GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Combined: Phase 1 + Phase 2

CANADA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Canada 2011

COMBINED: PHASE 1 + PHASE 2

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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 90 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.

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 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 adopted by the Global Forum.

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

Executive Summary

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

2. Canada has an extensive history of exchanging information for tax purposes, during which time it has established a strong framework to ensure the elements for effective availability and access to relevant information are in place. In addition, it has now developed a network of exchange agreements, including 88 Double Tax Conventions (DTCs) in force and 13 Tax Information Exchange Agreements (TIEAs) signed, 2 of which are in force. Seventeen of those EOI partners provided input into this review, including key economic partners such as the United States (US), the United Kingdom (UK) and France. The input of Canada's EOI partners to the review process should be seen in light of the significant number of requests it has received over a substantial period of time.

3. The Canadian legislative framework concerning the availability of relevant information is a mixture of federal and provincial requirements. Many regulatory functions also remain the responsibility of the provinces. This particular division of responsibilities has not, over a long history of exchanging information, affected the availability of information for Canada's EOI partners. A fundamental component of the availability of information is Canada's reporting requirements for tax purposes, as well as its anti-money laundering regime and corporate law obligations. Canada's legal and regulatory framework generally ensures that ownership information of legal entities, bank information and accounting records are effectively maintained. However, Canada does not require nominees to maintain identity information on their clients, and allows the issuance of bearer shares, although in practice,

evidence of the issuance of such securities was not found. Canada's legal framework is found to generally meet the standard, but recommendations are made for certain aspects to be improved.

4. The Canada Revenue Agency (CRA) is the government agency responsible for managing Canada's EOI relationships and handling requests for information from its partners. The CRA has available a number of different powers to ensure access to relevant information which are comprehensive. In the first instance the CRA will generally seek the voluntary production of information. Where necessary, this will be followed by the issue of a compulsory requirement to produce the information, which is supported by strong penalties if the holder of the information does not comply. In some instances, the CRA will also be able to deploy search and seizure powers, or require evidence to be given before an appointed officer. The necessary framework to access information for EOI purposes is found to be in place.

5. Within the CRA, the EOI Services Section is the principal point of contact for Canada's partners making EOI requests. Although Canada's partners are generally satisfied with its responsiveness, the CRA's organisational processes can be hindered by generous internal working deadlines, and with the majority of requests being administered outside the EOI Services department. The CRA has recently taken steps to ensure that status reports are routinely provided where a substantive response cannot be provided within 90 days. Overall however, Canada's long history in EOI for tax purposes is one of effective exchange through co-operative and well-developed relationships with partner jurisdictions. The elements for the effective exchange of information are in place with a recommendation made to improve certain of Canada's practices.

Introduction

Information and methodology used for the peer review of Canada

6. The assessment of the legal and regulatory framework of Canada 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 14 January 2011, other information, explanations and materials supplied by Canada during the on-site visit that took place on 25-27 August 2010, and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the relevant Canada public agencies including the Canada Revenue Agency, Office of the Superintendent of Financial Institutions, and Corporations Canada (see Annex 4).

7. 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 combined review assesses Canada'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 Canada's legal and regulatory framework that either (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are also made concerning Canada's practical application of each of the essential elements. As outlined in the Note on Assessment Criteria, following a jurisdiction's Phase 2 review, a "rating" will be applied to each of the essential elements to reflect the overall position of a jurisdiction. However this rating will only be published "at such time as a

representative subset of Phase 2 reviews is completed". This report therefore includes recommendations in respect of Canada's legal and regulatory framework and the actual implementation of the essential elements, as well as a determination on the legal and regulatory framework, but it does not include a rating of the elements.

8. The assessment was conducted by an assessment team composed of two expert assessors: Petra Koerfgen, officer in the German competent authority with respect to exchange of information; and Evelyn Lio, Acting Tax Director of International Tax in the Inland Revenue Authority of Singapore; as well as a representative of the Global Forum Secretariat, Caroline Malcolm.

Overview of Canada

9. Canada is the second largest country in the world by area, and has a population of just over 34 million, making it the 37th most populous country. The capital city is Ottawa, and the vast majority of the population lives in the southern part of the country, within 200 kilometres of its border with the United States. Canada is a federation made up of ten provinces and three territories,[1] and is officially bilingual (French and English). Canada's currency is the Canadian dollar (CAD), with CAD1 equivalent to 0.99 US dollars (USD) as at 17 February 2011.

General information on legal system and the taxation system

10. Canada's Constitution establishes three branches of government: the legislature, executive and judiciary. The federal legal system, as well as in each of the provinces, are common law jurisdictions with the exception of Quebec which has a hybrid arrangement. In Quebec, private law follows a civil law, codified system, whilst public law follows the common law tradition. Federal legislation, the application of which requires reliance on provincial private law, takes into account the terminology, concepts and institutions of Quebec civil law. The division of responsibilities between the federal and provincial levels of government is established by sections 91 and 92 of the Constitution. The federal parliament is also responsible for the three territories (Yukon, Nunavut and the Northwest Territories), but allows the territories to elect councils with similar powers to the provincial legislatures. Canada's Charter of Rights and Freedoms forms part of its Constitution.

11. There are basically four levels of courts in Canada. First there are provincial/territorial courts, which handle the great majority of cases that

1. References in this report to "provinces" or to "provincial law" should be taken to include a reference to each of the ten provinces and three territories in Canada.

come into the system. Second are the provincial/territorial superior courts. These courts deal with more serious crimes and also take appeals from provincial/territorial court judgments. On the same level, but responsible for different issues, are the Federal Court and the Tax Court of Canada. At the next level are the provincial/territorial courts of appeal and the Federal Court of Appeal, then the Supreme Court of Canada, which is the highest level court that interprets and applies the law of Canada including challenges to the constitutional validity of laws.

12. Laws to raise money by taxation and international relations are under federal jurisdiction, whilst provinces may impose direct taxes applicable only within the province for the purpose of raising revenue for provincial purposes. At the federal level, the Minister of Finance is responsible for fiscal policy and legislation, whilst the Canada Revenue Agency is responsible for administering the Income Tax Act, the primary source of income tax law in Canada.

13. Canada's tax system is schedular, with residents subject to tax on worldwide income on a progressive tax scale for individuals. Individual residency is determined by looking at all relevant factors to determine the degree of residential ties with Canada, which may include place of residence, and social and economic relationships in Canada. For companies, residency will be determined by place of incorporation or residency (a common law definition based around the concept of central management and control). A fixed rate of income tax applies to corporations, with a lower rate applying to Canadian-controlled private corporations. Partnerships are not taxed at the entity level; instead income from a partnership is taxed in the hands of any Canadian resident partners at their normal rate of tax.

14. Generally, non-residents are subject to income tax on Canadian source income, and a 25% withholding tax is applied to certain types of income including interest, dividends, pensions and annuity payments. The rate of withholding tax will generally be lower, commonly between 5 – 15%, where a double tax convention is applicable.

15. In addition to income taxes, the federal government also levies a goods and services tax at the rate of 5% and most of the provinces also levy a sales tax.

Exchange of information

16. Canada is a member of the Global Forum and also participates in international meetings in the area of EOI including the OECD's Working Party 10 (formerly WP 8) as well as the Expert Sub-Group on Mutual Administrative Assistance in Tax Matters (formerly TIES Sub-Group). This involvement ensures that Canada remains up to date with new developments

and key issues in the global EOI arena. Canada has also provided training to countries with less experience in EOI such as countries that are members of the Centre de Rencontres et d'Études des Dirigeants des Administrations Fiscales (CRÉDAF). Canada also participates in meetings held by the Inter American Association of Tax Administration (CIAT).

Overview of commercial laws and other relevant factors for exchange of information

17. Canada entered its first exchange of information agreement, a double tax convention (DTC), with the United States in 1942. It signed its first Tax Information Exchange Agreement (TIEA) with Mexico in 1990. It now has a network of 88 DTCs in force and 13 TIEAs signed, 2 of which are in force,[2] and is continuing to expand its network and to renegotiate certain agreements to bring them into line with the international standard. The CRA encourages the sharing of information with foreign revenue authorities through spontaneous and automatic exchanges as well as exchange on request, and is also a founding partner in the Joint International Tax Shelter Information Centre (JITSIC). JITSIC's aim is to supplement the ongoing work of identifying and curbing tax avoidance and shelters and those who promote and invest in them. The CRA also participates in the annual Leeds Castle Group meetings, where the Tax Commissioners of Australia, Canada, China, France, Germany, India, Japan, South Korea, the United Kingdom (UK), and the United States of America (USA) meet.

Overview of commercial laws

18. Legal entities or arrangements available for use in business in Canada include companies, partnerships, and trusts. Foreign banks and insurance companies are also permitted to operate in Canada on a branch basis after having obtained the consent of the relevant authorities. Such branch operations are not considered separate legal entities. Companies may be incorporated and registered at both a federal and provincial level, and may also be incorporated as specialist financial services corporations under specific statutes. Supervisory oversight of certain financial services entities (federally

2. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curacao and Saint Maarten) with the remaining three islands (Bonaire, St. Eustatius and Saba) joining the Netherlands as special municipalities. The TIEA concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, will continue to apply to Curacao, Sint Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and will be administered by Curacao and Saint Maarten for their respective territories and by the Netherlands for Bonaire, St. Eustatius and Saba.

regulated financial institutions, *i.e.* banks, authorized foreign banks, trust and loan companies, cooperative credit associations, life insurance companies, fraternal benefit societies and property and casualty insurance companies) is undertaken at the federal level by the Office of the Superintendent of Financial Institutions (OSFI) or provincially by an equivalent agency, whilst the incorporation of general companies is overseen by the Director appointed under the Canada Business Corporations Act (CBC Act), a position within Industry Canada. Again, an equivalent provincial agency is responsible for general companies incorporated under provincial laws.

19. Partnerships are created under provincial law only and other than limited partnerships are created under the rules of the common law although subject to laws that codify and regulate certain aspects of the partnership. In contrast, limited partnerships are created under statute and subject to ongoing registration requirements.

20. There is no general requirement for trusts to be registered, but Canadian resident trusts and certain foreign-resident trusts will be subject to obligations to file information under the income tax laws. Further, specific-purpose trusts such as unit or mutual fund trusts will be subject to the securities laws of the relevant province. Trusts created under the laws of Quebec will be required to register in some instances.

Overview of the financial sector and relevant professions

21. Canada has a large and highly developed financial services sector which includes banks, trust and loan companies, credit unions, caisse populaires, property and casualty insurance, life and health insurance, and the pension fund industry. Responsibility for regulation of these industries varies according to whether the relevant company is federally or provincially incorporated, with OSFI providing prudential oversight at the federal level. All banks, including branch operations of foreign banks, are regulated solely at the federal level. The securities sector including in respect of mutual funds, is currently regulated on a province by province basis (for example by the Ontario Securities Commission – OSC) with liaison between the provinces through the Canadian Securities Administrators Association. However the Canadian government is seeking to establish a Canadian securities regulator which would administer a single or corresponding Securities Act, harmonising existing regulation. Presently, the securities regulators for the provinces promote a coordinated approach to regulation through the Joint Forum of Financial Market Regulators which was established in 1999, and which also includes provincial regulators covering the insurance and pension sectors.

22. The core banking sector (as opposed to deposit taking sector) is restricted to Canadian incorporated banks (which may be Canadian owned or

foreign owned) and foreign bank branches that are regulated under the federal Bank Act. The core banking sector is highly concentrated, with six domestic banks holding more than 90% of total bank assets.

23. Under the Bank Act, banks are classified into three types: Canadian incorporated banks that are not subsidiaries of foreign banks (Schedule I); Canadian incorporated banks that are subsidiaries of foreign banks (Schedule II); and foreign banks permitted to carry on business in Canada on a branch basis (Schedule III). Only Schedule III banks are not incorporated under the Bank Act, but operate in accordance with that Act as prescribed. Banks are generally not permitted to deal in goods, wares or merchandise but may provide any financial service other than those specifically prohibited, such as offering trust services, dealing in securities, automobile leasing or most types of insurance products. However, banks are permitted to own or invest in entities that can perform many financial services they are not permitted to perform directly, *e.g.* insurance and securities dealing.

24. The broader deposit taking sector includes trust and loan companies, which may be either federally or provincially incorporated, that offer similar services to banks, including accepting deposits and making personal and property loans. Trust companies may also administer estates, trusts, and pension plans. Canada's largest trust and loan companies are subsidiaries of major banks. Credit unions and caisse populaires are provincially incorporated and may not operate outside provincial borders. Relative to banks, these entities are minor participants in the deposit-taking sector. However, caisse populaires represent a large portion of the deposit-taking sector in the province of Quebec.

25. The other key agency relevant to Canada's financial sector is Canada's financial intelligence unit, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), which was established in 2000. Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA), FINTRAC's main functions are to receive and analyse suspicious and other prescribed transaction reports required from financial institutions and intermediaries under the PCMLTFA, and to disseminate information as appropriate to law enforcement and intelligence agencies. FINTRAC is also responsible for ensuring compliance with Part 1 of the PCMLTFA which covers the client identification, record-keeping, transaction reporting and compliance regime requirements on financial institutions and intermediaries. Whilst FINTRAC acts as the head supervisory agency in respect of money laundering measures, Canada's financial services and securities regulators, such as OSFI and OSC, conduct AML/CFT (anti-money laundering and counter financing of terrorism) assessments of Federally Regulated Financial Institutions (FRFIs) and provide FINTRAC with information about non-compliance with the PCMLTFA. The anti-money

laundering regime requires certain regulated entities to report particular transactions, for example "suspicious" transactions, or cash or international transfers of CAD 10 000 or more.

Recent developments

26. In 2010, as part of its efforts to implement the OECD standard on exchange of tax information, Canada signed a protocol amending its tax treaty with Switzerland. In addition, Canada signed twelve tax information exchange agreements with respectively, Anguilla, The Bahamas, Bermuda, the Cayman Islands, Dominica, Jersey, Saint Lucia, San Marino, St. Kitts and Nevis, St. Vincent and the Grenadines and the Turks and Caicos Islands, and completed procedures leading to the entry into force of the agreement in respect of the Netherlands Antilles.[3] Canada continues to negotiate tax information exchange agreements, and has recently commenced negotiations with seven other jurisdictions.

3. See footnote 2.

Compliance with the Standards

A. Availability of Information

Overview

27. 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[4] may not be able to obtain and provide it when requested. This section of the report describes and assesses Canada's legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework. The material in this report is generally based on federal law, and provincial law where indicated. For provincial laws, statutes cited are representative of the laws of all provinces, with difference noted where appropriate.

28. The legal and regulatory framework for the maintenance of ownership and identity information is in place in Canada, but in respect of the laws applicable to nominees and bearer shares, requires improvement. The CRA has received requests for all types of ownership and identity information from its EOI partners including with respect to companies, partnerships and trusts and there have not been any instances where ownership and identity information could not be provided as a result of it not being available.

4. 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.

29. The main business structures used in Canada are companies, partnerships and trusts. Companies may be incorporated either federally or provincially, and as either general companies or pursuant to financial institution specific legislation. In all cases however, companies are required to maintain up to date registers reflecting ownership information although these will not include bearer shares or share warrants issued to bearer. Partnerships are regulated by the laws of the provinces, and are also required to be registered, and disclose partner identity information in the province they seek to carry on a business. The Income Tax Act requires partnership information returns to be submitted, including in most instances, disclosure of the names and addresses of partners. Canadian resident trusts, and certain foreign trusts with Canadian source income are required to file a trust information and income return, which must identify beneficiaries in receipt of income.

30. In respect of accounting records, every person who carries on a business or who is required to pay, or collect taxes or other amounts is required to keep adequate records that record and explain all transactions for a minimum 6 years from the end of the last taxation year to which the records and books of account relate. In addition, there are accounting record requirements imposed under company, partnership and trust law, as well as under securities regulations and the AML/CFT regime.

31. Banks and other deposit-taking institutions including trust and loan companies are required to maintain information on all account holders pursuant to either the laws under which they were incorporated, or the requirements of the AML/CFT regime.

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[5] A.1.1)

32. Companies in Canada can be incorporated under either provincial or federal law. Companies that are incorporated in one jurisdiction (*i.e.* federally, provincially[6] or outside of Canada) and operating in another must register in each province in which they carry on business.

5. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.
6. References in this report to a "province" should be taken to refer to the ten provinces as well as the three territories that make up Canada's federation.

Federal Law

33. Under federal law, three types of general companies can be formed: share corporations under the Canada Business Corporations Act of 1985 (CBC Act); non-share capital corporations under the Canada Corporations Act of 1970 (CC Act) and cooperatives under the Canada Cooperatives Act of 1998 (Co-op Act).[7]

34. In addition, a company may be formed under a federally regulated financial institution (FRFI) statute, or an equivalent provincial law, and these types of companies are discussed further below.

35. Securities of a company, formed under a general federal law or an FRFI law, may be either in registered, bearer, or order form (see, for example, CBC Act, s. 48). Registered shares either specify a person entitled to the security or to the rights it evidences, and its transfer is capable of being recorded in a securities register or it bears a statement that it is in registered form. Bearer securities are defined as a security payable to bearer according to its terms and not by reason of any endorsement. (see paragraphs 55-58 below). A security in order form is not a share but a debt obligation, payable to the order or assigns of any person therein specified with reasonable certainty or to the person or the person's order.

36. The main type of general company is the CBC Act corporation, which can be either a "distributing" or "non-distributing" company. A distributing CBC Act corporation is essentially a public company which is also regulated under provincial securities laws, whilst a non-distributing corporation is defined as any other CBC Act corporation. The rules for maintaining a register of shareholders do not change depending on whether it is a distributing corporation or not.

37. CBC Act corporations are incorporated with the Director appointed under the CBC Act, an office within Industry Canada. The requirements of the CBC Act include having to notify the Director of its registered office address (s. 19) which must be in a Canadian province. Any change to a company's registered office details must be advised to the Director within 15 days. There is no requirement to provide any ownership and identity information to the Director.

38. At its registered office, the CBC Act corporation is required to maintain records including a securities register (s.20) which must include

7. Canada reports that the Canada Corporations Act is being replaced with the Canada Not-for-profit Corporations Act, which will be closer in structure and requirements to the CBC Act and the Co-op Act. On 23 June 2009 the Canada Not-for-Profit Corporations Act was given Royal Assent. Most of the act will not be in effect until it is proclaimed into force by an Order-in-Council. Proclamation will occur when the regulations, including the service fees, have been approved.

registered securities issued by the company showing: i) the names and the latest known address of each person who is or has been a security holder; ii) the number of securities held; and iii) the date and particulars of the issue and transfer of each security (s.50). The securities register is not, however, required to include bearer shares or securities in order form. The securities register may be kept outside of Canada if it is accessible in Canada (for example by computer) during business hours, and the corporation provides assistance to facilitate its inspection (s.20).

39. The CBC Act requires that any records held by the person responsible for keeping records upon dissolution of a corporation be able to produce any such records for 6 years after the company's dissolution (s.225). This will include the securities record as this is required to always be maintained (s.20).

40. Under section 20(6), a person who, without cause, contravenes the record keeping requirements, including failure to keep a securities record, is guilty of an offence and liable on summary conviction to a fine not exceeding CAD 5 000.

41. Industry Canada is the federal regulator for non-financial institution entities, and includes Corporations Canada which administers the CBC Act, the CC Act and the Coop Act; and is responsible for the registration of federal companies. Corporations Canada encourages voluntary compliance with statutory reporting obligations through education, corporate filer services and assistance. These activities are supplemented by examination and audit of corporate files. The focus is on making up-to-date corporate information publicly available in order to provide the marketplace with easy, efficient access to information as well as to facilitate the self-enforcing nature of corporate law statutes. The supervisory role of Industry Canada is very minimal. From time to time, Industry Canada also issues policies to assist clients in meeting the requirements for various transactions, (*e.g.* Incorporation Kit, Filing of Annual Returns, Steps to Follow to Dissolve a Corporation), and whilst these are not legally binding, they have been referred to as evidence of best practice by the Supreme Court of Canada and other courts.

Companies created as Federally Regulated Financial Institutions

42. Federally Regulated Financial Institutions (FRFIs) are entities which are incorporated, continued or, in the case of foreign banks and foreign insurance companies, authorized to carry on business in Canada under specific statutes, including: the Bank Act (1991); Trust and Loan Companies Act (1991) (TLC Act); Insurance Companies Act (1991) (IC Act); and the Cooperative Credit Associations Act (1991) (CCA Act). All FRFIs are regulated and supervised by the Office of the Superintendent of Financial Institutions (OSFI), to whom all applications for incorporation, continuance or the establishment of operations in Canada are made.

43. FRFIs are required to provide some ownership and identity information to OSFI when an application is made to incorporate, continue the entity or to obtain approval to carry on business in Canada. For example, the Bank Act requires such ownership disclosure in the case of shareholders owning more than 10% of any class of shares. There are also requirements to obtain approvals when there is a "material change" in ownership of entities incorporated or continued in Canada. Each of the FRFI Acts includes specific provisions requiring an FRFI incorporated under those laws to maintain an up to date shareholder register which includes, at minimum, the name and address of the shareholder, the number of securities held, and the details of the issue and transfer of each security (see for example, s. 253, TLC Act). However, such shareholder register would not be required to include bearer shares (see further paragraphs 55-58 below).

44. OSFI's regulation of FRFIs is generally principles-based, setting a minimum expectation for regulated entities rather than prescriptive requirements. In addition to the Acts and Regulations applicable to FRFIs, OSFI also issues guidelines which prescribe best practices but are not legally binding. As part of their supervision of regulatory compliance, and under an MOU, OSFI also conducts AML/CFT assessments of FRFIs and provides FINTRAC with information about non-compliance with the PCMLTFA. As at 31 March 2010, OSFI is responsible, pursuant to its mandate, for the regulation and supervision of 78 banks, 68 trust and loan companies, 285 insurance companies, 7 cooperative credit associations, and over 1300 federally registered private pension plans. OSFI employs approximately 550 staff, with more than 250 people working within OSFI's Supervision division.

45. Examinations of regulated entities are both desk-based and on-site, and take place on average about once per year per entity, although frequency will reflect the Composite Risk rating applied to each FRFI. The confidential risk rating is determined by a consideration of the degree to which the inherent risk involved in the activities of the entity, is mitigated by the quality of risk management processes. Each FRFI is allocated a relationship manager within OSFI, through which contact is channeled. OSFI also relies on MOUs with relevant provincial or international regulatory bodies to liaise as required in the conduct of its supervisory activities.

Provincial Law

46. Companies may also be incorporated under provincial law, either pursuant to general corporation statutes similar to the federal general corporations' acts, or under specialized legislation for financial institutions, similar to the laws concerning FRFIs. To incorporate under provincial law, each type of company must register with a provincial corporate register, such as the

Companies and Personal Property Security Branch in Ontario, or a financial institution regulator, such as the Financial Services Commission of Ontario.

47. In addition, in some provinces (Nova Scotia, Alberta and British Columbia), an unlimited liability company (ULC) may be incorporated. In Alberta, for example, a ULC must maintain corporate records, including a securities register containing the names and latest known addresses of each person who is or has been a security holder (s. 49, Alberta Business Corporations Act)

48. Similar to companies formed under federal law and FRFIs, companies incorporated under provincial law allow securities to be issued in one of three forms: registered, bearer or order (see paragraph 35 above) with the exception of companies formed under Quebec's Business Corporations Act[8], which expressly prohibits bearer shares.

49. In general, no ownership and identity information must be provided to either the provincial corporate register or the financial services regulator; however, each provincially-incorporated company is subject to an obligation under the relevant incorporation act to maintain an up-to-date register of shareholders. However, such shareholder registers are not required to include bearer securities.[9]

Foreign-incorporated companies

50. Unless a foreign-incorporated company is subject to ownership information under the Income Tax Act (see below) or carries on business in Canada as a financial institution, and therefore must be registered under a FRFI statute or one of the equivalent provincial acts, they are not required under Canadian law to maintain ownership information. Provincial securities law requires companies (including foreign-incorporated companies) that are registered as securities dealers, advisors or investment fund managers in Canada to disclose ownership information about themselves. However, other companies not so registered are not subject to this requirement.

Tax law requirements for companies

51. Section 150(1)(a) of the IT Act, requires every corporation to file a tax return if they satisfy certain conditions including:

- are resident in Canada;

8. Canada expects this Act to take effect in February 2011.
9. Except in the case of companies formed under British Columbia's Business Corporations Act (see further paragraph 55).

- carry on business in Canada[10];
- have a taxable capital gain;
- dispose of taxable Canadian property;
- have tax payable under the IT Act, or
- would, but for a tax treaty, have such tax payable.

52. The tax return of a public company will not include ownership information. However, all private corporations (essentially, corporations not listed on a stock exchange that have not elected to be a public corporation), including foreign-incorporated private corporations, that are required to file a tax return are required to include with their return a schedule naming any person holding 10% or more of share capital.

53. The penalty for failure to file a tax return is generally equal to 5% of the unpaid tax plus 1% of such unpaid tax per month of default not exceeding 12 months. In the case of repeated failure to file the penalty will be the sum of 10% of the unpaid tax plus 2% of the unpaid tax per month of default, not exceeding 20 months. However, there is a penalty imposed on large corporations (s235 IT Act) and non-residents (s.162(7)(b), IT Act) even if no tax is owing. Failure to provide certain information on a prescribed form under the IT Act or a regulation, the penalty is $100 for each such failure (s.162(5) IT Act), and can be more for late filings or if not filed in the appropriate manner (s. 162(7.01) and (7.02) IT Act).

Nominees

54. Currently, there is no obligation imposed on nominees to know the ultimate beneficial owner of shares they hold on behalf of another person. A company's securities register is not required to indicate whether the share is held by a nominee. Further, the CBC Act makes clear that where a nominee furnishes proof of its rights to exercise ownership, the CBC Act corporation itself "is not required to inquire into the existence of, or see to the performance or observance of, any duty owed to a third person by a registered holder of any of its securities or by anyone whom it treats, as permitted or required by this section, as the owner or registered holder thereof" (s51, CBC Act). As indicated in Part B, the CRA has the power under the IT Act to

10. There is no statutory definition of "carrying on business in Canada" for income tax purposes, but its meaning is guided by common law which has outlined relevant factors. Under the IT Act, this common law definition is extended in respect of certain persons (non-residents and certain trusts) to ensure it covers *inter alia* persons offering anything for sale in Canada through an agent or servant, or dispose of certain Canadian resource, timber and real property: see section 253, IT Act.

require a nominee to identify 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 requirement. When nominees conduct financial transactions, the financial institution/service provider is required under the PCMLTFA to confirm the existence of an entity and take reasonable measures to determine on whose behalf a client is acting and to keep records of this information.

Bearer shares (ToR A.1.2)

55. Canada allows for the issuance of securities in bearer form for all types of companies (federal and provincial) with the exception of companies formed under Quebec's Business Corporations Act.[11] Whilst one federal law (s24, CBC Act) provides that "Shares of a corporation shall be in registered form", sections 48(1) and 187(9) of the CBC Act appear to permit bearer shares to be issued by such corporations. Further, the possibility of issuing bearer shares has also been noted in the FATF Mutual Evaluation of Canada of February 2008.

56. No company is required to retain a register of bearer securities that have been issued (either nominative or by share number) with the exception of shares issued by companies formed under British Columbia's Business Corporations Act. [12]

57. Although companies *may* require that the holder of a security be a registered holder in order to be able to vote, receive notices, and receive interest dividends or other payments, this is not an absolute requirement. Canada has advised that in the Quebec Business Corporations Act, expected to take effect in February 2011 (which will only have effect for corporations incorporated under that Act), the issuance of bearer shares is specifically forbidden.

58. Shareholder information could be obtained by the tax administration where necessary for tax purposes. This can be done by the tax administration issuing a "Requirement for Information" to the corporation pursuant to section 231.2(1) of the Income Tax Act. Sanctions for non-compliance with a requirement include fines and or imprisonment (subsection 238(1). See further Part B of this report). However, as a corporation is not required to keep a register of such records, it is not clear that a company could necessarily produce such information.

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11. Canada expects the Act to enter into force in February 2011.
12. Federal laws include the CBC Act, Bank Act, Insurance Companies Act, TLC Act. Of the provincial laws allowing incorporation of a company, all permit bearer securities with the exception of Quebec's Business Corporations Act which expressly prohibits bearer shares, whilst British Columbia's Business Corporations Act allows the issue of bearer shares but requires all shares to be registered.

59. No instances of bearer shares were found in the course of the FATF Mutual Evaluation of Canada of February 2008 and no exchange of information request has been received where ownership information regarding bearer shares has been sought. Nonetheless, there may be circumstances where such shares exist and in those cases information concerning their owners may not be available.

AML Obligations

60. Canada's AML/CFT regime is based on the Proceeds of Crime (Money Laundering) and Terrorist Financing Act of 2000 (PCMLTFA) and its Regulations (PCMLTF Regulations). FINTRAC is responsible for ensuring compliance with Part 1 of the PCMLTFA which covers the client identification, record-keeping, transaction reporting and compliance regime requirements on financial institutions and intermediaries.

61. The AML/CFT regime is based on requirements imposed on "reporting entities" (REs) which are defined in section 5 of the PCMLTFA to include:

- banks regulated under the Bank Act;
- credit unions;
- trust and loan companies, whether federal or provincially regulated;
- life insurance companies and agents;
- securities dealers;
- money services businesses and foreign exchange dealers; and
- accountants

62. The AML/CFT regime applies to persons who provide company registration or registered office services only if they otherwise fall within s5 of the PCMLTFA.

63. Reporting Entities (REs) incur reporting and other obligations under the AML/CFT regime, including (but not limited to):

- identification and verification of a customer's identity when they provide designated services or conduct certain transactions on their behalf.[13] This includes an obligation to ensure identity verification

13. For financial institutions for example, the client identification requirements apply to any customer (natural or legal person) either opening an account (including credit card accounts), conducting an occasional transaction above a prescribed threshold (see below), or in respect of any suspicious transaction. The prescribed

is kept up to date, and to take reasonable measures to obtain information about the entity's beneficial ownership (persons directly or indirectly owning or controlling at least 25% of the entity);

- taking reasonable measure to determine whether the customer is acting on behalf of a third party, and obtaining prescribed information regarding that third party;
- reporting suspicious and other prescribed transactions;
- maintaining certain records for at least 5 years, where those records include account statements, account holder and beneficial owner information, deposit slips, debit and credit memos, and copies of trust deeds and settlor's identification records; and
- appointing a compliance officer responsible for the compliance regime.

64. Failure to comply with PCMLTFA or the PCMLTFA Regulations can result in either civil or criminal penalties. FINTRAC has the authority to issue administrative, monetary penalties to address non-compliance and the amount will depend on the severity of the violation. Criminally, the offense for failure to ascertain identity or keep a record is: on summary conviction, a fine of not more than CAD 50 000 or imprisonment for a term of not more than 6 months or both; and, on conviction on indictment, a fine of not more than CAD 500 000 or imprisonment for a term of not more than 5 years or both (s74, PCMLTFA).

65. To assist entities in applying the obligations of the AML/CFT regime, FINTRAC issues guidelines which explain the requirements but do not create legally binding requirements. FINTRAC's supervisory role is carried out by officers (currently 55 supervisory officers) through a mixture of desk-based and onsite audits. There are approximately 300 000 REs, and the 2008 FATF report noted the low number of supervisory officers and assessments conducted compared with the high number of REs, which is not always compensated by the involvement of other regulators in supervising AML compliance. Selection for audits of REs is made based on a consideration of the risk of non-compliance in light of the impact of non-compliance. In 2009, FINTRAC conducted 340 desk-based examinations and 360 onsite examinations, in addition to which are the examinations carried out by other regulators such as

thresholds for occasional transactions are: cash transactions of $10 000 or more; Issuance of money orders, traveler's cheques or other similar negotiable instruments: $3 000 or more, electronic funds transfers of $1,000 or more, foreign currency exchange transaction of $3,000 or more; any suspicious transaction (regardless of the amount). These obligations are set out in section 12 of the PCMLTFA Regulations. The requirements for other types of REs are set out in later provisions of that regulation.

OSFI, which in some cases will consider AML regime compliance. Similarly to OSFI, FINTRAC has a developed system of MOUs with federal and provincial regulators to facilitate its supervisory role.

66. There is no regular, general exchange of information between FINTRAC and the CRA. When FINTRAC suspects the information is relevant to a money laundering or terrorist financing investigation or prosecution and determines that the information is relevant to a tax evasion offence, it is required to disclose this information to the CRA. A recent change to Canada's AML/CFT regime makes tax evasion a predicate offence to money laundering. This will likely increase the instances where information is required to be disclosed to the CRA. Where the CRA requires information to respond to an EOI request which is required to be kept under the AML/CFT regime, the CRA does not seek the information from FINTRAC, but rather directly from the entity.

Partnerships (ToR A.1.3)

67. In Canada, partnerships are governed by provincial law. For the purposes of this section references are to the laws of Ontario, and any relevant differences between provinces are indicated.

68. Three types of partnerships may be formed:

- general partnerships, where each partner has unlimited liability;
- limited liability partnerships (LLPs), which must have a written partnership agreement and each partner's liability is limited to their own negligence and that of persons under their direct supervision or control. Generally, a limited liability partnership may only be formed "for the purpose of practicing a profession governed by an Act" (such professions being undefined, s.44.2, Partnerships Act however they must meet certain criteria);[14]
- limited partnerships (LPs) must be registered and consist of at least one general partner (with unlimited personal liability) and one limited partner (with liability limited to the amount contributed to the partnership). A person may be a general partner and a limited partner at the same time in the same limited partnership (s.5, LP Act).

69. General partnerships and LLPs are subject to the Partnership Act, which defines a partnership in section 2 as "the relation that subsists between persons carrying on a business in common with a view to profit". The provisions of the Partnership Act override the common law to the extent of any inconsistency. The Partnership Act does not require partnerships to register, and there is no

14. Presently, LLPs may be incorporated in the following provinces only: Ontario, Manitoba, Alberta, British Colombia, the territory of Nunavut and Nova Scotia.

obligation under the Partnership Act for either the partnership or the partners themselves to maintain a list of partners (obligations do, however, exist under other legislation if carrying on a business, see paragraphs 73-75 below).

70. LPs are governed by the Limited Partnership Act of 1990 (LP Act) and are formed when a declaration signed by each of the general partners is filed with the Registrar (LP Act, s3). The declaration must include the full name and address of each of the general partners, and the LP's principal place of business in Ontario (cl. 1.1, LP Regulations). Any change to the information filed in the declaration will not have effect until it is advised to the Registrar, except for changes of address which however must be notified to the Registrar within 15 days (s19, LP Act). In addition, the general partner of a LP must maintain an up to date record of limited partners, including their full name and address, and amount of their partnership contribution (cl.4, LP Regulations). This record must be kept at the limited partnership's principal place of business within Ontario. An LP must also keep at the principal place of business, a copy or the partnership agreement, a copy of the declaration and any change amending it. LPs formed outside of Ontario may not carry on business in Ontario unless it has filed a declaration with the Registrar (s.25, LP Act) which will include the same information required by a LP formed under Ontario law.

71. Non-compliance with the LP Act or the LP Regulations, or the making of a false or misleading statement or omission, creates liability on conviction to a fine of not more than CAD 2 000 or for a partner who is a corporation, CAD 25 000 (s.35, LP Act).

72. Quebec is distinct from the other provinces in regards to the form of partnerships, with a division between "declared" (general or limited partnership) or "undeclared" partnerships[15]. A declared partnership is registered under the Civil Code (an Act respecting the legal publicity of sole proprietorships, partnerships and legal persons) while undeclared partnerships may be formed without registration (although may voluntarily register). Registration under the Civil Code requires the partnership to file a declaration every year which identifies the names and address of each of the partners. However, where the declared partnership is a limited partnership, it is only required to register the names and address of the general partners and those special partners known at the time the contract is entered into, and must specify the partner who furnishes the greatest contribution. Every person who fails to comply with the annual declaration requirement is liable to a fine of not less than CAD 200 and not more than CAD 2 000 in the case of a natural person, and not less than CAD 400 and not more than CAD 4 000 in the case of a legal person.

15. An undeclared partnership does not fall within the scope of partnerships covered by the *Terms of Reference* as it (i) does not have income, deductions or credits for tax purposes in Canada, (ii) does not carry on business in Canada or (iii) is not a limited partnership formed under the laws of Canada.

Partnerships carrying on a business

73. In the common law provinces, a partnership that wishes to carry on business in that province must register under the Business Names Act 1990 (BN Act) which includes a requirement to make an annual declaration that includes the name and address of each partner[16].In Quebec, every general and limited partnership formed in Quebec or carrying on an activity in Quebec is required to register and make an annual declaration that includes the name and address of each partner.[17]

Tax law requirements for partnerships

74. The IT Act requires that every person who is a partner (including a person holding as nominee or agent) at any time in a fiscal period for a partnership must make an information return, where that partnership carries on a business in Canada, or is a Canadian partnership, or a SIFT partnership ("Specified Investment Flow Through" partnership, commonly known as a publicly-traded partnership) (IT Regulations cl.229). The information return made by a partner must include the following information:

- the name, address and social insurance number of each member of the partnership; and
- their share in the income or loss of the partnership for the fiscal period.

75. The penalty for failure to file an information return under the IT Act is, for the partnership, a penalty equal to the greater of CAD 100 and the product of CAD 25 times the number of days in default (not exceeding 100) (cl.162, IT Regulations).

Trusts (ToR A.1.4)

76. Trusts can be formed in Canada's common law provinces (which will be subject to both statutory and common law obligations) whilst in Quebec the Civil Code (art. 1260) also allows the creation of trusts.

77. Any person who has the legal capacity to hold title to property in their own right has the capacity to act as a trustee in Canada, however if the

16. If a partnership has more than 10 partners, it may choose a "designated partner" and give this partner's name and address on the registration form. The designated partner is then obligated to keep a list of partners and their addresses as well as the date on which each became "associated with" the partnership (Business Names Regulations s3(1)).
17. See sections 2, 11 and 26 of An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons.

trustee is a company, it must be authorised under one of the Trust and Loan Companies Acts[18] although other companies may act as a trustee in respect of isolated transactions. Additionally, some provinces require that a trust corporation incorporated in another province, or federally, must register in the province in order to act as a trustee in that province. For example, in Ontario, under section 31 of its Loan and Trust Corporations Act 1990, a company incorporated outside of Ontario must register as a trust company and such registration will only be granted if the company has the authority to carry on business under the federal TLC Act. Further, each of the common law provinces have a Trustee Act which applies to all trustees resident in that province, and which include provisions concerning the rights, powers and liabilities of a trustee. However, the Trustee Act creates no relevant obligations on a trustee to keep ownership and identity information, or accounting records[19].

78. For the common law provinces, the rules and principles of common law or equity apply to the extent that they are not inconsistent with federal or provincial laws, or the instrument creating the trust. There is no central system of registration for trusts as there is for companies.

79. Under the common law, trustees have a duty to disclose accounts and information and must keep information regarding the trust, so it would be readily available to those who have an interest in the trust, whether as a beneficiary or creditor (see Sandford v. Porter (1889) and Ontario (Attorney General) v. Ballard Estate and Schimdt v. Rosewood Trust Ltd (2003)). Further, the Canadian authorities have indicated that a resident trustee would need to have information on the identity of beneficiaries in order to enable compliance with tax obligations.

80. Registration of a trust may be required if it is carrying on a business (provincial Business Names Act), or if the trust/trustee requires a license for carrying on certain business activities, for example Unit Trusts and Mutual Fund Trusts must comply with the requirements of the relevant provincial Securities Act. These requirements do not require the disclosure of identity information concerning the settlor or beneficiaries of a trust.

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18. In Quebec, the law regulating companies acting as an administrator of a trust (similar to a trustee), is the Loi sur les sociétiés de fiducie et les sociétiés d'épargne du Québec.

19. The comparable law in Quebec is the Civil Code of Quebec, under which an express trust may only be established by will, or contract (art.1262). Canada advises that in general, that document will identify the settlor, as well as the trustee and designated beneficiaries, or class of beneficiaries. The trustee must render a summary account annually (art 1351) and must allow the beneficiary to examine books and vouchers relating to his/her administration (art 1354).

Foreign Trusts

81. Residents of Canada may act in a fiduciary capacity for profit for a trust formed under foreign law, and these trusts will generally be governed by the laws of the jurisdictions under which they are created. However, there may be an obligation to complete a Trust Return if the trust is resident in Canada, deemed resident of Canada, carries on a business in Canada, or, in certain cases, receives Canadian source income (see paragraph 80).

82. In addition, the federal and provincial trust and loan company acts will apply to corporate trustees resident in Canada, even in the case where the relevant trust is not created in or administered under Canadian law[20]. A foreign trust can also be deemed a resident for tax purposes when, as in section 94 of the IT Act, a trust which is not resident in Canada but a person resident in Canada was directly or indirectly beneficially interested in the trust and either the trust had directly or indirectly acquired property from a person resident in Canada or the beneficiary had directly or indirectly acquired the trust interest from a person resident in Canada.

Anti-money Laundering Law relevant to trusts

83. All Trust and Loan Companies (federal or provincial), as well as other persons providing prescribed services to trusts are subject to Canada's AML/CFT regime, and the general obligations concerning ownership and identity information under that regime described at paragraphs 60-64 apply.

84. In addition, there are some specific AML/CFT obligations which apply to trust and loan companies where they act as a trustee. The PCMLTFA and the PCMLTF Regulations require that a trust company keep a record of the following information in respect of a trust for which it is a trustee (sections 11, 15 and 55 of the regulations):

- copy of the trust deed;
- a record of each settlor's name, address and principal business or occupation. If the settlor is an individual, the record must also include the settlor's date of birth;
- keep records of the name, address, date of birth for individuals and occupation or principal business of each beneficiary known at the time that the company becomes the trustee.

20. See s12 of the Trust and Loan Companies Act (federal law) and sections 3 and 31.1 Loan and Trust Corporations Act (Ontario). As noted in paragraph 77, if the trustee is a company, it must be authorised under a federal or provincial trust and loan companies acts although other companies may act as a trustee in respect of isolated transactions.

- where the trust is an institutional trust (a trust that is established by a corporation, partnership or other entity for a particular business purpose) and the settlor is a corporation, a copy of the part of the official corporate records that contains any provision relating to the power to bind the settlor in respect of the trust.

85. These records must be kept by a trust company for five years from the day on which the last business transaction is conducted by the trust (section 69, PCMLTF Regulations). A trust company must retain records in a way that they can be provided to an authorised person within 30 days after the request is made to examine it pursuant to section 62 of the PCTF Act. Aside from this, there is no specific requirement that the records be retained in Canada.

86. In addition, as noted in paragraph 62, the PCMLTFA (section 11.1), which applies to all reporting entities (therefore also trust and loan companies), requires the confirmation of the existence of an entity and to take reasonable measures to obtain and keep a record of:

name and occupation of all directors of the corporation and the name, address and occupation of all persons who own or control, directly or indirectly 25% or more of the shares of the corporation;

name, address and occupation of all persons who own or control, directly or indirectly, 25% or more of the entity.

87. Failure to comply with the PCMLTFA or the PCMLTF Regulations can result in either civil or criminal penalties (see paragraph 64).

Tax law obligations in respect of trusts

88. The IT Act requires a Trust Income and Tax Return (Trust Return) to be filed where the trust is:

- resident in Canada;[21] or
- a non-resident trust with Canadian source income from trust property that is subject to tax, and satisfies an additional element, such as
- the trust has tax payable; has a taxable gain or has disposed of capital property; or has received income gain or profit paid or payable to a beneficiary;

21. For income tax purposes, whether a trust is resident in Canada will be determined on a case by case, but is generally considered to reside where the trustee, executor, administrator, heir or other legal representative who manages the trust or controls the trust assets resides.

89. Under Canadian tax law, a trust is deemed to be an individual and is itself taxed on trust income. This is the case whether it is a trust formed pursuant to the law of a common law province, or Quebec; and it is the responsibility of the trustee to meet the tax law obligations. The Trust Return serves as both an income tax return and an information return. It must identify the amounts allocated and designated to beneficiaries in a financial year, although it is not necessary to identify the beneficiaries unless income has been allocated to them. When a trust files its first Trust Return, a copy of the will or trust document must be attached which, according to Canada, will usually provide the identity of the settlor(s), the trustee(s) and beneficiary(ies), however there is no specific requirement that these details are included. Where income has been allocated to a beneficiary, the beneficiaries' identification number (social insurance number or business number) must be provided. These records must be kept for 6 years from the end of the tax year to which they relate. Penalties for failure to meet tax law obligations are set out in paragraph 93.

90. Trustees in respect of certain types of trusts are exempt from the requirement to file a Trust Return, for example registered charities, registered education savings plan or employee profit sharing trusts. These trusts are however subject to other reporting requirements, for example, a charity is required to file an information return (s.149.1(14), IT Act).

91. The obligations imposed on trusts under Canadian law ensure the availability of information relating to trusts whether they are Canadian or foreign law trusts, where significant elements of the trust such as its central management and control or residence of a trustee are connected with Canada. Nevertheless, it is conceivable that a trust could be created which has no connection with Canada other than that the settlor chooses that the trust will be governed by the laws of Canada or one of its provinces. In that event there may be no information about the trust available in Canada. In these situations trust information would rest in the jurisdiction where the trustee is located as the relevant records would be situated there. Canada's EOI partners have not indicated any instances where information concerning a trust has been sought from Canada which has not been available.

Foundations (ToR A.1.5)

92. There are no legislation or common law principles that permit the establishment of foundations in Canada. The term "foundation" is a categorisation used for not for profit entities usually established for charitable purposes.

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

93. The existence of appropriate sanctions for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information. In Canada's case, appropriate sanctions are in place to enforce identity and ownership record keeping obligations. Some of the key sanctions available under Canadian law are set out below:

- companies established as CBC Act corporations which fail to maintain records including a securities register are liable on conviction to a fine not exceeding CAD 5 000.
- a company created under a financial industry specific statute, such as insurance companies, are subject to significant penalties for non-compliance with record-keeping requirements, for example a fine of up to CAD 100 000 and imprisonment for 12 months, or both for an individual, or a fine of up to CAD 500 000 for a legal entity.
- a person who fails to comply with Ontario's Limited Partnership Act or Regulations, or the making of a false or misleading statement or omission, creates liability on conviction to a fine of not more than CAD 2 000 or for a partner who is a corporation, CAD 25 000.
- a person who fails to comply with the requirement to file an annual declaration concerning a Quebec partnership, is liable to a fine of not less than CAD 200, and not more than CAD2 000 in the case of a natural person, and not less than CAD400 and not more than CAD4 000 in the case of a legal person.
- under the IT Act (s.238), a person who fails to keep the books and records required by the IT Act or fails to submit a return is guilty of an offence and liable upon conviction to a fine of between CAD 1 000 – CAD 25 000, or imprisonment of up to 12 months, or both. Alternatively, administrative penalties may be applied (s.162, IT Act), for example for failure to file a return of income when required, is liable for a penalty of a minimum of 5% of the tax payable.
- non-compliance with AML/CFT obligations is also subject to significant penalties (see paragraph 64).

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 that are not subject to AML laws 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.
Canadian law permits the issuance of bearer shares by all types of companies (federal and provincial, except in Quebec and British Columbia). No record of the ownership of these securities is required to be kept.	Canada should ensure that ownership information is available for bearer shares issued by all types of companies.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

A.2. Accounting records

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

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2), and 5-year retention standard (ToR A.2.3)

94. 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.

Tax Law requirements

95. Each person who carries on a business, or who is required to pay, or collect taxes or other amounts is required by the IT law to keep "books and records" at their place of business or residence in Canada (s230, IT Act). This includes a requirement for any partner who is resident of Canada to make available such books and records of the partnership.[22]

96. These books and records shall be in such form, and containing such information as would enable the taxes payable or other amounts that should have been deducted, withheld or collected to be determined. These books and records are to be kept for a minimum of 6 years from the end of the tax year to which they relate.

97. The CRA's Information Circular (IC78-10R5) provides guidance on the precise records which are to be kept, including such records that:

- would permit the taxes payable or the taxes or other amounts to be collected, withheld or deducted by a person to be determined; and
- be supported by source documents that verify the information in the records and books of account.

98. A source document, for IT Act purposes includes items such as sales invoices, purchase invoices, cash register receipts, formal written contracts, credit card receipts, delivery slips, deposit slips, work orders, dockets, cheques, bank statements, tax returns and general correspondence.

99. In addition to the accounting record requirements imposed under other laws, the record-keeping obligations imposed by the IT Act ensure the availability of accounting information and allows the CRA to satisfy requests for such information from its EOI partners.

Anti-money Laundering Law requirements

100. Persons subject to Canada's AML/CFT regime are required to keep for a minimum five year period, records that document the transactions conducted by their clients including the underlying documents referred to in paragraph 63 (note bullet point 4). These records will only cover those transactions conducted by the client through that person.

22. Merko v MNR 90 DTC 6643 (FCTD); Bernick v The Queen 2002 DTC 7167 (Ont SCJ).

Companies

101. General companies incorporated under the CBC Act as well as FRFIs are required to maintain "adequate accounting records" or "corporate accounting records" in the case of FRFIs, and they must also table audited annual financial statements at each annual general meeting, or in the case of foreign banks or insurance companies, the statement must be filed by the auditor with principal officer or chief agent in Canada. There is no definition of "adequate" or "corporate" accounting records. These accounting records are to be kept at the registered office of the company or such other place designated by the directors or the principal officer or chief agent. If records are maintained outside of Canada (for FRFIs records must be maintained in Canada), such records must be accessible within Canada as to enable directors to ascertain the financial position of the company on a quarterly basis. For general companies under the CBC Act accounting records must be maintained for a minimum of 6 years after the financial year to which they relate. In the case of FRFIs, no time period is specified. These requirements are in addition to the requirements a company would have under the IT Act.

Partnerships

102. In Ontario, section 28 of the Partnership Act requires that partners in general and limited liability partnerships have a duty to "render true accounts and full information of all things affecting the partnership" to any partner or their legal representative.[23] Further, section 24 of the Partnership Act requires that books and records relating to the partnership are to be kept at the principal place of business of the partnership however it does not define "books and records". Limited partnerships are subject to the same obligations, under sections 10 and 33 of the Limited Partnership Act. These accounting obligations are in addition to obligations under the IT Act.

103. Accounting record requirements for partnerships created under Quebec's Civil Code are found in the provisions of the Civil Code that deal with the administration of the property of others (articles 1299 – 1370). Annual accounts are to be made which should be sufficiently detailed in order to allow verification of their accuracy (article 1352), and the books and records are available at all times to the other partners (article 1354). Limited partnerships are subject to the same obligations (article 2238).

104. Considering the obligations under provincial partnership laws and the IT Act, it is not clear that limited partnerships formed under Canadian law but which do not have any Canadian resident partners, or which do not carry

23. Young v Berryman, 1881 Carswell NB 4, Tru.110; Rowe v Wood 37 Eng. Rep 740 1557-1865.

on business in Canada or are not otherwise subject to income tax law obligations, are subject to record-keeping requirements in line with the standard described in the Terms of Reference. However in practice, no concerns have arisen in this regard.

105. Unless it can be demonstrated that this issue is not material, Canada should clarify the obligations for limited partnerships to maintain relevant accounting records, including underlying documents, in cases where there are no Canadian resident partners, and the limited partnership does not carry on business in Canada and is not otherwise subject to income tax law obligations. This issue will be followed up in Canada's detailed written report to be provided to the PRG within one year.

Trusts

106. Under the common law, a trustee has a duty to disclose accounts and information; therefore there is a corresponding duty to have accounts ready, to afford all reasonable facilities for inspection and examination and to give full information whenever required[24]. In Quebec, administrators of trusts have a duty to render a summary account of the trust to its beneficiaries at least once a year (article 1351), which should be sufficiently detailed in order to allow verification of its accuracy (article 1352). The administrator must at any time allow the beneficiary to examine the books and vouchers relating to the administration (article 1354). These accounting obligations are in addition to obligations under the IT Act, which in respect of trusts (formed either under the law of Quebec or the common law provinces) are the responsibility of the trustee.

Securities Law requirements

107. Entities which are subject to provincial securities laws will be subject to additional accounting record requirements. In Ontario for example, there is an obligation on entities to keep "such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep such other books, records and documents as may otherwise be required" (s19, Securities Act 1990).

24. See *Simonds v. Coster (1906), 3 N.B. Eq. 329 (NBSC); Sandford v. Porter (1889), 16 O.A.R. 565 (Ont. C.A.) at 571; and Campbell v. Hogg, 39 O.W.N. 85,* [*1930*] *3 D.L.R.. 673 (Ontario P.C.).*

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

108. The Bank Act requires that banks maintain records for each bank customer showing the daily transactions of each customer and the balance owed to or by the bank (s238(2)(c)). These records must be held within Canada (s.239(1)) but there is no time period specified for which they must be held. Cooperative credit societies, credit unions and caisse populaires are subject to similar obligations under provincial laws.

109. Federal trust and loan companies are required by section 243(2) of the TLC Act to retain records showing:

"for each customer of the company, on a daily basis, particulars of the transactions between the company and that customer and the balance owing to or by the company in respect of that customer"

110. Trust and loan companies created under provincial laws are subject to a similar obligation in respect of records relating to account-holders. Trust and loan companies are also subject to the AML/CFT regime requirements to hold banking information for account holders, described below.

111. Any person that contravenes the requirements of the Bank Act without cause or knowingly provides false or misleading information in relation to this Act is guilty of an offense (s980). Punishment on summary conviction is a fine of up to CAD 100 000 and/or 12 months imprisonment; on conviction it is up to CAD 1 000 000 and/or 5 years imprisonment. In the case of an entity, a penalty of up to CAD 500 000 on summary conviction or up to CAD 5 000 000 may be imposed on indictment. Failure to comply with the TLC Act results in penalties imposed on the trust and loan company which are identical to those of the Bank Act.

112. Both banks, and trust and loan companies (provincial and federal) as well as caisse populaires and credit unions, are also subject to the AML/CFT regime, and the general obligations concerning client identity information described at paragraph 63. In respect of banking records concerning the account, under section 14 of the PCMLTF Regulations, financial institutions subject to the AML/CFT regime, including banks and trust and loan companies must keep records for five years that include:

- a deposit slip in respect of every deposit that is made to an account;
- every debit and credit memo that it creates or receives in the normal course of business in respect of an account, except debit memos that relate to another account at the same branch of the financial entity that created the debit memo;
- a copy of every account statement that it sends to a client, if the information in the statement is not readily obtainable from other records that are kept and retained by it under these Regulations;
- every cleared cheque that is drawn on, and a copy of every cleared cheque that is deposited to, an account
- every client credit file that it creates in the normal course of business;
- a transaction ticket in respect of every foreign currency exchange transaction.

113. Under the AML/CFT regime, a failure to maintain these records will be liable upon conviction for a fine of up to CAD 500 000 or five years imprisonment, or both. Alternatively, FINTRAC may impose an administrative monetary penalty.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

B. Access to Information

Overview

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

115. The Canada Revenue Agency (the CRA) is the government agency responsible for managing the EOI requests made to and by Canada, whilst the Minister of National Revenue is named as Canada's competent authority for EOI purposes. The CRA's access powers are found in Canada's Income Tax Act (IT Act), under which the Minister may access information for tax purposes, including for the purposes of EOI requests. Those access powers are delegated to the CRA officials through Canada's Commissioner of Revenue, who may exercise all of the Minister's powers under the IT Act (s220, IT Act).

116. Whilst the CRA has broad information gathering powers, in the first instance, where possible and where the information is not already held or accessible by the CRA, it seeks voluntary production by requesting the holder to produce the information. However, where this approach is unsuccessful, it is able to employ a number of access powers which are supported by significant sanctions including court orders, penalties, and criminal sanctions for non-compliance. These powers are balanced by a limited number of judicial review and appeal rights which are compatible with effective access to information. To date however, such rights have not been exercised extensively in regards to the use of the access powers for EOI purposes. Within the context

of accessing information for domestic tax purposes, they are more frequently relied upon.

117. In practice, whilst EOI requests are channelled through a single section within the CRA, the process for gathering information for the majority of EOI requests is de-centralised, which may impact on the ability to quickly respond to requests. The CRA acknowledges that the internal processes for handling requests are managed under an internal timetable which may not always reflect an appropriate level of priority given to EOI requests such that would allow Canada to expeditiously access relevant information.

118. Overall however, within the structural arrangement of the CRA, the EOI Services section has a long history of accessing information for EOI purposes. Recent changes to internal processes and systems may also improve its communications with EOI partners on the progress of accessing requested information and allow the timeliness of handling different types of requests to be monitored closely.

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

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

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

119. All of Canada's DTCs and TIEAs specify that the Minister of National Revenue (or an authorised representative) is the Canadian competent authority. Pursuant to s8(1) of the Canada Revenue Agency Act, the Commissioner of the Canada Revenue Agency and the Assistant Commissioners are delegated to exercise the powers and perform the duties of competent authority. In addition, the Director of the Competent Authority Services Division has been authorised to act as competent authority and has all the powers to administer Canada's DTCs and TIEAs. Further, the Director of the International, Provincial and Strategic Policy Division is authorised to act as competent authority for any questions of interpretation and the negotiation of other agreements with the other competent authority under Canada's DTCs and TIEAs. The Assistant Commissioners may also authorise any other person in the CRA to exercise certain duties of the competent authority where such authorisation is required.

120. EOI requests are managed by the CRA's EOI Services Section, in the Headquarters of CRA, which is based in Ottawa. EOI Services is part of the Competent Authorities Services Division, within the International and Large Business Directorate. The Director of the Competent Authority Services Division is responsible for the day-to-day administration of all DTCs and TIEAs.

121. All exchange of information requests are entered into the CRA's Electronic Information Tracking System (EITS) for recording and tracking purposes. Each request is then assigned to an appropriately experienced EOI Services officer by the manager of EOI Services. The CRA will acknowledge receipt of request within 3 weeks by e-mail where possible, or by letter in other cases. If the requested information is already available within CRA's own records or through public registries, the EOI Services officer will obtain the relevant information. The officer may also contact the CRA's Knowledge and Research Centre or federal or provincial government agencies to obtain relevant information which might be held by them.

122. Where the information is not obtained by EOI Services, the request is allocated to a Tax Services Office (TSO). There are currently 45 TSOs located across five regions covering all of Canada. Each TSO has designated managers for EOI purposes and these managers assist EOI Services in gathering the information needed to respond to the request for information from a treaty partner. The EOI services officer will liaise with the TSO until the information is provided.

123. All requests are divided into "simple" or "complex" requests by the manager of EOI Services when received, based *inter alia* on the type of information sought, and whether the information is readily available to the CRA. Where the requested information is available within the CRA's own records or through public registries, the request should be responded to within 30 days of receipt. A simple request, allocated to a TSO, is allocated by EOI Services a 6 month response time-frame, whilst a complex request is managed within a 12 month schedule. Until recently these timeframes were not consistently communicated to the TSOs however, although this practice has now commenced.

124. Whilst most requests are sent directly from an EOI partner to the EOI Services section, some are made as a result of Canada's involvement in JITSIC[25] and are made directly by JITSIC members to Canada's JITSIC representatives rather than EOI Services. However, such a request is entered into the EITS and is managed by the JITSIC representative in largely in the same manner as requests received by the EOI Services section.

25. That is, by one of the jurisdictions who participate in the Joint International Tax Shelter Information Centre, currently Australia, Canada, Japan, the United Kingdom and the United States.

125. For the purposes of responding to an EOI request, the CRA may access any information already held by it, or information which is publicly available without formally exercising its access powers. Within the CRA itself, the Knowledge and Research Centre is available to assist with property searches and a wide variety of other research tasks relating to EOI requests. If information is held by another government agency that is not publicly available, the CRA cannot exercise its access powers[26].

126. In cases where the requested information is not already available to the CRA, it has broad powers to access information. These can be broken down into five distinct powers:

a. **an "audit" power in respect of taxpayers**: whereby an authorised CRA official may *inter alia* inspect, audit or examine the books, records or any document of a taxpayer, or of any other person that relates or may relate to information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under the Income Tax Act. This includes the power to enter into any premises or place in connection with any business or where any property is kept which does or should relate to the taxpayer's records or books (s231.1, IT Act), and may also be used to require a person to provide assistance and answer questions.

b. **a "requirement" power in respect of all persons:** pursuant to which the Minister may by a notice (known as a "requirement") require that any person provide, within a reasonable time stipulated in the notice (usually 30 days), any information or additional information or any document, for any purpose relating to the administration or enforcement of the Income Tax Act or a comprehensive tax information exchange agreement, or a tax treaty (s231.2, IT Act). In respect of requirements, which seek information from a third party that relates to one or more unnamed persons (for instance, an unnamed but ascertainable person or class of person), then the Minister must seek the authorisation of a Court before such a notice may be issued (s231.2(3), IT Act).

c. **a search warrant power in respect of an offence:** whereby the Minister, may on application to the Court seek a warrant to search and seize any document or thing that may afford evidence as to the commission of an offence under Canada's IT Act (s231.3, IT Act or s487(1) Criminal Code).

26. However, Canada has advised that it has entered into various confidential MOUs and other arrangements with various government agencies, by which means it is routinely able to obtain information that is not publicly available.

d. **an inquiry power in respect of the administration and enforcement of the IT Act**: although this power is rarely used, the Minister may appoint a person to make any inquiry deemed necessary with respect to the administration or enforcement of the IT Act. The inquiry shall be before a hearing officer appointed by the Tax Court. (s231.4, IT Act)

e. **a power to access foreign based information or documents:** the Minister may require a Canadian resident or a non-resident carrying on business in Canada to provide within a reasonable time (not less than 90 days), information or a document available or located outside of Canada which is relevant to the administration or enforcement of the Act. This may include requiring a person to provide a document or information which is in the control of or available to a non-resident person who is related[27] to the person on whom the notice is served (s231.6, IT Act).

127. The courts in Canada have confirmed that the powers described above, which are available for domestic tax purposes, are to be used in respect of EOI requests even where there is no specific reference to the application of these powers for EOI purposes including in respect of the administration or enforcement of the tax laws of a EOI partner. In addition, in some cases those powers have already been used for such purposes even where they do not include any specific reference to their use. In respect of accessing information to respond to an EOI request, the CRA most commonly relies on its power to issue a requirement.

128. The manner in which information is accessed will be determined by the TSO. Before invoking the statutory access powers, voluntary production of the information will first be sought. In most cases, voluntary productions means a request by phone call or informal letter to the holder of the information, to request that the information be produced to the CRA within 30 days (pursuant to s.231.1) Once this 30-day time frame expires, then the CRA will issue a requirement which requires the information, providing a further "reasonable time", usually a 30 day period, for production (or 60 – 90 days where complex or voluminous information is sought).

129. In particular types of cases, the above general process may be modified. For instance, where information must be requested from a bank the CRA would not first request the information be produced voluntarily, but rather issue a requirement at first instance as the bank is concerned about

27. Section 251(2) of the IT Act defines the term "related persons" for the purpose of the Income Tax Act to include individuals related by blood, marriage, adoption or a common law partnership, as well as corporations which are controlled by the same person or by related persons.

breaching their confidentiality requirements to their customers. Concerning information from other government agencies, the CRA noted that those agencies cannot be the subject of the requirement power, but their laws generally allow for the provision of information to the CRA. In addition, the CRA has a number of Memorandums of Understanding in place with both federal and provincial agencies that are intended to facilitate the exchange of information. However, CRA advised that the general approach is to seek to obtain the information directly from the primary holder of the information, rather than the government agency.

130. Where the information is to be obtained for the predominant purpose of launching a criminal tax investigation which may lead to a criminal prosecution, a different domestic process applies as the audit and requirements powers in sections 231.1 and 231.2 of the IT Act are not available[28]. In those cases, in consultation with the Public Prosecution Service, the CRA must obtain judicial authorisation to gather evidence for such matters by way of search warrants and production orders under the Criminal Code. This process of obtaining prior judicial authorization is used for requests made under Canada's MLATs or where information is sought by a letter of request issued by a court of a foreign jurisdiction[29]. In addition, where information is requested pursuant to an EOI agreement for purposes of gathering evidence of a criminal tax offence in general Canada will also use the search warrant powers under the Criminal Code, rather than the search warrant power available under section 231.3 of the IT Act. In these cases while information in response to the request is gathered by way of a judicially authorised search warrant under the Criminal Code, as opposed to using the audit/inspection powers, the information is still exchanged under the auspices of the EOI agreement (rather than for instances, under an MLAT).

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

131. The concept of "domestic tax interest" describes a situation where a contracting party can only access information for the purposes of providing it to another contracting party if it has an interest in the requested information for its own tax purposes. The information gathering powers of the Minister are not curtailed by any requirement that its power may only be exercised where there is a domestic tax interest.

28. *Jarvis v. the Queen et al.* (2002 SCC 73).
29. Pursuant to the *Mutual Legal Assistance in Criminal Matters Act* or the *Canada Evidence Act*.

Compulsory powers (ToR B.1.4)

132. Failure to give access to information, books and records or to provide any information or documents in compliance with the access power or a requirement (s.231.1 or s.231.2, IT Act), is punishable by a fine under section 162(7) of the IT Act. In addition, under section 238 of the IT Act, it is a criminal offence to fail to comply with an obligation imposed by the section 231 access powers (including audit powers and requirements) and a person is liable upon summary conviction to a fine of not less than CAD 1 000 and not more than CAD 25 000, or to both a fine and imprisonment for a term not exceeding 12 months. A person so convicted may also be subject to an order to provide the relevant information, similar to the "compliance order" described below (s.238(2), IT Act).

133. In addition to the criminal sanctions available under section 238, the CRA may also refer the matter to the Department of Justice (DoJ) who, where appropriate, will make a summary application in the name of the Minister for a compliance order. A judge may issue a compliance order to compel a person to provide any access, assistance, information or document sought by the Minister if the judge is satisfied that: (i) the person failed to comply with a access power (s.231.1, IT Act) or a requirement (s.231.2, IT Act), and (ii) the information or document is not protected from disclosure by solicitor-client privilege (s.231.7, IT Act). If a person fails to comply with a compliance order, the person may be held in contempt of court.

134. In respect of non-compliance with a requirement to provide foreign-based information or documents under section 231.6, as well as the sanctions available under section 238, a person who does not comply with a requirement but later seeks to rely on such information or document in a civil proceeding concerning the administration or enforcement of the IT Act, shall be prohibited from so relying on it, on the motion of the Minister (s.231.6(8), IT Act).

Secrecy provisions (ToR B.1.5)

135. Canadian law does not include secrecy or confidentiality provisions (including in respect of banking information) which restrict the above access powers, The access powers referred to in part B.1.1 will only be conditional on the restrictions against accessing communications subject to solicitor-client privilege (as defined in the IT Act, and discussed in part C.1. of this report).

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

B.2. Notification requirements and rights and safeguards

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

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

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

137. With two exceptions, there are no specific review or appeal rights provided for in the IT Act in respect of the access (s231.1), requirement (s231.2), search warrant (s231.3 or s487 Criminal Code) or inquiry (s231.4) powers. In those instances, a person may have access to the judicial review remedies applicable under the principles of administrative law, for example that the Minister has exercised the power unreasonably, or ultra vires.

138. However, where a judge has authorised the Minister to issue a requirement to a third party to provide information or documents which relates to one or more unnamed persons (for instance, an unnamed but ascertainable person or class of person) pursuant to section 231.2(3), then the IT Act provides for the third person to, within 15 days of service of the requirement, apply to a judge for review of the authorisation (s.231.2(5), IT Act). Whilst the CRA has advised that in respect of accessing information for domestic purposes it is this type of requirement which generally gives rise to the most legal challenges, in respect of EOI requests, they have only received one request seeking information for such a group, in regard to which the Minister recently obtained a compliance order.

139. Another appeal avenue is also available in respect of a requirement to provide foreign-based documents or information under s231.6 of the IT Act. There, the person to whom the requirement is issued may apply for a

review of the requirement within 90 days after the service of the notice of the requirement and such an application will have the effect of suspending the period in which they are required to respond to the requirement (s.231.6(4)). In practice, this means that a person holding foreign-based information and documents could delay the production of relevant information since the person need not furnish the information and documents pending the appeal.

140. On a review or appeal under sections 231.2(5) or 231.6(4), a judge may: (a) confirm the requirement; (b) vary the requirement as the judge considers appropriate in the circumstances; or (c) set aside the requirement if the judge is satisfied that the requirement is unreasonable. For the purposes of s231.6 the requirement notice shall not be regarded as unreasonable because the information or document is under the control of or available to a non-resident person that is not controlled by the person served with the notice, provided that person is related to the non-resident person.

141. Notwithstanding the judicial review or appeal provisions Canada should still be able to provide a status update on the progress of the request to its EOI partners within 90 days.

142. Generally, Canadian law does not provide for any notification rights when accessing information for the purposes of an EOI request. However, where the CRA makes an inquiry under section 231.4, the person whose affairs are being investigated, as well as the person to whom the inquiry is made, is entitled to be present and legally represented except where the hearing officer determines it would be prejudicial to the effective conduct of the inquiry (s231.4(6), IT Act).

143. In practice, in respect of accessing information for the purpose of an EOI request, Canada has had very few instances where the access has been the subject of judicial review or appeal. In the exercise of its access powers generally (including for domestic tax purposes), the frequency of legal challenges is very low, at no more than 1 in 100 exercises of the powers. As mentioned above, only one use of the access powers which related to an EOI request has led the CRA to seek, and obtain, a compliance order against the holder of the information being sought.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

C. Exchanging Information

Overview

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

145. In Canada, the legal authority to exchange information derives from bilateral mechanisms: double tax conventions (DTCs), and tax information exchange agreements (TIEAs). DTCs are specifically incorporated into Canadian domestic law by a treaty bill which is usually passed annually to incorporate all DTCs signed by Canada since the previous bill. There is no specific incorporation of its TIEAs into Canadian domestic law; however Canada's access powers under its Income Tax Act are available to obtain information relevant to an EOI request pursuant to a TIEA.

146. Canada has a well-developed DTC network, covering all of its major trading partners with 88 DTCs in force. In undertaking this review, peer input from 17 of Canada's EOI partners was received, which included input from key economic partners including the US, the UK, France, Australia, and Japan. In the last three years, the US and UK have made more than 30% of the total specific EOI requests made to Canada. In addition to its DTCs, Canada has recently begun a program of concluding TIEAs, and has signed 13 TIEAs to date, 10 of which were signed in 2010 alone. Two of its TIEAs are currently in force (Curacao and Sint Maarten[30]). All of Canada's EOI agreements including their date of entry into force where applicable are listed in Annex 2. Whilst Canada has been exchanging information under its DTC network for almost 70 years, to date it has no practical experience of exchanging information under its TIEAs as only two have very recently entered into force.

30. Formerly Netherlands Antilles, see footnote 2.

147. The DTCs and TIEAs which have been signed by Canada in the main follow the terms of the OECD Models, and Canada is in the process of negotiating to bring some of its older DTCs into line with the 2005 update to the OECD Model in respect of the EOI provisions. Most recently it has updated its agreement with Switzerland. In respect of confidentiality of tax information, Canada has stringent domestic law confidentiality provisions, supported by sanctions for non-compliance, and these supplement the confidentiality provisions in its EOI agreements.

148. While this report is focused on the terms of its EOI agreements and Canada's practices in respect of the exchange of information on request, Canada also engages in spontaneous and automatic exchange of information as well as simultaneous tax examinations. For information concerning criminal tax matters, Canada may also exchange using its network of Mutual Legal Assistance Treaties. Canada also actively participates in the Joint International Tax Shelter Information Centre with the US, the UK, Australia and Japan.

149. Canada is in the process of making changes to its internal processes to improve its responsiveness to requests and has recently instituted a process to provide regular status updates, although these measures may not address the more procedural issues which could cause delays in responding substantively to EOI requests. In general, the EOI partners who responded to the peer questionnaire praised Canada's efforts as an important EOI partner, and its EOI experience should be seen in the light of the significant number of requests it has received over a substantial period of time.

C.1. Exchange of information mechanisms

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

Foreseeably relevant standard (ToR C.1.1)

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

> *"The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of*

> *the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information."*

151. In respect of its DTCs, Canada's treaties are generally patterned on the OECD Model Taxation Convention as regards the scope of information that can be exchanged. DTCs initially signed or amended after 2005 use the foreseeably relevant standard whilst older treaties tend to use the words "as is necessary" in place of "as is foreseeably relevant". These terms are recognised in the commentary to Article 26 of the OECD Model DTC as allowing for the same scope of exchange.

152. The Swiss-Canada 2010 amending protocol, which includes an interpretative protocol, requires the requesting jurisdiction to provide certain information when making an EOI request, including specific information concerning the taxpayer (their name) and the holder of the information (their name). These requirements impose a higher burden on the requesting State than that required by the standard (see Article 5(5) of the OECD Model TIEA and its Commentary), and may therefore limit the availability of EOI. The amending protocol (with interpretative protocol) which was signed in October 2010 expressly provides that the contracting partners shall have the power to ensure the disclosure of bank information, notwithstanding any contrary provisions in domestic laws.

153. It is noted that Article 5(5)(e) of the Canada-Saint Kitts and Nevis TIEA creates a requirement for establishing a valid request which is in addition to those set out in Article 5(5) of the OECD Model TIEA, *i.e.* the requesting party must specify:

> *(...) the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the applicant party with respect to the person identified in subparagraph (a) of this paragraph.*

154. Item 6 of the Protocol to the Bermuda-Canada TIEA also creates another additional condition for the establishment of a valid request under Article 5, requesting that a senior official of the applicant party confirms the relevance of the requested information, as follows:

> *For the purposes of Article 5, a senior official of the applicant Party shall confirm that the information is relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. For Canada, the senior official shall be an official of the Canada Revenue Agency who is at the Director level or a position more senior. For Bermuda, the senior official shall be the Assistant Financial Secretary of the Ministry of Finance or a position more senior". [emphasis added]*

155. Nevertheless, those variations to Article 5(5) of the OECD Model TIEA appear to be in line with the purpose of the requirements in this provision, which is to demonstrate the foreseeable relevance of the information sought.

156. It is noted that in Canada's TIEAs with Bermuda (art.5(5)(b)) and the Turks and Caicos Islands, a requested party is under no obligation to provide information which relates to a period more than six years prior to the tax period under consideration.

157. Overall, Canada's DTCs and TIEAs meet the "foreseeably relevant" standard as described in the 2005 Commentary to Article 26 of the OECD Model Tax Convention and the 2002 Commentary to the OECD Model TIEA.

In respect of all persons (ToR C.1.2)

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

159. All of Canada's DTCs allow for exchange of information with respect to all persons, however the DTC with Barbados is restricted as a result of the interpretation by Barbados of the terms of the treaty: information pertaining to or held by entities that are excluded from treaty benefits, such as Barbadian International Business Companies and offshore banks, are interpreted to be outside the application of the EOI provision.

160. Where some of its DTCs do not explicitly provide that the EOI provision is not restricted by Article 1 (Persons Covered), Canada has advised that they interpret the EOI provision to allow exchange with respect to all persons. In no instance has Canada refused to exchange information, or been refused the exchange of information by an EOI partner, on this basis.

161. In respect of the TIEAs signed by Canada, they contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA.

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

162. 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 Tax Convention, the OECD Model TIEA and the UN Model Tax Convention stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

163. Canada's DTCs with Austria, Belgium, Luxembourg, Malaysia and Switzerland are limited as a result of banking secrecy provisions in the partner jurisdiction.[31] In respect of its DTC with Barbados, there is a limitation on exchanging banking information held by a Barbadian offshore bank as a result of the interpretation by Barbados of the terms of the treaty (see paragraph 156). Canada's remaining DTCs are not limited by secrecy provisions or in respect of information held by nominees, agents or fiduciaries.

164. All the TIEAs signed by Canada explicitly forbid the requested jurisdiction to decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person (provision equivalent to Article 5(4)(a) of the OECD Model TIEA).

Absence of domestic tax interest (ToR C.1.4)

165. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

166. Each of the DTCs and TIEAs signed by Canada allow information to be exchanged notwithstanding the fact that the requested party may not

31. Canada had also informed that they had commenced re-negotiation with Austria, Barbados, Belgium, Luxembourg and Singapore.

require the information for domestic tax purpose (provisions equivalent to Article 26(4) of the OECD Model DTC, or Article 5(2) of the OECD Model TIEA). However, in the case of the Canada-Singapore DTC, information cannot be obtained from Singapore unless there is a domestic interest as the DTC was concluded prior to the 2010 changes to Singapore's law allowing such information to be obtained for EOI purposes. This DTC is currently being re-negotiated.

Absence of dual criminality principles (ToR C.1.5)

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

168. None of the DTCs or TIEAs signed by Canada creates a dual criminality requirement to restrict the exchange of information.

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

169. Information exchange may be requested both for tax administration and 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").

170. Each of Canada's EOI agreements provides for information exchange in respect of both civil and criminal tax matters. With regard to processing of EOI requests which relate to criminal tax matters, Part B.1. of this report notes that a slightly different process applies for accessing information where the predominant purpose of the request relates to the possible imposition of criminal sanctions, because the usual access powers for audit or inspection purposes, are not available for such matters.

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

171. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form

is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

172. All of the TIEAs concluded by Canada allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws (provision equivalent to Article 5(3) of the OECD Model TIEA). There are no impediments in Canadian law which would prevent the information being obtained in the form for example of an authenticated copy of original document or as a witness deposition. In the case of the latter, such a request may however necessarily affect the time within which the information could be provided.

In force (ToR C.1.8)

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

174. Canada has DTCs in force with 88 jurisdictions. Canada has also signed 13 TIEAs, two of which are in force. Ten of these TIEAs were concluded in 2010.

175. In the case of TIEAs concluded by Canada, there is no legislative process required to enact the TIEA, as it imposes no additional obligations or restrictions under domestic law. For example, the information access powers relied on to respond to an EOI request regarding income taxes under a TIEA, are already established under the IT Law and are available to be used in respect of EOI requests. Some of Canada's TIEAs also allow for the exchange of information in respect of taxes imposed by the federal government other than income taxes. Amendment to Canada's domestic law will be required to allow for the exchange of information other than income taxes. In respect of the changes relating to the exemption from Canadian tax for dividends received out of active business income earned by foreign affiliates of Canadian companies residing in a jurisdiction that has agreed to a TIEA with Canada, these changes have been incorporated into Canada's domestic law by a change of the definition of "designated treaty country" in the Income Tax Regulations, to include jurisdictions with which Canada has signed a TIEA which is in force.

176. Therefore, for its part, Canada will have taken all steps necessary to bring the TIEAs it has signed into force, once the agreements are tabled in the House of Commons and the Government observes a period of at least 21 sitting days, during which Members of Parliament may initiate a debate on the agreement or request a vote on a motion regarding it. Following the

completion of this process, the Government ratifies the treaty by the signing of an Order in Council, and communicates to its EOI partner that it has completed its internal procedures.

177. In respect of the DTCs concluded by Canada, each DTC or amending protocol must be incorporated into domestic law which can take more than a year from the conclusion of negotiations. Once negotiations are concluded with the partner jurisdiction and the draft agreement is initialed, Canadian law requires that the treaty be translated into French (if negotiated in English, or vice versa) and then submitted to Canada's Cabinet for approval, with this stage taking 2-4 months. Depending on the particular treaty, Cabinet approval may require consultation with a number of federal departments which would delay the process further. Once Cabinet approval for the signing of the treaty is given, an order-in-counsel must be made to appoint the particular individuals delegated with the power to sign the DTC on behalf of Canada (1 month), after which a signing date with the EOI partner must be agreed. Once the DTC is signed, it is tabled for a 21-day "sitting" period in Parliament, after which a Bill is introduced to bring the DTC into law, and which provides that the DTC will override all other domestic law except for the Treaty Interpretation Act. Generally, one treaty bill is promulgated per year, which will bring into force all DTCs or protocols signed since the previous Bill. Generally, passage through the Houses of Parliament (first the Senate, then the House of Commons) is quick, and is followed by Royal Assent which can take 3-4 months. Once the domestic legal processes are complete, Canada notifies the EOI partner that it has taken all steps necessary to bring the DTC into law.

178. Whilst lengthy, the process for bringing a DTC or amending protocol into effect under Canadian law is reflective of its bicameral Westminster system of government, and comparable to similar parliamentary systems in jurisdictions such as Australia and the UK.

In effect (ToR C.1.9)

179. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement. Canada's DTCs are specifically incorporated into Canadian domestic law by legislation, however no specific incorporation of TIEAs is required. Canada can use its full range of domestic tax information gathering powers to obtain information relevant to exchange of information requests made pursuant to DTCs and TIEAs (see paragraph 122-124).

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
In some instances, Canada's DTCs are limited by provisions in their EOI partner's domestic legislation, which creates domestic tax interest requirements and/or secrecy provisions, despite the fact that the EOI partners' policy in respect of exchanging such information has changed since the DTCs were signed.	Canada should continue to work with its EOI partners to ensure that EOI provisions are not restricted by domestic tax interests/secrecy provisions.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

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

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

180. The Terms of Reference provide at footnote 26 that

> *Ultimately, the 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, this should be drawn to the attention of the Peer Review Group, as it may indicate a lack of commitment to implement the standards.*

181. Canada has DTCs with all of its major trading partners, and in addition its negotiation program for both DTCs and TIEAs is actively ongoing. As at January 14, 2011, Canada had signed EOI agreements with 105

jurisdictions, being 92 DTCs and 13 TIEAs. Of the DTCs[32], 88 are in force and two of the TIEAs are currently in force.

182. The assessment team received peer input to this review from 17 of Canada's EOI partners, including its key partners.

183. In general, the responses suggested that Canada's practices in terms of exchange of information are of a very high standard. They highlighted only two areas of concern. First, there have sometimes been delays in providing the information requested by treaty partners and second, Canada has not always provided an update or status report to its DTA partners within 90 days in the event that it is unable to provide a substantive response within that timeframe.

184. Canada has recently signed new DTCs or amending protocols with Colombia, France, Greece, Namibia, Switzerland and Turkey. In addition, it has commenced renegotiations of DTCs or amending protocols with Austria, Barbados, Belgium, Luxembourg, Malaysia and Singapore. In respect of TIEAs, Canada has commenced negotiations with Aruba, Bahrain, Belize, the British Virgin Islands, Brunei, the Cook Islands, Costa Rica, Gibraltar, Guernsey, Isle of Man, Liberia, Liechtenstein, and Vanuatu.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

32. Canada has signed DTCs not yet in force with Colombia, Lebanon, Namibia and Turkey. In addition, the recently signed (October 2010) amending protocol (including an interpretative protocol) between Canada and Switzerland, which is intended *inter alia* to bring the EOI provisions into line with the international standard, has not yet entered into force.

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

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

186. All the DTCs and TIEAs concluded by Canada meet the standards for confidentiality including the limitations on disclosure of information received and use of the information exchanged, which are reflected in Article 8 of the OECD Model TIEA or Article 26 of the OECD Model DTC. Principally that is, that the information received by an EOI partner shall be treated as secret in the same manner as information obtained under the domestic tax laws of that partner and shall be disclosed only to persons or authorities concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes covered by the agreement, or the oversight of the above.

187. In practice, EOI requests are received directly from the EOI partner to Canada's EOI Services which enters the relevant information about the request into its internal management system EITS. Access to this system is by individual login and password, and is only available where the EOI Services Manager has expressly provided permission for access. A hard copy file is also created and is maintained securely by the EOI Services officer to whom the matter is allocated.

188. There are strict confidentiality provisions protecting tax information under Canada's domestic tax laws, and these also apply to information in respect of EOI requests. Section 241 of the IT Act prohibits officials and other persons from using or providing taxpayer information obtained under this Act, unless they are specifically authorized to do so by one of the exceptions

found in that section. The most relevant exception for exchange of information purposes is in section 241(4)(e)(xii), which authorises disclosure:

> *for the purpose of a provision contained in a tax treaty with another country or in a comprehensive tax information exchange agreement between Canada and another country or jurisdiction that is in force and has effect.*

189. Other relevant exceptions to section 241, although not directly or necessarily related to an EOI request are:

> *(i) criminal proceedings or any legal proceedings relating to the administration or enforcement of the IT Act (s.241(3));*
>
> *(ii) disclosure to any person taxpayer information that can reasonably be regarded as necessary for the purpose of the administration or enforcement of the IT Act (s.241(4)(a)); and*
>
> *(iii) with the consent of the taxpayer (s.241(5)).*

190. The penalty for contravention of the IT Act confidentiality provisions is an offence punishable on summary conviction by a fine of up to CAD 5 000 and imprisonment for up to 12 months.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

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

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

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

191. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions.

192. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

193. Each of Canada's DTCs and TIEAs include provisions equivalent to Article 26(3)(c) of the OECD Model DTC or Articles 7(2) and 7(3) of the Model TIEA, which allow that the EOI partners may decline to exchange information where the information is: covered by solicitor client privilege, a trade, business industrial, commercial or professional secret, or information the disclosure of which would be contrary to public policy (ordre public). Canada has confirmed that it interprets the definition of solicitor-client privilege used in its EOI agreements in line with the international standard.

194. In addition, under Canada's domestic law, information which is subject to solicitor-client privilege is not required to be produced to the CRA. Solicitor-client privilege is defined under Canadian common law to denote: the client's right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney. It includes legal advice privilege, which covers all communications, verbal or written, of a confidential nature between a client and a legal adviser directly related to the seeking, formulating or giving of legal advice or legal assistance.[33] It also includes litigation privilege, which covers all papers and material produced or brought into existence with the dominant purpose of using it in order to obtain legal advice or to conduct or aid in the conduct of litigation, whether existing or contemplated.[34] The scope of solicitor-client privilege in Canada is consistent with the standard described in the *Terms of Reference*.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

33. *See Solosky* v. *The Queen*, [1980] 1 SCR 821; *MNR* v. *Reddy*, 2006 DTC 6178 (FC). The terms "legal assistance" and "legal advice" derive from the terms of the judgment in *Solosky*, and are synonymous.
34. *See Deloitte & Touch Inc.* v. *AG Can*., 97 DTC 5520 (FCTD).

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1.)

195. 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 cooperation as cases in this area must be of sufficient importance to warrant making a request.

196. Each of the TIEAs signed by Canada, except for the one with The Bahamas, include an obligation to either respond to the request, or provide a status update within 90 days of receipt of the request. The TIEA signed with The Bahamas provides that the requested Party shall use its "best endeavours" to forward the requested information to the requesting Party "within a reasonable time".

197. In practice, the internal timelines established by the EOI Services section as well as the structure of the CRA mean that if the requested information is not already in the CRA's possession or publicly available, it is difficult for Canada to provide information in response to a request within 90 days. The internal process to access information after an EOI request is received is described in Part B of this report. EOI Services has set an internal benchmark for information available to EOI Services to be answered within 30 days (a "simple" request), for "simple" requests, referred to a TSO, to be answered within 6 months, and within 12 months for "complex" requests. Whilst there is no established definition of simple versus complex requests, this will be determined by the EOI Services Manager depending on factors including the amount and type of information requested, and whether the information is easily accessible by EOI Services or must be obtained through a TSO.

198. A small number of Canada's EOI partners noted that in a few instances, there was an issue of timeliness in Canada's responses. Canada acknowledges that until recently it had no formal process to ensure that its EOI partners were kept up to date with the progress of requests which may have had the result that status updates were not consistently being provided

in line with the standard. However, the CRA has advised that the process has been reviewed and EITS has been modified to provide an automatic alert when key time markers are imminent. In turn, this will prompt Canada to provide timely status updates on the progress of a request to its EOI partners.

199. A precise consideration of the data from any jurisdiction is difficult without an appreciation of the complexity of each request, however it is noted that in 2009, 42% of requests received substantive and complete responses from Canada within 90 days, and a further 25% in 180 days, with the result that 1/3 of requests took more than 180 days for a substantive response. In 2008 the response times were similar, with 47% of requests answered substantively within 90 days, and a further 21% within 180 days, leaving about 1/3 of requests that took more than 180 days for a response. For 2007, 37% of all requests received a substantive and complete response within 90 days and an additional 19% within 180 days, meaning that 44% of requests took longer than 180 days to receive a response. Canada advises that almost all of the requests that took more than 180 days to respond to were classified by Canada as "complex".

200. Noting the 30-day timeframe for the holder of information to provide information to the CRA (described in Part B), the process required where the information is requested for the predominant purpose of launching a criminal tax investigation which may lead to criminal prosecution, and the current internal timetable established by EOI Services for the handling of requests, it is clear that responsiveness may be impacted by structural or procedural issues. For example, a TSO, which is responsible for accessing the information and must liaise with the EOI Services, is not under the direct supervision of EOI Services which therefore has little control over the priority the TSO gives to accessing the information. Further, EOI Services has only recently begun to consistently advise the TSOs of its timeframe expectations in respect of each request. Therefore, whilst the current risks of a lack of expedient access to information may be low, the potential exists for future issues of timely access and exchange of information to arise. CRA acknowledges that the internal timeframes for responding to requests for information may, in some circumstances, be considered generous.

201. In general however, Canada's EOI partners have been satisfied with the responsiveness of the CRA, and further, Canada has advised that it has recently amended its internal procedures to ensure that a notification is provided to its EOI partners if the request cannot be responded to within 90 days of receipt, and explaining the reason for this. However, even taking into account the measures taken to improve the provision of status updates, Canada's response times in terms of the substantive provision of information, appear lengthy.

Organisational process and resources (ToR C.5.2.)

202. The EOI Services section sits within the Competent Authority Services Division and is based in CRA's headquarters in Ottawa. The Division is in the International and Large Business Directorate of the Compliance Branch. The Assistant Commissioner of the Compliance Programs Branch, reports directly to the Commissioner of the CRA. EOI Services currently consists of 12 full-time staff, which includes one Manager, and ten Officers and one administrative assistant.

203. The principal system for the management of EOI requests is the Exchange of Information Tracking System (EITS), into which all incoming EOI requests are recorded. A demonstration of the EITS was provided during the onsite visit. The system allows for allocation of work, a representation of workloads amongst EOI Services staff, and a mechanism for monitoring the progress of each request. Requests can also be categorised according to the type of information to which they relate, and the complexity of the request, and key dates in the EOI request timeframe can be entered which triggers an automatic reminder to the responsible persons. The Manager of EOI Services is also responsible for determining the level of access to each EOI request file, and EITS allows the database to be searched, and reports to be prepared for example to indicate the timeline for managing each request.

204. In addition, EOI Services staff and TSO officers are given training on the management of EOI requests, as well as an EOI Services Reference Guide and an EOI Procedure Manual which cover both incoming and outgoing EOI requests. The Manual provides a step-by-step description of the life of an EOI request, and the actions that each relevant person in CRA must take, whilst the Reference Guide is a very detailed document covering EOI on request as well as Canada's handling of requests pursuant to its automatic and spontaneous EOI mechanisms, criminal tax matters as well as specific requests that come through Canada's participation in JITSIC.

205. Following a restructure in May 2009, the structure of EOI Services has remained constant, and there are no foreshadowed changes to the organisation or number of staff. Canada's competent authority is staffed appropriately considering the volume of requests it receives. The staff has adequate expertise and training specific to exchange of information.

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

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

207. There are no laws or regulatory practices in Canada that impose restrictive conditions on exchange of information that would be incompatible with the international standard.

Determination and factors underlying recommendations

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

Phase 2 Rating	
To be finalised as soon as a representative subset of Phase 2 reviews is completed.	
Factors underlying recommendations	**Recommendations**
Canada's domestic procedures for handling EOI requests, in particular the long internal timelines allocated for responding to requests, appears to inhibit expedient responses to EOI requests.	Canada should ensure that EOI Services sets appropriate internal deadlines to be able to respond to EOI requests in a timely manner, by providing the information requested within 90 days of receipt of the request, or if it has been unable to do so, to provide a status update.

Summary of Determinations and Factors Underlying Recommendations[35]

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Nominees that are not subject to AML laws 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.
	Canadian law permits the issuance of bearer shares by all types of companies (federal and provincial, except in Quebec and British Columbia). No record of the ownership of these securities is required to be kept.	Canada should ensure that ownership information is available for bearer shares issued by all types of companies.
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.		

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

Determination	Factors underlying recommendations	Recommendations
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.		
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.		
Banking information should be available for all account-holders *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.		
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: To be finalised as soon as a representative subset of Phase 2 reviews is completed.		

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
Phase 1 determination: The element is in place		
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.		
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
Phase 1 determination: The element is in place	In some instances, Canada's DTCs are limited by provisions in their EOI partner's domestic legislation, which creates domestic tax interest requirements and/or secrecy provisions, despite the fact that the EOI partners' policy in respect of exchanging such information has changed since the DTCs were signed.	Canada should continue to work with its EOI partners to ensure that EOI provisions are not restricted by domestic tax interests/secrecy provisions.
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.		

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: To be finalised as soon as a representative subset of Phase 2 reviews is completed.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
Phase 1 determination: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.	Canada's domestic procedures for handling EOI requests, in particular the long internal timelines allocated for responding to requests, appears to inhibit expedient responses to EOI requests.	Canada should ensure that EOI Services sets appropriate internal deadlines to be able to respond to EOI requests in a timely manner, by providing the information requested within 90 days of receipt of the request, or if it has been unable to do so, to provide a status update.

Annex 1: Jurisdiction's Response to the Review Report*

1. Canada has a long history of exchanging information for tax purposes and has a large tax treaty and Tax Information Exchange Agreement (TIEA) network to accomplish this. Canada welcomes the work of the Global Forum on Transparency and Exchange of Information in assisting countries to adhere to the key principles of transparency and exchange of tax information. Canada values international cooperation and the effective exchange of tax information to help combat tax evasion and to allow jurisdictions to access the information necessary to enforce their own tax laws.

2. Canada is committed to the work of the Global Forum and to improving its own exchange of information process. In this respect, following the review of the peer questionnaires, Canada was made aware that status reports were not always provided following the receipt of requests for information. As a result, the Canada Revenue Agency immediately took steps to ensure that status reports would be routinely provided where a substantive response cannot be provided within 90 days of receipt of requests. In addition, Canada is taking steps to decrease the overall time to respond to requests for information.

3. Since the finalization of this report, Canada has signed an additional 2 TIEAs: Isle of Man (signed January 17, 2011) and Guernsey (signed January 19, 2011).

* 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

	Jurisdiction	Type of EoI Arrangement	Date Signed	Date Entered Into Force
1.	Algeria	DTC	28-Feb-99	26-Dec-00
2.	Argentina	DTC	29-Apr-93	30-Dec-94
3.	Armenia	DTC	29-Jun-04	24-Jan-06
4.	Austria	DTC	09-Dec-76	16-Feb-81 29-Jan-01
5.	Australia	DTC	21-May-80	29-Apr-81 18-Dec-02
6.	Azerbaijan	DTC	07-Sep-04	14-Feb-06
7.	Bangladesh	DTC	15-Feb-82	18-Jan-85
8.	Barbados	DTC	22-Jan-80	22-Dec-80
9.	Belgium	DTC	22-May-02	06-Oct-04
10.	Brazil	DTC	04-Jun-84	23-Dec-85
11.	Bulgaria	DTC	03-Mar-99	25-Oct-01
12.	Cameroon	DTC	26-May-82	16-Jun-88
13.	Chile	DTC	21-Jan-98	28-Oct-99
14.	China	DTC	12-May-86	29-Dec-86
	Colombia	DTC	21-Nov-08	Not yet in force
15.	Croatia	DTC	09-Dec-97	23-Nov-99
16.	Cyprus[36, 37]	DTC	02-May-84	03-Sep-85

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

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

	Jurisdiction	Type of EoI Arrangement	Date Signed	Date Entered Into Force
17.	Czech Republic	DTC	25-May-01	28-May-02
18.	Denmark	DTC	17-Sep-97	02-Mar-98
19.	Dominican Republic	DTC	06-Aug-76	23-Sep-77
20.	Ecuador	DTC	28-Jun-01	20-Dec-01
21.	Egypt	DTC	30-May-83	02-Oct-84
22.	Estonia	DTC	02-Jun-95	28-Dec-95
23.	Finland	DTC	20-Jul-06	17-Jan-07
24.	France	DTC	02-May-75	29-Jul-76
25.	Gabon	DTC	14-Nov-02	22-Dec-08
26.	Germany	DTC	19-Apr-01	28-May-02
27.	Greece	DTC	29-Jun-09	1-Jan-11
28.	Guyana	DTC	15-Oct-85	04-May-87
29.	Hungary	DTC	15-Apr-92	01-Oct-94
30.	Iceland	DTC	19-Jun-97	30-Jan-98
31.	India	DTC	11-Jan-96	06-May-97
32.	Indonesia	DTC	16-Jan-79	23-Dec-80
33.	Ireland	DTC	08-Oct-03	12-Apr-05
34.	Israel	DTC	21-Jul-75	27-Jul-76
35.	Italy	DTC	17-Nov-77 03-Jun-02	24-Dec-80 Not yet in force
36.	Jamaica	DTC	30-Mar-78	02-Apr-81
37.	Japan	DTC	07-May-86	14-Nov-87
38.	Jordan	DTC	06-Sep-99	24-Dec-00
39.	Kazakhstan	DTC	25-Sep-96	30-Mar-98
40.	Kenya	DTC	27-Apr-83	08-Jan-87
41.	Korea	DTC	05-Sep-06	18-Dec-06
42.	Kuwait	DTC	28-Jan-02	26-Aug-03
43.	Kyrgyzstan	DTC	04-Jun-98	04-Dec-00
44.	Latvia	DTC	26-Apr-95	12-Dec-95
	Lebanon	DTC	29-Dec-98	Not yet in force
45.	Lithuania	DTC	29-Aug-96	12-Dec-97
46.	Luxembourg	DTC	10-Sep-99	17-Oct-00
47.	Malaysia	DTC	15-Oct-76	18-Dec-80
48.	Malta	DTC	25-Jul-86	20-May-87
49.	Mexico	DTC	12-Sep-06	12-Apr-07

	Jurisdiction	Type of EoI Arrangement	Date Signed	Date Entered Into Force
50.	Moldova	DTC	04-Jul-02	13-Dec-02
51.	Mongolia	DTC	27-May-02	20-Dec-02
52.	Morocco	DTC	22-Dec-75	09-Nov-78
	Namibia	DTC	25-Mar-10	Not yet in force
53.	Netherlands	DTC	27-May-86	21-Aug-87
54.	New Zealand	DTC	13-May-80	29-May-81
55.	Nigeria	DTC	04-Aug-92	16-Nov-99
56.	Norway	DTC	12-Jul-02	19-Dec-02
57.	Oman	DTC	30-Jun-04	27-Apr-05
58.	Pakistan	DTC	24-Feb-76	15-Dec-77
59.	Papua New Guinea	DTC	16-Oct-87	21-Dec-89
60.	Peru	DTC	20-Jul-01	17-Feb-03
61.	Philippines	DTC	11-Mar-76	21-Dec-77
62/	Poland	DTC	04-May-87	30-Nov-89
63.	Portugal	DTC	14-Jun-99	24-Oct-01
64.	Ivory Coast	DTC	16-Jun-83	19-Dec-85
65.	Romania	DTC	08-Apr-04	31-Dec-04
66.	Russia	DTC	05-Oct-95	05-May-97
67.	Senegal	DTC	02-Aug-01	07-Oct-03
68.	Singapore	DTC	06-Mar-76	23-Sep-77
69.	Slovak Republic	DTC	22-May-01	20-Dec-01
70.	Slovenia	DTC	15-Sep-00	12-Aug-02
71.	South Africa	DTC	27-Nov-95	30-Apr-97
72.	Spain	DTC	23-Nov-76	26-Dec-80
73.	Sri Lanka	DTC	29-Jun-82	09-Jun-86
74.	Sweden	DTC	27-Aug-96	23-Dec-97
75.	Switzerland	DTC	05-May-97	21-Apr-98
76.	Tanzania	DTC	15-Dec-95	29-Aug-97
77.	Thailand	DTC	11-Apr-84	16-Jul-85
78.	Trinidad and Tobago	DTC	11-Sep-95	08-Feb-96
79.	Tunisia	DTC	10-Feb-82	04-Dec-84
	Turkey	DTC	14-Jul-09	Not yet in force
80.	Ukraine	DTC	04-Mar-96	29-Apr-97
81.	United Arab Emirates	DTC	09-Jun-02	25-May-04
82.	United Kingdom	DTC	08-Sep-78	17-Dec-80

	Jurisdiction	Type of EoI Arrangement	Date Signed	Date Entered Into Force
83.	United States	DTC	28-Sep-80	16-Aug-84
84.	Uzbekistan	DTC	17-Jun-99	14-Sep-00
85.	Venezuela	DTC	10-Jul-01	05-May-04
86.	Vietnam	DTC	14-Nov-97	16-Dec-98
87.	Zambia	DTC	16-Feb-84	28-Dec-89
88.	Zimbabwe	DTC	16-Apr-92	15-Dec-94
	Anguilla	TIEA	28-Oct-10	Not yet in force
	The Bahamas	TIEA	17-Jun-10	Not yet in force
	Bermuda	TIEA	14-Jun-10	Not yet in force
	Cayman Islands	TIEA	24-Jun-10	Not yet in force
1.	Curacao[38]	TIEA	29-Aug-09	1-Jan-2011
	Dominica	TIEA	29-Jun-10	Not yet in force
	Jersey	TIEA	12-Jan-11	Not yet in force
	St. Kitts and Nevis	TIEA	14-Jun-10	Not yet in force
	St. Lucia	TIEA	18-Jun-10	Not yet in force
2.	Sint Maarten[39]	TIEA	29-Aug-09	1-Jan-2011
	San Marino	TIEA	27-Oct-10	Not yet in force
	St. Vincent and the Grenadines	TIEA	22-Jun-10	Not yet in force
	Turks and Caicos Islands	TIEA	22-Jun-10	Not yet in force

38. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curacao and Sint Maarten) with the remaining three islands (Bonaire, St. Eustatius and Saba) joining the Netherlands as special municipalities. The TIEA concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, will continue to apply to Curacao, Sint Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and will be administered by Curacao and Sint Maarten for their respective territories and by the Netherlands for Bonaire, St. Eustatius and Saba.

39. See footnote 29.

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

Federal Legislation

The Constitution Act, 1867 (U.K.), 30 & 31 Victoria, c. 3.

The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Bank Act, S.C. 1991, c. 46

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Cooperatives Act, S.C. 1998, c. 1

Canada Corporations Act, R.S.C. 1970, c. C-32

Canada Evidence Act, R.S.C. 1985, c. C-5

Canada Not-for-profit Corporations Act, S.C. 2009, c. 23

Canada Revenue Agency Act, S.C. 1999, c. 17

Canadian Bill of Rights, S.C. 1960, c. 44

Cooperative Credit Associations Act, S.C. 1991, c. 48

Criminal Code, R.S.C. 1985, c. C-46

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Insurance Companies Act, S.C. 1991, c. 47

Mutual Legal Assistance in Criminal Matters Act, R.S.C. 1985, c. 30 (4th Supp.)

Office of the Superintendent of Financial Institutions Act, R.S.C. 1985, c. 18 (3rd Supp.), Part I

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17

Trust and Loan Companies Act, S.C. 1991, c. 45

Regulations

Bank Act: Access to Basic Banking Services Regulations, SOR/2003-184

Income Tax Act: Income Tax Regulations, C.R.C., c. 945

Provincial Legislation

Alberta

Business Corporations Act, R.S.A. 2000, c. B-9

Companies Act, R.S.A. 2000, c. C-21

Cooperatives Act, S.A. 2001, c. C-28.1

Credit Union Act, R.S.A. 2000, c. C-32

Loan and Trust Corporations Act, R.S.A. 2000, c. L-20

Partnership Act, R.S.A. 2000, c. P-3

Securities Act, R.S.A. 2000, c. S-4

Trustee Act, R.S.A. 2000, c. T-8

British Columbia

Business Corporations Act, S.B.C. 2002, c. 57

Business Number Act, S.B.C. 2003, c. 50

Company Act, R.S.B.C. 1996, c. 62

Cooperative Association Act, S.B.C. 1999, c. 28

Credit Union Incorporation Act, R.S.B.C. 1996, c. 82

Financial Institutions Act, R.S.B.C. 1996, c. 141

Partnership Act, R.S.B.C. 1996, c. 348

Securities Act, R.S.B.C. 1996, c. 418

Trustee Act, R.S.B.C. 1996, c. 464

Manitoba

Business Names Registration Act, C.C.S.M. c. B110

Cooperatives Act, C.C.S.M. c. C223

Corporations Act, C.C.S.M. c. C225

Credit Unions and Caisses Populaires Act, C.C.S.M. c. C301
The Partnership Act, C.C.S.M. c. P30
Securities Act, C.C.S.M. c. S50
Trustee Act, C.C.S.M. c. T160

New Brunswick

Business Corporations Act, S.N.B. 1981, c. B-9.1
Companies Act, R.S.N.B. 1973, c. C-13
Co-operative Associations Act, S.N.B. 1978, c. C-22.1
Corporations Act, R.S.N.B. 1973, c. C-24
Credit Unions Act, S.N.B. 1992, c. C-32.2
Limited Partnership Act, S.N.B. 1984, c. L-9.1
Loan and Trust Companies Act, S.N.B. 1987, c. L-11.2
Partnership Act, R.S.N.B. 1973, c. P-4
Partnerships and Business Names Registration Act, R.S.N.B. 1973, c. P-5
Securities Act, S.N.B. 2004, c. S-5.5
Trustees Act, R.S.N.B. 1973, c. T-15

Newfoundland and Labrador

Co-operatives Act, S.N.L. 1998, c. C-35.1
Corporations Act, R.S.N.L. 1990, c. C-36
Credit Union Act, 2009, S.N.L. 2009, c. C-37.2
Limited Partnership Act, R.S.N.L. 1990, c. L-17
Partnership Act, R.S.N.L. 1990, c. P-3
Securities Act, R.S.N.L. 1990, c. S-13
Trust and Loan Corporations Act, S.N.L. 2007, c. T-9.1
Trustee Act, R.S.N.L. 1990, c. T-10

Nova Scotia

Companies Act, R.S.N.S. 1989, c. 81
Co-operative Associations Act, R.S.N.S. 1989, c. 98

Corporations Miscellaneous Provisions Act, R.S.N.S. 1989, c. 100
Corporations Registration Act, R.S.N.S. 1989, c. 101
Credit Union Act, S.N.S. 1994, c. 4
Limited Partnerships Act, R.S.N.S. 1989, c. 259
Partnership Act, R.S.N.S. 1989, c. 334
Partnerships and Business Names Registration Act, R.S.N.S. 1989, c. 335
Securities Act, R.S.N.S. 1989, c. 418
Trust and Loan Companies Act, S.N.S. 1991, c. 7
Trustee Act, R.S.N.S. 1989, c. 479

Ontario

Business Corporations Act, R.S.O. 1990, c. B.16
Business Names Act, R.S.O. 1990, c. B.17
Co-operative Corporations Act, R.S.O. 1990, c. C.35
Corporations Act, R.S.O. 1990, c. C.38
Corporations Information Act, R.S.O. 1990, c. C.39
Credit Unions and Caisses Populaires Act, 1994, S.O. 1994, c. 11
Extra-Provincial Corporations Act, R.S.O. 1990, c. E.27
Limited Partnerships Act, R.S.O. 1990, c. L.16
Loan and Trust Corporations Act, R.S.O. 1990, c. L.25
Partnerships Act, R.S.O. 1990, c. P.5
Securities Act, R.S.O. 1990, c. S.5
Trustee Act, R.S.O. 1990, c. T.23

Prince Edward Island

Companies Act, R.S.P.E.I. 1988, c. C-14
Co-operative Associations Act, R.S.P.E.I. 1988, c. C-23
Credit Unions Act, R.S.P.E.I. 1988, c. C-29.1
Extra-Provincial Corporations Registration Act, R.S.P.E.I. 1988, c. E-14
Limited Partnerships Act, R.S.P.E.I. 1988, c. L-13
Partnership Act, R.S.P.E.I. 1988, c. P-1

Securities Act, R.S.P.E.I. 1988, c. S-3.1

Trust and Fiduciary Companies Act, R.S.P.E.I. 1988, c. T-7.1

Trustee Act, R.S.P.E.I. 1988, c. T-8

Quebec

Business Corporations Act, R.S.Q. c. S-31.1 (not yet in force).

An Act respecting the Caisse de dépôt et placement du Québec, R.S.Q. c. C-2

An Act respecting certain caisses d'entraide économique, R.S.Q. c. C-3.1

An Act respecting the caisses d'entraide économique, R.S.Q. c. C-3

Civil Code of Québec, L.R.Q., c. C-1991

Companies Act, R.S.Q. c. C-38

An Act respecting the Compilation of Québec Laws and Regulations, R.S.Q. c. R-2.2.0.0.2

Cooperatives Act, R.S.Q. c. C-67.2

An Act respecting the legal publicity of enterprises, R.S.Q. c. P-44.1

An Act respecting the Legal publicity of sole proprietorships, partnerships and legal persons, R.S.Q. c. P-45

Securities Act, R.S.Q. c. V-1.1

An Act respecting Trust companies and savings companies, R.S.Q. c. S-29.01

Saskatchewan

Business Corporations Act, R.S.S. 1978, c. B-10

Business Names Registration Act, R.S.S. 1978, c. B-11

Companies Act, R.S.S. 1978, c. C-23

Co-operatives Act, 1996, S.S. 1996, c. C-37.3

Credit Union Act, 1998, S.S. 1998, c. C-45.2

Partnership Act, R.S.S. 1978, c. P-3

Securities Act, 1988, S.S. 1988-89, c. S-42.2

Trust and Loan Corporations Act, 1997, S.S. 1997, c. T-22.2

The Trustee Act, 2009, S.S. 2009, c. T-23.01

Territories

Northwest Territories

Business Corporations Act, S.N.W.T. 1996, c. 19

Business Licence Act, R.S.N.W.T. 1988, c. B-4

Co-operative Associations Act, R.S.N.W.T. 1988, c. C-19

Credit Union Act, R.S.N.W.T. 1988, c. C-23

Partnership Act, R.S.N.W.T. 1988, c. P-1

Securities Act, S.N.W.T. 2008, c. 10

Societies Act, R.S.N.W.T. 1988, c. S-11

Trustee Act, R.S.N.W.T. 1988, c. T-8

Nunavut

Business Corporations Act, S.N.W.T. (Nu.) 1996, c. 19

Business Licence Act, R.S.N.W.T. (Nu.) 1988, c. B-4

Companies Act, R.S.N.W.T. (Nu.) 1988, c. C-12

Co-operative Associations Act, R.S.N.W.T. (Nu.) 1988, c. C-19

Credit Union Act, R.S.N.W.T. (Nu.) 1988, c. C-23

Partnership Act, R.S.N.W.T. (Nu.) 1988, c. P-1

Securities Act, S.Nu. 2008,c. 12

Societies Act, R.S.N.W.T. (Nu.) 1988, c. S-11

Trustee Act, R.S.N.W.T. (Nu.) 1988, c. T-8

Yukon

Business Corporations Act, R.S.Y. 2002, c. 20

Cooperative Associations Act, R.S.Y. 2002, c. 43

Partnership and Business Names Act, R.S.Y. 2002, c. 166

Securities Act, S.Y. 2007, c. 16

Societies Act, R.S.Y. 2002, c. 206

Trustee Act, R.S.Y. 2002, c. 223

Annex 4: People Interviewed during On-Site Visit

Canada Revenue Agency

Director, Competent Authority Services Division

Manager, Exchange of Information Services, Competent Authority Services Division

Senior Officers, Exchange of Information Services, Competent Authority Services Division

Senior Legal Counsel, Department of Justice, CRA Legal Services

Regional International Tax Advisors

Director, Quebec Bureau and Consumption Taxes Division

Assistant Director, Provincial and Territorial Affairs Division

Industry Canada

Manager, Policy Section, Corporations Canada

Legal Counsel, Department of Justice, Industry Canada Legal Services

Office of the Superintendent of Financial Institutions (OSFI)

Officer, Legislation and Policy Initiatives, Regulation Sector

Ontario Securities Commission

Director, Office of Domestic and International Affairs

Assistant Manager, Office of Domestic and International Affairs

Associate General Counsel

Assistant Manager, Corporate Finance

Senior Accountant, Compliance and Registrant Regulation

Financial Transactions and Reports Analysis Centre

Senior Compliance Officer, Financial Transactions and Reports Analysis Centre

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PEER REVIEWS, COMBINED: PHASE 1 + PHASE 2

CANADA

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

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

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

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