



REPORT ON THE UNITED STATES VIRGIN ISLANDS



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1. In the context of the Global Forum on Transparency and Exchange of Information for Tax Purposes' (the Global Forum) strategy in dealing with smaller jurisdictions, and to ensure that their involvement in the Global Forum does not consume a disproportionate amount of resources, the United States was asked by the Steering Group to undertake a preliminary assessment of the United States Virgin Islands (USVI).

2. In response to the Steering Group's request the United States presented a preliminary assessment of the USVI (the USVI Preliminary Assessment) to the Steering Group at its meeting in Paris in September 2011. The USVI Preliminary Assessment recommended that it was unnecessary to undertake a separate peer review of USVI because the USVI would effectively be covered by the combined peer review report of the United States (the "U.S. Report"). The United States based this recommendation on a number of factors. First, much of the legal and regulatory framework that would be reviewed as part of a peer review of the USVI is identical to or derivative of United States federal law, or the laws of the U.S. states, which have already been effectively evaluated as part of the United States combined review. Moreover, the income tax laws in the USVI, which are generally identical to the income tax portions of the United States Internal Revenue Code (IRC), are known as the mirror code. Further, the network of U.S. treaties provides for exchange of information located in the USVI. In addition, the U.S. Internal Revenue Service (IRS) handles all exchange of information requests for information in the USVI and the administrative powers of the United States in the USVI are available to the U.S. Competent Authority in responding to a request for information from a tax treaty partner.

3. After considering the USVI Preliminary Assessment, the Steering Group agreed with the United States' recommendation in principle, but thought that it would be helpful to have the assessment team for the combined review of the United States confirm whether, in its view, the legal and regulatory framework of the USVI for the exchange of information, particularly through its relationship with the legal and regulatory framework of the United States, would be covered by the combined review of the United States. If it was found that the U.S. Report also in effect covers the USVI, the conclusions of the U.S. Report could be extended to cover the USVI.

4. The assessment team concludes that the particular relationship between the United States and the USVI is such that the conclusions of the U.S. Report may generally be extended to the USVI. The power of the IRS to obtain information in the possession or control of persons in the USVI and exchange this information with its treaty partners is clearly established. Regarding availability of ownership, identity and accounting information, the rules contained in the IRC apply to entities and arrangements organised in the USVI pursuant to the "mirror code," with the exception of exempt companies and certain LLCs.

5. The U.S. Report found that the legal and regulatory framework is generally in place with respect to the maintenance of ownership and accounting information by corporations in the United States as a result of the applicable federal and state tax law provisions. For completeness, a review of these rules as they apply to corporations, LLCs and "exempt companies" in the USVI is included in this report. In respect of corporations, U.S. federal tax laws, which are mirrored in the USVI, together with USVI law, ensure the availability of ownership and accounting information. The USVI provides for the creation of LLCs, but these do not differ substantially from LLC legislation in place in the various states of the United States.

The issues identified in the U.S. Report regarding single-member LLCs arose by virtue of the rules applicable under the IRC. Since the USVI applies these same rules, the conclusions of the U.S. Report in this regard apply equally to USVI single-member LLCs. While the USVI does provide for tax exemptions within the scope permitted under the IRC for “exempt companies,” these rules are dependent upon the identity of the owners of the entities claiming the exemption and so require the maintenance of ownership and identity information. In any event, an exempt company must be a corporation organised under USVI law, and so the commercial law obligations to maintain ownership information will also apply. Although exempt companies are not required to file annual financial reports under the commercial law, they nevertheless have the obligation to maintain correct books of account, which appear to generally meet the standards. With respect to the availability of banking information, banks and other financial institutions in the USVI are subject to U.S. federal laws and regulations on money laundering and bank reporting. Thus, banks and other financial institutions are required to maintain bank information to the same extent as banks and other financial intuitions located in the United States.

6. In respect of the exchange of information in practice, the processes and procedures in place in the United States to obtain and provide information to its treaty partners are identical regardless of whether the information is in the possession or control of a person in the United States or in the USVI. Pursuant to U.S. treaties, which have the force of statutory law in the United States, potential foreign tax liabilities are treated as though they are liabilities arising under the IRC. As a result, under IRC § 7651 as discussed later in this report, the administrative powers of the United States in the USVI are available to the U.S. Competent Authority in responding to a request for information from a tax treaty partner. In addition to the summons and other standard administrative tools, the IRS may rely on the Tax Implementation Agreement between the Government of the United States and the Government of the Virgin Islands to obtain information held by the USVI government. This relationship has existed since The Naval Appropriations Act of 1922, which implemented the federal law mirroring system. Exchange of information between the United States and the USVI was later formalised (including the automatic exchange of certain information) with the Tax Implementation Agreement in 1987. Consequently, the conclusions of the U.S. Report in this regard apply to the same extent to the USVI.

Structure of Report

7. The assessment team for the review of the United States has been asked whether the conclusions of the U.S. Report can be extended to cover the USVI. To this end this report provides a brief overview of the USVI, describes the conclusions of the U.S. Report and the circumstances of the USVI in connection with availability of information, access to information and exchange of information as they relate to those conclusions.

8. The assessment team for the review of the United States was comprised of two expert assessors (Ms. Monica Bhatia, India and Ms. Roberta Poza Cid, Spain) and two members of the Secretariat (Mr. Donal Godfrey and Mr. Andrew Auerbach). Since the U.S. peer review was completed in April 2011, Ms. Bhatia has left the Indian Ministry. The Indian government has appointed a replacement, Mr. Deepak Garg of the Ministry of Finance, India.

Overview of the USVI

9. The USVI are a group of islands in the Caribbean Sea, located in the Leeward Islands of the Lesser Antilles. The USVI consists of the main islands of Saint Croix, Saint John, Saint Thomas and Water Island. The total land area of the territory is 346 square kilometres. Since 1917, these islands have been administered under the flag of the United States, and are today organised as an unincorporated territory of the United States. In 2010, the resident population of the USVI was 106,405. Since 1927, individuals born in the USVI are U.S. citizens. As a U.S. territory, the USVI use the U.S. Dollar as its currency.

10. Under the U.S. Constitution, the U.S. Congress has plenary authority to govern the U.S. territories, including the USVI (U.S. Const. Art. IV, § 3(2)). Given its status as a territory of the United States, the authority of the USVI Government may be variously characterised depending on the particular law being applied. In most areas regulated by U.S. federal law, the particular federal law applies by its provisions to the USVI as part of the United States. For example, with respect to the administration and collection of tax, all provisions of U.S. federal law are applicable in the USVI directly as part of the United States (IRC § 7651). As a result, the IRS carries out tax administration functions in the USVI. If a USVI territorial law conflicts with U.S. federal law, the territorial law is invalidated. The U.S. Government operates a U.S. federal district court in the USVI and directly enforces federal laws applicable in the USVI. As a territory of the United States, the USVI may not conduct its own foreign policy because the sole authority for its international relations lies with the U.S. government.

11. Tourism is the primary economic activity, accounting for more than 70% of GDP and employment. The manufacturing sector consists of rum production, textile, electronics, and pharmaceutical industries; and until recently, a petroleum refinery on the island of Saint Croix. International business and financial services are a small but growing component of the economy. The GDP for the USVI for 2009 was estimated to be \$4.509 billion, made up of \$1.879 billion in personal consumption expenditures, \$322 million in private investment, \$1,035 million in net exports, and \$984 million in government consumption and investment.

Conclusions of the U.S. Report

Availability of Information

12. The U.S. Report determined that the legal and regulatory framework is generally in place for all entities and arrangements to maintain ownership and identity information through the application of its federal tax law provisions as well as applicable state law. The U.S. Report found that with regard to single-member LLCs that have no U.S. owner, are not engaged in a U.S. trade or business, have no employees or activity in the United States (such as a bank or other financial account in the United States), no U.S.-source income, and are not otherwise subject to federal income taxes, employment taxes, or excises taxes, information on the owner of such an entity will not be available pursuant to U.S. federal tax laws. Information may be held in accordance with the statutory law of the state of the entity's formation, though this is not guaranteed in all cases. Accordingly, the report concluded that element A.1. is in place, but certain aspects of the legal implementation of the element need improvement. The U.S. Report recommends that the United States should take all necessary steps to ensure that information concerning the owners of all LLCs is available.

13. Similarly, it was determined that accounting information is generally available, except for certain single-member LLCs. Thus, the U.S. Report recommends that the United States should ensure that accounting records (including underlying documentation) are available for all LLCs.

14. In respect of availability of bank information, the U.S. Report determined that the provisions of the Bank Secrecy Act ensure the availability of bank information in accordance with the standard.

Access to information

15. The U.S. Report found that the power of the IRS to obtain information for tax purposes is wide-ranging and is coupled with strong compulsory powers. This relates to all kinds of information that could be relevant for EOI purposes including bank, ownership, identity and accounting information. The U.S. Report also found that rights and safeguards applicable under U.S. law are also consistent with the standards and so elements B.1 and B.2 were found to be in place.

16. The United States has an extensive network of EOI agreements (double taxation conventions (DTCs) and tax information exchange agreements (TIEAs)) that meet the international standards and cover all relevant partners. Provisions regarding the confidentiality of information exchanged and the rights and safeguards that apply also meet the standards. The U.S. Report concluded that all elements of Part C are in place.¹

The U.S. legal framework as applied to the USVI

Availability of Ownership, Identity and Accounting Information

17. The analysis contained in the U.S. Report relies heavily on the application of the IRC to ensure the availability of ownership, identity and accounting information for relevant entities and arrangements. The same requirements in the IRC are applicable to entities and arrangements that are residents of the USVI. The income tax laws in the USVI, which are generally identical to the income tax portions of the IRC but substitute “Virgin Islands” for “United States” as appropriate, are generally known as the “mirror code”. Residents of the USVI are subject to the mirror code, meaning that they pay taxes to the USVI Bureau of Internal Revenue (BIR) calculated on the basis of the IRC. The basis for this arrangement is “*An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes*”, approved July 12, 1921 (48 USC § 1397):

The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Virgin Islands of the United States, except that the proceeds of such taxes shall be paid into the treasuries of said islands: Provided further, That, notwithstanding any other provision of law, the Legislature of the Virgin Islands is authorized to levy a surtax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the government of the Virgin Islands.

18. Similarly the *Revised Organic Act of the Virgin Islands*, approved July 22, 1954, provides that USVI residents, “shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands” (48 USC § 1642). The IRC gives effect to this rule by deeming the Virgin Islands to include the United States for the purposes of so much of the IRC as relates to the taxes imposed by this chapter of determining the tax liability of a USVI resident (IRC § 932(c)(3)).

19. The BIR does not have its own territorial counterparts for every U.S. tax form; rather, residents typically use IRS tax forms for income reporting purposes. Thus, USVI-resident individuals file Form 1040, U.S. Individual Income Tax Return, with the BIR; USVI-resident partnerships file Form 1065, U.S. Return of Partnership Income, with the BIR; and USVI-resident corporations file Form 1120, U.S. Corporation Income Tax Return, with the BIR.

20. The entities and arrangements that may be formed under USVI law are the same entities and arrangements that may be formed pursuant to the laws of the various states and that were reviewed in the context of the U.S. Report. These entities include corporations, general and limited partnerships, LLCs and trusts.

21. The U.S. Report determined that the requirements established by the IRC regarding the maintenance of ownership and identity information meet the standards in respect of partnerships and trusts. For companies, the standards are generally satisfied through the application of various IRC provisions as

¹ Element C5 is not evaluated in Phase 1 reviews, as it involves issues of practice that are dealt with in the Phase 2 review.

well as applicable state law. With respect to accounting records, the requirements of the IRC meet the standards and apply similarly to all entities and arrangements. As noted above, the issues identified in the U.S. report relate to circumstances where certain relevant entities are outside the scope of the IRC provisions. Similarly, there may be circumstances where relevant USVI entities are outside the scope of the mirror code. The following section provides a brief analysis of USVI law and the application of U.S. federal laws as applied to the USVI in respect of corporations, LLCs and exempt companies formed under USVI law.

Corporations

22. Under the Virgin Islands Code (VIC), corporations are required to maintain a stock ledger that contains the names and addresses of the stockholders, the number of shares held by them, respectively and the dates when they respectively became owners (13 VIC § 189). The stock ledger must at all times, during the usual hours for business, be open to the examination of every stockholder (13 VIC § 189). In addition, certain ownership information is reported as part of the income tax return that USVI corporations subject to tax are required to file on an annual basis under mirrored I.R.C. section 6012(a)(2).² A separate set of ownership reporting requirements also apply in connection with any amount paid by a USVI corporation to a foreign person (I.R.C. §§ 1441 through 1464 and the regulations thereunder). The books and records required to be kept under I.R.C. section 6001 include the books and records required to satisfy these ownership reporting requirements and reporting with respect to payments made to owners (notably including dividend payments and, in the case of owners that are not USVI persons, reporting with respect to all fixed, determinable, annual, or periodical gains, profit, or income). There are substantial civil and criminal penalties under the IRC for noncompliance with these tax filing and information reporting and maintenance requirements.³

23. In respect of accounting information, every corporation has the duty to maintain correct books of account of its business transactions (13 VIC §73). The USVI authorities report that the phrase “correct books of account of its business transactions” has existed in USVI law since 1921, and, as such, is not a specific listing of technical requirements but rather a general reference to accounting records. The USVI authorities interpret the requirement to maintain “correct books of account of its business transactions” as requiring companies to produce and maintain a general ledger containing records of all accounts, including: capital stock accounts, income and expenditure accounts, and asset and liability accounts. The records should be supported by the documentation that enables financial statements to be prepared. Furthermore, caselaw confirms that companies are required to maintain accounting records and stockholders have authority to review such records under the common law (*Estate of Bishop v. Antilles Enterprises*, 252 F.2d 498 (1958)). USVI corporations must file an annual report with the office of the Lieutenant Governor (13 VIC § 371(a)). The annual report must contain *inter alia*:

² In particular, USVI corporations must report the identity of any person that owns (directly) at least 20% or (directly or indirectly) at least 50% of the total voting power of the corporation. Furthermore, the USVI corporation must report whether any foreign person owns, directly or indirectly, at least 25% of the corporation (by vote or value). The Form 1120 also provides the identity and ownership information, including compensation, of all corporate officers. (IRS Form 1120 Schedule E).

³ Any person required to pay any tax, or required to make a return (including information returns), keep any records, or supply any information, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than USD 25 000 (USD 100 000 in the case of a corporation) or imprisoned not more than 1 year, or both, together with the costs of prosecution (I.R.C. § 7203). Where a false corporate tax return is filed wilfully, criminal penalties of up to USD 500 000 and 3 years of imprisonment may be imposed (I.R.C. § 7206).

- 1) a true and exact statement of the amount of the corporation's capital which is used in conducting business within the Virgin Islands;
- (2) a true and exact general balance sheet showing the financial condition of the corporation at the close of its last fiscal year; and
- (3) a profit and loss statement for the last fiscal year of the corporation.

LLCs

24. As noted earlier, single-member LLCs were the subject of specific recommendations in the U.S. Report. The Virgin Islands Uniform Limited Liability Company Act governs the formation, operation and dissolution of domestic and foreign LLCs in the USVI. The characteristics of LLCs formed under this Act are substantially similar to those in respect of LLC legislation in effect in the various states of the United States. Given the application of the “mirror code,” the same issue identified in the U.S. Report regarding certain LLCs having only one member that are disregarded for U.S. federal income tax purposes and which have no nexus to the United States other than having been organised under U.S. law, would also apply to single-member LLCs formed in the USVI. Consequently, the conclusions of the U.S. Report in this regard would apply equally to LLCs in the USVI. The United States response to the recommendations in the U.S. Report on this issue through changes to its federal law (e.g. tax or anti-money laundering regime) will equally have effect for LLCs formed in the USVI.

Exempt Companies

25. The extent to which the USVI government may allow setting up offshore business is defined and limited by U.S. federal law. Section 934 of the IRC permits the USVI Government the authority to reduce or remit tax liabilities under the mirror code in certain situations, subject to the limitations of section 934(b). Section 934(b) limits that authority to income from sources within the USVI or income effectively connected with a trade or business in the USVI, or, if a company meets a non U.S. ownership test, only on its income that is not U.S.-sourced and not effectively connected with the conduct of a U.S. trade or business. The rules of section 934 do not mitigate the powers of the IRS to carry out tax administration or enforcement functions in the USVI (IRC § 7651).

26. Within these limited constraints, the USVI has put in place a framework for the establishment of exempt companies (13 VIC §§ 850 – 863). After filing an election, a USVI corporation or other business entity that is at least 90% non-U.S. and non-USVI owned and does not engage in a trade or business in the USVI or the United States may be exempt from income tax and other taxes (13 VIC § 853; IRC § 934(b)(3)). Under the VIC, companies that qualify for the exemption are subject to an annual franchise tax of \$1000 (13 VIC § 860). Exempt companies are required to file a combined annual report and annual franchise tax report with the Office of the Lieutenant Governor and all tax benefits for an exempt company are guaranteed under a 20-year contract between the exempt company and the USVI, which is signed by the Lieutenant Governor of the USVI. The section 371 requirement to file an annual report for a USVI corporation that is an exempt company does not include accounting information as it does for non-exempt companies (see above under *Corporations*), however, the requirement to maintain correct books of account of its business transactions (13 VIC §73) does apply. In addition, as described below, exempt companies must maintain records in respect of their transactions in order to validate their exempt status.

27. The USVI Lieutenant Governor’s Office, Division of Corporation and Trademarks, maintains information on exempt companies. As of July 2012, there were 112 exempt companies registered in the USVI.

28. Exempt companies must appoint a resident agent in the USVI, who must file annual returns containing the exempt company's name and address, the date on which its most recent fiscal year ended, the names and addresses of all the directors and officers, and a statement that the exempt company is in compliance with all of the requirements set forth in section 852 of the VIC (13 VIC § 860). Section 852 provides that in order to qualify as an exempt company, the company must be at least be 90% non-U.S. and non-USVI owned and (except for exempt insurers, mutual funds and banks)⁴ cannot engage in a trade or business in the USVI or the United States. Section 863 of the VIC provides that “[t]he resident agent of an exempt company shall solicit and maintain records of such information as may be required to establish that the exempt company is in compliance with section 852. Resident agents are therefore required to maintain financial and transaction records and other relevant accounting documentation necessary to establish that an exempt company does not engage in a trade or business in the USVI or the United States. Such documentation would normally include all records establishing the source of income earned or received by an exempt company and the location and use of its assets and liabilities.

29. Section 863 of the VIC also requires the resident agent of an exempt company to establish that any requirements relating to the ownership of an exempt company imposed by federal or local law or regulatory or administrative action have been met. Any resident agent who:

(1) signs the statement described in section 860(a) of this chapter of the annual report of the exempt company and arranges for the filing of such report, or who provides and files at least annually with the Lieutenant Governor an affidavit containing such statement, and

(2) who maintains in the United States Virgin Islands current records of the legal and beneficial ownership of the exempt company, shall be deemed to have complied with this provision. For this purpose, maintenance in the United States Virgin Islands of the original or duplicate stock ledger required by section 189 of this title shall be deemed to be an adequate record of the legal ownership and, if all of the shareholders are individuals, the beneficial ownership of the exempt company.”

30. Finally, only corporations organised in the USVI (and not LLCs)⁵ can qualify as exempt companies (13 VIC § 851). Accordingly, the requirements of the USVI company law to maintain a stock ledger apply, as described above.

Availability of Bank Information

31. With respect to the availability of banking information, banks and other financial institutions in the USVI are subject to U.S. federal laws and regulations on money laundering and bank reporting (e.g., the Bank Secrecy Act) (31 USC §5312(a)(6); 31 CFR §1010.100(zz), (hhh)). Thus, banks and other

⁴ Special types of exempt companies may be established for international banking or as a captive insurance company (13 VIC §§ 850 – 863). Exempt international banking facilities, though not allowed to engage in the active conduct of a trade or business in the United States, may engage in a banking trade in the USVI, including making loans, taking deposits, and purchasing and selling securities (9 VIC § 401; 13 VIC § 852). Captive insurance and reinsurance companies, international reinsurance companies, insurance managers, insurance brokers, and supporting or similar businesses may, by application to the Superintendent of Alternative Markets, be granted tax incentive benefits (22 VIC § 1312 – 1395). Exempt mutual funds may also conduct activities in the USVI, including trading in securities for its own account, communications, holding meetings, maintaining accounts, accepting investments, and making disbursements (13 VIC §§ 801 – 819).

⁵ Foreign companies are able to apply for the status as an “exempt branch”, however, such companies would not by that reason be tax resident in the USVI, nor would they be permitted to conduct any business in the USVI, and so would not have a sufficient nexus with the USVI to be considered relevant under the *Terms of Reference*.

financial institutions are required to maintain bank information to the same extent as banks and other financial intuitions located in the United States.

Access to Information

32. The U.S. Report notes that:

Under I.R.C. section 7602 et seq., there are various tools available to secure requested information. A summons may be issued to examine books, papers, records, or other data of taxpayers and third parties and to obtain testimony under oath that may be relevant or material in ascertaining the correctness of any tax return, making a return where none has been made, determining a tax liability, collecting a tax liability, or inquiring into any offense connected with the administration or enforcement of the internal revenue laws. I.R.C. § 7602. The IRS may summon a taxpayer, an officer or employee of a taxpayer, a person having possession, custody, or care of the taxpayer's records, and any other person in possession of relevant and material evidence. (U.S. Report, para. 169).

33. The IRC provides that all administrative powers available to the IRS to effectively administer U.S. tax laws can be applied in any of the U.S. territories, including the USVI. IRC section 7651 provides:

§7651(1) Applicability of administrative provisions

All provisions of the laws of the United States applicable to the assessment and collection of any tax imposed by this title or of any other liability arising under this title (including penalties) shall, in respect of such tax or liability, extend to and be applicable in any possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

34. The summons power, and other powers of inspection, are held directly by the IRS; the IRS Deputy Commissioner (International), in his capacity as the U.S. Competent Authority, has power to obtain information directly using revenue agents and officers under his chain of authority and also in other branches of the IRS. Information-gathering procedures involving the U.S. Department of Justice or the U.S. courts are available in the USVI, both in U.S. domestic tax enforcement and on behalf of treaty and TIEA partners, through the USVI offices of those authorities, specifically, the office of the U.S. Attorney for the District of the Virgin Islands and the U.S. District Court for the Virgin Islands.

35. The powers granted to the IRS in IRC section 7602 *et. seq.* to obtain information are "applicable to the assessment and collection of any tax imposed by this title". The use of these powers for exchange purposes has been clearly established by the U.S. Supreme Court (see U.S. Report, paras. 180 and 181). The effect of the Supreme Court decisions is that, where a treaty partner requests information under an EOI agreement, the IRS, in order to invoke the powers in section 7602 *et. seq.* must show that the investigation is for a legitimate purpose, that the inquiry may be relevant to that purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the IRC have been followed (U.S. v Powell, 379 U.S. 48 (1964)). The administration and enforcement of a foreign tax law is a legitimate purpose where this information is required for the purposes of a treaty (U.S. v Stuart, 489 U.S. 453 (1989), U.S. v. Mazurek, 271 F3d 226 (5th Circuit 2001)). Therefore, the powers contained in IRC section 7602 *et. seq.* can equally be invoked by the IRS in order to obtain information held by persons in the USVI.

Exchange of Information

36. The U.S. Constitution grants the U.S. Government the full power to make all “needful rules and regulations respecting the territory or other property belonging to the United States” (United States Const. art. IV, § 3(2)). The USVI does not have any power to enter into international relations with foreign states or territories and consequently cannot on its own enter into agreements for the exchange of information for tax purposes.

37. The United States is empowered to respond to requests from its treaty partners for information in the control or possession of a person in the USVI. This power is based on two factors. First, the U.S. treaties generally allow its treaty partners to request information that is foreseeably relevant to the administration of the treaty partners’ tax laws and in those circumstances the United States is obliged to use its information-gathering powers to obtain such information. As the IRS’s information-gathering powers extend to the USVI (see *Access to Information*), the treaties are generally effective to allow for exchange of information in respect of the USVI. In addition, a number of the U.S. TIEAs specifically extend to the USVI.⁶

38. The U.S. Model Technical Explanation accompanying the 2006 U.S. Model Income Tax Convention confirms this and states at article 26 (1) that “Although the term “United States” does not encompass U.S. possessions⁷ for most purposes of the Convention, Section 7651 of the Code authorizes the IRS to utilize the provisions of the Internal Revenue Code to obtain information from the U.S. possessions, pursuant to a proper request made under Article 26. If necessary to obtain requested information, the IRS could issue and enforce an administrative summons to the taxpayer, a tax authority (or a government agency in a U.S. possession), or a third party located in a U.S. possession.” The United States reports that it generally includes the quoted language in technical explanations accompanying its DTCs, which (like the U.S. Model) are publicly available. The United States is also a signatory to the Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol (the “Multilateral Convention”). Pursuant to Article 29, paragraph 1, of the Multilateral Convention (Territorial Application of the Convention), the United States applies the Convention to the USVI. This is noted in the United States Declaration to the Multilateral Convention registered with the Secretary General of the OECD on 5 December 1991, which is publicly available.

39. Consequently, where U.S. DTCs do not explicitly include the USVI in their coverage, the treaty partners of the United States should be aware that information from the USVI can be obtained through the DTC. In addition, the U.S. Government reports that, on several occasions, the issue of obtaining information from the U.S. territories has been specifically discussed during the course of tax treaty negotiations. It is noted that peer input received in connection with the U.S. peer review did not deal specifically with requests related to information held by persons in the USVI.

40. Secondly, the United States and the USVI have entered into the *Tax Implementation Agreement between the Government of the United States of America and the Government of the Virgin Islands* (the TIA). Pursuant to the TIA, the parties agree to “exchange information to administer and enforce the domestic laws of the Contracting Governments concerning taxes covered by this Agreement” (TIA, art. 4(1)). As responding to requests for information on behalf of treaty partners is considered to be necessary to the “administration and enforcement of the domestic laws of the [United States] concerning taxes”, the U.S. Competent Authority is authorized to make a request under this provision in the TIA on behalf of a

⁶ Antigua and Barbuda, The Bahamas, Barbados, Brazil, Costa Rica, Dominica, Dominican Republic, Gibraltar, Guernsey, Guyana, Honduras, Jamaica, Jersey, Liechtenstein, Marshall Islands, Monaco, Panama, Peru, and Trinidad and Tobago.

⁷ The terms “territory” and “possession” are generally interchangeable in U.S. law.

treaty or TIEA partner. In any event, the TIA stipulates that the United States may exercise its rights under section 7602 *et seq.* of the IRC to obtain information in the Virgin Islands without resorting to the procedures set forth in the TIA (TIA, art. 4(4)).

41. Moreover, article 4 of the TIA provides for automatic exchange of information between the United States and the USVI.⁸ In practice, the United States reports that the USVI routinely supplies tax return information to the U.S. Competent Authority on an annual basis pursuant to the TIA.

Conclusions

Phase 1 Aspects

42. The particular relationship between the United States and the USVI is such that the conclusions of the U.S. Report can generally be extended to the USVI. The power of the IRS to obtain information in the possession or control of persons in the USVI and exchange this information with its treaty partners is clearly established. Regarding availability of ownership, identity and accounting information, the rules contained in the IRC apply equally to entities and arrangements organised in the USVI pursuant to the “mirror code”.

43. While the USVI does provide for tax exemptions within the scope permitted under the IRC, these rules are dependent upon the identity of the owners of the entities claiming the exemption and so require the maintenance of ownership and identity information. USVI legal requirements to maintain accounting records in accordance with the standard generally apply to relevant entities and arrangements. With respect to the availability of banking information, banks and other financial institutions in the USVI are subject to U.S. federal laws and regulations on money laundering and bank reporting. Thus, banks and other financial institutions are required to maintain bank information to the same extent as banks and other financial institutions located in the United States.

Phase 2 Aspects

44. In respect of the exchange of information in practice the processes and procedures in place in the United States to obtain and provide information to its treaty partners are identical regardless of whether the information is in the possession or control of a person in the United States or in the USVI. The income tax laws of the USVI are generally identical to the tax provisions of the U.S. IRC. Moreover, the network of U.S. TIEAs and income tax treaties with foreign countries provide for exchange of information located in the USVI. The administrative powers of the United States in the USVI are available to the U.S. Competent Authority in responding to a request for information. In addition to the summons and other standard

⁸ Article 4(2)(b) of the TIA provides the USVI with the legal authority to routinely supply the following information to the United States: copies of reports of individual, partnership, corporate, and employment audit changes that disclose information relevant to the United States; information about the ownership interests of all corporations subject to Virgin Islands tax with non-Virgin Islands source income that receive a rebate, subsidy or reduction of Virgin Islands taxes; information about any taxpayer subject to Virgin Islands tax with non-Virgin Islands source income who files an income tax return with the Virgin Islands claiming for the first time to be a Virgin Islands resident; all corporate information about ownership interests in any Foreign Sales Corporation (as defined in section 922 of the Code) established in the Virgin Islands; such information about corporations electing application of section 936 of the IRC as may be agreed upon by the competent authorities; and information about any rebates, subsidies or reductions of tax provided by the Virgin Islands for income derived by a Virgin Islands taxpayer from other United States possessions and territories. Article 4(c) of the TIA further provides that the United States and the USVI may agree to expand or limit the information to be routinely exchanged.

administrative tools, the IRS may rely on the Tax Implementation Agreement between the Government of the United States and the Government of the Virgin Islands in obtaining information held by the USVI government. Consequently, the conclusions based on U.S. law and its application contained in the U.S. Report in this regard apply to the same extent to the USVI. It is noted that peer input received in connection with the U.S. peer review did not deal specifically with requests related to information held by persons in the USVI.

ANNEX 1: PRELIMINARY ASSESSMENT OF THE UNITED STATES

USVI Preliminary Assessment
October 2011

PRELIMINARY ASSESSMENT: UNITED STATES VIRGIN ISLANDS

Overview

This preliminary assessment of the United States Virgin Islands (“USVI”), which has been requested by the Chair of the Global Forum on Transparency and Exchange of Information (“Global Forum”), will provide the Steering Group to the Global Forum with the information relevant to its determination whether, and if so, when, the USVI should be scheduled for a peer review.

The USVI is a member of the Global Forum, and prior to evaluation of this preliminary assessment, had been scheduled for a Phase 1 review in the first half of 2012, and a Phase 2 review in the first half of 2013.

As discussed in more detail below, much of the legal and regulatory framework that would be reviewed as part of a peer review of the USVI is identical to or derivative of United States federal law or the laws of U.S. states, which have already been effectively evaluated as part of the United States combined review concluded in April 2011.⁹ For example, the Internal Revenue Code, the Securities and Exchange Act, the Banking Act, and large portions of the USVI partnership, LLC and corporations law have already been assessed. Under the United States Constitution, the United States Congress has plenary authority to govern United States territories, including the USVI,¹⁰ and the United States federal government, in exercising its constitutional powers, will generally preempt any conflicting or inconsistent exercise of territorial authority. Moreover, the income tax laws in the USVI, which are generally identical to the income tax portions of the United States Internal Revenue Code, are known as the mirror code. Further, with respect to the administration and collection of tax in the USVI, all provisions of United States federal law are applicable in the USVI directly as part of the United States,¹¹ and the United States Internal Revenue Service (“IRS”) carries out tax administration functions in the USVI.

It should also be noted that although the USVI does not have any tax or trade agreements with other countries because the sole authority for its international relations lies with the United States government, the network of tax information exchange agreements (“TIEAs”) and income tax treaties of the United States with foreign countries provide for exchange of information located in the USVI. The administrative powers of the United States in the USVI are available to the United States Competent Authority in responding to a request for information. In addition to the summons and other standard administrative tools, the IRS may rely on the Tax Implementation Agreement between the Government of the United States of America and the Government of the Virgin Islands in obtaining information held by the USVI

⁹ Global Forum Peer Review Report, Combined Phase 1 + Phase 2, United States, adopted by the Global Forum in June 2011.

¹⁰ United States Const. art. IV, § 3(2).

¹¹ 26 U.S.C. § 7651.

government. Pursuant to this agreement, the United States Competent Authority is authorized to make a request on behalf of a treaty or TIEA partner.

For these reasons, the United States recommends that a separate review of the USVI is unnecessary and should not be undertaken. This approach would be consistent with the concern expressed by the Steering Group that assessments of small jurisdictions should not consume a disproportionate amount of resources in relation to any risks that such jurisdiction may pose.

Introduction

The islands of St. Croix, St. John, St. Thomas, and Water Island on the northern boundary of the Caribbean Sea and just east of Puerto Rico make up the USVI. The total land area of the territory is approximately 346 square kilometers. In 2009, the resident population of the USVI was 106,405.

Since 1917, these islands have been administered under the flag of the United States, and are today organised as an unincorporated territory of the United States. Since 1927, individuals born in the USVI are United States citizens.¹²

Under the United States Constitution, the United States Congress has plenary authority to govern United States territories, including the USVI.¹³ If a USVI territorial law conflicts with United States federal law, the territorial law is invalidated. Thus, as with the supremacy of federal law over state law in a state of the United States, the United States federal government, in exercising its constitutional powers, will generally preempt any conflicting or inconsistent exercise of territorial authority. In addition to this legal structure, the United States federal government operates a U.S. federal district court in the USVI and directly enforces federal laws applicable in the USVI.

The income tax laws in the USVI, which are generally identical to the income tax portions of the United States Internal Revenue Code but substitute “Virgin Islands” for “United States” as appropriate, are generally known as the mirror code.

Given its status as a territory of the United States, the authority of the USVI government may be variously characterized depending on the particular law being applied. In most areas regulated by United States federal law, the particular federal law applies by its provisions to the USVI as part of the United States. For example, with respect to the administration and collection of tax, all provisions of United States federal law are applicable in the USVI directly as part of the United States.¹⁴ As a result, the United States Internal Revenue Service (“IRS”) carries out tax administration functions in the USVI.

Thus, much of the legal and regulatory framework is identical to or derivative of United States federal law. The administrative functions of the IRS, as well as federal laws, have been previously evaluated by the Global Forum in its Peer Review Report, Combined Phase 1 + Phase 2, United States.

To provide for management of local affairs, the United States Congress has granted the USVI certain governmental authority and functions under the Revised Organic Act of the Virgin Islands.¹⁵ The USVI government consists of an executive headed by an elected governor, a legislature, and a territorial court system.

¹² 8 U.S.C. § 1406.

¹³ United States Const. art. IV, § 3(2).

¹⁴ 26 U.S.C. § 7651.

¹⁵ 48 U.S.C. §§ 1541 -1646.

In most areas of law ordinarily governed by state and local law, the USVI legislates as a United States state or municipality would. For example, just as the states of the United States enact corporate law and partnership law, the USVI has enacted regimes to regulate such entities. Similarly, the USVI imposes a 4.5% gross receipts tax analogous to a state sales tax. However, United States Federal law requires the USVI government to collect into the USVI treasury income tax from its residents.¹⁶

1. Please provide a short overview of the jurisdiction's economy.

Gross domestic product for the USVI for 2009 was estimated to be \$4.509 billion, made up of \$1.879 billion in personal consumption expenditures, \$322 million in private investment (fixed and inventory), \$1,035 million in net exports, and \$984 million in government consumption and investment. In 2010 the resident population was 106,405. The largest sectors by employment were: territorial government with 12,166 employed, services (professional and business, education, health, and other) with 9,143 employed, leisure and hospitality with 7,296 employed, and wholesale and retail trade with 6,706 employed. The United States federal government employed 962 people in the USVI during 2010.

Tourism is the primary economic activity in the USVI. Total visitors in 2010 were approximately 2,550,504, of whom approximately 691,558 were air visitors; with the remainder principally cruise ship passenger excursionists. These visitors spent approximately \$1.021 billion. Of those hotel guests who were not USVI residents, over 85.4% were from the mainland United States.

Also significant, and the territory's largest private employer, is the Hovensa petroleum refinery located on St. Croix, which is the second largest refinery in the United States. The refinery supplies heating oil and gasoline primarily to the United States east and Gulf coasts with crude mainly from Venezuela. The refinery directly employs 1,400 employees with another 900 employed by contractors.

Rum production is now considerable and with increasing capacity. A rum distillery for Cruzan rum has long operated in St. Croix, and Diageo USVI recently completed construction of a distillery which is capable of producing up to 20 million proof gallons of Captain Morgan Rum a year for sale on the mainland United States. Watch making, which was historically significant, has declined in recent years, but textile, pharmaceutical, and electronics manufacturing are now present. The agricultural sector is small, with most food being imported.

Per-capita personal income in 2010 was \$21,622, which was only 53.3% of the United States. As reported by the USVI government in 2007, the income distribution of the USVI is highly skewed, with more than 25 percent of all households living on less than \$10,000 per year, compared to less than 10 percent for the United States as a whole.

In 2010, the USVI government had an operating budget of \$869.8 million, against net revenues of \$826.4 million. This net revenue figure does not include some amounts paid to the USVI government from the United States government, including \$119.9 million representing federal excise taxes on rum produced in the USVI but sold elsewhere in the United States. The USVI government is projected to have a deficit of \$19.3 million in fiscal year 2011 and \$32.9 in fiscal year 2012. The territory's economy is also dependent on United States federal government grants. For example, in 2008, direct United States federal government expenditure in the territory amounted to \$821 million.

¹⁶ 48 U.S.C. § 1642.

2. Is there a legal framework in place which allows for offshore businesses to be set up? If so, please provide a general description of this legal framework.

In general, the USVI government administers income tax laws that are identical (except for the substitution of the name of the USVI for the term “United States” where appropriate) to those in force in the United States (commonly referred to as the mirror code).¹⁷ The mirror code reflects the substantive income tax provisions (including tax rates) as well as the administrative requirements of the United States Internal Revenue Code, including regulatory and judicial authority thereunder. As a result, comprehensive income tax returns of corporations and individuals, as well as information returns including those relating to trusts and partnerships, are filed with the Virgin Islands Bureau of Internal Revenue (“VIBIR”). Under the mirror code, these follow the format used in filings with the IRS.¹⁸

The extent to which the USVI government may allow setting up offshore businesses is defined and limited by United States federal law. Sections 932 and 934 of the United States Internal Revenue Code permit the USVI Government the authority to reduce or remit tax liabilities under the mirror code in certain situations, subject to the limitations of section 934(b). Section 934(b) specifically limits that authority to income from sources within the USVI or income effectively connected with a trade or business in the USVI, or, if a company meets a non-United States ownership test, only on its income that is not United States-sourced and not effectively connected with the conduct of a United States trade or business. United States federal taxation of United States citizens resident in the USVI is reinforced by special rules in section 932. Moreover, the rules of sections 932 and 934 do not mitigate the powers of the United States government to carry out tax administration or enforcement functions in the USVI.¹⁹

Within these constraints, the USVI has put in place certain frameworks to promote investment and the establishment of companies by businesses from outside the islands. One such mechanism available to non-resident, non-United States persons is the USVI exempt company.²⁰ After filing an election, a USVI corporation or other business entity that is at least 90% non-United States and non-USVI owned and does not engage in a trade or business in the USVI or the United States may be exempt from income tax and other taxes.²¹ According to some publicly available articles and treatises, the exempt company may be attractive to offshore investors whose business requires United States presence, who wish to avail themselves of the United States courts for dispute resolution, or for uses such as aircraft registration with the United States Federal Aviation Administration.²²

Exempt companies must appoint a resident agent in the USVI, who must file annual returns and maintain information including legal and beneficial ownership at least sufficient to show the companies comply with United States federal and USVI legal requirements, including the 90% non-United States, non-USVI ownership threshold.²³

¹⁷ 48 U.S.C. § 1397.

¹⁸ See Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States, ¶¶ 66-69, 74-78, 93-97, 116-119, 136.

¹⁹ See 26 U.S.C. § 7651.

²⁰ 13 V.I.C. §§ 850 - 863.

²¹ 13 V.I.C. § 853; see also, 26 U.S.C. 934(b)(3).

²² See, e.g., Joseph M. Erwin, B.N.A. Tax Management Portfolio 995, ¶ V(C)(1)(a).

²³ 13 V.I.C. § 863, which provides:

The resident agent of an exempt company shall solicit and maintain records of such information as may be required to establish that the exempt company is in compliance with section 852 of this chapter and to establish that any

With these ownership information maintenance requirements in place, the United States and USVI tax authorities are able to require the registered agent to disclose such ownership information.

Special types of exempt companies may be established for international banking or as a captive insurance company.²⁴ Exempt international banking facilities, though not allowed to engage in the active conduct of a trade or business in the United States, may engage in a banking trade in the USVI, including making loans, taking deposits, and purchasing and selling securities.²⁵ Captive insurance and reinsurance companies, international reinsurance companies, insurance managers, insurance brokers, and supporting or similar businesses may, by application to the Superintendent of Alternative Markets, be granted tax incentive benefits.²⁶ Exempt mutual funds may also conduct activities in the USVI, including trading in securities for its own account, communications, holding meetings, maintaining accounts, accepting investments, and making disbursements.²⁷

Another framework, the USVI Economic Development Commission (“EDC”) business incentive program, is targeted at inward investment and export businesses but is not available to entirely offshore businesses.²⁸ The EDC application lists, among other basic requirements, that the applicant provide full-time employment for at least 10 residents of the USVI, and that the applicant invest at least \$100,000 in an industry that advances the economic well-being of the USVI. Benefits are granted on a case-by-case basis by the EDC but include up to a 90% reduction in corporate income tax, up to a 90% reduction in personal income tax on dividends and distributions paid to USVI residents, a reduction in customs duties on certain components from 6% to 1%, a 100% exemption from excise tax on raw materials and components, and a 100% exemption from both property tax and gross receipts tax. The program was originally tailored to industrial exporters, but in recent years, financial service firms have established operations to qualify for tax reductions as an EDC beneficiary. Regardless of industry, any EDC beneficiary will have a real presence in the USVI and is not appropriate for an offshore business.

3. Please provide an indication of the size of the offshore sector in the jurisdiction and, if known, where businesses using the offshore sector come from.

The Lieutenant Governor’s Office, Division of Corporation, maintains information on exempt companies. There are currently 115 active exempt companies in the USVI.

requirements relating to the ownership of an exempt company imposed by federal or local law or regulatory or administrative action have been met. Any resident agent who:

(1) signs the statement described in section 860(a) of this chapter of the annual report of the exempt company and arranges for the filing of such report, or who provides and files at least annually with the Lieutenant Governor an affidavit containing such statement, and

(2) who maintains in the United States Virgin Islands current records of the legal and beneficial ownership of the exempt company, shall be deemed to have complied with this provision. For this purpose, maintenance in the United States Virgin Islands of the original or duplicate stock ledger required by section 189 of this title shall be deemed to be an adequate record of the legal ownership and, if all of the shareholders are individuals, the beneficial ownership of the exempt company.

²⁴ 13 V.I.C. §§ 850 - 863.

²⁵ 9 V.I.C. § 401; 13 V.I.C. § 852.

²⁶ 22 V.I.C. §§ 1312 - 1395.

²⁷ 13 V.I.C. § 851(h).

²⁸ 13 V.I.C. §§ 801 - 819.

The USVI Economic Development Authority maintains information on EDC beneficiaries. As of July 13, 2011, there were 92 EDC beneficiary companies.

4. Please indicate the extent, if known, to which the jurisdiction's other domestic legal and regulatory framework is being used by non-residents, especially to conduct business outside the jurisdiction.

Investors from outside the USVI wishing to organize a business in the USVI may use the corporation, limited liability company, limited partnership, general partnership, and trust forms available to residents and non-residents in the USVI. These business forms are typical of the entities available in all United States jurisdictions. Such business forms have been previously evaluated with respect to transparency and exchange of information for tax purposes in the Global Forum peer review of the United States.²⁹

USVI corporations are governed in the format common in U.S. states; shareholders elect directors who appoint officers and employees to operate the affairs of the corporation.³⁰ The corporate governance and capital statutes were generally copied from the Delaware corporation laws in effect in 1953 and 1965, with supervisory and administrative provisions originating from earlier USVI statutes. Like most states of the United States, the USVI has substantially enacted the Uniform Limited Liability Company Act,³¹ the Uniform Partnership Act,³² and the Uniform Limited Partnership Act.³³

Pursuant to the mirror code, corporations subject to income tax are required to file with the VIBIR an annual income tax return reporting the identity of any person that owns (directly) at least 20% or (directly or indirectly) at least 50% of the total voting power of the corporation, and report whether any foreign person owns, directly or indirectly, at least 25% of the corporation (by vote or value).³⁴ Similarly, information identifying the partners in a partnership is reported on an annual basis as part of the annual return that all USVI partnerships (including LLCs classified as partnerships) with income, deductions or credits for income tax purposes are required to file.³⁵ In the case of a taxable domestic trust, the trustee must file an income tax return with the VIBIR for each year in which the trust has any taxable income, gross income of \$600 or more, or a beneficiary who is a non-resident alien; the form requires identification of any trustee and each beneficiary who received trust income in the year.³⁶ Trusts organized under foreign law in certain circumstances will also be subject to USVI income tax reporting, as well as United States customer due diligence and USVI trust administration rules.³⁷

²⁹ See Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States.

³⁰ See 13 V.I.C. §§ 1 - 473.

³¹ 13 V.I.C. §§ 1101 - 2203.

³² 26 V.I.C. §§ 1 - 276.

³³ 26 V.I.C. §§ 321 - 575.

³⁴ See 26 U.S.C. § 6012(a)(2); IRS Form 1120; Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States, ¶ 66.

³⁵ See 26 U.S.C. § 6031; IRS Form 1065; Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States, ¶ 93.

³⁶ See Treas. Reg. § 1.6012-3(a)(1); IRS Form 1041; Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States, ¶ 116.

³⁷ For more information, see Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States, ¶¶ 121-122.

We are not aware of any quantitative data showing the extent to which non-residents conducting business outside the USVI and the United States are using USVI business entities.

5. Does the jurisdiction actively promote itself as an international financial centre, international offshore centre or something similar?

The USVI government promotes investment in the USVI, including in the financial sector, primarily through marketing of the EDC business incentive program. These materials do not promote purely offshore companies or activity; rather, promotion focuses on the use of tax incentives to attract local employment, and on the territory's connection to, rather than escape from, most United States government institutions.

The USVI Economic Development Authority provides information in respect of the EDC and notes, for example, that the EDC provides a comprehensive series of tax incentives to encourage companies to the Virgin Islands in order to create jobs for residents and profits for employers. This information also emphasizes the USVI's integration into the United States, referencing the fact that the USVI offers all the benefits of the United States flag, including United States courts, United States currency, United States banking systems, and the United States postal system.

6. Please provide a general overview of the financial services sector in the jurisdiction and describe how it is regulated, e.g. number of banks, insurance companies, law or accounting firms, company or trust service providers operating in the jurisdiction, if any, and identify the functions of the agencies involved in their regulation.

Currently, there are five banks, plus the Government Development Bank, in the USVI. There are 191 registered insurance companies. The USVI bar association has approximately 850 member lawyers practicing within the USVI; the VISCPA, a voluntary association, provides contact information for 43 certified public accountants in the USVI. The USVI is home to about a dozen corporate management firms, several of which advertise their company formation and trust service provider capabilities.

The combined assets of commercial banks domiciled in the USVI at the end of 2010 was \$2.5595 billion. Total bank deposits –which consist of savings demand accounts, demand deposits and time deposits–was \$2.1504 billion. In fiscal year 2010, the average number of jobs in finance, insurance, and real estate was 2,371.

United States banking laws generally apply in the USVI and the Lieutenant Governor has local regulatory authority as Chairman of the Banking Board.³⁸ At the United States federal level, banks, savings and loan associations, and credit unions are generally supervised by at least one of the five federal bank regulatory agencies: the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration.³⁹

Regulations require that a financial institution must collect the following identifying information about a customer at the time the customer seeks to open the account: (1) name; (2) for individuals, date of birth; (3) for individuals, a residential or business street address, or, if there is no street address available, an Army Post Office or Fleet Post Office box number or the street address of next of kin or of another contact

³⁸ 9 V.I.C. § 61.

³⁹ See Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States, ¶ 34.

individual; or, for persons other than individuals, the principal place of business, local office, or other physical location; and (4) for United States persons, a United States taxpayer identification number, passport number and country of issuance, and for non-U.S. persons, passport information which includes number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.⁴⁰ As a result, legal requirements are in place to ensure that banking information is available for all account holders.⁴¹

United States federal securities laws apply in the USVI,⁴² but the Uniform Securities Act has also been adopted as local law.⁴³ Stockbrokers must obtain a business license from the Department of Licensing and Consumer Affairs, a part of the Lieutenant Governor's office.⁴⁴ Broker-dealers and mutual funds are subject to United States federal regulations providing for customer identification to the same extent as that required of banks and described above.⁴⁵

7. Please indicate to what extent bank secrecy exists in the jurisdiction. Can such bank secrecy be lifted in case of a request for information?

Banks and other institutions in the USVI are subject to United States federal laws on money laundering and bank reporting.⁴⁶ For purposes of the requirement to file a report concerning foreign bank accounts, residents of the USVI are considered resident in the United States.⁴⁷ The USVI was studied as part of the United States in the OECD Financial Action Task Force report, "Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, United States of America," dated June 23, 2006.

The confidentiality of bank account information is generally defined and delimited by the Right to Financial Privacy Act (RFPA).⁴⁸ The RFPA applies to banks and other financial institutions in the USVI.⁴⁹ The RFPA was enacted in 1978 and generally prohibits disclosure of information to United States federal government authorities without notice to the customer and an opportunity for the customer to challenge the request.

However, there are numerous exceptions that work to assure the free flow of information to the government with respect to law enforcement. Perhaps the broadest area carved out of the applicability of the RFPA is tax enforcement; 12 U.S.C. § 3413(c) permits disclosure of financial records under

⁴⁰ *Id.* ¶ 161.

⁴¹ *Id.* at Determination A.3.

⁴² 15 U.S.C. § 77b(a)(7).

⁴³ 9 V.I.C. §§ 601 *et seq.*

⁴⁴ 27 V.I.C. § 302(d).

⁴⁵ See Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States, ¶ 161.

⁴⁶ 31 U.S.C. § 5312(a)(6).

⁴⁷ 31 C.F.R. § 1010.350(b).

⁴⁸ 12 U.S.C. §§ 3401 - 22.

⁴⁹ 12 U.S.C. § 3401(1).

enforcement procedures in the Internal Revenue Code, including summons procedures undertaken in order to respond to a request for information under an international agreement.⁵⁰

In the case of a request for information, the IRS has the authority to collect information from banks in the USVI in the same way and to the same extent it collects information from banks throughout the United States.⁵¹

The power of the IRS to obtain information for tax purposes, in the USVI as throughout the United States, is wide-ranging and is coupled with strong compulsory powers. Notice to the taxpayer is required in many cases when the IRS uses its compulsory summons authority to acquire information from third parties. Under I.R.C. section 7602 *et seq.*, there are various tools available to secure requested information. A summons may be issued to examine books, papers, records, or other data of taxpayers and third parties and to obtain testimony under oath that may be relevant or material in ascertaining the correctness of any tax return, making a return where none has been made, determining a tax liability, collecting a tax liability, or inquiring into any offense connected with the administration or enforcement of the internal revenue laws.⁵² The IRS may summon a taxpayer, an officer or employee of a taxpayer, a person having possession, custody, or care of the taxpayer's records, and any other person in possession of relevant and material evidence. The summons power, and other powers of inspection, are held directly by the IRS; the IRS Deputy Commissioner (International), in his capacity as the United States Competent Authority, has power to obtain information directly using revenue agents and officers under his chain of authority and also in other branches of the IRS.⁵³ Information-gathering procedures involving the U.S. Department of Justice or the U.S. courts are available in the USVI, both in U.S. domestic tax enforcement and on behalf of treaty and TIEA partners, through the USVI offices of those authorities, specifically, the office of the U.S. Attorney for the District of the Virgin Islands and the U.S. District Court for the Virgin Islands.

8. Does the jurisdiction have any arrangements which provide for the possibility to exchange information for tax purposes with another jurisdiction? If so, please provide an overview.

Yes, the network of TIEAs and income tax treaties of the United States with foreign countries provide for exchange of information located in the USVI.

TIEAs that the United States has entered into with other countries cover, for purposes of production of information, the United States territories, including 19 TIEAs that explicitly cover the USVI. For example, the United States-Dominican Republic TIEA states: "For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "United States" means the United States of America, including . . . the Virgin Islands" The result of this inclusive definition is that the IRS has the authority to issue administrative summonses in the USVI and to obtain information pursuant to the request of a party to the information exchange agreement.

Income tax treaties of the United States do not explicitly include the territories in their coverage. Either they define the United States to include only the 50 states and the District of Columbia or they exclude one

⁵⁰ See Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States, ¶¶ 185-189.

⁵¹ See generally 26 U.S.C. § 7651.

⁵² 26 U.S.C. § 7602.

⁵³ See Global Forum on Transparency and Exchange of Information Peer Review Report, Combined Phase 1 + Phase 2, United States.

or more named territories from the definition. But the effect of this exclusion is only with respect to treaty income-tax relief, making such relief unavailable to USVI residents or USVI operations.

With respect to tax administrative powers of the United States, however, the terms of the treaties generally require the United States to use its information gathering methods on behalf of the foreign requesting country. Pursuant to the treaties, which have the force of statutory law in the United States, potential foreign tax liabilities are treated as though they were liabilities arising under the United States Internal Revenue Code. As a result, under 26 U.S.C. § 7651 as discussed earlier, the administrative powers of the United States in the USVI are available to the United States Competent Authority in responding to a request for information from a tax treaty partner.

In addition to the summons and other standard administrative tools, the IRS may rely on the Tax Implementation Agreement between the Government of the United States of America and the Government of the Virgin Islands (“US-USVI TIA”) in obtaining information held by the USVI government.⁵⁴ That agreement, similar to many TIEAs, provides that information requests may be considered as needed for “the administration and enforcement of the domestic laws of the [United States] concerning taxes”. Because carrying out its obligations under income tax treaties and TIEAs is an integral part of administration of United States domestic tax law obligations, the United States Competent Authority is authorized to make a request under this provision in the US-USVI TIA on behalf of a treaty or TIEA partner.

9. Please indicate whether the jurisdiction has been asked by any (other) jurisdiction to enter into an exchange of information arrangement for tax purposes and, if so, what the outcome was. Even if it has never been asked, would the jurisdiction be willing to enter into such an agreement if requested in the future?

The USVI does not have any tax or trade agreements with other countries because the sole authority for its international relations lies with the United States government. Additionally, because the mechanisms described in the preceding response enable the exchange of tax-relevant information and mutual assistance in tax matters with respect to the USVI, the USVI would have no occasion or need to enter into a separate agreement with other jurisdictions.

10. Is any significant change expected regarding the above answers in the near future?

We are not aware of any enacted legislation or announced business plan that would significantly change the answers in this report.

Conclusion

As discussed above, much of the legal and regulatory framework that would be reviewed as part of a peer review of the USVI is identical to or derivative of United States federal law or the laws of the states of the United States, and thus already has been effectively evaluated as part of the Global Forum Peer Review Report, Combined Phase 1 + Phase 2, of the United States, adopted by the Global Forum in June 2011. Given the Steering Group’s concern that assessments of small jurisdictions should not consume a disproportionate amount of resources in relation to any risks that such jurisdictions may pose, the United States recommends that a separate review of the USVI is unnecessary and should not be undertaken.

⁵⁴ 1989-1 C.B. 347.

For more information

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Exchange of Information for Tax Purposes

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