

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report Combined: Phase 1 + Phase 2

UNITED STATES



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

COMBINED: PHASE 1 + PHASE 2

June 2011
(reflecting the legal and regulatory framework
as at February 2011)



Summary of Determinations and Factors Underlying Recommendations¹²

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
Phase 1 Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Ownership and identity information for single member LLCs is not always available	The United States should take all necessary steps to ensure that information concerning the owners of all LLCs is available.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
Phase 1 Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	Accounting information for all single member LLCs is not always available.	The United States should ensure that accounting records (including underlying documentation) are available for all LLCs.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.		

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

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders. (ToR A.3)		
Phase 1 Determination: The element is in place.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). (ToR B.1)		
Phase 1 Determination: The element is in place.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. (ToR B.2)		
Phase 1 Determination: The element is in place.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1)		
Phase 1 Determination: The element is in place.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2)		
Phase 1 Determination: The element is in place.		The United States should continue to develop its EOI network with all relevant partners.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. (ToR C.3)		
Phase 1 Determination: The element is in place.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
Phase 1 Determination: The element is in place.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
Phase 1 Determination: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed.	A number of the United States partners have pointed to delays in obtaining information and the procedures for responding to requests, which require a number of steps, appear to inhibit response times.	The United States should examine how its competent authority could speed up its internal processes for obtaining and providing information to ensure more timely responses and provide a status update within 90 days in all cases.

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

This annex is left blank because the United States of America has chosen not to provide any material to include in it.

* This Annex presents the Jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

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

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
1	Australia	DTC (+Protocol)	06-Aug-82	01-Dec-83
2	Austria	DTC	31-May-96	01-Jan-99
3	Bahamas	TIEA	25-Jan-02	01-Jan-06
4	Bangladesh	DTC	26-Sep-04	07-Aug-06
5	Barbados	DTC (+Protocols)	31-Dec-84	28-Feb-86
	Barbados	TIEA	03-Nov-84	03-Nov-84
6	Belgium	DTC (+Protocol)	27-Nov-06	28-Dec-07
7	Bermuda	DTC	11-Jul-86	02-Dec-88
	Bermuda	TIEA	02-Dec-88	02-Dec-88
8	Brazil	TIEA	20-Mar-06	Not in force
9	British Virgin Islands	TIEA	03-Apr-02	01-Jan-04
10	Bulgaria	DTC (+Protocols)	23-Feb-07	15-Dec-08
11	Canada	DTC (+Protocols)	26-Sep-80	16-Aug-84
12	Cayman Islands	TIEA	27-Nov-01	10-Mar-06
13	Chile	DTC	04-Feb-10	Not in force
14	China	DTC (+Protocols)	30-Apr-84	22-Oct-86
15	Colombia	TIEA	30-Mar-01	Not in force
16	Costa Rica	TIEA	15-Mar-89	12-Feb-91
17	Cyprus ^{13, 14}	DTC	19-Mar-84	31-Dec-85

13. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRN C). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.
14. Note by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
18	Czech Republic	DTC	16-Sep-93	23-Dec-93
19	Denmark	DTC (+Protocols)	19-Aug-99	29-Jan-01
20	Dominica	TIEA	01-Oct-87	09-May-88
21	Dominican Republic	TIEA	07-Aug-89	12-Oct-89
22	Egypt	DTC	24-Aug-80	31-Dec-81
23	Estonia	DTC	15-Jan-98	01-Jan-00
24	Finland	DTC (+Protocol)	21-Sep-89	01-Jan-91
25	France	DTC (+Protocols)	31-Aug-94	30-Dec-95
26	Germany	DTC (+Protocols)	29-Aug-89	01-Jan-91
27	Gibraltar	TIEA	01-Mar-09	22-Dec-09
28	Greece	DTC	20-Feb-50	01-Jan-53
29	Grenada	TIEA	18-Dec-86	13-Jul-87
30	Guernsey	TIEA	19-Sep-02	30-Mar-06
31	Guyana	TIEA	22-Jul-92	27-Aug-92
32	Honduras	TIEA	27-Sep-90	11-Oct-91
33	Hungary	DTC	12-Feb-79	18-Sep-79
	Hungary	DTC	04-Feb-10	Not in force
34	Iceland	DTC (+Protocol)	23-Oct-07	15-Dec-08
35	India	DTC	12-Sep-89	01-Jan-91
36	Indonesia	DTC	11-Jul-88	01-Jan-90
37	Ireland	DTC	28-Jul-97	01-Jan-98
38	Isle of Man	TIEA	03-Oct-02	01-Jan-06
39	Israel	DTC (+Protocols)	20-Nov-75	01-Jan-95
40	Italy	DTC (+Protocol)	25-Aug-99	16-Dec-09
41	Jamaica	DTC	21-May-80	29-Dec-81
	Jamaica	TIEA	18-Dec-03	18-Dec-03
42	Japan	DTC (+Protocol)	06-Nov-03	30-Mar-04
43	Jersey	TIEA	04-Nov-02	26-Jun-06
44	Kazakhstan	DTC (+Protocol)	24-Oct-93	01-Jan-96
45	Latvia	DTC	15-Jan-98	01-Jan-00
46	Liechtenstein	TIEA	08-Dec-08	04-Dec-09
47	Lithuania	DTC	15-Jan-98	01-Jan-00

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
48	Luxembourg	DTC	03-Apr-96	01-Jan-01
	Luxembourg	Protocol	20-May-09	Not in force
49	Malta	DTC	08-Aug-08	
50	Marshall Islands	TIEA	14-Mar-91	14-Mar-91
51	Mexico	DTC (+Protocol)	18-Sep-92	01-Jan-94
	Mexico	TIEA	09-Nov-89	18-Jan-90
52	Monaco	TIEA	08-Sep-09	11-Mar-10
53	Morocco	DTC	01-Aug-77	30-Dec-81
54	Netherlands	DTC (+Protocol)	18-Dec-92	01-Jan-94
55	Netherlands Antilles	TIEA	17-Apr-02	22-Mar-07
56	New Zealand	DTC	23-Jul-82	02-Nov-83
	New Zealand	Protocol	01-Dec-08	Not in force
57	Norway	DTC	03-Dec-71	29-Nov-72
58	Pakistan	DTC	01-Jul-57	21-May-59
59	Peru	TIEA	15-Feb-90	31-Mar-93
60	Philippines	DTC	01-Oct-76	16-Oct-82
61	Poland	DTC	08-Oct-74	22-Jul-76
62	Portugal	DTC	06-Sep-94	01-Jan-96
63	Romania	DTC	04-Dec-73	26-Feb-76
64	Russia	DTC	17-Jun-92	01-Jan-94
65	Slovak Republic	DTC	08-Oct-93	30-Dec-93
66	Slovenia	DTC	21-Jun-99	22-Jun-01
67	South Africa	DTC	17-Feb-97	28-Dec-97
68	South Korea	DTC	04-Jun-76	20-Sep-79
69	Spain	DTC	22-Feb-90	21-Nov-90
70	Sri Lanka	DTC (+Protocol)	14-Mar-85	12-Jul-04
71	Sweden	DTC (+Protocol)	01-Sep-94	26-Oct-95
72	Switzerland	DTC	02-Oct-96	01-Jan-98
	Switzerland	Protocol	23-Sep-09	Not in force
73	Thailand	DTC	26-Nov-96	15-Dec-97
74	Trinidad & Tobago	DTC	09-Jan-70	30-Dec-70
	Trinidad & Tobago	TIEA	11-Jan-89	09-Feb-90

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
75	Tunisia	DTC	17-Jun-85	26-Dec-90
76	Turkey	DTC	28-Mar-96	19-Dec-97
77	Ukraine	DTC	04-Mar-94	05-Jun-00
78	United Kingdom	DTC (+Protocol)	24-Jul-01	31-Mar-03
79	Venezuela	DTC	25-Jan-99	30-Dec-99

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

Tax laws

- Internal Revenue Code and Regulations
- Relevant tax forms and schedules
- Relevant case law

Company Laws

- Model Business Corporation Act (MBCA)
- Delaware General Company Law
- California Corporations Code
- New York Business Corporations Law 2001
- Pennsylvania Corporations and Unincorporated Associations Law
- Florida Business Corporations Act
- Texas Business Organizations Code
- Securities Exchange Act of 1934
- Securities Act of 1933
- Bank Secrecy Act (BSA)

Partnerships

- Uniform Limited Partnership Act (2001)
- Delaware Limited Partnership Act

Texas Business Organizations Code, ch. 153, title 4
Pennsylvania Statutes Title 15
Revised Uniform Limited Liability Company Act (2006)
Delaware Limited Liability Company Act
California Limited Liability Company Act
Florida Limited Liability Company Act
New York Texas Limited Liability Company Act
Texas Limited Liability Company Act

Trusts

Restatement Third, Trusts
Uniform Trust Code
Restatement (Second) of Conflict of Laws
Relevant case law

Annex 4: People Interviewed during On-Site Visit

Representatives from the U.S. Treasury Department

Representatives from the Internal Revenue Service including:

- The Deputy Commissioner (International), Large and Mid-Size Business division (the U.S. competent authority)
- Director Treaty Administration & Int'l Coordination
- Revenue Service Representative Plantation, FL
- IRS Chief Counsel attorneys

Representatives of FinCEN

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Commission takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, COMBINED: PHASE 1 + PHASE 2 UNITED STATES

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

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

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

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

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

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

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