GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings

NEW ZEALAND



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: New Zealand 2013

COMBINED: PHASE 1 + PHASE 2,
INCORPORATING PHASE 2 RATINGS

November 2013
(reflecting the legal and regulatory framework
as at December 2010)



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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 120 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 ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

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

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in New Zealand 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 whether that information can be effectively exchanged with its exchange of information partners.

2. New Zealand has considerable experience exchanging information in all forms to and from tax treaty partners. New Zealand signed its first agreement providing for exchange of information for tax purposes in 1947. New Zealand currently has a network of 37 double tax conventions (DTCs), 35 of which are in force, primarily with its major trading and investment partners. The DTCs all contain exchange of information articles. Apart from a few exceptions, the articles generally follow Article 26 of the OECD *Model Tax Convention* wording that prevailed at the time each DTC was entered into. New Zealand also has an emerging network of Tax Information Exchange Agreements (TIEAs). To date, 18 TIEAs have been signed, four of which are in force. All of New Zealand's TIEAs are based on and closely follow the OECD *Model TIEA*.

3. New Zealand fully endorses the implementation of the international standards for transparency and exchange of information for tax purposes. As an OECD country, New Zealand has been an active member of the Global Forum on Transparency and Exchange of Information for Tax Purposes since its creation. New Zealand has no domestic law restrictions based on dual criminality or domestic tax interest principles. Moreover, New Zealand does not have bank secrecy rules. A number of New Zealand judicial decisions have confirmed aspects of New Zealand's exchange of information law and practice. In taxing residents generally on their worldwide incomes, New Zealand considers transparency and information sharing to be essential to tax compliance management.

4. The main business structures used in New Zealand are companies, partnerships and trusts. New Zealand relies primarily on a centralised system of company registration, business record keeping requirements, tax filing and disclosure requirements, and the investigative powers of its tax authority to ensure that information concerning the legal ownership and control of relevant legal entities and arrangements is readily accessible to New Zealand's competent authority in a timely fashion. New Zealand's legal framework also ensures that bank information and accounting records are effectively maintained and accessible.

5. Some improvements to New Zealand's legal and regulatory framework may be needed, for example, to ensure that ownership and identity information is available for owners of companies where shares are held by nominees. In addition, while enforcement provisions exist to ensure the accuracy of information provided to the Registrar of Companies, they may not necessarily be effective for companies with non-resident directors. New Zealand is in the process of taking steps that may address such issues. These include new anti-money laundering legislation that, when effective, will apply to trust and company service providers and will require the maintenance of information on the beneficial ownership and control of certain legal entities and arrangements. New Zealand is also considering a proposal that will require all New Zealand companies to have either one New Zealand-resident director or a local agent. The Global Forum will monitor the developments during New Zealand's follow-up evaluation as a factor of New Zealand's compliance with regard to the standards of transparency and exchange of information.

6. New Zealand's tax authority has broad powers to obtain bank, ownership, identity, and accounting information and have measures to compel the production of such information. During the on-site visit, the assessment team found that New Zealand's institutional framework facilitates effective access to and provision of information requested by competent authorities of other jurisdictions. Over the last three years there have been no cases where New Zealand has not provided information requested by exchange of information partners due to difficulties in obtaining requested information. Application of rights and safeguards in New Zealand do not restrict the scope of information that the tax authority can obtain.

7. Due to the extensive information holdings by New Zealand's tax authority, including access to New Zealand's company registries, many exchange of information requests can be responded to directly by New Zealand's competent authority (Inland Revenue Department) without the involvement of regional field offices or using the tax authority's various access powers. New Zealand recently established performance standards that ensure requests are responded to in a timely and consistent manner.

8. New Zealand has an excellent bilateral relationship with its major exchange of information partners, in particular with Australia – its largest trading partner. New Zealand considers the negotiation of a DTC or a TIEA as the first step in a long-term partnership. Most of New Zealand's significant exchange of information and trading partners provided input to this review. The information received confirms that, notwithstanding some minor imperfections, New Zealand's practices with respect to exchange of information in tax matters are of a very high standard.

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

1.. This report reflects the legal and regulatory framework as at the date indicated on page 1 of this publication. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.

Introduction

Information and methodology used for the peer review of New Zealand

10. The assessment of the legal and regulatory framework of New Zealand 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, 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 December 2010, other information, explanations and materials supplied by New Zealand during the on-site visit that took place on 9-11 November 2010, and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of relevant New Zealand government agencies, including the Inland Revenue Department, the Ministry of Economic Development (Company Registrar), the Ministry of Justice and the Financial Intelligence Unit (see Annex 4).

11. The Terms of Reference break 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 review assesses New Zealand'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 New Zealand'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 made concerning New Zealand's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect New Zealand's overall level of compliance with the standards.

12. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mrs. Alexandra Storckmeijer Sansonetti of the Swiss Federal Tax Administration, International Affairs Division; Mr. Kamlesh Varshney of the Indian Ministry of Finance, Department of Revenue; and Mr. Stewart Brant from the Global Forum Secretariat.

13. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. The assignment of ratings was also conducted at a different time from those reviews, and the circumstances may have changed in the meantime. Readers should consult Annex 1 for information on changes that have occurred.

Overview of New Zealand

14. New Zealand is located in the south-western Pacific Ocean, approximately 2 000 kilometres southeast of Australia. New Zealand comprises two main islands, the North Island and the South Island, separated by the Cook Strait, and a number of smaller outlying islands. The total land area is approximately 268 000 square kilometres. The capital city, Wellington, is located at the bottom of the North Island. The population of New Zealand is approximately 4.4 million.[2] Approximately 30% of New Zealand's population lives in Auckland, the largest city in New Zealand.

15. New Zealand has a small open economy. It can be described as a mixed economy that operates on free market principles. It has sizeable manufacturing and service sectors complementing an efficient agricultural sector. Exports of goods and services account for around 28% of GDP[3] which was approximately 187.8 billion[4] New Zealand dollars (EUR 106.6 billion) in 2009. New Zealand's major trading partners are Australia, the United States, Japan, the United Kingdom, and the Peoples' Republic of China. It also has significant exports to other countries in Asia that have risen significantly in recent years. New Zealand's currency is the New Zealand dollar (NZD) (NZD 1.761 = EUR 1 as at 8 December 2010).[5]

2. 2010 figures. Statistics New Zealand, www.stats.govt.nz/.
3. 2010 figures. Statistics New Zealand, www.stats.govt.nz/.
4. 2010 figures. Statistics New Zealand, www.stats.govt.nz/.
5. www.xe.com/.

General information on legal system and the taxation system

16. New Zealand is a constitutional monarchy with a parliamentary democracy. The head of state is Queen Elizabeth II. The Queen's personal representative in New Zealand is the Governor-General. By convention, the Governor-General is bound, with rare exception, to act on the advice of Ministers who have the support of the House of Representatives. The Prime Minister of New Zealand is New Zealand's head of government. The system of Government is based on the Westminster model which provides for a separation of powers between the Legislature, the Executive and the Judiciary:

- the **Legislature** (the New Zealand Parliament) makes laws by examining and debating Bills which become law when passed. The Parliament comprises one chamber, the House of Representatives. It is made up of the Members of Parliament and Select Committees;
- the **Executive** initiates and administers the law by deciding policy, drafting Bills and administering Acts. It is made up of Ministers of the Crown and government departments; and
- the **Judiciary** applies the law by hearing and deciding cases. It is made up of judges and judicial officers who, by constitutional principle, are independent of the Executive and the Legislature.

17. New Zealand has no separately represented sub-national entities such as provinces, states or territories, apart from local government (city and district councils, and regional councils). A local government has the power to make bylaws affecting its area, but may be overruled by the judiciary if it exceeds its powers (*Local Government Act* 2002 and *Bylaws Act* 1910). This is in contrast to central government; when the legislature passes legislation it may not be overruled by the judiciary.

18. As a former colony of Britain, New Zealand inherited the English system of common law.

19. The Court structure consists of (in order of precedence) the Supreme Court of New Zealand,[6] the New Zealand Court of Appeal, the High Court and over 60 regional District Courts. The Taxation Review Authority (established under the *Taxation Review Authorities Act* 1994) is a specialised tribunal for hearing tax matters. Appeals from this tribunal are generally made, in the first instance, to the High Court. Decisions of higher Courts on

6. The Judicial Committee of the (British) Privy Council was, until recently, the highest Court in New Zealand's hierarchy. However, the *Supreme Court Act* (2003) abolished appeals to the Privy Council and set up as New Zealand's highest Court, the Supreme Court of New Zealand. No new appeals to the Privy Council can be brought from decisions of the New Zealand Courts after 31 December 2003.

issues of law are generally binding on lower Courts. Legal counsel and judges frequently refer to analogous case law from the United Kingdom and other Commonwealth jurisdictions; such case law is not binding precedent, but can be highly persuasive.

20. All explicit taxation rules in New Zealand are contained in legislation passed by the New Zealand Parliament. However, and as a matter of constitutional principle, the following lists, in order of precedence, the hierarchy of laws in New Zealand:

- statutes of the New Zealand Parliament (*e.g.* the *Income Tax Act* (2007));
- sub-delegated enactments such as regulations and Orders in Council which are authorised by enactments, but in principle authorised by Ministers of the Crown (*e.g.* the *Taxation Review Authority Regulations* (1998));
- decisions of the Courts of New Zealand concerning the interpretation of statutes and regulations;
- the New Zealand common law, much of which is derived from United Kingdom law, and is the result of case law decided by the Courts (examples of where non-tax general law can intersect with taxation law include the common law relating to the law of trusts and contracts); and
- guidelines, rulings or other assistance provided by Government departments such as Inland Revenue (these have no formal legal status but are issued regularly and cover a very wide range of interpretative and procedural areas).

21. As in most other Commonwealth jurisdictions, treaties cannot be directly applicable or self-executing. Where a proposed treaty action will create obligations for New Zealand that are inconsistent with existing domestic law, that law must be amended before New Zealand becomes a party.

The tax system

22. Under section 22 of the *Constitution Act* (1986), taxes may only be levied by or under an Act of Parliament. The general administration of taxes in New Zealand is governed by the *Tax Administration Act* (1994). However, taxes are imposed by means of separate, dedicated Acts. New Zealand taxes include an income tax, a goods and services tax (GST), excise taxes and certain duties (such as customs duties, gift duty,[7] cheque duty and gaming

7. The Government introduced a Bill to Parliament in November 2010 which, when enacted, will abolish gift duty.

duty). The Inland Revenue Department administers all of these taxes (except for excise taxes, custom duties, and GST on imports which are administered by the New Zealand Customs Service).[8] The various Acts that comprise the tax legislation administered by Inland Revenue are referred to as "the Inland Revenue Acts", and these are listed in a Schedule appended to the *Tax Administration Act*.[9]

23. Broadly, the statutory tax collection powers and functions are conferred in the first instance on the Commissioner of Inland Revenue, who may then delegate those powers and functions to officers of the Inland Revenue Department. Inland Revenue reports to the Minister of Revenue. However, the Commissioner has a role that is statutorily independent of the Minister (the statutory powers and functions conferred on the Commissioner must be exercised in his or her own right and not as delegate or agent of Ministers[10]).

24. All income tax is imposed under the *Income Tax Act* (2007). The rules for determining taxable income are generally the same for both individuals and companies – residents are taxed on their worldwide income, but non-residents are taxable only on their New Zealand sourced income. The tax year for both individuals and companies is 1 April to 31 March,[11] but non-standard balance dates can be applied for (*e.g.* for a subsidiary to match the balance date of its parent). The company tax rate was reduced from 30% to 28% for income years commencing on or after 1 April 2011. Individuals are taxed at progressive rates which, from 1 April 2011 will range from 10.5%, on the first dollar earned, to 33%, which is the top marginal rate. Tax for salary and wage earners is generally deducted at source under a system referred to as "PAYE" or "Pay As You Earn". For administrative purposes, all taxpayers (whether individual or non-individual) are allocated a unique tax file number, known as an "Inland Revenue Department (IRD) Number".

25. The tax base is broad, but New Zealand generally does not tax capital gains (with some exceptions, such as capital gains from loan arrangements or from trading in "capital" items). There are no export or research and

8. In addition to the administration of the tax system, Inland Revenue provides advice on tax policy to Ministers and is responsible for drafting all tax legislation. Inland Revenue has other roles, including a number of social policy functions.
9. The *Local Government (Rating) Act* (2002) gives local governments the power to levy "rates" on land. Local body rates in New Zealand are generally thought of as a charge for services rather than a tax. The definition of "tax" at section 3 of the *Tax Administration Act* 1994 does not include rates.
10. First report of the *Working Party on the Re-organisation of the Income Tax Act 1976,* July 1993 at ch.3.
11. The New Zealand Government's fiscal year, by contrast, runs from 1 July to 30 June.

development incentives or investment holidays in the New Zealand tax system. There are a number of concessionary rules, however, that pertain to particular activities, such as mining, farming, forestry and films. There are also some concessionary rules for venture capital investment into New Zealand. An individual who becomes resident for tax purposes, having previously been non-resident for at least 10 years, will enjoy a four year exemption from taxation of most categories of foreign-sourced income (provided they satisfy the "transitional resident" criteria). There are no allowances for individuals, but some tax credits are allowed – such as for foreign taxes paid or for charitable donations. There are also tax credits provided for taxpayers with children. These abate with income. As a result of these tax credits, some individuals are net recipients under the income tax system rather than net payers.

26. Companies are resident in New Zealand for tax purposes if they are incorporated or have their head office or centre of management in New Zealand. They are also resident if control of the company by its directors is exercised in New Zealand.

27. Tax is paid at the company level, and again at the shareholder level when profits are distributed. A full imputation system operates to prevent double taxation by providing that a credit for the company tax paid is allowed against the shareholder's tax liability. Imputation credits can only be claimed by resident shareholders for New Zealand taxes paid. However, imputation credits can also be of value to non-resident shareholders.[12]

28. New Zealand tax law features many rules that are common amongst OECD member countries, such as controlled foreign company rules and a consolidation regime for companies. New Zealand's tax legislation also includes both a general anti-avoidance rule and a number of specific anti-avoidance regimes (such as thin capitalisation and transfer pricing rules).

29. GST is imposed under the *Goods and Services Tax Act* (1985). GST is a value added tax based on the standard European model, but with a single rate of tax and few exemptions. The tax rate rose to 15% on 1 October 2010, having previously been 12.5%. New Zealand does not have any wealth taxes or taxes on capital.[13]

12. By virtue of a "supplementary dividend" mechanism in the income tax legislation (*Income Tax Act* ss. LP 1 – LP 10).
13. An Act is currently before Parliament to abolish gift duty. Local body rates levied on land are generally not considered a tax.

Overview of the financial sector and relevant professions

30. New Zealand is not a major financial centre. The majority of financial activities are domestic. Australian and other foreign banks dominate New Zealand's financial sector. The New Zealand financial system comprises 19 registered banks, and a number of non-bank deposit takers (consisting of more than 100 finance companies, 10 building societies and over 41 credit unions), life insurers and friendly societies. The registered banks, which had a total of NZD 344 billion in assets as at June 2008, are the dominant participants in the sector. The share of the sector held by finance companies and building societies that provide deposit taking and lending services is NZD 18 billion in assets held.

31. New Zealand has one registered exchange, the New Zealand Exchange Limited (NZX), which operates the securities market. As at 31 March 2009, there were 232 listed issuers with a total market capitalisation of NZD 57.40 billion. NZX participants, also called brokers, provide services including investment advising and trading services to investors, and securities issuance and underwriting to issuers.

32. The *Financial Service Providers (Registration and Dispute Resolution) Act* (2008) requires all providers of financial services in New Zealand to be registered and members of a dispute resolution scheme. It also requires all controlling owners, senior managers and directors (or their equivalent) to meet negative assurance criteria with respect to reviews of criminal records.

33. The *Financial Advisers Act* (2008) requires financial advisers to meet standards for competence, professional conduct, and disclosure and to be accountable for the quality of advice they give to clients. In general, advisers who give advice or undertake investment transactions on products such as securities, and all people who provide financial planning services, must be authorised by the Securities Commission which has supervisory responsibility for issuers of securities, collective investment schemes, brokers, financial advisers, trustee companies and futures dealers.

Exchange of information for tax purposes

34. New Zealand has considerable experience exchanging information in all forms to and from tax treaty partners. New Zealand signed its first agreement providing for exchange of information for tax purposes in 1947, with the United Kingdom. That, and a number of subsequent agreements, have since been terminated and replaced, leaving a 1963 agreement with Japan as the oldest agreement still in force. New Zealand currently has a network of 37 double tax conventions (DTCs), 35 of which are in force, primarily with its major trading and investment partners. The DTCs all contain exchange

of information articles. Apart from a few exceptions, the articles generally follow Article 26 of the OECD *Model Tax Convention* wording that prevailed at the time each DTC was entered into.

35. New Zealand also has an emerging network of Tax Information Exchange Agreements (TIEAs). To date, 18 TIEAs have been signed, four of which are in force. All of New Zealand's TIEAs are based on and closely follow the OECD *Model TIEA*.

36. Inland Revenue is the Government agency responsible for administering New Zealand's arrangements for exchange of information for tax purposes. Other agencies generally have no involvement.

Recent developments

37. New Zealand is a member of both the Financial Action Task Force (FATF) and the Asia-Pacific Group on Money Laundering (APG), and has recently been the subject of an extensive review of its anti-money laundering / combating financing of terrorism (AML/CFT) regime and the legal framework that underpins it. Overall, the FATF Mutual Evaluation Report of 16 October 2009[14] found New Zealand's system to be "quite robust" (paragraph 11). However, the report identified a number of deficiencies and made recommendations for addressing those deficiencies. Some of the deficiencies that were identified are relevant to New Zealand's framework for transparency and exchange of information for tax purposes.

38. In particular, the report notes that there are essential gaps in the customer due diligence obligations that apply to financial institutions – such as the lack of a legal requirement for such institutions to have measures in place to identify the beneficial owner (paragraph 20). Similarly, the report notes that the registration system for legal persons contains useful information about the legal ownership of domestic legal persons, and the legal control of both domestic and overseas legal persons, but contains no information about the beneficial ownership and control of legal persons (paragraph 37).

39. Reforms are currently in progress in response to these recommendations. In particular, the *Anti-Money Laundering and Countering Financing of Terrorism Act* (2009) (*AML/CFT Act*) was enacted on 16 October 2009. This new Act sets out to achieve compliance with the international AML/CFT standards. Coverage under the *AML/CFT Act* is expected to commence in the first quarter of 2013. It was explained by New Zealand that the Act proposes to include (by Regulation) company and trust service providers within

14. Accessible online at: www.fatf-gafi.org/dataoecd/31/24/43920251.pdf.

coverage of the Act. Further, it was explained that "enhanced due diligence" will apply for customers that are trusts or nominees.

40. In addition, New Zealand's Government recently announced its intention to tighten the requirements around company directors and company registration. The main change will require all New Zealand companies to have either one New Zealand-resident director or a local agent.

Compliance with the Standards

A. Availability of Information

Overview

41. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority[15] may not be able to obtain and provide it when requested. This section of the report describes and assesses New Zealand's legal and regulatory framework for availability of information. It also assesses the implementation and effectiveness of this framework.

42. Information received from partner jurisdictions with an exchange of information relationship with New Zealand, as well as quantitative and qualitative information received from New Zealand, indicate that New Zealand actively exchanges bank, ownership, and identity information and accounting records. Based on peer input received, it is clear that New Zealand's competent authority has been able to provide such information for all types of legal

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

entities and arrangements in response to specific requests for exchange of information.

43. The main business structures used in New Zealand are companies, partnerships and trusts. New Zealand relies primarily on a centralised system of company registration, corporate record keeping requirements, and the investigative powers of New Zealand's Inland Revenue Department (Inland Revenue) to ensure the maintenance of information on the legal ownership of companies. All New Zealand companies are subject to the provisions of the *Companies Act*, which establish the statutory office of the Registrar of Companies (the New Zealand Companies Office). Bearer shares are prohibited under New Zealand law.

44. There is no specific requirement in the *Companies Act* for nominee shareholders to maintain ownership and identification information in respect of persons for whom they act as legal owners. However, New Zealand authorities report that such information should be held as a consequence of the general fiduciary obligation owed by the nominee to the beneficial owner. In addition, if a company acts as a nominee shareholder, it must retain records that correctly record and explain the transactions of the company. This would include any trust agreements that the company has entered into. Similarly, if individuals act as nominee shareholders, then their ordinary business records kept for tax purposes should record the details of the transactions by which the individual agreed to become a trustee.

45. Overseas companies (companies incorporated outside of New Zealand) conducting business in New Zealand are required to register with the Companies Office. They are not, however, required to disclose ownership information as part of the registration process and tax returns typically do not contain such information. However, foreign incorporated but New Zealand resident companies need to maintain information about their shareholders to meet their tax obligations. In particular, shareholding information is required to be maintained in order to assess: whether income tax losses can be carried forward to future income years; whether income tax losses can be offset to other group companies; whether imputation credits can be carried forward and distributed; whether thin capitalisation interest denials are required; and whether other entities are associates. New Zealand's self-assessment tax regime is buttressed by an audit programme which routinely requires the provision of shareholder information to confirm compliance with these various tax law provisions.

46. Information is available to New Zealand's competent authority that identifies the partners in any partnership that has income, deductions or credits for New Zealand tax purposes, carries on business in New Zealand, or is a limited partnership formed under New Zealand law. Such partnerships are obliged to provide an annual partnership return to Inland Revenue identifying all partners in the partnership. In addition, the Companies Office maintains a

public register of all New Zealand limited partnerships identifying all general and limited partners.

47. New Zealand law requires the maintenance of information that identifies the settlor, trustee, and beneficiaries of trusts. Trustees are obliged to furnish a return of income to Inland Revenue if the trust derives New Zealand taxable income or makes a taxable distribution to beneficiaries. The return details the taxable income distributed and requires the identification of the beneficiaries. Where no return is required, New Zealand trust disclosure and record keeping requirements ensures the maintenance of identity information of trustees, settlors and beneficiaries of foreign trusts and resident trusts having foreign trustees. In the case of a New Zealand trust with no tax filing obligations, New Zealand's Inland Revenue has broad powers under the *Tax Administration Act* to require a resident settlor or trustee to provide particulars regarding the New Zealand trust.

48. Any legal entity or arrangement which carries on business in New Zealand, carries on any other activity for the purpose of deriving assessable income, or makes, holds, or disposes of any investment (for the purpose of deriving any assessable income) is obliged to maintain a full range of accounting records, including underlying documentation, for a minimum of seven years.

49. Financial institutions operating in New Zealand are obliged to maintain information on all account-holders and related financial and transactional information.

50. The accuracy of data contained in New Zealand's public registries and information maintained by Inland Revenue relies on the compliance level of taxpayers' and third parties' statutory reporting obligations and tax filing requirements. New Zealand's Inland Revenue reports to have few difficulties with respect to issues regarding the availability of ownership and identity information, both for domestic tax cases and for international assistance in tax matters.

51. There is a variety of penalties under New Zealand's laws to ensure that information required to be maintained is, in fact, maintained. The penalties appear to be proportionate and dissuasive enough to ensure compliance. Most of New Zealand's laws provide a range of penalties, including small to large monetary fines depending on the level of infraction, and imprisonment in egregious cases.

52. New Zealand's competent authority is able to respond to requests for ownership and identity information for all types of legal entities and arrangements, accounting records, and bank information. Information received from partner jurisdictions with an exchange of information relationship with New Zealand confirms this.

A.1. Ownership and identity information

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

Companies (ToR[16] A.1.1)

Types of companies

53. The *Companies Act* (1993) provides general rules for the incorporation of companies in New Zealand. The *Companies Act* recognises only one general form of company – companies that have been incorporated and registered under Part 2 of the Act.[17] Section 10 of the *Companies Act* provides that a company must have: a name; one of more shares; one or more shareholders, having limited or unlimited liability for the obligations of the company; and one or more directors. Although the term is not used in the legislation, such companies are generally referred to as limited liability companies. It is, however, possible to register an unlimited liability company under the *Companies Act*.

54. A number of categories of companies of a specialised nature also exist. These are generally subject to the *Companies Act*, but also receive special legislative treatment in other enactments, as follows: insurance companies are subject to the *Insurance Companies (Ratings and Inspections) Act* (1994); co-operative companies are subject to the *Co-operative Companies Act* (1996); and previous State or public bodies which are now State-owned enterprises, local authority trading enterprises or energy companies are subject to, respectively, the *State Owned Enterprises Act* (1986) the *Local Governments Act* (1974), and the *Energy Companies Act* (1992).

55. The *Companies Act* requires registration of, and imposes a number of obligations on, overseas companies that conduct business in New Zealand (s.334).

56. A "company" is defined for tax purposes as "any body corporate or other entity that has a legal existence separate from that of its members, whether it is incorporated or created in New Zealand or elsewhere" (*Income Tax Act* s.YA 1). This definition also applies for the purposes of the *Tax Administration Act*. The definition lists the following specific types of

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

17. This includes companies that have been registered under the *Companies Reregistration Act* (1993). These are companies that pre-existed at the time of the enactment of the *Companies Act*. Such companies were required to re-register under the new 1993 legislation.

companies: listed limited partnership; foreign corporate limited partnership; unit trust; certain group investment funds; aircraft operator; statutory producer board; society registered under the *Incorporated Societies Act* (1908); society registered under the *Industrial and Provident Societies Act* (1908); a friendly society; and a building society. The definition specifically excludes partnerships (a limited partnership, other than a listed limited partnership or a foreign corporate limited partnership, is therefore not a company for tax purposes) (*Income Tax Act* s.YA 1).

Ownership information on domestic companies

Registration of companies

57. The *Companies Act* establishes the statutory office of the Registrar of Companies (the New Zealand Companies Office) and establishes a number of registers that the Companies Office is responsible for maintaining. Every company incorporated under the *Companies Act* is recorded in the New Zealand Companies Register.[18] The Companies Office also maintains other registers for overseas companies, building societies, incorporated societies, limited partnerships, industrial and provident societies, credit unions and friendly societies. All of these registers are similar to the Companies Register in that they hold similar types of information. The majority of interactions with the Companies Office are handled online. In 2008, 99.9% of company registrations were electronic. As at 30 June 2009, there were 520 777 New Zealand companies registered with the New Zealand Companies Office.[19]

58. The same company registration requirements apply to all New Zealand companies, regardless of whether they are owned by non-residents, or whether the company carries on business activities within New Zealand or offshore.

59. On incorporation, companies are obliged to send to the Companies Office certain information using prescribed forms contained in Schedule 1 of the *Companies Act Regulations* (1994). The information includes the full name and residential address of each director; the full legal name and address of each shareholder; the number of shares to be issued to each shareholder; and the registered office of the proposed company (*Companies Act* s.12). The Companies Office registers the application and issues a certificate of incorporation upon receipt of a properly completed application for registration (s.13). All information registered under the *Companies Act* is available to the general public, on payment of a fee (s.363).

18. Searchable online at www.business.govt.nz/companies/.
19. New Zealand Companies Office Profile 2009-2010. Accessible online at: www.business.govt.nz/companies/pdf-library/strategic-plans-annual-reports/companies-office-profile-2009-2010-pdf.

60. The Companies Office verifies whether registered documents are in the prescribed form and that their formulation is in accordance with the *Companies Act* (*Companies Act* s.362). The Companies Office can refuse to register a document and can demand that the document be appropriately amended or completed and submitted for re-registration (s.362). The Companies Office does not routinely verify the accuracy of information contained in an application for registration, but will do so by verifying the identify of individuals concerned and the *bona fides* of the application where it has reason to believe that the company has been incorporated as a nominee company. The Companies Office also has broad powers of inspection over the company's records (s.365). Additionally, section 190 of the *Companies Act* requires the board of directors of a company to ensure that adequate measures exist to prevent the company's records from being falsified and detect any falsification of them. Failure to comply with section 190 is an offence and, if convicted, a director can be liable to a fine of up to NZD 10 000 (EUR 5 678) (ss.190(3), 374(2)).

61. New Zealand companies are obliged to notify the Companies Office of any changes to information registered within prescribed timeframes and using forms prescribed in Schedule 1 of the *Companies Act Regulations*. Specifically, the requirements involve filing and updating the annual return requirement (ss.214, 340), notice of change of name (ss.23, 334), notice of change of directors (s.159), change of registered office (s.187), change of address for service (ss.193, 339A), and alteration of the company constitution (ss.32, 339). Failure to provide a required notification to the Companies Office is an offence and subjects the company's directors to a fine not exceeding NZD 10 000 (s.374).

62. Companies incorporated in New Zealand are obliged to file annual returns with the Companies Office using prescribed forms set out in Schedule 1 *Companies Act Regulations* (*Companies Act* s.214). The majority of annual returns are filed electronically. Information required to be registered includes (Fourth Schedule):

- the address of the registered office of the company;
- if the share register is divided into two or more registers kept in different places, the place in which each register is kept;
- if any records are not kept at the company's registered office under section 189(1) of the *Companies Act* (*i.e.* constitution of the company; minutes of all meetings, copies of financial statements; accounting records, share register), details of those records and of the places where they are kept;
- the number of shares issued and, if there is more than one class of shares, the number of shares in each class and the value of the consideration for each share issued;

- the full names and residential addresses of the directors of the company;
- if the company is a listed company (*i.e.* publicly traded), the names and addresses of, and the number of share held by, the persons holding the ten largest parcels of shares or, if there is more than one class of shares, the persons holding the ten largest parcels of shares in each class; and
- if the company is not a listed company, the names and addresses of all the shareholders of the company and details of the shares.

63. Failure to furnish an annual return is an offence (*Companies Act* s.298(3)). On conviction, a director can be liable to a fine not exceeding NZD 10 000 (EUR 5 678) (s.374).

Company share registers

64. The *Companies Act* imposes an obligation on all domestic companies to keep and maintain a share register (s.87). The share register is the primary source of information in New Zealand regarding shares and legal ownership of those shares. Entries in the share register are prima facie evidence as to the legal title to shares (s.89). The share register must be kept in New Zealand and is usually, but not necessarily, kept at the company's registered office (the location must be registered with the Companies Office) (s.88).

65. In addition to specified details of the company's shares, the share register must record, for all current shareholders and those that have been shareholders within the last 10 years, an alphabetical list of the name(s), last known address, and number of shares of each class held (*Companies Act* s.87(2)). The requirement to maintain a share register also applies to publicly traded companies. Section 194 of the *Companies Act* also requires companies to maintain a record of the full names and addresses of the current directors of the company.

66. There is no requirement in the *Companies Act* for share registers of companies incorporated in New Zealand to indicate whether shares are held beneficially or not. The Act expressly provides that no notice of a trust, whether express, implied, or constructive, may be entered on the share register (s.92).

67. Failure to correctly maintain a share register is an offence (*Companies Act* s.87(4)) and, on conviction, a company can be liable to a fine of up to NZD 10 000 (EUR 5 678) (s.373) and a director can also be liable to a fine of up to NZD 10 000 (s.374). Section 190 of the *Companies Act* requires the board of directors of a company to ensure that adequate measures exist to prevent the records being falsified and detect any falsification of them. Failure to comply with section 190 is an offence and, if convicted, a director can be liable to a fine of up to NZD 10 000 (s.374).

Tax law

68. Under the New Zealand criteria for tax residence, a company that is incorporated in New Zealand is resident for tax purposes in New Zealand (*Income Tax Act* s.YD 2). Resident companies are liable for tax on world-wide income. In general, all taxpayers are required to furnish a return of income (*Tax Administration Act* ss.33, 43A). This requirement applies to all New Zealand resident companies, regardless of whether they are owned by non-residents, whether or not they are incorporated in New Zealand or offshore, or whether the company carries on business activities within New Zealand or offshore. The only exception is for non-active companies that have filed an IR433 Non-active Company Declaration (*Tax Administration Act* s. 43A). There is no requirement to identify directors or owners on the return, except in certain cases, such as when remuneration has been paid by the company with no PAYE deducted. However, Inland Revenue may use its general information gathering powers to obtain ownership information (*Tax Administration Act* s.17.).

69. Various sanctions apply for non-compliance with New Zealand's tax laws. In particular, failure to furnish a return of income is an offence and, on conviction, can result in a fine of up to NZD 4 000 (EUR 2 271) for a first offence, NZD 8 000 (EUR 4 542) for a second offence, and NZD 12 000 (EUR 6 814) for a third or successive offence (*Tax Administration Act* s.143).

Ownership information on foreign companies

70. An "overseas company" is defined in the *Companies Act* as a body corporate that is incorporated outside New Zealand (s.2(1)). An overseas company can operate in New Zealand in one of three ways:

- by establishing a wholly owned New Zealand subsidiary company and registering with the Companies Office under Part II of the *Companies Act* (ss.11-15);
- by establishing a branch operation and registering as an overseas company on the overseas register under Part XVIII of the *Companies Act* (ss.332-337); or
- by transferring its incorporation from the country in which it is registered to New Zealand under Part XIX of the *Companies Act* and becoming a New Zealand company by registering under Part II of the *Companies Act* (ss.344-349, 11-15).

Registration of foreign companies

71. All overseas companies intending to carry on business in New Zealand are obliged to register with the Companies Office within ten working days of commencing to carry on business in New Zealand (*Companies Act* s.334(1)). Failure to register is an offence and subjects the overseas company, on conviction, to a fine not exceeding NZD 10 000 (EUR 5 678) (ss.334(6), 373(2)). As at12 April 2011, there were 1 221 overseas companies registered with the New Zealand Companies Office.[20]

72. The phrase "carrying on business" is not specifically defined in the *Companies Act*. However, Section 332(a) provides that a reference to an overseas company carrying on business in New Zealand includes a reference to the overseas company establishing or using a share transfer office or share registration office in New Zealand, or administering, managing or dealing with property in New Zealand as an agent, personal representative or trustee. These activities may be through its employees or an agent or in any other manner.[21]

73. Section 336 of the *Companies Act* obliges all overseas companies carrying on business in New Zealand to provide the Companies Office with certain information, using prescribed forms contained in Schedule 1 of the *Companies Act Regulations*. Information required to be registered includes (Fourth Schedule): the address of the place of business in New Zealand; full name and address of one or more persons in New Zealand authorised to accept service of documents on behalf of the company; and the full name and residential address of each director of the company. Overseas companies are obliged to update the Companies Office, within prescribed timeframes, of any change of directors, place of business, or persons authorised to accept service (s.159). Failure to register is an offence (s.334) and, on conviction, a company can be liable to a fine of up to NZD 10 000 (EUR 5 678) (s.373). Failure to advise a change of details is also an offence (s.159(3)). On conviction, a director in either case can be liable to a fine not exceeding NZD 10 000 (s.374).

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20. In terms of country registration: 62% (756 companies) from Australia; 10% (119 companies) from the United States; 7% (88 companies) from the United Kingdom; and 21% (258 companies) from other jurisdictions.

21. The following activities do not, on their own, amount to carrying on business in New Zealand: becoming a party to or settling a legal proceeding, claim, or dispute in New Zealand; holding meetings of directors or shareholders in New Zealand or carrying on any internal activities in New Zealand; maintaining a bank account in New Zealand; selling property through an independent contractor in New Zealand; conducting an isolated transaction that is completed within 31 days, where that transaction is not one of a number of similar transactions repeated from time to time; or investing funds or holding property (*Companies Act* s.332(b)).

74. Overseas companies are obliged to file an annual return with the Companies Office using prescribed forms contained in Schedule 1 of the *Companies Act Regulations* (*Companies Act* s.340). Information required to be registered includes: the name and address of place of business or principal place of business in New Zealand; full name and address of one or more persons in New Zealand authorised to accept service of documents on behalf of the company; and the full name and residential address of each director of the company (Form 18, Annual return of overseas company). Failure to furnish an annual return is an offence (s.340(6)). On conviction, a company can be liable to a fine not exceeding NZD 10 000 (EUR 5 678) (s.373) and a director can also be liable to a fine not exceeding NZD 10 000 (s.374).

75. Since 2007, certain Australian companies registered as overseas companies have been exempt from the requirement to lodge certain documents and information with the Companies Office (*i.e.* name and address of directors; the company's constitution; certificate of incorporation) (*Companies Act* s.343A, *Companies Act Regulations* s.4A). Post registration requirements, including alterations, are also limited. Australian company information lodged with the Australian Securities and Investments Commission (ASIC)[22] is shared with the Companies Office, and vice-versa, using a data transfer connection between the two company registries.

76. Since the establishment of the data transfer arrangements with the New Zealand Companies Office and ASIC, almost 3 700 company changes have been sent to the Companies Office for Australian companies registered in New Zealand. Company data is matched at the point of registration of an Australian company in New Zealand, and a New Zealand company in Australia, using the data transfer connection to provide a "snapshot" of the company information. This ensures that both countries' registries are accurately maintained from the outset for companies registered in both countries. The information exchanged between the Companies Office and ASIC is, however, limited to the information requirements that are legislatively identical in both New Zealand and Australia. Thus, share registry information maintained in Australia for Australian companies is not directly available to the Companies Office.

77. Companies incorporated outside of New Zealand but having their central management and control in New Zealand are not obliged to provide any information identifying their owners as a part of registration requirements. However, it was explained by New Zealand's Inland Revenue that having central management and control in New Zealand will result in an overseas

22. ASIC is Australia's corporate, markets and financial services regulator. ASIC regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.

company being resident for tax purposes in New Zealand. Consequently, Inland Revenue will be able to access ownership information in the same way as for any other New Zealand company. (*Tax Administration Act* s.17).

Tax law

78. If an overseas company is resident for tax purposes, it is subject to the general return filing requirement for resident companies. Other than by reason of incorporation, a company will be resident in New Zealand if its head office or centre of management is in New Zealand, or if control of the company by its directors is exercised in New Zealand (*Income Tax Act* s.YD2). New Zealand authorities represent that most of the overseas companies registered with the Companies Office operate in New Zealand as branches (*i.e.* they are not tax resident by reason of management and control).

79. If an overseas company is non-resident, and derives New Zealand sourced income, it also falls within the general return filing requirement. In some cases, however, a return may not be required (*e.g.* if the New Zealand sourced income consists solely of certain kinds of passive income and non-resident withholding tax has been deducted from it) (*Income Tax Act* ss.BB 2(2), YA definition of "non-filing taxpayer").

80. Tax returns for overseas companies typically do not contain information on the ownership of the company, which is consistent with New Zealand's self-assessment tax regime. However, foreign incorporated but New Zealand resident companies need to maintain information about their shareholders to meet their tax obligations. In particular, shareholding information must be maintained in order to assess: whether income tax losses can be carried forward to future income years; whether income tax losses can be offset to other group companies; whether imputation credits can be carried forward and distributed; whether thin capitalisation interest denials are required; and whether other entities are associates.

81. New Zealand's tax loss regime for companies is based on shareholder continuity.[23] To carry forward a tax loss from one tax year to another, a company must maintain shareholder continuity of 49%, based on voting interests in the first instance, from the beginning of the tax year in which the loss arose to the end of the year in which it is offset. Shareholder continuity is measured at ultimate owner level, subject to tracing concessions, so in many cases a company tax return preparer will need to know details of its ownership even beyond immediate parent level. Thus, companies in New Zealand carrying tax losses must be continually aware of potentially significant

23. Unlike a number of jurisdictions, New Zealand does not have a business continuity test but instead has a shareholder continuity test.

changes on their share registers. Where there is any significant change in shareholder composition, the tax losses are at risk of forfeiture (*Income Tax Act*, subpart IA). Similarly, for one company to offset an income tax loss to another company, both companies must be 66% commonly owned[24] and the loss company must meet the shareholder continuity test for the loss that is being transferred (subpart IC).

82. New Zealand operates an imputation system of company taxation. Imputation is a system that allows companies to pass on to their shareholders the benefit of the New Zealand income tax they have already paid. Companies can do this by "imputing" (attaching to the dividends they pay out) credits for the income tax the company has already paid. The amount "imputed" is called an imputation credit.[25] For a company to carry forward and distribute imputation credits, 66% continuity of ownership must be maintained from when the date the credit arose (*i.e.* the date the payment of tax was made) to the date it is distributed. As with losses, shareholder continuity is measured at the ultimate owner level, subject to tracing concessions (*Income Tax Act*, subpart YC).

83. New Zealand's Inland Revenue reports that shareholder information is routinely requested by field audit staff to ensure foreign companies are complying with their New Zealand tax obligations. The assessment team was informed that companies are aware of these obligations, and that New Zealand Inland Revenue has good audit coverage and has not experienced difficulties in practise in verifying ownership of foreign companies. Input received from New Zealand's exchange of information partners confirms this. However, it is recommended that New Zealand continue to monitor the availability of ownership and identity information for foreign incorporated but tax resident companies, in particular any exchange of information requests that cannot be satisfied because the information is not maintained.

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24. The common ownership test will generally be met if there is a group of shareholders whose combined lowest voting interest in both the loss company and the profit company is 66% or more during the "continuity period". The "continuity period" is the period from the beginning of the tax year in which the loss was incurred until the end of the tax year in which it is offset.
25. Tax payments by the company are tracked in a memorandum account, called an imputation credit account (ICA), which records the amount of company tax paid that may be imputed to dividends paid to shareholders. All New Zealand resident companies are required to maintain an ICA. When the shareholders receiving these dividends fill in their income tax returns, they include in their gross income not only the dividend they receive from the company, but also the imputation credit attached to it. They can then claim credit against their income tax liability for the amount of the imputation credit attached to the dividend.

Ownership information held by directors and officers

84. Directors and officers of New Zealand companies are not statutorily required to maintain ownership information in respect of the company. These requirements lie on the company. The *Companies Act* currently requires that a company have at least one director, but it is not necessary that any director of a company be resident in New Zealand. Directors and other persons directly or indirectly involved in the management of the company must be natural persons (*Companies Act* s.126). The use of nominee directors is permissible (s.298).

85. In September 2010, New Zealand's Minister of Commerce announced that the Government intends to tighten the requirements around company directors and company registration.[26] New Zealand is considering a proposal that will require all New Zealand companies to have either one New Zealand-resident director or a local agent. It is proposed that New Zealand-resident directors or agents will be responsible for ensuring companies provide accurate information to the Companies Office and will be liable if companies breach their filing requirements under the *Companies Act*. The Companies Office will also get expanded powers under the proposed changes, including:

- a greater ability to remedy issues concerning the bona fides of directors and shareholders of companies, and to deal with compliance issues around company registration;
- greater powers to take action where doubt exists about the accuracy of information about a company on the register; and
- the ability to "flag" companies which are under investigation and if the investigation shows that a company and its directors or agent have given inaccurate or misleading information, or have committed other breaches of company legislation, the Registrar will have the power to remove that company from the register.

86. The proposed changes will extend to limited partnerships in New Zealand. The measures outlined by the Minister of Commerce will require amendments to the *Companies Act* and related legislation. A bill setting out these measures is expected to be introduced to New Zealand's Parliament in 2011.

26. Government tightens rules around companies: www.beehive.govt.nz/release/government-tightens-rules-around-companies.

Ownership information held by service providers

87. The *Financial Transactions Reporting Act* (1996) ("*FTRA*"), New Zealand's current anti-money laundering legislation, covers a range of financial institutions[27] and designated businesses. In particular, it applies to any person whose business or the principal part of that business consists of any of the following: borrowing or lending money; administering or managing funds on behalf of other persons; acting as a trustee in respect of funds of other persons; providing financial services that involve the transfer or exchange of funds; lawyers and conveyancers (to the extent they receive funds for deposits or investments or for settling real-estate transactions) and accountants (to the extent they receive funds for deposits or investments) (*FTRA* s.3).

88. The *FTRA* operates to prohibit financial institutions and designated businesses from keeping anonymous accounts or accounts in fictitious names by requiring financial institutions to perform customer due diligence measures for the opening of a facility (FTRA, Part 2). A facility is broadly defined as any account or arrangements through which the customer (facility holder) may conduct two or more transactions, including *inter alia* a life insurance policy, membership in a superannuation scheme, and safe custody facilities (*e.g.* a safety deposit box) (s.2). The *FTRA* generally requires financial institutions and designated businesses to verify the identities of customers when establishing business relations (s.6), carrying out certain occasional transactions (s.7), or where money-laundering transactions are suspected (s.11). The *FTRA* customer due diligence procedures do not require financial institutions and designated businesses to determine in all cases who are the natural persons that ultimately own or control their customers or obtain information on the purpose and intended nature of the business relationship.

89. Identification records relating to a customer (facility holder) must be maintained for not less than five years after the person ceases to be a customer (*FTRA* s.30). Failure to maintain records is an offense and subject to fine not exceeding NZD 20 000 (EUR 11 357) in the case of an individual and NZD 100 000 (EUR 56 785) in the case of a body corporate (s.36).

90. New Zealand is a member of both the Financial Action Task Force (FATF) and the Asia-Pacific Group on Money Laundering (APG), and has recently been the subject of an extensive review of its anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the legal framework that underpins it. The FATF report identifies a number of

27. Section 3 of the *FTRA* defines the term "financial institution" as including: banks; life insurance companies; building societies; friendly societies; holders of casino operators licenses; sharebrokers; real estate agents (to the extent they receive funds for settling real estate transactions); and trustees or administrators or managers of superannuation schemes.

deficiencies in New Zealand's *FTRA* customer due diligence procedures, in particular the lack of requirements pertaining to the maintenance of ownership information where the legal owner acts on behalf of another person.

91. In 2009, the Government of New Zealand passed the *Anti-Money Laundering and Countering Financing of Terrorism Act (*2009) *(AML/CFT Act).*[28] This new Act sets out to achieve compliance with the international AML/CFT standards. The Act forms part of a legislative package that will implement the first phase of reforms to New Zealand's AML/CFT regulatory regime. The Ministry of Justice is the lead agency for New Zealand's AML/CFT regime. It administers the *FTRA* and is responsible for the AML/CFT reform project.

92. The New Zealand government agreed to implement the new *AML/CFT Act* in two phases. Phase 1, expected to be in force in the first quarter of 2013, will cover financial institutions and casinos. It is also proposed to include authorised financial advisors, and trust and company service providers within the scope of the regime, through regulations. Phase 2 will cover other designated non-financial business and professions and other non-financial entities, including lawyers, accountants, and real-estate agents. The *AML/CFT Act* requires customer due diligence not only on a customer, but also on any beneficial owner of a customer (s.11). Further, section 22 requires "enhanced due diligence" for customers that are trusts or nominees. The *FTRA* will continue to apply to most financial institutions until the *AML/CFT Act* is implemented, and will continue to apply to lawyers, accountants, real estate agents and conveyancing practitioners (not captured under the first phase of AML/CFT reform) until the second phase of the AML/CFT reform fully replaces the *FTRA*. Penalties under the new Act are up to NZD 100 000 (EUR 56 785) for an individual and NZD 1 million (EUR 567 859) for a body corporate.

Ownership information held by nominees

93. Currently nominees are not explicitly required to know the ultimate beneficial owner of shares being held on behalf of another person. Nominees must know who they are acting for but there is no requirement for them to retain identity information on the persons for whom they act as legal owner. Additionally, there is no requirement in the Companies Act for companies to indicate whether shares are held beneficially or not. The Act expressly provides that no notice of a trust is to be entered on the share register (s.92). New Zealand authorities report, however, that such information should be held as a consequence of the general common law fiduciary obligation owed by the nominee to the beneficial owner. Pursuant to section 17 of the Tax Administration Act, New Zealand's Inland Revenue has the power to require a nominee to identify

28. The *AML/CFT ACT* received Royal Assent on 16 October 2009.

the person on whose behalf securities are held. If a person is unable or unwilling to disclose the identity of the person for whom they act as legal owner they can be subject to penalties for failing to comply with the notice (see section B.1. of this report). Inland Revenue officials have indicated that they have never been asked to provide this type of information by a tax treaty partner.

94. New Zealand authorities report that prominent trust and company service providers, and their associated nominee companies, are well known to Inland Revenue. In other cases, however, Inland Revenue would not know who was a nominee shareholder, until ascertained in the course of an audit or alerted to the fact by a treaty partner. The Companies Office is currently developing methods to enable it to identify companies which are nominee companies. Information on those companies will be available to Inland Revenue and other law enforcement agencies at their request.

95. The *AML/CFT Act*, expected to be in force in the first quarter of 2013, requires reporting entities to undertake enhanced due diligence if they establish a business relationship or conduct an occasional transaction with a company with nominee shareholders. The Act will also require entities to review the adequacy of the due diligence if there is a material change to the business relationship and they consider the information held is insufficient. (See paragraphs 81-86.)

Bearer shares *(ToR A.1.2)*

96. There is no express prohibition against bearer shares in the *Companies Act*. However, the ability to issue bearer shares in New Zealand is precluded (indirectly) by the requirements relating to the issue and transfer of shares and the requirement that companies maintain a share register containing the names of shareholders in the *Companies Act* (ss.35-40 and 84-91) and the *Securities Act* (1978) (s.51). In particular, section 84 of the *Companies Act* provides that shares in a company may be transferred by entry of the name of the transferee on the share register. Entry of the name of a person in the share register as holder of a share is prima facie evidence that legal title to the share vests in that person (s.89(1)). A company may treat the registered holder of a share as the only person entitled to: exercise the right to vote attaching to the share; receive notices; receive a distribution in respect of the share; and exercise the other rights and powers attaching to the share (s.89(2)).

Partnerships *(ToR A.1.3)*

Types of partnerships

97. New Zealand law provides for the creation of three types of partnerships: general partnerships, limited partnerships, and special partnerships.

As at 30 June 2009, 200 limited partnerships were registered with the New Zealand Companies Office. It is not known how many general and special partnerships exist in New Zealand.

General partnerships

98. Partnership law in New Zealand is governed primarily by the *Partnership Act* (1908). Section 4(1) of the Act defines partnership as "the relation which subsists between persons carrying on a business in common with a view to profit". A general partnership is not a legal entity nor is it separate from the individual partners that comprise the partnership. However, a general partnership is a distinct commercial entity for accounting purposes, with each partner jointly and severally liable for the liabilities of the partnership. A partnership relationship is typically formalised by a partnership agreement, but a written agreement is not essential and the existence of a partnership can be determined based on facts and a consideration of all of the surrounding circumstances. The mere fact of co-ownership (*i.e.* holding property under joint tenancy and other profit-sharing arrangements) does not itself create a partnership.

99. Under section HG 2 of the *Income Tax Act*, a partnership is generally treated as "transparent" for income tax purposes. Partners are treated as holding partnership property directly, carrying on the activities of the partnership, and having the status, intention, and purpose of the partnership. Non-partnership activities, however, are not attributed such status. Partners are treated as holding property in proportion to their partnership share or, in the absence of a partnership agreement, equally.

100. Under section 42 of the *Tax Administration Act*, a partnership carrying on business in New Zealand must furnish joint returns of income, stating the amount of taxable income and the entitlement of each partner to a share of it. Note, however, that the partners are also obliged to include their allocable share of partnership income on their own separate returns of income, and tax is assessed on the partners rather than on the partnership.

Limited partnerships

101. A limited partnership is a partnership that is registered under section 51 of the *Limited Partnerships Act*, and that has at least one general partner who is liable for the debts and liabilities of the partnership and at least one limited partner who is not. The Companies Office maintains a register of limited partnerships. By virtue of section 11 of the *Limited Partnerships Act*, a limited partnership is a separate legal person.

102. Overseas limited partnerships are limited partnerships that are formed or incorporated offshore and which carry on business in New Zealand. The

Limited Partnerships Act requires registration of, and imposes a number of obligations on, overseas limited partnerships.

103. Although limited partnerships have separate legal personality, they are treated as general partnerships for tax purposes (*Income Tax Act* s.YA 1 definition of "partnership"). Limited partnerships are therefore generally transparent for tax purposes. However, if a limited partnership is listed on a recognised stock exchange, it is referred to as a "listed limited partnership", and is treated as a company for tax purposes. Similarly, a "foreign corporate limited partnership" (*i.e.* an overseas limited partnership that is treated as a separate legal entity under the laws (other than tax laws) in the jurisdiction where it was established) is treated as a company for tax purposes (s.YA 1).

Special partnerships

104. Prior to 2008, the *Partnership Act* made provision for a special type of partnership known as special partnerships. These typically comprised a general partner that carried on the partnership business and several special partners who contributed capital. Special partners are only liable for partnership debt to the extent of their capital contribution.

105. The *Limited Partnerships Act* repealed the provisions of the *Partnerships Act* that relate to special partnerships. Accordingly, no new special partnerships can be formed. Pre-existing special partnerships may continue to operate until they expire (the maximum life of a special partnership is seven years).

106. Special partnerships are subject to the general taxation rules applicable to general partnerships. Section HZ 3 of the *Income Tax Act* provides that there will be no tax consequences for the transition of a special partnership to a limited partnership.

Ownership information on partnerships

107. The Companies Office maintains publicly-available registers of limited partnerships and overseas limited partnerships (*Limited Partnerships Act* ss.54, 55). There are no registration requirements for general and special partnerships.

108. A limited partnership is, by definition, a partnership that is listed in the register of limited partnerships (*Limited Partnerships Act* s.6). The register of limited partnerships contains, in respect of each limited partnership, the limited partnership's name, registration number, and address of its registered office, and the name, address, and date of birth (where applicable) of each general and limited partner (s.57). As at 30 June 2009, there were 200 limited partnerships registered with the New Zealand Companies Office.[29]

29. New Zealand Companies Office Profile 2009-2010.

109. General partners of a limited partnership are obliged to advise the Registrar within ten working days of any change of details, including any change of limited partners (*Limited Partnerships Act* s.59). Failure to provide a required notification to the Registrar is an offence and subjects the general partners on summary conviction to a fine not exceeding NZD 10 000 (EUR 5 678) (s.59(3)). Limited partnerships are also obliged to furnish annual returns to the Registrar, and these again include names, dates of birth (where applicable) and addresses of the limited partners (s.76).

110. An overseas limited partnership that carries on business in New Zealand is obliged to register with the Companies Office (*Limited Partnerships Act* s.104), advise change of details (s.110) and furnish annual returns (s.112). Details of the limited partners, however, are not required to be disclosed in any of these notifications. Failure to provide a required notification to the Registrar is an offense and subjects the overseas limited partnership and its general partners to a fine not exceeding NZD 10 000 (EUR 5 678) (s.112(6)).

111. Partnerships in New Zealand are not liable for tax. The tax is levied on each partner according to their allocable share of partnership income. However, partners are obliged to make a joint return of income (regardless of whether the income is taxable) of the partnership reflecting each partner's share of that income. General partnerships, limited partnerships and special partnerships fall under the same general taxation rules. Section 42 of the *Tax Administration Act* requires all limited partnerships (including overseas limited partnerships) and all general and special partnerships carrying on business in New Zealand to file a yearly partnership return with Inland Revenue. The partnership return must contain information regarding the partnership's income and any information with a bearing on the tax assessment of the individual partners. The partnership return includes a list of the names of all partners in the partnership (including limited partners) and their addresses, IRD number, and share of partnership income (s.42; see prescribed return for partnerships IR 7). Partnership returns are maintained and managed by the Inland Revenue for a minimum of ten years.

112. Each of a partnership's partners are obliged to lodge an individual tax return in respect of their allocable share of partnership profits or losses (*Tax Administration Act* s.42(3)(b)). The *Tax Administration Act* imposes penalties for failure to lodge tax returns and where incorrect returns, statements or declarations are made.

113. Although a partnership is not required to disclose the ultimate owners of corporate partners on a tax return, Inland Revenue may ask for information regarding the ultimate owners (*Tax Administration Act* s.17)

Information held by service providers

114. The *FTRA* requires financial institutions and designated businesses (including lawyers and accountants) to identify the principal facility holder(s) in circumstances where the facility holders(s) have an account or arrangement through which two or more transactions are conducted. Penalties for non-compliance are up to NZD 20 000 (EUR 11 357) for an individual and NZD 100 000 (EUR 56 785) for a body corporate. (See paragraphs 81-86.)

115. The *AML/CFT Act*, expected to be in force in the first quarter of 2013, will generally require all reporting entities, including all entities that provide trust and company services, to identify the beneficial owners of legal persons.

Information held by the partnership or partners

116. There is no specific requirement for a general or special partnership to maintain information on the identity of its partners. However, knowledge of the identity of partners is likely given the joint and several liability that rests on partners of general partnerships and general partners of special partnerships. In addition, section HD 20B of the *Income Tax Act* requires a New Zealand resident partner of a partnership that carries on business in New Zealand to be treated as the agent of any absentee partner.

117. Limited partnerships are required to maintain a list of the names and last known business, residential or mailing addresses of each current partner and of each person who has ceased to be a partner within the last seven years. Limited partnerships are obliged to maintain these records at their registered office (*Limited Partnerships Act* s.74).

Trusts *(ToR A.1.4)*

118. New Zealand, as a common law jurisdiction and former colony of Britain, inherited the English concept of trusts. Trust law in New Zealand is well-developed, predominantly through case law. It is not known how many trusts exist in New Zealand, but they are very common. Under the common law, there is a general legal duty on trustees to maintain proper accounts of the trust property and to have knowledge of all documents pertaining to the formation and management of a trust.

119. A trust is not a separate legal entity. Rather, it is a (fiduciary) relationship between the trustee and beneficiary. There is no definitive classification of trusts in New Zealand. For most purposes, however, trusts can be classified as follows:

- express trusts, which are created by the actual terms of some instrument or declaration (such as inter vivos trusts, which are set up by a living

person, or testamentary trusts, which are set up through the death of an individual), or which by some enactment are expressly imposed on persons in relation to some property vested in them, whether or not they are already trustees of that property; or

- trusts arising by operation of law (other than express trusts imposed by enactments), of which there are two kinds: resulting trusts and constructive trusts.

120. The New Zealand *Trustee Act* (1956) contains definitions of "trust" and "trustee", but these do not necessarily correspond with the meanings of those terms under common law. The *Trustee Act* confers powers on trustees in addition to the powers conferred by the instrument, if any, creating the trust; but, unless otherwise stated, those powers apply if and so far only as a contrary intention is not expressed in that instrument. If the trustee is a corporation, the powers conferred on the corporation by its own constitution will be relevant. If the trustee is a trustee corporation, the powers conferred on it by its own constituting statute and, where applicable, the *Trustee Companies Act* (1967) will be relevant.

121. Trust law in New Zealand does not require a written instrument in order to establish an express trust. It is, however, the normal practice to do so, and the normal practice is to identify the trustees, settlor and beneficiaries in an identifiable way. Identity information concerning beneficiaries would normally be known to the trustees, but is not required to be kept in a register or disclosed publicly. Often, trust deeds merely identify a class of persons who can benefit, at the discretion of the trustees, *e.g.* "any of the children of X and Y".

122. Generally, there are no limitations or requirements for persons that can act as a trustee in New Zealand. Section 43 of the *Trustees Act* provides for the appointment or substitution of new trustees if an existing trustee is "unfit" or "incapable" of acting. Section 51 of the Act authorises the Courts to appoint or substitute new trustees when it is "expedient" to do so. A company may not act as trustee of a testamentary trust (s.48). The same person may act as settlor, trustee and beneficiary in relation to a particular trust. There are no prohibitions for a resident of New Zealand to act as a trustee or otherwise in a fiduciary capacity in relation to a trust formed under foreign law. Likewise, there are no prohibitions for a resident of New Zealand from administering a trust or acting as a trustee or trust protector of a trust governed under foreign law.

Registration of trusts

123. There is no general obligation to register a trust. Trusts constituted for charitable purposes can, however, voluntarily register in two ways:

- the trustees of the trust can apply to the Registrar of Incorporated Societies to be incorporated as a board under the *Charitable Trusts*

Act (1957); the trust board, once registered, is included in the register of charitable trusts maintained by the Companies Office; or

- the trustees of the trust can apply to the Charities Commission to be registered as a charitable entity under the *Charities Act* (1995); once registered, the trust deed (containing the names of the settlors, beneficiaries and trustees of the trust) and the annual returns of the trust (including financial statements) are included in the Charities Register; the Charities Register is a fully searchable on-line register that is available without charge to the public.

Taxation of trusts

124. Before 1988, New Zealand's rules for taxing the income of trusts essentially followed the residence of the trustee(s). Since 1988, however, the trust rules are largely based on the residence of the settlor regardless of the residence of the trustee(s). Generally, either the trustee or the beneficiary of a trust is liable to tax, depending on whether the income of the trust is classified as "trustee income" or "beneficiary income". The rules (contained in ss. HC 1 to HC 37 of the Income Tax Act) are complex and below is a generalised summary of how the rules work.

125. Retained income: If income earned by a trust in an income year is not distributed to beneficiaries during or within six months after the end of that income year, or by the return filing date for that income year, it is "trustee income" (*Income Tax Act* ss.HC 6, HC 7).

- when the income has a New Zealand source, the income is taxable in the hands of the trustee(s), regardless of the residence of the trustee(s) (s.HC 24); and
- when the income has a foreign source: if a settlor of the trust is a New Zealand resident at any time during that income year, the income is taxable in the hands of the trustee(s), regardless of the residence of the trustee(s) (s.HC 25); and if no settlor of the trust is New Zealand resident at any time during that income year, the income is exempt in the hands of the trustee(s), regardless of the residence of the trustee(s) (s.HC 26).

Settlor	Trustee	NZ sourced income	Foreign sourced income
resident	resident	taxable	taxable
resident	non-resident	taxable	taxable
non-resident	resident	taxable	exempt
non-resident	non-resident	taxable	exempt

126. Beneficiary income: If taxable income earned by a trust in an income year is distributed to beneficiaries during or within six months after the end of that income year, or by the return filing date for that income year, it is "beneficiary income" (*Income Tax Act* ss. HC 6, HC 7).

- when the income has a New Zealand source it is taxable in the hands of the beneficiary at their marginal tax rate; and
- when the income has a foreign source it is taxable in the hands of the beneficiary if the beneficiary is resident in New Zealand but not if the beneficiary is not resident in New Zealand.

127. Whether any other distribution (*e.g.* of accumulated trustee income, or of non-taxable capital gains derived by the trust) is taxable in the hands of the beneficiaries depends on the classification of the trust at the time of the distribution (distributions of part of the corpus of a trust to beneficiaries are not taxable):

- for a "complying trust" (*i.e.* a trust for which all tax obligations in respect of trustee income have been met since the year the trust was settled), the distributions are exempt (s. HC 20);
- for a "foreign trust" (*i.e.* a trust for which no settlor has been New Zealand resident): distributions of accumulated trustee income are taxable in the hands of the beneficiary at their marginal tax rate (ss. HC 15(4), HC 18); and distributions of capital gains are not taxable (s. HC 15(4)(c)); and
- for a "non-complying trust" (*i.e.* a trust that is neither a complying trust nor a foreign trust), distributions of accumulated trustee income and capital gains are taxable in the hands of the beneficiary at a flat rate of 45% (ss. HC 15(2), HC 19, HC 34).

Type of trust	Accumulated trustee income	Capital gains	Corpus
Complying trust	not taxable	not taxable	not taxable
Foreign trust	taxable (marginal rate)	not taxable	not taxable
Non-complying trust	taxable (45%)	taxable (45%)	not taxable

Tax filing and disclosure requirements for trusts

128. Trustees of a trust are treated as a single taxable unit and their trustee income is calculated separately from their personal income (*Tax Administration Act* s.59(3); *Income Tax Act* s.HC 24). Trustee(s) of a trust are required to furnish a return of income if the trust derives taxable income or makes a taxable distribution to beneficiaries (*Tax Administration Act*

s.59(3)).[30] The return must detail the taxable income that is distributed to beneficiaries, and requires the identification of the beneficiaries. However, there is no requirement for a trustee to furnish a return if the trust derives no taxable income and no taxable distributions are made. In such cases, trust disclosure and record keeping requirements, as detailed below, ensure that information is maintained regarding the trustees, settlors and beneficiaries of foreign trusts (trusts with non-resident settlors) and resident trusts (trusts with resident settlors) having foreign trustees. The beneficiary can claim a tax credit for the amount of tax paid by the trustee on his or her behalf.

129. In the case of a New Zealand trust with a resident settlor, resident trustee, and no tax filing obligations, New Zealand's Inland Revenue has the power under section 17 of the *Tax Administration Act* to require the settlor or trustee to provide particulars regarding the New Zealand trust. If a person is unable or unwilling to disclose particulars regarding the trust they can be subject to penalties for failing to comply with the notice (see section B.1. of this report). Inland Revenue officials have indicated that they have never had a problem accessing such information.

130. If a trust has a resident settlor but does not have any resident trustee, section 59 of the *Tax Administration Act* requires the settlor to disclose to Inland Revenue the details of the settlement (defined broadly in s.YA 1 of the *Income Tax Act* to include the creation of a trust), the name and address of the settlor, trustee and of the beneficiaries of the trust, the trust deed, and such further details as may be required by the Commissioner (Form IR 462). The resident settlor of the trust will also be liable as agent for the trustee's income tax obligations (*Income Tax Act* s. HC 29).

131. Section 59B of the *Tax Administration Act* imposes a general disclosure requirement on trusts that do not have a resident settlor but which do have a resident trustee (*i.e.* foreign trusts). Trustees of foreign trusts are obliged to disclose to Inland Revenue:

- the name or other identifying particulars of the foreign trust;
- the name and contact details of the resident trustee(s);
- whether a settlor is resident in Australia; and
- any changes in the particulars referred to above.

30. In the case of beneficiary income, the trustee, as agent for the beneficiary, generally withholds tax from the amount paid out. A New Zealand resident beneficiary is liable to income tax on all beneficiary income, regardless of where the income is sourced. A New Zealand resident beneficiary is also liable to New Zealand income tax on any taxable distribution received from a trust, irrespective of the source of the distribution. A non-resident beneficiary is only liable to income tax on New Zealand-source beneficiary income and New Zealand-source taxable distributions.

132. In addition, resident trustees and administrators of foreign trusts are subject to the same record keeping requirements regarding the trust. Section 22 of the *Tax Administration Act* applies *inter alia* to (i) any person carrying on a business in New Zealand; (ii) any person carrying on any other activity (other than as an employee) for the purpose of deriving assessable income; and (iii) a resident foreign trustee of a foreign trust. A person who administers a foreign trust, but who is not a trustee, would do so as part of a business or as an income-earning activity.[31] The administrator would therefore be subject to the same section 22 record-keeping requirements as resident foreign trustees. The information that is required to be maintained is set out in section 22(7), and includes:

- documents that evidence the creation and constitution of the trust (trust deed or similar); and
- particulars of settlements made on (defined broadly in s.YA 1 of the *Income Tax Act* to include the creation of a trust), and distributions made by, the trust, including the date of the settlement or distribution, the name and address (if known) of the settlor of the settlement, the name and address (if known) of the recipient of the distribution.[32]

133. Section 22(2) of the *Tax Administration Act* provides that a person who is required to keep records may apply to Inland Revenue for permission to keep records offshore, or in a language other than English. If a resident foreign trustee or administrator does not personally hold information relating to a foreign trust's offshore interests, they may apply to Inland Revenue under this provision and the department may exercise its discretion to allow records to be kept offshore. If records are kept offshore, a trustee or administrator will be expected to provide records to Inland Revenue within a reasonable timeframe, if requested.

134. The main sanction for non-compliance with sections 59B and 22(7) of the *Tax Administration Act* is the knowledge offence in section 143A. It applies if a resident foreign trustee "knowingly" fails to disclose information, or keep or provide records, as required by law. If a resident foreign trustee has failed to comply with the disclosure and record keeping requirements but was not aware

31. Given that a key aspect of establishing a trust in New Zealand is that the settlor and beneficiaries are protected by common law fiduciary obligations on the trustee to hold and administer trust assets in good faith, it is unclear whether in practice the administration function would ever be separated from that of the trustee. However, it is theoretically possible for a trust (with no New Zealand resident settlor, trustee or beneficiary, and deriving no New Zealand sourced income) to be set up under New Zealand trust law, and administered from New Zealand. New Zealand's competent authority reports that this issue has never arisen in relation to an exchange of information request.

32. See also: *Inland Revenue Department Tax Information Bulletin:* Vol 18. No 5 (June 2006)

of these rules, sanctions will not apply. As a matter of practice, if Inland Revenue is aware of the name and contact particulars of a resident foreign trustee, it will notify the trustee of his or her tax responsibilities as a trustee of a foreign trust, seek the required information disclosure and outline the recordkeeping requirements. Whether the trustee is aware of his or her tax responsibilities is a question of fact and is determined on a case-by-case basis, although Inland Revenue assumes that "professional trustees" and those trustees in the business of providing trustee services will be aware of these requirements. If a resident foreign trustee has failed to comply with these rules and the trustee knew or ought to have known about his or her tax responsibilities as a trustee of a foreign trust, the trustee will be in breach of section 143A and, if convicted, will be subject to a fine not exceeding NZD 50 000 (EUR 28 392) and/or imprisonment.[33]

135. Sections 59B and 22(7) were added to the *Tax Administration Act* in 2006 to enable New Zealand to meet its exchange of information obligations with its tax treaty partners. Previously, a foreign trust that received a foreign sourced amount of income was not required to provide information to Inland Revenue or keep records for New Zealand tax purposes about that income. Australian authorities, in particular, were concerned that foreign trusts were being established in New Zealand to avoid Australian tax. Currently, when a resident foreign trustee indicates that a settlor of a foreign trust is an Australian resident, Inland Revenue routinely provides the disclosed information to the Australian Taxation Office.

Identity Information maintained by service providers

136. There are generally no current requirements in New Zealand for trust service providers to maintain information on trusts. Under the FTRA, lawyers and accountants are required to identify the principal facility holder(s) (which could include a trust) in circumstances where the facility holder has an account or arrangement and where the facility holder conducts two or more transactions. However, they are not required to identify or maintain information on the beneficiaries or settlors of a trust.

137. Reporting entities under the *AML/CFT Act*, expected to be in force in the first quarter of 2013, will be required to carry out enhanced due diligence on trusts, including identifying beneficial owners of trusts. The New Zealand Government recently approved the inclusion of trust and company

33. Section 59B(3) of the *Tax Administration Act* provides that in certain cases, there will be a two-year moratorium in applying the disclosure rules. This delay applies to individuals who have been appointed a trustee of a foreign trust before becoming a New Zealand resident and the trustee: becomes a New Zealand resident on or after 1 October 2006; and is not in the business of providing trustee services; and has not been resident in New Zealand on any day in the period five years that ends immediately before the trustee becomes a New Zealand resident.

service providers within the scope of the *AML/CFT Act* (by regulation). Trust service providers will be required to undertake appropriate due diligence on their clients, including identification of beneficial ownership. Identification of the beneficial ownership of trusts will require consideration of who has effective control of the trust or person on whose behalf a transaction is conducted. Penalties are up to NZD 100 000 (EUR 56 785) for an individual and NZD 1 million (EUR 567 859) for a body corporate. (See paragraphs 81-86.)

Record retention requirements

138. The record-keeping requirements contained in Part III of the *Tax Administration Act* are subject to a general retention period of seven years after the end of the income year to which they relate (s.22(2)). The Commissioner may require a taxpayer, by notice given before the expiry of the seven-year retention period, to retain records for a further period not exceeding three years (se.22(5)). Records must be kept in New Zealand, although a taxpayer may apply to the Commissioner to keep the records outside New Zealand. Permission to keep records outside of New Zealand is granted by the Commissioner on condition that, if required, the records would be produced to Inland Revenue within a stipulated time. In addition, trust tax returns and disclosure statements are maintained and managed by the Inland Revenue for a minimum of 10 years.

Foundations *(ToR A.1.5)*

139. There are no laws or common law principles that permit the establishment of foundations in New Zealand. The term "foundation" is a categorization used for not for profit companies usually established for charitable purposes.

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

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

141. The *Companies Act* provides a variety of penalties to ensure that accurate information is maintained on the legal ownership of companies incorporated in New Zealand. New Zealand companies are obliged to register ownership information, and any changes thereto, with the Companies Office. If a company neglects to do so, directors of the company are subject to a fine not exceeding NZD 10 000 (EUR 5 678) (s.374). Likewise, failure to furnish an annual return is an offense (s.298(3)) and, on conviction, a director can be liable to a fine of up to NZD 10 000 (s.374).

142. Section 190 of the *Companies Act* requires the board of directors of a company to ensure that adequate measures exist to prevent the company's records from being falsified and detect any falsification of them. If the board of directors fails to comply with section 190, every director commits an offense and is liable on conviction to NZD 10 000 (EUR 5 678) (ss.190(3), 374(2)). Although section 190 provides an effective deterrent for New Zealand resident directors, it may be difficult to apply in the case of non-resident directors. As previously mentioned, section 190 currently requires that a company have at least one director, but it is not necessary that any director of a company be resident in New Zealand. Also, the use of nominee directors is permissible (s.298). Proposed changes to the *Companies Act* have been announced by New Zealand's Government that will require all New Zealand companies to have either one New Zealand-resident director or a local agent.[34] It is recommended that these changes be implemented expeditiously to ensure the effectiveness of section 190.

143. New Zealand companies are obliged to maintain a share register that reflects the legal ownership of the company. Failure to correctly maintain a share register is an offence (*Companies Act* s.87(4)) and, on conviction, a company can be liable to a fine of up to NZD 10 000 (EUR 5 678) (s.373) and a director can also be liable to a fine of up to NZD 10 000 (s.374).

144. All overseas companies intending to carry on business in New Zealand must register with the Companies Office within ten working days of commencing to carry on business in New Zealand (*Companies Act* s.334(1)). Failure to register and advise the Companies Office of any change of details is an offence and subjects the overseas company, on conviction, to a fine not exceeding NZD 10 000 (EUR 5 678) (ss. 334(6), 373(2)). Likewise, failure to furnish an annual return is an offence (s.340(6)) and, on conviction, an overseas company can be liable to a fine of up to NZD 10 000 (s.373) and a director can also be liable to a fine of up to NZD 10 000 (s.374).

145. The *Companies Act* also sanctions egregious offenses with large monetary fines or imprisonment. In particular, section 379 provides that every director, employee, or shareholder of a company who, with the intent to defraud or deceive a person, destroys, alters, or falsifies any register, accounting

34. New Zealand authorities have recently become aware of evidence that some individuals and groups (particularly offshore interests) have been misusing the New Zealand company incorporation process. One recent case to receive significant publicity is that of *SP Trading Limited*, where a New Zealand-incorporated company controlled from overseas was involved in chartering a plane later used in weapons trafficking in contravention of United Nations sanctions. SP Trading Limited had no New Zealand resident directors or shareholders. This highlighted the need for measures to be introduced in the company registration process to protect against the use of New Zealand incorporated companies in criminal activity.

records, or other document belonging to the company or makes a false entry in any of the above commits and offense and is liable on conviction to a fine not exceeding NZD 200 000 (EUR 113 571) or imprisonment for a term not exceeding five years (*Companies Act* ss.379; 373(4)). More generally, section 377 provides that every person, who with respect to a document required by or for the purpose of the *Companies Act*, knowingly makes a statement that is false or misleading or omits any matter knowing that the omission makes the document false or misleading commits an offense and is liable on conviction to a fine not exceeding NZD 200 000 or imprisonment for a term not exceeding five years (s.373(4)).

146. The National Enforcement Unit (NEU) investigates and, where appropriate, prosecutes offences under the *Companies Act* on behalf of the Companies Office. The NEU operates nationally and is based in Auckland. New Zealand authorities represent that creation of the NEU in 1999 has significantly increased compliance with reporting obligations under the *Companies Act*. The NEU conducts random checks on the information submitted as part of registration requirements and also verifies details if it has reason to suspect there may be error. In 2010, the NEU successfully prosecuted multiple directors under section 189 and 377(1)(a) of the *Companies Act* for, respectively, failing to ensure that company records were maintained and for making false statements in documents. The NEU's primary function, however, is to verify whether prohibited directors are acting in violation of section 385 of the *Companies Act*.

147. Limited partnerships are obliged to register ownership information, any changes thereto, and annual returns with the Companies Office. Failure to provide a required notification to the Companies Office is an offence and subjects the general partners on summary conviction to a fine not exceeding NZD 10 000 (EUR 5 678) (*Limited Partnerships Act* ss.59(3), 76). An overseas limited partnership that carries on business in New Zealand must also register with the Companies Office, advise of any change of details and furnish annual returns (ss.104, 110, 112). Failure to provide a required notification to the Companies Office is an offence and subjects the overseas limited partnership and its general partners to a fine not exceeding NZD 10 000 (s.112(6)).

148. Part 9 of the *Tax Administration Act* imposes a wide range of civil and criminal penalties for failure to comply with New Zealand's statutory tax filing and disclosure requirements. The tax penalties are intended to: encourage taxpayers to comply voluntarily with their tax obligations and to co-operate with the Inland Revenue; be imposed impartially and consistently; and sanction non-compliance with tax obligations effectively and at a level that is proportionate to the seriousness of the breach (s.139).

149. In particular, late filing penalties are civil penalties, and range in amount from NZD 50 (EUR 28) (for taxpayers with net income below NZD 100 000 (EUR 56 785) to NZD 500 (EUR 284) (for taxpayers with net income above NZD 1 000 000 (EUR 567 860) (*Tax Administration Act* s.139A.). Failure to furnish a return of income, failure to maintain books and documents that are required to be kept, and filing a false return will result, on conviction, in the imposition of criminal penalties, of which there are three categories depending on the severity of the offence:

- "absolute liability offences" – a fine not exceeding NZD 4 000 (EUR 2 271) for a first offence; NZD 8 000 (EUR 4 542) for a second offence; and NZD 12 000 (EUR 6 814) for a third or successive offence (s.143);
- "knowledge offences" – a fine not exceeding NZD 25 000 (EUR 14 196) for the first offence; and NZD 50 000 (EUR 28 392) for a second or successive offence. (s.143A); and
- "evasion or similar offences" – imprisonment for a term not exceeding five years, or a fine not exceeding NZD 15 000 (EUR 8 517), or both. (s.143B).

150. If a resident foreign trustee fails to comply with New Zealand's foreign trust disclosure rules and the trustee knew or ought to have known about his or her tax responsibilities as a trustee of a foreign trust, the trustee is subject, on conviction to a fine not exceeding NZD 50 000 (EUR 28 392) and/or imprisonment (*Tax Administration Act* s.143A)

151. Enforcement of penalties under the *Tax Administration Act* is taken seriously. In 2010, Inland Revenue successfully prosecuted 82 cases with a further 143 cases before the courts. Most of these cases relate to prosecutions for failure to keep records, not providing information or providing false information, or evasion offences, such as providing false information or returns, intending to evade taxes, and aiding and abetting others to evade taxes.[35]

152. Moreover, New Zealand has a strong compliance culture. Most individuals and businesses meet voluntarily the New Zealand Government's requirements to provide complete and accurate information on time. In New Zealand, tax agents handle the financial affairs of over 1.9 million taxpayers and in 2010 filed over 75% of all income tax returns. Inland Revenue maintains an active assurance programme across all sectors, while at the same time working co-operatively with taxpayers and their agents to help them self-manage their tax compliance as much as possible. New Zealand's compliance culture is

35. Number of taxpayers prosecuted for specified offences (completed cases) in the twelve month period ending 30 June 2010: over 500 absolute liability offences; 38 knowledge offences; and 74 evasion offences.

complemented by Inland Revenue's broad powers to compel the production of information from natural and legal persons (see Section B of this report). Inland Revenue has powers of discovery and inspection, and can compel production from taxpayers and third parties of any document deemed relevant.

153. There is a variety of penalties under New Zealand's laws to ensure that information required to be maintained is, in fact, maintained. The penalties appear to be proportionate and dissuasive enough to ensure compliance. Most of New Zealand's laws provide a range of penalties, including small to large monetary fines depending on the level of infraction and imprisonment in egregious cases. During the onsite visit, the assessment team found that New Zealand's tax authority is able to respond to requests for ownership and identity information for all types of legal entities and arrangements. Information received from partner jurisdictions with an exchange of information relationship with New Zealand confirms this.

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**
Nominees are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.

Phase 2 Rating	
Largely Compliant.	
Factors underlying recommendations	**Recommendations**
While enforcement provisions exist to ensure the accuracy of information provided to the Companies Office, they may not necessarily be effective for companies with non-resident directors.	New Zealand should implement its proposal to tighten the requirements around company directors and company registration (*e.g.* to require companies to have at least one resident director or local agent).

A.2. Accounting records

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

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

General requirements (ToR A.2.1)

155. Accounting obligations in New Zealand are primarily governed by the Tax Administration Act, which has a very wide scope, as well as specific Acts governing particular types of legal entities and arrangements. The Tax Administration Act contains provisions requiring the maintenance of accounting records that correctly explain all transactions, enable the financial position of entities and arrangements to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Other specific Acts add to or reinforce the record-keeping requirements contained in the Tax Administration Act.

156. Part III of the *Tax Administration Act* provides requirements for certain records to be kept for the purpose of applying particular provisions of New Zealand's various tax Acts. Section 22(2) of the *Tax Administration Act* provides a general requirement for the following persons (amongst others) to maintain accounting records: any person who (i) carries on business in New Zealand, (ii) carries on any other activity (other than as an employee) for the purpose of deriving assessable income, and (iii) makes, holds, or disposes of, for the purpose of deriving any assessable income, any investment. The records required to be maintained pursuant to section 22 of *Tax Administration Act* include (s.22(1)):

- a record of the assets and liabilities of the person (in relation to that business); and
- a record of all entries from day to day of all sums of money received and expended by the person (in relation to that business) and the matters in respect of which the receipt and expenditure takes place.

157. Section 22(7) defines "records" as including books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure and vouchers, bank statements, invoices, receipts, and such other documents as are necessary to verify the entries in the books of account.

158. Section 22 also provides detailed accounting record retention requirements for certain types of businesses. Businesses involved in dealing in goods are required to maintain *inter alia* a record of all goods purchased and of all goods sold in the carrying on of that business, and all invoices relating to the goods (*Tax Administration Act* s.22(1)(c)). Businesses involved in provision of services are required to maintain records of the services provided and all invoices relating to them (s.22(1)(d)). In addition, there are specific record-keeping requirements that relate to deductions, tax credits, fringe benefits, credits and debits to memorandum accounts, and many others (ss.22(g)-(m)).

159. Section 75 of the *Goods and Services Tax Act* (1985) also imposes specific record-keeping requirements on a registered person (generally, a person who makes supplies of goods or services in New Zealand and who is required to register under the Act) in respect of the goods or services that they supply in New Zealand. Generally, the records[36] required to be maintained pursuant to section 75 of the *Goods and Services Tax Act* include (s.75(2)):

- a record of all goods and services supplied by or to that registered person showing the goods and services, and the suppliers or their agents, in sufficient detail to enable the goods and services, the suppliers, or the agents to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes, and debit notes relating thereto; and
- the charts and codes of account, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each taxable period in the supply of goods and services.

160. The record-keeping requirements of the *Tax Administration Act* and *Goods and Services Tax Act* both require accounting records be kept in New Zealand, although both Acts also provide that a taxpayer may apply to the Commissioner to keep the records outside New Zealand. Permission to keep records outside of New Zealand is granted by the Commissioner on condition

36. For purposes of the *Goods and Services Tax Act*, the term "records" includes books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure, and also includes vouchers, bank statements, invoices, tax invoices, credit notes, debit notes, receipts, and such other documents as are necessary to verify the entries in any such books of account (s.75(1)).

that, if required, the records would be produced to Inland Revenue within a stipulated time. Failure to keep books and documents required to be maintained under New Zealand's tax laws is an offense and, on conviction, can result in a fine of up to NZD 4 000 (EUR 2 271) for a first offence, NZD 8 000 (EUR 4 542) for a second offence, and NZD 12 000 (EUR 6 814) for a third or successive offence (*Tax Administration Act* s.143).

161. As mentioned, additional accounting record retention obligations are imposed in other Acts that add to or reinforce the record-keeping requirements contained in the *Tax Administration Act*. These Acts are specific to particular types of legal entities and arrangements and are detailed below.

162. The *Companies Act* requires the board of a company to ensure that accounting records for the company be kept (s.194). Section 194 of the *Companies Act* provides that accounting records must (i) correctly record and explain the transactions of the company; enable the directors to ensure that the financial statements of the company comply with section 10 of the *Financial Reporting Act* (1993) (*e.g.* that they comply with generally accepted accounting practice); and enable the financial statements of the company to be readily and properly audited. Without limiting the above, section 194 also provides that the accounting records must contain entries of money received and spent each day and the matters to which it relates; and a record of the assets and liabilities of the company.

163. Section 190 of the *Companies Act* requires the board of directors of a company to ensure that adequate measures exist to prevent the records being falsified and detect any falsification of them. Failure to comply with section 190 is an offence and, if convicted, a director can be liable to a fine of up to NZD 10 000 (EUR 5 678) (s.374).

164. Section 189 of the *Companies Act* generally provides that accounting records must be kept at either the company's registered office or at another place provided that the Companies Office has been notified of that place. Section 195 of the *Companies Act* provides that if accounting records are not kept in New Zealand, the company must ensure that accounting records of the company that disclose with reasonable accuracy the financial position of the company (at intervals not exceeding six months) and will enable the preparation of the company's financial statements be kept in New Zealand. Notification of the place at which they are maintained must also be given to the Registrar.

165. Section 19 of the *Financial Reporting Act* provides additional financial reporting requirements for overseas companies (in addition to the obligations imposed under the *Tax Administration Act* and *Companies Act*), as follows:

- large companies with 25% or more overseas ownership must file financial statements with the Companies Office. A company is large if it meets or exceeds at least two-out-of-three of the following criteria: USD 20 million annual revenue, $10 million total assets and 50 full-time equivalent employees; and
- overseas incorporated companies that carry on business in New Zealand must file consolidated and parent entity financial statements with the Companies Office. There is also a requirement to file for the New Zealand business of the company as though it were a stand-alone entity. The Companies Office can make exceptions for the legal entity financial statements where the home country only requires consolidated financial statements to be prepared.

166. The *Limited Partnerships Act* provides specific obligations on limited partnerships to prepare and maintain accounting records at its registered office. Section 75 of the *Limited Partnership Act* obliges all limited partnerships to maintain accounting records that correctly record and explain the limited partnership's transactions and at any time enable the financial position of the limited partnership to be determined with reasonable accuracy. Limited partnerships are obliged to maintain such records for the last seven completed accounting periods of the limited partnership (s.75). Limited partnerships are also reporting entities for purposes of the *Financial Reporting Act*. As such, limited partnerships are required to prepare financial statements (s.75).

167. General partnerships are treated as "transparent" for tax purposes. Therefore, tax obligations and liabilities generally fall on the partners rather than on the partnership. However, section 22(4) of the *Tax Administration Act* provides that the record-keeping requirements do not apply to the partner of a partnership if the partnership retains the records that the partner would otherwise be required to retain. Limited partnerships (other than listed limited partnerships) are legal entities but are taxed as general partnerships. Therefore, section 22(4) also applies in the case of limited partnerships. Both partnerships and limited partnerships may be registered persons for purposes of the *Goods and Services Tax Act*, and therefore the GST record-keeping requirements will apply directly to the partnership.

168. Trusts have no legal personality. However, the record-keeping requirements contained in Part III of the *Tax Administration Act* and section 75 of the *Goods and Services Tax Act* (explained above) apply to the trustee(s) of a trust.

169. In respect of foreign trusts, section 22(7) of the *Tax Administration Act* requires the following information to be kept:

- documents that evidence the creation and constitution of the foreign trust;

- particulars of settlements made on, and distributions made by, the foreign trust, including the date of the settlement or distribution, the name and address (if known) of the settlor of the settlement, the name and address (if known) of the recipient of the distribution;
- a record of the assets and liabilities of the foreign trust;
- a record of all entries from day to day of all sums of money received and expended by the trustee in relation to the foreign trust and the matters in respect of which the receipt and expenditure takes place; and
- if the trust carries on a business, a record of the charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each income year in the administration of the trust.

170. Foreign trusts that are not in business are excluded from the final requirement of the previous paragraph (*i.e.* they are not required to keep information relating to their accounting information system) (*Tax Administration Act* s.22(7)(d)(iii)(C)). However, the records relating to the assets and liabilities of the foreign trust and the details of all sums of money received and expended by the trustee relating to the trust are required to be kept and retained. This more limited record-keeping is intended to reduce compliance costs for these trusts while ensuring that they maintain sufficient records to enable the financial position of the trust to be determined with reasonable accuracy.[37]

171. If a resident foreign trustee does not personally hold information relating to a foreign trust's offshore interests, the trustee may apply to Inland Revenue under section 22(2) of the *Tax Administration Act* to keep such records offshore. If records are kept offshore, a trustee will be expected to provide records to Inland Revenue within a reasonable timeframe, if requested. If a resident foreign trustee leaves New Zealand and no resident foreign trustee remains in New Zealand, the departing trustee can either seek Inland Revenue's approval to keep and retain the records of the foreign trust outside New Zealand, or maintain the records of the foreign trust in New Zealand. In either case, it is the responsibility of the departing trustee to ensure that the records are maintained, readily available, and can be provided at minimal cost to Inland Revenue, if requested.

172. Financial institutions and designated businesses are also subject to the *FTRA*, currently in force, which imposes record-keeping requirements. The *FTRA* requires records to be maintained that are reasonably necessary to

37. Refer to Tax Information Bulletin, volume 18, number 5 (June 2006), p.109. Accessible at www.ird.govt.nz/resources/3/0/304a21004bbe41cdacd3fcbc87554a30/tib-vol18-05.pdf.

enable customer transactions to be reconstructed at any time. Such records must include: the nature of the transaction; the amount of the transaction; the date on which the transaction was conducted; and the parties to the transaction. (See paragraphs 81-86.)

173. The *AML/CFT Act*, expected to be in force in the first quarter of 2013, requires reporting entities to maintain records of every transaction that are reasonably necessary to enable that transaction to be readily reconstructed at any time. Reporting entities will also be required to maintain identity and verification records, and without limiting the above, section 51 of the *AML/CFT Act* will require entities to maintain: records that are relevant to the establishment of the business relationship; records relating to risk assessments, AML/CFT programmes and audits; and any other records (for example, account files, business correspondence, and written findings) relating to, and obtained during the course of, a business relationship that are reasonably necessary to establish the nature and purpose of, and activities relating to, the business relationship.

174. The New Zealand Institute of Chartered Accountants (NZICA) regulates its members under the *Institute of Chartered Accountants of New Zealand Act* (1996). NZICA has no specific AML/CFT supervisory function, but can deal with complaints and initiate disciplinary action where chartered accountants breach their obligations under New Zealand law, including under the *FTRA*.

Underlying documentation *(ToR A.2.2)*

175. All legal entities and arrangements that (i) carry on business in New Zealand, (ii) carry on any other activity for the purpose of deriving assessable income, or (iii) make, hold, or dispose of, for the purpose of deriving any assessable income, any investment have a statutory obligation to maintain underlying accounting documentation (*Tax Administration Act* s.22(2)). Underlying documentation required to be maintained includes books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure and vouchers, bank statements, invoices, receipts, and such other documents as are necessary to verify the entries in the books of account (s.22(7)). Other specific Acts (*i.e. Companies Act, Financial Reporting Act*) also require the maintenance of underlying documentation as detailed above.

176. The New Zealand Inland Revenue has also developed non-binding statements of guidance and principles to assist taxpayers meet their tax and record keeping obligations. In particular, Inland Revenue Guide IR323 (December 2007) provides guidance on the types of records required to be maintained (*i.e.* cashbooks, journals, ledgers, bank statements, invoices,

receipts, cheque and deposit books, internet transaction details, interest and dividend statements, depreciation schedules, asset register), which includes underlying documentation. While contracts are not explicitly mentioned in the Guide, all contracts that relate to accounting entries and are necessary to verify the entries in the books of account must be maintained.

Document retention (ToR A.2.3)

177. The record-keeping requirements contained in Part III of the *Tax Administration A*ct are subject to a general retention period of seven years after the end of the income year to which they relate (s.22(2)). The Commissioner may require a taxpayer, by notice given before the expiry of the 7-year retention period, to retain records for a further period not exceeding three years (s.22(5)). Conversely, retention of records is not required if (i) the Commissioner has given notice that retention is not required, or (ii) the company has been liquidated (s.22(4)). The Commissioner may also, by notice published in the Gazette, dispense certain classes of taxpayer from the need to retain records, or any class of records, for more than 12 months (s.22(6)). A general seven-year retention period also applies for the purpose of the record-keeping requirements contained in the *Goods and Services Tax Act* but, again, the Commissioner is able to give notice that retention is not required (s.75). The discretion under section 22(4)(a) has never been exercised. Consequently, there has been no impact on exchanges of information. The Commissioner would only exercise his discretion under this section in circumstances where: (i) the record-keeping requirements of other Acts would be unaffected; (ii) third party confirmation of the information would be available (*e.g.* from bank or company records); and (iii) where withholding tax is deducted.

178. Section 22(6) of the *Tax Administration Act* provides that the Commissioner has the discretion to exempt a class of taxpayers from the need to retain records for more than 12 months following the end of the income or tax year to which the records relate. There are two requirements: that taxpayer cannot be a provisional taxpayer[38] and the records must relate to payments from which tax has been withheld or deducted at source. The provision was added to the *Tax Administration Act* for the purpose of reducing the tax compliance burden borne by small taxpayers. To date, there has been no identified case in the Gazette records where section 22(6) was exercised by the Commissioner.

38. A provisional taxpayer means a person who is liable to pay provisional tax under section RC 3 of the *Income Tax Act*. Provisional taxpayers generally include a person whose residual income for the tax year is more than NZD 2 500 or a person who chooses to pay provisional tax. However, a company that does not have a fixed establishment in New Zealand and is not treated as a resident in New Zealand does not pay provisional tax (*Income Tax Act* s. RC 3).

179. Section 189 of the *Companies Act* obliges all companies to maintain accounting records for the current accounting period and for the last seven completed accounting periods of the company. A liquidator appointed in relation to a company is required to retain the accounts and records of the company for a minimum of one year after the liquidation of the company (s.256). The Registrar of Companies may, however, require the liquidator to retain the records for a period of longer than one year (s.256). If requested by Inland Revenue, the Registrar would generally do so where the Inland Revenue request discloses good reason. In addition, the average time that a company spends in liquidation is two years.

180. Section 75 of the *Limited Partnership Act* obliges all limited partnerships to maintain accounting records for the last seven completed accounting periods of the limited partnership.

181. Reporting entities under the *FTRA* are obliged to maintain records for at least five years (*FTRA* s.30).

182. Information received from New Zealand's peers noted that in all cases New Zealand has been able to provide the requested accounting records.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
Accounting records and underlying documentation for a liquidated company are not required to be maintained for a period of 5 years or more.	New Zealand should require that accounting records and underlying documentation be maintained for liquidated companies for at least 5 years.

Phase 2 Rating
Compliant.

A.3. Banking information

Banking information should be available for all account-holders.

183. The Reserve Bank of New Zealand is New Zealand's central bank. The Reserve Bank of New Zealand Act (1989) governs its purpose and activities. Its overall purposes are to promote price stability, and a sound and efficient financial system. It does this by formulating and implementing monetary policy, managing the issuance of currency, overseeing the payment system, regulating non-bank deposit takers, and regulating and supervising the banking sector. Trustee supervisors undertake supervision of non-bank deposit takers. New legislation providing for prudential supervision of insurers is currently under development. It has been agreed that the Reserve Bank will be the prudential supervisor for insurers. The Reserve Bank is also the AML/CFT supervisor for banks, life insurers, and non-bank deposit takers.

184. One noteworthy aspect of the New Zealand banking system is that it is almost entirely foreign owned, with about 96% of the total banking assets being held by subsidiaries or branches of foreign banks. Of the 19 registered banks, only three smaller banks are New Zealand-owned. Of the 16 foreign-owned banks, 10 are operating as branches of banks incorporated overseas, and six are local subsidiaries of foreign parent banks. The 19 banks operating in New Zealand vary in the size and nature of their activities.

Record-keeping requirements (ToR A.3. 1)

185. This *Reserve Bank of New Zealand Act* provides for the registration and reporting requirements of banks to the Reserve Bank. The Act also protects records of banks and section 151 states that it is an offence to destroy, alter, or conceal records.

186. Customer due diligence and record retention requirements under New Zealand's *FTRA* apply to all financial institutions in New Zealand. The term "financial institutions" is defined broadly to include: banks registered with the Reserve Bank; the Reserve Bank of New Zealand; and to any other person, partnership, corporation or company carrying on the business of banking in New Zealand (*FTRA* s.3(1)(a)). The *FTRA* also applies to any person whose business or whose principal part of whose business consists of borrowing or lending money, or administering or managing funds on behalf of other persons (s.3)(1)(k).

187. Section 29 of the *FTRA* provides that, in relation to every transaction that is conducted, financial institutions must keep such records as are reasonably necessary to enable that transaction to be readily reconstructed

at any time by the Commissioner of Police. This is an overarching requirement, although section 29(2) of the *FTRA* provides some further specificity by requiring that, at a minimum, such records must contain the following information:

- the date, nature and amount of the transaction, and the currency in which it was denominated;
- the parties to the transaction;
- where applicable, the facility through which the transaction was conducted, and any other facilities (whether or not provided by the financial institution) directly involved in the transaction; and
- the name of the officer, employee, or agent of the financial institution who handled the transaction, if that officer, employee, or agent has face-to-face dealings in respect of the transaction with any of the parties to the transaction and has formed a suspicion about the transaction.

188. Section 30 of *FTRA* requires financial institutions to keep such records in such manner as to make them readily accessible and (if not in writing and/or English) readily convertible into written form in the English language (s.32). Transaction records must be maintained for not less than five years after the completion of the transaction (s.29(3)). In addition, financial institutions are obliged to maintain identification records relating to a customer (facility holder) for not less than five years after the person ceases to be a customer (*FTRA* s.30).

189. Similar requirements are contained in the *AML/CFT Act,* which is expected to be in force in the first quarter of 2013. In addition to the above requirements, section 51 of the *AML/CFT* requires financial institutions to keep:

- records that are relevant to the establishment of the business relationship; and
- records relating to risk assessments, AML/CFT programmes and audits; and
- any other records (for example account files, business correspondence, and written findings) relating to, and obtained during the course of, a business relationship that are reasonably necessary to establish the nature and purpose of, and activities relating to, the business relationship.

190. Reporting entities will also be required to maintain identity and verification records, and without limiting the above, section 51 of the *AML/CFT Act* will require entities to maintain: records that are relevant to the

establishment of the business relationship; records relating to risk assessments, AML/CFT programmes and audits; and any other records (for example, account files, business correspondence, and written findings) relating to, and obtained during the course of, a business relationship that are reasonably necessary to establish the nature and purpose of, and activities relating to, the business relationship.

191. Peer input received indicates that New Zealand is able to exchange bank records for all types of legal entities and arrangements. New Zealand authorities report that bank information is maintained for all clients and that its competent authority has not encountered issues regarding availability of bank information, both for domestic tax cases and for providing exchange of information assistance.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant.

B. Access to Information

Overview

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

193. New Zealand's Inland Revenue has broad powers to obtain bank, ownership, identity, and accounting information and has measures to compel the production of such information. The ability of Inland Revenue to obtain information for exchange of information purposes is derived from its general access powers under sections 16 and 17 of the *Tax Administration Act* coupled with the authority provided by the relevant exchange of information agreements. There are no statutory bank secrecy provisions in place that would restrict effective exchange of information.

194. New Zealand's competent authority (Inland Revenue, International Audit Unit), when requested by a foreign counterpart, can retrieve information directly or with assistance from Inland Revenue field offices, which have broad powers under the *Tax Administration Act* to access information from taxpayers and third parties. Inland Revenue has access to all information maintained by the Companies Office and other relevant public registries, and also maintains tax filling and disclosure information received in accordance with its laws. As a result, many international exchange of information requests can be responded to directly by New Zealand's competent authority without the involvement of field offices or using Inland Revenue's various access powers.

195. New Zealand has a high volume of specific requests for exchange of information both to and from its exchange of information partners. The requests vary in complexity and cover a wide range of material, including: all income tax related information, including tax returns and financial statements; individual and company tax information and documentation; goods and services tax information (where GST is covered in the tax treaty or TIEA); tax investigation information; ownership details and banking information; and public records. Over the last three years there have been no cases were New Zealand has not provided information requested by exchange of information partners due to difficulties in obtaining requested information.

196. Application of rights and safeguards (*e.g.* notification, appeal rights) in New Zealand does not restrict the scope of information that New Zealand's tax authority can obtain.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

Bank, ownership, and identity information (ToR B.1.1) and accounting records (ToR B.1.2)

197. Inland Revenue is the New Zealand government department responsible for administering New Zealand's tax laws and the collection of taxes. Inland Revenue's functions are carried out through a network of regional field offices, arranged into Service Centre areas. There are five Service Centre areas: Auckland North, Auckland South, Hamilton, Wellington and South Island. Each Service Centre is responsible for the services provided by the other offices located within its area. Inland Revenue also operates six contact centres located in Takapuna, Manukau, Hamilton, Palmerston North, Wellington and Christchurch. As at 30 June 2010, Inland Revenue had 5 511 full-time equivalent employees. In the year 2008-09, Inland Revenue collected NZD 49 billion in tax – representing over 80% of core Crown revenue.[39]

198. Administration of the exchange of information articles under New Zealand's treaty network is the responsibility of New Zealand's competent authority, being the Commissioner of Inland Revenue or an authorised representative of the Commissioner. The Chief Advisor of Inland Revenue's

39. Inland Revenue Annual Report 2010. Accessible at: www.ird.govt.nz/resources/3/d/3d2d9d8044320113aef5be4e9c145ab7/ar-2010.pdf.

International Audit Unit is authorised to act as competent authority and, in practice, is responsible for managing and responding to all of New Zealand's exchange of information requests. The International Audit Unit is based in Wellington.

199. In some cases, requests for information made under New Zealand's DTCs or TIEAs pertain to information already held by Inland Revenue (*e.g.* tax returns and tax declarations; publicly available registry data, etc.). In such cases, New Zealand's competent authority is able to respond to a request without the involvement or co-ordination of Inland Revenue field offices or other government authorities. New Zealand's competent authority is also able to exercise information gathering powers to obtain the required information from external sources. Where field staff involvement is required, cases are allocated in consultation with respective business line managers. Cases allocated to field staff tend to involve complex issues, such as aggressive tax planning schemes and transfer pricing issues.

200. There are no legal or procedural limitations on how a person may be audited or the number of times they may be audited that would limit the ability of the New Zealand competent authority or field staff to use their access powers for the purpose of exchange of information requests.

Powers to obtain information

201. Inland Revenue has wide-ranging information gathering powers conferred on it under the *Tax Administration Act*. The two key provisions in the Act are at section 17 (access to information) and section 16 (access to premises). Both sections confer powers on Inland Revenue to obtain information for a number of express purposes, and also more generally "for the purpose of carrying out any other function lawfully conferred on the Commissioner".[40]

202. The legislation conferring information gathering powers generally refers to "information, books and documents". The reference to "books and documents" has, by definition, a very wide meaning. It includes all books, accounts, rolls, records, registers, papers, and other documents and all photographic plates, microfilms, photo static negatives, prints, tapes, discs, computer reels, perforated rolls, or any other type of record whatever (*Tax Administration Act* s.3).

40. New Zealand's DTCs and TIEAs are given effect by Order in Council pursuant to section BH 1 of the *Income Tax Act*. The Order in Council giving effect to a DTC or TIEA includes the full text of that DTC or TIEA, and the provisions of DTCs and TIEAs are therefore, incorporated directly into and become part of New Zealand domestic law. As such, the exchange of information under a DTC or TIEA is clearly a function lawfully conferred on the Commissioner.

203. Section 17 provides that "every person[41] shall, when required by the Commissioner, furnish in writing any information and produce for inspection any books and documents which the Commissioner considers necessary or relevant for any purpose relating to the administration or enforcement of any of the Inland Revenue Acts or for any purpose relating to the administration or enforcement of any matter arising from or connected with any other function lawfully conferred on the Commissioner."

204. Inland Revenue's information gathering powers are not limited to persons who are required to maintain information. Section 17(1B) of the *Tax Administration Act* expressly provides that information or a book or a document is to be treated as being in the knowledge, possession or control of a New Zealand resident if the New Zealand resident controls, directly or indirectly, a non-resident and the information or book or document is in the knowledge, possession or control of that non-resident.

205. Where information is demanded under section 17, a pro-forma notice is issued. Prior to issuing a section 17 notice, Inland Revenue typically requests the information informally. Generally, apart from where the taxpayer wishes to claim the right of non-disclosure, a section 17 notice is only issued following a failure to provide information previously requested, or where specific issues have been identified and an attempt to resolve those issues has failed. There are occasions, however, where a section 17 notice is issued without a prior request[42] (*e.g.* where there have been prior instances of non-cooperation from the taxpayer and/or their advisers, or where the Commissioner otherwise considers that delay, or a less formal approach, may unreasonably increase the risk of non-compliance) (Standard Practice Statement (SPS) 05/08 – Section 17 Notices (July 2005)). In most cases, a section 17 notice is not required for purposes of accessing information in order to respond to an exchange of information request, This is largely due to New Zealand's good compliance culture. Only in exceptional cases must a section 17 notice be issued.

206. There are no limitations on the ability of Inland Revenue to obtain information held by a bank or other financial institution for either civil or criminal tax purposes in response to a specific exchange of information request. There is also no explicit requirement to specify particular details when making a request for information to New Zealand for bank information.

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41. This includes any officer employed in or in connection with any Department of the Government or by any public authority, and any other public officer (*Tax Administration Act* s.17).

42. Depending on the circumstances, a refusal or failure to comply with an informal request for information would be non-cooperation and a refusal or failure to comply with a more formal request for information, *i.e.* one mentioning section 17, would be non-compliance.

However, as a matter of practicality, sufficient details would need to be provided to enable Inland Revenue to action the request. Officers of Inland Revenue always quote section 17 in their formal requests for information from financial institutions. New Zealand's TIEAs generally follow Article 5 of the OECD *Model TIEA*, which requires the provision of certain details when making a request. Responding to a request for bank information can be accomplished by the competent authority without the involvement of Inland Revenue field offices. Inland Revenue, including the International Audit Unit, has a good relationship with the majority of the financial institutions in New Zealand. Banks have reportedly been co-operative with requests for information. In recent years, requests from Inland Revenue have been actioned in a central point by each of the major banks.

207. Sections 143, 143A and 143B of the *Tax Administration Act* provide for the imposition of criminal penalties on any person convicted of failing to provide information when requested by Inland Revenue. These include a fine (of up to NZD 25 000 (EUR 14 196) for a first offence, or NZD 50 000 (EUR 28 392) for repeat offences) or imprisonment of up to five years.[43]

208. Where non-compliance occurs, Inland Revenue does not reissue a section 17 notice in a different format. An offence is committed if a section 17 notice is not complied with. Where non-compliance occurs, a follow-up notice is generally issued before further action is taken. The follow up notice typically states that the section 17 notice has not been complied with, court orders are being sought and/or prosecution action is being considered. A follow-up notice does not entitle a taxpayer (or their authorised tax advisor) to claim (for the first time or to make a subsequent claim) the non-disclosure right for tax advice documents that were required to be disclosed under the original section 17 notice (SPS 05/08).

209. Inland Revenue may also obtain information by requiring any person to attend and give evidence under oath before the Commissioner or an authorised officer (*Tax Administration Act* s.19). Inland Revenue may also apply to the District Court for an inquiry (including examination of witnesses under oath) to be held before a District Court Judge (s.18).

210. Section 16 gives "the Commissioner or any officer of the Department authorized by the Commissioner in that behalf" the power to have "full and

43. The New Zealand Litigation Management Unit reports directly to the Commissioner of Inland Revenue and is responsible for the management of tax cases, where the taxpayer disagrees with assessed tax liability. Litigation Management is also responsible for the management of judicial review and declaratory judgment proceedings involving Inland Revenue, and for maintaining an overview of Inland Revenue's entire litigation effort, including prosecutions and insolvency proceedings.

free access to all lands, buildings and places and to all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whether, for the purpose of inspecting any books and documents and any property, process, or matter which the Commissioner or officer considers necessary or relevant for the purpose of collecting any tax or duty under any of the Inland Revenue Acts, or any other lawful function of the Commissioner." However, for entry to a private dwelling, a warrant must first be issued by a judicial officer (s.16(3)). Books and documents may be removed to make copies (s.16B). Subject to the issue of a warrant (or by consent of the occupier), books and documents may be retained for inspection for as long as is necessary (s.16C).

211. New Zealand's judicial system has produced multiple cases that support Inland Revenue's information gathering powers for purposes of responding to specific exchange of information requests. Notably, in the case of Avowal Administrative Attorneys Ltd v District Court at North Shore & Anor it was argued that Inland Revenue could not use its powers of inspection or interview to collect information solely for the Australian Taxation Office ("ATO"). The High Court found that Inland Revenue could use its search powers even if the purpose had been purely to assist the ATO. In doing so, the High Court gave a solid endorsement of exchange of information under New Zealand's DTCs, noting in particular an evolving general recognition that an increasingly globalised society requires state institutions to act in aid of one another. The case was affirmed on appeal on 11 May 2010.

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

212. 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. New Zealand has no domestic tax interest with respect to its information gathering powers. Information gathering powers provided to New Zealand's tax authority under the *Tax Administration Act* can be used to provide exchange of information assistance regardless of whether New Zealand needs the information for its own domestic tax purposes.

213. New Zealand's exchange of information agreements are given the force of law by an Order in Council. Under section BH 1(4) of the *Income Tax Act*, an exchange of information agreement is paramount over the tax law which has been enacted in New Zealand. An exchange of information agreement also overrides anything in the *Official Information Act* (1982) and the *Privacy Act* (1993).

Compulsory powers (ToR B.1.4)

214. As previously described, Inland Revenue has broad powers to compel the production of information from natural and legal persons. Under the *Tax Administration Act*, Inland Revenue has powers of discovery and inspection, and is able to compel production of any documents deemed relevant to their examination from taxpayers and third party record keepers (ss.16, 17). Inland Revenue also has the power to compel testimony from taxpayers and third parties (s.19).

Secrecy provisions (ToR B.1.5)

215. There are no provisions under New Zealand's laws relating to the secrecy of ownership, identity or accounting information. Section 17 of the *Tax Administration Act* overrides confidentiality provisions applicable to banks and other financial institutions (*Income Tax Act* s.BH 1). Moreover, New Zealand's Court of Appeal has ruled that, "while banks owe a general obligation of confidentiality to their customers, this obligation is subject to limits and that there is no confidence preventing the disclosure of iniquity. Where bank accounts are used as a vehicle for offending there would be a power and perhaps even a duty to consider and respond to police questions."[44]

216. All of New Zealand's exchange of information agreements permit New Zealand to decline a request if responding to the request 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. This follows the standards set forth in Article 26 of the OECD *Model Tax Convention* and the OECD *Model TIEA*.

217. Among the situations in which New Zealand is not obliged to supply information in response to a request is when the requested information would disclose confidential communications protected by attorney-client privilege. Section 20 of the *Tax Administration Act* protects information, books and documents from disclosure if they constitute confidential communications made or brought into existence for the purpose of obtaining or giving legal advice between:

- a legal practitioner in the practitioner's professional capacity and another legal practitioner in such capacity; or
- a legal practitioner in the practitioner's professional capacity and the practitioner's client.

44. R v Harris, 2000, 2 NZLR 524.

218. Accordingly, attorney client privilege protection is preserved under New Zealand's DTCs and TIEAs and requests for that information will be declined unless the privilege has been waived.

219. The *Tax Administration Act* also provides a statutory right enabling taxpayers to claim non-disclosure for certain tax advice contained in documents prepared by tax advisors. The statutory right also extends to certain documents created by taxpayers for the purpose of seeking tax advice from tax advisors. The rules for claiming non-disclosure for tax advice are contained in sections 20B to 20G of the *Tax Administration Act,* effective from 22 June 2005. The non-disclosure right belongs to taxpayers. It applies to tax advice documents that Inland Revenue seeks to have disclosed under its statutory powers to obtain information (*e.g. Tax Administration Act* ss.16-19 ("information demand")). The right does not apply to tax contextual information (s.20F).

220. Generally, the types of confidential documents to which the right to claim non-disclosure attaches are those which are created in order to seek or obtain tax advice, and would not have been created except for such purpose, even though they may serve ancillary functions such as conveying factual information (s.20B(3)). Documents which simply record decisions or transactions, set out calculations or summarise facts, whether or not they are part of the process of generating tax advice are not eligible to be tax advice documents. Document or forms completed for the main purpose of meeting tax compliance obligations are also not eligible to be tax advice documents.[45]

221. The tax advice must only be about New Zealand tax rules as they affect the taxpayer in question. Advice about the effect and application of tax laws in another jurisdiction (such as a country in which a controlled foreign company is resident) are not subject to the right to claim non-disclosure. Advice provided to taxpayers about non-tax issues such as accounting treatment (including materiality, provisioning, related party disclosures),

45. Other examples of documents which will not be tax advice documents are: tax calculations and worksheets, transfer pricing reports, reports on factual matters in support of tax returns, financial statements (including the tax notes, tax worksheets and tax provisioning calculations), board minutes, valuation reports, invoices, agreements and other transaction documents, structure diagrams, memoranda of understanding, tax indemnity agreements, term sheets, guarantees, compliance forms and certificates, communications with third parties, employment contracts, confidentiality agreements, bank statements and other similar documents. All these types of documents will still need to be disclosed in full (any advice referred to or contained in them may not be deleted or blanked out) if subject to an Information Demand. The above list is not intended to be an exhaustive list (SPS 05/07 Non-Disclosure right for tax advice documents).

insolvency law, company and trust law will constitute tax contextual information, as discussed below. If the main purpose of the document is to give such advice, it is not subject to the right to claim non-disclosure.

222. Tax contextual information means information relating to a tax advice document, *i.e.* the information is either contained in or necessarily implied (by reference from the words used in the document), that falls into any of the following categories (*Tax Administration Act* s.20F(3)):

- facts or assumptions relating to the transaction identified in the information demand and to which the advice relates, whether the transaction has occurred, will or is expected to occur or is assumed to have occurred by the creator of the tax advice document;
- a description of steps involved in the performance of the transaction whether the transaction has occurred will or is expected to occur or is assumed to have occurred by the creator of the tax advice document;
- advice related to the operation and effect of laws other than tax laws on the taxpayer and any related facts or assumptions that this advice is based on;
- advice related to the operation and effect on the taxpayer of tax laws relating to the collection of debts payable to the Commissioner and any related facts or assumptions that this advice is based on; or
- facts or assumptions from, or relating to the preparation of the taxpayer's financial statements, supporting worksheets or other source documents or documents containing information that the taxpayer is required to provide the Commissioner under an Inland Revenue Act (this is intended to apply equally to advisors' accounting and tax workpapers which support the financial statements and/or tax return).

223. Generally, Inland Revenue seeks tax contextual information in order to establish the facts relating to a transaction or series of transactions (though information demands may relate to wider matters) including relevant information such as whether the transaction took place, who were the parties, the purpose of the transaction, relevant dates, amounts, conditions, formulae, etc.

224. If non-compliance with a section 17 notice relates to a requirement to disclose tax contextual information from tax advice documents, a number of offences may have occurred, including offences under sections 143 to 143B or section 143H (obstruction) under the *Tax Administration Act* or an offence under section 11 of the *Crimes Act* (1961) (false statements or declarations).

225. New Zealand's competent authority reports that application of the professional secrecy provisions outlined above has not limited or prevented it from responding to an exchange of information request. Information received

from partner jurisdictions with an exchange of information relationship with New Zealand confirms this.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant.

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)*

226. New Zealand's Inland Revenue is not obliged to inform the person concerned of the existence of an exchange of information request. Likewise, Inland Revenue is not obliged to inform the taxpayer concerned prior to contacting third parties to obtain information.

227. If a person fails to provide information to Inland Revenue as required by a written notice under section 17 and within the time limit specified in the notice, Inland Revenue may apply to New Zealand's District Court for an order requiring the person to produce the information for review (*Tax Administration Act* s.17A(2)). Notice of the application must be given by Inland Revenue to the person in respect of whom the order is sought and any other person the District Court directs (s.17A(5)). Inland Revenue and each person who is given notice of an application is entitled to appear and to be heard on the hearing of the application (s.17A(6)). In practice, it takes one month to six weeks before the first appearance.

228. At the hearing, the District Court may order the information requested under section 17 to be produced to the District Court and review the information to determine whether or not (s.17A(7)):

- to make an order requiring the taxpayer to produce the information to the Commissioner;
- the information is the subject of legal professional privilege; and

- the information is contained in a tax advice document and, if the information is contained in a tax advice document, whether or not the information is required to be disclosed.

229. If and to the extent that the District Court is satisfied that the information is likely to be relevant for a purpose relating to the administration or enforcement of a tax law, or a matter arising from or connected with another function lawfully conferred on the Commissioner, the District Court may order the person named in the application to produce the information or any part of that information for review by the Commissioner. Court orders are made at the first appearance (*i.e.* same day). Depending on the circumstances, Court orders may provide two months for taxpayers to comply with. If not complied with, contempt of Court proceedings commence. In practice, most taxpayers comply with a Court order.

230. The procedures described above are applicable in the case of an exchange of information request. In practice, however, they are seldom used because taxpayers and third parties typically co-operate with Inland Revenue in exchange of information cases. New Zealand responds to the vast majority of exchange of information requests within 90 days and judicial process has seldom been the cause of longer timeframes taken to respond to requests. If applied in the exchange of information context, the time and effort to overcome any objection from a taxpayer or third party appears to be compatible with effective exchange of information.

231. Inland Revenue regularly publishes guidance that describes how Inland Revenue will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts. Inland Revenue has several Standard Practice Statements that describe the Inland Revenue's right of access to records in various circumstances. In particular, Standard Practice Statements (SPS) 05/08 (Section 17 Notices) and 05/07 (Non-disclosure right for tax advice documents) provide guidance on Inland Revenue's information-gathering powers.

232. SPS 05/07 provides procedures followed by Inland Revenue when issuing a section 17 notice and the procedures for taxpayers to claim non-disclosure for legal professional privilege and certain tax advice documents. Some of the key principles contained in the Statement are:

- Inland Revenue will only require disclosure of information considered necessary or relevant and that is reasonably required in the circumstances of the case;
- Inland Revenue will be reasonable in relation to the quantity of information sought and the timeframe for providing that information. Inland Revenue will reconsider parts of the demand where there is genuine difficulty in obtaining and/or providing that information;

- Inland Revenue will generally not use section 17 where information is available publicly and will meet the usual charges, for example where the information is held by the Land Information New Zealand, the Companies Office and Quotable Value New Zealand. Public availability of information does not, however, prevent Inland Revenue from requiring information to be provided under section 17;
- where the section 17 notice contains a reference to the non-disclosure right, the section 17 notice should also refer to when the tax contextual information (*i.e.* the factual and non tax advice content of the documents) would be required to be disclosed if the Commissioner requires such a disclosure. The notice should generally advise that disclosure of the tax contextual information (if required by the Commissioner) will be required in a subsequent notice or in rare cases, the section 17 notice will contain a requirement to disclose the tax contextual information as part of the disclosure requirements for the section 17 notice;
- generally, Inland Revenue will use a section 17 notice only where it is prepared to invoke the statutory remedies in the event of non-compliance; and
- in some cases, Inland Revenue will not request information but will access the books and documents under section 16 which gives the Commissioner the power to enter all places for the purpose of inspecting any books and documents.

233. It is mandatory that Inland Revenue officers follow these principles and other principles contained in Standard Practice Statements as they are part of Inland Revenue's policy on access and information gathering. Inland Revenue reports that these principles do not limit its ability to exchange information.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant.

C. Exchanging Information

Overview

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

235. New Zealand has considerable experience in exchanging information in all forms to and from tax treaty partners. New Zealand signed its first agreement providing for exchange of information for tax purposes in 1947, with the United Kingdom. That, and a number of subsequent agreements, have since been terminated and replaced, leaving a 1963 agreement with Japan as the oldest agreement still in force. New Zealand currently has a network of 37 DTCs, 35 of which are in force, primarily with its major trading and investment partners. The DTCs all contain exchange of information articles. Apart from a few exceptions, the articles generally follow Article 26 of the OECD *Model Taxation Convention* wording that prevailed at the time each DTC was entered into. Article 26 embodies the rules under which information may be exchanged to the widest possible extent. New Zealand has no observations or reservations in respect of Article 26.

236. New Zealand also has an emerging network of TIEAs. To date, 18 TIEAs have been signed, four of which are in force. All of New Zealand's TIEAs are based on and closely follow the OECD *Model TIEA*.

237. All exchange of information articles in New Zealand's agreements contain confidentiality provisions and New Zealand's domestic legislation also contains relevant confidentiality provisions. These provisions apply equally to all information and documentation forming the requests received by New Zealand as well as to responses received from counterparties.

238. New Zealand's agreements ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets or information which is the subject of attorney client privilege or to make disclosures which would be contrary to public policy.

239. New Zealand's institutional framework facilitates effective exchange of information: there is a sufficient number of professional staff with clear responsibilities for processing requests and retrieving information; the staff has adequate expertise and training specific to exchange of information; and New Zealand has adequate financial and technical resources dedicated to exchange of information.

240. In general, the responses the assessment team received to the peer questionnaire from New Zealand's exchange of information partners suggest that New Zealand's practices in terms of exchange of information are to a very high standard. Peer jurisdictions generally consider New Zealand to be an exceptional exchange of information partner. New Zealand receives a relatively high volume of requests per year for which it has been capable of responding to in a timely manner.

C.1. Exchange-of-information mechanisms

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

Other forms of exchange of information

241. Beyond meeting the standard of effective exchange of information assistance in response to specific requests, New Zealand engages in exchange of information practices that go beyond the standard including: automatic and spontaneous exchanges of information; simultaneous examinations; and allows representatives of requesting jurisdictions to enter its territory to conduct interviews and examine records. Peer input received indicates that New Zealand actively exchanges information on a spontaneous and automatic basis with its peers.

Automatic exchange of information

242. These exchanges comprise the systematic supply of information about a category of payment or income. Typically such exchanges relate to the passing on of information provided to Inland Revenue under domestic return requirements, a primary example of which is information relating to interest income provided in returns by financial institutions. Details received by Inland Revenue on interest, dividends and royalties paid to non-residents are systematically transmitted to New Zealand's treaty partners where the non-resident recipients are resident. This is usually carried out once a year.

243. In terms of reciprocity, New Zealand recognises that many treaty partners are not yet in a position where they are able to readily engage in automatic exchanges. New Zealand interprets the overarching principle of reciprocity in tax treaty relations in a broad and pragmatic manner and still sends such information even though an equivalent response is unlikely, although legally possible under the particular tax treaty.

Spontaneous exchanges of information

244. Officers in Inland Revenue's business lines are encouraged to identify items of information for spontaneous exchange with New Zealand's tax treaty partners as part of the process of examining tax returns, particularly for taxpayers involved in international trade and investment. Information of this kind may relate to situations in which there is some suspicion that items shown in a New Zealand tax return may not be dealt with in a symmetrical fashion in a corresponding overseas return or may not have been returned abroad at all or, more generally, there may be some suspicion that taxes are being avoided or evaded on transactions with an international dimension. The actual exchanges to treaty partners are made by New Zealand's competent authority.

245. Examples of information New Zealand provides spontaneously to treaty partners include: details of undisclosed offshore bank accounts and credit cards; details of abusive transactions involving New Zealand residents; and documentation relating to tax avoidance arrangements (both generic and specific) as well as promoters of such schemes.

Industry-wide or issue-specific exchange of information

246. New Zealand has participated in exchanges of information with tax treaty partners that examine issues relating to particular industries and issues. These exchanges are designed to foster a better understanding of such industries and issues rather than focus on particular taxpayers. Oil, pharmaceuticals, information technology, banking and insurance have all been covered by New Zealand in such exchanges with tax treaty partners.

247. New Zealand has regular contact with other tax administrations in which industry-specific or issue-specific matters are discussed without reference to a particular named taxpayer. Where appropriate, New Zealand's competent authority exchanges information during such discussions under the exchange of information article of the relevant treaty. This accords such exchanges the protection of the secrecy provisions contained in the article. Not all information exchanged during these contacts requires the protection of the secrecy provisions. Often such information exchanges are of an administrative nature or the information may already be in the public arena in New Zealand.

248. Simultaneous tax examinations: New Zealand has no formal procedures governing its participation in simultaneous examinations. The programme in New Zealand has not been used extensively. Simultaneous tax examinations in New Zealand take place under the authority of the exchange of information article of DTCs and are governed by the confidentiality terms of such articles. If more than two countries are involved in a simultaneous examination, the bilateral nature of tax treaties is respected and the New Zealand competent authority ensures this happens.

249. Tax examinations abroad: A tax examination abroad allows for the possibility to obtain information through the presence of representatives of the competent authority of the requesting Contracting State. A foreign tax official is unable to actively participate in an examination in New Zealand unless the taxpayer concerned has consented. New Zealand's competent authority must also be informed and have agreed to the examination.

Foreseeably relevant standard (ToR C.1.1)

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

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

251. New Zealand's DTCs are generally patterned on the OECD *Model Taxation Convention* and its commentary as regards the scope of information that can be exchanged. DTCs initially signed or amended by protocol after 2005 generally use the "foreseeably relevant" standard (*e.g.* Australia (2009); Austria (2006); Czech Republic (2007); Mexico (2006); Poland (2005); Singapore (2009); United Kingdom (2007)). Older DTCs generally use the term "as is necessary" or "as is relevant" in lieu of "as is foreseeably relevant". The terms "as is necessary" and "as is relevant" are 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".[46]

252. New Zealand's DTCs with Japan (1963), Malaysia (1976), and Switzerland (1980) incorporate additional language, noting that it applies to "… such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary …". The bracketed text is not in line with the standards as it limits the exchange of information article to information at the parties' disposal under taxation laws, not information at their disposal under other laws, and it limits the exchange of information to information which is at their disposal in the normal course of administration. Thus, if it is not "normal" for one of the parties to obtain certain information, the information might not be provided to the other Contracting State. In practice, however, this wording will not limit New Zealand's ability to respond to a request from these jurisdictions.

253. New Zealand's DTC with Switzerland (1980) reflects the previous reservation the Swiss then had to Article 26 of the OECD *Model Taxation Convention*. As such, the exchange of information article contained in the New Zealand-Switzerland DTC only relates to matters concerned with the prevention of double taxation and not to tax avoidance.

254. All but one of New Zealand's TIEAs meet the foreseeably relevant standard as they are patterned on the OECD *Model TIEA* and its commentary regarding the scope of information that can be exchanged. New Zealand's TIEA with Bermuda (signed 16 April 2009) contains additional language that may limit the scope of information that may be exchanged. Article 5 of the New Zealand – Bermuda TIEA sets forth a requirement that the applicant party certify certain information regarding the relevance of the request, as follows:

> *Where the applicant party requests information with respect to a matter which does not constitute serious tax evasion, a senior official of its competent authority shall certify that the request is relevant to, and necessary for, the determination of the tax liability under the laws of the applicant Party.* [*emphasis added*]

255. In addition to the requirement to certify this information, the use of the words "tax liability" in this provision may not cover all of the purposes set out in Article 1. For instance, information relevant to the collection of tax, or the investigation or prosecution of tax matters. In both these regards, this

46. The word "necessary" in paragraph 1 of Article 26 of the 2003 OECD *Model Taxation Convention* was replaced by the phrase "foreseeably relevant" in the 2005 version. The commentary to Article 26 recognises that the term "necessary" allows for the same scope of exchange as does the term "foreseeably relevant".

provision may create an additional obligation which could prevent the effective exchange of information in certain very limited instances.

256. In cases where a request is unclear or incomplete, New Zealand's Inland Revenue reports that its competent authority routinely seeks clarifying or additional information from the requesting jurisdiction before declining a request. Information received from partner jurisdictions with an exchange of information relationship with New Zealand confirms this.

In respect of all persons (ToR C.1.2)

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

258. All of New Zealand's DTCs and TIEAs provide for exchange of information with respect to all persons. None of New Zealand's agreements restricts the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting States.

259. New Zealand's TIEA with Bermuda, however, provides in Article 5(4) an additional obligation where the request relates to a person who is neither a resident nor national of either the applicant or requested jurisdictions, as follows:

> *If information is requested that relates to a person that is not a resident, nor a national, of one or other of the Parties, it also shall be established to the satisfaction of the competent authority of the requested Party that such information is necessary for the proper administration and enforcement of the fiscal laws of the applicant Party.*

260. This requirement may narrow the application of the "foreseeably relevant" standard in the OECD *Model TIEA* for those cases where the request relates to a person who is neither a resident nor national of either the applicant or requested jurisdictions. New Zealand's competent authority, however, does not consider that this provision creates any additional requirement on the Applicant State where it seeks information relating to a non-resident.

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

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

262. Only New Zealand's DTCs signed or amended by protocol after 2005 include paragraph 26(5) of the OECD *Model Taxation Convention*, which provides 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 a person (*e.g.* Australia (2009); Austria (2006); Czech Republic (2007); Mexico (2006); Poland (2005); Singapore (2009); United Kingdom (2007)). New Zealand's policy is to include Article 26 (5) in all of its new agreements.

263. Although New Zealand's older DTCs do not include such a provision, there are no limitations in New Zealand's laws with respect to access to bank information, information held by nominees, and ownership and identity information. There may be, however, such limitations in place in the domestic laws of some of its treaty partners. In these cases, the absence of a specific provision requiring exchange of bank information unlimited by bank secrecy may serve as a limitation on the exchange of information which can occur under the relevant DTC. New Zealand should continue to renegotiate its older DTCs to include paragraph 26(5) of the OECD *Model Taxation Convention*.

Absence of domestic tax interest (ToR C.1.4)

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

265. All of New Zealand's DTCs signed or amended by protocol after 2006 contain Article 26 (4) of the OECD *Model Taxation Convention*, obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. New Zealand's older DTCs do not contain such a provision. There are,

however, no domestic interest restrictions on New Zealand's powers to access information. New Zealand is able to exchange information, including in cases where the information is not publicly available or already in the possession of the governmental authorities as noted in section B.2 of this report.

266. A domestic tax interest requirement may however exist for some of New Zealand's treaty partners. 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 DTC.

267. It is noted in the case of New Zealand's DTC with Switzerland that the treaty contains a clause that states:

> *... shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement in relation to the taxes which are the subject of this Agreement.*

268. In such cases, Switzerland would be prevented by the DTC's wording from requesting assistance from New Zealand to satisfy an exchange of information request which does not relate to carrying out the provisions of the DTC and New Zealand would have no obligation to respond to such a request (although it is recognised that Switzerland does not currently make such requests of New Zealand). However, if the DTC was to be updated to reflect minimum international standards for exchange of information, New Zealand's Inland Revenue reports that it would have no difficulty in fulfilling a request from Switzerland for information (including a request relating to bank information).

269. New Zealand should continue to renegotiate its older DTCs to include paragraph 26 (4) of the OECD *Model Taxation Convention*.

270. All of New Zealand's TIEAs allow information to be obtained and exchanged notwithstanding it is not required for any New Zealand domestic tax purpose.

Absence of dual criminality principles (ToR C.1.5)

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

272. There are no dual criminality requirements in New Zealand's agreements for exchange of information in tax matters.

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

273. 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").

274. All of New Zealand's exchange of information agreements provide for exchange of information in both civil and criminal tax matters.

275. New Zealand provides exchange of information assistance at the administrative level in all cases, whether civil or criminal. New Zealand's Inland Revenue reports that criminal cases are given as much priority as possible.

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

276. There are no restrictions in the exchange of information provisions in New Zealand's DTCs and TIEAs that would prevent New Zealand from providing information in a specific form, as long as this is consistent with its own administrative practices. New Zealand's DTC with the United States includes a specific clause to reinforce the need to provide information in the form requested.

277. New Zealand's competent authority is prepared to provide information in the specific form requested to the extent permitted under New Zealand's law and administrative practice. Information received from partner jurisdictions with an exchange of information relationship with New Zealand indicates that New Zealand is able to respond to such requests.

In force (ToR C.1.8)

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

279. New Zealand has a network of 55 bilateral agreements that provide for exchange of information in tax matters, comprising 37 DTCs and 18 TIEAs. Thirty-five of New Zealand's DTCs and four TIEAs are in force.

280. For the large majority of agreements, ratification by New Zealand has occurred within a year of signing. New Zealand's ratification procedures typically take four months. After an agreement is signed it is reviewed by Parliament (two months) and subsequently an Order in Council is made which

concludes the ratification procedures (two months). New Zealand's 16 agreements not in force were signed in 2009 and 2010. New Zealand authorities report that ratification of these agreements is taking longer as a result of the significant number of agreements signed over the past two years. While this timeframe is not currently of concern, it is recommended that New Zealand continue to bring agreements into force expeditiously.

In effect (ToR C.1.9)

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

282. All of New Zealand's agreements which have been signed and ratified by both parties are in effect in New Zealand. Exchange of information agreements negotiated between New Zealand and another Contracting State are given the force of law in New Zealand by an Order in Council. Under section BH 1(4) of the *Income Tax Act*, a DTC or TIEA will then be paramount over the tax law which has been enacted in New Zealand. A DTC or TIEA will also explicitly override anything in the *Official Information Act* (1982) and the *Privacy Act* (1993). More generally, information required to be disclosed under a DTC or TIEA may then be exchanged despite any confidentiality requirement of any other enactment (*Tax Administration Act* s.88).

283. New Zealand's competent authority has a developed institutional framework that supports effective exchange of information. It has written procedures to be followed by exchange of information staff for processing, co-ordinating, and responding to incoming requests. Agreements (both tacit and actual) between New Zealand's competent authority and other relevant government agencies (*e.g.* Inland Revenue field offices) provide procedures for assistance in relation to exchange of information and establish a commitment by the agencies to provide assistance in a timely manner.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant.

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

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

284. 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.

285. New Zealand has an extensive treaty network that covers all of its major trading partners (Australia, the United States, Japan, Hong Kong, the United Kingdom, and the Peoples' Republic of China). New Zealand has signed exchange of information agreements with 28 OECD/G20 countries[47] and 51 of the 96 Global Forum members. New Zealand also has an emerging network of TIEAs. To date, 18 TIEAs have been signed, four of which are in force.

286. New Zealand currently has 11 TIEA negotiations in various stages of progress. In addition, New Zealand is involved in renegotiating three of its existing DTCs and amending a further four by Protocol. In all seven cases, New Zealand expects that the outcome in terms of exchange of information provisions will be to the international standard. There is no indication that New Zealand has not entered into an agreement with a jurisdiction when requested to do so.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	New Zealand should continue to develop its exchange of information network with all relevant partners.

47. Australia, Austria, Belgium, Chile, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Mexico, Netherlands, New Zealand, Poland, South Korea, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Canada, China, India, Indonesia, and Russia.

Phase 2 Rating
Compliant.

C.3. Confidentiality

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

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

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

288. All exchange of information articles in New Zealand's DTCs have confidentiality provisions modelled on Article 26 (2) of the OECD *Model Tax Convention*. Likewise, all of New Zealand's TIEAs have confidentiality provisions modelled after Article 8 of the OECD *Model TIEA*. New Zealand's exchange of information agreements are part of New Zealand's domestic law.

289. All documents sent with competent authority letters (including those sent by electronic means) are stamped with the following warning to protect against unauthorised use or disclosure:

> *This information is furnished by New Zealand under the provisions of our convention. Its use and disclosure must be governed by the convention.*

290. The confidentiality provisions of New Zealand's DTCs and TIEAs are backed by general confidentiality provisions in New Zealand's domestic tax legislation. Section 81 of the *Tax Administration Act* imposes an obligation on Inland Revenue to maintain strict confidentiality in respect of any information it holds. There are, however, a number of specific instances where the Inland Revenue may disclose personal information.

291. Section 81(4) of the *Tax Administration Act* contains a general exception for information disclosure for the purpose of carrying into effect the Inland Revenue Acts. Although this general exception for information disclosure is quite broad, it is supplemented by a number of specific exceptions. These include, at section 88 of the *Tax Administration Act*, an express authorisation

for disclosure of information to another jurisdiction to the extent that such disclosure is required by a DTC or a TIEA:[48]

> *Notwithstanding any obligation of secrecy imposed by any enactment, the Commissioner may disclose such information as is required to be disclosed under a double tax agreement or tax recovery agreement to a person authorised to receive such information under the law of the territory in relation to which the double tax agreement or tax recovery agreement has been made.*

292. Section 88 effectively "switches off" the secrecy rules of the *Tax Administration Act* for the purpose of complying with requests for information made under a DTC or TIEA. Section 88 also explicitly overrides any obligation of secrecy imposed by any other enactment. New Zealand does have an *Official Information Act* (1982), but the empowering legislation for giving effect to DTCs and TIEAs specifically overrides the *Official Information Act*.[49]

293. Any breach of section 81 is, pursuant to section 143C of the *Tax Administration Act*, an offence and on conviction the offender is liable to up to six months imprisonment, a fine of NZD 15 000 (EUR 8 517), or both.

294. The matter of disclosure of information between competent authorities has been considered by the New Zealand Court of Appeal in CIR v ER Squibb & Sons (NZ) Ltd 14 NZTC 9146. The Court held that the treaty confidentiality obligations remain paramount.

295. New Zealand has internal administrative guidelines regarding confidentiality of information exchanged. In addition, New Zealand's competent authority uses encrypted e-mail in exchanging information to tax treaty partners wherever possible. PGP (Pretty Good Privacy) is New Zealand's preferred encryption method and has been endorsed by the OECD.[50] Only

48. The term "double tax agreement" is very broad. As defined in the *Income Tax Act*, a DTC is an agreement negotiated for one or more listed purposes. The exchange of information is a listed purpose. (Section YA 1 and subsections BH 1(1) and BH 1(2).) Therefore, TIEAs are DTCs for purposes of the *Income Tax Act*. That same meaning also carries over to the *Tax Administration Act*. (*Tax Administration Act* s.3(2)).

49. Given the possibility of "circularity" in the legislation – with various Acts purporting to override each other – the empowering provision for making Orders in Council to give effect to a DTC or TIEA (*Income Tax Act* s.BH 1) clarifies that the Order in Council has precedence over particular Acts and, in particular, the *Privacy Act* (which imposes limitations on the ability of agencies to obtain and disclose personal information).

50. PGP uses public key cryptography and includes a system which binds the public keys to a user name and/or an e-mail address. There is no known method which

International Audit Unit staff involved in exchange of information work have access to the exchange of information database of cases. As it is an electronic database, there is a trail of usage.

All other information exchanged *(ToR C.3.2)*

296. The confidentiality provisions in New Zealand's exchange of information agreements and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant.

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)*

297. Each of New Zealand's exchange of information agreements ensures that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy.

298. As noted in section B.1 of this report, New Zealand's domestic law permits the disclosure of information to the extent that it is required to be

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will allow a person or group to break PGP encryption by cryptographic or computational means. No password is required. New Zealand reports that the secure electronic exchange of information has considerably decreased turnaround time and provides additional efficiencies in the processing of information within tax authorities.

disclosed by a DTC or TIEA. New Zealand's DTCs and TIEAs specifically provide that trade, business, industrial, commercial or professional secrets are not required to be disclosed. Similarly, they do not require the disclosure of information that would be contrary to public policy. Therefore, information that falls into these categories remains protected under New Zealand domestic law and requests for such information are declined. New Zealand's Inland Revenue reports that, to date, no such matter has arisen.

299. Currently, New Zealand generally follows the "mutuality" provision in Article 26 of the OECD *Model Taxation Convention* and the Commentary thereto. This has the effect of removing from New Zealand any obligation to carry out administrative measures or otherwise supply information to a requesting State if that requesting State is not itself able to carry out corresponding administrative measures or to obtain the information under its laws or in the normal course of its administration.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days *(ToR C.5.1)*

300. 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.

301. There are no provisions in New Zealand's laws or in its DTCs pertaining to the timeliness of responses or the timeframe within which responses should be provided. New Zealand's TIEAs include an obligation to either respond to the request, or provide a status update within 90 days of receipt of the request. As such there appear to be no legal restrictions on the ability of New Zealand's competent authority to respond to requests within

90 days of receipt by providing the information requested or by providing an update on the status of the request.

302. New Zealand receives a high volume of requests for information each year. In 2009, New Zealand's competent authority handled 214 new cases in respect of specific exchange of information requests. Information received from partner jurisdictions with an exchange of information relationship with New Zealand indicates that in the vast majority of cases New Zealand responds to requests within 90 days. In a few cases New Zealand responds to requests within 180 days. Only in exceptionally rare cases does New Zealand respond within one year. However, as seen during the on-site visit, New Zealand gives priority to urgent requests, otherwise its overall objective is to respond to tax treaty partners within three months where information is readily available or within six months where information is required from external parties.

Monitoring and reporting

303. New Zealand's competent authority uses performance measures to internally monitor its exchange of information program. New Zealand's competent authority maintains a register of all exchange of information cases. The register is regularly reviewed to ensure requests are actively pursued and responses are provided to tax treaty partners in a timely fashion. Controls and recording systems are in place to monitor the handling of requests (electronic database with electronic bring-up system from 90 days from date request received). A count of new exchange of information cases opened is carried out every six months. The time engaged on cases generally varies with the complexity of the subject matter and the volume of information requested. Periodically, New Zealand's competent authority will send a reminder to follow up with field staff if the request is long outstanding.

304. New Zealand's competent authority introduced a new performance standard from 1 July 2010 which requires non-complex requests to be actioned within two months and complex requests within six months. Overall performance is monitored by the Chief Advisor (International Audit) by regular review of the electronic database.

305. Since 2010, New Zealand's competent authority has provided status updates to exchange of information partners where a response has not been provided within 90 days of receiving a request. Prior to 2010, New Zealand regularly provided such updates, although not in all cases. Information received from partner jurisdictions with an exchange of information relationship with New Zealand confirms this.

306. New Zealand's Inland Revenue reports that feedback is provided on all cases to tax treaty partners that have responded to exchange of

information requests made by New Zealand. Details are given as to resulting tax adjustments or additional tax collections, as well as outcomes of court cases (including prosecutions) and legislative changes. New Zealand provides such feedback to encourage bilateral tax co-operation and exchange of information.

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

307. New Zealand's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by Inland Revenue. The Chief Advisor (International Audit) is delegated authority to act as competent authority under New Zealand's exchange of information agreements. New Zealand's Competent Authority is clearly identifiable to its exchange of information partners. The competent authority's name and address is listed on Inland Revenue's website and in the OECD's list of competent authorities.

308. The International Audit Unit is based in Wellington. There are two full-time staff (a tax auditor and a service officer) within the Unit that assist the Chief Advisor respond to exchange of information requests. The staff have been with the Unit for many years and have considerable experience with exchange of information for tax purposes and periodically receive training specific to exchange of information issues (obligations under exchange of information mechanisms, internal processing of requests, confidentiality obligations). The Unit has ready access to field staff (where external inquiries are necessary) and to a very experienced Computer Forensics Unit for collection of data from computers of New Zealand parties. New Zealand's competent authority has adequate financial and technical resources dedicated to exchange of information.

309. All exchanges of information apart from matters concerning the interpretation of DTCs are managed centrally in Inland Revenue's National Office by the International Audit Unit. This ensures a high standard is maintained and policies and procedures are followed consistently. The Unit has direct access to databases of New Zealand Companies Office and Land Information (for real estate ownership) and there is a Memorandum of Understanding with New Zealand Customs (for travel movements). Inland Revenue's Policy Advice Division is responsible for interpretation issues arising from DTCs. The International Audit Unit answers all exchange of information requests received from exchange of information partners unless external inquiries are required by field staff. Where field staff involvement is required, cases are allocated in consultation with respective business line managers. New Zealand's competent authority has regular contact with field staff regarding the status of gathering information necessary to respond to a request.

310. New Zealand's International Audit Unit is very experienced in accessing information. International Audit staff have access to information from public registries (in particular, company and land details), international databases, trade directories and telephone books and also can use the information gathering powers under the *Tax Administration Act*.

311. New Zealand has internal administrative procedures for processing incoming requests for information, including procedures relating to the exchange of information staff receiving requests and to Inland Revenue field offices that are sources of common types of information requested. These procedures are based on the *OECD Manual on Information Exchange*. Upon receipt of a request, the competent authority performs a control check to determine whether the request is in conformity with the respective exchange of information agreement and whether the information requested can be retrieved without the assistance of a regional field office.

312. The International Audit Unit maintains an intranet site on which OECD resource materials (such as a database of public websites and a reference guide on sources of information from abroad) can be found. The site also has links to overseas company registries as well as full contact details of International Audit staff members.

313. New Zealand's exchange of information programme covers the receipt and supply of information from its network of tax treaty partners. Information is exchanged automatically (interest, dividends and royalties), by specific request and spontaneously. The International Audit Unit also facilitates simultaneous examinations with other jurisdictions and industry-wide exchanges.

314. New Zealand has an excellent bilateral relationship with Australia, its major trading partner, built up over many years of working closely together. The competent authorities meet at least once a year to discuss opportunities to co-operate and share information on issues of mutual interest, and there is regular communication by telephone.

315. New Zealand's competent authority is staffed appropriately considering the volume of requests it receives and the fact that a majority of requests can be answered by consulting information already available to them online. The staff has adequate expertise and training specific to exchange of information. New Zealand's Inland Revenue has adequate financial and technical resources dedicated to exchange of information.

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

316. There are no laws or regulatory practices in New Zealand that impose restrictive conditions on exchange of information.

Determination and factors underlying recommendations

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

Phase 2 Rating
Compliant.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation need improvement.	Nominees are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.
Phase 2 rating: Largely Compliant.	While enforcement provisions exist to ensure the accuracy of information provided to the Companies Office, they may not necessarily be effective for companies with non-resident directors.	New Zealand should implement its proposal to tighten the requirements around company directors and company registration (*e.g.* to require companies to have at least one resident director or local agent).
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.	Accounting records and underlying documentation for a liquidated company are not required to be maintained for a period of 5 years or more.	New Zealand should require that accounting records and underlying documentation be maintained for liquidated companies for at least 5 years.
Phase 2 rating: Compliant.		
Banking information should be available for all account-holders *(ToR A.3)*		
Phase 1 determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Compliant.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
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: Compliant.		
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Phase 1 determination: The element is in place.		New Zealand should continue to develop its exchange of information network with all relevant partners.
Phase 2 rating: Compliant.		

Determination	Factors underlying recommendations	Recommendations
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: Compliant.		
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.		
Phase 2 rating: Compliant.		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Compliant.		

Annex 1: Jurisdiction's Response to the Review Report[51]

New Zealand very much welcomes the Global Forum's Peer Review. It has been, without doubt, a lot of work for a small jurisdiction. However, we have long recognised that transparency and information exchange are essential to tax compliance. Accordingly, New Zealand has an active exchange of information programme, and has a long history of all forms of information exchange with treaty partners (i.e. automatic, spontaneous, and on request).

The world is truly becoming a smaller place through globalisation and rapid technological change. As international business and investment transactions increase, so too does the need for tax authorities to seek assistance from one another through closer co-operation.

For these reasons, New Zealand fully endorses the international standards for transparency and exchange of information, and has supported the work of the Global Forum since its inception.

Overall, we consider the combined phase 1 and phase 2 report to be a fair and balanced reflection of the New Zealand position. The report concludes that each of the essential elements for transparency and exchange of information are in place, but does identify some minor imperfections in New Zealand's legal and regulatory framework. Overall, New Zealand receives a phase 2 rating of "Compliant" and, with one exception, the individual ratings for each of the essential elements assessed during the peer review are also all "Compliant". The exception relates to essential element A.1 which, due to the above mentioned minor imperfections, only receives a rating of "Largely compliant".

We accept the recommendations and ratings that have been made in the report on these issues. However, we note that are progressing initiatives that will address the identified imperfections. At the time of providing this updated Annex (October 2013), remedial amendments are in the process of being enacted. Upon enactment, we will request a Supplementary Report, with a view to receiving confirmation from the Global Forum that all identified imperfections have been addressed.

51. 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

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Anguilla	Tax Information Exchange Agreement (TIEA)	11-Nov-09	pending
2	Australia	Double Taxation Convention (DTC)	26-Jun-09	19-Mar-10
3	Austria	DTC	21-Sep-06	01-Dec-07
4	Bahamas	TIEA	18-Nov-09	pending
5	Belgium	DTC	15-Sep-81	08-Dec-83
6	Bermuda	TIEA	16-Apr-09	pending
7	British Virgin Islands	TIEA	13-Aug-09	pending
8	Canada	DTC	31-May-80	29-May-81
9	Cayman Islands	TIEA	13-Aug-09	pending
10	Chile	DTC	10-Dec-03	21-Jun-06
11	China	DTC	16-Sep-86	17-Dec-86
12	Cook Islands	TIEA	09-Jul-09	pending
13	Czech Republic	DTC	26-Oct-07	29-Aug-08
14	Denmark	DTC	10-Oct-80	22-Jun-81
15	Dominica	TIEA	16-Mar-10	pending
16	Fiji	DTC	27-Oct-76	11-Feb-77
17	Finland	DTC	12-Mar-82	22-Sep-84
18	France	DTC	30-Nov-79	19-Mar-81
19	Germany	DTC	20-Oct-78	21-Dec-80
20	Gibraltar	TIEA	13-Aug-09	pending
21	Guernsey	TIEA	21-Jul-09	08-Nov-10

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
22	Hong Kong	DTC	01-Dec-10	pending
23	India	DTC	17-Oct-86	03-Dec-86
24	Indonesia	DTC	25-Mar-87	23-Jun-88
25	Ireland	DTC	19-Sep-86	26-Sep-88
26	Isle of Man	TIEA	27-Jul-09	27-Jul-10
27	Italy	DTC	06-Dec-79	23-Mar-83
28	Japan	DTC	30-Jan-63	19-Apr-63
29	Jersey	TIEA	27-Jul-09	27-Jul-10
30	Korea	DTC	06-Oct-81	22-Apr-83
31	Malaysia	DTC	19-Mar-76	02-Sep-76
32	Marshall Islands	TIEA	4-Aug-10	pending
33	Mexico	DTC	16-Nov-06	16-Jun-07
34	Netherlands	DTC	15-Oct-80	18-Mar-81
35	Netherlands Antilles*	TIEA	01-Mar-07	02-Oct-08
36	Norway	DTC	20-Apr-82	31-Mar-83
37	Philippines	DTC	29-Apr-80	14-May-81
38	Poland	DTC	21-Apr-05	16-Aug-06
39	Russia	DTC	05-Sep-00	04-Jul-03
40	St Christopher and Nevis	TIEA	24-Nov-09	pending
41	St Vincent and the Grenadines	TIEA	16-Mar-10	pending
42	Samoa	TIEA	24-Aug-10	pending
43	Singapore	DTC	21-Aug-09	12-Aug-10
44	South Africa	DTC	18-Feb-02	23-Jul-04
45	Spain	DTC	28-Jul-05	31-Jul-06
46	Sweden	DTC	21-Feb-79	14-Nov-80
47	Switzerland	DTC	06-Jun-80	21-Nov-81
48	Chinese Taipei	DTC	11-Nov-96	15-Dec-97
49	Thailand	DTC	22-Oct-98	14-Dec-98
50	Turkey	DTC	22-Apr-10	pending
51	Turks and Caicos Islands	TIEA	11-Dec-09	pending

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
52	United Arab Emirates	DTC	22-Sep-03	29-Jul-04
53	United Kingdom	DTC	04-Aug-83	16-Mar-84
54	United States of America	DTC	01-Dec-08	12-Nov-10
55	Vanuatu	TIEA	4-Aug-10	pending

* The Netherlands Antilles was dissolved on 10 October 2010, resulting in two new constituent jurisdictions – Curacao and Saint Maarten – with the remaining three islands (Bonaire, Saint Eustatius and Saba) joining the Netherlands as special municipalities. The treaty remains applicable to all of the islands of the former Netherlands Antilles. Curacao and Saint Maarten will administer the treaty obligations on their own behalf, while the Netherlands will administer the treaty obligations on behalf of Bonaire, Saint Eustatius and Saba.

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

Commercial Laws

Companies Act (1993)
Companies Act Regulations (1994)
Companies Reregistration Act (1993)
Partnership Act (1908)
Limited Partnerships Act (2008)
Insurance Companies (Ratings and Inspections) Act (1994)
Trustee Act (1956)
Trustee Companies Act (1967)
Charitable Trusts Act (1957)
Institute of Chartered Accountants of New Zealand Act (1996)
Financial Reporting Act (1993)
Co-operative Companies Act (1996)
Energy Companies Act (1992)
Local Government Act (1974)
State Owned Enterprises Act (1986)
Bylaws Act (1910)
Incorporated Societies Act (1908)
Industrial and Provident Societies Act (1908)
Financial Service Providers (Registration and Dispute Resolution) Act (2008)
Financial Advisers Act (2008)

Taxation Laws

Income Tax Act (2007)
Tax Administration Act (1994)
Goods and Services Tax Act (1985)

Banking Laws

Reserve Bank of New Zealand Act (1989)

Anti-Money Laundering Laws

Financial Transactions Reporting Act (1996)
Anti-Money Laundering and Countering Financing of Terrorism Act (2009)

Other Laws

Constitution Act (1986)
Taxation Review Authorities Act (1994)
Supreme Court Act (2003)
Local Government (Rating) Act (2002)
Crimes Act (1961)
Privacy Act (1993)
Official Information Act (1982)

Annex 4: People Interviewed During On-Site Visit

Inland Revenue Department

International Audit

Tax Policy
Legal & Technical Services
Field officers

Ministry of Economic Development (Company Registrar)

Financial Intelligence Unit

Financial Crime Group

Ministry of Justice

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, COMBINED: PHASE 1 + PHASE 2, incorporating Phase 2 ratings – NEW ZEALAND

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 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264205864-en.***

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