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THE NETHERLANDS

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COMBINED: PHASE 1 + PHASE 2

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(reflecting the legal and regulatory framework as at July 2011)

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

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to *www.oecd.org/tax/transparency*.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Netherlands as well as practical implementation of that framework. The international standard which is set out in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners.

2. The Netherlands[1] has a relatively small domestic and large foreign market, and has thus historically focussed on removing obstacles to the international flow of goods, capital and services. Starting with its first agreement that provided for sharing of information with Belgium in 1845, the Netherlands now has an extensive network of 86 taxation treaties, covering 90 jurisdictions, and 28 taxation information exchange agreements, the majority of which provide for international exchange of information for tax purposes in line with the international standard. In addition, the Netherlands is able to exchange information with other European Member States under various EU mechanisms that provide for exchange of information on automatic and spontaneous bases in addition to information exchange on request.

3. The 22 agreements signed by the Netherlands Antilles are almost all in line with the international standard and continue to apply to the Caribbean part of the Netherlands. Under the BES Taxation Act, the Netherlands will provide information to its treaty partners in respect of these islands also. There has not yet been any international exchange of information in tax matters concerning the Caribbean part of the Netherlands and thus it is too early to determine the effectiveness of this system in practice. The Global Forum will further consider practical aspects of the exchange of information relating

1. This review relates to the Netherlands and its three special municipalities in the Caribbean (Bonnaire, Sint Eustatius, and Saba). The other countries which are members of the Kingdom of the Netherlands (Aruba, Curaçao and Sint Maarten) are independent members of the Global Forum and are reviewed separately.

to the Caribbean Netherlands in detail in a targeted Phase 2 review, to be scheduled for the first half of 2014.

4. The legal and regulatory environment ensures that information on the owners of various domestic and foreign entities and arrangements operating in the Netherlands and Caribbean Netherlands is available to its competent authority. However, some concerns remain about the completeness of information on ownership of limited partnerships and foundations. In addition, the Netherlands and the Caribbean Netherlands allow for the issuance of bearer shares by public limited liability companies, but there are insufficient mechanisms in place to allow the identification of the owners of such shares.

5. The Netherlands' tax and commercial legislation contain provisions ensuring the keeping of full accounting information by all relevant entities for at least seven years. Underlying documents must also be maintained for tax purposes. Information relating to transactions and accounts held by financial institutions is available to the competent authority.

6. In the Netherlands, the competent authority has direct access to information available in the databases of the Chamber of Commerce and the tax administration. Tax inspectors in each region assist the competent authority by obtaining information from tax files and by gathering information from taxpayers or third parties, who are sufficiently empowered to get this information.

7. The authorities must notify the person from whom the information originates prior to responding to the requesting competent authority. If there is a compelling reason to do so, the information is provided to the requesting authority prior to the notification to the party concerned. Persons notified have the right to object to the provision of information and if such objections are rejected by the competent authority they can appeal and request injunctions against providing the information. This notification and appeal process can be lengthy.

8. In September 2009 the Netherlands established a new competent authority in the form of a Central Liaison Office (CLO), based in Almelo, which exclusively deals with the administrative aspects of exchange of information. The CLO is well resourced with experienced staff and are supported by the tax administration, in particular by the network of Regional Liaison Offices in the 13 tax administrative regions of the Netherlands. The CLO has recently begun to systematically provide status updates to foreign partners when requests are not responded to within 90 days.

9. Notwithstanding the need to strengthen some areas of the Netherlands' system relating to exchange of information, all 20 of the Netherlands peers that provided detailed comments to assist this review indicated that the Netherlands is a very important and valued partner exchanging a significant amount of information in tax matters.

Introduction

Information and methodology used for the peer review of the Netherlands

10. The assessment of the legal and regulatory framework of the Netherlands and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at July 2011, other information, explanations and materials supplied by the Netherlands during the on-site visit that took place on 9-13 May 2011, and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the relevant Netherlands agencies including the Ministry of Finance, the Chamber of Commerce and the Authority for Financial Markets.

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) exchanging information. This combined review assesses the Netherlands's legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding the Netherlands's legal and regulatory framework 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. In addition, to reflect the Phase 2 component, recommendations are also made concerning the Netherlands's practical application of each of the essential elements. As outlined in the *Note on Assessment Criteria*, following a jurisdiction's

Phase 2 review, a "rating" will be applied to each of the essential elements to reflect the overall position of a jurisdiction. However this rating will only be published "at such time as a representative subset of Phase 2 reviews is completed". This report therefore includes recommendations in respect of the Netherlands's legal and regulatory framework and the actual implementation of the essential elements, as well as a determination on the legal and regulatory framework, but it does not include a rating of the elements.

12. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Ms. Shauna Pittman, Legal Counsel, Legal Services, Canada Revenue Agency: Mr. Torsten Kluge, Saxon State Ministry of Finance, Germany: and Mr. Sanjeev Sharma of the Global Forum Secretariat.

Overview of the Netherlands

13. The Netherlands is a constituent country of the Kingdom of the Netherlands, located mainly in North-West Europe, with three small islands – Bonnaire, Sint Eustatius, and Saba – in the Caribbean.[2] The Netherlands is part of the Kingdom of the Netherlands which also comprises the countries of Aruba, Sint Maarten and Curaçao. The relation between the Netherlands and the other parts of the Kingdom of the Netherlands is governed by the Statute for the Kingdom of the Netherlands, pursuant to which Aruba, Curaçao and Sint Maarten are self-governing to a large degree and accordingly have legislative autonomy on various matters, including taxes. Defence, foreign relations, nationality and extradition are affairs of the Kingdom.

14. The European part of the Netherlands borders the North Sea and has a total geographical area of 41 543 km^2. It shares land borders with Belgium to the south, and Germany to the east. The Netherlands is divided into 12 administrative regions (provinces), which are further divided into 441 municipalities. Amsterdam is the capital and the seat of the government is in The Hague. In 2009, the Netherlands had a population of about 16.5 million[3]. The official language of the Netherlands is Dutch, which is spoken by the

2. Formerly, the Kingdom comprised three countries: the Netherlands, Aruba and the Netherlands Antilles. Effective 10 October 2010, the former Netherlands Antilles was dissolved and the three islands – Bonnaire, Sint Eustatius, and Saba – became special municipalities in the Netherlands administrative structure. These special municipalities, located in the Caribbean, are referred to as the Caribbean Netherlands in this report. The islands of Sint Maarten and Curacao joined the Netherlands and Aruba as constituent countries forming the Kingdom of Netherlands.

3. Statistics Netherlands, *www.cbs.nl/en-GB/menu/themas/bevolking/nieuws/default.htm*, accessed 22 June 2011.

vast majority of the inhabitants. Another official language is Frisian (Frysk), which is spoken in the northern province of Friesland (Fryslân).

15. The Caribbean Netherlands comprises Bonaire, Sint Eustatius and Saba, which have a collective population of 18 000 inhabitants and an area of 322 km^2. Netherlands and English are the official languages of Saba and Saint Eustatius, while Netherlands and Papiamentu are the official languages of Bonaire. The Netherlands currency is the Euro. From 1 January 2011, the official currency of the Caribbean Netherlands is the US Dollar.[4]

16. The Netherlands has an open economy. With a GDP[5] of USD 680.4 billion in 2010, it is the 22nd largest economy in the word. The service sectors contribute about 72% to its GDP, whereas industry (24.9%) and agriculture (2.6%) make up most of the remaining. The Netherlands is the 9th largest exporter in the world with total exports valued at EUR 309.3 billion in 2009. Exports of machinery and equipment, chemicals and fuel are mainly to Germany, Belgium, France and the UK. The imports, amounting to EUR 274 billion in 2009, are mainly from Germany, China, Belgium and the USA. Germany is by far the most important trading partner for the Netherlands.

17. Tourism is the mainstay of the economies of the Caribbean Netherlands[6]. The Caribbean Netherlands has close trading relations with Venezuela and other countries in the region. Almost all capital and consumer goods are imported.

18. The Netherlands is a founding member of the European Union (EU), and is a member of the Organisation for Economic Co-operation and Development (OECD) and the World Trade Organisation (WTO). It joined the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2009. The Caribbean Netherlands is not part of the EU and instead constitute "overseas countries and territories" of the union to which special provisions apply.[7]

4. As at 27 May 2011, USD 1 = EUR 0.70.
5. CIA World Fact Book: *https://www.cia.gov/library/publications/the-world-factbook/geos/nl.html*, accessed 22 June 2011.
6. *www.bbc.co.uk/news/world-latin-america-11511355*, accessed 22 June 2011.
7. Under the Lisbon Treaty the European Council may change the status of an extra-European territory of Denmark, France or the Netherlands regarding the application of EU treaties to the territory. The position of the islands will be reviewed after a five year transitional period which began in October 2010.

General information on the legal system and the taxation system

19. The Netherlands has been a constitutional monarchy since 1848. The Netherlands is a parliamentary democracy and the State is ruled by the government under the supervision of the Parliament. The government consists of the Ministers under the leadership of the Prime Minister. The Parliament consists of an Upper House (Eerste Kamer) and Lower House (Tweede Kamer). The 150 members of the Lower House are elected by popular vote for a four-year term. The Upper House has 75 seats and the members are indirectly elected by the country's 12 provincial councils for a four-year term. The Lower House supervises the government's actions and has the right to change bills proposed by the Cabinet. Bills passed by the Lower House must be approved by the Upper House.

20. The legal system is one of civil law (single national law). Generally there is a codification of law but the court decisions are also important sources of law. Major sources of law in the Netherlands are: International and EU legislation; the Constitution (Grondwet); Laws enacted by the Parliament, Decrees, Ministerial Regulations, provincial Ordinances and Communal Ordinances. All domestic legislative instruments derive from the State. The Netherlands is an EU Member State and EU Regulations have direct effect while EU Directives must be given effect through Netherlands legislation.

21. Articles 93 and 94 of the Constitution *expressis verbis* provides for the precedence of directly effective binding provisions of international treaties. International treaties including tax treaties rank high in the hierarchy of legal norms. They take precedence over any conflicting national law and enjoy priority over the Acts of Parliament and even over the Constitution itself. Article 120 of the Constitution restricts the judiciary's competence to review treaties. The Parliament decides whether a treaty is in conformity with the Constitution.

22. As for the judicial system, the Netherlands is divided into 19 districts and each has its own District Prosecutors' Office[8] and District Court (of first

8. Beside the District Prosecutors' offices, there is a National Public Prosecutors' Office (Landelijk Parket, LP) and a National Financial, Environmental and Food Safety Offences Public Prosecutors'Office (Functioneel Parket, FP). The National Public Prosecutors' Office (LP) focuses on international forms of organised crime which are not confined to the jurisdiction of a district court or appeal court. The Financial, Environmental and Food Safety Offences Office (FP) is a centre of expertise and an office of the Public Prosecution Service with responsibility for economic or financial offences, social security fraud or agricultural or environmental offences. These are offences investigated upon by special investigative services such as FIOD. The FP has a specific focus on tax fraud and corruption of the financial systems.

instance). Each District Court is made up of a maximum of five sectors, which include at least administrative (including tax cases), civil and criminal law. Appeals from the District Courts are decided by the competent Court of Appeal. In addition to criminal and civil cases, the Court of Appeal decides appeals against tax assessments, in its capacity as an administrative court. Court of Appeal Decisions can be contested in the Supreme Court of the Netherlands on points of law.

23. The Caribbean Netherlands (CN) has a legal system, different from the European part of the Netherlands, which is largely derived from the law of former Netherlands Antilles. The legal system of the Caribbean Netherlands is based on civil law and relies on a single national law. With the exception of matters at the discretion of the Islands authorities, all laws are made in the Netherlands and have the same hierarchy as in the Netherlands.

24. The islands of the Caribbean Netherlands are classed in Netherlands law as being openbare lichamen (literally translated as "public bodies") and not gemeenten (municipalities). They do not form part of a Netherlands province, and the powers normally exercised by provincial councils within municipalities are divided between the island governments themselves and the central government (by means of the National Office for the Caribbean Netherlands). Executive power rests with the governing council (bestuurscollege) headed by a Lieutenant Governor (gezaghebber). The main democratic body for each public body is the Island Council (eilandsraad).

25. A large number of laws of the Caribbean Netherlands have been enacted since 10 October 2010. The National Office for the Caribbean Netherlands (Rijksdienst Caribisch Nederland) has assumed responsibility for taxation, policing, immigration, transport, infrastructure, health, education and social security in the islands and provides these services on behalf of the Government of the Netherlands.

Tax system

26. The Netherlands levies income tax, corporate income tax, wage tax, dividend tax, VAT, inheritance tax and gift tax as the important national taxes. Article 104 of the Constitution provides that state taxes can only be levied on the basis of a law.

27. Individuals resident in the Netherlands are subject to income tax on their worldwide income. Non-resident individuals are subject to income tax on income from sources in the Netherlands. The tax year follows the calendar year. Income is classified into three boxes: income from employment and home ownership (progressive tax rate, maximum 52%); income from a substantial interest (flat tax rate, 25%); and, income from savings and investments (flat tax rate, 30%).

28. In the Netherlands, companies[9] are subject to corporate income tax on their worldwide profits. Non-resident companies are subject to corporate tax on income earned from business through a permanent establishment or a permanent representative in the Netherlands and also income from a substantial interest in a company established in the Netherlands or from Netherlands real estate. Private companies with limited liability (BVs) and public companies limited by shares (NVs) are subject to progressive corporate income tax rates: the first EUR 200 000 profits are taxed at 20%; the subsequent profits are taxed at 25%. Dividends received and capital gains derived from a shareholding for which a Netherlands participation exemption applies are exempted.

29. Dividends distributed by a resident company are in principle subject to a 15% withholding tax though, under applicable tax treaties, the rate for inter-company dividends is often reduced. The Netherlands does not levy withholding tax on interest and royalties nor on remittance of profits by a permanent establishment to its foreign head office. The tax system provides an incentive to entities established in the Netherlands.[10]

30. The International Assistance (Levying of Taxes) Act and the General State Taxes Act (GSTA) provide the domestic framework for the international exchange of information in tax matters. The Minister of Finance is the competent authority. Officials of the Ministry of Finance lead the work relating to policies and negotiation of international agreements, while the Central Liaison Office, based in the city of Almelo, bears the primary responsibility for conducting the international exchange of information. The agreements are signed by the Minister of Finance or his authorised representative and come into force after ratification by the Parliament (Art.91 Constitution).

31. The Ministry of Finance is responsible for drafting the tax laws in the Caribbean Netherlands. Levying and collection of taxes is looked after by the "Belastingdienst" (Revenue Service) Caribbean Netherlands, a part of the Netherlands Belastingdienst. New tax legislation for the Caribbean Netherlands has been passed by the Netherlands Parliament, effective

9. Other persons subject to corporate income tax are: open limited partnerships, co-operative societies and other association based on co-operative principles, mutual insurance companies and other associations which act as insurance or credit organisations based on principle of mutuality, associations and foundations if they conduct business and government owned companies.
10. Including: (i) fiscal investment companies receiving portfolio investment income qualify for zero rate of tax on meeting required conditions; (ii) tax exempt investment companies are fully exempted from Netherlands corporate income tax and dividend withholding tax; and (iii) under the innovation box regime, net earnings derived from intangible assets are taxed at 5%.

1 January 2011.[11] The substantive tax law in the Caribbean Netherlands differs from that of the Netherlands, but the procedural law is quite similar.

Overview of the financial sector and relevant professions

32. The Netherlands has a modern and developed financial sector which contributes 6 to 7% to GDP. Financial services regulation is structured according to the "Twin Peaks" model. The Central Bank (De Nederlandsche Bank; DNB) focuses on prudential supervision of financial enterprises and on admission of financial enterprises to the financial markets, while the Authority for the Financial Markets (Autoriteit Financiële Markten; AFM) focuses on supervision of conduct of the financial markets. Integrity and AML/CFT supervision are performed by both. The institutions under the purview of the DNB are: banks, insurance companies, pension funds, bureaux de change, and money transfer offices. The AFM supervises approximately 14 000 financial institutions; the majority of which (approximately 10 000) are financial service providers. The DNB and AFM also supervise the financial sector in the Caribbean Netherlands.

33. The banking sector comprises 103 banks, 58 of which are incorporated in the Netherlands and banks that are part of financial conglomerates. At the end of the first quarter of 2011, assets in the banking sector amounted to EUR 2 703 193 million. The four largest banks (ABN Amro Bank, ING Bank, Rabo bank, and SNS Reaal) account for about 80% of the Netherlands' banking market. As of July 2011, 12 money transaction offices (including money transfer offices and bureaux de change) are registered with and supervised by the DNB.

34. Insurance companies in the Netherlands perform a number of functions, including making loans, granting mortgages and purchasing real estate. In early 2011 the insurance sector was composed of 322 insurers (46 life insurers, 29 benefits-in-kind and funeral expenses insurers, and 247 non-life insurers).

35. The Netherlands has a large, well developed asset management sector comprised of pension and investment funds. At the end of the first quarter of 2011 investment funds (excluding pension funds and insurers) had assets under management totalling EUR 493 billion. The Amsterdam Stock Exchange is the oldest exchange in the world.[12] In 2000, the Amsterdam

11. The Global Forum will further consider practical aspects of the exchange of information relating to the Caribbean Netherlands in detail in a targeted Phase 2 review, to be scheduled for the first half of 2014.
12. Established in 1602 by the Dutch East India Company, whose shares were the first to be traded.

Stock Exchange merged with the Brussels and Paris exchanges to form Euronext NV.[13]

36. Around 1 700 notaries (800 offices) provide services in the Netherlands. Netherlands law requires a notarial instrument for a wide range of agreements and legal transactions. Notaries must be members of the Royal Dutch Notarial Society. There are approximately 16 000 lawyers in the Netherlands (3 800 offices). About one third of this number provides, at least occasionally, services that relate to financial transactions.[14] Lawyers must be members of the Bar Association.

37. Approximately 12 000 public chartered accountants carry out activities in the Netherlands. They are required to be members of the NIVRA. There are also about 6 500 public chartered accountant-business administration consultants, who are authorised to perform audits and are required by law to be members of the NOVAA. In addition, there are approximately 11 000 tax advisors in the Netherlands; of which 4 500 are members of the Dutch Association of Tax Advisors.

38. Trust offices are required to comply with requirements concerning licensing, operations and organisation. They are supervised by the DNB. As of July 2011, there were 307 licensed Trust and Company Service Providers (TCSPs).

39. Finally, there are about 10 000 other independent legal advisers and financial economic advisers performing activities in the Netherlands.

40. The Money Laundering and Terrorist Financing Prevention Act (Wet ter voorkoming van witwassen en financieren van terrorisme; WWFT[15]), came into force on 1 August 2008. Financial institutions, trust and company service providers, lawyers, accountants, tax advisors and notaries are obliged entities covered by the provisions of the WWFT.

41. The Caribbean Netherlands currently has 16 credit institutions, 7 insurance companies, 10 trust and company service providers and 9 insurance intermediaries. There are also 9 lawyers, 13 accountants and one notary public providing services in the Caribbean Netherlands. Pursuant to AML/CFT laws[16] enacted in respect of the Caribbean Netherlands, these service

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13. NYSE Euronext: *www.euronext.com/trader/priceslists/priceslists-1800-EN.html?country=NLD*, accessed 1 June 2011.
14. Information received from the Netherlands' Bar Association.
15. This implemented Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing (the Third Directive).
16. Wet identificatie bij dienstverlening BES (Staatsblad 2010, 464) and Wet melding ongebruikelijke transacties BES (Staatsblad 2010, 465). The Netherlands

providers are obliged entities to undertake customer due diligence measures in respect of their customers.

Recent developments

42. Effective 1 January 2011, changes made to the exchange of information regime of the Caribbean Netherlands bring it in line with the Netherlands International Assistance (Levying of Taxes) Act. Requests for information will now be responded to 10 days after notification is given to the person from whom information is gathered (previously this period was two months).

43. A new Mutual Assistance Directive was adopted by the European Council on 15 February 2011 and will come into force on 1 January 2013.

44. As of July 2011 a new system of supervision of legal persons has come into force. Relevant data is collected by a special department of the Ministry of Security and Justice, *e.g.* from the Commercial Register, the Civil Register and the Insolvency Register. When there is an increased risk of misuse, a report is sent to the relevant authorities who may decide to start an investigation.

45. Also, a bill is under preparation that will require foundations to deposit accounting records with the Chamber of Commerce.

46. A dematerialisation process for bearer shares is currently being developed and a central depository is being set up to collect bearer shares. The Netherlands RIS List has been created, containing a summary of all the reports drawn up by the police with regard to stolen or missing bearer securities. The objective of this RIS List is to administer centrally the registration of stolen or lost physical bearer securities.

plans to integrate these laws into a single BES Money Laundering and Terrorist Financing Prevention Act.

Compliance with the Standards

A. Availability of information

Overview

47. 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 the information is not kept or it is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report describes and assesses the Netherlands's legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework.

48. The legal and regulatory framework for the maintenance of ownership and identity information is in place in the Netherlands for many relevant entities, with some exceptions related to limited partnerships and foundations.

49. Information on the owners of companies is available to the Netherlands authorities through a variety of mechanisms. All companies incorporated under the Netherlands' law, or foreign companies carrying on business in the Netherlands must register with the Chamber of Commerce and after registration the identity information of companies is available. Both private and public limited liability companies are required to keep the shareholders register, which must be updated regularly. And resident companies

must file annual return of corporate income tax which contains information on all the shareholders at the end of the year. Co-operatives keep registers of their members and information must also be filed with the Chamber of Commerce.

50. Public limited liability companies are allowed to issue bearer shares. Some bearer shares are in circulation at present, but there are insufficient mechanisms in place to ensure the availability of information on the owners of bearer shares.

51. Information identifying all partners in civil partnerships, general partnerships and European Economic Interest Groupings is available in the Netherlands and Caribbean Netherlands. Information on foreign partners of a limited partnership who are not earning income from the Netherlands or Caribbean Netherlands may not be available to tax authorities in the Netherlands or Caribbean Netherlands.

52. The Netherlands' law does not provide for the creation of trusts, however foreign trusts are recognised. Mechanisms are in place ensuring the availability of information regarding the settlors and beneficiaries of trusts which have trustees resident in the Netherlands. Foundations can be established in the Netherlands but information on the beneficiaries of foundations in the Netherlands is not ensured in all cases.

53. There is a range of sanctions available under the tax laws ensuring that the ownership information required to be maintained or disclosed to the administrative authorities is in fact maintained. Administrative as well as criminal sanctions provided under tax laws enable the tax authorities and courts to apply a sanction proportionate to the nature and level of a breach of these laws. In addition, the proactive approach adopted by the Chamber of Commerce ensures that up-to-date information about the identity of owner's of relevant entities is available.

54. The combination of commercial, tax and AML laws ensure the availability of full accounting records for all relevant entities. The requirements under tax laws ensure keeping of underlying documents by all relevant entities. Accounting records and underlying documentation must be maintained for a minimum of seven years. In addition, anti-money laundering and commercial law requirements ensure that financial institutions maintain transaction records and customer due diligence records for at least five years.

55. Similar conclusions have been reached with respect to the availability of ownership, identity and accounting information in respect of relevant entities and arrangements in the Caribbean Netherlands. The obligations for all relevant entities under the Civil Code and tax laws ensure the availability of information, although this information may not be guaranteed in some cases

where bearer shares are issued or with respect to limited partners in limited partnerships and some beneficiaries of foundations.

56. In practice, identity and ownership information needed by international partners appears to be available to the competent authority. This is evident from the response of the Netherland's exchange of information partners. They have been appreciative of the willingness of the authorities to provide information even in the cases where the statutory time for retaining the accounting information had expired.

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.

57. The formation, management and dissolution of business entities in the Netherlands are governed by the Civil Code (CC), Commercial Register Act 2007 and Commercial Register Decree 2008. Book 2 of the CC deals with legal persons, while non-legal persons (partnerships) are governed by the Book 7a. Legal entities can be established in the form of a private company with limited liability, a public limited liability company, an association, a co-operative or a foundation. A legal person is created through a deed signed by a notary (Art.4 Book 2).

58. The Netherlands has a common commercial register for the registration of all undertakings[17] and legal persons and it is compulsory for all legal entities to be registered. This register contains general information on the constitution of such entities. The information available in the commercial register is publicly available and can be accessed online[18] on payment of a fee.

59. In the Caribbean Netherlands, the corporate law can be found in the Civil Code[19] (Burgerlijk Wetboek) and the Commercial Code (Wetboek van Koophandel). The registration of companies is regulated by the Law on

17. Article 2 of the Commercial Register Decree 2008 states that, an undertaking exists if there is an independently operating organisational unit of one or more persons through which, by means of a sufficient contribution of work or funds by third persons, services or goods are supplied or works are completed with a view to making a reasonable profit. No undertaking exists if the volume of activities or turnover is insignificant according to the Decree.
18. Chamber of Commerce website: *www.kvk.nl*, accessed 1 June 2011.
19. After the dissolution of the Netherlands Antilles, the Caribbean Netherlands has a new Civil Code (Law of 27 September 2010, Official Journal 2010, 494) which is based on the Civil Code of the Netherlands Antilles and is similar to the Civil

Business Register (Law of 22 September 2010, Official journal 2010, 434) and the Royal Decree of 15 September 2010, Official Journal 2010, 447 on business registers. A business license is necessary for carrying out business in the Caribbean Netherlands.

Companies *(ToR A.1.1)*

The Netherlands

60. The Netherlands' law allows for the establishment of the following types of companies:

- **private companies with limited liability** (Besloten Vennootschap; BV) (Title 5 of Book 2) BVs are set up by one or more natural or legal persons. Authorised capital is divided into shares; however, share certificates cannot be issued. The shareholders' liability in cases of losses incurred by the company is limited to the amount which must be paid up on their shares. BVs must have a minimum share capital of EUR 18 000, which can be contributed in cash or kind. Transfer of ownership of BV shares is subject to notarial authentication. In absence of restrictions in the articles, the shares can be freely transferred to spouse or registered partner or his relative;
- **public limited liability companies** (Naamloze Vennootschap; NV) (Title 4 of Book 2): NVs require a minimum share capital of EUR 45 000. Shares of NVs are transferable and may be publicly traded without need for a notarial deed. NVs may issue both registered and bearer shares. Shareholders are not personally liable for acts performed in the name of the company and are not liable to contribute to the losses of the company in excess of the amount which must be paid on their shares;
- **co-operatives** (Title 3 of Book 2): a co-operative is an association established for the benefit of its members and this objective must be clear from its articles. It may be established by two or more members through a notarial deed and subsequent registration with the Chamber of Commerce. After incorporation, the number of members may reduce to one. A co-operative has no minimum capital requirement and may not issue shares. Co-operatives may carry out any type of activity other than insurance, including acting as holding companies;

Code of the Netherlands. These laws also apply to companies incorporated before 2010.

- **Associations** (Title 2, Book 2)[20]: An Association is a legal person formed for a particular purpose, different than that of co-operative or mutual insurance society, by means of a multilateral juridical act. An association may not distribute profits among its members;
- **European companies** (Europese Vennootschap; SE): SEs are regulated by European Council Regulation (EC) 2157/2001 of 8 October 2001 on Statute for a European Company which provide for the creation and management of companies with a European dimension, free from the territorial application of national company law. Pursuant to Section 10 of the European Regulation, the rules applicable to public limited companies apply to these types of companies. The Netherlands law of 17 March 2005, Official Journal 2005, 150 (Uitvoeringswet verordening Europese vennootschap) deals with SEs; and
- **European co-operative societies** (Europese Cooperatieve Vennootschap; SCE): European Council Regulation (EC) 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society provides for the establishment of such companies in the EU Member States. The Netherlands' Law of 14 September 2006, Official Journal 2006, 425 (Uitvoeringswet verordening Europese cooperatieve vennootschap) regulates these companies in the Netherlands. SCEs are subject to the same registration requirements as BVs and NVs.

61. Statistics on legal persons are kept by the Central Bureau of Statistics and the Chamber of Commerce. As of 31 December 2009, a total of about 1.1 million domestic and 7 000 foreign and European companies were registered with the Chamber of Commerce, comprising 753 960 BVs, 3 642 NVs, 5 277 co-operative societies, 117 398 associations, and 6 905 foreign corporations. BVs are mainly used for smaller business and are privately owned. NVs are commonly used to engage in banking or insurance business or for companies to be listed on a stock exchange. Further, there are 3 SEs and 33 SCEs registered in the Netherlands.

Ownership information held by government authorities

62. Legal entities[21] established under the Netherlands' law require a deed of incorporation executed before a civil law notary (Art.4 Book 2).

63. Articles 64 and 175 of Book 2 of the CC prescribe the rules for incorporation of NVs and BVs respectively. Both NVs and BVs are incorporated by

20. Mutual insurance societies are a form of association established to conclude insurance contracts with members in the course of insurance business carried for the benefit of members.
21. With the exception of religious communities and public legal persons.

one or more natural or legal persons. The founders may be of any nationality and may be domiciled within or outside of the Netherlands.

64. The notarial deed of incorporation must be signed by each incorporating person and by each person subscribing to shares. Pursuant to Articles 66 and 177 of Book 2, the deed of incorporation, which includes articles of association, must mention, amongst other things, the number and class of shares subscribed by each person and the amount paid thereon at the time of incorporation of the company. The company's corporate seat must be situated in the Netherlands. Once incorporated, the Articles of Association may only be amended by way of a notarial deed.

65. Article 5 of the Commercial Register Act 2007[22] (CRA) requires registration in the Commercial Register by legal persons and undertakings[23] established in the Netherlands (Art.6). If an undertaking belongs to a legal person, registration of the undertaking is considered to constitute registration of the legal person (Art.7). The commercial register contains the following information on a registered undertaking: its unique serial number allocated by the Chamber of Commerce; its trade name(s); the date of its commencement, continuation or termination; the person to whom the undertaking belongs; and, its place of business (Art.9). Where the undertaking is a legal person, the register also lists its legal type. Article 24 of the Commercial Register Act requires the publication of information registered with the Chamber of Commerce.

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22. Act of 22 March 2007 for the regulation of a base register for undertakings and legal persons. This law came into effect on 1 July 2008.
23. Article 5 provides for the registration by the following undertakings:

    a. an undertaking established in the Netherlands belonging to a company limited by shares; a private company with limited liability; a general partnership; a limited partnership; a partnership; a ship owners' firm; a co-operative; a mutual insurance society; an association; a foundation; a religious association or a legal person under public law;

    b. an undertaking established in the Netherlands belonging to a natural person;

    c. an undertaking belonging to a European Company, a European co-operative society or a European economic interest grouping, with its seat in the Netherlands in accordance with its Statute or articles;

    d. an undertaking belonging to a foreign legal person with its principal place of business or a branch establishment in the Netherlands;

    e. an undertaking established in the Netherlands belonging to a person other than mentioned in subparagraphs (a) to (d), inclusive.

66. The legal person must be registered in the commercial register within eight days of incorporation. The registration is performed at the Chamber of Commerce in the district of the company's official seat.

67. Each director of the legal person is responsible for the filing of returns[24] for registration in the commercial register (Art.6 Commercial Register Decree). For all entities, including undertakings and legal persons established outside the Netherlands, the person charged with the day-to-day management of the principle place of business or the authorised commercial agent designated by the undertaking or the legal person must file the return for registration (Art.18 CRA). The return must contain, amongst other things, an officially certified copy of the deed of incorporation (Arts.69 and 80 Book 2 CC).

68. Article 22 of the Commercial Register Decree 2008 stipulates that for NVs, BVs, SEs and SCEs, registration involves provision of information on personal particulars of each director and supervisory board member and other persons who are authorised to represent the company.[25] Information on the authorised capital and the amount of the issued and paid-up capital is also recorded. Information on the owners of non-fully paid up shares needs to be registered and consists of personal particulars, the holding of each shareholder and the amount paid on such shares. Additionally, where all shares are held by one person, information on that person is also provided as part of registration.

69. Article 4 of the Commercial Register Decree authorises the Chamber of Commerce to investigate the completeness and accuracy of the information provided before it finalises registration. It verifies whether the return is filed by the authorised person and that the return is not in conflict with data from another register or data already recorded on the undertaking or legal person.

70. Legal entities and undertakings are obliged to notify the Chamber of Commerce within one week of any change in the particulars recorded in the commercial register. In addition, a database of all residents of the Netherlands is maintained by the municipalities[26] and any changes to the information in

24. The Chamber of Commerce has set forms for registering a legal entity, a branch or for changes to a registration. Forms are available on *www.kvk.nl/english/*, accessed 1 June 2011.
25. Article 10(2) of the Commercial Register Act 2007 refers to personal particulars which include, name, address, gender, place and country of birth.
26. The records are maintained pursuant to Municipal Database (Personal Records) Act and contain information regarding all residents in the municipality. This includes personal and address details of all residents. The database is used as a source of information by various organisations, including the Chamber of Commerce and the Tax and Customs Administration.

that database automatically result in updates of the Chamber of Commerce's registry.

71. All information and documents maintained by the Chamber of Commerce are publicly available (Art.21 CRA).

Co-operatives

72. Co-operatives are formed by way of a notarial deed (Art.54 Book 2). Article 28 of the Commercial Register Decree requires the registration of the personal particulars of the manager and supervisory board members as well as an indication of whether they are authorised to represent the entity, however, information on members is not registered.

73. Article 61 sets out specific provisions applicable to co-operatives. Where the articles of incorporation of a co-operative do not entirely exclude any obligation of its members and former members to contribute to a deficit of the co-operative, the following provisions apply. A copy of the membership list, certified by the Board of Directors, must be deposited at the office of the commercial register at the time of registration of the co-operative. Afterwards, changes to the membership list must be submitted within one month after the end of each accounting year and a new membership list must be deposited whenever requested by the Chamber of Commerce.

Associations

74. An association is a legal person, with members, established for a certain goal, other than the goals of a co-operative society or a mutual company. Associations can make profits, however, these may be used only to further the common goal and profits may not be distributed. Associations are a common legal form for interest groups such as home owners and sports clubs (Art.26 Book 2).

75. An association formed by a notarial deed of incorporation must contain the articles of association, which describes the purpose of the association, obligations of the members towards the association, the method of convening the general meeting and the method for the appointment and dismissal of the officers of the association (Title 2.2 Book 2). The directors of an association are responsible for registering the association in the commercial register (Art.29). For associations of owners, the personal particulars of each manager must be registered in the commercial register. A copy of the notarial instrument of amendment and amended articles must also be registered.

Institutions in the financial, securities and insurance sectors

76. Access to the financial markets of the Netherlands is regulated by the Act on Financial Supervision (AFS).[27] The Central Bank (DNB) and the Authority for the Financial Markets (AFM) are the supervisory authorities under this Act. The DNB grants licenses for conducting the business of a clearing institution, credit and financial institution, re-insurer, life insurer and non-life insurer, business of funeral expenses and benefits in kind insurer and business of an entity for risk acceptance. Licenses for conducting the business of offering investment objects, offering credit, offering units in collective investment schemes, performing advisory services in respect of financial products other than financial instruments, performing brokerage services, performing reinsurance brokerage services, acting an authorised agent or authorised sub-agent, providing investment services and performing investment activities and systematic internalisation are granted by the AFM. The vast majority of the companies engaged in these regulated businesses take the form of NVs or BVs, supplemented by a small number of co-operatives and mutual insurance societies.

77. Requirements to be fulfilled in order to obtain a license include, amongst other things, provision to the licensing authority of information on the control and operational structure of the party (Sections 3:16, 3:17, 4:13, 4:14 and 4:15 AFS). The relevant licensing authority can access information and verify the control structure of these entities (AFS ss.1:72 and 1:74). The licensed entities are also subject to various reporting requirements and a public register containing various information (not including ownership information) is maintained (AFS s.1:107).

Foreign companies

78. A foreign company can conduct business in the Netherlands without setting up a Netherlands company. The Netherlands' international private law is based on the incorporation doctrine, which means that an entity is regulated according to the laws of the country of incorporation. Foreign companies that have an undertaking[28] in the Netherlands are required to be registered in the Netherland's commercial regsiter. The Netherlands had 6 905 foreign companies' undertakings registered with the Chamber of Commerce in accordance with the Commercial Register Decree as of 31 December 2009. Of these 6 905 foreign companies, 45 had their main office in the Netherlands.

79. With regards to registration of undertakings of foreign companies, Article 10 of the Commercial Register Decree provides that if the person to

27. Act of 28 September 2006, which came into force on 1 January 2007.
28. See footnote 17 for a description of what constitutes an undertaking.

whom an undertaking belongs has been registered in a foreign register for undertakings, the registration number from such register, the name of the register and the place and country where the register is kept must be recorded in the Netherland's commercial register. Articles 24 through 27 of the Commercial Registry Decree refer to the particulars that must be registered in the commercial registry relating to foreign legal persons and partnerships. The information registered varies depending upon whether the foreign legal person is established under the law of a State which is a party to the agreement on the European Economic Area or not. The information contains identification particulars of the entity; however, there is no obligation to provide ownership information as part of registration at the Commercial Register.

80. Some foreign companies conduct their business almost entirely in the Netherlands, without connection with the country of incorporation and these companies are called "companies formally registered abroad". Such companies, in addition to registration under the Commercial Register Decree, are also regulated by the Companies Formally Registered Abroad Act 1997.[29] As part of registration with the Commercial Register they must provide a confirmation that they are formal foreign companies. Such companies must also file an annual proof of registration in a foreign companies' register with the Chamber of Commerce and are subject to minimum capital requirements of EUR 18 000. However, in accordance with a decision of the European Court of Justice, this act is not applicable to foreign companies incorporated in other EU Member States.

81. If a foreign company has its place of effective management in the Netherlands, it is considered a tax resident and subject to tax on worldwide income. Such companies must provide ownership information in tax returns (see further below).

Tax law

82. Any legal entity or a branch of a non-resident entity engaged in business must register for tax purposes with the Tax and Customs Administration. The information about the name and address in the Netherlands of the business, legal form of the business, details of the incorporator and the activities performed are required to be provided.

83. Irrespective of whether the business activities are performed through a legal entity established in the Netherlands or through a branch of a foreign entity, an annual corporate tax return must be filed within five months after

29. Website of the Chamber of Commerce: *www.kvk.nl/english/traderegister/020_About_the_trade_register/Foreign_companies/Companiesformallyregisteredabroad.asp*, accessed 1 June 2011.

the preceding financial year is closed. When a tax return is not filed, the tax inspector may issue an estimated assessment.

84. Tax resident companies are required to provide information on all shareholders in tax returns (Form VPB 082), indicating the name, address, city of residence and country code for shareholders if resident abroad. For stock registered NVs, information only on the shareholders with an interest of 5% or more in the company needs to be provided. As domestic companies are obliged to file tax returns on an annual basis, information on the shareholders available with the tax authorities is updated annually.

85. Pursuant to Article 4.6 of the Individual Income Tax Act 2001, any natural person resident in the Netherlands holding an interest of 5% or more in a domestic or foreign company must file an annual tax return. Likewise, non-resident natural persons holding 5% or more interest in a Netherlands company need to file an annual tax return (Art.7.5(1) Individual Income Tax Act). Similar obligations apply to resident and non-resident legal persons (arts. 13 and 17 of the Corporate Tax Act 1969).

86. A foreign company having its effective place of management in the Netherlands is considered as tax resident in the Netherlands and is subject to tax on its worldwide income. They are subject to identical tax obligations as apply to domestic companies and file tax returns (Form VPB-082). They must provide identity information on all their shareholders. Accordingly, information on the ownership of the foreign companies having sufficient nexus with the Netherlands is available to the competent authority.

Ownership information held by companies

87. The management of a public limited liability company (NV) is obliged to keep a register recording the names and addresses of all holders (legal owners) of registered shares (not holders of bearer shares – see further below) (Book 2 Art.85). The records must also state the date of acquisition of shares. Information on the persons who have a right of usufruct or pledge in respect of shares also needs to be recorded (Book 2 Art.85 CC). The register of shareholders must be kept updated and kept at the office of the company, which may or may not be in the Netherlands. Similar provisions apply to BVs, who can issue only registered shares (Book2 Art.194).

88. The shares of an unlisted NV can be transferred through a notarial deed. The shares of a listed NV can be transferred through a private deed and the corporation must acknowledge such transfer. The issuance of new shares or transfer of shares of a BV can take place through a notarial deed only.

89. Further, *all data and information which may be of importance to the levying of taxes on that person* should be accessible by tax inspectors

within a reasonable period of time (Arts.47, 49(1) and 52(6)).[30] As a result, it could be expected that in practice companies will maintain information on their owners/members as this would reasonably be expected to fall within the category of *information which may be of importance to the levying of taxes* on the entity. This act does not prescribe that this information, including the register of shareholders, be kept in the Netherlands.

Ownership information held by service providers

90. Pursuant to Article 4 of the Civil Code, all legal entities, except religious communities and public persons, require a notarial deed for incorporation. Notaries, financial institutions, accountants, tax advisors lawyers, trust and company service providers and others[31] are obliged entities under the WWFT (Arts.1-3). They must undertake customer due diligence, including identification of their customers and verification of the customers' identities. Customer is defined as a natural or legal person with whom a business relationship is established or on whose behalf a transaction is carried out (Art.1(1)(b)).

91. Article 3(2)(b) of the WWFT obliges these service providers to identify the beneficial owners[32] of any customer which is a legal person. In addition, where the customer is a legal person, a foundation or a trust, the service provider must take risk-based and adequate measures to gain insight into the

30. The General State Taxes Act (GSTA) provides that *If so requested, every person shall: (a) provide the inspector with all data and information which may be of importance to the levying of taxes on that person; (b) make available for that purpose, at the inspector's option, the books, records and other data carriers or the contents thereof, the examination of which may be of importance for ascertaining such facts as may influence the levying of tax on that person; …* (Art.47).

31. The persons covered under the AML Law include: credit institution; financial institution; money transfer office; life insurer; investment firm; financial service provider; trust office as referred in the Supervision of Trust Offices Act; external chartered accountant; external accounting consultant or tax advisor insofar as they act in the course of their professional activities; natural person, legal person or company providing advice or assistance as a lawyer, notary with regard to services including the incorporation or management of companies, legal persons or similar bodies referred to in Art.2(1)(b) GSTA.

32. A natural person who holds more than 25% of the issued capital or can exercise more than 25% of the voting rights in the shareholders' meeting of a legal person other than a foundation, or can exercise actual control over the legal person. For a foundation/foreign trust, a beneficiary of 25% or more of the assets of the foundation/trust, or the party that has special control over 25% or more of the assets of the foundation.

customers' ownership and control structure. Further, Article 3(2)(d) of the WWFT obliges the institution to carry out constant monitoring of the business relationship and the transactions conducted during the existence of the relationship.

92. As the definition of beneficial owner does not include persons who hold less than a 25% interest in a legal person or control less than 25% of the assets of a foundation or trust, the AML requirements do not provide for recording by service providers of full information on the owners of legal entities or persons who hold less than a 25% interest in a trust.

93. Trust and Company Service Providers (TCSPs) in the Netherlands are governed by the Act on the Supervision of Trust Offices (Wet toezicht trustkantoren; Wtt) and Implementing Regulation on Sound Operational Management of Trust Offices (Regeling integere bedrijfsvoering Wet toezicht trustkantoren; Rib Wtt). A legal entity, partnership or natural person either by itself or together with other legal entities, partnerships or natural persons can provide a specified range of trust and company services[33] in a professional capacity or on a commercial basis on the instructions of another legal entity, partnership or natural person (Art.1(a) Wtt). These service providers are referred to as "Trust Offices" in the Act.

94. Working as a trust office without a licence from the Central Bank (the DNB) is prohibited.[34] The supervisory authority maintains a register of all licensed trust offices (Art.7 Wtt).

95. Pursuant to Article 10 of the Act on the Supervision of Trust Offices, trust offices are subject to rules regarding their administrative organisation, including the financial accounting system and internal control such that:

33. Section 1(d) of the Wtt specifies such services as: being a manager or partner of a legal entity or partnership; making an address or correspondence address as referred to in ss.9(1)(b) and 10(a) of the Trade Registry Decree available to a legal entity or partnership, if at least one of the ancillary activities of providing advice or assistance in the area of private law, providing tax advice or preparing tax returns and related work, performing work in connection with preparing, reviewing or auditing financial statements or keeping accounting records or recruiting a manager for the legal entity or partnership; selling a legal entity; being a trustee within the meaning of the Hague Convention on the Law Applicable to Trusts and on their Recognition; or other services designated by an order in Council.

34. However, the DNB and other government entities authorised by the Minister of Finance or the supervisory authority can provide services as a Trust Office without obtaining a licence.

- the trust office must know the identity of the ultimate beneficial owner[35] of its client or have information showing that there is no ultimate beneficial owner; and
- the trust office must have knowledge of the relevant parts of the structure of the group to which the client entity or arrangement belongs.

96. These rules are supplemented by specific provisions in regulations. The trust office must also know the identity of the ultimate beneficial owner of a client company and keep available the evidence used to determine this (Art.12 Rib Wtt).

97. Trust offices are subject to the provisions of the AML law (Art.1(1)(a)(10) WWFT). Similar to the requirements under the Act on the Supervision of Trust Offices, under the AML law they must identify their customers and beneficial owners. The Central Bank is entitled to obtain all information that is reasonably required for supervision of trust offices (Art.9 Wtt).

98. The WWFT and the Act on the Supervision of Trust Offices contain obligations for service providers to identify their clients. These obligations must ensure the availability of identity information on their clients and also information on the natural and legal persons having an ownership interest in the legal person. Further, where there is a legal person with an ownership interest, information on natural persons who hold more than 25% interest must be available. This may allow tracing the ownership chain in the Netherlands. However, the authorities have clarified that the Tax and Customs Administration in practice does not solely rely on the service providers to gather ownership information on relevant entities. They also use other available sources, such as information from the commercial registry and from the Land Registry based on Article 55 of the GSTA.

Nominees

99. Although the concept of nominee ownership is not mentioned as such under Netherlands law, the Act on Financial Supervision indicates that a person can legally own shares although the economic risk is borne by another person. This act contains rules on offering securities and non-equity

35. Article 1(c) of the Trust Office Act defines ultimate beneficial owner as the natural person who has a qualifying holding in object company or who is a beneficiary of at least 10% of the capital of a foundation (stichting) or a trust as referred to in Convention on the Law Applicable to Trusts and on their Recognition. Article 1(h) of the same law defines qualifying holding as a direct or indirect interest of at least 10% of the issued share capital or a comparable interest, or the ability either directly or indirectly to exercise at least 10% of the voting rights, or exercising comparable control.

securities to the public and also obligations for issuers whose securities are admitted to trading on a regulated market situated or operating in the Netherlands. Section 5.25(a) defines a shareholder as "a party that, whether or not for its own account, directly or indirectly hold shares or depository receipts for shares in an issuer". This definition indicates that it is possible for a person to legally own shares for another person.

100. The Netherlands' laws do not oblige nominees to disclose to the company or government authorities the fact that they are nominees or any information on the persons on whose behalf they hold shares. The beneficial owners of shares are also not subject to any disclosure requirement. The company's register of shareholders is not required to indicate whether the share is held by a nominee.

101. If a TCSP acts for another person, holding shares on his behalf, it must under the Trust Office Act identify its client. The provisions of the AML law also require all obliged entities, which include a wide range of professionals[36] who could be expected to undertake nominee activity on a professional basis, to conduct customer due diligence and verify the identity of the person for whom the shares are held. If persons not covered by the provisions of the AML law act as nominees, they need not identify the persons for whom they act.

102. Where a nominee is a customer of a financial institution or other service provider (with the exception of TCSPs, due to their obligation under the Trust Office Act), the financial institution/service provider is not likely to hold any information on the nominee relationship as these entities are not obliged under the AML law to identify beneficial owners behind natural persons who are their customers.[37]

36. The persons covered under the AML Law include: credit institution; financial institution; money transfer office; life insurer; investment firm; financial service provider; trust office as referred in the Supervision of Trust Offices Act; external chartered accountant; external accounting consultant or tax advisor insofar as they act in the course of their professional activities; natural person, legal person or company providing advice or assistance as a lawyer, notary with regard to services including the incorporation or management of companies, legal persons or similar bodies referred to in Art.2(1)(b) GSTA.

37. The Netherlands' authorities have indicated that a legislative proposal containing amendments of the WWFT is expected to enter into force on 1 January 2013. This proposal is currently open for public consultation: *www.internetconsultatie.nl/wwft*. The amended act will required obliged entities to identify the beneficial owners of legal and natural persons who are their customers and take risk-based and adequate measures to verify their identities. Obliged entities will also, where

103. The Income Tax Act 2001 is applicable to beneficial owners behind nominee shareholders. According to this law, any individual is liable to income tax if he/she holds a "substantial interest" in a company. Individuals have to pay tax on the financial gains that result from this substantial interest. In a nominee relationship, the nominee and his client may both qualify as having a "substantial interest" (and thus be liable to tax and required to submit a tax return) as they may each hold one or more of the following economic interests in the company (Art.4.6):

- at least 5% of the shares (also per type) in a domestic or foreign company;
- at least 5% of the option to buy shares in a domestic or foreign company;
- at least 5% of the profit-sharing certificates of a domestic or foreign company;
- at least 5% of the enjoyment rights (also per type) to the profit-sharing certificates or shares in a domestic or foreign company; or
- at least 5% of voting rights in a co-operative society or co-operative association.

104. Moreover, should a nominee receive dividends on the shares he holds, he will need to provide proof in his annual tax return that the shares are held for another person and it is this person who bears the tax liability associated with receipt of those dividends. Also, as discussed in Part B of this report, the GSTA requires all taxpayers or third parties to provide to the Tax and Customs Administration, upon request, any information enabling them to determine the amount of taxable income, whether this income is that of the person or of a person for whom they act (Arts.47, 52 and 53).

105. Thus, TCSPs and other professional service providers must when acting as nominees always identify all persons for whom they act. It is not clear whether non-professional nominees, who would comprise primarily persons performing services gratuitously or in the course of a purely private non-business relationship, are significant in terms of numbers and the assets they hold. Obligations can also be found in the Income Tax Act and the GSTA which provide for information on persons for whom nominees act. It can be expected that commonly, in performing their duties as nominees, they will establish a business relationship with a financial institution. Where the nominee is a legal person, financial institutions will then be required to record and keep information on the nominee's beneficial owners who have at

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the client is a legal person, be obliged to take risk-based and adequate measures to gain insight into the ownership and control structure of the client.

least a 25% interest. While financial institutions and service providers are not required to identify the beneficial owners behind nominees who are natural persons, the Income Tax Act is likely to result in information being submitted to the Tax and Customs Administration on the natural persons with a 5% interest in a company. The small remaining gap in information required to be available on the ownership chain behind nominees should be monitored by the Netherlands authorities to ensure it does not in any way interfere with the effective exchange of information in tax matters.

106. None of the Netherlands' peers which provided input to this review indicated difficulties concerning obtaining information on companies where a nominee is involved.

Conclusion – The Netherlands

107. Mechanisms are in place in the Netherlands which ensure the availability of identity and ownership information for companies. In most cases information on the identity of companies is available with the Chamber of Commerce due to companies' registration and filing obligations. In addition, information on the shareholders of BVs and holders of registered shares of NVs is available in the registers of shareholders maintained by companies. Information on the owners of tax resident companies must be available in the corporate tax returns, which is updated annually. For foreign companies which are tax resident, information on the owners is similarly provided in tax returns. Information on the members of co-operatives is available with the co-operatives' management and with the Chamber of Commerce. There is a small gap in the availability of ownership information for companies: there is no legal requirement to keep information on the members of associations and service providers will hold information on those members who hold at least a 25% interest in the associations. It is recommended that the Netherlands monitor this issue to ensure that there is no difficulty obtaining information on all members of associations if needed in order to respond to international requests for information in tax matters. Peer input received from the Netherlands' EOI partners do not indicate any concerns related to the availability of ownership information for companies.

The Caribbean Netherlands

108. Book 2 of the Civil Code (Law of 27 September 2010, Official Journal 2010, 494) provides for the establishment of public limited liability companies (Art.100), private limited liability companies (Art.200), co-operative companies and associations (Art.70). These forms of company mirror those in the Netherlands (see full descriptions provided in Part A.1 of this report).

109. All companies are formed through a notarial deed signed by a notary. The deed must include information on the shares subscribed and the persons who have taken shares at the time of incorporation and also information on the initial managing directors. Information on all companies and businesses (including foreign companies) in the Caribbean Netherlands must be entered in the trade register held by Chamber of Commerce and a copy of the incorporation deed must be deposited. Any changes in the company's directors and members of the supervisory board need to be updated within one week of the change. The trade register and filed documents are accessible to the public on payment of a fee. After submission of the original notarial deed, no information on the shareholders of domestic or foreign companies is required to be filed with the Chamber of Commerce. The exception is when all shares of a company are owned by a single owner (natural or legal person); information on this owner must be disclosed. Anyone whose holding in a company with voting rights crosses a certain threshold in either direction must report to the company (Art.4 Disclosure of Major Holdings in Listed Companies Act).

110. The management of public limited liability companies and private limited liability companies is obliged to keep an up-to-date register of the names and addresses of the holders of the registered shares. Shareholders are entitled to inspect the register (Art.109 Book 2). Domestic companies are also required to file tax returns, which contain information on the shareholders. The requirements for co-operatives and mutual insurance companies in the Caribbean Islands in terms of maintenance of information and submission of it to government authorities are the same as those prevailing in the Netherlands.

111. The BES Financial Services Identification Act[38], the BES Reporting of Unusual Transactions Act[39] and the BES Cross-Border Money Transports Act[40] provide the AML/CFT framework in the Caribbean Netherlands. Banking and credit institutions, investment companies, investment funds and administrators are subject to licensing and supervision by the DNB. When providing specified services these obliged entities are obliged to establish the identity of their customers and, where the customer is a legal entity, the ultimate beneficial owners ("ultimate interested party") of their customers. The ultimate interested party is defined as someone with at least a 25% interest in the entity, similar to the definition in place in the Netherlands.

112. The Civil Code of the Caribbean Netherlands also provides for establishment and operation of associations and co-operative societies (Arts.90-99). These persons can be incorporated through a notarial deed, which must

38. Staatsblad 2010, No.464, 1 October 2010.
39. Staatsbald 2010, No.465, 1 October 2010.
40. Staatsbad 2010, No.462, 1 October 2010.

contain the articles of incorporation. These entities are required to register in the Commercial Register. The information on the managing persons must be registered. The lists of members of the co-operative societies must be filed upon registration and any changes in the registered information must be updated within one week from the occurrence of the event giving rise to this change.

113. The laws of the Caribbean Netherlands do not oblige nominees to disclose to the company or government authorities the fact that they are nominees or any information on the persons on whose behalf they hold shares. However, the BES Financial Service Identification Act establishes a broad obligation regarding the identification of clients by service providers (Art.5). The definition of services includes express reference to "fiduciary services" (through articles 1(d) and 3(c) of the related Decree) which may cover nominees, as persons acting in such a capacity would normally perform a fiduciary type of activity.

114. In addition, service providers who are dealing with a nominee shareholder are required (Art.5 BES Financial Service Identification Act) to ascertain whether a natural person who appears before him on behalf of a client (or a representative thereof) is acting for himself or a third party (*e.g.* acting as a nominee). If the latter is the case, the service provider is required to establish the identity of that third party with the help of documents to be submitted by the natural person and, if the third party acts for another third party, to establish the identity of that other third party in the same manner.

Tax laws

115. Articles 5.1, 5.9 and 5.10 of the BES Taxation Act contain provisions relating to withholding tax and reporting requirements for the withholding agents. Article 5.1 provides that a tax is levied on those persons who receive distributions on account of holding of shares of public companies, private companies, open limited partnerships or other companies whose capital is wholly or partly divided into shares. The benefits on account of membership certificates and profit shares of the BES Islands established co-operatives and associations, or any distributions from a foundation established in the BES Islands or a special purpose fund or proceeds from an open mutual fund are also taxable. Article 5.9 obliges a withholding agent to issue a dated memorandum indicating name and address of the holder, the description and amount of proceeds and tax withheld to the person to whom distributions have been made. However, the Minister may grant full or partial exemption from these obligations (Art.5.9(3)). The tax law therefore creates an obligation on the withholding agent to withhold tax and can be considered a useful mechanism ensuring information on the beneficiaries of the entities. But, due

to the exemption allowed by the Minister, this does not guarantee the availability of information in all cases.

116. New tax legislation for the Caribbean Netherlands was passed by the Netherlands Parliament, effective 1 January 2011. The provisions of the tax laws in the Caribbean Netherlands, concerning information in the tax returns filed by companies, including foreign companies which are tax resident, in the Caribbean Netherlands are identical to that of the Netherlands (Art.5.6 of the BES Taxation Act). Foreign companies which have their place of effective management in the Caribbean Netherlands are considered tax resident and subject to tax on worldwide income. Domestic companies and foreign companies which are tax resident in the Caribbean Netherlands must provide ownership information in tax returns.

117. As discussed in Part B of this report, the BES Taxation Act requires all taxpayers or third parties to provide to the Tax and Customs Administration, upon request, any information enabling them to determine the amount of taxable income, whether this income is that of the person or of a person for whom they act (Arts.47, 52 and 53).

Conclusion – The Caribbean Netherlands

118. Public limited liability companies and private limited liability companies are obliged to keep share registers and are required to file tax returns which contain shareholder information. Information on ownership of foreign companies which are tax resident in the Caribbean Netherlands must be available in the tax returns filed annually. There is a small gap in the availability of ownership information for the members of associations as service providers will hold information on those members who hold at least a 25% interest in the associations. It is recommended that the Netherlands monitor this issue to ensure that there is no difficulty obtaining information on all members of associations if needed in order to respond to international requests for information in tax matters.

119. As no exchange of information related to the Caribbean Netherlands has occurred to date, no comment has been received from peers as to the availability of ownership information for companies.

Bearer shares *(ToR A.1.2)*

The Netherlands

120. The Netherlands' law allows public limited liability companies (NVs) to issue shares in registered or bearer form. Shares to the extent of 100% can be issued in bearer form. There were 3 642 listed and unlisted NVs registered

as on 31 December 2009 (0.4% of all domestic companies). An NV must indicate in its articles of incorporation whether the shares are issued in registered or bearer form (Art.82 Book 2 CC). The law further provides that a registered share can be exchanged with a bearer share or vice–versa, as far as the articles of the company do not provide otherwise. A company can convert all bearer shares into registered shares by means of an amendment of the articles of incorporation and in that case the holder of bearer share cannot exercise the right of shareholder till the bearer share is surrendered to the company.

121. Information concerning the holder of bearer shares is not required to be maintained by the Commercial Register or in the company's own register of shareholders.

122. Holders of bearer shares of listed companies can be identified via the central clearing institutions. In addition, for such stock registered NVs, information on shareholders with an interest of 5% or more in the company needs to be provided to the Tax and Customs Administration via tax returns.

123. Under the Civil Code, a company must be informed within eight days if a bearer shareholder has acquired all shares in the capital of a company and also if such 100% holding is reduced because some other person has acquired such shares (Art.91(a)).

124. The rules for the disclosure of major holdings and capital interests in issuing institutions impose a duty on all persons to disclose to the company when they acquire or lose shares above or below any of the following thresholds: 5%[41], 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95% (Art. 5:38 Act on Financial Supervision).

125. Under the tax law, the natural persons (Art.4.6 Income Tax Law) and legal persons (Art.13 Corporate Tax Law) who hold an interest of 5% or more in the company (the "controlling shareholders") are obliged to declare this in their tax returns.

126. Corporate tax returns for unlisted NVs require information on all shareholders indicating the name, address, city of residence and country code for shareholders if resident abroad. If they do not, sanctions apply. It is unclear that in absence of the requirement to keep information on the bearer shares and the absence of obligations on them to know the current holder of bearer shares which can be traded anonymously, how the company could fulfil this obligation.

127. In accordance with Article 3 of the WWFT, financial institutions, accountants and company service providers must identify their customers, including those who open securities portfolios.

41. A bill currently before Parliament proposes to lower this threshold to 3%.

128. The Netherlands' authorities have indicated that a relatively low proportion of shares are in bearer form: 486 259 bearer shares are currently in circulation and these represent about 0.004% of all shares issued by Netherlands legal entities.[42]

129. The Netherlands' authorities have advised that a dematerialisation process is currently being developed and a central depository is being set up to collect bearer shares. After, the completion of dematerialisation process all bearer shares held in physical form will need to be compulsorily converted into dematerialised form and identification of holders would be possible. An important step has been the creation of an RIS List, which contains a summary of all the reports drawn up by the police with regard to stolen or missing bearer securities previously known as the "summary list of the investigation list issued by the police related to stolen or lost securities." The objective of this RIS List is to administer centrally the registration of stolen or lost physical bearer securities. It is envisaged that the issuance of new bearer shares will be prohibited in future and the dematerialisation process is likely to be completed by 1 January 2013.

130. Peer input received from the Netherlands' EOI partners does not indicate concerns with respect to the availability of ownership information on companies. There has been no indication received that peers have had difficulty obtaining information from the Netherlands in respect of bearer shares.

Conclusion

131. Bearer shares can be issued in the Netherlands. There are some mechanisms by which the competent authority can obtain information on the holders of bearer shares. The Netherlands should take necessary measures to ensure that robust mechanisms are in place to identify the owners of all bearer shares or should eliminate such instruments. No comment was received from peers with respect to requests for information related to companies in the Netherlands with bearer shares.

Caribbean Netherlands

132. Article 104 of the Book 2 of the Civil Code prohibits the issuance of bearer shares, unless a deed of incorporation for an NV provides for the issuance of a bearer certificate at the request of a shareholder against the surrender of a registered share certificate (Arts.100 and 104).

42. Parliamentary document, see, *https://zoek.officielebekendmakingen.nl/dossier/31830/kst-31830-7.html*, accessed on 10 August 2011.

133. Some limited mechanisms exist with respect to information on the owners of bearer shares:

- under the BES Income Tax Act, a natural person who holds an interest of 5% or more in the company (a controlling shareholder) is obliged to declare this in his/her tax return (Art.11); and
- under the AML/CFT framework in the Caribbean Netherlands (see previous), financial institutions, accountants and company service providers are obliged to establish the identity of their customers, including those who open securities portfolios.

134. Information about bearer shares issued in the Caribbean Netherlands is not available.

135. As no exchange of information related to the Caribbean Netherlands has occurred to date, no comment has been received from peers as to the availability of information related to companies with bearer shares.

Partnerships *(ToR A.1.3)*

The Netherlands

136. Under Netherlands law, partnerships are not legal entities and they cannot acquire title to property. Four types of partnerships can be established:

- **civil partnership (maatschap)**: This is a contractual form of partnership commonly used by professionals, such as doctors, lawyers, dentists or architects. Partners are jointly and severally liable for debts arising out of legal acts engaged upon by each of them on behalf of the partnership. The rules for these partnerships are included in Book 7A, Title 9 of the Civil Code. The Netherlands had 29 675 registered partnerships in May 2011;
- **firm or general partnership (vennootschap onder firma; v.o.f)**: This form of partnership is mainly used by contractors, carpenters or painters. It is operated like a company for third parties. Partners are jointly and severally liable to creditors of the partnership. As at April 2011, 159 642 firms were registered with the Chamber of Commerce;
- **limited partnership (commanditaire vennootschap; CV)**: This form of partnership is similar to the firm but with one or more silent partners (commanditaire vennoten) that are only liable to the extent of their investment. In exchange for their limited liability, the silent partners are not allowed to engage in any activity on behalf of the

partnership.[43] The managing partner is fully liable to creditors of the partnership. This form of partnership is mainly used for risky investments, such as producing a movie or undertaking a joint venture. The Netherlands had 10 893 CVs (5.4% of all Netherlands partnerships) registered in the commercial register as at April 2011; and

- **European economic interest groupings (Europees economisch samenwerkingsverband; EEIG)**: Law of 28 June 1989, Official Journal 1989, 245 implemented European Economic Community Council Regulation No.2137/85 of 25 July 1985 on the European Economic Interest Grouping in the Netherlands. The EEIG is a European form of partnership in which companies or partnerships from different European countries (the partners in the EEIG) can co-operate. Partners are jointly and severally liable. The Netherlands had 63 such entities registered as of 31 December 2009.

137. Rules relating to firms and limited partnerships are contained in Book 7a of the Civil Code and in the Commercial Register Act 2007. No formal requirements exist with respect to partnership agreements. These partnerships are required to register in the commercial register if they conduct a business in the Netherlands. Identification information for almost all partners[44] needs to be submitted as part of registration. The exceptions to this are limited partners of limited partnerships and those partners of foreign limited liability partnerships who work outside the Netherlands. However, if information on the limited partners of limited partnerships is included in the partnership agreement it will therefore be available to the Tax and Customs

43. As soon as a silent partner engages in such activity, his limited liability shifts to joint and several liability.
44. Pursuant to Article 17 of the Commercial Register Decree, in respect of a general partnership, a limited partnership or a private partnership, the following information must be recorded:

a. in respect of each non-limited partner, the date on which he became and ceased to be a partner, and

(1) if the partner is a natural person, an indication of the gender and the signature;

(2) if the partner is a legal person or partnership under Dutch law, the visiting address;

(3) if the partner is a legal person or partnership under foreign law, the visiting address, the number under which the legal person or partnership has been registered in the foreign register, the name of that register and the place and country where the register is kept.

b. the duration for which the general partnership or private partnership has been entered into.

Administration upon request. If the partner is a legal person or partnership under foreign law, the number under which the legal person or partnership has been registered in the foreign register, the name of the register and the place and country where the register is kept must be recorded in the commercial register (Art.26 Commercial Register Decree).

138. Partnerships are not subject to corporate income tax and are treated as transparent for tax purposes. The share of income from these partnerships is directly taxed in the hands of the partners. Partners, resident and non-resident, are required to file tax returns with the tax authorities and thus the Tax and Customs Administration holds information on all partners, including limited partners who earn Netherlands-sourced income. The list of partners with Netherlands-sourced income in a partnership can be compiled from the database of the Tax and Customs Administration. Nevertheless, information on any foreign partners of a partnership established in the Netherlands but carrying on activities outside of the Netherlands may not be available to tax authorities, as such partners need not file tax returns.

139. For EEIGs, an authentic copy of the contract establishing the grouping must be lodged at the commercial register and information on the personal particulars of each director and supervisory board member must be registered (Art.23 Commercial Register Decree).

140. In addition, the WWFT applies obligations to financial institutions and a range of designated non-financial businesses and professions (including lawyers, accountants, notaries and TCSPs) where they provide financial services to customers. These obliged entities must identify their customers and, where the customer is a legal entity, must identify the beneficial owners of that entity in the same way as discussed previously with respect to companies. Thus, service providers will identify all partners who have at least a 25% interest in the partnership which is a customer of the service provider.

Foreign partnerships

141. Where a partnership established outside the Netherlands establishes an undertaking or a branch in the Netherlands, that undertaking or branch must be registered in the commercial register. Information to be submitted as part of the registration includes: the personal particulars of each partner; the date on which s/he entered into or ceased to be in office as such with the partnership; and a statement of the law of the country which the partnership is subject to. If the undertaking's principal place of business is located outside the Netherlands, information about the address of the principal place of business which is published in the register of foreign country must also be registered (Art.26 Commercial Register Decree). 6 955 foreign partnerships were registered as of April 2011.

142. Peer input received from the Netherlands' EOI partners indicates that requested information on partnerships has been received.

Conclusion

143. The Tax and Customs Administration is likely to hold information on all partners who are resident or non-resident earning Netherlands-sourced income. The list of partners with Netherlands-sourced income in a partnership can be compiled from the database of the Tax and Customs Administration. Information on foreign partners of a Netherlands limited partnership who are not earning Netherlands-sourced income may not be available to tax authorities directly by way of tax returns. It is recommended that the Netherlands authorities have provisions in place to have information on all partners of a limited partnership formed in the Netherlands.

Caribbean Netherlands

144. The Caribbean Netherlands, similar to Netherlands, provides for the establishment of civil partnerships (Arts.1630-1663 Book 7a CC), firms/general partnerships and limited partnerships (Arts.11-31 Commercial Code).

145. Information on the identity of partners is commonly stated in the partnership deed, which is to be filed with the Chamber of Commerce as part of registration. The BES Commercial Register Act 2009 and Commercial Decree 2009 oblige all types of partnerships to register with the Chamber of Commerce and information is registered on all partners, except the limited partners of a limited partnership. Changes in the partnerships must be submitted within one week of such taking place.

146. As for the Netherlands, the tax laws require that a foreign partnership with an undertaking in the Caribbean Netherlands has to be registered in the commercial register. Limited partners (for both domestic and foreign partnerships) that receive income from the Caribbean Netherlands have to file a tax return, so they will be known to the Tax and Customs Administration.

147. As no exchange of information related to the Caribbean Netherlands has occurred to date, no comment has been received from peers as to the availability of information identifying partners.

Trusts *(ToR A.1.4)*

The Netherlands

148. Domestic law in the Netherlands does not provide for the creation of trusts. The Netherlands is, however, signatory to the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition[45] and there are no restrictions on a resident acting as a trustee, administrator or manager or from having the responsibility of distributing profits or administering a trust constituted under foreign law.

149. Pursuant to the Commercial Register Act, a foreign trust that has its statutory seat or a fixed place of business in the Netherlands or can be considered as an undertaking must be registered at the trade register. The information required upon registration includes details of the person administering the trust, but no information concerning the settlor or beneficiaries.

150. The Netherlands' administration has indicated that trusts are not registered as trusts in the Commercial Register.

151. Any changes to the information are required to be updated within a week. If a foreign trust holds immovable property in the Netherlands, this will also be registered in the Land Registry database, in the name of the trustee.

Tax law

152. For the purposes of tax law, a foreign trust that has its statutory seat or a fixed place of business in the Netherlands is considered to be resident in the Netherlands. This would include a foreign trust whose trustee is resident in the Netherlands. A foreign trust that is resident in the Netherlands is liable to corporate income tax on its worldwide income and must file a tax return. The trust's tax return would contain the same information that companies are required to provide: an overview of profits and losses, a list of assets and debts. The trust is required to maintain reliable accounting records and all other data of relevance for the levying of taxes on the trust as well as third parties (Arts.52(1) and 53(1) GSTA). This accounting information would likely identify those beneficiaries who received some form of benefit from the trust during the tax year. According to the Netherlands' authorities, there are currently no trusts resident in the Netherlands as there are none registered in the Commercial Register and none have submitted tax returns.

153. Trusts that are not resident in the Netherlands but which derive certain Netherlands source income or that have a permanent establishment in the Netherlands are non-resident taxpayers and are subject to tax on Netherlands

45. *www.hcch.net/index_en.php?act=conventions.text&cid=59.*

source income. They are required to file income tax returns and such returns do not have information on the participants.

154. Under the GSTA, all persons who carry on a business or practise an independent profession are required to keep administrative records and must *maintain such books and records of their financial position and of all facts pertaining to their business, independent profession or occupation according to the requirements of that business, independent profession or occupation* in such a way and that *at all times they clearly show the rights and obligations* of importance for the levying of taxes (Art.52). The Netherlands' authorities have indicated that, as professionals must keep records of *all facts pertaining to their business* and records that *clearly show the rights and obligations*, professional trustees and administrators must therefore maintain information on the settlors and beneficiaries of trusts they act for. Nevertheless, the Netherlands is advised to establish express requirements that these records include details of settlors, trustees and beneficiaries of trusts. The authorities have advised that they would most certainly ask for information regarding the settlor and the beneficiaries, which, under articles 47 and 53, the trust is obliged to give.

155. Residents of the Netherlands can establish trusts in other jurisdictions and can be beneficiaries of trusts established in other jurisdictions. On 1 January 2010, the Netherlands enacted legislation governing the taxation of settlors and beneficiaries. Under the Income Tax Act 2010, foreign trusts are disregarded as concerns the settlor and information on the settlor and beneficiaries must be provided in the tax return on an annual basis. The settlor is subject to tax on the trust income earned from assets contributed to the trust. If trust income is distributed to a beneficiary pursuant to a legally enforceable obligation, the amount is deducted from the trust income taxable to the settlor, and the beneficiary is taxed on the income. If the foreign trust is a resident of the Netherlands, however, it will be subject to corporate income tax, and settlor and beneficiary will not be subject to tax. Therefore, if any resident of the Netherlands is settlor or beneficiary of a foreign trust, the tax administration will have information on such trusts.

Ownership information held by service providers

156. A foreign trust can be administered from the Netherlands without being resident there. This would happen, for instance, if a person provided simple administration services for the trust, such as managing bank accounts, but did not make key decisions for the trust. The Act on the Supervision of Trust Offices (Trust Offices Act) governs the provisions relating to such service providers, which include management services, domiciliation services, administration services and trustee services. A legal entity, partnership or natural person providing the services, in a professional capacity or

on a commercial basis, of a trustee within the meaning of the Convention on the Law Applicable to Trusts and their Recognition, is covered by the Trust Offices Act. Accordingly, the provision of the services of a trustee on a professional or commercial basis is subject to licensing and the obligations set out in the Trust Offices Act.

157. Article 16 of the Trust Offices Act requires a trust office acting as a trustee to know the identity of the settlor of the trust as well as the identity of the ultimate beneficiary of the trust. The ultimate beneficiary is defined as a beneficiary of at least 10% of the assets of the trust (s.1(c) Act on the Supervision of Trust Offices). If there is no ultimate beneficiary, the trust office shall keep all information related to this state of affairs. The trustee must know the source of the beneficiary's wealth as well as the purpose of the structure. Article 16(3) provides that if a trust office acts as a trustee of a foreign trust, it shall know the source of assets of the settlor of the trust. Failure to comply with these provisions may result in a fine or the revocation of the trust office's license. The Netherlands authorities have advised that 176 trust companies are now licensed in the Netherlands, however, none of these companies have provided services to a foreign trust.

158. Financial and non-financial service providers and trust offices subject to AML legislation are required to identify the customer and verify the customer's identity. They are also required to identify the beneficial owner and to take measures to verify the beneficial owner's identity. The beneficial owner is defined as the beneficiary of 25% or more of the assets of the trust or the party that has special control over 25% of the assets of the trust. Further, in the case of a trust, service providers are required to "take risk-based and adequate measures to gain insight into the customer's ownership and control structure." Changes in ownership must also be monitored. The information must be kept for at least five years after the end of the provision of the services. Failure to comply with these provisions can result in an administrative fine or criminal prosecution.

159. Thus, TCSPs and other professional service providers must when acting as trustees for foreign trusts always identify all persons for whom they act. It is not clear whether non-professional trustees in the Netherlands, who would comprise primarily persons performing services gratuitously or in the course of a purely private non-business relationship, are engaged to act for foreign trusts and the Netherlands' authorities are of the view that this is improbable. This small potential gap in information required to be available on foreign trusts which use a non-professional trustee in the Netherlands should be monitored by the Netherlands authorities to ensure it does not in any way interfere with the effective exchange of information in tax matters.

Conclusion

160. To summarise, information on the settlors and beneficiaries of foreign trusts with a professional trustee resident in the Netherlands is available to the competent authority due to provisions in the GSTA, the Trust Offices Act and the WWFT. Thresholds related to identification of beneficiaries in the Trust Offices Act and the WWFT (10% and 25% respectively) create a gap which is filled by the GSTA provisions, though the Netherlands would benefit from a more express requirement that records kept by trustees for tax purposes must include details of settlors, trustees and beneficiaries of trusts. Provisions in the Income Tax Act also result in provision of information on trustees and beneficiaries to the Tax and Customs Administration in the tax returns of all settlors who are tax resident in the Netherlands or are non-resident but earning Netherlands-sourced income.

161. The inputs received from the Netherlands' peers suggest that they have not requested information relating to trusts in the Netherlands.

Caribbean Netherlands

162. Similar to the Netherlands, trusts cannot be created in the Caribbean Netherlands. However, there are no restrictions on its residents acting as trustees, administrators, and trust protectors or in any fiduciary capacity of a trust formed under foreign law.

163. Pursuant to the Commercial Register Act, a trust having its statutory seat or a fixed place of business in the Caribbean Netherlands must be registered in the trade register.

164. A decree[46] governing the integrity of financial markets stipulates the obligations on trust offices which act as trustees. Article 49 obliges the trust office to know the identity of the settlor and beneficial owner of the trust it is trustee for. The trust office must have information to establish the identity of the constituents of the trust. If no beneficial owner exists, the trust office must have data to determine the same. Information is to be kept for a period of five years after the service was rendered.

165. Article 2 of the Financial Service Identification Act obliges financial institutions and service providers to establish the identity of their customers and the ultimate interested parties.[47] Although this act does not specifically refer to settlors and beneficiaries, the definition of customer must cover

46. *Regeling integriteit financiële markten* BES (Staatscourant 2010, nr.14616) as amended by Staatscourant 2011, nr.8178

47. Defined as "the natural person who is entitled to or has special control over 25% or more of the assets or income of a foundation or trust" (Art.1(g)).

anyone to whom such services are provided. Categories of professionals who carry out the work of trustees are obliged entities under that act (notably lawyers, accountants and TCSPs). Moreover, the definition of services triggering the customer due diligence obligations includes "fiduciary services" (Arts.1(d) and 3(c) of the supporting decree) and this would cover trustees, as persons acting in such a capacity are fiduciaries. Nevertheless, information may not be available on the beneficiaries who have less than a 25% interest in the trust.

166. Foreign trusts that are not resident in the Caribbean Netherlands are not subject to tax on distribution of dividends in the Caribbean Netherlands. For the purposes of the tax law, only a trust that has its statutory seat or a fixed place of business in the Caribbean Netherlands is considered to be resident in the Caribbean Netherlands. Trusts that are resident in the Caribbean Netherlands are required to file a tax return when distributing dividends or capital. Trusts that are resident are also required to keep information on the beneficiaries.

167. All legal entities and natural persons who carry on a business or practise a profession in the Caribbean Netherlands are required to keep administrative records, including *records of their financial position and of all facts pertaining to their business, in accordance with the requirements of that business, and must retain the data carriers in such a way that at all times they clearly show the rights and obligations, as well as any other data of importance for the levying of taxes* (Art.8.86 BES Taxation Act). The Netherlands' authorities indicate that it could reasonably be expected therefore that any professional in the Caribbean Netherlands who is acting as a trustee or administrator of a foreign trust will maintain records pertaining to the settlor and beneficiaries of the trust.

Conclusion

168. In summary, if a trust office acts as a trustee of a foreign trust, information on the settlor and beneficiaries is available under the provisions of the Decree Governing the Integrity of the Financial Markets. If any other person is hired to provide services as a trustee, administrator or protector, information on the beneficiaries with at least a 25% interest in the assets or income of the trust is available in the Caribbean Netherlands in accordance with obligations under the Financial Service Identification Act. Obligations under the BES Taxation Act likely ensure the maintenance of information on all beneficiaries as well as settlors.

169. As no exchange of information related to the Caribbean Netherlands has occurred to date, no comment has been received from peers as to the availability of information relating to trusts in the Caribbean Netherlands.

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

The Netherlands

170. A foundation is a legal person and created through a notarial deed. It has no members and may not issue shares or possess share capital. The profits of the activities of a foundation may only be used to achieve the foundation's stated purposes which are generally of the nature of idealistic or social purposes. However, foundations can also be used as a holding company or to carry out commercial activities. Foundations generally cannot make distributions to founder(s), those participating in its constituent bodies or to beneficiaries, unless, as regards the latter, the distributions have an idealistic or social purpose (Art.285). Where a foundation conducts commercial activities by way of an undertaking, that undertaking must be registered in the commercial register, as outlined previously. There are currently approximately 200 000 foundations in the Netherlands.

171. Some foundations in the Netherlands hold shares in companies and issue depository receipts to investors. The Netherlands' authorities have indicated that, since in these situations the foundation is the shareholder on behalf of the owners of the depository receipts, it receives the dividends and in turn distributes the dividends to the holders of the depository receipts/certificates. These foundations can be considered to be transparent for tax matters. For civil law matters, the foundation separates control and financial interest.

172. Similar to other legal entities, the incorporation of a foundation requires a notarial deed (Arts.4(1) and 286(1)). The deed must contain the articles of the foundation, which do not contain information on the founders, foundation council members or beneficiaries of the foundation.

173. The officers of the foundation are obliged to register the foundation in the Commercial Register. The names and addresses of the founder(s), foundation council members and the first supervisory directors are submitted as part of registration. An officially certified copy or officially certified extract of the deed of establishment embodying the articles must also be lodged at the registry (Art.289). However, it is noted that the identity of beneficiaries need not be submitted to any authority unless requested. Legal entities are obliged to inform the Chamber of Commerce within one week of any changes to the registered information. The Chamber of Commerce checks the accuracy of the data in the business register by sending a periodic questionnaire to the foundations and also other registered entities. Authorities have indicated that this exercise is conducted every three years.

174. Foundations are taxable and file tax returns only if they carry on a business and earn profits. A tax return must also be submitted if the profits are all applied to charitable purposes. This tax return in itself does not

contain information on the founders, the foundation council or the beneficiaries. As noted in Part B of this report, such foundations are obliged entities under the GSTA and thus tax inspectors have the power to gather information, including that concerning the founders and beneficiaries (Arts.47, 52 and 53 GSTA).

175. From 1 January 2010 a new statutory regulation regarding the taxation of foundations that are family or private wealth managing foundations[48] has determined that the property and assets of this kind of foundation are attributed to the settlor or founder, who will be taxed on this.

176. The WWFT applies to financial institutions and a range of designated non-professional businesses and professions providing services to foundations, in the same way as applicable when the customer is a company. The beneficial owner of a foundation is defined as any natural person who is a beneficiary of 25% or more of the assets of a foundation or the party has special control over more than 25% or more of the assets of a foundation of the capital of a foundation (Art.1(f) WWFT). In addition, according to Article 10 of the Act on Supervision of Trust Offices, trust offices must know the identity of the ultimate beneficial owner or must have information showing that there is no ultimate beneficial owner. An ultimate beneficial owner is defined as a person who is a beneficiary of at least 10% of the capital of a foundation (Art.1(c)).

Conclusion

177. Although information identifying the founder(s) and foundation council members is submitted as part of registration of a foundation, and this is updated from time to time, foundations are not obliged to disclose identity information concerning their beneficiaries to the Chamber of Commerce. Nevertheless, under AML laws, information on those beneficiaries who have at least a 25% interest in the foundation is held by service providers which the foundation comes into contact with. Foundations are subject to tax if they carry on business, however, information on the beneficiaries of a foundation is not required to be provided in the tax return. If a trust office provides services to a foundation, it needs to identify persons who are beneficiaries of at least 10% capital of the foundation. In practice, foundations are likely to maintain all relevant ownership information in order to be able to respond fully to requests for information from the Tax and Customs Administration. The Netherlands' peers have not indicated any concerns with respect to the availability of ownership information related to foundations.

48. Called APVs (*Afgezonderde Particuliere Vermogens*; = Segregated Private Capital.

Caribbean Netherlands

178. Articles 50-57 of Book 2 of the Civil Code set out the provisions relating to foundations and private fund foundations. A foundation may not pay benefits, other than distributions of an idealistic or social nature, to the founders or its managing bodies; however, no such restriction applies to private fund foundations. A private fund foundation is not allowed to conduct a business. Managing its assets and acting as a holding company does not qualify to be carrying on a business

179. Both types of foundations are required to be registered in the trade register maintained by the Chamber of Commerce. Information on the founder(s), foundation council members and the supervisory directors needs to be registered and changes in the registered information must be filed within seven days of any change.

180. Under the AML/CFT regime, Article 2 of the Financial Service Identification Act obliges financial institutions and service providers to establish the identity of their customers and the ultimate interested parties.[49] Nevertheless, considering the definition of interested party, information may not be available on the beneficiaries who have less than a 25% interest in the foundation.

181. The Netherlands authorities have indicated that, the tax treatment of foundations in the Caribbean Netherlands is similar to that in the Netherlands.

Conclusion

182. Foundations and private foundations are not required to disclose identity information concerning their beneficiaries to the Trade Register. Obligations on the service providers and trust offices ensure the availability of some but not all information on beneficiaries of the foundations. Tax laws also do not require that foundations maintain up to date identity information concerning their beneficiaries in all cases.

183. Obligations under the BES Taxation Act likely ensure the maintenance of information on all founders and beneficiaries in order to be able to respond fully to requests for information from the tax administration. As no exchange of information related to the Caribbean Netherlands has occurred to date, no comment has been received from peers as to the availability of information related to foundations.

49. Defined as "the natural person who is entitled to or has special control over 25% or more of the assets or income of a foundation or trust" (Art.1(g)).

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

The Netherlands

Commercial laws

184. After incorporation, companies, associations, co-operatives and foundations must be registered in the Commercial Register. Article 47 of the Commercial Register Act refers to enforcement provisions and states: "It shall be prohibited to act in breach of or not to comply with any obligation set by or pursuant to the Act for filing of a return for registration in the commercial register or failure to provide information about the changes to the registered information".

185. Each officer or director is responsible to the legal person for the proper performance of the duties assigned to him (Art.9 Book 2 CC), and is liable for any non-compliance. Non-compliance with the obligation of registration will make directors jointly and severally liable for all debts arising from their acts (Arts.69, 180 Book 2 CC). Non-compliance relating to registration or providing updates to registered information in the Commercial Register is an economic offence punishable by imprisonment for six months maximum, community service or a fine (Art.1(4) Economic Offences Act). The amount of the fine for such an economic offence has not been provided.

186. For ensuring the correctness and completeness of the commercial register, Article 41 of the Commercial Register Act requires that the Chamber of Commerce must arrange the audit of the commercial register once every three years and outcome of the audit must be sent to the Minister and published.

187. The Chamber of Commerce is authorised to wind-up an NV, a BV or a co-operative registered in the commercial register if the Chamber of Commerce determines that such an entity has not fulfilled at least two of the four circumstances stated in article 19a(1) of Book 2 of the CC. These circumstances include:

- the legal person is in default for at least one year in performing its obligations to publish its annual accounts or its balance sheet and notes in accordance with Articles 394, 396 or 397;
- the legal person has not acted for at least one year upon a summons referred to in Article 9(3) of the GSTA to file a corporate tax return; or
- the director has not been contactable for at least one year either at the address on the record in the register or at the address registered in the municipal population register.

188. The management board of a company is obliged to keep a register of shareholders. As the register of shareholders can be kept outside the Netherlands, it is not clear how the authorities check the compliance of the provisions in practice. The failure to keep and maintain updated shareholder register is an economic offence (Art.1(4) Economic Offences Act), that is punishable by imprisonment for six months maximum or a maximum fine of EUR 18 500.In practice, action re non-compliance takes place when the Public Prosecutor is investigating the company in general.

189. The Public Prosecutor Office as the supervisory authority for foundations may apply to court for dismissal or suspension of directors of a foundation in cases of violations of laws.

190. The Act on Supervision of Trust Offices prescribes powers under which the supervisory authority can impose a cease and desist order under penalty and impose administrative fines in respect of breach of the provisions of the Act (ss.20 to 30 Wtt). Non-compliance may also lead to revocation of the license required for the profession of TCSP.

Tax laws

191. Provisions relating to administrative fines in the GSTA are contained in Chapter VIII. The inadvertent failure by any natural or legal person (including companies) to submit a tax return or to submit a tax return within due time for a tax levied on a tax assessment or a tax that should be paid or transferred on the basis of a tax return constitutes an omission for which a fine of up to EUR 4 920 can be imposed by the inspector (Arts.67(a) and 67(b)). In case of deliberate intent of the tax payer in not filing of tax return or an incorrect or incomplete filing of tax return, a fine of up to 100% of the assessment can be imposed.

192. When the tax assessment is too low or the taxes have been under levied due to intent or gross negligence of the taxpayer, a fine of up to 100% of the assessment may be imposed.

193. The provisions relating to punishable offences under criminal law are set out in Chapter IX of the GSTA. The failure to keep and retain books, records or other data in accordance with the requirements of tax legislation is a criminal offence and can be penalised by a term of imprisonment of up to six months, or a fine of the third category, amounting to EUR 7 600[50] (Art.68(2)). Any person who intentionally fails to submit a tax return or fails to do so within the due time can be penalised by a term of imprisonment of

50. As at 1 January 2010. The fine corresponding to a category is adjusted every two years based on inflation.

up to four years or a fine of fourth category, amounting to EUR 19 000, or 100% of tax due (Art.69).

194. Intentional failure to not fulfilling the obligations described in section 68, for example keeping the books and records, which results in underpayment of taxes, can be penalised by a term of imprisonment of up to four years or a fine amounting to EUR 19 000 (s.69(1)).

AML laws

195. Failure to comply with the obligations under the AML/CFT law attracts an administrative fine (Art.27). The amount of administrative fine is determined by multiplying EUR 5 445 by the factor determined by the relevant category of the institution for which Act contain information.

Conclusion

196. There is a range of sanctions available under each of the relevant laws to ensure that information required to be kept and maintained or disclosed to administrative authorities is in fact maintained. These sanctions are of a dissuasive nature. These penalties appear to be dissuasive enough to ensure compliance, even by legal persons.

The Caribbean Netherlands

197. Article 8.74 of the BES Taxation Act prescribes sanctions in the form of imprisonment of up to six months or a fine of the fourth category (USD 14 000; EUR 9 800) for various defaults, which among other things, include: failure to submit a tax return or keep administrative records; failure to retain such records and data failure to provide complete and accurate information; and failure to provide other assistance as required. The inadvertent failure by any natural or legal person to submit any tax return or to submit the tax return on time constitutes an omission for which a fine of up to USD 1 400 (EUR 980) may be imposed by the tax inspector (Art.8.22 BES Taxation Act). When the tax assessment is too low or the taxes have been under levied due to intent or gross negligence of the taxpayer, a fine of up to 100% of the assessment may be imposed (Art.8.25).

198. Non-compliance with requirements to register in the commercial register or default in informing the Chamber of Commerce of changes in registered information can be sanctioned with a fine of up to USD 28 000 (EUR 19 600).

199. Defaults in carrying out the obligations of the BES Financial Service Identification Act as applicable to service providers may invite fines of

USD 56 000 (EUR 39 200) for natural persons and USD 560 000 (EUR 392 000) for legal persons and legal arrangements.

200. The range of penalties allows for the authorities to apply a sanction proportionate to the nature and level of a breach of these laws. These penalties appear to be dissuasive enough to ensure compliance, even by legal persons.

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**
Information on foreign partners of a limited partnership who are not earning income from the Netherlands or Caribbean Netherlands may not be available to tax authorities in the Netherlands or Caribbean Netherlands.	It is recommended that an obligation be established for limited partnerships in the Netherlands and the Caribbean Netherlands to keep identity information concerning all of their limited partners.
There are some bearer shares in circulation in the Netherlands at present, but there are insufficient mechanisms in place that ensure the availability of information allowing for identification of the owners of bearer shares in companies limited by shares. There are insufficient mechanisms in place in the Caribbean Netherlands that ensure the availability of information on the owners of bearer shares.	The Netherlands should take necessary measures to ensure that mechanisms are in place to identify the owners of bearer shares in the Netherlands and in the Caribbean Netherlands, or should eliminate such bearer instruments.
Foundations in the Netherlands and the Caribbean Netherlands are not systematically required to keep identity information concerning all beneficiaries.	An obligation should be established in both the Netherlands and the Caribbean Netherlands for foundations to keep identity information concerning all beneficiaries.

Phase 2 rating
To be completed once a representative subset of Phase 2 reviews have been completed.

A.2. Accounting records

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

General requirements *(ToR A.2.1)*

The Netherlands

Civil Code requirements

201. Article 10(1) of Book 2 of the CC imposes a general record–keeping requirement for legal persons and provides that "the management must administer the financial condition of the legal person and everything relating to its activities as such activities may require and keep the books, records and other data pertaining thereto in such a manner that its rights and obligations can be ascertained at any time".

202. The management of a legal person is also required to prepare within six months from the end of each financial year a balance sheet and a statement of income and expenditure or the annual accounts and report (Arts.10(2), 49, 58, 101, 210 and 300 CC). The management board of the entity must deposit these accounts, duly signed by each member of the Management Board, for inspection by the members or shareholders at the office. The Management Board must also submit the annual accounts for adoption to the General Meeting.

203. The accounting standards of the Netherlands are based on the Fourth Council Directive of 25 July 1978 on the annual accounts of certain types of companies and the Seventh Council Directive on consolidated accounts of 13 June 1983.

204. Article 362 of Book 2 contains general requirements for the preparation of the accounts. The annual accounts must provide, on the basis of generally accepted accounting principles, such insights that an informed assessment can be made about the legal person's property (assets and liabilities) and, insofar as the nature of annual accounts permits, about its solvency and liquidity. The balance sheet and explanatory notes thereto must fairly; clearly and consistently show the size and composition of the property at the end of the financial year, expressed in assets and liabilities. Similarly, the profit and loss account and explanatory notes must fairly, clearly and consistently show the profit amount for the financial year and how this is deduced from the income and expenditure items.

205. The detailed rules relating to arrangement of data in the annual accounts and notes, items relating to assets and liabilities, profit and loss

account, valuation, annual report and other related information are stated in Articles 363 to 392 of Book 2. Further, article 393 obliges a legal person to appoint an auditor to audit the annual accounts and issue an auditor's certificate that the accounts meet the requirements set or pursuant to law.

206. The legal person is obliged to publish the annual accounts within eight days of their adoption by depositing a full copy (in paper or electronic form) at the office of the Commercial Register kept by the Chamber of Commerce (Art.394). The nature of the documents to be filed depends on the size of the company. For small companies, only the abridged balance sheet and limited notes need to be filed. Medium sized companies must file *inter alia* a simplified balance sheet and a simplified profit and loss account. Large companies are subject to comprehensive requirements to file these documents and a range of additional documents related to their accounts.

207. Article 15i of Book 3 mandates that all persons who pursue a business or a professional practice have a duty to keep books and accounting records. They must keep and preserve books, accounting records and other facts with regard to the value of the business enterprise or practice, including all assets and liabilities, and in such a way that it is possible at all times to determine the rights and obligations in accordance with the standards acknowledged for that business or profession. These persons must also prepare a balance sheet and income and expenditure statement and retain books and records for seven years. This would require all partners of partnerships to keep accounting records for their partnerships.

Financial Supervision Act requirements

208. Investment companies to which the provisions of the Financial Supervision Act apply must meet the requirements for the company's annual accounts set out in that act (Art.401 Book 2). Article 2.9.14 of the Civil Code specifies special rules for banks based on the Council Directive of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions II (86/635/EEC). Based on Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings, the special rules are specified in Article 2.9.15 of the Civil Code.

209. Part 3.3.9 of the Act on Financial Supervision prescribes the accounting and reporting requirements for the regulated entities. The licensed parties must within six months of the end of the financial year provide the annual accounts, annual report and the other information as referred in the Civil Code to the supervisory authority.

210. A party whose securities are admitted to trading on a regulated market situated or operating in the Netherlands, pursuant to the Act on Financial

Supervision (Chapter 5), must make its annual financial accounts available to the public, within four months of the end of the financial year and must be kept available for at least five years (s.5:25(c)).

211. Section 6 of the Regulation on Sound Operational Management relating to the Act on the Supervision of Trust Offices relates to the "Segregation of assets". This obliges trust offices to take measures with respect to monies or cash equivalents of object companies or third parties managed by them to protect the rights of those object companies or third parties. This provision must to a large extent ensure the keeping of the accounting records and underlying documents by the trust offices in respect of entities managed by them. This regulation would benefit from a more detailed description of the accounting records which must therefore be maintained.

General State Taxes Act requirements

212. Article 52(1) of the GSTA states that "those required to keep administrative records[51] must maintain such books and records of their financial position and of all facts pertaining to their business, independent profession or occupation in such a way and must retain these books, records and other data carriers in such a way that all times they clearly show the rights and obligations, as well as any other data of importance for levying of taxes". Entities (including those who are not established in the Netherlands, but taxable for their Netherlands sourced income and those established in the Netherlands but not taxable at all) must keep administrative records (Art.52(2)). Article 52(3) provides that anything required be recorded, registered or prepared under other tax legislation must also be considered part of the administrative records. For example, the requirement to keep invoices under the VAT Act ensures the availability of invoices.

213. The obligations under tax laws may require trustees to keep the accounts of a trust which they administer so as to comply with the obligations under articles 52 and 53 of the GSTA for the trust itself and so as to avoid the attribution of assets of the trust to their account.

51. Persons required to keep administrative records are: all bodies; natural persons who carry on a business or practice an independent profession, as well as natural persons who enjoy taxable profits from an enterprise as referred to in Article 3.3 of the Income Tax Act; natural persons who are required to withhold taxes or social security contributions; natural persons who carry on activities as referred to in Articles 3.90, 3.91or 3.92 of the Income Tax Act 2001.

Caribbean Netherlands

214. Legal persons are obliged to keep an orderly accounting system and records (Art.15 Book 2). Partnerships must keep accounting records in such a way that the financial position of the partnership can be determined with reasonable accuracy at any time (Arts.15(a) and 15(i) Book 3).

215. Article 8.86 of the BES Taxation Law provides that, "Persons obliged to keep records are obliged to keep records of their financial position and of everything concerning their company, independent profession or work, in accordance with the requirements of that company, that independent profession or that work". These books, records and data carriers must be kept in such a way that that at all time they clearly show the rights and obligations, as well as any other data of importance for the levying of taxes (Art.8.86(2)).

Underlying documentation *(ToR A.2.2)*

The Netherlands

216. The legal entities subject to audit and following international accounting standards are obliged to keep all documents supporting the transactions. While entities not subject to the detailed accounting requirements prescribed in Title 9 of Book 2 of the CC must keep the underlying documents pursuant to Article 10 of the Book 2.

217. Under the GSTA, all obliged entities must keep the necessary underlying documents to ensure that verification is possible by the tax administration and tax due can be determined (Art.52(6)). The obliged persons must keep books, records and other data carriers (Art.52(1)). The concept of "books, records and other data carriers" as described, in the Explanatory Memorandum to the relevant articles of the GSTA[52] is to encompass *inter alia* the books and all kinds of primary records, such as rough books, cash receipts/sale slips/cash vouchers, warehouse stock sales and purchase bills, receipts, deeds/contracts, registers, client dossiers, correspondence, notes, appointment books, microfilms, magnetic tapes and also all documents or paperless information carriers on which the annual accounts and the profit and loss accounts are based. Failure to substantiate the income disclosed in the tax return may result in an additional assessment and penalties.

52. House of Parliament, meeting year 1988-89, 21287, nr.3, page 5.

Caribbean Netherlands

218. Article 15a of Book 3 of the Civil Code requires a person carrying on a business to keep records and related books, papers and other data carriers in such a way that his rights and obligations can be determined at any time.

219. For tax purposes, every person is obliged to provide all data, including its contents and information relevant to levying of tax to the tax inspector (Art.8.83 BES Taxation Act). The failure to provide information, data and indications is a punishable offence. Tax law and commercial law requirements ensure availability of underlying documents.

Document retention *(ToR A.2.3)*

The Netherlands

Civil Code requirements

220. General requirements for retaining records are specified in Book 2 of the Civil Code. The management is obliged to retain the books, records and other data for seven years (Art.10(3)).The financial year is generally the calendar year in the Netherlands. Legal persons are obliged to keep all documents relating to annual accounts and their annual report for seven years (Art.394(6) Book 2).

221. The registered particulars in respect of a legal person must be kept for ten years after the date on which the legal person ceased to exist consequent to winding up proceedings (Art.19(7)). Further, pursuant to Article 24, the books, records and other data of a legal person which has been wound up must be retained for seven years after the legal person has ceased to exist.

Financial Supervision Act requirements

222. Article 14(5) of the Decree on Prudential Rules, issued pursuant to the Act on Financial Supervision obliges the regulated financial institutions to maintain its own records and client records for a minimum of five years after the services have been provided.

General State Taxes Act requirements

223. For tax purposes, administrative records must be retained for a period of seven years (Art.52(2) GSTA). Further, Article 52(6) requires that administrative records must be organised and kept in such a way and the data retained in such a way that an audit can be conducted by the inspector within a reasonable time. The person required to keep the administrative records

must also co-operate where required, including providing any information required on the organisation and functioning of the administrative records. All legal persons obliged under this act to keep records must retain the accounts, documents and other data that may be of relevance to tax.

224. A policy statement of the Ministry of Finance of 3 April 2000 provides that, for the determination of the starting point of the seven year retention period, the current "value" of a document to the operations is of importance. Documents that still have a current value (*e.g.* a contract which has not yet come to a conclusion) are part of the annual records and the seven–year record retention period begins once the document is no longer current. In practice, tax returns are retained by the tax administration for a period of thirteen years. Some other information is retained even longer if it is still considered to be of value.

AML requirements

225. The persons covered under the personal scope of AML Law are obliged to retain the records relating to the customer due diligence and reported unusual transactions for five years following the termination of business relationship or five years after the transaction concerned was carried out.

Caribbean Netherlands

226. Article 15a of Book 3 of the Civil Code requires maintenance of the accounting records for 10 years. The books and records of the dissolved legal person, after the liquidation, must be held by the liquidator or a custodian for a period of ten years (Art.33 Book 2).

227. Article 8.86 of the BES Taxation Act provides for keeping of administrative records and data for a period of seven years.

228. The AML Law, in respect of the retention of customer due diligence documents, prescribes a retention period of five years after the expiration of the contract on the basis of which services were rendered or five years after the services were rendered.

Conclusion for A.2

The Netherlands

229. Obligations contained in the taxation, commercial and AML laws oblige all relevant entities to maintain comprehensive accounting records and underlying documents for a minimum of five years. The precise nature of the

accounting records and underlying documents to be maintained with respect to foreign trusts which have a trustee in the Netherlands are not specified.

230. The responses of the peers on the receipt of the accounting information are positive. In urgent cases the information was provided in time. Some peers have commented that the Netherlands has provided accounting information even after the expiry of the statutory retention period of seven years. They have also received copies of invoices and agreements. However, most of them expressed concern that information is generally received late. They perceive that delay is caused due to domestic notification procedure but they appreciate that this is generally beyond their control.

The Caribbean Netherlands

231. Obligations contained in the BES Taxation Act, the Civil Code and AML laws mirror those in place in corresponding legislation in the Netherlands and oblige all relevant entities and to maintain comprehensive accounting records and underlying documents for a minimum of five years. The precise nature of the accounting records and underlying documents to be maintained with respect to foreign trusts which have a trustee in the Netherlands are not specified. As no exchange of information has occurred to date, no input has been received from peers as to the availability of accounting information.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place	
Factors underlying recommendations	**Recommendations**
The precise nature of the accounting records and underlying documents to be maintained with respect to foreign trusts which have a trustee in the Netherlands or Caribbean Netherlands is not specified in law.	It is recommended that the nature of the accounting records and underlying documents to be maintained with respect to foreign trusts which have a trustee in the Netherlands or Caribbean Netherlands be clearly outlined.

Phase 2 rating
To be completed once a representative subset of Phase 2 reviews have been completed.

A.3. Banking information

Banking information should be available for all account-holders.

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

The Netherlands

232. The general record-keeping requirements for legal entities prescribed in the Civil Code and the GSTA apply to banks. They must also prepare annual accounts and annual reports irrespective of the type of legal entity in which they are organised.

233. Article 14(5) of the Decree on Prudential Rules, issued pursuant to the Act on Financial Supervision, imposes on credit insurers, life insurers, payment institutions or branches a record keeping requirement in relation to the identification of the customer and the monitoring of the client transactions. It requires these financial institutions to maintain that data for a minimum of five years after the services have been provided. Further, credit institutions, clearing institutions, payment service providers, insurers and branches must keep records of all rights and obligations (Art.19).

234. Article 21(5) of the Decree on the Supervision of the Conduct of Financial Enterprises, issued pursuant to the Act on Financial Supervision, requires a collective investment scheme to keep records on the monitoring of transactions and to keep them for five years. Article 269(4) has comparable provisions for record keeping of the monitoring of transactions for investment firms.

235. These obligations are further strengthened by obligations contained in the Money Laundering and Terrorist Financing Prevention Act (WWFT). Regulated financial entities are obliged to maintain records relating to a transaction that has been subject of an Article 16 disclosure (an unusual transaction report to the financial intelligence unit) for five years following the moment the disclosure was made (Art.34). The data related to identification of the customer and business relationship must be retained for five years following the termination of business relationship or five years after the transaction concerned was carried out.

236. The Netherlands' law does not allow for the creation of anonymous accounts or accounts in fictitious names. A small number of protected accounts[53] are held by financial institutions. For all bank accounts, including

53. The protected accounts, for example belong to members of the Royal family. Information on the account holders is available to in some documents and known to the responsible persons in the bank but not revealed in all documents to protect the identity of account holders.

protected accounts, the provisions of the WWFT ensure the identity information of all account holders. The Netherlands authorities have indicated that the Central Bank has changed the regulation on the protected accounts and all protected accounts are being converted to normal bank account.

237. The Netherlands' peers have noted that they receive bank information in a timely manner from the Netherlands.

Caribbean Netherlands

238. In addition to general record keeping requirements under the Civil Code and GSTA, pursuant to Article 42 of the Act of 1994 on the Supervision of Bank and Credit System, credit agencies are obliged to keep all letters, documents and information related to the company, as well as books relating to transaction history of all accounts kept by the credit agency, in its own name and also in the name of third parties. The retention period is ten years.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
To be completed once a representative subset of Phase 2 reviews have been completed.

B. Access to information

Overview

239. 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 the Netherlands's legal and regulatory framework gives the authorities access powers that cover all relevant people and information, and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

240. The procedure followed by the Netherlands' competent authority – the central liaison office (CLO) – in order to access information to respond to incoming requests for information depends on the source of information. Requests are responded to directly, without seeking the assistance from other areas of the tax administration or other authorities, if the information is available in the database of the tax administration or the databases of public authorities, to which the CLO has direct access. Otherwise, the required information is obtained from the relevant tax administrative region through a network of designated regional liaison offices (RLOs).

241. When the information requested by a foreign authority is not already in the possession of the Tax and Customs Administration, the regional tax office responsible for the entity which holds the information uses their powers available under the GSTA to carry out an inquiry to gather information from the taxpayer or third parties (including financial institutions). Officers of the Tax and Customs Administration are empowered to request required information from the taxpayer or third parties. The Tax and Customs Administration may also, by request, visit business premises. In most cases third parties co-operate voluntarily, so only very rarely is a court order needed to compel the production of information.

242. The powers of the authorities in the Caribbean Netherlands to access information in order to respond to international requests for information mirror those which are in place in the Netherlands. The Global Forum will further consider practical aspects of exercise of the Caribbean Netherlands' access powers in detail in a targeted Phase 2 review, to be scheduled for the first half of 2014.

243. Professional practitioners, including lawyers, accountants and notaries, can claim privilege and decline to provide information requested for third party inquiries. It is not clear that the scope of professional privilege is fully consistent with the international standard.

244. The CLO must notify the person from whom the information originates of its decision to send information to the requesting foreign authority, prior to transmitting the requested information. The notified party has a right to object, within ten days of the notification, and can request an injunction from the court to stop the information being provided to the requesting authority. As the notification is given after the information is collected, and certain exceptions exist allowing for waiver of the notification, it does not affect the access to information but has caused delays in provision of information.

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).

245. The Minister of Finance or a representative designated by the Minister is the competent authority for the exchange of information for tax purposes in the Netherlands. The Minister has delegated these powers to the State Secretary for Finance, who in turn further delegated these powers to the Tax and Customs Administration. From 1 September 2009, the Director of the Belastingregio Oost tax region is the central competent authority of the Netherlands with regard to the international exchange of information.[54] Policy work relating to mutual administrative assistance is carried out by the Tax Matter Division of the Ministry of Finance's Directorate General of Tax and Customs Administration.

54. Prior to 1 September 2009, the Chairman of the Management Team of the Fiscal Information and Investigation Service (FIOD) was the central competent authority. The FIOD is the investigation service arm of the Tax and Customs Administration. The FIOD still has central competent authority status for criminal tax matters.

246. The Director of the Belastingregio Oost Tax Region has granted a sub-mandate to the Belastingdienst/Oost/Central Liaison Office Almelo (CLO), which is the central executive competent authority for exchange of information for tax purposes in accordance with double taxation conventions (DTCs) and taxation information exchange agreements (TIEAs). The CLO has a dedicated team dealing with mutual administrative assistance in the areas of direct taxes, value-added tax (VAT) and recovery of taxes. The CLO also acts as the competent authority for the exchange of information in relation to the Caribbean Netherlands.

247. The Tax and Customs Administration is divided into 14 administrative regions (1 of which is the Caribbean Netherlands). As of 1 January 2010, each tax region has a Regional Liaison Office (RLO), which serves as a link between the CLO and the tax inspectors in the region. The RLOs are responsible for forwarding requests for information to the officers in the region (considering allocation of responsibilities in the region for management of certain groups of taxpayers or for certain large taxpayers) and monitoring the status of provision of information by the tax inspectors. They are also responsible for carrying out the Netherlands' notification procedure for information requests from EU Member States.

Bank, ownership and identity information *(ToR B.1.1)*

Exchange of information – domestic legal mechanism

248. The Netherlands International Assistance (Levying of Taxes) Act of 24 April 1986 (NIAA) was enacted to fulfil obligations arising from the Directives of the Council of the European Union as well as other international and regional rules on mutual assistance related to the levying of taxes[55] and levying of interest on such taxes and any associated administrative penalties and fines. Article 5 of this law authorises the Minister of Finance to provide the information asked for by foreign authorities that may be relevant to the requesting competent authority for its levying of taxes, as well as the levying of interest on such taxes and associated administrative penalties and fines.

249. The NIAA provides for exchange of information on request, automatically and spontaneously. The Global Forum's *Terms of Reference* concerns the exchange of information on request only. Hence, the issues relating to automatic as well as spontaneous exchange of information are not analysed in this report.

55. VAT and excise duties falling under EU Regulations, import duties and export duties not included.

250. The competent authority tests incoming requests based on the international exchange of information provision in the relevant DTC/TIEA and within the legal possibilities existing in the Netherlands' domestic law. The Minister may require the tax administration to conduct an enquiry, exercising powers available in Chapter VIII, Part 2 of the GSTA to gather the required information (Arts.8(1) and 8(2) NIAA).

251. In December 2010, the Netherlands enacted a separate law, the BES Taxation Act,[56] to implement a system of taxation for the Caribbean Netherlands. While Article 1.1 provides that the provisions of this legislation apply to the BES Islands in respect of "the levying and collecting of BES taxes", Section 2 of Chapter VIII of the act specifically concerns the access to and sharing of information in accordance with international agreements, including DTCs and TIEAs (Art.8.124(1)). Article 8.125 contains provisions similar to the provisions of Article 5 of the NIAA and Article 8.129 contains provisions similar to Article 8 of the NIAA. Importantly, the BES Taxation Authority is specifically empowered to use its domestic information gathering powers in order to respond to an EOI request (Art.8.129(2)).

252. The provisions with regard to exchanging information in the NIAA and the BES Taxation Act apply to administrative tax matters as well as criminal tax matters. However, in practice for information related to criminal investigations and prosecutions the Netherlands prefers to use access powers under the Criminal Procedure Code and exchange information under its mutual legal assistance treaties (MLATs).

Information gathering

253. The CLO relies on the extensive information available in the databases of the tax administration[57], the public domain and databases of other authorities and information obtained through tax inquiries for responding to foreign requests for information. As noted in Part A of this report, the information available in the databases includes the registers of the Chamber

56. Act of 16 December 2010 adopting the BES Taxation Act. See also the Parliamentary Notes on the BES Taxation Act, which outline the intention of the Parliament that the provisions in that act mirror the provisions in the NIAA.

57. The Tax and Customs Administration receives periodic information from many private and public institutions, which is usually stored in digital files and can be consulted by the tax office. Individual taxpayers also submit periodic information about their tax matters. The Tax and Customs Administration's databases and physical files contain information on, amongst other things, shareholders of legal entities, public financial statements, movable and immovable property, and bank accounts. Information on salaries and pensions, interest and savings, dividends and securities, annuities and endowment insurance is also available in this database.

of Commerce (details on legal persons), real estate registration system (real property) and municipal databases (population register; details of natural persons).

254. Identity information in the case of legal persons and undertakings is available in the records of the Chamber of Commerce and the tax administration has access to this database. The inspector can also request specific information from the Chamber of Commerce and other authorities under provisions of Article 55 of the GSTA. Further, the Tax and Customs Administration has at its disposal the notarial deeds with regard to the transfer of registered shares.

255. Information concerning companies' registered shareholders is available with the companies and also in the annual tax returns filed by resident companies and by foreign companies which are resident in the Netherlands for tax purposes.

256. When information available in public databases or the Tax and Customs Administration's network is sufficient to respond to the request, the CLO processes the request itself, without involvement of the RLOs. Where the requested information is not readily available in the databases, the request is forwarded to the relevant RLO for action. If the information is required to be gathered from the taxpayer or third parties, the case officer (auditing officer, levying officer or account manager) responsible for the relevant entity initiates an inquiry to collect the information. The case officer decides what kind of inquiry is needed in the particular case. He may ask information from the taxpayer or third party or investigate the books or even visit the premises of the taxpayer. The case officer prepares the audit report and sends it to the RLO, who in turn forwards it to the CLO if the request is from a non-EU country. If the request is from an EU country, the RLO prepares the reply.

Access powers

257. The powers of tax inspectors and the obligation of persons for the purpose of levying of taxes are set out in Part 2, Chapter VIII of the GSTA).

258. Every person is obliged to provide the tax inspector all data and information or make available for inspection the books, records and other data, or contents thereof, which may be of importance to the levying of taxes on that person (Art.47 GSTA). The information must be provided within the timeframe set by the inspector. As the CLO expects a reply within two months after receipt of a request[58], the tax inspector will make certain to set a timeframe within which this is achievable.

58. Instruction of 11 January 2010 concerning Decentralisation of Mutual Assistance regarding Direct Taxes.

259. Article 49(2) of the GSTA requires taxpayers permission for taking copies, readable print out or extracts of the information which is made available for the examination to the tax authorities. A person who does not comply with this provision is subject to a fine of third category – EUR 7 600 (Art.68).

260. There are three articles regarding third party obligations to provide information to the tax authorities. First, any person who is obliged to keep books and records under the act must provide information to the inspector for levying of taxes on third parties, though certain professional practitioners can claim privilege from providing information (Art.53(1) GSTA). Secondly, any third party who holds documents of a taxpayer is required to provide these documents to the tax authority on request (Art.48). Finally, banks and other financial institutions and trust offices must automatically and annually provide information to the tax authorities (Art.10.8 Income Tax Act).

261. Private individuals, other than those obliged to keep records under articles 47(3), 48(10) and 52 of the GSTA, need not permit Tax and Customs Administration officers to inspect, with a view to levying tax on third parties, any records that they may keep. If the tax administration wishes to ask such "not-obliged" private individuals questions about third parties then they must make clear that they are not required to answer (Parliamentary documents II 1992/1993, 23050, no.1-2). This protects the privacy of such private individuals from having to provide co-operation in relation to third party enquiries.

262. A person using a building or site for business purposes, at the tax inspector's request, must admit the inspector and any experts appointed by the inspector to the premises and provide any information necessary for performing an inquiry required under tax legislation (Art.50 GSTA). Not granting access attracts an administrative fine of up to EUR 4 920 (Art.67(ca)(1a)). The authorities have indicated that, if the request is refused, the tax inspector has no legal power to access the premises. In that case, the Tax and Customs Administration, in addition imposing an administrative fine, has recourse to court proceedings to get access to the building and/or the necessary information.

263. The Tax and Customs Administration, with the exception of the FIOD, does not have the power to take depositions of witnesses for domestic or international purposes. One partner jurisdiction had requested the Netherlands to obtain a deposition for use as evidence in the requesting jurisdiction and the Netherlands was unable to provide it as their domestic tax practices do not provide for the possibility to take a deposition of a witness. This is only possible for criminal tax matters investigated by the FIOD under the Criminal Procedure Code. However, if the foreign authority asks for a deposition, the Netherlands authorities can ask the taxpayer to provide one voluntarily. If the taxpayer is reluctant to do so, the Tax and Customs Administration will force the taxpayer to give a statement to the tax inspector

(Arts.47 and 53 GSTA). The tax inspector will take this down, and will certify the statement under oath of office. In practice these statements fulfil the requests of foreign authorities.

264. Tax inspectors can also obtain information from Ministers, public bodies and institutions or departments of the government (Art.55 GSTA). This ensures co-operation with other government departments.

265. The State Secretary of Finance issued regulation[59] No.2011/109M of 28 January 2011, concerning the supply of information by banks. This regulation sets out the procedure for the tax authorities to acquire information on third parties from banks and how the banks must meet such requests. The regulation requires that before seeking information from banks, the tax administration must request the information from the concerned party.[60] If the requested person does not possess the required information then the tax inspector must ask him/her to request the information from the bank. If this does not produce the desired result, the tax authority makes a direct request to the bank. While making such a request to a financial institution, the tax inspector indicates that the information has been requested by a foreign authority. There is however an exception to this procedure in that the tax administration can seek information directly from the bank if doing so is in the interests of the inquiry. If requested by the tax administration, the bank will not inform the relevant third party about the request for information. The bank cannot make the provision of information contingent on the approval of the relevant third party. Thus, if the foreign authority indicates that they do not wish the taxpayer to be aware of the inquiry, the Tax and Customs Administration will go directly to the bank for the information and will ask the bank not to notify the account holder of the request.

266. Regarding the information needed in order to identify account holders, the regulation provides that s/he is identified *by stating the usual personal details and if the Tax Administration only has an account number without the accompanying personal details and it can be reasonably assumed that this account is held at a certain bank, that bank must check its administrative records to ascertain whether that is the case and, if so, must disclose the personal details accompanying the account*. The tax administration can also ask for information concerning a group of customers. The Netherlands'

59. This regulation is an updated version of the earlier Decision of 18 March 2002, No.DGB 2002/1499M (Government Gazette 2002, 58). The Netherlands has clarified that, a decision is a part of the body of law and is issued on the basis of the delegated powers. These rules are not required to be passed by the Parliament but have Parliament acceptance.

60. This requirement in practice amounts to the notification of the taxpayer.

peers have indicated that the responses they have received from the Netherlands to requests for bank information have been timely and complete.

267. The BES Taxation Act contains powers to access information from taxpayers and third parties which mirror those in place in the Netherlands (see Title 7 of Chapter VIII).

Current criminal investigations in the Netherlands

268. Criminal investigations in tax matters are the responsibility of the Fiscal Information and Investigation Service (FIOD). which is part of the Tax and Customs Administration. The FIOD conducts criminal investigations based on the fraud reports of the Tax and Customs Administration and also various other supervisory bodies such as the Central Bank and the Netherlands Authority for the Financial Markets. The FIOD makes annual agreements with the supervisory authorities and the Public Prosecution Service about the use of resources and the fraud themes which are given extra attention. Particular cases are discussed in tripartite consultation meetings involving the FIOD, the Tax and Customs Administration (or other relevant supervisory body) and the Public Prosecutor. In the tripartite consultations decisions are made as to whether a proposed case will be investigated or prosecuted. The final decision to prosecute is made by the Public Prosecutor after the investigation is finished. During investigations, coercive measures, if any, are taken with the permission of the Public Prosecutor. Cases that are not selected for criminal investigation are returned to the tax administration for further administrative handling.

269. During the normal information gathering procedures described previously, the Tax and Customs Administration may discover that there is a current criminal investigation by the FIOD. Where there is a current criminal investigation, the FIOD is alerted to the request for information received from the foreign authority and they contact the Public Prosecutor dealing with the case.

270. As noted above, the provisions with regard to exchanging information of the NIAA and the BES Taxation Act apply to administrative tax matters as well as criminal tax matters; no distinction being made in these laws between the two types of tax matters. Information already contained in the databases of the Tax and Customs Administration will be exchanged with a foreign partner where the request relates to a criminal, as well as civil, matter. However, in terms of using the access powers in practice, there is a difference from the moment a taxpayer is considered an accused person in a criminal tax matter. As of that moment the FIOD, working with the Public Prosecutor (coming under the Ministry of Justice), will handle the case and the investigative and compulsory powers under the Criminal Procedure Code as

well as Chapter IX of the GSTA will apply to the gathering of the requested information, rather than the powers under Chapter VIII. The exchange of the requested information will then normally take place under an MLAT, as this is the preferred instrument for investigation and prosecution cases. If there is no MLAT, the exchange will take place under the DTC/TIEA/multilateral agreement, as long as it allows for information exchange for the prosecution of tax matters. In those cases the information will be exchanged after the consent of the Minister of Justice in consultation with the Minister of Finance (Art.552(m)(3) Criminal Procedure Code).

271. The Public Prosecutor will not, in principle, have any objection to providing the information if either: the criminal investigation has already been completed; or, the FIOD and the Public Prosecutor together agree that the requested information does not concern issues relating to the criminal investigation. If the Public Prosecutor and the FIOD conclude that the requested information is related to the criminal investigation, he will commonly wish to postpone granting permission for the supply of information until the criminal investigation has been completed or until the criminal investigation cannot be jeopardised by releasing the information (*e.g.* after searches have been completed or suspects have been interviewed). The Netherlands' authorities take into consideration the interests of the requested States and the interests of the domestic criminal investigation. This consideration of interests may cause some delay in providing information to prevent the information being disclosed too early in the requesting State, thus jeopardising the domestic criminal investigation. Where possible, requests may receive partial answers regarding issues that do not jeopardise the criminal investigation.

272. The Netherlands' authorities have indicated that in 2010 none of their responses in the year's 354 exchange of information cases were delayed due to ongoing criminal investigations. However, in 2008 and 2009 the provision of information was delayed due to ongoing criminal investigations in four cases. In these cases there was a delay of about 18 months in providing the information. Delays of this nature may jeopardise the inquiries/investigations of important cases in the requesting jurisdiction as information which is provided after a long delay may have lost value or even be unusable because of time limitations in the foreign jurisdiction's laws. The Netherlands authorities should monitor this to ensure it does not undermine the effective exchange of information in tax matters.

Criminal investigations in partner jurisdictions

273. Similarly, if the information request is with regard to an ongoing criminal tax investigation in the requesting jurisdiction, the Netherlands will use the powers provided in the Criminal Procedure Code (not the GSTA)

to gather information under the supervision of the Public Prosecutor. This means that the Netherlands can invoke much stronger information gathering powers (*e.g.* search and seizure, testimony of witnesses) and on the other hand the rights of the taxpayer and third parties are protected in line with this penal context and accused has the right to remain silent and has the right to not contribute to his own conviction. In such cases, the Netherlands will exchange information preferably based on mutual legal assistance instruments. If such an instrument (MLAT) is not available, exchange of information in this situation will take place based on a TIEA, the multilateral COE/OECD convention or a DTA which allows for information to be disclosed to the prosecution.

Accounting records *(ToR B.1.2)*

274. The powers in the NIAA and the BES Taxation Act mentioned previously can be used to obtain any information requested by a foreign authority, including accounting records.

275. In addition, taxpayers must organise and keep the books and records in such a way that a tax audit can be instituted within a reasonable time (Art.52(6) GSTA).

276. Most of the peers which provided input to this review commented positively on the accounting information provided by the Netherlands. The Netherlands authorities have given satisfactory explanations regarding the isolated cases where accounting information could not be provided on time due to delays caused by the notification and appeal procedure (Part B.2 of this report). Reasons leading to delays in providing information are also stated in paragraph Part C.5.

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

277. The Tax and Customs Administration is empowered to use all its powers to gather information to respond to requests from foreign tax authorities. Indeed, one of the primary purposes of the NIAA is to empower the tax authorities to initiate inquiries solely to assist other States. Therefore, the Netherlands uses its information gathering powers available under domestic laws for EOI purposes, without the requirement of a domestic tax interest in the matter.

278. Similarly, under the BES Taxation Act, the BES Taxation Authority is specifically empowered to use its domestic information gathering powers in order to respond to an EOI request (Art.8.129(2)).

Compulsory powers (ToR B.1.4)

279. If a taxpayer does not provide information for the levying of tax (including foreign taxes), the tax inspector may estimate the assessment and the burden of proof shifts to the taxpayer. The court of first instance and the court of appeal both have the same power to shift the burden of proof if a taxpayer in their opinion wrongfully did not comply with a request for information or did not file a tax return (Arts.25(3) and 27(e)). Shifting the burden of proof is an effective measure against non-compliance in the domestic assessment of a taxpayer.

280. Chapter IX of the GSTA provides for criminal sanctions for failing to provide information to the Tax and Customs Administration. These sanctions apply to any person. Defaulters can be penalised in the event of failure (Arts.68 and 69):

- to provide information, data, or indications or if these are provided incorrectly or incompletely; or
- to provide books, records and other data carriers for consultation or if these are falsified.

281. If the failure is unintentional, defaults may be sanctioned by a term of imprisonment of up to six months, or a fine of the third category (EUR 7 600). If the failure is intentional, defaults may be sanctioned by a term of imprisonment of up to four years (or six years in case of falsifications) or the highest of the following amounts: a fine of the fourth category (EUR 19 000), or of the fifth category (EUR 76 000)in case of falsifications, or 100% of the unlevied tax. With regard to all information, including bank information, Article 11 of the NIAA provides that any person failing to comply with a request for information will be penalised by a term of imprisonment of up to six months or a fine of the third category (EUR 7 600) or, if intentional, with a fine of EUR 19 000.

282. The Tax and Customs Administration may however file an appeal with a civil court to obtain a court order for the taxpayer or the obliged persons under the GSTA to co-operate with a tax in investigation (*e.g.* with a view to respond to a treaty partners request for information), as to provide information and answer questions. Simultaneously, the tax authorities will request and court will grant damages imposed on a daily basis in case of non-compliance. The Netherlands authorities have indicated that in practice enforcing compliance for providing information through the court takes about three months. The taxpayer or obliged person can file an appeal against the original decision of the court, but regardless must comply with the order to provide information.

283. In the case of the Caribbean Netherlands similar provisions are contained in the BES Taxation Act. Any person failing to comply with request for information, including bank information, is liable for penalty in the form of imprisonment of up to six months or a fine of the fourth category (USD 14 000), or, in case of intentional failure, the term of imprisonment can be up to four years or a fine of fifth category (USD 56 000). Any other person, who has been requested information in connection with a third party inquiry, may also be subjected to similar penalties, if he fails to comply with the request for information (Arts.8.133 and 8.74 BES Taxation Act).

284. The Tax and Customs Administration is empowered to use the administrative measures in the GSTA to gather information. Only the FIOD has search and seizure powers, as regulated in the Criminal Procedure Code. A pre-requisite for using this power is a "serious suspicion" that a crime has been committed.

Secrecy provisions *(ToR B.1.5)*

285. Neither the Civil Code nor the Act on Supervision of Financial Markets contain provisions by which bank information is to be considered secret. The secrecy of customers' information is based on the contract between the bank and the customer. Banks are however obliged to provide information to the tax authorities, as noted previously.

286. Article 96(a) of the Criminal Procedure Code provides that professionals who, by virtue of their appointment, profession or employment are bound by confidentiality are not required to comply with a production order to the extent that the production of information would violate their obligation to secrecy. The professional has an obligation of confidentiality versus the client; he can never waive the right of privilege without the consent of the client. Further, these professionals can be excused from the obligation to testify with regard to information that they have been entrusted with (Arts.165(2)(b) and 218 Criminal Procedure Code).

287. Lawyers admitted to the bar can claim professional privilege. Rule 6 of the Code of Conduct for lawyers, adopted by the Bar Association under delegated powers, imposes an obligation of confidentiality upon lawyers.[61]

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61. Rule 6 says "1. Advocates must observe secrecy; they shall not divulge the details of cases they are handling, the identity of their clients or the nature and extent of their interests.

    2. If an advocate is of the opinion that the proper performance of the task entrusted to him requires his knowledge to be made public in any way, he shall be free to do so if the client does not object thereto and if it is compatible with sound professional practice.

288. Article 53(a) of the GSTA states: *With regard to any refusal to comply with obligations relating to the levying of taxes on third parties only ministers of a faith, notaries, lawyers, physicians and pharmacists may appeal to the circumstances that they are in the capacity of their status, office or profession, bound to confidentiality.* Article 8.88(2) of the BES Taxation Act an identical provision.

289. It is not expressly provided in the Bar Association Code of Conduct or in Article 53(a) of the GSTA that legal professional privilege is confined to information that constitutes *confidential communication between a client and attorney, solicitor or other admitted legal representative, if such communication is produced for the purpose of seeking or providing legal advice or is produced for the purpose of use in existing or contemplated legal proceedings* (see Paragraph 19.3 of the commentary on Article 26 of the OECD Model Tax Convention on Income and on Capital and the Commentary to Article 7(3) of the 2002 Model Agreement on Exchange of Information on Tax Matters). This could be inferred from the use of the phrase *in the capacity of their status, office or profession* in Article 53(a) and from the primary role of a lawyer, which is to provide legal advice and represent clients in legal proceedings.[62] It is recommended that the Netherlands' authorities make it clear that the privilege which can be claimed by lawyers under Article 53(a) of the GSTA only relates to confidential communication produced for the purpose of seeking or providing legal advice or produced for the purpose of use in existing or contemplated legal proceedings.

290. If a lawyer acts in another capacity, for instance as administrator or trustee, Article 53(a) of the GSTA does not apply. This has been substantiated by the answer of the government to the question of members of the Parliament concerning the scope of legal professional privilege in Article 53(a), especially with regard to lawyers and notaries who also act as

3. Advocates shall impose the same obligation to observe secrecy upon their staff as that to which they are bound.

4. The obligation to observe secrecy shall continue after the relationship with the client has come to an end.

5. If advocates have undertaken to observe secrecy, or if this secrecy arises from the nature of their relationship with any third party, they shall also observe this secrecy vis-à-vis their clients."

62. However the Supreme Court (March 2, 2010–LJN BJ 9262) held that special investigation powers under the Investigation Act (Wet BOB) cannot be used to gather information covered by professional secrecy and these powers cannot be directed to obtain information related to activities of lawyers and notaries, except when such a person is a suspect or with respect to objects that form part of a criminal act.

tax advisors: … *if this professional works in another field, for example as custodian of financial documents, envelopes, or the like, the inspection of books and documents or the seizure of those cannot be prevented with an appeal to his duty of confidentiality.*[63]

291. The privilege under Article 53(a) extends also to ministers of faith, notaries, physicians and pharmacists such that these professionals may claim privilege when asked by the tax administration for information. These professionals, particularly notaries, do not commonly create relevant records for their clients (*e.g.* accounting records) but may have access to them. As described previously, the tax administrations in the Netherlands and Caribbean Netherlands have complete powers to access information from the entities obliged to create/maintain such records and can sanction them if records are not provided. As a result, this extension of privilege to ministers of faith, notaries, physicians and pharmacists is unlikely in practice to create a barrier to access to information. It is recommended that the Netherlands monitor the availability of information concerning this privilege, in particular any exchange of information requests that cannot be satisfied because the information is not accessible.

292. The privilege under Article 53(a) does not apply to accountants or tax advisers. Jurisprudence developed in the Netherlands however offers protection against having to disclose certain advice and advice papers prepared by external professional accounting or tax advisors who are independent of the taxpayer but, importantly, the authorities advise that this jurisprudence does not cover papers prepared in connection with the conception, implementation and formal recording of a transaction or arrangement and which explain the setting, context and purpose of the transaction or arrangement.[64]

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63. Parliamentary Notes (Kamer II, 1990-1991, 21 287, nr.5, pages 25-26). See further the judgement of the Rotterdam (Court of Rotterdam) 23 maart 1995, nr.301/95, Info bulletin 1995/358, where it was held that *information with regard to money from third parties that a lawyer keeps in custody will not fall under the legal privilege, because this is information that has not been trusted to him in his capacity of lawyer.*
64. Supreme Court (HR 23 September 2005, V-N 2005/46.5).

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
The scope of professional privilege in tax matters is not clear in the Netherlands and appears to extend beyond that provided for in the international standards.	It is recommended that the Netherlands clarify the scope of professional privilege for the purpose of the exchange of information in tax matters, to ensure it is consistent with the international standard.

Phase 2 rating
To be completed once a representative subset of Phase 2 reviews have been completed.

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)

293. The NIAA requires notification of the person from whom information is obtained and who is living or established in the Netherlands, who may or may not be the party who is the subject of the request, of the decision that the information is being supplied to a foreign competent authority. No notification is required if the information to be exchanged is derived from public sources or the Tax and Customs Administration's own database. Such notification is given after gathering the information from the concerned person but prior to the supply of the information to the requesting foreign authority. When the information is originally gathered, the tax inspector does not inform the provider of the purpose of seeking the information[65]; they are notified after the information has been obtained. The relevant provisions are contained in Article 5 of the NIAA. The notification contains a description of the requested information, a description of the information to be provided and indicates which foreign competent authority the information will be provided to. The

65. See Dutch Supreme Court (Hoge Raad, 13 May 2005, nr.C04/014), wherein the Court decided that the tax authorities were not obliged to inform the taxpayer of the name of the requesting state before the taxpayer had to provide the requested information.

response to the requesting authority is not sent until ten days (including weekend/public holidays) after the date of the notification. The Netherlands authorities have explained that the purpose of the notification is to ensure that the information provided is accurate and it relates to the correct person.

294. In cases of an urgent nature, the information can be provided to the requesting authority prior to the notification to the concerned party, and in that case the notification must be given as soon as possible but not later than four months after the execution of the request. "Cases of an urgent nature" are not defined in the NIAA.

295. The Parliamentary Memorandum (1985-1986, 18 852, nr.9, page 11) which accompanied the International Assistance (Levying of Taxes) Bill when it was presented to Parliament refers to compelling reasons and states: *Depending on a given situation, the Minister should consider whether there are compelling reasons, as referred to in Article 5, third paragraph of the bill. A situation may involve, for example, suspicion of serious international fraud and fears that without fast provision of information, evidence will disappear. This fear can also be based on information from the competent authority of another state from which information comes forward regarding suspicion of international fraud.* The Memorandum goes on to indicate that *In some other place in the parliamentary explanations the following indication has been given "like for instance the combating of international fraud." But also this is just an example to indicate in which direction has been thought in applying the term "urgent reasons". What matters is that not for mere trifles an appeal on urgent reasons of the third paragraph is possible, but that something more has to be going on.* The decision as to what constitutes compelling reasons for an exception to the notification requirement is taken on a case-by-case basis.

296. Relevant court decisions indicate that urgent cases include:

- suspicion of international fraud[66];
- the threat of the expiry of a time limit for the actual levying of taxes;
- uncertainty caused by the party concerned as to the country in which his accounts or records to be inspected are located;
- presence of a foreign officer at a tax investigation; or
- there is a risk that a delay might impede the exchange of the requested information, *e.g.* if there is a risk that the information will be spirited away.[67]

66. Based on case law: Administrative District Court, 27 December 2000, V-N 2001/11.7.
67. Parliamentary Memorandum, 1985-1986, 18 852, nr.9, page 11.

297. In practice, the requesting authority should make a request for urgency, giving reasons. The Tax and Customs Administration does not simply rely on indications of urgency from the foreign partner however.[68] If the Netherlands authorities, on the basis of known facts and circumstances, concludes that there is a situation where urgent reasons are involved, the competent authority will act on that, even in the absence of an express request for the same from the requesting authority, and no prior notification will be sent.

298. There are therefore exceptions to the notification procedure in cases of an urgent nature, and, due to the inclusive definition of "urgent cases" and the case-by-case approach taken to deciding where the notification procedure can be waived, in cases where the notification is likely to undermine the success of the investigation conducted by the requesting authority.

299. Under the notification procedure, the natural or legal person from whom the information originates may lodge an objection with the CLO or the RLO. For a period of 10 days the information is not supplied to the other country. Where there is an objection, the CLO decides on the objection through a written decision after weighing the interests of the State and the party concerned and then provides the information to the requesting jurisdiction. If the objection is combined with an application to the court for injunctive relief (accelerated proceedings), the CLO will not provide the information to the requesting foreign authority until the court has reached a decision.

300. The grounds for objections are generally derived from the grounds for refusal of information by the State under the tax treaties, the European Directive 1977-799 and the TIEAs, which are incorporated in the NIAA (*e.g.* information does not fall within the scope of the international rule, or the gathering of the information is not in accordance with the domestic law, that there is no reciprocity, that the information is not correct, that the other State has not used all the methods available to collect information, that there is a business or professional secret involved, or lack of taxation interest in other State or the person will suffer damage if the information is provided).

301. The notification procedure is as follows:

- after receipt of the letter of notification the party concerned has a term of 10 days to lodge an objection with the CLO (non European cases) or RLO (European cases). The information will not be supplied during this period;
- if an objection is made, the CLO or RLO will contact the taxpayer to offer a personal hearing. This process can take 4 to 8 weeks, and is

68. See paragraph 7.5.2 of General Instruction Mutual Administrative Assistance Direct Taxes (Decision of 6 April 2006, No.CPP 2006/546/M).

concluded by means of a final decision from the CLO or RLO on the case, taken by another official (second view concept); and

- if this objection is combined with an application to the court for an accelerated procedure, that procedure will commence after the final decision of the CLO/RLO has been made. In some cases the hearing will solve the matter and a Court decision will no longer be considered by either party to be necessary. Where a court matter is needed, the information will not be provided until the Court has reached a decision. Depending on the workload of the Court, the case could take 5-9 weeks.

302. The whole procedure will take 10.5 to 18.5 weeks. If the court decision is in favour of the Tax and Customs Administration, the information will be supplied immediately to the requesting authority. Where the decision is in favour of the taxpayer, the information to be provided will be adapted accordingly or not supplied at all. In that case the requesting authority will receive an explanation (a "motivated refusal letter").

303. In 2010, the Netherlands provided information requested by foreign authorities in 354 cases. In 117 (33%) of cases, the information was supplied without notification. In 64% of the cases (227), the information was supplied with prior notification. And in ten cases the notification was given after supplying the information. In only 9 cases (2.5% of all fulfilled requests), the party concerned objected against the provision of information to the requesting authority. In two cases, the court delivered judgments in accelerated proceedings. The Court decided in both cases that the information could be provided to the requesting authorities. In the nine cases where objections were filed, the notification procedure and court decision took on average 4.5 months.

304. Comments received from some of the Netherlands' peers during the review process indicate that the notification process has caused significant delays for them in receiving requested information. One jurisdiction indicated that it had to close its own proceedings as information was not received in time, and this was due to an objection being made in the Netherlands combined with an application to the court for an accelerated procedure. The Netherlands' authorities are of the view that the possibility for the concerned person and Tax Administration to verify the correctness of the information before the supplying of it outweighs the possible disadvantage in a small number of cases.

305. To sum up, there is a notification and appeal procedure required under the Netherlands Law after collection of information but before it is provided to the requesting authority. Certain exceptions exist to this notification. This process has resulted in delays in providing information in a small number of cases. It is recommended that the authorities consider means to

accelerate the notification and appeal process to ensure it does not hinder the effective international exchange of information in tax matters.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
To be completed once a representative subset of Phase 2 reviews have been completed.	
Factors underlying recommendation	**Recommendation**
The notification and appeal process takes on average 10 to 18 weeks to complete before information is provided to the requesting jurisdiction.	The process for notification and appeal should be reviewed with a view to ensuring that it is compatible with effective international exchange of information in tax matters.

C. Exchanging information

Overview

306. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. A jurisdiction's practical capacity to effectively exchange information upon request relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report assesses the Netherlands' network of international agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

307. The Netherlands' network of bilateral information exchange agreements is extensive and covers its major trading partners as well as the world's financial centres. Currently the Netherlands has 28 taxation information exchange agreements (TIEAs) plus 86 double taxation conventions (DTCs), which cover 90 jurisdictions[69], allowing it in total to exchange information with 118 jurisdictions. A list of all EOI agreements is given in Annex 2. The majority of these agreements are to the international standard. In terms of the volume of information exchanged, Belgium, France, Germany, Poland, Spain and the United Kingdom are the Netherlands' most significant partners.

308. In addition, the Netherlands is able to exchange information in tax matters with other European Union (EU) Member States[70] under the EU Council Directive 77/99/EEC of 19 December 1977 (Mutual assistance in Tax Matters)

69. The Netherlands' DTC with the former Czechoslovakia remains in force with respect to both the Czech Republic and the Slovak Republic. Similarly, the Netherlands continues to apply the DTC signed with the Former Socialist Federal Republic of Yugoslavia to Bosnia and Herzegovina, Kosovo, Montenegro, and Serbia. See the State Secretary of Finance Decree of 22 September 2009 (IFZ2009/510M).
70. The EU Member States covered by this Council Directive are: Austria, Belgium, Bulgaria, Cyprus*, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta,

concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums. Further, the Netherlands is also a signatory to the COE/OECD Convention on Mutual Administrative Assistance in Tax Matters[71], which is currently signed by 18 jurisdictions.[72] This convention provides for all possible forms of administrative co-operation between States in the assessment and collection of taxes. The multilateral convention also applies to the Caribbean Netherlands.

309. While this report examines the Netherlands' agreements and practices concerning the exchange of information on request, the Netherlands is also actively engaged in automatic and spontaneous exchange of information concerning direct taxation and value-added tax (VAT) with the EU Member States and many other jurisdictions.

310. The EOI agreements signed by the former Netherlands Antilles (1 DTC and 21 TIEAs) continue to apply to the Caribbean Netherlands. Except for the TIEA concluded with the Cayman Islands, all the other TIEAs are in line with the OECD Model TIEA. All the EOI agreements appear to meet the "foreseeably relevant" standard. However, as indicated below, in some instances provisions deviating from the OECD Model TIEA were included in the TIEAs which may result in restrictions to the effective EOI that are not in line with the international standard. As the Central Liaison Office

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the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

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

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

71. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters has incorporated internationally agreed standards for exchange of information in tax matters and since 1 June 2011 the Convention is open to all countries (including non-OECD and non-EU) for signature.

72. Azerbaijan, Belgium, Denmark, Finland, France, Georgia, Iceland, Ireland, Italy, the Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Ukraine, the United Kingdom and the United States. In addition, Germany and Canada have signed the Convention.

only recently became the competent authority for international exchange of information (EOI) in tax matters for the Caribbean Netherlands, there is insufficient information available at this time to comment on the effectiveness of EOI related to the Caribbean Netherlands. The Global Forum will further consider practical aspects of the exchange of information relating to the Caribbean Netherlands in detail in a targeted Phase 2 review, to be scheduled for the first half of 2014.

311. The Netherlands' authorities have also indicated that they will, where relevant to the request, exchange information related to the Caribbean Netherlands with all of their 118 partners.[73] In the future, the Netherlands intends to include the Caribbean Netherlands formally within the scope of its DTCs and TIEAs.

312. The competent authority of the Netherlands – the Central Liaison Office; CLO – bears primary responsibility for the actual exchange of information for both the Netherlands and the Caribbean Netherlands. This responsibility for EOI was transferred to the CLO, based in Almelo, in September 2009. The CLO is properly resourced with skilled staff and benefits from timely expert assistance from the staff working in the tax administration. They also have appropriate procedures for gathering and providing the requested information.

313. Many competent authorities have commented positively on the quality of the relationship with the Netherlands' competent authority. The Netherlands has made important changes to its procedures, including the recently implemented system for systematically providing status updates to the requesting parties, and has worked through a backlog of cases in the past 18 months.

C.1. Exchange-of-information mechanisms

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

Bilateral agreements

314. The Netherlands has signed 86 DTCs, covering 90 jurisdictions, that provide for exchange of information in tax matters.[74] The Netherlands has also signed TIEAs with 28 jurisdictions. This network of 114 agreements allows for EOI with 118 jurisdictions. Currently, 96 of these agreements are in force.

73. This is expressly provided for in Article 8.124(2) of the BES Taxation Act.
74. The Netherlands also applies the DTC with the former USSR in respect of Kyrgyzstan and Tajikistan, however, this treaty does not provide for exchange of information in tax matters. Thus these agreements are not analysed in this report.

315. The EOI provisions of the 22 agreements (1 DTC and 21 TIEAs) established by the former Netherlands Antilles are applicable to the Caribbean Netherlands. Article 8.124(2) of the BES Taxation Act also allows the Netherlands to provide information from the Caribbean Netherlands to answer a request received from any of its 118 partners.

Other forms of exchange of information

316. A multilateral agreement signed in 1964 among the three former parts of the Kingdom – the Netherlands, Aruba, and the Netherlands Antilles (now succeeded by Curacao and Sint Maarten) provides for avoidance of double taxation and the prevention of fiscal evasion. Under articles 37 and 38, it includes an EOI provision which generally follows the old wording of Article 26 of the OECD Model Tax Convention, *i.e.* before the 2005 update. The Netherlands is thus able to exchange information in tax matters with Aruba, Sint Maarten and Curacao.

317. The Netherlands has signed memoranda of understanding (MOUs) with 12 countries[75] providing for automatic exchange of information. The MOUs with the EU Member States are based on EU Directive 77/799/EEC (Mutual Assistance in Tax Matters), the multilateral COE/OECD Convention and tax treaties, whereas the multilateral COE/OECD Convention and tax treaties form the basis for the other MOUs. Information pertaining to income from immovable property, dividends, interest, income from independent personal services, loan and salary income, payments to directors, income of artists, income from pensions and other income is being exchanged pursuant to these MOUs. The Netherlands has been very active in applying various mechanisms for exchange of information. For example, in 2010 under automatic exchange, the Netherlands sent 126 000 pieces of information to its partners and received 251 000 pieces of information. The actual information exchanged automatically with a particular country depends on the scope of the agreement and the availability of practical mechanisms for such exchange. Most of the information exchanged can be linked to a taxpayer and is useful to the tax administration in many ways.

318. The Netherlands is actively participating in the automatic exchange of information under the EU Savings Directive 2003/48/EC of 3 June 2003 which provides for exchange of information concerning interest payments. Under this instrument in 2010, the Netherlands provided more than 245 000

75. Australia (2002), Belgium (2004), Canada (1997), Denmark (1999), Germany (1997), Estonia (2004), France (1996), Lithuania (2004), Poland (2005), Spain (2006), the Czech Republic (2006) and Sweden (2004).

pieces of information to its partners[76] and received more than 116 000 pieces of information. The Netherlands Antilles agreed to implement measures equivalent to those contained in this directive on the basis of reciprocal bilateral agreements signed with each EU Member State. These bilateral agreements continue to apply to the Caribbean Netherlands.

319. The Netherlands is engaged in the spontaneous exchange of information with EU Members pursuant to Article 4 of Council Directive 77/779/EEC (Mutual Assistance in Tax Matters). Sometimes information is also exchanged in accordance with the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance.[77] Spontaneous exchange of information is also taking place in accordance with the provisions of tax treaties. In 2010, the Netherlands sent 30 750 records, whereas received 30 978 records from its partners. The Netherlands has ratified the European Convention on Mutual Assistance in Criminal Matters between Member States in 2004.

320. When more than one legal instrument may serve as the basis for exchange of information – for example where there is a bilateral agreement with an EU member which also applies Council Directive 77/799/EEC – the overlap is generally addressed within the instruments themselves (see in particular Article 27 of the Council of Europe Convention and Article 11 of the 1977 EC Directive "Applicability of wider-ranging provisions of assistance"). There are no domestic rules in the Netherlands requiring it to choose between mechanisms where it has more than one agreement involving a particular partner and thus the competent authority is free for any exchange to invoke all of the available mechanisms or to choose the most appropriate.

Foreseeably relevant standard (ToR C.1.1)

321. The international standard for exchange of information envisages information exchange 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 reflected in the standard of "foreseeable relevance" which is included in Article 26(1) of the OECD *Model Taxation Convention* set out below:

> *The competent authorities of the contracting states shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or*

76. All members of the European Union and Aruba, the British Virgin Islands, Curaçao, Guernsey, the Isle of Man, Jersey, Montserrat and Sint Maarten.
77. The Netherlands Antilles had signed the protocol to this convention on 27 March 2010, which is applicable to the Caribbean Netherlands.

> *enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.*

The Netherlands

322. The Netherlands' network of DTCs generally follows the OECD Model Tax Convention and provides for exchange of information on request. The agreements signed or revised after 2005[78] contain a specific reference to the exchange of information that is "foreseeably relevant" to the administration or enforcement of the tax laws of the Contracting States. Older DTCs generally use the term "necessary" in lieu of "foreseeably relevant". The phrase "as is necessary" is recognised in the commentary to Article 26 of the OECD Model Taxation Convention to allow for the same scope of exchange as does the term "foreseeably relevant".

323. Thirteen of the Netherlands' DTCs, covering 16 jurisdictions[79], limit the possibility for the exchange of information to that which the authorities have at their disposal in the normal course of administration as is necessary for carrying out the DTC. The provisions of these agreements suggest that the Netherlands may not therefore be able to exchange all information forseeably relevant to the provisions of these DTCs or the administration or enforcement of domestic laws. The Netherlands' authorities have however indicated that they will use their access powers to obtain information requested under these 16 agreements (see further Part C.1.4 below).

324. Seventeen of the Netherlands' DTCs, covering 21 jurisdictions[80], limit the exchange of information to that necessary for carrying out the provisions of the convention, not allowing for exchange of information for the administration or enforcement of the domestic laws of the Contracting States. As no obligations arise to exchange information for the implementation of domestic laws, these agreements are not consistent with the international standard.

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78. With Austria; Bahrain; Barbados; Belgium; Ghana; Hong Kong, China; Japan; Luxembourg; Malaysia; Mexico; Oman; Panama; Qatar; Singapore; South Africa; Switzerland; United Arab Emirates and the United Kingdom.
79. Bosnia and Herzegovina, the Czech Republic, France, Ireland, Israel, Kosovo, Malawi, Montenegro, Nigeria, the Philippines, the Republic of Korea, Serbia, the Slovak Republic, Spain, Thailand and Zambia.
80. Bosnia and Herzegovina, Brazil, Bulgaria, Czech Republic, Germany, Hungary, Ireland, Israel, Kosovo, Malawi, Montenegro, Morocco, Nigeria, the People's Republic of China, the Philippines, the Republic of Korea, Serbia, Slovak Republic, Spain, Thailand, and Tunisia.

Further, the DTC with Germany provides that the authorities may refuse to supply information which would necessitate extensive enquiries.

325. The limitation in the DTCs with Bulgaria, the Czech Republic, Germany, Hungary, Ireland, Slovakia and Spain will not affect the exchange of information to the standard in practice, as all are members of the EU and information exchange takes place under the EU Mutual Assistance Directive.

326. The agreements with Bulgaria, Hungary, Slovakia and Czech Republic do not provide for information exchange in prosecution matters.

327. The DTC with Ghana signed on 10 March 2008, though consistent with the international standard on other aspects, provides for limited exchange of information from the Ghana side (the restriction does not apply to the Netherlands). Article 26(6) of the agreement provides that Ghana will supply information if such information is obtained by Ghana in the course of court proceedings in relation to a prosecution involving acts of tax fraud in the Courts of Ghana. The Netherlands authorities have indicated that they will exchange all foreseeably relevant information in respect of all persons under this agreement, regardless of any limitation in the information Ghana may exchange.

328. The tax treaty with Panama signed in 2010 contains a provision for exchange of information in tax matters which is identical to Article 26 of the OECD Model Tax Convention. However, the protocol to the agreement provide that in relation to Article 24 of the Convention (EOI Article), the requesting State shall provide information to the tax authorities of the requested state which *inter alia* include the name and address of the person(s) under examination or investigation and, if available, other particulars facilitating that person's identification, such as date of birth, marital status, tax identification number. The requesting State also needs to provide name and address of any person believed to be in possession of the requested information. Article 5(5)(a) of the OECD Model TIEA and its commentary is clear that the obligation to "identify" the relevant taxpayer, does not necessarily require the provision of their name and address and article 5(5)(e) states that the name and address of the holder of the information need only be provided "to the extent known". Considering this, the protocol is not consistent with the standard.

329. All but one of the TIEAs signed by the Netherlands clearly follow the OECD 2002 Model Agreement on Exchange of information on Tax Matters (OECD Model TIEA). The provisions in the TIEA with the British Virgin Islands deviate from the OECD Model TIEA, containing the wording that, *there is no obligation to obtain or provide information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer*. It is unclear how the term "directly relate to the taxpayer" will be interpreted in practice as the agreement is not yet in force. Notwithstanding this variation, all of the Netherlands TIEAs are considered to meet the "foreseeably relevant" standard.

330. The comments received from treaty partner countries evidence the very positive attitude of the Netherlands authorities in providing the requested information in line with the foreseeable relevant standard.

The Caribbean Netherlands

331. The Caribbean Netherlands' network of DTCs and TIEAs generally follows the OECD Model Tax Convention and provides for exchange of information on request, referring either to the exchange of information that is "foreseeably relevant"/"necessary" to the administration or enforcement of the tax laws of the Contracting States.[81]

332. Article 27(1) of the 1989 DTC with Norway provides for EOI that is "necessary" for carrying out the provisions of the convention and the domestic tax laws of the contracting States concerning taxes covered by the convention, insofar as the taxation there under is not contrary to those conventions. Likewise, the TIEA with Bermuda refers to information that is "relevant" for EOI purposes. The Netherlands authorities have confirmed that the terms "necessary" and "relevant" under these EOI agreements are interpreted in accordance with Commentary to Article 26(1) of the OECD Model Tax Convention. Therefore, the Norway DTC and the Bermuda TIEA meet the "foreseeably relevant" standard.

333. Some TIEAs create a requirement for establishing a valid request which is in addition to those set out in Article 5(5) of the OECD Model TIEA, *i.e.* the requesting party must specify: ... *the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting party* (Article 5(6)(d) British Virgin Islands TIEA) or … *why it is relevant to the determination of the tax liability of a taxpayer under the laws of the applicant party* (Article 5(7)(g) Bermuda TIEA).

334. Article 5(6) of the Bermuda TIEA also creates an additional condition for the establishment of a valid request under Article 5, requesting that the applicant party confirms the relevance of the requested information:

> *Where the applicant Party requests information in accordance with this Agreement, a senior official of the competent authority of the applicant Party shall certify that the request is relevant to, and necessary for, the determination of the tax liability of the taxpayer under the laws of the applicant Party.* [emphasis added]

81. The phrase "as is necessary" is recognised in the commentary to Article 26 of the OECD Model Taxation Convention to allow for the same scope of exchange as does the term "foreseeably relevant".

335. It is also noted that in the TIEAs with Bermuda (Article 5(5)(ii)) and British Virgin Islands (Article 5(5)(b)), a requested party is under no obligation to provide information which relates to a period more than six years prior to the tax period under consideration. Nevertheless, these variations to Article 5(5) of the OECD Model TIEA appear to be in line with the purpose of the requirements in this provision, which is to demonstrate the foreseeable relevance of the information sought.

336. Item I of the Protocol to the TIEA with the Cayman Islands states that the term *pursued all means available in its own territory* in Article 5(5)(g) of this TIEA is understood as including an obligation for the requesting party to use *exchange of information mechanisms it has in force with any third country in which the information is located*. That is, under this TIEA, a requesting party cannot make an EOI request until it has sought the information from the jurisdiction where the information is located. This may impose difficulties on the requesting party to make use of EOI mechanisms to obtain information outside its own territory and is inconsistent with the Commentary to Article 5(5) of the OECD Model TIEA (para.73) and narrower than the international standard. The Netherlands is therefore encouraged to modify item I of the Protocol to the Cayman Islands TIEA to bring it into conformity with the international standard.

337. While the Netherlands has not yet exchanged information from the Caribbean Netherlands, it seems likely that the Netherlands will exchange all foreseeably relevant information in respect of these islands.

In respect of all persons *(ToR C.1.2)*

338. 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 must provide for exchange of information with respect to all persons.

The Netherlands

339. None of the TIEAs signed by the Netherlands restricts their application to certain persons such as those considered resident in one of the jurisdictions, or precludes the application of the provisions in respect of certain types of entities.

340. Twenty of the Netherlands' DTCs, covering 24 jurisdictions[82] do not expressly provide that the exchange of information is not restricted by Article 1[83] of the Convention. However, in principle, the absence of this specific provision does not restrict the exchange of information as long as the agreement allows for the exchange of information for carrying out the provisions of the domestic laws of the Contracting States, as the domestic laws apply to non-residents also. Seventeen of the Netherlands' DTCs, covering 21 jurisdictions[84], limit the exchange of information to that necessary for carrying out the provisions of the convention, not allowing for exchange of information for the administration or enforcement of the domestic laws of the Contracting States. Therefore, under these DTCs information concerning non-residents might not be exchanged.

341. The limitation in the DTCs with Bulgaria, the Czech Republic, France, Germany, Hungary, Ireland, the Slovak Republic and Spain will not affect the exchange of information to the standard in practice, as all are members of the EU and information exchange can take place under the *EU Mutual Assistance Directive.*

342. All TIEAs signed by the Netherlands contain a provision concerning the jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA and conforms to the international standard.

343. In practice, the Netherlands has provided information in respect of all persons requested by its partner jurisdictions. Only once, it was unable to provide information as the taxpayer was of the former Netherlands Antilles and the information did not relate to the Netherlands.

The Caribbean Netherlands

344. The Caribbean Netherlands' DTC with Norway[85] and all the TIEAs applicable to the Caribbean Netherlands contain provisions concerning the

82. Bosnia and Herzegovina, Brazil, Bulgaria, Chinese Taipei, the Czech Republic, France, Germany, Hungary, India, Israel, the Republic of Korea, Kosovo, Montenegro, Morocco, Nigeria, the People's Republic of China, the Philippines, Qatar, Serbia, the Slovak Republic, Spain, Thailand, Tunisia and Zambia.
83. Article 1 of the Convention refers to the personal scope of the tax treaty and treaty benefits are available to the persons who are resident of either or both of the Contracting States.
84. Bosnia and Herzegovina, Brazil, Bulgaria, the Czech Republic, Germany, Hungary, Ireland, Israel, Kosovo, Malawi, Montenegro, Morocco, Nigeria, People's Republic of China, the Philippines, the Republic of Korea, Serbia, Slovak Republic, Spain, Thailand, and Tunisia.
85. A protocol was signed on 10 September 2009 and the existing EOI Article was replaced by an Article containing equivalent wording of Article 26 of the *OECD*

jurisdictional scope and provide for exchange of information in respect of all persons. While the Netherlands has not yet exchanged information from the Caribbean Netherlands; it seems likely that the Netherlands will exchange information in respect of all persons from these islands.

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

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

The Netherlands

346. Seventeen of the Netherlands' DTCs[86] contain the wording of Article 26(5) of the OECD Model Tax Convention, which states that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in person.

347. The DTC with Ghana contains an equivalent wording of Article 26(5) of the OECD Model Tax Convention with respect to the information to be provided by the Netherlands, but does not contain a similar obligation for Ghana. The Netherlands' authorities have indicated that they will, regardless of the limitation in the information Ghana may exchange, exchange under this agreement all information held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, including if it relates to ownership interests in person.

348. Nine of the Netherlands' DTCs, concerning 10 jurisdictions – the Czech Republic, Germany, Ireland, Israel, the Republic of Korea, Morocco, the Slovak Republic, Spain, Thailand and Zambia – explicitly state that the obligation to exchange information does not include information obtained from banks or from financial institutions assimilated thereto or equivalent institutions. Due to these express provisions for not exchanging bank

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Model Tax Convention.

86. Austria; Bahrain; Barbados; Belgium; Hong Kong, China; Japan; Luxembourg; Malaysia; Mexico; Oman; Panama; Qatar; Singapore; South Africa; Switzerland; the United Arab Emirates; and the United Kingdom.

information, these nine DTCs fall below the international standard. However, bank information is being exchanged with the Czech Republic, Germany, Ireland, the Slovak Republic and Spain under the EU Directive.

349. The remaining 59 of the Netherlands DTCs do not include a stipulation similar to Article 26(5) of the OECD Model Tax Convention. These agreements were concluded prior to the 2004 revision of the OECD Model Tax Convention. For 26[87] of these DTCs, as neither the Netherlands nor its partner jurisdictions suffers from limitations to access to bank information, the absence of a provision in line with Article 26(5) of the OECD Model Tax Convention does not result in the agreements not being in line with the international standard. Out of the remaining 32 treaties, it is possible that some of the Netherlands partners may have domestic restrictions on access to bank information and in such a situation the absence of a provision akin to Article 26(5) of the *OECD Model Tax Convention* would result into these agreements falling short of standard as these agreements do not establish an obligation to exchange all types of information.

350. All of the Netherlands' TIEAs include provisions containing the wording of Article 5(4)(a) and (b) of the OECD Model TIEA, obliging the Contracting States to exchange all types of information.

351. Input received from partner jurisdictions indicates that the Netherlands has always provided the requested bank information in a timely manner.

The Caribbean Netherlands

352. The Caribbean Netherlands' DTC with Norway and all of the TIEAs which apply to the Caribbean Netherlands include a provision akin to Article 26(5) of the OECD Model Tax Convention or Article 5(4)(a) and (b) of the OECD Model TIEA, obliging the Contracting States to exchange all types of information. While the Netherlands has not yet exchanged information from the Caribbean Netherlands; it seems likely that the Netherlands will exchange information from these islands which are held by financial institutions, nominees or persons acting in an agency or fiduciary capacity.

Absence of domestic tax interest *(ToR C.1.4)*

353. 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

87. Argentina, Australia, Canada, China, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, India, Italy, Macedonia, Malta, New Zealand, Norway, the Philippines, Poland, Portugal, Romania, Russia, Slovenia, Sweden, Turkey and United States.

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.

The Netherlands

354. Eighteen of the Netherlands' DTCs[88] include the wording of Article 26(4) of the OECD Model Tax Convention, obliging the contracting parties to use information gathering measures to exchange requested information without regard to a domestic tax interest.

355. While the Netherlands' 68 older DTCs, applicable to 71 jurisdictions, do not contain such a provision, its absence does not create any restrictions on exchange of information as domestic law does not require existence of a domestic tax interest in order for the Netherlands to access information for the purposes of EOI (see Part B.1.3 of this report). Thus, even in the absence of wording akin to Article 26(4) of the OECD Model Taxation Convention, the authorities are able to obtain and provide all types of information without the need for a domestic tax interest in the matter.

356. Thirteen of the Netherlands agreements, covering 16 jurisdictions[89], limit the provision of information to information which such authorities have in proper order at their disposal. The Netherlands has issued the General Instruction on Mutual Administrative Assistance Direct Taxes[90] which contains information on the treaties wherein information exchange is limited to information available in an orderly manner. In this instruction it is stated that this means that a treaty partner is not obliged to execute an investigation for the treaty partner. Differing interpretations are possible: either the exchange will be restricted to the information contained in the tax authority's files and databases (in which case the provision is equivalent to a domestic tax interest requirement), or the exchange will cover all information to which the tax authority has access. The Netherlands'authorities, for their part, favour the second interpretation and have indicated that, notwithstanding the instruction, they will use all their access powers to obtain information requested under these 16 agreements. In addition, the Netherlands exchanges information with

88. Austria; Bahrain; Barbados; Belgium; Ghana; Hong Kong, China; Japan; Luxembourg; Malaysia; Mexico; Oman; Panama; Qatar; Singapore; South Africa; Switzerland; the United Arab Emirates and the United Kingdom.
89. Bosnia and Herzegovina, the Czech Republic, France, Germany, Ireland, Israel, Kosovo, Malawi, Montenegro, Nigeria, the Philippines, the Republic of Korea, Serbia, the Slovak Republic, Spain, Thailand and Zambia.
90. Decision of 6 April 2006, no.CPP 2006/546/M.

the Czech Republic, France, Germany, Ireland, Slovakia and Spain without need for any domestic tax interest under the EU Mutual Assistance Directive.

357. A domestic tax interest requirement may exist in some of Netherlands's partner jurisdictions. In such cases, the absence of a specific provision requiring exchange of information unlimited by domestic tax interest will serve as a limitation on the exchange of information which can occur under the relevant agreement.

358. All of the TIEAs signed by the Netherlands explicitly permit the exchange of information regardless of whether the jurisdictions need such information for a domestic tax purpose.

359. The Netherlands has always provided information requested by its treaty partners and the domestic tax interest has never been any issue. No peers have raised any concern on this issue.

The Caribbean Netherlands

360. All of the agreements applicable to the Caribbean Netherlands explicitly permit the exchange of information even where the jurisdictions may not need such information for a domestic tax purpose. While the Netherlands has not yet exchanged information from the Caribbean Netherlands; it seems likely that the Netherlands will exchange information from these islands without regard to whether the Caribbean Netherlands has a domestic tax interest in the matter.

Absence of dual criminality principles *(ToR C.1.5)*

361. 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 dual criminality principle.

362. None of the agreements signed by the Netherlands nor those applicable to the Caribbean Netherlands apply the dual criminality principle to restrict exchange of information.

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

363. 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").

The Netherlands

364. Some of the Netherlands' agreements refer to exchange of information in particular for the prevention of fraud and for the administration of statutory provisions against legal avoidance of taxes. It is understood that the emphasis on the information exchange for the prevention of fraud does not limit the EOI for criminal tax matters only.

365. As noted previously (see Part C.1.1 of this report), 17 of the Netherlands' agreements, covering 21 jurisdictions, provide for the exchange of information for carrying out the provisions of the convention and not for administering domestic laws. These agreements have the potential to limit the EOI to information foreseeably relevant for the purposes of civil tax matters only.

366. The confidentiality provisions in 16 agreements, covering 20 jurisdictions – Bangladesh, Bosnia and Herzegovina, Bulgaria, the Czech Republic, France, Germany, Hungary, Indonesia, Israel, Kosovo, Malawi, Montenegro, Morocco, Nigeria, the Republic of Korea, Serbia, the Slovak Republic, Spain, Thailand and Tunisia – do not expressly provide for disclosure of information received to the authorities which are involved with the prosecution of tax matters.

367. All the TIEAs signed by the Netherlands contain the explicit obligation to exchange information for the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims (*i.e.* civil matters), or the investigation and prosecution of tax matters (*i.e.* criminal matters).

368. The information that is subject of criminal investigations undertaken by the FIOD and the Public Prosecutors, is provided after the completion of the investigation or as soon as the criminal investigation cannot be jeopardised any more. Information that indirectly relates to the criminal investigation is provided as long as the criminal investigation cannot be jeopardised. This sometimes delays providing the information.

369. The Netherlands authorities have advised that if an information request pertains to a case involving criminal investigation directed by the Public Prosecutor in the requesting jurisdiction, the Netherlands will exchange information based on mutual legal assistance treaties (MLATs) and in that case the Minister of Justice is the competent authority. If such an instrument (MLAT) is not available, exchange of information in such a situation will take place based on a TIEA, the multilateral COE/OECD Convention or a DTC which allows for information to be disclosed to the prosecution. The Netherlands also exchanges information under the MLAT where a prosecution is started in the Netherlands. In the absence of an MLAT, information will be provided under the relevant DTC/TIEA.

The Caribbean Netherlands

370. The Caribbean Netherlands' DTC with Norway and all of the TIEAs applicable to the Caribbean Netherlands contain the obligation to exchange information for the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims (*i.e.* civil matters), or the investigation and prosecution of tax matters (*i.e.* criminal matters). While the Netherlands has not yet exchanged information from the Caribbean Netherlands, it is expected that the Netherlands will exchange information from these islands in respect of both civil and criminal tax matters.

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

371. According to the Global Forum's *Terms of Reference*, exchange of information mechanisms should allow for the provision of information in specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under a jurisdiction's domestic laws and practice.

The Netherlands

372. The exchange of information agreements of the Netherlands does not contain any restriction that would prevent the Netherlands from providing information in a specific form requested. TIEAs signed by the Netherlands and those applicable to the Caribbean Netherlands oblige the requested party to provide information[91] to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records. The agreements do not oblige a Contracting State to carry out administrative measures at variance with the laws and administrative practice and to supply information which is not obtainable under the laws or in the normal course of the administration of that or the other Contracting State.

373. The Netherlands authorities have indicated that in administrative mutual assistance in Tax matters they are unable to provide witness statements to be used as evidence in court, and indeed one of the Netherlands' peers has commented on this limitation. This limitation exists equally for domestic tax matters. They have further advised that, if the treaty partner asks for a deposition of a witness, the Netherlands can ask the taxpayer to provide the deposition voluntarily. If the taxpayer is reluctant to do so, the Netherlands Tax and Customs Administration will enforce the taxpayer to give a statement to the tax inspector (Arts.47 and 53 GSTA). The tax inspector will take this down, and will certify the statement under oath of office. In practice these statements fulfil the expectations of the Netherlands treaty partners. However, in

91. Information means any fact, statement, document or record in whatever form.

criminal tax cases involving the Public Prosecutor,[92] the Netherlands is able to provide witness statements. Authenticated copies of original documents can be obtained by the FIOD and provided by the competent authority to partners under DTCs and TIEAs for civil as well as criminal tax matters.

374. Other than that one instance, comments received from partner jurisdictions indicate that the Netherlands has always provided the information in the form requested by them. They have also received copies of requested invoices and other documents.

The Caribbean Netherlands

375. The exchange of information agreements applicable to the Caribbean Netherlands does not contain any restriction that would prevent the Netherlands from providing information in a specific form requested. The DTC with Norway and all the TIEAs applicable to the Caribbean Netherlands oblige the requested party to provide information[93] to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records. The agreements do not oblige a Contracting State to carry out administrative measures at variance with the laws and administrative practice and to supply information which is not obtainable under the laws or in the normal course of the administration of that or the other Contracting State.

376. The provisions of the relevant tax laws of the Caribbean Netherlands are similar to that of the Netherlands. While the Netherlands has not yet exchanged information from the Caribbean Netherlands, it is expected that the Netherlands will provide information from the Caribbean Netherlands in the specific form requested.

In force *(ToR C.1.8)*

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

The Netherlands

378. The Netherlands has a very wide treaty network of 86 DTCs allowing for exchange of information with 90 jurisdictions. Only four DTCs are not yet in

92. In addition, the FIOD is empowered to obtain witness statements in their own right as some FIOD officials have the status of assistant public prosecutor. This competency is attached to them by the Criminal Procedure Code.
93. Information means any fact, statement, document or record in whatever form.

force.[94] Also, out of the seven protocols concluded after 1 January 2009, three are not yet in force.[95] The Netherlands has signed 28 TIEAs and 16[96] of these are in force. Of these, the TIEAs with the Cook Islands and Montserrat have been ratified by the Netherlands and are waiting for ratification by the other jurisdiction.

379. EOI agreements come into force after the completion of the required procedure in both jurisdictions. Agreements are ratified by the Netherlands Parliament, in the form of a Bill signed by the Minister of Foreign Affairs and the State Secretary of Finance. Two procedures are provided for ratification: Silent and Explicit. The silent procedure is followed for standard agreements such as TIEAs and generally concludes within 30 days. The explicit procedure involves discussion in the Parliament and the same procedure as required for passing domestic laws. This is generally required for treaties and agreements of importance. This procedure generally takes one year for its completion. It is recommended that the Netherlands ensure the time to complete this process remains at that level or is reduced.

380. As mentioned above, out of 28 TIEAs, 12 are not yet in force. This includes a number of TIEAs signed in the second half of 2009 of which 2 have been ratified by the Netherlands and not by the TIEA partner. It is recommended that the Netherlands take action to bring these agreements into force expeditiously.

The Caribbean Netherlands

381. Out of 22 TIEAs signed, 10 are in force. The only DTC, with Norway, and its protocol are also in force. The remaining 12 TIEAs, many of which were signed in 2009, are not yet in force. These agreements also apply to Curaçao and Sint Maarten and the ratification require input from all parties involved, co-ordinated by the Ministry of Foreign Affairs of the Kingdom. The process involved takes some time. It is recommended that the Netherlands take necessary steps so these agreements progress through ratification expeditiously.

In effect *(ToR C.1.9)*

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

383. The Netherlands' DTCs and TIEAs gain the status of international agreement after ratification by the Parliament (Art.91 Constitution) and hold

94. Hong Kong, China; Oman; Panama; and Switzerland.
95. Barbados, Belgium and Japan.
96. Andorra, Anguilla, Antigua and Barbuda, The Bahamas, Belize, Bermuda, Cayman Islands, Guernsey, Isle of Man, Jersey, Liechtenstein, Monaco, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and San Marino.

a higher status than domestic laws. Article 94 of the Constitution provides for the supremacy of treaty provisions over provisions of domestic law where the provisions in the treaty are considered to be binding for every citizen.

384. However, as discussed in Part B.1 of this report, there are some limitations in the legislation providing for availability of information in the Netherlands and in the access to information by the authorities. Thus, the Netherlands cannot be considered to have given full effect to these arrangements through domestic law.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
18 of the Netherlands' 114 agreements providing for international exchange of information in tax matters, in particular some older agreements, do not provide for exchange information to the international standard.[97] Only one of the 22 agreements covering the Caribbean Netherlands does not provide for exchange information to the international standard.	It is recommended that the Netherlands continues its program of renegotiating its older treaties with main trading partners to bring them in line with the international standard.
Of the 28 information exchange agreements and 7 protocols concluded since January 2009, to date 23 have entered into force. In the Caribbean Netherlands, 12 out of 22 agreements are not yet ratified by the Netherlands.	The Netherlands should ensure the expeditious ratification of all signed EOI arrangements.

97. These 18 agreements cover 22 jurisdictions: Bosnia and Herzegovina, Brazil, Bulgaria, the Czech Republic, Germany, Hungary, Ireland, Israel, Kosovo, Malawi, Montenegro, Morocco, Nigeria, People's Republic of China, the Philippines, the Republic of Korea, Serbia, Slovak Republic, Spain, Thailand, Tunisia and Zambia. The Netherlands does however have full exchange of information with seven of these partners (Bulgaria, the Czech Republic, Germany, Hungary, Ireland, Slovakia and Spain) under the EU Mutual Assistance Directive.

Phase 2 rating
To be completed once a representative subset of Phase 2 reviews have been completed.

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

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

385. 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.

386. The Netherlands has a very long history of exchange of information in tax matters. The first convention in this regard was signed with Belgium on 24 May 1845. It detailed the information and documents that the Netherlands and Belgium should exchange with each other.

387. The Netherlands has signed 86 DTCs which provide for international exchange of information, applicable to 90 jurisdictions. Of these, four (Hong Kong, China; Oman, Panama and Switzerland) are not yet in force. Of the 82 DTCs in force, only 18[98] are not completely in line with the international standard. The Netherlands also has 28 TIEAs, most of which have been signed since 2008. Currently 12 TIEAs are not in force. The Netherlands has also been exchanging information in tax matters with other EU Members under the provisions of the *EU Mutual Assistance Directive and the Savings* Directive and with non-EU-members under the COE/OECD Convention.

388. The Netherlands has a very broad network of signed EOI agreements covering all EU, OECD and G20 members[99] with the exception of Chile and

98. Bosnia and Herzegovina, Brazil, Bulgaria, Hungary, the Czech Republic, Germany, Ireland, Israel, the Republic of Korea, Kosovo, Malawi, Montenegro, Morocco, Nigeria, the People's Republic of China, the Philippines, Serbia, the Slovak Republic, Spain, Thailand, Tunisia and Zambia.
99. Argentina, Australia, Austria, Belgium, Brazil, Canada, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India,

Cyprus.[100] While the *EU Mutual Assistance Directive* does not meet the international standard for EOI, the Netherlands and other EU Member States exchange all types of information in tax matters under that agreement.

389. The Netherlands' bilateral information exchange agreements cover its major trading partners as well as major financial centres. Its agreements cover 83 out of 103 Global Forum members and it has not refused to enter into an agreement for exchange of information with any Global Forum member. As the Netherlands already has agreements with most of its relevant partners, its priorities are focussed on updating its older agreements so as to bring the exchange of information provision to the international standard. It intends to expand its treaty network with African as well as South American countries and conclude more TIEAs. these efforts are reflected in the recent revision of treaties with Austria, Belgium, Luxembourg and Switzerland and the establishment of 26 TIEAs in the past 3 years.

390. It is recommended that the Netherlands revise its agreements to ensure that bank information can be exchanged with Israel, Morocco, the Republic of Korea, Thailand and Zambia.

391. The five most significant partners of the Netherlands where the Netherlands is the requesting state have been (in order): Germany, Belgium, United Kingdom, the Netherlands Antilles and Spain. The five most significant relationships where the Netherlands has been the requested state have been (in order): Belgium, Germany, Poland, France and Spain. The Netherlands exchanges information with these partners on regular basis. The Netherlands'

Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, New Zealand, Norway, the People's Republic of China, Poland, Portugal, the Republic of Korea, Romania, Russia, Saudi Arabia, the Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

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

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

partners, including France, Germany and Spain, have commented on the healthy EOI relationship they have with the Netherlands.

392. With regard to Caribbean Netherlands, the Netherlands is willing to provide its partners with information from the Caribbean Netherlands on a unilateral basis. And in future new agreements will specifically cover both the Netherlands and the Caribbean Netherlands.

393. The Global Forum has received inputs from various members of the Global Forum concerning their exchange of information experience with the Netherlands, commenting on the importance and efficacy of the Netherlands as an EOI partner.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendation	**Recommendation**
	The Netherlands should continue to develop its EOI network with all relevant partners and upgrade already existing treaties.

Phase 2 rating
To be completed once a representative subset of Phase 2 reviews have been completed.

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)

394. 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, countries with tax systems generally impose

strict confidentiality requirements on information collected for tax purposes. 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.

395. All DTCs and TIEAs signed by the Netherlands and the Caribbean Netherlands contain secrecy provisions ensuring that all the information exchanged is treated as secret. These secrecy provisions are primarily based on the rules of confidentiality prescribed in Article 26(2) of the OECD Model Tax Convention or Article 8 of the OECD Model TIEA. The wording in the DTCs varies but in substance provides protection to information exchanged to the same degree as information obtained under domestic laws.

396. With regard to disclosure of information to persons or authorities, the wording in most tax treaties follow the standard language used in Article 26(2) of the OECD Model Convention, however, the treaties with Bangladesh, Bosnia and Herzegovina, Bulgaria, the Czech Republic, France, Germany, Hungary, India, Indonesia, Israel, Korea, Kosovo, Malawi, Montenegro, Morocco, Nigeria, Serbia, the Slovak Republic, Spain, Thailand and Tunisia do not provide for provision of information to authorities dealing with prosecution matters in respect of taxes covered by the Convention.

397. Legal provisions regarding the duty of confidentiality apply to information provided by a competent authority and to information obtained during an enquiry. The duty of confidentiality under tax laws is broad and strict. It is forbidden for any person to disclose anything which comes to light or is divulged about the person or the affairs of another person during any activity performed for or in connection with the enforcement of the tax legislation (Art.67 GSTA).

398. Article 67 of the GSTA provides certain exceptions from the duty confidentiality:

- any statutory regulation obliges disclosure;
- it is determined by ministerial order that disclosure is necessary for proper performance of the public duties of an administrative body;
- disclosure is to the person to whom the information relates, insofar as this information has been provided by him or on his behalf; and
- in cases other than the aforementioned; the Minister of Finance may grant exemption from the duty of confidentiality.

399. These exceptions would be subject to the scope of disclosure of information as set out in the relevant DTC/TIEA. In the Netherlands, international treaties including tax treaties take precedence over any conflicting national law and enjoy priority over the Acts of Parliament and even over the

Constitution itself (para.21). Thus, any Ministerial Order which seeks to lift confidentiality in a way not authorised by the relevant DTC/TIEA would be invalid.

400. The Caribbean Netherlands laws contain similar provisions with regard to confidentiality.

401. Information will not be provided to a competent authority if the legislation of that competent authority's state does not impose on officers of the tax administration of that state a duty of confidentiality with regard to information coming to their attention during performance of the tax laws of that state (Art.14 NIAA).

402. The competent authority has established the necessary procedures ensuring the confidentiality of the information exchanged. The Netherlands authorities have confirmed that in no cases the information received by the Netherlands competent authority has been disclosed to any person other than permitted pursuant to the international confidentiality provisions as incorporated in the national confidentiality legislation.

403. The Netherlands' peers who have provided input to this review have not indicated that there has ever been a breach of confidentiality concerning their exchanges of information with the Netherlands. While the Netherlands has not yet exchanged information from the Caribbean Netherlands, it is expected that the Netherlands will ensure the confidentiality of information received in response to a request from the Caribbean Netherlands.

All other information exchanged (ToR C.3.2)

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

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
To be completed once a representative subset of Phase 2 reviews have been completed.

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)

405. All of the Netherlands' exchange of information agreements ensures that the Contracting States are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

406. The Netherlands' authorities can decline to exchange information on the grounds set out in Article 13 of the NIAA which among other things include: if public order of the Kingdom of the Netherlands dictates otherwise; or if providing the information would disclose a commercial, industrial or professional secret.

407. Article 26(3) of the OECD Model Taxation Convention and Article 7 of the OECD Model TIEA refer to the grounds on which a request can be declined by the requested State. The grounds for refusal stated in the domestic law of the Netherlands are in line with the standards.

408. The Netherlands may decline provision of information that would disclose professional secrets. The scope of the legal professional privilege available in the TIEAs signed by the Netherlands is similar to the Model TIEA and is consistent with the international standard. However, the term "professional secrets" is not defined in the DTCs and therefore, considering the provisions of Article 3(2) of the DTCs, this term would derive its meaning from the domestic laws of the Netherlands. The GSTA protects communication between a client and an attorney when the legal representative acts in his or her capacity as an attorney. There is some lack of clarity with respect to the scope of this privilege however (see Part B.1.5 of this report).

409. The Netherlands' peers who have provided input to this review have not indicated that they have ever had a concern related to the Netherlands authorities' EOI activities as relate to respect for the rights and safeguards of taxpayers and third parties, except that such rights cause delay in getting the information. It is too soon to determine whether in practice this could be a concern in requests concerning the Caribbean Netherlands.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
The Netherlands' tax treaties do not define the term "professional secret "and the scope of the term "professional secret "under the domestic laws of the Netherlands is not clearly consistent with the international standard.	It is recommended that the Netherlands restrict the scope of the protection under the term "professional secret "in its domestic laws so as to be in line with the standard for the purpose of agreements for exchange of information.

Phase 2 rating
To be completed once a representative subset of Phase 2 reviews have been completed.

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)

410. 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.

411. Before acting on the request, the competent authority of the Netherlands scrutinises the incoming requests based on the criteria of the international obligations as contained in the EOI agreement. It is determined whether the domestic law enables the Netherlands to gather the information requested and whether the request is comprehensible, if more information is needed this is requested. The purpose of the scrutiny is also to critically analyse the legal grounds for refusal available in the EOI agreement and domestic law and particularly the issue of reciprocity.

412. For the three year period 2008 to 2010, the Netherlands responded to 35% of requests within 90 days, to 18% of requests within 90-180 days,

to 24% of requests within 180-360 days and 23% of requests took more than 360 days. In September 2009 the CLO in Almelo assumed primary responsibility for the international exchange of information, previously conducted by the FIOD in Amsterdam, and the positions of regional liaison offices (RLOs) were created. Since that time the process of gathering and providing information to international partners has been reorganised and the emphasis has been on ensuring the quality of answers and the legal basis for collection and supply of requested information.

413. Starting September 2009, the CLO has endeavoured to improve the response times. The CLO initially focussed its attention on processing the older request and the backlog has recently been cleared. The CLO has adopted new procedures and has now set a two-month target for the tax inspector for responding to international requests. This is a continuous process of improvement and the CLO is now in a position to supply information in a more timely manner.

414. Some of the Netherlands' EOI partners have indicated that in some cases the Netherlands has either not yet provided the requested information or has provided it belatedly. The CLO has indicated that delays in providing the information occur under the following circumstances:

- when the request is received in a languages other than English, French, German (which the CLO can itself translate) or Netherlands;
- the Tax and Customs Administration concentrates its activities (audit and assessment process) mainly on recent tax years. As a consequence, taxable companies are inclined to archive their bookkeeping (administrative data) and underlying documents from earlier years. Treaty partners can have different taxation systems and their activities (and thus their EOI requests) may concentrate on less recent years. This means that the Netherlands' companies need more time to provide the requested information from their archives;
- most companies use a complex digital system for their bookkeeping and this system is subject to frequent software modifications. Requesting information from less recent years makes it harder to get the books and data digitally available;
- when the request concerns information which is very old and thus must be retrieved from archives. In such cases, the Netherlands often asks for additional information from the jurisdiction about the tax use of such old information;
- when an audit is required to be conducted to collect the requested information;

- when the concerned party lodges an objection to providing the information and objects to the correctness and completeness of the information.
- when a criminal investigation is being conducted;
- when the requested information is complicated, involving many parties and their transactions; and
- when the objection in the notification procedure is regarding non-exhaustion of the procedure in the requesting state or lack of taxation interest, as this involves requesting supplementary information from the jurisdiction.

415. Prior to the re-organisation of the competent authority and the creation of the RLO posts, work of the competent authority was looked after by the FIOD. During the re-structuring process, the FIOD had a shortage of manpower, which led to a backlog of old cases, which were dealt with by the new competent authority on a priority basis.

416. The CLO has access to the databases of the public bodies and the tax administration. If the request can be met out of the information available in these databases, the CLO desires to provide information at the earliest and in all such cases, the information is mostly provided within 90 days. As no notification procedure is required for provision of such information, it rarely gets delayed. If the information already available in the tax file of a taxpayer is sufficient to provide response, such information can be obtained quickly with the assistance of the RLO. Then in most of the cases the taxpayer has to be notified before the information can be provided to the requesting state. Some cases involving detailed inquiries from the taxpayers or complicated cases require an audit by the tax inspector and in such cases, the gathering of information takes time. The necessary notification procedure in some cases also contributes to the delay.

417. In all cases the Netherlands sends a confirmation of the receipt of the EOI request. Since January 2011 the CLO has implemented a new procedure under which a status report is sent to the requesting state in a case an answer cannot be provided within 90 days. Under this procedure the CLO will now more consistently update the requesting State about the situation where there is an ongoing (criminal) investigation in the Netherlands or where an objection or appeal against providing the information has been lodged.

418. According to the Netherlands' treaty partners that have provided input to this review, the responses received are invariably of high quality. Some partners have however commented on the delays caused by the notification and subsequent appeal procedure. They have also commented that the status updates are rarely provided, but according to the CLO now the updates are being provided and they have made efforts to keep partners informed of

developments. As noted previously, in Part B.2 of this report, it is recommended that the Netherlands examine the reasons of delays and improve the procedures to ensure the effective exchange of information.

Organisational process and resources *(ToR C.5.2)*

Resources

419. In the Ministry of Finance there are about 12 people responsible for the negotiation of DTCs and TIEAs for the Netherlands and the Caribbean Netherlands. Currently, the CLO, which is based in Almelo, consists of 49 persons, 29 of whom are responsible for mutual administrative assistance and 20 are responsible for accounts and administrative matters. These 29 persons work in areas dealing with matters relating to exchanges of information relating to VAT (11 persons), 9 persons look after exchanges of information relating to direct taxes and the other 9 look after exchanges of information relating to recovery of taxes.

420. In addition, the CLO relies on tax inspectors in the regions to collect requested information. The RLOs, in each of the 13 tax administrative regions, also carry out the notification procedure and prepare a draft of the response to the requesting State in case of requests from European Member States. Some regions have a RLO in which officers process requests for information on a full-time basis, whilst officers at other regions receiving fewer international requests for information are involved in these matters on a part-time basis.

421. The Tax and Customs Administration has issued instructions concerning the international exchange of information which outline the administrative processes and relevant legal matters. For example, the *Instructions for the Decentralisation of Direct Taxation* and the *Instructions for the Processing of Requests from the EU Member States*. These detailed instructions provide the guidance to all the persons involved in the gathering of information and providing the same to foreign authorities. No staff was transferred from the FIOD to the new CLO, but all the staff working at the CLO were trained on the job. The CLO organises various events in which all the persons involved in the EOI related work are regularly updated on the new developments in the field.

422. The CLO uses the WBY computer application to record all the incoming as well as outgoing requests for exchange of information. It also records the spontaneous provision of information (other than automatic exchange of information) to and from other states and the requests for special mutual assistance (such as the notification of foreign documents and requests for foreign officers to attend Tax and Customs Administration inquiries).

423. A unique identification number (HEF number) is assigned to all requests entered in WBY, which is used to track the current status of all issues relating to the request. The date on which follow-up actions are to be carried out is also recorded in WBY. It is possible to query the data in WBY for the purposes of a range of analyses, such as the outstanding requests (by jurisdictions and type of request) and the time taken in answering the completed requests (by request, or as averages). The WBY record contains information including the date of receipt of the request, the processing phase (the initiation of the tax investigation by the Tax Region officers, completion of investigation, the sending of the notification, objection, appeal, answer or sub-answer to the other state.) It also reveals the name of the officer processing the request, the number of reminders and the date on which the request for information is completed. The underlying documents can be traced in the hard copy file to assess the progress in the substance of the request, such as the elements of the objection/appeal, the actual information to be provided and the reason for long processing times in the Tax Regions.

424. The CLO also prepares a hardcopy file for each request which is identified by the unique HEF number and contains all correspondences including with the requesting or requested states and the internal Tax and Customs Administration correspondence. CLO also uses a "Deadline monitoring" system which includes references to all pending hard copy files. They are arranged in the sequence of the WBY date for action, to create a link between the WBY registration system and the actual underlying documents for each request. The deadline monitoring system is used to send the reminders of outstanding requests to all regions and states.

425. The CLO carries out a check for completeness and the legitimacy of the information planned to be provided to the requesting state. This check is part of the notification procedure and also verifies that the international exchange of information is in compliance with the domestic administrative law requirements. CLO measures the effectiveness of its performance by using the indicators for the response time and quality.

426. The quality of work of the exchange of information is reviewed with respect to three indicators: legitimacy of the provision of information; completeness of the information; and administrative law requirements.

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

427. There are no laws or regulatory practices in the Netherlands that impose additional restrictive conditions on exchange of information.

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.

Phase 2 rating	
To be completed once a representative subset of Phase 2 reviews have been completed.	
Factors underlying recommendation	**Recommendation**
The Netherlands is often not able to respond within 90 days to international requests for information in tax matters and only recently began systematically providing status updates to the requesting parties.	The Netherlands should ensure that its authorities respond to EOI requests in a timely manner, by providing the information requested within 90 days of receipt of the request, or if it has been unable to do so, to provide a status update.

Summary of Determinations and Factors Underlying Recommendations[101]

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 *(ToR A.1)*.		
Phase 1 Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Information on foreign partners of a limited partnership who are not earning income from the Netherlands or Caribbean Netherlands may not be available to tax authorities in the Netherlands or Caribbean Netherlands.	It is recommended that an obligation be established for limited partnerships in the Netherlands and the Caribbean Netherlands to keep identity information concerning all of their limited partners.
	There are some bearer shares in circulation in the Netherlands at present, but there are insufficient mechanisms in place that ensure the availability of information allowing for identification of the owners of bearer shares in companies limited by shares. There are insufficient mechanisms in place in the Caribbean Netherlands that ensure the availability of information on the owners of bearer shares.	The Netherlands should take necessary measures to ensure that mechanisms are in place to identify the owners of bearer shares in the Netherlands and in the Caribbean Netherlands, or should eliminate such bearer instruments.
	Foundations in the Netherlands and the Caribbean Netherlands are not systematically required to keep identity information concerning all beneficiaries.	An obligation should be established in both the Netherlands and the Caribbean Netherlands for foundations to keep identity information concerning all beneficiaries.

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

Determination	Factors underlying recommendations	Recommendations
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*.		
Phase 1 Determination: The element is in place	The precise nature of the accounting records and underlying documents to be maintained with respect to foreign trusts which have a trustee in the Netherlands or Caribbean Netherlands are not specified in law.	It is recommended that the nature of the accounting records and underlying documents to be maintained with respect to foreign trusts which have a trustee in the Netherlands or Caribbean Netherlands be clearly outlined.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
Banking information should be available for all account-holders *(ToR A.3)*.		
Phase 1 Determination: The element is in place		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*.		
The element is in place.	The scope of professional privilege in tax matters is not clear in the Netherlands and appears to extend beyond that provided for in the international standards.	It is recommended that the Netherlands clarify the scope of professional privilege for the purpose of the exchange of information in tax matters, to ensure it is consistent with the international standard.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*.		
Phase 1 Determination: The element is in place.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed	The notification and appeal process takes on average 10 to 18 weeks to complete before information is provided to the requesting jurisdiction.	The process for notification and appeal should be reviewed with a view to ensuring that it is compatible with effective international exchange of information in tax matters.

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*.		
Phase 1 Determination: The element is in place.	18 of the Netherlands' 114 agreements providing for international exchange of information in tax matters, in particular some older agreements, do not provide for exchange information to the international standard.[102] Only one of the 22 agreements covering the Caribbean Netherlands does not provide for exchange information to the international standard.	It is recommended that the Netherlands continues its program of renegotiating its older treaties with main trading partners to bring them in line with the international standard.
	Of the 28 information exchange agreements and 7 protocols concluded since January 2009, to date 23 have entered into force. In the Caribbean Netherlands, 12 out of 22 agreements are not yet ratified by the Netherlands.	The Netherlands should ensure the expeditious ratification of all signed EOI arrangements.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		

102. Bosnia and Herzegovina, Brazil, Bulgaria, the Czech Republic, Germany, Hungary, Ireland, Israel, Kosovo, Malawi, Montenegro, Morocco, Nigeria, People's Republic of China, the Philippines, the Republic of Korea, Serbia, Slovak Republic, Spain, Thailand, Tunisia and Zambia. The Netherlands does however have full exchange of information with seven of these partners (Bulgaria, the Czech Republic, Germany, Hungary, Ireland, Slovakia and Spain) under the EU Mutual Assistance Directive.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*.		
Phase 1 Determination: The element is in place		The Netherlands should continue to develop its EOI network with all relevant partners and upgrade already existing treaties.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*.		
Phase 1 Determination: The element is in place		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*.		
Phase 1 Determination: The element is in place.	The Netherlands' tax treaties do not define the term "professional secret "and the scope of the term "professional secret "under the domestic laws of the Netherlands is not clearly consistent with the international standard.	It is recommended that the Netherlands restrict the scope of the protection under the term "professional secret "in its domestic laws so as to be in line with the standard for the purpose of agreements for exchange of information.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*.		
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.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed	The Netherlands is often not able to respond within 90 days to international requests for information in tax matters and only recently began systematically providing status updates to the requesting parties.	The Netherlands should ensure that its authorities respond to EOI requests in a timely manner, by providing the information requested within 90 days of receipt of the request, or if it has been unable to do so, to provide a status update.

Annex 1: Jurisdiction's Response to the Review Report[103]

This annex is left blank because the Netherlands has chosen not to provide any material to include in it.

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

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

Multilateral agreements

The Netherlands is a party to the:

- *Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters,* which is currently in force with respect to 17 jurisdictions[104];
- *EU Council Directive 77/799/EEC* of 19 December 1977 (as amended) concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums.[105] This Directive came into force on 23 December 1977 and all EU members were required to transpose it into national legislation by 1 January 1979. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Cyprus[106], Czech

104. Azerbaijan, Belgium, Denmark, Finland, France, Georgia, Iceland, Italy, the Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Ukraine, the United Kingdom and the United States. In addition, Germany and Canada have signed the Convention.

105. A new Mutual Assistance Directive was adopted by the European Council on 15 February 2011 and will come into force on 1 January 2013.

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

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

Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom; and

- *EU Council Directive 2003/48/EC* of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.

Bilateral agreements for the Netherlands

(*see below for the agreements which apply to the Caribbean Netherlands*[107])

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force[108]
1	Albania	Double taxation convention (DTC)	22.07.2004	15.11.2005
2	Andorra	Taxation information exchange agreement (TIEA)	06.11.2009	01.01.2011
3	Anguilla	TIEA	22.07.2009	01.05.2011
4	Antigua and Barbuda	TIEA	02.09.2009	01.03.2010
5	Argentina	DTC	22.12.1996	11.02.1998
6	Armenia	DTC	31.10.2001	22.11.2002
7	Australia	DTC	17.03.1976	27.09.1976
8	Austria	DTC	01.09.1970	21.04.1971
		Protocol	08.09.2009	01.07.2010
9	Azerbaijan	DTC	22.09.2008	18.12.2009
10	Bahamas	TIEA	04.12.2009	01.12.2010
11	Bahrain	DTC	16.04.2008	24.12.2009
12	Bangladesh	DTC	13.07.1993	08.06.1994

107. Please note also that the Dutch authorities are willing to exchange information from the Caribbean Netherlands under all agreements in place for the Netherlands, even though such agreements do not formally cover the Caribbean Netherlands. This is expressly provided for in Article 8.124(2) of the BES Taxation Act.

108. * indicates that the agreement has been ratified by the Netherlands.

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
13	Barbados	DTC	28.11.2006	12.07.2007
		Protocol	27.11.2009	Not in force*
14	Belarus	DTC	26.03.1996	31.12.1997
15	Belgium	DTC	05.06.2001	31.12.2002
		Protocol	23.06.2009	Not in force*
16	Belize	TIEA	04.02.2010	01.01.2011
17	Bermuda	TIEA	08.06.2009	01.02.2010
18	Bosnia and Herzegovina[109]	DTC	22.02.1982	06.02.1983
19	Brazil	DTC	08.03.1990	22.11.1991
20	British Virgin Islands	TIEA	11.09.2009	Not in force
21	Bulgaria	DTC	06.07.1990	11.05.1994
22	Canada	DTC	27.05.1986	21.08.1987
23	Cayman Islands	TIEA	08.07.2009	29.12.2009
24	China	DTC	13.05.1987	05.03.1988
25	Chinese Taipei	DTC	27.02.2001	16.05.2001
26	Cook Islands	TIEA	23.10.2009	Not in force*
27	Costa Rica	TIEA	29.03.2011	Not in force
28	Croatia	DTC	23.05.2000	06.04.2001
29	Czech Republic[110]	DTC	04.03.1974	05.11.1974
30	Denmark	DTC	01.07.1996	06.03.1998
31	Dominica	TIEA	11.05.2010	Not in force
32	Egypt	DTC	21.04.1999	20.05.2000
33	Estonia	DTC	14.03.1997	08.11.1998
34	Finland	DTC	28.12.1995	20.12.1997
35	Former Yugoslav Republic of Macedonia	DTC	11.09.1998	21.04.1999
36	France	DTC	16.03.1973	29.03.1974

109. The Netherlands continues to apply the agreement established with the Former Socialist Federal Republic of Yugoslavia to Bosnia and Herzegovina.
110. The Netherlands continues to apply the agreement established with Czechoslovakia to the Czech Republic.

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
37	Georgia	DTC	21.03.2002	21.02.2003
38	Germany	DTC	16.06.1959	18.09.1960
39	Ghana	DTC	10.03.2008	12.11.2008
40	Gibraltar	TIEA	23.04.2010	Not in force
41	Greece	DTC	16.07.1981	17.07.1984
42	Grenada	TIEA	18.02.2010	Not in force
43	Guernsey	TIEA	25.04.2008	11.04.2009
44	Hong Kong, China	DTC	22.03.2010	Not in force
45	Hungary	DTC	05.06.1986	25.09.1987
46	Iceland	DTC	25.09.1997	27.12.1998
47	India	DTC	30.07.1988	21.01.1989
48	Indonesia	DTC	29.01.2002	31.12.2003
49	Ireland	DTC	11.02.1969	12.05.1970
50	Isle of Man	TIEA	12.10.2005	24.07.2006
51	Israel	DTC	02.07.1973	09.09.1974
52	Italy	DTC	08.05.1990	03.10.1993
53	Japan	DTC	03.04.1970	23.10.1970
		Protocol	25.08.2010	Not in force
54	Jersey	TIEA	20.06.2007	01.03.2008
55	Jordan	DTC	30.10.2006	16.08.2007
56	Korea, Republic of	DTC	25.10.1978	17.04.1981
57	Kosovo[111]	DTC	22.02.1982	06.02.1983
58	Kuwait	DTC	29.05.2001	23.04.2002
59	Kyrgyzstan	DTC	21.11.1986	27.09.1987
60	Latvia	DTC	14.03.1994	29.01.1995
61	Liberia	TIEA	27.05.2010	Not in force
62	Liechtenstein	TIEA	10.11.2009	01.12.2010
63	Lithuania	DTC	16.06.1999	31.08.2000
64	Luxembourg	DTC	08.05.1968	20.10.1969
		Protocol	29.05.2009	01.07.2010

111. The Netherlands continues to apply the agreement established with the Former Socialist Federal Republic of Yugoslavia to Kosovo.

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
65	Malawi	DTC	18.06.1969	30.01.1970
66	Malaysia	DTC	07.03.1998	02.02.1989
		Protocol	04.12.2009	19.10.2010
67	Malta	DTC	18.05.1977	09.11.1977
68	Marshall Islands	TIEA	14.05.2010	Not in force
69	Mexico	DTC	27.09.1993	13.10.1994
		Protocol	11.12.2008	31.12.2009
70	Moldova	DTC	03.07.2000	01.06.2001
71	Monaco	TIEA	11.01.2010	01.12.2010
72	Mongolia	DTC	08.03.2002	17.10.2003
73	Montenegro[112]	DTC	22.02.1982	06.02.1983
74	Montserrat	TIEA	10.12.2009	Not in force*
75	Morocco	DTC	12.08.1977	10.06.1987
76	New Zealand	DTC	15.10.1980	18.03.1981
77	Nigeria	DTC	11.12.1991	09.12.1992
78	Norway	DTC	12.01.1990	31.12.1990
79	Oman	DTC	05.10.2009	Not in force
80	Pakistan	DTC	24.03.1982	04.10.1982
81	Panama	DTC	06.10.2010	Not in force
82	The Philippines	DTC	09.03.1989	20.09.1991
83	Poland	DTC	13.02.2002	18.03.2003
84	Portugal	DTC	20.09.1999	11.08.2000
85	Qatar	DTC	24.04.2008	25.12.2009
86	Romania	DTC	05.03.1998	29.07.1999
87	Russia	DTC	16.12.1996	27.08.1998
88	Saint Kitts and Nevis	TIEA	02.09.2009	29.11.2010
89	Saint Lucia	TIEA	02.12.2009	31.03.2011
90	Saint Vincent and the Grenadines	TIEA	01.09.2009	31.03.2011
91	Samoa	TIEA	14.09.2009	Not in force

112. The Netherlands continues to apply the agreement established with the Former Socialist Federal Republic of Yugoslavia to Montenegro.

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
92	San Marino	TIEA	27.01.2010	01.01.2011
93	Saudi Arabia	DTC	13.10.2008	01.12.2010
94	Serbia[113]	DTC	22.02.1982	06.02.1983
95	The Seychelles	TIEA	04.08.2010	Not in force
96	Singapore	DTC	19.02.1971	31.08.1971
		Protocol	25.08.2009	01.05.2010
97	Slovak Republic[114]	DTC	04.03.1974	05.11.1974
98	Slovenia	DTC	30.06.2004	31.12.2005
99	South Africa	DTC	10.10.2005	28.12.2008
		Protocol	08.07.2008	24.12.2008
100	Spain	DTC	16.06.1971	20.09.1972
101	Sri Lanka	DTC	17.11.1982	24.01.1984
102	Surinam	DTC	25.11.1975	13.04.1977
103	Sweden	DTC	18.06.1991	12.08.1992
104	Switzerland[115]	DTC	26.02.2010	Not in force*
105	Thailand	DTC	11.09.1975	09.06.1976
106	Tunisia	DTC	16.05.1995	15.12.1995
107	Turkey	DTC	27.03.1986	30.09.1998
108	Turks and Caicos Islands	TIEA	22.07.2009	Not in force
109	Uganda	DTC	31.08.2004	10.09.2006
110	Ukraine	DTC	24.10.1995	02.11.1996
111	United Arab Emirates	DTC	08.05.2007	02.06.2010
112	United Kingdom	DTC	26.09.2008	25.12.2010
113	United States	DTC	18.12.1992	31.12.1993
		Protocol	08.03.2004	28.12.2004
114	Uzbekistan	DTC	18.10.2001	27.05.2002

113. The Netherlands continues to apply the agreement established with the Former Socialist Federal Republic of Yugoslavia to Serbia.
114. The Netherlands continues to apply the agreement established with Czechoslovakia to the Slovak Republic.
115. The Netherlands also has a DTC with Switzerland signed on 12 November 1951, however, this does not provide for exchange of information in tax matters.

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
115	Venezuela	DTC	29.05.1991	11.12.1997
116	Vietnam	DTC	24.01.1995	25.10.1995
117	Zambia	DTC	19.12.1977	09.11.1982
118	Zimbabwe	DTC	18.05.1989	21.04.1991

Bilateral agreements for the Caribbean Netherlands

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
1	Antigua & Barbuda	TIEA	29.10.2009	Not in force
2	Australia	TIEA	01.03.2007	04.04.2008
3	Bermuda	TIEA	28.09.2009	Not in force
4	British Virgin Islands	TIEA	11.09.2009	Not in force
5	Canada	TIEA	29.08.2009	01.01.2011
6	Cayman Island	TIEA	29.10.2009	Not in force
7	Denmark	TIEA	10.09.2009	01.06.2011
8	Faroe Islands	TIEA	10.09.2010	Not in force
9	Finland	TIEA	10.09.2009	01.06.2011
10	France	TIEA	10.09.2009	Not in force
11	Greenland	TIEA	10.09.2009	Not in force
12	Iceland	TIEA	10.09.2009	Not in force
13	Mexico	TIEA	01.09.2009	04.02.2011
14	New Zealand	TIEA	01.03.2007	02.10.2008
15	Norway	DTC	13.11.1989	17.12.1990
		Protocol	10.09.2009	01.09.2011
16	Saint Kitts & Nevis	TIEA	11.09.2009	Not in force
17	Saint Lucia	TIEA	29.10.2009	Not in force
18	Saint Vincent and the Grenadines	TIEA	28.09.2009	Not in force
19	Spain	TIEA	10.06.2008	27.01.2010
20	Sweden	TIEA	10.09.2009	20.04.2011
21	United Kingdom	TIEA	10.09.2010	Not in force
22	United States	TIEA	17.04.2002	22.03.2007

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

The Netherlands

Commercial laws

Civil Code: Books 2, 3 and 7A

Commercial Register Act 2007

Commercial Register Decree 2008

Act on Supervision of Trust Offices

Regulation on Sound Operational Management Relating to the Act on the Supervision of Trust Offices

Tax laws

General State Taxes Act (GSTA)

Netherlands International Assistance (Levying of Taxes) Act

Banking laws

Act of 28 September 2006, on Rules regarding the Financial Markets and their Supervision (Act on Financial Supervision)

Decree on Disclosure of Major Holdings and Capital Interests in Issuing institutions (AmvB9) of 12 October 2006

AML laws

Money Laundering and Terrorist Financing Prevention Act

Explanatory Memorandum to AML law

Others

Personal Data Protection Act

General Administrative Law Act

Act of 31 October 1991 – Regulations Governing Public Access to Government Information

Instruction for decentralisation of direct taxes

Standard organisation of Regional Liaison Offices

General Instruction Mutual Administrative Assistance Direct Taxes

Instructions for processing of requests from EU Member States

Instructions for tax authority/bank information – Decision of 28 January 2011

Summary of judgement of the Amsterdam Court of Appeal (civil section) of 13 November 2003, V-N 2004, 7.8

The Caribbean Netherlands

Commercial laws

Books 2 and 3 of the Civil Code (Law of 27 September 2010, Official Journal 2010, 494)

Law on Business register (Law of 22 September 2010, Official Journal 2010, 434)

Royal Decree of 15 September 2010, Official Journal 2010, 447 on business registers

Tax laws

Act of 16 December 2010 adopting the BES Taxation Act [Wet Belastingwet BES]

Banking and financial regulation laws

Law on Supervision of Banking and Credit Institutions 1994 BES

Law on Supervision of Trust Service Providers BES

AML laws

BES Financial Services Identification Act (Staatsblad 2010, nr.464, 1 October 2010)

BES Reporting of Unusual Transactions Act (Staatsblad 2010, nr.465, 1 October 2010)

BES Cross –Border Money Transports Act (Staatsblad 2010, nr.462, 1 October 2010)

Annex 4: People Interviewed During On-Site Visit

Ministry of Finance

Deputy Director General, Tax and Customs Policy and Legislation

Director, International Tax Policy and Legislation

International Tax Counsellor, International Tax Policy and Legislation Directorate

Senior Policy Advisor, International Tax Policy and Legislation Directorate

Senior Policy Advisor, Exchange of Information, DG of the Tax and Customs Administration

Senior Policy advisor, Direct Tax Directorate, Former Law and Recovery Division

Policy advisor, International Tax Policy and Legislation Directorate

Policy Advisor, Institutional Policy and integrity Unit, Financial Markets Policy Directorate

Central Liaison Office (CLO)

Deputy Director General of the Tax and Customs Administration

Head of the CLO in Almelo

Co-ordinator, Exchange of Information

Local Tax Offices

Tax Officer, Tax Office Rotterdam EOI Division

Tax Officer, Tax Office Holland – Noord EOI Matters

Tax Office, Amsterdam – Bank Matters

Chamber of Commerce

Legal Advisor, Department of Legislation and Legal Affairs

Information Manager Trade Register

Ministry of Economic Affairs, Agriculture and Innovation

Legal Advisor

Ministry of Security and Justice

Legal Advisor, Directorate for Legislation, Private Law Section

Financial Information and Investigation Service (FIOD)

Senior Policy Advisor, Utrecht

Senior Policy Advisor

Policy Advisor

Central Bank

Examining Officer, Trust and Payments

Bureau of Financial Supervision

Director, BFS

Financial Intelligence Unit

Senior Policy Advisor

Policy Advisor

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, COMBINED: PHASE 1 + PHASE 2

THE NETHERLANDS

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.

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