EXPLANATION OF PROPOSED PROTOCOL AMENDING THE MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

Scheduled for a Hearing
Before the
COMMITTEE ON FOREIGN RELATIONS
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Prepared by the Staff
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INTRODUCTION

This pamphlet,[1] prepared by the staff of the Joint Committee on Taxation, provides an explanation of the proposed Protocol amending the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("proposed protocol"[2]). The proposed protocol, signed by the United States on July 15, 2010, may be ratified, accepted, or approved by the members of the Council of Europe and by the members of the Organization for Economic Cooperation and Development ("OECD"). The Senate Committee on Foreign Relations has scheduled a public hearing on the proposed protocol on February 26, 2014.

The first part of the pamphlet provides a summary of the proposed protocol, an overview of the development of the OECD standards for administrative assistance as well as an overview of U.S. tax administration in a cross-border context. The second part provides a detailed, article-by-article explanation of the proposed protocol. The final part presents a discussion of issues raised by the proposed protocol.

[1] This pamphlet may be cited as follows: Joint Committee on Taxation, *Explanation of Proposed Protocol to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters*, (JCX-9-14), February 21, 2014.

[2] References to the "multilateral treaty," "existing treaty" or "treaty" refers to the "Multilateral Convention on Mutual Administrative Assistance in Tax Matters" as currently in force with respect to the United States.

I. SUMMARY

The proposed protocol amends the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which is designed to promote increased cooperation in tax administration and enforcement among the parties to the convention. As amended by the proposed protocol, the multilateral convention conforms to the OECD standards on transparency and effective exchange of information and includes mechanisms for extending those standards beyond the membership of OECD.

The existing multilateral treaty relating to mutual administrative assistance in tax matters entered into force in 1995 with the member States of the Council of Europe or Member countries of the OECD, including the United States, which ratified the treaty in 1991, subject to reservations discussed below. The proposed protocol was opened for signature on May 27, 2010 and entered into force on June 1, 2011, the first day of the month following expiration of three months from the date by which five countries had ratified or approved the proposed protocol. It is currently in force with respect to 34 countries.

The multilateral treaty is organized in six chapters to provide a series of rules and procedures for nations to implement mutual administrative assistance. The first two chapters outline the scope of the treaty and provide definitions. Chapter III of the treaty prescribes the three forms of administrative assistance available under the treaty: exchange of information related to tax matters; collection or recovery of taxes; and service of documents. In Chapter IV, rules applicable to all forms of assistance are provided. These rules outline the requisite contents of a request for assistance, establish rules for when and how to respond to requests, including establishing grounds for rejecting a request, and impose confidentiality requirements. Special provisions in Chapter V establish a governing body to administer the treaty, prescribe the official language of treaty communications, and determine how costs are borne. Chapter VI includes the final provisions that deal with various procedural requirements of signature, entry into force, and the effect of its entry into force, including the extent to which a signatory may reserve the right not to comply with specified provisions of the convention.

The amendments in the proposed protocol center on the rules in Chapters III and IV, concerning the types of assistance to be provided and the standards and confidentiality, respectively. As amended, those chapters now reflect the OECD standards requiring that mechanisms for exchange of information upon request exist; that exchange of information is available for purposes of domestic tax law in both criminal and civil matters; that there are no restrictions of information exchange caused by application of the dual criminality principle[3] or a domestic tax interest requirement; respect for safeguards and limitations; strict confidentiality rules for information exchanged; and availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such

[3] The principle of dual criminality derives from the law regarding extradition and grounds for refusal to grant a request. Extradition is generally permitted only if the crime for which a person is to be extradited is treated as a similarly serious offense in the state in which the fugitive has sought refuge. *Restatement (Third) of the Foreign Relations Law of the United States*, sec. 476 (1987). The principle is relevant to a request for exchange of tax information only if the treaty in question limits the scope of its permitted exchanges to criminal tax matters.

information in response to a specific request.[4] It also opens the multilateral treaty to participation by States that are not members of either Council of Europe or OECD and thus were previously ineligible.

Ratification of the protocol is not intended to alter the reservation of rights or declarations of understanding that the United States made when it ratified the existing convention in 1991. In its instrument of ratification, the United States reserved the right not to provide (1) assistance for taxes imposed by possessions, political subdivisions, or local authorities of other parties to the convention; (2) tax collection assistance; or (3) assistance in serving documents (except the service of documents by mail). The reservations are reciprocal; to the same extent that the United States will not provide assistance, other parties need not assist the United States. Thus, only the provisions relating to information exchanges and service of documents by mail are in effect for the United States.[5] Those reservations would continue to govern the effect of the treaty with respect to the United States upon ratification of the proposed protocol.

At the same time, the United States also declared that the Convention would apply to all territories and possessions of the United States. Finally, with respect to exchange of information, the United States declared that it may inform persons who are the subject of a request for assistance before providing the requested assistance.

[4] OECD, *Tax Cooperation: Towards a Level Playing Field, 2008 Assessment by the Global Forum on Taxation*, p. 8.

[5] Such reservations are expressly contemplated by the convention under Article 30. They can be made upon signing, upon depositing instruments of ratification, or at any later time. Reservations previously made may be added to or withdrawn. The United States did not enter any reservations to the convention upon signing.

II. OVERVIEW OF TAX ADMINISTRATION IN CROSS-BORDER CONTEXT

This section provides an overview of the broad international consensus that has coalesced around the issue of bank transparency for tax purposes, and the relationship of that consensus to the U.S. ability to enforce U.S. tax laws in the cross-border context. Domestic measures available are described generally, the historical difficulties of gaining access to foreign-based information are summarized, and the manner in which international agreements facilitate access to the required information under present law is explained. Tax treaties establish the scope of information that can be exchanged between treaty parties. Although most signatories to the OECD Multilateral agreement have had a network of bilateral income tax treaties or tax information exchange agreements, exchange of information under the applicable tax treaties and agreements was often limited due to strict bank secrecy rules under the domestic law of one of the treaty partners. In recent years, great efforts have been made by the United States and other G-20 jurisdictions to reconcile the conflicts between jurisdictions, particularly between jurisdictions with strict bank secrecy and those seeking information needed to enforce their own tax laws. The proposed protocol is a response to those efforts.

A. General Background of OECD

The OECD is a multinational organization established in 1961 by the United States, Canada and 18 European countries, dedicated to global development. Since its founding it has grown to include members from around the world, and developed numerous programs to work closely with many non-members. The Council of Europe, based in Strasbourg, France, was established to promote democracy, protect human rights and rule of law in Europe. It currently has 47 member States, many of whom are also members of the OECD. The United States is a member of the OECD and an observer State of the Council of Europe. Table 1 in the Appendix identifies all countries that have acceded to the treaty as amended or signed the protocol, and indicates whether they are members of G-20, OECD, EU or the Council of Europe.[6]

The proposed protocol amends the multilateral Convention on Mutual Administrative Assistance in Tax Matters, which is designed to promote increased cooperation in tax administration and enforcement among the parties to the convention. The existing multilateral treaty relating to mutual administrative assistance in tax entered into force in 1995 with the member States of the Council of Europe or Member countries of the OECD. There are currently in force a number of bilateral income tax treaties between the United States and other countries, including agreements with individual member States of the Council of Europe and individual Member countries of the OECD, which contain provisions relating to mutual administrative assistance in tax matters.

The proposed protocol was opened for signature on May 27, 2010. It initially entered into force on June 1, 2011, and is currently in force with respect to 34 countries. Additional signatories, including the United States, have not yet ratified or approved the convention as

[6] The table also notes whether a jurisdiction has been the subject of a peer review of its compliance with transparency and any resulting rating assigned. See the discussion of the peer review process, *infra.*

amended. The most recent list of signatories and the status of the proposed protocol with respect to each is included in the Appendix, as Table 2. The signatories include several who are members of G-20 but do not belong to the OECD or the Council of Europe, as well as several States that are not members of any of the aforementioned organizations.[7]

[7] The following signatories belong to neither G-20, nor OECD nor Council of Europe: Colombia, Costa Rica, Ghana, Guatemala, and Tunisia. Signatories who are members of G-20 but not members of OECD or Council of Europe are Argentina, Brazil, China, India, Indonesia, Saudi Arabia and South Africa.

B. Emerging Consensus on OECD Transparency Standards

In addition to purely domestic measures, the United States is one of many jurisdictions seeking new ways to ensure an adequate network of bilateral exchange of information agreements, whether by tax treaty or other agreement and through participation in multilateral *fora* to complement those domestic efforts. To the extent that there is less than near universal acceptance of any emerging norms on the desirability of greater exchange of information, countries that are implementing international standards on exchange of information are understandably concerned that capital for investment will flow to noncompliant jurisdictions. Since 2008, several jurisdictions previously reluctant to commit to OECD standards of transparency ("the OECD standards") have done so, suggesting little political tolerance for shielding tax avoidance from exposure remains.

The development of international norms in recent years owes a great deal to the work done on transparency and exchange of information by the OECD Global Forum on Transparency and Exchange of Information (the "Global Forum"), begun in 1996. The OECD Standards require:

- Exchange of information where it is "foreseeably relevant" to the administration and enforcement of the domestic laws of a requesting State;
- No restrictions on exchange due to bank secrecy or domestic tax interest requirements;
- Availability of reliable information and powers to obtain it;
- Respect for taxpayer rights; and
- Strict confidentiality of information exchanged.[8]

The OECD Standards have been endorsed by the G-20 Ministers of Finance. Also initiated in 1996 was the OECD's Harmful Tax Practices Project, which is carried out through the Forum on Harmful Tax Practices ("FHTP"). FHTP focuses on (1) eliminating harmful tax practices of preferential tax regimes of OECD Member States; (2) identifying tax havens and pursuing their commitments to OECD Standards; and (3) encouraging other non-OECD counties to associate themselves with FHTP work.[9] As of 2000, FHTP had identified more than 40 jurisdictions with harmful tax practices. By 2005, 35 of these had become "committed jurisdictions," that is, jurisdictions that formally documented their commitment to the OECD Standards. While seven jurisdictions on the original list initially refused to become committed jurisdictions, by early 2009, the list of noncooperative jurisdictions was reduced to three: Andorra, Monaco, and Liechtenstein.

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[8] Overview of the OECD's Work on International Tax Evasion (A note by the OECD Secretariat), p. 3 (March 23, 2009) ("2009 OECD Overview"). See, OECD, *Update to Article 26 of the OECD Model Tax Convention and Its Commentary*, (July 12, 2012), available at http://www.oecd.org/ctp/exchange-of-tax-information/120718_Article%2026-ENG_no%20cover%20%282%29.pdf.

[9] 2009 OECD Overview, pp. 3-4.

As a meeting of the G-20 to be held in London on April 2, 2009, approached, concerns arose that the list of noncooperative jurisdictions would be revisited and possibly expanded at that meeting, on the basis of a survey conducted by the OECD of 46 jurisdictions that had not yet made sufficient progress with respect to the exchange of information and banking secrecy, including Luxembourg and Switzerland.[10] When a progress report was published at the end of the London meeting, Switzerland and Luxembourg were listed as jurisdictions that recently committed to the OECD standards.[11] Both jurisdictions avoided inclusion on the final list of noncooperative jurisdictions by announcing less than a month earlier their intention to commit to the OECD standards, as did Austria, Belgium, and Liechtenstein.[12]

At the conclusion of the 2009 G-8 Meeting, the Finance Ministers of the members of G-8 issued a statement[13] expressing support for efforts to improve tax information exchange and transparency. They endorsed efforts to expand the commitment to the implementation of the OECD Standards. In addition, they committed to the development of an effective peer-review mechanism to assess compliance with the same standards, and proposed that responsibility for development and conduct of such a process be charged to the Global Forum.

At the Global Forum meeting in Mexico City on September 1 and 2, 2009, the Global Forum began the process of establishing a Peer Review system. It formed a Peer Review Group and a Steering Group to develop the methodology and detailed terms of reference for a robust, transparent and accelerated process. [14] The methodology and terms developed by these groups and later adopted by the Global Forum contemplate a peer review conducted in two phases. Phase I, which began in 2010, examines the legal and regulatory framework in each jurisdiction. The Global Forum anticipates that it will complete Phase I reviews of all member countries within the initial three-year mandate.[15] Phase II evaluates the implementation of standards in practice. A summary of all reviews performed as of February 6, 2014, is included as Table 3 in the appendix attached to this report.[16] The overall ratings of the signatories are also noted in Table 1 of the Appendix.

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[10] Randall Jackson, Kristen A. Parillo, and David Stewart, "Tax Havens Agree to OECD Transparency Standards," 53 *Tax Notes International* 1027 (March 23, 2009).

[11] OECD, *A Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard* (April 2, 2009), reprinted at 2009 *Tax Notes Today* 62-65.

[12] Randall Jackson, Kristen A. Parillo, and David Stewart, "Tax Havens Agree to OECD Transparency Standards," 53 *Tax Notes Int'l* 1027 (March 23, 2009).

[13] Statement of G-8 Finance Ministers, Lecce, Italy, June 13, 2009.

[14] OECD Centre for Tax Policy, Summary of Outcomes of the Meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes Held in Mexico on 1-2 September 2009, (September 2, 2009), available at http://www.oecd.org/dataoecd/44/39/43610626.pdf (last accessed March 1, 2011).

[15] The United States, as well as several other countries with robust exchange of information programs and demonstrated commitment to the standards, agreed to a review combining Phases I and II. The review was conducted in late 2010. A report issued in 2011 rated the United States "Largely Compliant."

[16] Summary of all Peer Reviews, available at **http://eoi-tax.org/library#reviews**, as of February 6, 2014.

C. Extent of Mutual Assistance Under Present Law

The difficulties one jurisdiction has in piercing the "bank secrecy" of another jurisdiction can be traced to the centuries-long tradition against expecting one jurisdiction to assist another jurisdiction with collection of its taxes. This doctrine, known as the "Revenue Rule," is rooted in common law and sovereign immunity. It is often referred to as the Lord Mansfield Rule, in recognition of the jurist's statement, "For no country ever takes notice of the revenue laws of another."[17] Although its vitality and scope have been questioned, most recently in *Pasquatino v. United States*,[18] the doctrine remains a cornerstone of all common law jurisdictions, as well as many others. To the extent that countries have provided administrative assistance of any sort, including exchange of information, it has been a result of State-to-State negotiations, resulting in a multilateral or bilateral international agreements or treaties, ensuring that any waiver of the principle will be reciprocated.

The degree of governmental access to financial information has varied historically from country to country, ranging from the relative transparency in the United States to the traditional opacity of jurisdictions such as Switzerland or Liechtenstein. The term "bank secrecy" generally refers to a legal standard, whether judicial or statutory in origin, which prevents governmental access to the financial information necessary to ascertain beneficial ownership and enforce tax, securities and financial regulations. The limitations may apply only to certain entities operating within the jurisdiction or may apply only to the sharing of information with a foreign jurisdiction,[19] and are often reinforced by civil or criminal penalties.

Presently, the United States is a party to more than 60 income tax conventions, more than 20 tax information exchange agreements ("TIEAs"), and more than 50 Mutual Legal Assistance Treaties ("MLATs").[20] In a report in 2011 to the Permanent Subcommittee on Investigations, U.S. Senate Committee on Homeland Security and Governmental Affairs, the Government Accountability Office outlined the varied bilateral agreements under which the United States exchanges tax information. In this network of agreements, exchange of information is not the sole type of assistance that has been agreed upon, but it is the principal form of assistance that the United States has been willing to provide. In its treaties with France, Canada, Sweden, Denmark, and the Netherlands, the United States has specifically agreed to provide mutual assistance in collection, and does so under its Mutual Assistance Collection Program.[21] It also

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[17] *Holman v. Johnson*, 98 The English Reporter 1120 (King's Bench 1775), cited in *AG of Canada v. R.J. Reynolds Tobacco Holdings, Inc.*, 268 F.3d 103, *cert. denied*, 537 U.S. 1000 (2002).

[18] 544 U.S. 349; 125 S. Ct. 1766; 161 L. Ed. 2d 619 (2005).

[19] OECD, *Tax Co-operation: Towards a Level Playing Field, 2008 Assessment by the Global Forum on Taxation*, tabulates the numerous permutations by which information that is available to the host jurisdiction may or may not be shared with a requesting state.

[20] See, Appendices IV, V and VI of Government Accountability Office, *Tax Administration: IRS's Information Exchanges with Other Countries Could be Improved through Better Performance Information*, GAO-11-730, September 2011.

[21] See I.R.M. Pars. 11.3.25.5 and 11.3.25.6.

provides assistance in criminal tax matters via the MLATs. Unlike the tax treaties, MLATs designate the Department of Justice as the "Central Authority" having the role of administering the treaty on behalf of the United States.[22]

Exchange of information provisions first appeared in the late 1930s.[23] They are included in almost all[24] current double tax conventions to which the United States is a party. Beginning in the 1980s, the United States began entering into specific TIEAs under the authority of the Code.[25] In contrast to the bilateral double tax conventions, TIEAs are executive agreements entered into by Treasury without the advice and consent of the Senate and are limited in scope to the mutual exchange of information.[26] These agreements often are entered into with countries that impose little or no income tax.

The information exchange procedures followed by the United States under its network of international agreements are described below. The goals of the U.S. tax information exchange program are (a) assuring the accurate assessment and collection of taxes, (b) preventing fiscal fraud and tax evasion, and (c) developing improved information sources for tax matters in general.[27] With respect to the United States, taxes covered generally are limited to national taxes, such that state and local taxes are not covered. The objective of a TIEA is to promote international cooperation in tax matters (civil and criminal) through exchange of information. A party to the TIEA must have adequate process for obtaining information; if the party is required to enact measures providing such process, then the entry into force of the TIEA may be delayed until such requirements have been met.[28] The requirements of the TIEA often require a

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[22] See I.R.M. Pars. 11.3.28.3.2.

[23] The United States' first double tax convention was entered into in 1932 with France; it did not contain an exchange of information provision. Article XV of the U.S.-Sweden Double Tax Convention, signed on March 23, 1939, included the United States' first exchange of information provision. This event was followed shortly by a second double tax convention with France, signed on July 25, 1939, which provided for the exchange of information in Article 26.

[24] The 1973 income tax treaty between the Union of Soviet Socialist Republics and the United States does not have an exchange of information provision. It still applies to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kirgizstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

[25] Code sec. 274(h)(6)(C). All references to "the Code" or code sections refer to the Internal Revenue Code of 1986, as amended.

[26] See, *Barquero vs. United States*, 18 F.3d 1311, 1314-15 (5th Cir. 1994); Congressional Research Service, *Treaties and Other International Agreements: The Role of the United States Senate, A Study Prepared for the Committee on Foreign Relations, United States Senate, Library of Congress* (January, 2001), S. Prt. 106-71.

[27] Treasury Department News Release R-2780 (July 24, 1984), reprinted in Richard A. Gordon and Bruce Zagaris, *International Exchange of Tax Information: Recent Developments* (1985).

[28] For example, effect of the Liechtenstein TIEA was delayed until each state notified the other that it has completed the necessary internal procedures required for entry into force (Article 15), including the requirement that any changes or additions to domestic laws necessary be enacted by December 31, 2009 (Article 13). The conditions were met and the TIEA entered into effect on January 1, 2010.

jurisdiction to override its domestic laws and practices pertaining to disclosure of information regarding taxes.

To administer its obligations under the network of bilateral treaties, the Secretary of the Treasury has delegated the role of U.S. Competent Authority for the treaties to the Deputy Commissioner, Large Business & International, IRS. The Competent Authority is responsible for resolving disputes with the other contracting State about the scope or interpretation of the treaty. With respect to exchange of information articles, the Competent Authority determines whether the agency should present a request for information to a treaty partner as well as how to respond to any requests that it receives from the treaty partner.

All information exchanged flows through the offices of the Competent Authorities,[29] and is safeguarded by the domestic laws of each State as well as the secrecy clause in the exchange of information article. In the United States, the information received from a treaty partner is within the scope of "tax convention information"[30] and, if it is taxpayer-specific, is also treated as "return information"[31] for purposes of protecting it from disclosure. Non taxpayer-specific information received from a partner is considered tax convention information as is also protected from disclosure if such disclosure would harm tax administration, as determined by the Competent Authority in consultation with his counterpart.[32] Since the entry into force of the first treaty to include an exchange of information article, the United States has exchanged information with its partners in a variety of ways.

The principal types of information exchanges are generally referred to as routine or automatic, spontaneous, or specific exchanges. In addition, there are industry-wide exchanges with certain treaty partners, and simultaneous examinations or criminal investigations with other partners. The IRS reports the number of total disclosures under the exchange of information program in an annual report, but does not provide a breakdown of the type of exchange involved.[33]

A "routine exchange of information" is one in which the contracting States have agreed that a category of information will be shared with one another on an ongoing basis, without the need for a specific request because it is of a type that is consistently relevant to the tax administration of the receiving jurisdiction. Information that is automatically shared under this authority may include information that is not taxpayer specific, such as news about changes in

[29] In the United States, the requests are initially received by Tax Attaches, or, in the case of France or Canada, the Exchange of Information Team program analysts in Washington. I.R.M. par. 4.60.1.1(6)(b).

[30] Sec. 6105(c)(1).

[31] Sec. 6103(a)(2)

[32] Sec. 6105.

[33] For the calendar year 2012, the IRS reported 710,574 disclosures to tax treaty authorities of foreign countries under section 6103(k)(4). No other information explaining what that figure represents was provided in the report, mandated by section 6103(p) and published by JCT on April 15, 2013, available at https://www.jct.gov/publications.html?func=startdown&id=4514.

domestic tax legislation, or it may comprise voluminous taxpayer filings, such as magnetic disks containing the information from Forms 1042-S, relating to U.S.-source fixed or determinable income paid to persons claiming to be residents of the receiving treaty country. The type of information, when it will be provided and how frequently, are typically determined by the respective Competent Authorities after consultation. The information will then be automatically provided.

A "spontaneous exchange of information" occurs when one Contracting State is in possession of an item of information that it determines may be of interest to the other contracting State for the tax administration of that other State. In such an instance, the first State will spontaneously provide the information to the treaty partner. In the United States, such information would typically be identified by a revenue agent or other employee in the course of working on a U.S. tax matter. For example, information about a cross-border transaction could lead to information about a foreign party to the transaction that suggests that the foreign party requested that conditions be included in the documentation in an attempt to circumvent detection by the country in which the foreign party is resident. The IRS employee would forward the information to the U.S. Competent Authority to decide whether the information should be forwarded to the foreign jurisdiction. Information spontaneously provided by a treaty partner to the United States is generally reviewed by the Exchange of Information program analyst or Tax Attache who first receives it, who then forwards it to an appropriate field office for further action and follows up to determine the outcome of the exchange.

A "specific exchange" is a formal request by one Contracting State for information that is relevant to an ongoing investigation of a particular tax matter. These cases are generally taxpayer specific. Those familiar with the case prepare a request that explains the background of the tax case and the need for the information. That request is forwarded to the Competent Authority, who determines whether to issue the request. If he determines that it is an appropriate use of the treaty authority, he forwards it to his counterpart. When a contracting State receives a specific request for information, it is obligated to use its powers to obtain the information to the same extent that it would do so if it were a domestic case, even if the information obtained could not be used in a domestic case.

OECD has developed standards for the electronic format of such exchanges, to enhance their utility to tax administration, but further work is needed.[34] At the request of the G-20 Finance Ministers, and in cooperation with the European Union, it has developed common reporting standards addressing the content and frequency of automatic exchanges. It continues to work on the electronic transmission standards, and anticipates completion of the work during 2014. The common reporting standards incorporate due diligence standards for financial institutions.[35] The OECD has worked to standardize the information exchanged and improve its

[34] See OECD, Committee on Fiscal Affairs, *Manual on the Implementation of Exchange of Information Provisions for Tax Purposes*, Module 3(January 23, 2006) ("OECD Exchange Manual").

[35] OECD, Standard for Automatic Exchange of Financial Account Information: Common Reporting Standard, February 13, 2014, ("OECD Common Reporting Standards"). Available at http://www.oecd.org/ctp/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Common-Reporting-Standard.pdf.

usefulness, and work will continue to ensure that routine exchange of information can be effective for tax administrations.[36] To be useful to the IRS, a means is needed for correlation of account data in the information received with the information in IRS taxpayer databases is needed.[37]

The treaty partners may also work together to gain expertise about specific industries and to facilitate sharing of information when there is a common interest in the information. In those instances, they may arrange a meeting of agents or officials familiar with a particular industry or economic sector to share experiences, know-how, investigative techniques, and observations about trends in that industry. These discussions do not generally address the cases of specific taxpayers. Both the industry-wide meetings and the simultaneous examinations occur under the auspices of the exchange of information program; they are not in lieu of formal exchanges. They establish a process by which extensive exchanges of information can occur, with the assistance of an Exchange of Information analyst or Tax Attache.

As part of its obligations under its treaties, the United States has successfully defended its efforts to honor its treaty obligations against a variety of challenges. These challenges have included suits seeking to obtain publication of information received under treaty exchanges, objections to enforcement of administrative summonses and finally, an attempt to claim that the disclosure to another tax administrator was negligent. The United States successfully protected the secrecy of certain information in internal memoranda, including the identity of the treaty partner that had communicated with the IRS.[38] The need to safeguard the secrecy of the information to protect the working relationship of the treaty partners was sufficient reason to sustain the government position that documents from meetings of Competent Authorities are entitled to treaty protection.[39]

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[36] OECD Exchange Manual refers to a recommendation dating to 1997, "Recommendation on the use of Tax Identification Numbers in an International Context" C(97)29/FINAL (1997).

[37] Letter from Commissioner, IRS to Chairman, Senate Finance Committee (June 12, 2006), 2006 *Tax Notes Today* 115-17.

[38] *Tax Analysts v. Internal Revenue Service*, 152 F. Supp. 2d 1, 9 (D.D.C. 2001), *rev'd in part on other grounds*, 1 2002 WL 1300028 (D.C. Cir. 2002). Congress enacted section 6105, which explicitly provides that information obtained under a treaty and not taxpayer-specific is nevertheless protected information.

[39] *Tax Analysts v. Internal Revenue Service*, 217 F. Supp. 2d 23 (D.D.C. 2002).

D. Cross-Border Enforcement Actions

Because the United States taxes its citizens and residents on their worldwide income, U.S. tax administrators frequently need foreign-based financial information to verify the accuracy of reporting by U.S. taxpayers. The United States generally has three options for accessing information located in other jurisdictions: information reported by the taxpayer in compliance with U.S. domestic requirements; third-party information reporting to the IRS; and information obtained from other jurisdictions through an exchange of information under a bilateral agreement, as described in the preceding section.

1. U.S. information gathering ability in tax administration

The administration and enforcement of the Internal Revenue Code is generally governed by the provisions of Subtitle F of the Code. The broad powers granted to the IRS include the ability to compel production of information in the form of filing returns or response to summonses, the implementation of a system of third-party information reports on various specific subjects and the ability to impose and collect penalties for failure to comply with the measures.

Information gathering ability

Summons authority of the IRS

The IRS has broad statutory authority to require production of information in the course of an examination.[40] A request for information in the form of an administrative summons is enforceable if the IRS establishes its good faith, as evidenced by the four factors enunciated by the Supreme Court in *United States v. Powell*.[41] The *Powell* factors require that the information (1) is sought for a legitimate law enforcement purpose, (2) is of a type that will shed light on the subject of the examination, (3) is not already in the possession of the IRS, and (4) that the IRS has complied with all applicable statutory requirements, such as service of process. Subsequent to *United States v. Powell,* the legitimacy of using an administrative summons in furtherance of an investigation into criminal violations was validated in *United States v. LaSalle National Bank,*[42] in which the Supreme Court determined that the dual civil and criminal purpose was legitimate, so long as there had not yet been a commitment to refer the case for prosecution.

The use of this summons authority to obtain information from third parties is subject to greater procedural safeguards,[43] but otherwise the same good faith elements are analyzed to determine whether the summons should be enforced. When the existence of a possibly noncompliant taxpayer is known but not his identity, as in the case of holders of offshore bank

[40] Sec. 7602.

[41] 379 U.S. 48 (1964).

[42] 437 U.S. 298 (1978); codified in sec. 7609(c).

[43] Sec. 7609.

accounts or investors in particular abusive transactions, the IRS is able to issue a summons to learn the identity of the taxpayer, but must first meet greater statutory requirements, to guard against fishing expeditions.

An effort to learn the identity of unnamed "John Does" requires that the United States seek judicial review in an *ex parte* proceeding prior to issuance of the summons. In its application and supporting documents,[44] the United States must establish that the information sought pertains to an ascertainable group of persons, that there is a reasonable basis to believe that taxes have been avoided, and that the information is not otherwise available.[45] The reviewing court does not determine whether the summons will ultimately be enforceable. Once a court has determined that the predicate for issuance of a summons is met, the summons is served, and the summoned party served may challenge enforcement of the summons, based on the *Powell* factors. It is not entitled to judicial review of the *ex parte* ruling that permitted issuance of the summons.[46]

If a taxpayer whose liability is the subject of the summons either initiates or intervenes in a proceeding to challenge the enforcement of the summons, the limitations period for the tax year under investigation is suspended during the pendency of the proceeding.[47] The taxpayer whose identity is at issue in a John Doe summons would not initiate or intervene in a proceeding, and may not know of the proceeding. Nevertheless, enforcement of a John Doe summons is likely to be subject to time-consuming challenges, possibly warranting an extension of the limitations period. Thus, under current law, the limitations period for the tax year under investigation is suspended beginning six months after the service of a John Doe summons and ends with the final resolution of the response to the summons.[48]

Information reporting requirements

A variety of information reporting requirements apply under present law.[49] The primary provision governing information reporting by payors requires an information return by every person engaged in a trade or business who makes payments to any one payee aggregating $600 or more in any taxable year in the course of that payor's trade or business.[50] Reportable

[44] Sec. 7609(h)(2) provides that the determination will be made *ex parte*, solely on the pleadings.

[45] Sec. 7609(f).

[46] *United States v. Samuels, Kramer & Co., and First Western Government Securities, Inc.*, 712 F.2d 1342 (9th Cir. 1983), which affirmed a lower court determination that the issuance of the John Doe summons was not subject to review, but reversed and remanded to permit a limited evidentiary hearing on whether the *Powell* standard was met.

[47] Sec. 7609(e)(1).

[48] Sec. 7609(e)(2).

[49] Secs. 6031 through 6060.

[50] Sec. 6041(a). Information returns are generally submitted electronically on Forms 1096 and Forms 1099, although certain payments to beneficiaries or employees may require use of Forms W-3 and W-2, respectively. Treas. Reg. sec. 1.6041-1(a)(2).

payments include compensation for both goods and services, and may include gross proceeds. Certain enumerated types of payments that are subject to other specific reporting requirements are carved out of reporting under this general rule by regulation.[51] Another carveout excepts payments to corporations from reporting requirements.[52] Additionally, the requirement that businesses report certain payments is generally not applicable to payments by persons engaged in a passive investment activity.

Detailed rules are provided for the reporting of various types of investment income, including interest, dividends, and gross proceeds from brokered transactions (such as a sale of stock).[53] In general, the requirement to file Form 1099 applies with respect to amounts paid to U.S. persons and is linked to the backup withholding rules of section 3406. Thus, a payor of interest, dividends or gross proceeds generally must request that a U.S. payee (other than certain exempt recipients) furnish a Form W-9 providing that person's name and taxpayer identification number.[54] That information is then used to complete the Form 1099.

Failure to comply with the information reporting requirements results in penalties, which may include a penalty for failure to file the information return,[55] a penalty for failure to furnish payee statements,[56] or failure to comply with other various reporting requirements.[57]

2. Access to cross-border information

Judicial process

Foreign-based information may be obtained using judicial process. It requires a balancing of the U.S. interest in tax enforcement with the interests of the other state in maintaining confidentiality. In *Société Internationale v. Rogers*,[58] the Supreme Court articulated a basic rule of comity, holding unanimously that a U.S. district court could not ignore the interests of the foreign state in determining whether it would compel production of foreign

[51] Sec. 6041(a) requires reporting of payments "other than payments to which section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a) or 6050N(a) applies and other than payments with respect to which a statement is required under authority of section 6042(a), 6044(a)(2) or 6045[.]" The payments thus excepted include most interest, royalties, and dividends.

[52] Treas. Reg. sec. 1.6041-3(p).

[53] Secs. 6042 (dividends), 6045 (broker reporting) and 6049 (interest), as well as the Treasury regulations thereunder.

[54] See Treas. Reg. sec. 31.3406(h)-3.

[55] Sec. 6721.

[56] Sec. 6722.

[57] Sec. 6723.

[58] 357 U.S. 197 (1958).

based documents. Since then, courts balancing these conflicting U.S. and foreign interests[59] have tended to give greater weight to the U.S. interests in cases involving money laundering or drug dealing than in cases involving tax compliance. In *United States v. Bank of Nova Scotia,* the court enforced a grand jury subpoena served in the United States for records maintained in the Cayman Islands, despite claims that the bank secrecy laws of that jurisdiction would not permit production.[60] In that case, the records were sought in connection with prosecution of money laundering and possible drug dealing.

Foreign Account Tax Compliance Act ("FATCA")

In response to the difficulties in compelling production of information across-borders, the United States has enacted a variety of statutory measures to require greater enhanced information reporting and encourage voluntary disclosure, at the risk of incurring penalties. One of the most significant is the separate reporting and withholding regime for outbound payments in order to police tax compliance of U.S. persons.[61] Although other measures provide narrowly targeted tools that assist in securing cooperation in later stages of controversies, such measures do not assist during the examination portion of a controversy.[62]

Commonly referred to as the Foreign Account Tax Compliance Act,[63] the new regime imposes a withholding tax of 30 percent of the gross amount of certain payments to foreign financial institutions ("FFIs") unless the FFI establishes that it is compliant with FATCA. The information reporting requires identification by third parties of certain U.S. accounts held in an FFI. An FFI must report with respect to a U.S. account (1) the name, address, and taxpayer

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[59] The balancing test is summarized in the *Restatement (Third) of the Foreign Relations Law of the United States* as follows: (a) A court or agency in the United States, when authorized by statute or rule of court, may order a person subject to its jurisdiction to produce documents, objects, or other information relevant to an action or investigation, even if the information or the person in possession of the information is outside the United States; (b) failure to comply with an order to produce information may subject the person to whom the order is directed to sanctions, including finding of contempt, dismissal of a claim or defense, or default judgment, or may lead to a determination that the facts to which the order was addressed are as asserted by the opposing party; and (c) in deciding whether to issue an order directing production of information located abroad, and in framing such an order, a court or agency in the United States should take into account the importance to the investigation or litigation of the documents or other information requested; the degree of specificity of the request; whether the information originated in the United States; the availability of alternative means of securing the information; and the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located. *Restatement (Third) of the Foreign Relations Law of the United States*, sec. 441(1) (1987).

[60] 691 F.2d 1384 (11th Cir.1982).

[61] Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111-147.

[62] See, for example, sec. 7456(b), which provides specific authority for the Tax Court to order foreign entities invoking its jurisdiction to provide all relevant information, and sec. 982, which provides a statutory exclusionary rule affecting admissibility of foreign-based documents that had not been provided to the government earlier in administrative or judicial proceedings.

[63] Foreign Account Tax Compliance Act of 2009 is the name of the House and Senate bills in which the provisions first appeared. See H.R. 3933 and S. 1934 (October 27, 2009).

identification number of each U.S. person holding an account or a foreign entity with one or more substantial U.S. owners holding an account, (2) the account number, (3) the account balance or value, and (4) except as provided by the Secretary, the gross receipts and gross withdrawals or payments from the account.[64]

Final regulations published in 2013 provide guidance on how FFIs may comply with FATCA. An FFI may become a participating FFI by completing the IRS FATCA registration process, obtaining a Global Intermediary Identification Number (GIIN), and agreeing to the terms of an FFI Agreement. A list of FATCA compliant institutions is to be published electronically by the IRS. The list can be relied upon by withholding agents in determining the status of a payee. To be included on the list, an FFI applies to the IRS for issuance of a GIIN through the IRS FATCA registration process. If approved, the applicant and GIIN will be included in the published list. The registration process and access to the list may be done electronically.

The process for complying with FATCA is expected to be further streamlined for FFIs resident in jurisdictions that are parties to an intergovernmental agreement ("IGA") with the United States.[65] In 2012, the United States began negotiations for a series of bilateral IGAs,[66] on the authority of its various tax treaties and agreements to exchange information, with the intention of forming a partnership with another jurisdiction (FATCA partner) to facilitate the implementation of FATCA and obviate any legal impediments that FFIs that are resident in a FATCA partner may otherwise have faced in complying with the terms of FATCA. Since then, the United States has signed intergovernmental agreements with 22 countries. In addition, it has completed negotiations with several others.

All bilateral IGAs conform to models published in 2012.[67] The Model 1 bilateral agreement provides a framework in which an FFI provides information to the tax authorities of the FATCA partner rather than to the IRS. The FATCA partner then provides information to the United States under an automatic exchange of information. In a variation on Model 1 referred to as the reciprocal version, the agreements include a reciprocal commitment for automatic exchange of information, under which the United States agrees to provide automatic exchange of certain information identified in the IGA and collected under U.S. information reporting requirements with respect to residents of the FATCA partner. Model 2 creates a framework

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[64] Sec. 1471(c).

[65] Although the information reporting requirement under Chapter 4 were initially to go into effect with respect to payments made after December 31, 2012, several aspects of the implementation have been delayed. In Announcement 2012-42, the IRS published an implementation timeline for due diligence requirements that were later included in the final regulations published January 28, 2013. T.D. 9610, Treas. Reg. sec. 1.1471-1 through 1.1474-7.

[66] Joint Statement with France, Germany, Italy, Spain, and the United Kingdom, February 2, 2012, available at http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

[67] A complete list of countries with which an IGA is in effect is maintained by the Office of Tax Policy and available at http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx, which also includes links to Model agreements as well as signed IGAs.

under which the FATCA partner agrees to waive domestic restrictions, if any, which would prevent FFIs from reporting directly to the IRS and to require these FFIs to comply with the terms of an FFI Agreement. The FATCA partner also agrees to honor U.S. requests for requests for exchange of information as needed. The FFIs provide the requisite information directly to the IRS.

Third-party reporting is not the only means by which compliance of U.S. persons with foreign financial holdings is encouraged. Reporting by taxpayers about their foreign holdings was also enacted contemporaneously with FATCA. Effective for tax years beginning after the date of enactment (March 18, 2010), individuals are required to disclose with their annual Federal income tax return any interest in foreign accounts and certain foreign securities if the aggregate value of such assets is in excess of the greater of $50,000 or an amount determined by the Secretary in regulations. Failure to do so is punishable by a penalty of $10,000, which may increase for each 30 day period during which the failure continues after notification by the IRS, up to a maximum penalty of $50,000.[68] In addition, U.S. persons with foreign holdings may be required to file an annual form TD F 90-22.1, Foreign Bank Account Report ("FBAR"). The FBAR includes information about foreign financial accounts held or controlled, as provided under regulations implementing the Bank Secrecy Act.[69]

[68] Sec. 6038D. On February 12, 2012, temporary regulations were published, effective on December 19, 2011, providing guidance on the scope of reporting required, the threshold values triggering reporting requirements for various fact patterns and how the value of assets is to be determined. T.D. 9567, Treas. Reg. secs. 1.6038D-1T to 1.6038D-8T.

[69] 31 U.S.C. sec. 5311 et seq.; 31 C.F.R. Chapter X.

III. EXPLANATION OF THE PROPOSED PROTOCOL

The following discussion describes each provision of the proposed protocol, highlighting the extent to which the proposed amendment brings the existing multilateral convention into conformity with the OECD standards on transparency and effective exchange of information.

Preamble

The Preamble to the proposed protocol provides the rationale leading the signatories to amend the existing treaty. First, the Preamble notes that the existing convention was signed and entered into force before consensus emerged around the international norms for exchange of information with respect to tax matters. As a result of the general agreement with respect to those standards, a new cooperative environment now exists. To ensure that the benefits from the adherence to the highest international standards and the cooperative environment are realized, the drafters consider it desirable to permit States that are neither members of the Council of Europe nor of the OECD to accede to the convention.

Article I

Article I comprises two paragraphs amending the Preamble of the existing convention. First, the seventh recital is replaced. The existing seventh recital states the assumption that no treaty country should supply information except in conformity with domestic law. By omitting references to the constraints of domestic law or practice from the new seventh recital, the Preamble as amended is now consistent with the OECD standard rejecting such restrictions. A treaty country may no longer justify rejection of a request for assistance on the basis of a lack of a domestic need for, or customary use of, the type of information requested.

A new paragraph is added to explain the decision to open the multilateral convention for signature by countries not previously eligible. The new recital states that the changed environment with respect to exchange of information warrants expanding participation in the multilateral agreement beyond the Council of Europe and the OECD. According to the recital, the benefits of the multilateral convention are enhanced for all participants when a greater number of countries implement the highest international standards of tax administration.

Article II

Article II of the proposed protocol replaces Article 4 (General provision), in the section dealing with exchange of information of the multilateral convention. The new article 4 provides that treaty countries must exchange any information that is "foreseeably relevant" to the administration or enforcement of the domestic tax laws of the requesting treaty country, similar to the standard found in the OECD Model and U.S. Model treaties. The scope of purposes for which exchange is appropriate is broadened to permit use of the information exchanged for the determination and the recovery of tax claims, as well as for the conduct of administrative, judicial or criminal proceedings. Separate authorization for disclosure of the exchanged information in a criminal proceeding is no longer required.

As under the existing convention, a treaty country may indicate that its domestic laws require it to inform its resident or national before transmitting information concerning him or

her. This is done by making a declaration addressed to either the Secretary General of the OECD or the Secretary General of the Council of Europe ("the Depositaries").[70]

Article III

Article III amends the provisions in Article 18 (Information to be provided by the applicant State) to make it clear that the requesting treaty country need not provide every item on the list of information in paragraph 1.b. of Article 18 with respect to a person that is the subject of a request for exchange of information. By changing the language from "name, address and any other particulars" to "name, address or any other particulars," it is clear that a specific request for information may be made for the purpose of ascertaining the identity of persons in circumstances analogous to the so-called "John Doe" summonses authorized in U.S. law. Under U.S. law, such summonses are issued when the existence of a possibly noncompliant taxpayer is known but his identity is unknown, as in the case of holders of offshore bank accounts or investors in particular abusive transactions, but only after establishing the reasonableness of the request in an *ex parte* judicial proceeding. At that hearing, the IRS must establish that the information sought pertains to an ascertainable group of persons (for example, persons with signature authority over specific numbered bank accounts), that there is a reasonable basis to believe that taxes have been avoided, and that the information is not otherwise available.

Article IV

Under this provision, Article 19 (Possibility of declining a request) is deleted in full. The deleted article permitted a requested treaty country to refuse to respond to a request for assistance if the applicant had not pursued "all means available in its own territory," except where doing so would give rise to disproportionate difficulty. A modernized variation of that rule is added by Article V to Article 21 (Protection of persons and limits to the obligation to provide assistance), under which a treaty country is not required to comply with a request for assistance if the applicant has not pursued all reasonable measures under its domestic laws or administrative practice. Both the deleted Article 19 and the new paragraph (2)(f) of Article 21 include the caveat that the applicant need not exhaust remedies under domestic law if to do so would give rise to disproportionate difficulty.

Article V

The proposed protocol revises Article 21 (Protection of persons and limits to the obligation to provide assistance) to conform to the OECD standards.

First, paragraph 2 is amended significantly. That paragraph enumerates specific limitations on the obligations of a requested treaty country. Three new subparagraphs are added and the terms of paragraphs 2.b. and 2.d are modified to conform to language found in the OECD model. As amended, paragraph 2 now provides that the convention is not to be construed to impose on a requested jurisdiction any obligation to do the following: carry out measures that are at variance with its own laws or administrative practices (as well as the laws and

[70] Article 2 (Taxes Covered), at paragraph 3.

administrative practices of the applicant State); carry out measures (including disclosure of professional or trade secrets) which would be contrary to public policy; to supply information not obtainable under its own laws or administrative practices (or those of the applicant State); provide administrative assistance to the extent that the requested State considers the taxation of the applicant State to be contrary to generally accepted taxation principles or to a treaty that the requested State has entered into with the applicant State; provide assistance in any instance where doing so would lead to discrimination between a national of the requested State and a national of the applicant State in the same circumstances; provide assistance if the applicant country has not pursued reasonable measures available under its laws, unless such measures would give rise to disproportionate burden; or assist in recovery where the burden for the requested treaty country is clearly disproportionate to the benefit of the assistance to the requesting treaty country.

In addition to clarifying the scope of the limitations on obligations imposed, the proposed protocol also adds two new paragraphs that reject certain circumstances relied upon in the past to justify declination of a request for assistance. Paragraph 3 requires that a treaty country in receipt of a request under the multilateral convention must use its information gathering powers to secure the requested information, regardless of whether the requested treaty country would have need for such information under its domestic law. Paragraph 4 rejects any construction of the multilateral convention that would permit a requested treaty country to refuse to comply with a request because the information requested is held by a bank, financial institution, nominee or persons acting as an agent or fiduciary, or because the information relates to ownership interests in a person. Thus, bank secrecy laws are not a basis for rejecting requests for assistance.

Article VI

The confidentiality requirements of Article 22 (Secrecy) with respect to personal data are strengthened by the proposed protocol. The proposed protocol also ensures that any information exchanged under the treaty may be disclosed in public court proceedings or judicial opinions, without need for consent of the party supplying the information. The revised article permits the treaty country supplying the information to specify additional safeguards that must be followed in order to ensure the requisite security of any personal data so exchanged. The general rule remains that a country in receipt of exchanged information must treat that information as secret in the same manner as under its own domestic law. Any measures so specified by a treaty country must be consistent with safeguards applicable under its own domestic laws. According to the Technical Explanation, the United States does not and will not provide information to a country unless that country observes the secrecy obligations of the revised Convention and any additional safeguards necessary to ensure a level of data protection similar to that available under U.S. confidentiality laws.

Article VII

The proposed protocol revises Article 27 (Other international agreements or arrangements) of the multilateral convention to remove a restriction that limited its benefits for members of the European Union in their relations with one another. Article 27 generally provides that the terms of the convention do not limit, nor are they limited by, any other international agreement that relates to cooperation in tax matters, but required members of the

European Union to apply E.U. rules exclusively. The proposed protocol amends that restriction by permitting treaty countries that are also E.U. members to apply the rules of the multilateral convention in their mutual relations if to do so would permit broader cooperation than the applicable rules of the European Union.

Thus, any treaty country that is a party to the convention as well as a party to a series of bilateral agreements, memoranda of understanding or other multilateral agreement, may utilize whichever agreement, arrangement, or instrument is most useful to the treaty country in its particular situation.

Article VIII

The proposed Protocol adds new paragraphs 4 through 7 to Article 28 (Signature and entry into force of the Convention) which together open the convention to signature by countries that are neither members of the Council of Europe nor members of the OECD.

New paragraph 4 of article 28 provides that current E.U. or OECD members that ratify the existing convention after the protocol has entered into force are considered to have ratified the convention as amended, unless they provide a written statement to the contrary to one of the Depositaries.

In new paragraph 5, the convention permits countries that are neither members of the Council of Europe nor members of the OECD to request that they be invited to sign and ratify the convention as amended. A request to be invited to sign must be submitted to one of the Depositaries, who transmits the request to all parties to the convention and the other depositary. An applicant is invited to sign and ratify the convention only if all parties to the convention reach consensus in favor of inviting the applicant, without exception. The parties to the convention act through the coordinating body established under Article 24 (Implementation of the Convention). That body consists of representatives of the competent authorities of each party, and is charged with responsibility to monitor the implementation and development of the convention, recommend any action that is likely to further the general aims of the convention, act as a forum for the study of new ways to increase international cooperation in tax matters, and, where appropriate, recommend revisions or amendments to the convention.

New paragraph 6 establishes that administrative assistance is available under the convention as amended for taxes arising on or after, or taxable periods beginning on or after, January 1 of the year following the one in which the convention as amended enters into force with respect to a party. Parties may agree to provide administrative assistance with respect to earlier periods or taxes. In addition, paragraph 7 provides that earlier taxable periods or taxes may be the subject of administrative assistance with respect to tax matters involving intentional conduct that may lead to criminal prosecution.

Finally, article VIII provides that a treaty country may enter a reservation, in paragraph (f) of Article 30 (Reservations), with respect to the effective date rule provided by paragraph 7, described above. Under the new reservation, a country may limit the extent to which administrative assistance is available for taxable periods prior to the effective date of the proposed protocol if the tax matter in question involves intentional conduct that may be subject

to prosecution under the criminal laws of the treaty country applying for administrative assistance.

Article IX

Article IX opens the proposed protocol for signature and establishes the conditions for its entry into force. All signatories to the multilateral convention are eligible to sign the protocol. The protocol is subject to ratification, acceptance or approval, which must be reflected in instruments deposited with either of the Depositaries. The proposed protocol first entered into force on January 6, 2011, the first day of the month following three months from the date on which at least five States had ratified, accepted, or approved the convention. For any signatory who ratifies, accepts, or approves the protocol after that date, it becomes effective with respect to that party on the first day of the month following three months after the date of deposit of the instrument of ratification, acceptance, or approval.

Article X

Each Depositary must notify the member countries of the Council of Europe and of the OECD, and the other Depositary, of any signature of the protocol; the deposit of any instrument of ratification, acceptance, or approval; the entry into force of the protocol pursuant to Article IX; and any other act, notification or communication relating to the protocol. The depositaries were responsible for transmitting a certified copy of the protocol to each member country, as well as establishing the text of the convention as amended and providing a certified copy of that text to all parties.

IV. ISSUES RELATED TO EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE

This summary provides an overview of two issues that ratification of the proposed protocol present concerning the U.S. position on exchange of information in general. First, the Committee may wish to inquire about the conditions under which non-members of the governing body of the agreement can accede. Second, the Committee may wish to inquire whether the OECD transparency standard reflected in the agreement, and substantively similar to the standard reflected in Article 26 of the 2006 U.S. Model treaty, has proven to be an appropriate standard.

A. Adequacy of Conditions Under Which Non-OECD States May Accede to the Convention

One of the most significant changes to the multilateral convention made by the proposed protocol is the opening of membership in the convention to states that are neither OECD nor Council of Europe members. In the most recently available list of signatories, dated December 23, 2013, there are a number of countries who are not members of G-20,[71] the OECD or the Council of Europe: Colombia, Costa Rica, Ghana, Guatemala, and Tunisia. All members of G-20 are among the signatories. Those members of G-20 who are not also members of either the OECD or Council of Europe include Argentina, Brazil, India, Indonesia, Saudi Arabia and South Africa. Thus, on the one hand, the inclusive standard for permitting nations to participate has opened the multilateral convention to a number of significant trade partners of the United States. On the other hand, it requires the United States to initiate an exchange of information program with jurisdictions with which it has not previously entered into a bilateral relationship. Among the signatories that have neither a tax treaty nor a TIEA with the United States are Albania, Andorra, Croatia, Ghana, Nigeria, Saudi Arabia, and Singapore.

The extent to which any of those states are jurisdictions with which the United States has previously participated in an exchange of information program and whether the program has operated satisfactorily are areas in which the Committee may wish to inquire. To the extent that they are jurisdictions with whom the United States has no exchange of information program under a bilateral agreement, the Committee may wish to inquire about the extent to which the United States has been able to satisfy itself that each jurisdiction is an appropriate partner for exchange of information. The Committee may also wish to inquire whether the expanded exchange of information requirements will be manageable.

The Committee may also wish to inquire about the circumstances under which the United States would object to accession by a non-member state, as contemplated under the procedures for securing the unanimous consent of the governing body of the treaty before the agreement may enter into effect with respect to that non-member state. For example, in explaining its

[71] G-20, or the Group of Twenty, is a forum for international economic cooperation among the member countries and the European Union. The leaders of the members meet annually, while finance and banking regulators meet more frequently throughout the year. They work closely with a number of international organizations, including the OECD.

general standards for considering entry into a bilateral agreement with a jurisdiction, Treasury has stated, "… prior to entering into an information exchange agreement with another jurisdiction, the Treasury Department and the IRS closely review the foreign jurisdiction's legal framework for maintaining the confidentiality of taxpayer information. In order to conclude an information exchange agreement with another country, the Treasury Department and the IRS must be satisfied that the foreign jurisdiction has the necessary legal safeguards in place to protect exchanged information and that adequate penalties apply to any breach of that confidentiality."[72]

[72] Preamble to Treas. Reg. 1.6049-4(b)(5). T.D. 9584, April 12, 2012.

B. Effectiveness of the Changes Intended to Reflect Modern OECD Transparency Standards

There are several questions about the effectiveness and scope of the OECD transparency standards, as well as questions about the extent to which the changes proposed are consistent with those standards. There has been a developing international consensus around the issue of bank transparency for tax purpose. That consensus has increased attention to efforts to reconcile the conflicts between jurisdictions, particularly between jurisdictions with strict bank secrecy laws and those seeking bank information to enforce their own tax laws.[73] As a result, the Committee may wish to inquire as to whether the OECD standards and the U.S. Model treaty published in 2006 are the appropriate standard by which to measure an effective exchange of information program. In announcing its proposed Common Reporting Standard, the OECD expressed its view that establishing global standards in the context of a multilateral agreement is preferable to reliance on a network of bilateral arrangements.[74]

The U.S. Model treaty conforms with the norms for transparency and effective exchange of information articulated by the OECD, which in turn are the standards by which the OECD determines whether a country is committed to transparency. Those standards require the existence of mechanisms for exchange of information upon request; the availability of exchange of information for purposes of both criminal and civil tax matters; absence of restrictions of information exchange caused by application of the dual criminality principle[75] or a domestic tax interest requirement; respect for safeguards and limitations; strict confidentiality rules for information exchanged; and availability of reliable information (in particular bank, ownership, identity, and accounting information) and powers to obtain and provide such information in response to a specific request.[76]

1. Remaining restrictions on the obligation to provide information based on domestic custom or practice

The scope and operation of Article 21, as amended by the proposed protocol, accomplishes one of the goals of the OECD transparency standards, in establishing that a requested State cannot rely on bank secrecy or lack of a domestic interest as a basis for a refusal

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[73] See Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2010 Budget Proposal; Part Three: Provisions Related to the Taxation of Cross-Border Income and Investment* (JCS-4-09), September 2009. Section VI of that pamphlet provides an overview of the international efforts to address these issues.

[74] OECD, Common Reporting Standards, paragraph 14.

[75] The principle of dual criminality derives from the law regarding extradition and grounds for refusal to grant a request. Extradition is generally permitted only if the crime for which a person is to be extradited is treated as a similarly serious offense in the state in which the fugitive has sought refuge. *Restatement (Third) of the Foreign Relations Law of the United States*, sec. 476 (1987). The principle is relevant to a request for exchange of tax information only if the treaty in question limits the scope of its permitted exchanges to criminal tax matters.

[76] OECD, *Tax Cooperation: Towards a Level Playing Field, 2008 Assessment by the Global Forum on Taxation*, p. 8.

to exchange information, but adds other new potential arguments against exchanging information, based on the requested party's interpretation of the domestic law of the requesting party. Under Article V of the proposed protocol, and Article 21 as amended, a treaty country is generally not obligated to take any action at variance with its domestic law, including disclosure of professional or trade secrets. That principle is limited by the rule that a treaty country may not decline to provide information on the ground that the information is held by a financial institution, nominee, or person acting in an agency or intermediary capacity. The effect of this amendment is potentially undermined by the continued inclusion of language that permits a signatory to refuse to exchange information if the requested country determines that the domestic tax law of the requester is outside generally accepted principles of taxation. Thus, the requested country is permitted to make determinations about the merits of a Competent Authorities request based on its interpretation of the domestic law of another country. The Commentary includes a brief discussion of this limitation, to the effect that a rate of tax that is confiscatory or a penalty that is disproportionate to the offense may be considered to be outside generally accepted tax principles, and urges contracting States to consult with one another in instances when such a basis for refusing to exchange information is considered.[77]

The Committee may wish to inquire whether the United States has had experience with application of the "generally accepted principles of taxation" standard in providing administrative assistance. Specifically, it may wish to determine whether similar language exists in any bilateral TIEA or exchange of information article of a tax treaty to which the United States is a party. Although the language was in the original Article 21 that is replaced by Article V of the proposed protocol, it may not have been invoked previously, because most jurisdictions with respect to whom the treaty was in force had a network of bilateral agreements on which they relied. For exa2mple, the Committee may ask whether there have been instances in which the United States refused to exchange information based on its view that the requester's tax regime was outside the norms of the international community. Similarly, the Committee may wish to inquire whether any country or countries have rejected requests from the United States on that basis.

The extent to which the standards of transparency depend upon the good faith of all parties also may warrant inquiry about the extent to which the signatories are in compliance with the OECD transparency standards. Peer reviews have been conducted since 2011, and include several of the signatories from previously opaque jurisdictions, such as Luxembourg and Switzerland. The former was determined to be "Not Compliant," and the proposed Phase 2 review of Switzerland is "conditional." The Committee may wish to inquire about the import of these outcomes for the two countries on the OECD Multilateral treaty, as well as the protocols pending with each of those jurisdictions.

Many peer reviews have been completed, others are in progress and still others remain to be scheduled. A summary of all reviews performed as of February 6, 2014, is included as Table

[77] See, paragraphs 197 and 199, OECD and Council of Europe, *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, available at http://dx.doi.org/10.1787/9789264115606-en 2011.

3 in the Appendix attached to this report. The overall ratings of the signatories are also noted in Table 1 of the Appendix.

2. Methods of exchange of information

The OECD standards do not require exchange other than upon specific requests for information, although the language permits the treaty countries to agree to provide for other exchange mechanisms. The OECD, in its commentary to the exchange of information provisions in the OECD Model treaty, specifies that the treaty "allows" the competent authorities to exchange information in any of three ways that treaty countries have traditionally operated[78] – routine, spontaneous,[79] or specific exchanges.[80] With regard to the latter type of exchange, the Committee may wish to seek confirmation that a request similar to a John Doe summons[81] would be viewed as an adequate specific request within the meaning of the article, and that protracted litigation similar to that which occurred in the UBS litigation[82] can be avoided or shortened.

The Committee may wish to explore issues related to "routine" or "automatic" exchange of information, which is the subject of the OECD Common Reporting Standards. In this type of exchange, the treaty countries identify categories of information that are consistently relevant to the tax administration of the receiving treaty country and agree to share such information on an ongoing basis, without the need for a specific request. Although information that is automatically shared under this authority may include information that is not taxpayer-specific, such as news about changes in domestic tax legislation, it may comprise voluminous taxpayer filings, such as magnetic disks containing the information from IRS Form 1042-S, relating to

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[78] OECD, Commentary on the Model Treaty Article 26, par. 9, as revised in OECD, *Update to Article 26 of the OECD Model Tax Convention and Its Commentary*, (July 12, 2012), available at http://www.oecd.org/ctp/exchange-of-tax-information/120718_Article%2026-ENG_no%20cover%20%282%29.pdf.

[79] A "spontaneous exchange of information" occurs when one treaty country in possession of an item of information that it determines may interest the other treaty country for purposes of its tax administration spontaneously transmits the information to its treaty country through their respective competent authorities.

[80] A "specific exchange" is a formal request by one treaty country to another for information that is relevant to an ongoing investigation of a particular tax matter. These cases are generally taxpayer specific. Those familiar with the case prepare a request that explains the background of the tax case and the need for the information and submit it to the Competent Authority in their country. If he determines that it is an appropriate use of the treaty authority, he forwards it to his counterpart.

[81] When the existence of a possibly noncompliant taxpayer is known but not his identity, as in the case of holders of offshore bank accounts or investors in particular abusive transactions, the IRS is able to issue a summons to learn the identity of the taxpayer, but must first meet greater statutory requirements, to guard against fishing expeditions. Prior to issuance of the summons intended to learn the identity of unnamed "John Does," the United States must seek judicial review in an *ex parte* proceeding. In its application and supporting documents,[81] the United States must establish that the information sought pertains to an ascertainable group of persons, that there is a reasonable basis to believe that taxes have been avoided, and that the information is not otherwise available.

[82] See *United States v. UBS AG*, Civil No. 09-20423 (S.D. Fla.), enforcing a "John Doe summons" which requested the identities of U.S persons believed to have accounts at UBS in Switzerland. On August 19, 2009, the United States and UBS announced an agreement (approved by the Swiss Parliament on June 17, 2010) under which UBS provided the requested information.

U.S.-source fixed or determinable income paid to persons claiming to be residents of the treaty country receiving the forms. The type of information, when it will be provided, and how frequently it will be provided are determined by the respective Competent Authorities after consultation.

The Committee may wish to inquire about the (1) the extent to which the United States presently engages in automatic exchange of taxpayer-specific information, (2) practical hurdles to greater use of automatic exchange, and (3) whether it anticipates significant changes in that practice should the proposed protocol be ratified. With respect to these areas of inquiry, the Committee may wish to explore the relationship between regulatory reporting requirements and automatic exchange of information, as described in the preamble to regulations finalized in 2012.

The Committee may also wish to inquire about regulations finalized in 2012 that expand information reporting by U.S. financial institutions on interest paid to nonresident aliens. In support of those regulations, the Preamble states "requiring routine reporting to the IRS of all U.S. bank deposit interest paid to any nonresidential alien individual will further strengthen the United States exchange of information program consistent with adequate provisions for reciprocity, usability and confidentiality in respect of this information."[83] Such reporting was not previously required, except with respect to payments to residents of Canada.[84] The regulations requires reporting with respect to payments to any nonresident alien who resides in a country with which the United States has a satisfactory exchange of information program under a bilateral agreement.[85] The IRS has published a list of the countries whose residents are subject to the reporting requirements, and a list of countries with respect to which the reported information will be automatically exchanged. The first list includes 76 countries. The second list includes only one, Canada.[86]

The Committee may wish to explore the usability of the information exchanged with Canada under present regulations, its relationship to the exchange of information program with Canada, the extent to which expanded regulations would strengthen exchange of information under the proposed protocol, as well as any additional attendant burdens that may arise as a result of these regulations.[87] In the past, there have been concerns that information received pursuant to automatic exchanges under bilateral and multilateral agreements was not in a usable form. Examples of practical hurdles that reportedly limited the value of information exchanged were the lack of timeliness of its production, lack of conformity in reporting periods, the need to

[83] Preamble to Treas. Reg. 1.6049-4(b)(5). T.D. 9584, April 12, 2012.

[84] Treas. Reg. sec. 1.6049-4(b)(5).

[85] *Ibid*.

[86] Rev. Proc. 2012-24 2012 I.R.B. Lexis 242 (April 17, 2012).

[87] The IRS and Treasury Department have requested written and electronic comments on the proposed regulations. A public hearing at which oral comments were presented was held on May 18, 2011.

translate the language of the documents and the currencies, and its voluminous nature.[88] To the extent that useful information can be gathered through exchange of information, the United States may be able to reduce its reliance upon self-reporting, that is, information provided by the taxpayer and, therefore, only available with respect to those in compliance with the tax laws.

Practical challenges with automatic exchanges are not exclusive to the United States. The OECD has developed standards for the electronic format of such exchanges, to enhance their utility to tax administration.[89] Despite these efforts to standardize the information exchanged and improve its usefulness, there remain numerous shortcomings, both practical and legal, in the routine exchange of information. Chief among them is the lack of taxpayer identification numbers ("TINs") in the information provided under the exchange, despite the recommendation of the OECD that member States provide such information.[90] Ideally, the information received by the IRS should either include a TIN or be subject to a process referred to as "TIN perfection" to enable the IRS to correlate account data in the information received with a valid TIN in its taxpayer databases, although such an undertaking may be time-consuming and costly. In the course of developing standards, Working Party 10 in the OECD surveyed countries about their experience, impediments to greater use of automatic exchanges, and preferences for improving such exchanges. The Committee may wish to inquire how the United States responded to the OECD inquiries, and the priority it places on such improvements.

3. U.S. reciprocity in providing information

The United States has come under increasing pressure to eliminate policies that provide foreign persons with the ability to shelter income. The criticism has focused on disparities between the U.S. standards and foreign standards governing "know-your-customer" rules for financial institutions and the maintenance of information on beneficial ownership. With respect to the latter, U.S. norms have been criticized in recent years.[91] The Committee may wish to explore the extent to which either the existing U.S. know-your-customer rules or the corporate formation and ownership standards prevent the United States from providing information about beneficial ownership on a reciprocal basis with its treaty countries. The Committee may also consider whether there are steps to take that would help refute the perception that the United

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[88] Letter from Commissioner, IRS, to Chairman, Senate Committee on Finance (June 12, 2006), 2006 *Tax Notes Today* 115-17.

[89] See OECD, Committee on Fiscal Affairs, *Manual on the Implementation of Exchange of Information Provisions for Tax Purposes*, Module 3 (January 23, 2006) ("OECD Exchange Manual").

[90] OECD Exchange Manual refers to a recommendation dating to 1997, "Recommendation on the use of Tax Identification Numbers in an International Context" C(97)29/FINAL (1997).

[91] Financial Action Task Force, IMF, *Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism United States of America*, pp. 10-11 (June 23, 2006); Government Accountability Office, *Company Formations: Minimal Ownership Information Is Collected and Available*, a report to the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate GAO-06-376 (April 2006); Government Accountability Office, *Suspicious Banking Activities: Possible Money Laundering by US Corporations Formed for Russian Entities*, GAO-01-120 (October 31, 2006).

States permits states to operate as tax havens and that would help the United States better respond to information requests from treaty countries who suspect that their own citizens and residents may be engaging in illegal activities through U.S. corporations and limited liability companies.[92]

[92] For example, the "Incorporation Transparency and Law Enforcement Assistance Act," S. 569, 111th Congress (2009), would require states to obtain and periodically update beneficial ownership information from persons who seek to form a corporation or limited liability company.

APPENDIX

This appendix comprises the following three tables:

Table 1. Signatories

This table was prepared by the staff of the Joint Committee on Taxation, based on information found in tables 2 and 3 as well as the membership information found on websites of each of the G-20, OECD, the European Union or Council of Europe. The table lists all countries that have signed the proposed protocol or acceded to the treaty as amended, their status under the ongoing peer review process of the OECD.

Table 2. Status of the Convention on Mutual Administrative Assistance and Amending Protocol -- 23 December 2013

This table summarizes the status of the proposed protocol, and is available at http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf.

Table 3. All Reviews; Chart of Peer Review Reports as of February 6, 2014

This table lists all jurisdictions that may be subject to a peer review of compliance with OECD transparency standards, and includes information on the status of pending reviews as well as a summary of the outcomes of completed reviews, as of February 6, 2014. The table, and future updates to the table, can be found in the Exchange of Information portal for the OECD. It is available at http://eoi-tax.org/library#reviews.

Table 1. Signatories

Countries	Peer Review Status	G-20‡	OECD	EU	COUNCIL OF EUROPE
Albania	No report			X **	X
Andorra	Phase 2 scheduled				X
Anguilla•					
Argentina	Largely Compliant	X			
Aruba♦					
Australia	Compliant	X	X		
Austria	Partially Compliant		X	X	X
Azerbajian	No report				X
Belgium	Compliant		X	X	X
Belize					
Bermuda•					
Brazil	Phase 2	X			
British Virgin Isl.•					
Canada	Compliant	X	X		X**
Cayman Islands•					

Countries	Peer Review Status	G-20[‡]	OECD	EU	COUNCIL OF EUROPE
Chile	Phase 2 scheduled		X		
China	Compliant	X			
Colombia					
Costa Rica					
Croatia				X	X
Curacao[♦]					
Czech Republic	Phase 2 scheduled		X	X	X
Denmark	Compliant		X	X	X
Estonia	Largely Compliant		X	X	X
Faroe Islands[†]					
Finland	Compliant		X	X	X
France	Compliant	X	X	X	X
Georgia	No report				X
Germany	Largely Compliant	X	X	X	X
Ghana					
Gibraltar[•]					
Greece	Largely Compliant		X	X	X
Greenland[†]					
Hungary	Phase 2 scheduled		X	X	X
Iceland	Compliant		X	X[*]	X
India		X			
Indonesia		X			
Ireland	Compliant		X	X	X
Isle of Man[•]					
Italy	Largely Compliant	X	X	X	X
Japan	Compliant	X	X		X[**]
Kazakhstan					
Korea	Compliant	X	X		
Latvia	No report			X	X
Liechtenstein	Phase 2 scheduled				X
Lithuania	Phase 2 scheduled			X	X
Luxembourg	Non-compliant		X	X	X
Malta	Largely Compliant			X	X
Mexico	Phase 2 scheduled	X	X		X[**]
Rep. of Moldova					X
Montserrat[•]					
Morocco					
Netherlands	Largely Compliant		X	X	X
New Zealand	Compliant		X		

Countries	Peer Review Status	G-20‡	OECD	EU	COUNCIL OF EUROPE
Nigeria					
Norway	Compliant		X		X
Poland	Phase 2 scheduled		X	X	X
Portugal	Phase 2 scheduled		X	X	X
Romania	No report			X	X
Russian Federation	Phase 2 scheduled	X			X
San Marino	Largely Compliant				X
Saudi Arabia		X			
Sint Maarten					
Singapore					
Slovak Republic	Phase 2 scheduled		X	X	X
Slovenia	Phase 2 scheduled		X	X	X
South Africa	Compliant	X			
Spain	Compliant		X	X	X
Sweden	Compliant		X	X	X
Switzerland	Phase 2 Conditional		X		X
Tunisia					
Turkey		X	X	X*	X
Turks & Caicos					
Ukraine					X
United Kingdom		X	X	X	X
United States		X	X		X**

‡ G-20 membership comprises 19 countries plus the European Union.

• Membership by extension of the United Kingdom.

♦ Membership by extension of the Netherlands.

† Extended by Denmark.

* Candidate for EU membership. http://europa.eu/about-eu/countries/index_en.htm.

** Observer State in the Council of Europe. Observer states that are not signatories are the Holy See and Israel. http://hub.coe.int

STATUS OF THE CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS AND AMENDING PROTOCOL – 23 DECEMBER 2013

COUNTRY/JURISDICTION*	ORIGINAL CONVENTION			PROTOCOL (P)/ AMENDED CONVENTION (AC)		
	SIGNATURE (Opened on 25-01-1988)	DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE	SIGNATURE (Opened on 27-05-2010)	DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE
1. ALBANIA				01-03-2013 (AC)	08-08-2013	01-12-2013
2. ANDORRA				05-11-2013 (AC)		
ANGUILLA[1]						01-03-2014
3. ARGENTINA				03-11-2011 (AC)	13-09-2012	01-01-2013
ARUBA[2]						01-09-2013
4. AUSTRALIA				03-11-2011 (AC)	30-08-2012	01-12-2012
5. AUSTRIA				29-05-2013 (AC)		
6. AZERBAIJAN	26-03-2003	03-06-2004	01-10-2004			
7. BELGIUM	07-02-1992	01-08-2000	01-12-2000	04-04-2011 (P)		
8. BELIZE				29-05-2013 (AC)	29-05-2013	01-09-2013
BERMUDA[3]						01-03-2014
9. BRAZIL				03-11-2011 (AC)		
BRITISH VIRGIN ISLANDS[4]						01-03-2014
10. CANADA	28-04-2004			03-11-2011 (P)	21-11-2013	01-03-2014
CAYMAN ISLANDS[5]						01-01-2014
11. CHINA				27-08-2013 (AC)		
12. CHILE				24-10-2013 (AC)		
13. COLOMBIA				23-05-2012 (AC)		

* This table includes State Parties to the Convention as well as jurisdictions, which are members of the GFTEI or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

[1] Extension by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

[2] Extension by the Netherlands (receipt by Depositary on 29 May 2013 and entry into force on 1 September 2013).

[3] Extension by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

[4] Extension by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

[5] Extension by United Kingdom (receipt by Depositary on 25 September 2013 and entry into force on 1 January 2014).

COUNTRY/JURISDICTION*	ORIGINAL CONVENTION			PROTOCOL (P)/ AMENDED CONVENTION (AC)		
	SIGNATURE (Opened on 25-01-1988)	DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE	SIGNATURE (Opened on 27-05-2010)	DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE
14. COSTA RICA				01-03-2012 (AC)	05-04-2013	01-08-2013
15. CROATIA				11-10-2013 (AC)		
CURAÇAO[6]						01-09-2013
16. CZECH REPUBLIC				26-10-2012 (AC)	11-10-2013	01-02-2014
17. DENMARK	16-07-1992	16-07-1992	01-04-1995	27-05-2010 (P)	28-01-2011	01-06-2011
18. ESTONIA				29-05-2013 (AC)		
FAROE ISLANDS[7]						01 06 2011
19. FINLAND	11-12-1989	15-12-1994	01-04-1995	27-05-2010 (P)	21-12-2010	01-06-2011
20. FRANCE	17-09-2003	25-05-2005	01-09-2005	27-05-2010 (P)	13-12-2011	01-04-2012
21. GEORGIA	12-10-2010	28-02-2011	01-06-2011	03-11-2010 (P)	28-02-2011	01-06-2011
22. GERMANY	17-04-2008			03-11-2011 (P)		
23. GHANA				10-07-2012 (AC)	29-05-2013	01-09-2013
GIBRALTAR[8]						01-03-2014
GREENLAND[9]						01-06-2011
24. GREECE	21-02-2012	29-05-2013	01-09-2013	21-02-2012 (P)	29-05-2013	01-09-2013
25. GUATEMALA				05-12-2012 (AC)		
26. HUNGARY	12-11-2013			12-11-2013 (P)		
27. ICELAND	22-07-1996	22-07-1996	01-11-1996	27-05-2010 (P)	28-10-2011	01-02-2012
28. INDIA				26-01-2012 (AC)	21-02-2012	01-06-2012
29. INDONESIA				03-11-2011 (AC)		
30. IRELAND				30-06-2011 (AC)	29-05-2013	01-09-2013
ISLE OF MAN[10]						01-03-2014
31. ITALY	31-01-2006	31-01-2006	01-05-2006	27-05-2010 (P)	17-01-2012	01-05-2012
32. JAPAN	03-11-2011	28-06-2013	01-10-2013	03-11-2011 (P)	28-06-2013	01-10-2013

* This table includes State Parties to the Convention as well as jurisdictions, which are members of the GFTEI or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

[6] Extension by the Netherlands (receipt by Depositary on 29 May 2013 and entry into force on 1 September 2013).

[7] Extension by Denmark (receipt by Depositary on 28 January 2011 and entry into force on 1 June 2011).

[8] Extension by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

[9] Extension by Denmark (receipt by Depositary on 28 January 2011 and entry into force on 1 June 2011).

[10] Extension by United Kingdom (receipt by Depositary on 21 November 2013 and entry into force on 1 March 2014).

COUNTRY/JURISDICTION*	ORIGINAL CONVENTION			PROTOCOL (P)/ AMENDED CONVENTION (AC)		
	SIGNATURE (Opened on 25-01-1988)	DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE	SIGNATURE (Opened on 27-05-2010)	DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE
33. KAZAKHSTAN				23-12-2013 (AC)		
34. KOREA	27-05-2010	26-03-2012	01-07-2012	27-05-2010 (P)	26-03-2012	01-07-2012
35. LATVIA				29-05-2013 (AC)		
36. LIECHTENSTEIN				21-11-2013 (AC)		
37. LITHUANIA	07-03-2013			07-03-2013 (P)		
38. LUXEMBOURG	29-05-2013			29-05-2013 (P)		
39. MALTA				26-10-2012 (AC)	29-05-2013	01-09-2013
40. MEXICO	27-05-2010	23-05-2012	01-09-2012	27-05-2010 (P)	23-05-2012	01-09-2012
41. MOLDOVA	27-01-2011	24-11-2011	01-03-2012	27-01-2011 (P)	24-11-2011	01-03-2012
MONTSERRAT[11]						01-10-2013
42. MOROCCO				21-05-2013 (AC)		
43. NETHERLANDS	25-09-1990	15-10-1996	01-02-1997	27-05-2010 (P)	29-05-2013	01-09-2013
44. NEW ZEALAND				26-10-2012 (AC)	21-11-2013	01-03-2014
45. NIGERIA				29-05-2013 (AC)		
46. NORWAY	05-05-1989	13-06-1989	01-04-1995	27-05-2010 (P)	18-02-2011	01-06-2011
47. POLAND	19-03-1996	25-06-1997	01-10-1997	09-07-2010 (P)	22-06-2011	01-10-2011
48. PORTUGAL	27-05-2010			27-05-2010 (P)		
49. ROMANIA	15-10-2012			15-10-2012 (P)		
50. RUSSIA				03-11-2011 (AC)		
51. SAN MARINO				21-11-2013 (AC)		
52. SAUDI ARABIA				29-05-2013 (AC)		
53. SINGAPORE				29-05-2013 (AC)		
SINT MAARTEN[12]						01-09-2013
54. SLOVAK REPUBLIC				29-05-2013 (AC)	21-11-2013	01-03-2014
55. SLOVENIA	27-05-2010	31-01-2011	01-05-2011	27-05-2010 (P)	31-01-2011	01-06-2011
56. SOUTH AFRICA				03-11-2011 (AC)	21-11-2013	01-03-2014
57. SPAIN	12-11-2009	10-08-2010	01-12-2010	11-03-2011 (P)	28-09-2012	01-01-2013
58. SWEDEN	20-04-1989	04-07-1990	01-04-1995	27-05-2010 (P)	27-05-2011	01-09-2011

* This table includes State Parties to the Convention as well as jurisdictions, which are members of the GFTEI or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

[11] Extension by United Kingdom (receipt by Depositary on 25 June 2013 and entry into force on 1 October 2013).

[12] Extension by the Netherlands (receipt by Depositary on 29 May 2013 and entry into force on 1 September 2013).

COUNTRY/JURISDICTION*	ORIGINAL CONVENTION			PROTOCOL (P)/ AMENDED CONVENTION (AC)		
	SIGNATURE (Opened on 25-01-1988)	**DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL**	**ENTRY INTO FORCE**	**SIGNATURE** (Opened on 27-05-2010)	**DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL**	**ENTRY INTO FORCE**
59. SWITZERLAND				15-10-2013 (AC)		
60. TUNISIA				16-07-2012 (AC)	31-10-2013	01-02-2014
61. TURKEY				03-11-2011 (AC)		
TURKS & CAICOS[13]						01-12-2013
62. UKRAINE	20-12-2004	26-03-2009	01-07-2009	27-05-2010 (P)	22-05-2013	01-09-2013
63. UNITED KINGDOM	24-05-2007	24-01-2008	01-05-2008	27-05-2010 (P)	30-06-2011	01-10-2011
64. UNITED STATES	28-06-1989	30-01-1991	01-04-1995	27-05-2010 (P)		

* This table includes State Parties to the Convention as well as jurisdictions, which are members of the GFTEI or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

[13] Extension by United Kingdom (receipt by Depositary on 20 August 2013 and entry into force on 1 December 2013).

All Reviews

				AVAIL-ABILITY OF INFOR-MATION			ACCESS TO INFOR-MATION		EXCHANGE OF INFOR-MATION				
JURIS-DICTION	TYPES OF REVIEW	RATING		A1	A2	A3	B1	B2	C1	C2	C3	C4	C5
Albania	No Report												
Andorra	Phase 1	Phase 2 Scheduled	Determination	IPB	IPB	IP	IPB	IPB	IPB	IP	IP	IP	U
Anguilla	Phase 1	Phase 2 Scheduled	Determination	IPB	NP	IP	IPB	IP	IP	IP	IP	IP	U
Antigua and Barbuda	Supplemental	Phase 2 Scheduled	Determination	IP	NP	IP	IP	IP	IP	IP	IP	IP	U
Argentina	(Phase 1 + Phase 2) Combined	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IPB	IP	IP	U
			Rating	C	C	C	C	C	C	LC	C	C	PC
Aruba	Phase 1	Phase 2 Scheduled	Determination	IPB	IP	IP	IPB	IPB	IPB	IPB	IP	IP	U
Australia	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
Austria	Phase 2	Partially Compliant	Determination	NP	IP	IP	IPB	IPB	IPB	IPB	IP	IP	U
			Rating	NC	C	C	PC	PC	PC	LC	LC	C	C
Azerbaijan	No Report												
Bahamas, The	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	LC	C	C	C	C	C	C	C	C
Bahrain	Phase 2	Largely Compliant	Determination	IP	IPB	IP	IPB	IP	IP	IP	IP	IP	U
			Rating	LC	PC	C	LC	C	C	C	C	C	LC
Barbados	Supplemental	Phase 2 Scheduled	Determination	IPB	IPB	IP	IPB	IP	IPB	IPB	IP	IP	U
Belgium	Phase 2	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	LC	C	C	C	C
Belize	Phase 1	Phase 2 Scheduled	Determination	IPB	NP	IP	IP	IP	IP	IP	IP	IP	U
Bermuda	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	LC	C	C	C	C	C	LC	C	C
Botswana	Phase 1	Phase 2 Blocked	Determination	IPB	IPB	IP	NP	IP	NP	NP	NP	IP	U
Brazil	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IPB	IPB	IP	IP	IP	U
			Rating	C	C	C	C	PC	LC	C	C	C	PC
Brunei Darussalam	Phase 1	Phase 2 Blocked	Determination	NP	NP	IP	NP	IP	NP	NP	IP	IP	U
Burkina Faso	No Report												
Cameroon	No Report												

Phase 1 Determinations
IP = The element is in place.
IPB = The element is in place, but certain aspects of the legal implementation of the element need improvement.
NP = The element is not in place.
U = Unverified

Phase 2 Ratings
C = Compliant
LC = Largely Compliant
PC = Partially Compliant
NC = Non-Compliant

				AVAIL-ABILITY OF INFOR-MATION			ACCESS TO INFOR-MATION		EXCHANGE OF INFOR-MATION				
JURIS-DICTION	TYPES OF REVIEW	RATING		A1	A2	A3	B1	B2	C1	C2	C3	C4	C5
Canada	(Phase 1 + Phase 2) Combined	Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	C	C	C	C	C	C	C	C	C
Cayman Islands	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	LC	C	C	C	C	C	C	C	C
Chile	Phase 1	Phase 2 Scheduled	Determination	IPB	IP	IP	IPB	IPB	IP	IP	IP	IP	U
China	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
Colombia	No Report												
Cook Islands	Phase 1	Phase 2 Scheduled	Determination	IPB	NP	IP	IP	NP	IP	IP	IP	IP	U
Costa Rica	Supplemental	Phase 2 Scheduled	Determination	NP	IPB	IP	IP	IP	IPB	IP	IP	IP	U
Curaçao	Phase 1	Phase 2 Scheduled	Determination	IPB	IP	IP	IP	IPB	IPB	IPB	IP	IP	U
Cyprus	Phase 2	Non-Compliant	Determination	IP	IP	IP	IP	IP	IP	IPB	IP	IP	U
			Rating	PC	NC	C	NC	C	C	LC	C	C	PC
Czech Republic	Phase 1	Phase 2 Scheduled	Determination	NP	IP	IP	IPB	IP	IP	IP	IP	IPB	U
Denmark	(Phase 1 + Phase 2) Combined	Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	C	C	C	C	C	C	C	C	C
Dominica	Phase 1	Phase 2 Blocked	Determination	IPB	NP	IP	NP	IP	NP	IPB	IPB	IP	U
Dominican Republic	No Report												
El Salvador	No Report												
Estonia	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	LC	LC	C	C
Finland	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
Former Yugoslav Republic of Macedonia	Phase 1	Phase 2 Scheduled	Determination	IP	IP	IP	IP	IPB	IP	IP	IP	IP	U
France	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
Gabon	No Report												
Georgia	No Report												
Germany	(Phase 1 + Phase 2) Combined	Largely Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	C	C	C	LC	C	C	C	C	LC

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				AVAIL-ABILITY OF INFOR-MATION			ACCESS TO INFOR-MATION		EXCHANGE OF INFOR-MATION				
JURIS-DICTION	TYPES OF REVIEW	RATING		A1	A2	A3	B1	B2	C1	C2	C3	C4	C5
Ghana	Phase 1	Phase 2 Scheduled	Determination	IPB	IPB	IP	IP	IP	IPB	IPB	IP	IP	U
Gibraltar	Phase 1	Phase 2 Scheduled	Determination	IPB	NP	IP	IP	IP	IP	IP	IP	IP	U
Greece	(Phase 1 + Phase 2) Combined	Largely Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	PC	C	C	C	C	LC	C	C	C	LC
Grenada	Phase 1	Phase 2 Scheduled	Determination	IPB	NP	IP	IPB	IP	IPB	IPB	IP	IP	U
Guatemala	Phase 1	Phase 2 Blocked	Determination	NP	IP	IP	NP	IPB	NP	NP	IP	IP	IPB
Guernsey	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	LC	C	C	C	C	C	LC	C	C
Hong Kong, China	Phase 2	Largely Compliant	Determination	IPB	IP	IP	IP	IP	IP	IPB	IP	IP	U
			Rating	PC	LC	C	C	C	LC	PC	C	C	C
Hungary	Phase 1	Phase 2 Scheduled	Determination	NP	IPB	IP	IPB	IPB	IPB	IP	IP	IPB	U
Iceland	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
India	Phase 2	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
Indonesia	Phase 1	Phase 2 Scheduled	Determination	IPB	IPB	IP	NP	IP	IPB	IPB	IP	IP	U
Ireland	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
Isle of Man	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	LC	C	C
Israel	Phase 1	Phase 2 Scheduled	Determination	NP	IPB	IPB	IPB	IP	IPB	IPB	IP	IP	U
Italy	(Phase 1 + Phase 2) Combined	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	LC	C	C	C	LC
Jamaica	Phase 2	Largely Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	PC	LC	C	LC	LC	LC	LC	C	C	LC
Japan	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	LC
Jersey	(Phase 1 + Phase 2) Combined	Largely Compliant	Determination	IP	IPB	IP	IPB	IP	IPB	IP	IP	IP	U
			Rating	C	PC	C	LC	C	LC	C	C	C	C
Kazakhstan	No Report												
Kenya	Phase 1	Phase 2 Scheduled	Determination	IPB	IP	IP	IP	IP	IPB	IP	IP	IP	U

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JURIS-DICTION	TYPES OF REVIEW	RATING		A1	A2	A3	B1	B2	C1	C2	C3	C4	C5
Korea, Republic of	(Phase 1 + Phase 2) Combined	Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	C	C	C	C	C	C	C	C	C
Latvia	No Report												
Lebanon	Phase 1	Phase 2 Blocked	Determination	NP	IPB	IP	NP	IP	NP	NP	IP	IP	U
Lesotho	No Report												
Liberia	Phase 1	Phase 2 Blocked	Determination	NP	NP	IP	IP	IP	IP	IP	IP	IP	U
Liechtenstein	Supplemental	Phase 2 Scheduled	Determination	NP	IP	IP	IP	IPB	IPB	IP	IP	IP	U
Lithuania	Phase 1	Phase 2 Scheduled	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
Luxembourg	Phase 2	Non-Compliant	Determination	NP	IP	IP	IPB	IP	IPB	IP	IP	IP	U
			Rating	NC	C	C	NC	PC	NC	LC	PC	NC	PC
Macao, China	Phase 2	Largely Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	PC	C	C	LC	C	C	C	C	C	LC
Malaysia	Phase 1	Phase 2 Scheduled	Determination	IPB	IPB	IP	IPB	IP	IPB	IPB	IP	IP	U
Malta	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	LC	C	C	C	C	C	C	C	C
Marshall Islands	Phase 1	Phase 2 Blocked	Determination	NP	NP	IP	IPB	IP	IPB	IP	IP	IP	U
Mauritania	No Report												
Mauritius	Supplemental	Largely Compliant	Determination	IPB	IPB	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	LC	C	LC	LC	LC	C	C	C	LC
Mexico	Phase 1	Phase 2 Scheduled	Determination	IPB	IPB	IP	IP	IP	IP	IP	IP	IP	U
Micronesia, Federated States of	No Report												
Monaco	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IPB	IP	IPB	IP	IP	U
			Rating	C	LC	C	C	PC	C	LC	C	C	LC
Montserrat	Phase 1	Phase 2 Scheduled	Determination	IPB	NP	IP	IP	IP	IP	IP	IP	IP	U
Morocco	No Report												
Nauru	Phase 1	Phase 2 Blocked	Determination	NP	NP	IP	NP	U	NP	NP	NP	NP	U
Netherlands	(Phase 1 + Phase 2) Combined	Largely Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	C	C	C	LC	LC	C	C	C	C
New Zealand	(Phase 1 + Phase 2) Combined	Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	C	C	C	C	C	C	C	C	C

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JURIS-DICTION	TYPES OF REVIEW	RATING		A1	A2	A3	B1	B2	C1	C2	C3	C4	C5
Nigeria	Phase 1	Phase 2 Scheduled	Determination	IPB	IPB	IP	IP	IP	IPB	IPB	IP	IP	U
Niue	Phase 1	Phase 2 Blocked	Determination	IPB	IPB	IP	IP	IP	NP	IPB	IP	IP	U
Norway	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
Pakistan	No Report												
Panama	Phase 1	Phase 2 Blocked	Determination	NP	NP	IP	NP	IP	NP	NP	IP	IPB	U
Philippines	Phase 2	Largely Compliant	Determination	IP	IPB	IP	IP	IP	IPB	IPB	IP	IP	U
			Rating	LC	PC	C	C	C	LC	C	C	C	LC
Poland	Phase 1	Phase 2 Scheduled	Determination	NP	IP	IP	IP	IP	IP	IP	IP	IP	U
Portugal	Phase 1	Phase 2 Scheduled	Determination	IPB	IP	IP	IP	IPB	IP	IP	IP	IP	U
Qatar	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	C	C	C	C	C	C	C	C	LC
Romania	No Report												
Russian Federation	Phase 1	Phase 2 Scheduled	Determination	IPB	IP	IPB	IPB	IP	IPB	IPB	IPB	IPB	U
Saint Kitts and Nevis	Phase 1	Phase 2 Scheduled	Determination	IP	IPB	IP	IP	IP	IP	IP	IP	IP	U
Saint Lucia	Phase 1	Phase 2 Scheduled	Determination	IP	NP	IP	IPB	IP	IPB	IP	IP	IPB	U
Saint Vincent and the Grenadines	Phase 1	Phase 2 Scheduled	Determination	IPB	NP	IP	IP	IP	IP	IP	IP	IP	U
Samoa	Phase 1	Phase 2 Scheduled	Determination	IPB	NP	IP	IP	IP	IP	IP	IP	IP	U
San Marino	Phase 2	Largely Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	LC	C	C	C	C	C	C	C	LC
Saudi Arabia	No Report												
Senegal	No Report												
Seychelles	Phase 2	Non-Compliant	Determination	IP	IP	IP	IP	IP	IPB	IPB	IP	IP	U
			Rating	NC	NC	C	C	C	PC	PC	C	C	LC
Singapore	Phase 2	Largely Compliant	Determination	IP	IP	IP	IPB	IP	IPB	IPB	IP	IP	U
			Rating	C	C	C	LC	C	LC	LC	C	C	C
Sint Maarten	Phase 1	Phase 2 Scheduled	Determination	IPB	IP	IP	IP	IPB	IPB	IPB	IP	IP	U
Slovakia	Phase 1	Phase 2 Scheduled	Determination	IPB	IP	IP	IPB	IP	IP	IP	IP	IPB	U

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JURIS-DICTION	TYPES OF REVIEW	RATING		A1	A2	A3	B1	B2	C1	C2	C3	C4	C5
Slovenia	Phase 1	Phase 2 Scheduled	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
South Africa	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
Spain	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IPB	IP	IP	U
			Rating	C	C	C	C	C	C	LC	C	C	C
Sweden	(Phase 1 + Phase 2) Combined	Compliant	Determination	IP	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	C	C	C	C	C	C	C	C	C
Switzerland	Phase 1	Phase 2 Conditional	Determination	NP	IP	IP	IPB	IPB	NP	IPB	IP	IP	U
Trinidad and Tobago	Phase 1	Phase 2 Blocked	Determination	IPB	IP	IP	NP	IPB	NP	NP	IP	IP	U
Tunisia	No Report												
Turkey	(Phase 1 + Phase 2) Combined	Partially Compliant	Determination	NP	IP	IP	IPB	IP	IPB	IP	IP	IPB	U
			Rating	NC	C	C	PC	C	LC		C	LC	PC
Turks and Caicos Islands	Phase 2	Largely Compliant	Determination	IP	IPB	IP	IP	IP	IP	IP	IP	IP	U
			Rating	C	LC	C	C	C	C	C	C	C	LC
Uganda	No Report												
Ukraine	No Report												
United Arab Emirates	Phase 1	Phase 2 Blocked	Determination	IPB	NP	IP	NP	IP	NP	IPB	IP	IPB	U
United Kingdom	Supplemental	Largely Compliant	Determination	IPB	IP	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	C	C	LC	C	C	C	C	C	LC
United States	(Phase 1 + Phase 2) Combined	Largely Compliant	Determination	IPB	IPB	IP	IP	IP	IP	IP	IP	IP	U
			Rating	LC	LC	C	C	C	C	C	C	C	C
Uruguay	Supplemental	Phase 2 Scheduled	Determination	IPB	IP	IP	IPB	IPB	IP	IP	IP	IP	U
Vanuatu	Phase 1	Phase 2 Blocked	Determination	IPB	NP	IP	NP	U	NP	NP	IP	IP	U
Virgin Islands, British	Phase 2	Non-Compliant	Determination	IP	IPB	IP	IP	IP	IP	IP	IP	IP	U
			Rating	PC	NC	C	NC	C	C	C	C	C	NC

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