii) foreign trusts with a Niuean trustee.	Niue should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases.

A.2. Accounting records

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

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

General requirements (ToR A.2.1) Underlying documentation (ToR A.2.2) Document retention (ToR A.2.3)

Companies

Company Law

125. The Companies Act requires the directors of a Niuean company to ensure that accounting records for the company be kept (s. 129). Accounting records must: (i) correctly record and explain the transactions of the company; (ii) enable the financial position of the company to be determined with reasonable accuracy at any time; (iii) enable the directors to ensure that the

financial statements of the company comply with section 130 and with any regulations made under the CA (*e.g.* that financial statements give a true and fair view of the matters to which they relate); and (iv) will enable the financial statements of the company to be readily and properly audited (s. 129).

126. Without limiting the above, section 129 also provides that the accounting records must contain entries of money received and spent each day and the matters to which it relates; and a record of the assets and liabilities of the company. Moreover, if the company's business involves dealing in goods, the company must maintain: (i) a record of goods bought and sold, and relevant invoices; and (ii) a record of stock held at the end of the financial year together with records of any stocktaking during the year; and (d) if the company's business involves providing services, a record of services provided and relevant invoices (s. 129(2)).

127. Failure to comply with section 129 is an offence and, if convicted, every director of the company can be liable to a fine of up to 50 penalty units (equivalent to NZD 10 000 or EUR 5 678) (s. 129(5)).

128. Accounting records must be kept at either the company's registered office or at another place provided that the Registrar has been notified of that place (CA s. 119(6)). If accounting records are not kept in Niue, the company must ensure that accounting records of the company that disclose with reasonable accuracy the financial position of the company (at intervals not exceeding six months) and will enable the preparation of the company's financial statements be kept in Niue. Failure to comply with section 119(6) is an offence and, if convicted, the company and every director of the company can be liable to a fine of up to 50 penalty units (equivalent to NZD 10 000 or EUR 5 678) (s. 117(3)).

129. All companies are obliged to maintain accounting records for the current accounting period and for the last seven *completed* accounting periods of the company (s. 117(1)). The Registrar may, by notice in writing to the company, approve that records are kept for a period of less than 7 years (s. 117(2)). However, no such notices have been issued so far. Failure to comply with section 117 is an offence and, if convicted, every director of the company can be liable to a fine of up to 50 penalty units (equivalent to NZD 10 000 or EUR 5 678) (s. 119(8)). The Companies Act does not expressly require overseas companies to maintain accounting records. However, foreign companies that are tax residents in Niue are subject to the record keeping requirements established in the Income Tax Act (see below).

Tax Law

130. The Income Tax Act 1961 (ITA) requires taxpayers to file income tax returns (s. 5). “Taxpayer” is a person chargeable with income tax (ITA s. 2), meaning a person who derives assessable income. Companies that are incorporated or have a centre of administrative management in Niue are tax residents (ITA s. 2, as amended by the Income Tax Amendment Act 2009). Tax returns must be accompanied by balance sheets and profit and loss accounts (s. 5(2)).

131. The ITA also establishes record keeping requirements that apply to “every person carrying on business or receiving income other than salary or wages” (s. 144). This includes domestic and foreign companies that are resident or carrying on business in Niue for tax purposes.

132. The records that are required to be kept must be sufficient to enable the Financial Secretary to assess the taxpayer’s *assessable income and allowable deductions to be readily ascertained by the Financial Secretary or any officer authorised by him in that behalf*. In particular, such records include both general accounting records and underlying documents such as *books of account recording receipts or payments or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and in the case of an agent, records of all transactions carried out on behalf of his principal* (ITA s. 144(3)).

133. The ITA does not specifically mention for how long accounting records and underlying documentation are required to be kept. However, the Income Tax Act provides for two prescribed circumstances where records need not be kept. The first instance is when the Treasurer specifically notifies the taxpayer in writing that retention is not required and the second instance is when a company is wound up and finally dissolved (ITA s. 144(2)). In the absence of any other prescribed circumstances, records have to be kept indefinitely.

134. If a taxpayer fails to file his or her tax returns, he or she is subject to, on conviction, a penalty not exceeding 2 penalty units (NZD 200 or EUR 127.20) (s. 127). A taxpayer who evades or attempts to evade the performance of any duty imposed by the ITA with intent to evade the assessment or payment of any sum which is or may become chargeable against him or her by way of tax, he or she is liable, on conviction, to additional tax (penal tax) not exceeding an amount equal to the amount of the deficient tax (s. 130).

Partnerships

135. There are no specific accounting requirements in the Partnership Act (PA), but a partner is bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives (PA s.31). In this regard, it is unclear what true accounts and full information entails and whether it will ensure reliable accounting records and underlying documentation are available for partnerships in all cases.

136. Notwithstanding the above, a partnership carrying on business in Niue must furnish joint returns of income, stating the amount of taxable income and the entitlement of each partner to a share of it (ITA s.8). The partners are also obliged to include their allocable share of partnership income on their own separate returns of income, and tax is assessed on the partners rather than on the partnership. Annual tax returns must be accompanied by balance sheets and profit and loss accounts (s.5(2)). The ITA provides that accounting records and underlying documentation are required to be kept indefinitely (except for the circumstances analysed in the earlier paragraphs).

137. There appears to be no requirement to keep accounting records and underlying documentation if a limited liability partnership (LLP) or a special partnership incorporated in Niue does not carry on business in Niue, does not have Niuean partners and is not in receipt of Niuean source income. This gap does not however appear to be material at this stage, since there are no LLPs and only 3 special partnerships in Niue.

Trusts

138. The Trustee Act does not explicitly require the keeping of accounting records. Under common law, however, there is a general duty on trustees to maintain proper accounts and records which is linked to the duty to inform beneficiaries. No specific case law exists in Niue in this regard. Foreign trusts will be typically governed by foreign law, so it is unclear whether and which common law duties would apply with respect to these arrangements.

139. Trustees are, in principal, required to furnish annual tax returns (ITA s.86). However, there is no requirement for a trustee of a domestic or a foreign trust to furnish a return if the trust meets the requirement to be an exempt trust (s.65(2)). Pursuant to the ITA, a trust is an exempt trust if it meets the following requirements in any year (s.65(1)): (i) the settlor is not a resident in Niue during that year; (ii) none of the beneficiaries are resident in Niue during that year; and (iii) the trust property does not include any land situated in Niue.

140. Since domestic and foreign trusts may be exempt from tax filing obligations and the common law obligations applicable to them are unclear, there seem to be no express obligation to maintain accounting records and underlying documentation.

AML

141. Financial institutions and designated businesses are also subject to the FTRA, which imposes record keeping requirements. The FTRA requires records to be maintained that are reasonably necessary to enable customer transactions to be reconstructed at any time. Such records must include: the nature of the transaction; the amount of the transaction; the date on which the transaction was conducted; and the parties to the transaction (s. 14) (see Part A.3 of this report). Records are limited to transactions and not all transactions are conducted through financial institutions and designated service providers.

142. Obligated entities under the FTRA are obliged to maintain records for at least five years (s. 14(3)).

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Niuean law does not ensure that reliable accounting records and underlying documentation are kept under certain circumstances for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.	Niue should establish obligations for the maintenance of reliable accounting records, including underlying documentation, for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.
Entities and arrangements other than domestic companies are not required to retain accounting records and underlying documentation for a minimum 5 year period except when they carry on a business in Niue or receive Niuean sourced income.	Niue should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of 5 years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

143. The record keeping requirements for banks can be found in Niue's AML laws, namely the Financial Transactions Reporting Act 2006 (FTRA).

144. The FTRA requires that obligated institutions keep records of every transaction that is conducted through the financial institution as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the FIU (s. 14). The records must contain:

- the nature of the transaction;
- the amount of the transaction and the currency in which it was denominated;
- the date on which the transaction was conducted;
- the place and time of the transaction;
- the parties to the transaction;
- the nationality of the parties to the transaction;
- if a natural person is a party to the transaction, details of his or her valid passport, drivers licence or official identification; and
- if a legal entity is a party to the transaction, details of its constitution, if not older than three months.

145. A financial institution must keep the records for a minimum period of six years after the completion of the transaction (FTRA s. 14(3)).

146. The obligated persons must identify their customers and verify the customers' identity, when he or she opens an account with the financial institution or performs a transaction (FTRA s.4). If the customer is a legal entity, the financial institution must adequately verify its legal existence and structure, including: the customer's name, legal form, address and its directors; the principal owners and beneficiaries; and provisions regulating the power to bind the entity and the authorisation of any person purporting to act on behalf of the customer (FTRA s. 15(2)(a)).

147. The FTRA requires that obligated persons keep records of evidence of a person's identity and a record of all correspondence between the identified person and the financial institution for a minimum period of six years after the evidence was obtained (s. 17). The FTRA does not provide for where records must be kept – whether within or outside Niue or records must be

kept up-to-date. The impact of the absence of a requirement to update the CDD information is not clear. For example, where financial institution deals with a legal person such as a company, there is no requirement under the Terms of Reference for the financial institution to know who the shareholders of that company are. Consequently, the failure to update the CDD information (such as business address, ownership structure or identity of directors) would not affect the reliability of information pertaining to the identity of the customer itself. Where the customer itself does change, then this should trigger a new obligation to conduct CDD in respect of the new customer. While the Niue Bank Act provides for the establishment of a central bank, the central bank has not been formed in Niue and there is no formal institutionalised mechanism in place for the supervision of the AML requirements in Niue.

148. If an obligated entity fails to comply the above-mentioned obligations, it is subject to the following penalties (ss.14 and 15):

- in the case of an individual, a fine not exceeding 250 penalty units (NZD 25 000 or EUR 15 900) or imprisonment for a term not exceeding 2 years, or both; or
- in the case of a body corporate – by a fine not exceeding 1 000 penalty units (NZD 100 000 or EUR 63 600).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to Information

Overview

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

150. Niue's tax authority – the Financial Secretary – has broad powers to obtain bank, ownership, identity, and accounting information and has measures to compel the production of such information. The ability of the Financial Secretary to use those powers for exchange of information with other jurisdictions under a TIEA or DTC is specifically provided in sections 85 and 139 to 142 of the Income Tax Act (as amended by the Income Tax Amendment Act 2012). These powers include the power to inspect books and documents, the power to request information in writing and the production of books and documents, the power to inquire of any person or request the inquiry of a person before a judge. To date, however, Niue has concluded neither TIEAs nor DTCs. TIEA negotiations have commenced with five jurisdictions and they are expected to be concluded shortly.

151. There are no statutory bank or professional secrecy provisions in place that restrict the tax authorities' access powers or prevent effective exchange of information. For the reasons above, element B.1 was found to be in place.

152. Niue's authorities can also access information pursuant to its Mutual Assistance in Criminal Matters Act 1998 (MACMA). This legislation provides for exchange of information with all foreign governments upon request in criminal matters, including criminal tax matters. Moreover, Niue's

domestic laws allow for access to ownership and identity information in a criminal tax matter; however, these powers cannot be currently employed in response to a request from another jurisdiction concerning a civil tax matter.

153. Application of rights and safeguards (e.g. notification, appeal rights) in Niue do not restrict the scope of information that the Niuean tax authority can obtain.

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).

Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)

154. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction’s authorities or is within the possession or control of persons within the jurisdiction’s territorial jurisdiction, ownership information on all such persons in an ownership chain.¹³ Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.¹⁴

155. The Niuean Financial Secretary is responsible for administering Niue’s tax laws and the collection of taxes with the assistance of the Collector of Inland Revenue. The Financial Secretary has a range of powers to access information. These powers include:

- the power to inspect books and documents (ITA s. 139);
- the power to request information in writing and the production of books and documents (ITA s. 140);
- the power to request the inquiry of a person before a judge or commissioner of the High Court for the purpose of obtaining information (ITA s. 141); and

13. See OECD Model TIEA Article 5(4).

14. See JAHGA Report paragraphs 6 and 22.

- the power to inquire into any person to attend and produce evidence before him (or an authorised officer) including all books and documents in the custody or under the control of that person which contain or which the Financial Secretary or the authorised officer considers likely to contain any such information (ITA s. 142).

156. The reference to “books and documents” has, by definition, a very wide meaning. This includes all books, accounts, rolls, records, registers, papers and other documents (ITA, s. 2).

157. All the above powers can be used for purposes of obtaining any information *required to comply with a request made under, give effect to, or enforce a tax agreement (as defined in section 85(4)) that is in force* (ITA, ss.139-142, as amended by the Income Tax Amendment Act 2012). A *tax agreement* includes an agreement to facilitate exchange of information (a TIEA) or to provide relief from double taxation (a DTC) (ITA, s. 85). Niue was reluctant to conclude negotiations for EOI without having the necessary powers to give effect to such agreements. With the recent amendments to the Income Tax Act, Niue expects to be able to conclude agreements shortly.

158. There are no specific provisions in Niuean law granting the Treasurer powers to obtain information held by banks or other financial institutions concerning the identity of their clients and the related financial records. The general access powers, which talk of information being obtained from ‘any person’, allow for access to information held by banks.

159. In addition to the ITA provisions, information can also be exchanged under the Mutual Assistance in Criminal Matters Act 1998 (MACMA). Pursuant to the MACMA, the Attorney General has powers to access information related to criminal tax matters in answer to a mutual legal assistance request received from a foreign authority. A criminal offence that can be investigated under the MACMA includes a criminal offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control (s.3). Civil tax matters are, therefore, excluded from the scope of the MACMA. Further, the provision of assistance may be refused at the discretion of the Attorney General.

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

160. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

161. Niue has no domestic tax interest with respect to its information gathering powers. The broad access powers provided to the Financial Secretary

under the ITA (as amended by the Income Tax Amendment Act 2012) can be used to obtain and provide information for the express purpose of giving effect to Niue's EOI agreements (Income Tax Act, ss.85, 139-142).

Compulsory powers (ToR B.1.4)

162. Pursuant to the ITA, if a person fails to provide information or fails to otherwise comply with sections 139 to 142 of the ITA, this person will be liable on conviction to a fine not exceeding 1 penalty unit, which is equivalent to NZD 100 (EUR 63.60) (ITA s. 143).

163. If any person requested to appear by the Financial Secretary refuses or wilfully neglects to appear before the Financial Secretary or authorised officer or to take an oath as witness or if any person being sworn as a witness at any such inquiry refuses or wilfully neglects to answer any question put to him touching the subject matter of the inquiry or to produce to the Financial Secretary or authorised officer any such documents as aforesaid, that person shall be liable on conviction to a fine not exceeding 2 penalty units, which is equivalent to NZD 200 (EUR 127.20) (ITA s. 142(3)). If any person wilfully gives false evidence at any inquiry under section 142 he or she is liable on conviction of perjury.

164. The Collector may also apply in writing to a Judge or Commissioner of the High Court to hold an inquiry if deemed necessary for the purposes of the administration or enforcement of the Income Tax Act or any other Act administered by the Collector (ITA s. 141(1)). The Judge may summons, and examine on oath touching any matter relevant to the subject matter of the inquiry, all persons whom the Collector or any other interested person requires to be so called and examined (ITA s. 141(2)).

Secrecy provisions (ToR B.1.5)

165. Jurisdictions should not decline on the basis of its secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

166. There are no secrecy provisions under the Niuean legislation that would prohibit or restrict the disclosure of information to the Financial Secretary. Various secrecy provisions may be found in the Niuean legislation, but these are overridden by the Income Tax Act (s. 85). The ITA explicitly provides that a tax agreement including a TIEA and a DTC have effect *despite anything in this Act or any other Act in relation to (...) (iv) any obligation as to privacy or secrecy* (s. 85(3)).

167. There are no statutory provisions providing for bank secrecy in Niue. Bank confidentiality is a contractual obligation between banks and their

customers. With respect to trustees, a confidentiality duty exists in the Trusts Act 1994 (s. 29) but it is overridden by the access powers provided under the ITA.

168. Section 341 of the Companies Act described the circumstances where legal professional privilege applies. It appears that the Companies Act expresses principles that would apply generally in Niue. Section 341 reads as follows:

341. Privileged communications

(1) Nothing in this Act requires a legal practitioner to disclose a privileged communication.

(2) For the purposes of this Act, a communication is a privileged communication only if –

(a) It is a confidential communication, whether oral or written, passing between –

(i) a legal practitioner in his or her professional capacity and another legal practitioner in that capacity; or

(ii) a legal practitioner in his or her professional capacity and his or her client – whether made directly or indirectly through an agent; and

(b) It is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) It is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.

(3) If the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, a book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner.

(4) The Court may, on the application of any person, determine whether or not a claim of privilege is valid and may, for that purpose, require the information or document to be produced.

169. Based on this provision, the scope of legal professional privilege is limited to legal advice provided by legal practitioners and does not cover other activities legal practitioners might conduct such as company formation

etc. For instance, if a lawyer acts as a nominee shareholder, a trustee, a settler, a company directors or under power of attorney to represent a company in its business affairs, the legal privilege does not apply.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B.2. Notification requirements and rights and safeguards

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

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

170. The *Terms of Reference* provides that rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

171. The Niuean Financial Secretary is not obliged to inform the person concerned of the existence of an exchange of information request. Likewise, the Financial Secretary is not obliged to inform the taxpayer concerned prior to contacting third parties to obtain information. However if the Financial Secretary subsequently decides to notify the person concerned, Niue has advised that procedures will have to be developed as there are none presently in place in Niue. This is because Niue does not have any EOI agreements in force with any foreign jurisdiction yet. Niue has advised that any procedures established in the future would observe the international standard. The ITA grants to the right of appeal against tax assessments made by Collector. Pursuant to the ITA, if a person who receives a request from the Collector believes that the request is improper, he may apply to the High Court, within 14 days from the date of receipt (Income Tax Act, s. 33). There are no general appeal rights in the ITA that could be used in EOI matters.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging Information

Overview

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

173. Niue committed to the international standards for exchange of information in April 2002. It also became a member of the Global Forum in September 2010.

174. Entering into international treaties is a prerogative of the Executive Branch. Pursuant to the Income Tax Amendment Act 2012, EOI agreements do not require ratification by the Niuean Legislative Assembly. Once Niue concludes an EOI agreement, it must be enacted by way of a Regulation made by the Niuean Cabinet of Ministers.

175. While Niue's authorities can exchange some information pursuant to its Mutual Assistance in Criminal Matters Act 1998, this legislation provides for discretionary exchange of information upon request by foreign governments for criminal tax matters only and, therefore, it does not meet the international standard.

176. In August 2012, Niue signed its first TIEA with New Zealand, its main trading partner. This agreement meets the foreseeably relevant standard; however, it is not in force yet. As Niue's sole EOI instrument to the standard does not allow for effective exchange of information at this stage, element C.1 was found to be not in place.

177. TIEA negotiations are underway with a number of countries. Niue's officials indicated that Niue was cautious about concluding negotiations for EOI agreements before having the necessary powers to give effect to such agreements. With the recent amendments to the Income Tax Act, Niue is confident they can conclude agreements quickly. As Niue has only one signed EOI agreement to date, element C.2 was found to be in place but in need of improvement.

178. Niue’s TIEA with New Zealand contains a confidentiality provision which meets the international standard. Niue’s domestic legislation also includes a relevant confidentiality provision, supported by sanctions for non-compliance. Consequently, element C.3 was found to be in place.

179. Niue’s TIEA with New Zealand ensures that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. Niue’s domestic legislation ensures that the rights and safeguards are protected in accordance with the standard. Element C.4 was thus found to be in place.

180. There appears to be no legal restrictions on the ability of Niue’s competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. The present report does not address element C.5, as this involves issues of practice that will be dealt with in the Phase 2 review (see section C.5 below).

C.1. Exchange-of-information mechanisms

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

Foreseeably relevant standard (ToR C.1.1)

181. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions,” *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 26(1)¹⁵ of the OECD *Model Taxation Convention* set out below:

The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

15. Article 1 of the OECD Model TIEA contains a similar provision.

182. Niue has recently signed its first bilateral instrument providing for exchange of information, a TIEA, with New Zealand. The TIEA provides for exchange of information upon request and meets the “foreseeably relevant” standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA.

183. Article 5(5) of Niue’s TIEA establishes the information the applicant party must provide the requested party when making a request for information to demonstrate the foreseeable relevance of the information to the request. This includes the identity of the person under examination or investigation and, to the extent known, the name and address of any person believed to be in possession or control of the requested information.

In respect of all persons (ToR C.1.2)

184. For exchange of information to be effective it is necessary that a jurisdiction’s obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

185. Niue’s TIEA is neither restricted to certain persons such as those considered resident in or nationals of one of the contracting jurisdictions, nor precludes the application of EOI provisions in respect to certain types of entities or arrangements. Article 2 of the TIEA follows the OECD Model TIEA and establishes that *A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.*

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

186. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The OECD *Model Taxation Convention*, which is an authoritative source of the standards, stipulates that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

187. The TIEA concluded by Niue includes a provision that mirrors Article 5(4) of the OECD Model TIEA, providing for the exchange of information held by banks, other financial institutions, and any person acting in

an agency or fiduciary capacity including nominees and trustees, as well as ownership and identity information. Section 85 of the Income Tax Act (as amended by the Income Tax Amendment Act 2012) makes it clear that a TIEA has effect despite anything in this act or any other act in relation to any obligation as to privacy or secrecy.

Absence of domestic tax interest (ToR C.1.4)

188. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

189. Niue’s TIEA contains a provision similar to the Article 5(2) of the OECD Model TIEA, which obliges the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic interest in the requested information. Moreover, the Niuean Financial Secretary’s powers to access information pursuant to the ITA (ss.139-142) can be used in order to reply to a request made under a TIEA or a DTC (see section B.1 of this report).

Absence of dual criminality principles (ToR C.1.5)

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

191. Niue’s domestic laws do not appear to contain constraints concerning dual criminality. Moreover, Niue’s TIEA explicitly excludes that the dual criminality principle may restrict the exchange of information (Article 5(1)).

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

192. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

193. The MACMA enables the Niuean authorities to obtain and provide information to foreign authorities in relation to criminal investigations and proceedings only. Civil tax matters are, therefore, excluded from the scope of the MACMA. A criminal offence that can be investigated under the MACMA includes a criminal offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control (s. 3). However, requests for international assistance are made to the Attorney General who has broad authority to refuse a request (s. 7). Within those restricted parameters, the MACMA in principle allows for information in respect to all persons to be exchanged and for all types of information to be exchanged. However, as explained above, the MACMA does not meet the international standard.

194. The TIEA concluded by Niue provides for the exchange of information in both civil and criminal matters. Niue's domestic legislation allowing for the exchange of information does not differentiate between information needed for civil or criminal purposes.

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

195. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

196. The TIEA concluded by Niue expressly allows for information to be provided in the specific form requested, to the extent allowable under the domestic laws of the requested party. This includes the provision of information in the form of depositions of witnesses and authenticated copies of original records.

In force (ToR C.1.8)

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

198. Entering into international treaties is a prerogative of the Executive Branch in Niue. Pursuant to the Income Tax Amendment Act 2012, TIEAs do not require ratification by the Niuean Legislative Assembly. TIEAs concluded

by Niue must be enacted by way of a Regulation made by the Niuean Cabinet of Ministers.

199. Niue signed its first TIEA in August 2012. It is not yet in force. Niue can exchange information on criminal tax matters under the MACMA, which is in force. However, the MACMA does not meet the international standard. As a result, Niue is not currently able to effectively exchange information to the standard.

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

200. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

201. In August 2012, Niue enacted the legislation necessary to give effect to EOI agreements. Notably, the Income Tax Amendment Act 2012 gives necessary powers to the Niuean competent authority to enter into EOI agreements as well to access and exchange information in order to reply to a request made under such agreements.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Niue has no agreements in force which provide for effective exchange of information in accordance with the international standard.	Niue should bring into force agreements providing for effective exchange of information to the international standard as soon as possible.

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

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

202. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

203. Under the Income Tax Amendment Act 2012, Niue can explicitly enter into EOI agreements both under the form of TIEAs and DTCs (ITA, s. 85(1)).

204. In the course of this review, comments were sought from the jurisdictions participating in the Global Forum, and no jurisdiction advised that Niue had refused to negotiate or enter into an agreement.

205. Niue recently signed its first TIEA with New Zealand, which counts for the vast majority of its trading. New Zealand is a member of the Global Forum and the OECD. Niue is also engaged in negotiations with four other countries (Australia, France, the Republic of Korea and the Netherlands). Niue's officials indicated that Niue was cautious about concluding negotiations for EOI without having the necessary powers to give effect to such agreements. With the recent amendments to the Income Tax Act, Niue is confident they can conclude agreements quickly. As Niue has only signed one EOI agreement to date, Niue is recommended that it take all necessary steps to sign and bring into force the other agreements under negotiation.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Although there is a number of ongoing negotiations, Niue has signed only one EOI instrument to date.	Niue should develop its exchange of information network with all relevant partners.

C.3. Confidentiality

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

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

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

207. The text of Article 8 of the TIEA concluded by Niue reads:

Any information received by a Contracting Party under this 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 covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

208. Niue's TIEA contains a provision consistent with Article 8 of the OECD Model TIEA, ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received.

209. Moreover, section 4 of the Income Tax Act provides that the Financial Secretary and every other officer of the Niue Government must maintain and aid in maintaining secrecy of all matters relating to the Act which comes to the knowledge of the officer, and shall not communicate any such matters to any person except for the purpose of giving effect to the Act or any other Act that imposes taxes. The Income Tax Act contains provisions concerning EOI instruments and, therefore, the secrecy duty is extended to the EOI agreements as well.

210. A person convicted of acting in contravention of the above secrecy provisions is liable for imprisonment not exceeding six months or a fine not exceeding NZD 200 (EUR 77 20) (s. 4(3)). There are no specific provisions in the Income Tax Act authorising the disclosure of information received under a DTC or TIEA.

All other information exchanged (ToR C.3.2)

211. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

212. The confidentiality provisions in the EOI agreements and in Niue's domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information,

background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

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

213. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other listed secret may arise.

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

215. In respect of the taxpayers' rights and safeguards, the OECD Model TIEA provides that they remain applicable "to the extent that they do not unduly prevent or delay effective exchange of information". The TIEA signed with New Zealand provides that a requested party "shall use its best endeavours" to ensure that their application does not so unduly prevent or delay effective EOI. It is unlikely, however, that this variation will materially affect the effectiveness of EOI, and this feature will be tested in the Phase 2 Review of Niue.

216. Moreover, domestic provisions on the professional privilege are in accordance with the international standard (see section B.1.5 of this report).

217. Article 7 of the TIEA concluded by Niue indicates that a request can be declined where it may impose the disclosure of trade, business, industrial, commercial, or professional secrets or trade process, or where the information disclosed would be contrary to public policy. Nevertheless, the TIEA expressly provides that information may not be treated as a secret or trade process merely because it is held by a bank, other financial institutions or persons “acting in an agency or fiduciary capacity including nominees and trustees”.

218. Moreover, the attorney-client privilege protected under the TIEA concluded by Niue refers specifically to:

confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are: (a) produced for the purposes of seeking or providing legal advice; or (b) produced for the purposes of use in existing or contemplated legal proceedings.

219. The TIEA also establishes that an EOI request must not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

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

221. There are no specific legal or regulatory requirements in place which would prevent Niue responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request. Niue has not entered into any exchange of information instrument to date.

222. As regards the timeliness of responses to requests for information the assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Organisational process and resources (ToR C.5.2)

223. The Financial Secretary is the authority responsible for tax matters in Niue. Niue’s Cabinet is responsible for entering into DTCs and TIEAs.

224. A review of Niue’s organisational process and resources will be conducted in the context of its Phase 2 review.

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

225. There are no laws or regulatory practices in Niue that impose restrictive conditions on exchange of information. However, Niue has not yet entered into any exchange of information instruments to the standard either.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Identity and ownership information may not consistently be available in respect of (i) domestic trusts and (ii) foreign trusts with a Niuean trustee.	Niue should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Niuean law does not ensure that reliable accounting records and underlying documentation are kept under certain circumstances for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.	Niue should establish obligations for the maintenance of reliable accounting records, including underlying documentation, for all (i) limited liability partnerships and special partnerships that do not carry on a business in Niue, do not have Niuean partners and do not receive Niuean sourced income; and (ii) trusts which are administered in Niue or in respect of which a trustee is resident in Niue in all circumstances.

Determination	Factors underlying recommendations	Recommendations
<p>Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement. <i>(continued)</i></p>	<p>Entities and arrangements other than domestic companies are not required to retain accounting records and underlying documentation for a minimum 5 year period except when they carry on a business in Niue or receive Niuean sourced income.</p>	<p>Niue should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of 5 years.</p>
<p>Banking information should be available for all account-holders (<i>ToR A.3</i>)</p>		
<p>Phase 1 determination: The element is in place.</p>		
<p>Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)</p>		
<p>Phase 1 determination: The element is in place.</p>		
<p>The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)</p>		
<p>Phase 1 determination: The element is in place.</p>		
<p>Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)</p>		
<p>Phase 1 determination: The element is not in place.</p>	<p>Niue has no agreements in force which provide for effective exchange of information in accordance with the international standard.</p>	<p>Niue should bring into force agreements providing for effective exchange of information to the international standard as soon as possible.</p>
<p>The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)</p>		
<p>Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.</p>	<p>Although there is a number of ongoing negotiations, Niue has signed only one EOI instrument to date.</p>	<p>Niue should develop its exchange of information network with all relevant partners.</p>

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
Phase 1 determination: The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
Phase 1 determination: The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's Response to the Review Report¹⁶

The Government of Niue acknowledges the important contribution of the Global Forum in ensuring global implementation of the international tax standard. Niue voluntarily joined the Global Forum in 2010 and, despite severe capacity constraints, has actively participated in the Peer Review process and has been fully cooperative.

We would like to express our gratitude to the Peer Review Assessment team for its commitment and professionalism throughout the course of the review, and wish to commend them for their valuable contribution to Niue's ongoing efforts.

Overall, the Niue authorities consider the review to have been a good experience. Furthermore, we appreciate the open and honest manner in which the review was conducted. Niue generally considers the report to be a fair and balanced reflection of Niue's position.

Despite the fact that the report identifies some shortcomings, we wish to affirm that Niue is a low risk jurisdiction. This has been further supported recently with the Asia Pacific Group on Money Laundering (APG) Mutual Evaluation which similarly identifies Niue as low risk.

The Niue authorities nonetheless remain committed to ensuring Niue has a robust tax framework and will continue to work towards the development of a legal and regulatory regime that will ensure ongoing high level compliance with the international standard.

At the same time, we believe that any peer review must also take into consideration that Niue is a Small Island State; even by Pacific island standards, it is small. It has a tiny population – 1600 people, and a tiny economy with little in the way of characteristics that may attract money laundering, terrorist financing or other undesirable activity.

With this in mind it is therefore most important that Niue's tax framework regime, in being robust and effective, is also risk-focused, proportionate, workable and cost-effective having regard to Niue's size, circumstances and resources.

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

Following the APG Mutual Evaluation the government is reviewing its AML/CFT regime and developing a Strategic Implementation Plan with the APG to address the recommendations made by the APG Mutual Evaluation report. The Strategic Implementation Plan will also take into account the recommendations of the Peer Review report.

Comments on one particular aspect of the report

The report notes that there is uncertainty concerning the extent of trustee duties under the common law of Niue and that case law developed by New Zealand is persuasive. We wish to clarify this comment, as we consider it to be somewhat misleading.

Niue is a former colony of New Zealand and as such the laws of New Zealand were extended to Niue. In 1974 Niue became self-governing in free association with New Zealand and Niue's Constitution expressly provides that "existing law" continues in force in Niue. This includes the common law of New Zealand.

While Niue does not have actual case law on trusts, in view of the comments in the report Niue's Constitution Advisor has provided written confirmation that New Zealand common law continues to apply in Niue. Relevant excerpts of this letter dated 12 September 2012 are reproduced below:

"Niue came within the British colonial system in 1900 as part of the Colony of New Zealand. It was administered as part of the Cook Islands group by the Government in New Zealand. As such the laws of the Colony of New Zealand were extended to it in a thoroughgoing way. That included the extension to Niue of the law of England as it applied in New Zealand, subject only to any adaptation necessary to reflect the remoteness and small size of Niue.

When the Cook Islands became an autonomous state in 1965, Niue continued its colonial link to New Zealand. In 1974 Niue became autonomous and its Constitution provided expressly that "The existing law shall continue in force". The result is that the current law of Niue is its Constitution (which is modelled on the English parliamentary system and is the supreme law), pre-1974 Acts inherited from New Zealand and Acts passed by the Parliament of Niue since 1974, and the Common Law body of legal principles that were inherited from New Zealand.

Niue has approximately 1600 people and is essentially a rural economy. It has a legal system that reflects its colonial history and the needs of its community. There is little litigation and very few judgments on private law matters. Accordingly, in respect of

the Common Law of Niue as it relates to trusts, there has been no deviation from the legal principles of New Zealand law.

Since independence in 1974, developments in New Zealand Common Law continue to influence the Common Law of Niue. This is reinforced by the fact that the Judges of the Superior Courts of Niue are New Zealand Judges. It can therefore be stated beyond doubt that a Niue Court will follow the general principles of New Zealand law and that a Niue Court will apply the New Zealand principles of trust law.”

*Professor A Angelo, Niue Constitution Advisor
12 September 2012*

Additional information

We also provide some additional context for all who read this report to recall this when considering Niue’s report:

- In 2002 and 2006 respectively Niue closed its offshore bank registry and international business companies registry which were key parts of Niue’s earlier international banking regime. Niue does not have an offshore centre and has no capacity to establish one.
- When considering the report materiality is important because while there was a suite of legislation passed in 1994 to establish Niue as an offshore centre, the key functioning parts have been repealed and other legislation such as Limited Liability Partnerships have not been used. As such there are no Limited Liability Partnerships, no trustee companies and only one trust is registered.
- Niue previously had just under 10 000 IBCs registered and of this only 10 have applied for restoration to the new companies regime. While Niue has re-registered 10 former international business companies, these are subject to Niue’s ordinary laws and only 4 remain active on the registry. It is also worth noting that there are two ways former IBCs may re-register; the first option is through the Registrar and the second is an application made at the Niue High Court. The Registrar requires that all applications for restoration are to be made by application to the High Court and the 10 companies that have gone through this process have applied to the High Court before being permitted to apply to the Companies registry. Niue neither markets nor encourages offshore companies to register under its new companies registry.
- Niue currently has one commercial bank that is a branch of a Pacific regional bank. This bank provides basic banking services and does

not provide internet banking or mobile phone banking on Niue. Apart from the bank, there is only one remittance service that sends and receives funds primarily with New Zealand.

- There are no insurance companies as insurance is extremely difficult to obtain (and if it is, it is from New Zealand) and almost all homes and businesses do not have insurance, and this includes life insurance.
- There are no casinos (including internet based casinos) and no dealers in precious metals and dealers in precious stones.
- There are no real estate agents and particular emphasis is on the fact that Niuean land cannot be bought or sold and any leases of land are legally required to be registered with the Niue Land Court Registry.
- There is no exchange for the trading in securities or assets, or the buying and selling of businesses. There is no logging, or mining industries. There are no high value or luxury goods sold in Niue as these are generally purchased offshore and imported. Neither are there any auction houses or investment advisors because with securities and insurance sectors, the size of the Niuean economy does not provide a commercially viable basis for the local provision of these services.
- In terms of access Niue is not a transit stop for airlines or shipping services. Niue has one commercial airline flight per week operated by Air New Zealand using an Airbus A320 that originates and ends in Auckland, New Zealand. There is one shipping service for supplies from Auckland, New Zealand although it also calls into neighbouring countries of the Cook Islands and Tonga.
- Niue's national budget is USD 16 million.

As regards to the entering into exchange of information treaties, Niue has adopted a cautious approach to concluding such agreements by first ensuring that framework legislation is in place. The enactment of the Income Tax Amendment Act 2012 in August provides a solid basis for Niue to commence concluding agreements. Subsequently Niue has already signed its first Tax Information Exchange Agreement (TIEA), with New Zealand.

Niue now intends to conclude TIEAs with other countries. Although only one other country has specifically approached Niue to request a TIEA, several discussions are in progress and Niue will also conclude TIEAs with any other country that asks for one.

The Niue government advises that it intends to repeal legislation that is not used, such as legislation enabling the creation of limited liability partnerships and trustee companies.

Annex 2: List of All Exchange-of-Information Mechanisms in Force

List of TIEAs signed by Niue as at August 2012.

	Jurisdiction	Type of Eol arrangement	Date signed	Date entered into force
1	New Zealand	TIEA	29 Aug 2012	not yet in force

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

Constitution

Civil and commercial laws

Companies Act 2006
International Business Companies Act 1994 (repealed)
Partnership Act 1908 (New Zealand enactment)
Partnership Application Act 1994
Trustee Act 1956 (New Zealand enactment)
Trusts Act 1994
Trustee Companies Act 1994
Incorporated Societies Act 1908

Regulated activities and AML/CFT laws

Financial Transactions Reporting Act 2006
Best Practices Guidelines for Financial Institutions
Mutual Assistance in Criminal Matters Act 1998
Niue Bank Act 1994
Niue Act 1966

Tax laws

Income Tax Act 1961

Income Tax Amendment Act 2009

Income Tax Amendment Act 2012

Other laws

Interpretation Act 2004

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: NIUE

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

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

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

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

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

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