

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information
on Request

UNITED STATES

2018 (Second Round)



Global Forum on Transparency and Exchange of Information for Tax Purposes: United States 2018 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

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(reflecting the legal and regulatory framework
as at April 2018)

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 145 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic). Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. the implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. the implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and <http://dx.doi.org/10.1787/2219469x>.

Abbreviations and acronyms

AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BSA	Bank Secrecy Act of 1970
CDD	Customer Due Diligence
CIP	Customer Identification Program
DGCL	Delaware General Corporation Law
DTC	Double Tax Convention
EIN	Employer Identification Number
EOI	Exchange of information
EOIR	Exchange of information on request
FATF	Financial Action Task Force
FBAR	Foreign Bank Accounts Report
FFIEC	Federal Financial Institutions Examination Council
FDIC	Federal Deposit Insurance Corporation
FinCEN	Financial Crimes Enforcement Network
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IDR	Information Document Request
IMS	Inventory Management System
I.R.C.	Internal Revenue Code
I.R.M.	Internal Revenue Manual
IRS	Internal Revenue Service
ITIN	Individual Taxpayer Identification Number

LLC	Limited liability company
LP	Limited partnership
LLP	Limited liability partnership
MBCA	Model Business Corporation Act
Multilateral Convention	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
OCC	Office of the Comptroller of the Currency
PRG	Peer Review Group of the Global Forum
SAR	Suspicious Activity Report
SEC	Securities and Exchange Commission
SFRC	Senate Foreign Relations Committee
SSN	Social Security Number
Standard	International standard on transparency and exchange of information for tax purposes, as set out in the 2016 Terms of Reference
TIEA	Tax Information Exchange Agreement
TIN	Taxpayer Identification Number
ULPA	Uniform Limited Partnership Act
ULLC	Uniform Limited Liability Company Act
US states	To be read as including all 50 US states, the District of Columbia and the US territories (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the United States Virgin Islands), except where otherwise indicated
UTC	Uniform Trust Code
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015.

Executive summary

1. In 2011, the Global Forum evaluated the United States for its legal and practical implementation of the EOIR standard against the 2010 Terms of Reference. The United States was rated overall Largely Compliant. This second round report analyses the implementation of the standard by the United States in respect of EOI requests received during the period of 1 January 2014 to 31 December 2016 against the 2016 Terms of Reference. This second round report concludes that the United States continues to be rated overall Largely Compliant.

2. The following table shows the comparison of results from the first and the second round review of the United States' implementation of the EOIR standard.

Element		First Round Report (2011)	Second Round Report (2018)
A.1	Availability of ownership and identity information	LC	PC
A.2	Availability of accounting information	LC	LC
A.3	Availability of banking information	C	LC
B.1	Access to information	C	C
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	LC
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and Safeguards	C	C
C.5	Quality and timeliness of responses	C	LC
OVERALL RATING		LC	LC

C = Compliant; LC = Largely Compliant; PC = Partially Compliant; NC = Non-Compliant

Progress made since previous review

3. The major issues identified in the 2011 report related to the availability of ownership and accounting information in respect of single-member LLCs and both elements A.1 and A.2 were therefore rated Largely Compliant. All other elements were considered Compliant though a recommendation was made in respect of the timeliness of responses to EOI requests in element C.5.

4. Since the first round review, the United States has addressed the recommendations made in respect of single-member LLCs. The United States issued regulations, effective for taxable years beginning after 31 December 2016, to require single-member LLCs to register with the IRS, report their legal owners and keep appropriate accounting records in line with the standard.

5. The 2011 report noted that a number of the United States' EOI partners pointed to delays in obtaining information and that the procedures for responding to requests, which require a number of steps, appear to inhibit response times. Several changes have been made since the first round review that have impacted the efficiency of EOI practice over the reviewed period. However, despite certain positive steps taken by the United States to address the concerns identified in the 2011 peer review report, the overall impact of these developments on efficiency of the EOI practice during the period under review was not positive. The time taken to provide substantive responses to requests remains long and does not ensure effective EOI in all cases. This was confirmed by peers. It is acknowledged that a significant portion of requests received by the United States can be classified as complex requests and consequently require additional time to respond. Nevertheless, the deficiency identified in the first round review remains to be addressed as the timeliness of responses has further declined.

Key recommendation(s)

6. The three key issues raised by this report relate to the availability of beneficial ownership information, the United States' network of EOI mechanisms and the timely responses to EOI requests.

7. As noted above, the United States has addressed the recommendations under element A.1 in respect of the availability of legal ownership information on single-member foreign-owned LLCs. However, the 2016 Terms of Reference contain additional requirements in respect of the availability of beneficial ownership information. Certain beneficial ownership information is required to be provided to the IRS, some is available with entities or trusts themselves and some financial institutions (including banks) are required to obtain beneficial ownership information pursuant to their AML obligations. Consequently, a significant amount of beneficial ownership information is available. However, none of the beneficial ownership information required to be available fully conforms to the standard. Moreover, where

beneficial ownership information is required to be maintained, appropriate procedures are not yet in place to ensure that the beneficial ownership information is adequate, accurate and up to date. Recommendations have accordingly been made in element A.1 and A.3.

8. While the United States has brought into force nine new or amended TIEAs since the last review, the United States has not ratified any DTC or multilateral exchange agreement since July 2010, including the 2010 Protocol to the Multilateral Convention, which the United States signed in 2010. This negatively impacts a significant proportion of the United States' EOI relationships and leads to a recommendation in element C.1.

9. Finally, as pointed out above, certain improvements are also recommended under element C.5 in respect of the efficiency of practical exchange of information upon request as the United States response times have declined since the first round of reviews.

Overall rating

10. Although recommendations made in the first round review have been addressed, the 2016 ToR broadened the requirements under the standard which now also include beneficial ownership information. As described above, the availability of beneficial ownership information poses a challenge. Gaps have been identified in respect of legal requirements to obtain and maintain beneficial ownership information as well as in respect of their implementation in practice. These issues result in element A.1 (availability of ownership information) being rated Partially Compliant and element A.3 (availability of banking information) being rated Largely Compliant. Improvements are also recommended mainly in respect of elements A.2 (availability of accounting information), C.1 (exchange of information mechanisms) and C.5 (exchange of information upon request practice) which are rated Largely Compliant.

11. All other elements are rated Compliant. The United States' access powers are broad and allow provision of quality information to its exchange of information partners as also confirmed by peers. The United States has in place a robust EOI Programme and is heavily involved in exchange of information receiving more than 2 600 requests over the three year review period. Accordingly, the United States is valued by its exchange of information partners as a very important and reliable partner.

12. In view of the above, the overall rating for the United States is assigned as Largely Compliant.

13. A follow up report on the steps undertaken by the United States to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
Legal and regulatory framework determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	Certain beneficial ownership information (i.e. identification of the responsible party) is required to be provided by companies (including LLCs) and partnerships upon registration with the IRS. However, not all beneficial owners are required to be identified in line with the standard. Beneficial ownership information is also required to be available with certain financial institutions (including banks) but the requirements to identify the beneficial owner(s) of a customer are not fully in line with the standard. Further, all entities are not required to engage such a financial institution.	The United States should take further measures to ensure that all beneficial owners of all relevant entities and arrangements are identified in line with the standard.
	Although the United States law requires identification of the settlor, the trustee, beneficiaries, and any person who exercises control over the trust through a combination of obligations imposed primarily under the state law, federal tax law, and common law; none of these obligations explicitly requires identification of all the beneficial owners of trusts as required under the standard (i.e. including the identity of any other natural person exercising ultimate effective control over the trust through a chain of entities or arrangements).	The United States should ensure that all beneficial owners of trusts are required to be identified in line with the standard.

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Partially Compliant	Although certain beneficial ownership information in respect of companies, partnerships and trusts is required to be reported to the IRS, supervisory measures to ensure that the beneficial ownership information is adequate, accurate and up to date are not sufficient.	The United States should strengthen its measures to ensure the availability of beneficial ownership information in practice in line with the standard.
	Federal tax law requiring all single-member foreign-owned LLCs to report and maintain ownership information is very recent, untested, and covers new persons who were previously not required to register and report to the IRS.	The United States should monitor the implementation of the new law to ensure that legal ownership information of all single-member LLCs is available.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Largely Compliant	Federal tax law subjects all single-member foreign-owned LLCs to tax filing obligations and requires them to maintain accounting information. These requirements are very recent and cover new persons who were previously not required to register and report to the IRS.	The United States should monitor the implementation of the new requirements to ensure that accounting records and underlying documentation of all single-member foreign-owned LLCs are available.

Determination	Factors underlying recommendations	Recommendations
	Although the IRS carries out significant number of supervisory activities, the extent to which they ensure availability of accounting information is not clear, particularly in respect of underlying documentation.	The United States should strengthen its measures to ensure that accounting information is being maintained by relevant entities (including single-member LLCs) and arrangements in line with the standard in all cases.
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
Legal and regulatory framework determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	The United States has introduced rules requiring banks to identify beneficial owners of customers that are entities. These rules ensure that beneficial ownership is available in respect of all account-holders except in certain limited cases. In particular, there may be cases where the person identified may not be the beneficial owner as defined under the standard; where the account holder is controlled by a trust (or any arrangement considered as a trust under applicable US law) the beneficial owner will be considered the trustee (or the person considered to be the trustee under applicable US law); or beneficial ownership information may not be necessarily available in respect of some pre-existing accounts where the identification of the account-holder has not yet been updated.	The United States should ensure that beneficial ownership information is available in line with the standard for all account-holders that are entities.

Determination	Factors underlying recommendations	Recommendations
	The US rules do not ensure identification by banks of all beneficial owners of account-holders who are trusts (or any arrangement considered as a trust under applicable US law). According to the US rules banks are required to identify only a trustee (or the person considered to be the trustee under applicable US law) of the trust where the account is opened in the name of the trust.	The United States should ensure that banks identify and verify the identity of all beneficial owners of a trust which have an account with a bank in the United States in line with the standard.
EOIR rating: Largely Compliant	Federal rules which require banks to identify and verify beneficial ownership of legal entity customers bring substantive broadening of banks' obligations to identify beneficial owners of account-holders. As the new obligations only took effect from May 2018, their implementation in practice is not yet tested.	The United States should monitor the new obligations to identify beneficial owners of banks' account-holders to ensure they are properly implemented in practice.
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) (<i>ToR B.1</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
Legal and regulatory framework determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	Since July 2010, the United States has not ratified any signed EOI agreement that requires US ratification. Of these EOI instruments, only the ratification of the 2010 Protocol to the Multilateral Convention and the DTC with Viet Nam directly impacts the US ability to exchange to the standard. It is noted that the United States is able to enter into a TIEA without going through a domestic ratification process. Nevertheless, as a result the United States currently does not have an EOI relationship in force with 38 out of 129 its EOI partners. While peers have not indicated that this has been an issue, the absence of ratification would prevent EOI in practice with these partners.	The United States should ratify its signed EOI agreements, including the 2010 Protocol to the Multilateral Convention, expeditiously so that all its EOI relationships are in force and, in the meantime, expeditiously pursue any alternative means to ensure effective EOI arrangements that meet the standard are in force with affected jurisdictions.
EOIR rating: Largely Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
Legal and regulatory framework determination: The element is in place.	A summons notice requires disclosure of the name of the taxpayer, the taxpayer's contact information and the tax year to which the requested information relates. While the disclosure of the name of the taxpayer and the tax year to which information relates is usually necessary to describe the requested information, and in the majority of cases the requested information is obtained through alternative means (e.g. an IDR), nevertheless the disclosure of this information may not always be necessary to the description of the requested information.	The United States should ensure that only the minimum information necessary to obtain the requested information is disclosed to information holders.
EOIR rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>)		
Legal and regulatory framework 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 implementation of EOIR in practice.	
EOIR rating: Largely Compliant	The United States response times have increased since the first round review, as well as throughout the current period under review, with 30% of requests received throughout the current period responded to within 90 days. Although the United States took certain positive steps, the time taken to provide a response to a request does not ensure effective exchange of information in all cases as was also pointed out by a few peers.	The United States should speed up the provision of the requested information.

Overview of the United States

1. This overview provides some basic information about the United States that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of United States' legal, commercial or regulatory systems.

Legal system

2. The United States is a constitution-based federal republic whose government is divided into executive, legislative, and judicial branches. The executive branch is headed by an elected President and Vice-President and an appointed Cabinet that operates through various federal departments and agencies, which in the area of tax administration include the Department of Treasury and its agency, the Internal Revenue Service (IRS). The federal legislature, known as Congress, consists of the House of Representatives and the Senate. The states similarly have legislative bodies. The judicial branch is made up of the US Supreme Court, Federal Courts of Appeal, Federal District Courts, and other federal-level courts such as the US Tax Court. There are also courts on the state level.

3. At both the federal and state levels, the law of the United States was originally derived largely from the common law system of English law. However, the United States' law has diverged greatly from English law both in terms of substance and procedure and has incorporated certain features resembling civil law.

4. The US Constitution enumerates the broad areas where the federal government has legislative authority. Congress may “make all laws which shall be necessary and proper” for executing any of its enumerated powers, and the Constitution prohibits the states from exercising certain powers (e.g. entering into treaties or coining money). Because of the Supremacy Clause contained in the Constitution, a federal law may supersede or preempt a state or local law where appropriate.

5. Under the US Constitution, both laws of the United States and ratified international treaties are treated as the supreme law of the land. When an act of Congress and a treaty relate to the same subject, the courts will endeavour to construe them so as to give effect to both, if that can be done without violating the language of either. A later-in-time treaty will generally be intended to override an earlier statute, and will do so. In the case of a conflict between an earlier treaty and a later statute, the courts do not favour the repudiation of an earlier treaty by implication and generally require clear indications that Congress, in enacting subsequent inconsistent legislation, meant to supersede the earlier treaty.

Tax system

6. The United States federal system of government results in a multi-tiered system of taxation. The federal government of the United States and the various state and local governments of the United States impose a wide range of taxes and duties. Individual and corporate income tax and payroll tax account for the bulk of federal government revenue. The federal government also imposes an estate and gift tax and certain excise taxes. Each of the states and local governments imposes various taxes in addition to those imposed by the federal government. Among the common types of taxes that states and local governments impose are personal income tax, corporate income tax, sales tax, real property tax, fuel tax, and estate and gift tax.

7. The federal government taxes US citizens and residents and domestic corporations on worldwide income annually. A corporation is domestic if it is formed in the United States. In that case its place of management is not relevant in determining if it is a domestic corporation. Different graduated tax rates apply to individuals and corporations, depending on their taxable net income. In 2016, the highest rate of tax applicable to individuals was 39.6%, and the highest rate for corporations (including entities taxed as corporations) was 35%.

8. The United States taxes non-resident individuals and foreign corporations under two systems, both of which are reported on annual tax returns filed with the Internal Revenue Service. First, to the extent that such persons are engaged in the conduct of a trade or business in the United States (a “US trade or business”), these persons are subject to tax on income effectively connected with the US trade or business at the same graduated rates as resident individuals and US corporations, respectively. The United States also taxes foreign persons on their fixed, determinable, annual or periodical income from US sources (e.g. interest, dividends, rents, and royalties) on a gross basis at a 30% rate during the review period. This gross basis tax is generally collected by withholding of such tax at the time the income is paid, and it may be reduced by treaty.

9. In the United States, trusts and estates are generally taxable entities. However, they generally are allowed a deduction for income that is distributed to beneficiaries in the year it is earned. Beneficiaries take such distributions into income annually. Income earned by partnerships is taxed on a flow-through basis. Thus, income of a partnership is taxed to the partners annually. LLCs may be taxed at the federal level as either a corporation, a pass-through entity in the manner of a partnership, or a disregarded entity.

10. The administration of federal taxes is the responsibility of the IRS. The IRS is headed by the Commissioner of Internal Revenue, who is appointed by the President. The IRS is an agency under the Department of Treasury forming part of the federal government.

Financial services sector

11. The United States financial system is large, internationally interconnected and highly diversified.

12. US banks are at the core of the world's banking network. Banks may be chartered at either the national or the state level and may be involved in many activities, including safeguarding money and valuables, providing loans and credit, offering payment services (such as checking accounts, money orders, and cashier's checks), and dealing in and holding Treasury and agency debt securities. As of 2016, there were approximately 16 000 depository institutions out of which about 9 000 qualified as banks. As of December 2016, four main banks (JP Morgan Chase Bank, Wells Fargo Bank, Bank of America, and Citibank) held nearly 45% of the total consolidated assets of large commercial banks within the United States (USD 6 837 109 million out of USD 14 985 540 million total assets).

13. Depending on a banking organisation's charter and organisational structure, it may be subject to several federal and state banking regulators. Banks are generally supervised by at least one of the four federal bank regulatory agencies – the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA). Some banks are further subject to oversight by state regulators.

14. The US wealth management sector (investments, securities, insurance) is very large. It comprises about 3 900 registered broker-dealers, 11 300 mutual funds with over USD 20 trillion in assets, and nearly 12 000 federally registered investment advisers. The US registers 895 life insurance companies employing or otherwise using over one million agents, brokers and service employees. Finally, there were about 42 000 money service

businesses registered in the United States responsible for more than 230 000 agents.¹

15. A significant role in wealth management (including setting up and operation of legal entities and arrangements) is played by professionals such as lawyers, accountants or trustees. As of 2016, there were about 1 million lawyers, of whom about 400 000 are members of the American Bar Association (ABA), and about 1.17 million accountants and auditors (including approximately 660 000 Certified Public Accountants (CPAs)).² Both professionals are licensed at the state level and are bound by professional codes of ethics. The exact number of trustees in the United States is not known, as trustee legal arrangements are not generally registered or subject to supervisory oversight. While natural persons may act as a trustee, only licensed trust companies can offer trust services as a business. Although it is not mandatory in the United States to use a professional to incorporate a legal entity, corporate formation agents handle approximately half of all incorporations of legal persons in the US states and represent a substantial business sector.³

16. As concluded in the Fourth Round Mutual Evaluation Report of the United States published by the Financial Action Task Force (FATF) (see further below), the US financial services sector is significantly exposed to money laundering and terrorism financing risks. The legal framework of AML/CFT preventive measures is set out in federal legislation. The Bank Secrecy Act (BSA), as amended by the USA PATRIOT Act sets out the main AML/CFT requirements that apply to covered financial institutions and trust company service providers, regardless of their federal or state registration/status. The institutional framework for AML/CFT is complex and involves a significant number of authorities. The federal Department of Treasury is the lead AML/CFT agency. On the operational level, there are numerous agencies handling intelligence analysis, investigations, prosecutions, regulation, and supervision. These include Financial Crimes Enforcement Network (FinCEN) (within the Department of Treasury) which is the primary AML/CFT regulator responsible for developing, issuing, administering, and civilly enforcing regulations implementing the BSA (in addition to its financial intelligence unit role). The banking sector is further regulated and subject to AML/CFT supervision by the Federal Reserve System, FDIC, OCC, NCUA, and state regulators. The main authorities responsible for supervising AML/CFT compliance in the securities and futures and derivatives sectors are Securities and Exchange Commission (SEC), Commodity Futures Trading

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1. Fourth Round Mutual Evaluation Report of the United States published by the Financial Action Task Force.
 2. *Ibid.*
 3. *Ibid.*

Commission (CFTC), National Futures Association (NFA) and Financial Industry Regulatory Authority (FINRA). Other AML/CFT service providers (such as casinos, real estate agents or non-profit organisations) are supervised by other federal and state authorities depending on their type of activity and place of business.

17. The Fourth Round of Mutual Evaluation of the United States' compliance with the AML/CFT standard was conducted by FATF and the Asia/Pacific Group on Money Laundering (APG) in 2016. The report provides a summary of the AML/CFT measures in place in the United States as at the date of the onsite visit on 18 January to 5 February 2016.

18. The outcomes of the review were rather positive overall. Several aspects of the AML/CFT framework are evaluated as Highly Effective such as the area of investigations and prosecutions of terrorist financing or Substantially Effective such as investigation and prosecution of money laundering, access and use of financial information including BSA reporting by law enforcement agencies and the US co-operation with international partners.

19. The FATF report concluded that the AML/CFT framework in the United States is well developed and robust. Domestic co-ordination and co-operation on AML/CFT issues is sophisticated and has matured since 2006. Nevertheless, Immediate Outcome 5 concerning the implementation of rules ensuring availability of beneficial ownership information in respect of legal persons and arrangements was rated Low. The United States' technical compliance with FATF's recommendations 10 and 25 was rated Partially Compliant and with recommendations 22 and 24 Non-Compliant.

20. The FATF/APG report further noted that the regulatory framework has some significant gaps, including minimal coverage of certain institutions and businesses (investment advisers, lawyers, accountants, real estate agents, trust and company service providers (other than trust companies) and that lack of timely access to adequate, accurate and current beneficial ownership information remains one of the fundamental gaps in the US context. It should be nevertheless noted that new CDD regulations on beneficial ownership issued in May 2016 and tax changes concerning the collection of ownership information (see further Recent Developments and section A.1 and A.3) were implemented outside of the FATF/APG report review period and therefore were not considered for their analysis. The complete assessment report has been published and is available at (www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf).

The United States territories

21. The United States comprises 50 states, the District of Columbia, and 16 territories of which five are inhabited: American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the United States Virgin Islands. The formation of US legal entities is governed by laws in each of the 50 states, the five inhabited territories and the District of Columbia. The reference to US states in this report includes the 50 states, five inhabited territories, and the District of Columbia unless specified otherwise.

22. The relevant rules for availability of ownership, accounting, and banking information applicable in the territories are substantially the same or similar as in the 50 states and the District of Columbia. The types of entities and arrangements which can be created under the territories laws and their governing rules are the same as described in the report in respect of the US states with the exception of American Samoa which does not provide for the creation of LLCs. Territory financial institutions are subject to federal AML laws including penalties and monitoring mechanisms.

23. All territories require entities and arrangements to obtain an EIN from the IRS for territory tax filing purposes, and they are required to have an EIN for purposes of complying with any applicable federal tax obligations (e.g. employment taxes). Therefore the same registration requirements (including completion of SS-4 form) apply as in respect of taxpayers created under states laws. Many US federal taxes apply directly to territory individuals and entities. Each territory also imposes local taxes on individuals and entities. All five territories except for American Samoa and Puerto Rico use income tax rules (and tax filing forms) which mirror the I.R.C. (i.e. mirror-code jurisdictions). American Samoa and Puerto Rico use income tax rules which are similar but do not exactly mirror the I.R.C. Although not identical, the relevant rules contained in the federal tax law generally apply also in the two non-mirror-code jurisdiction (unless indicated otherwise).

24. The IRS access powers under the I.R.C. apply also in respect of information available in territories. Pursuant to section 7651 of the I.R.C., the IRS has the authority to administer and enforce federal taxes in the US territories on the same basis as in states. Under that authority, the IRS can use the full scope of its access powers to (i) issue Information Document Requests (IDRs), (ii) issue summonses to taxpayers, third-party record keepers, and territory government agencies; and (iii) examine taxpayers as described in section B.1 and B.2. To facilitate the provision of information, the IRS has entered into EOI agreements (“tax co-ordination agreements” or “tax implementation agreements”) with all five territories. Exchanges are made

generally through the US Territories Program office within Large Business and International, IRS.

25. US territories cannot enter into separate tax treaties (DTCs, TIEAs or other international instruments). Although they are typically not included in the definition of “United States” under the US EOI instruments, the IRS is authorised under US EOI instruments to exchange information located in US territories with foreign competent authorities. In practice, the EOI Programme can access and has accessed information available in US territories to respond to EOI requests.

Recent developments

26. The United States has recently taken several measures to strengthen CDD obligations of financial institutions. In May 2016, FinCEN published rules that (i) establish a requirement for certain covered financial institutions to identify and verify the beneficial owner(s) of their legal entity customers when they open new accounts; and (ii) codify, clarify, consolidate, and strengthen existing CDD regulatory requirements and supervisory expectations. Covered financial institutions were obligated to implement the new rules by 11 May 2018. The new CDD rules apply to banks, securities broker-dealers, mutual funds, futures commission merchants, and introducing brokers in commodities (see further section A.3).

27. The United States has also adopted several new tax information reporting and enforcement regimes to strengthen the availability of legal and beneficial ownership information which mainly include the following:

28. Domestic Disregarded Entity Reporting Requirements – In December 2016, the Treasury Department and the IRS issued regulations that require a domestic disregarded entity (e.g. an LLC) that is wholly owned by a foreign person to file returns with the IRS, effective for taxable years that begin after 31 December 2016. The new regulations treat such an entity as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance, and associated compliance requirements. These entities are required to file Form 5472 (Information Return of a 25% Foreign-Owned US Corporation or a Foreign Corporation Engaged in a US Trade or Business), reporting ownership and transactional information. To file Form 5472, the entity is required to provide an Employer Identification Number (EIN), which is obtained from the IRS by filing Form SS-4 (Application for Employer Identification Number).

29. Collection of Beneficial Ownership Information through EIN Application – In general, the IRS assigns an EIN for use by employers, sole proprietors, corporations, partnerships, non-profit associations, trusts,

estates, government agencies, certain individuals, and other business entities for federal tax filing and reporting purposes. Additionally, US financial institutions are required to collect a US TIN (which may include an EIN) for any customer seeking to open an account. An EIN is obtained from the IRS by filing Form SS-4, which requires applicants to provide identifying information on its “responsible party.” Effective with tax year 2017, the definition of “responsible party” on Form SS-4 has been revised to more closely track the international standard definition of “beneficial owner”. Nevertheless, it still remains not fully in line with the standard. Any changes to the information provided on Form SS-4, including the entity’s responsible party, are required to be reported to the IRS. The new regulations cover not only new EIN applications but also all persons currently possessing an EIN (see further section A.1.1).

30. On 17 April 2012, the Treasury Department published final regulations under I.R.C. § 6049 outlining rules requiring specified US financial institutions to report to the IRS deposit interest payments to certain non-resident alien individuals in the amount of USD 10 or more per year paid after 31 December 2012 (see T.D. 9584). The rules apply to commercial banks, savings institutions, credit unions, securities brokerages, and insurance companies that pay interest on deposits. The final regulations require reporting and the exchange of information for EOI purposes for interest paid to a non-resident alien individual resident in a jurisdiction with which the United States has in force an information exchange agreement and with which the Treasury Department and the IRS have determined that it is appropriate to have an automatic exchange relationship with respect to that collected information. A list of such jurisdictions was published by the IRS in a revenue procedure issued in 2014, and that list has been updated numerous times, most recently in September 2017 in Revenue Procedure 2017-46.

31. The Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 to target non-compliance by US taxpayers using foreign financial accounts or investments in certain passive non-financial foreign entities to avoid US tax, and it has since been implemented in phases with the first FATCA exchanges occurring in 2015. Proposed FATCA rules were issued in 2012 and 2013 with temporary and final regulations published in 2013, 2014, and 2017 setting forth FATCA information reporting and withholding requirements.

32. On 22 December 2017, the Tax Cuts and Jobs Act, Public Law 115-97, was enacted. While this Act made many changes to the I.R.C, these changes do not impact legal provisions analysed in this report.

Part A: Availability of information

33. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

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

34. The 2011 report concluded that the US's legal and regulatory framework and its implementation in practice ensured the availability of legal ownership information for companies, partnerships and trusts. Since then there has been no change in this respect in the relevant obligations.

35. The 2011 report further concluded that ownership information may not be available for single-member foreign-owned LLCs with no US tax nexus and it was recommended that the United States take all necessary steps to ensure that ownership information concerning all LLCs was available. In order to address this recommendation, the United States issued regulations, effective for taxable years beginning after 31 December 2016, to require single-member foreign-owned LLCs to report ownership information to the IRS. The new rules address the recommendation and ensure that the identification of the legal owner of single-member LLCs is available in the United States. However, as these rules start to apply for taxable years that begin after 31 December 2016 and cover new persons who were previously not required to register and report to the IRS, the United States is recommended to monitor their implementation in practice.

36. Availability of legal ownership information is generally adequately ensured through the combination of supervisory and enforcement measures taken by the government authorities and legal safeguards. Practical supervision of the availability of legal ownership information is mainly carried out through tax filings and audits. In addition to tax supervision, the availability

of legal ownership is supported by vested interest of companies to keep the information themselves and measures taken at the state level.

37. Under the 2016 ToR, beneficial ownership of relevant entities and arrangements is required to be available. The main requirements ensuring availability of beneficial ownership information are contained in the federal tax law. Under tax law, only one beneficial owner needs to be identified. Also, although the requirement under federal tax law to identify an individual who directly or indirectly controls the entity is generally in line with the requirements of the standard, it does not ensure that in cases where different individuals exercise control based on controlling ownership interest, through other means than ownership or based on formal position held within the company, the individual identified as the beneficial owner will be the person with ultimate effective ownership or control.

38. Some beneficial ownership information is also available with certain financial institutions (including banks), although entities or arrangements are not required to engage such financial institution. Financial institutions will identify each natural person who controls directly or indirectly the legal person through 25% or more ownership interest via any contract, arrangement, understanding, relationship or otherwise, as well as a natural person who holds a senior managing position. However, the US rules contain only limited elements to cover situations where beneficial ownership is established through means other than controlling ownership interest or a senior managing position. Further, the US rules only require one natural person with significant responsibility to control, manage, or direct the customer to be identified.

39. It is therefore recommended that the United States takes further measures to ensure that all beneficial owners of relevant entities and arrangements are identified in line with the standard.

40. Although general supervisory and enforcement measures are in place, the requirements are new and may not be sufficient to ensure that the beneficial ownership information is adequate, accurate and up to date. The issues identified mainly relate to the issuance of EINs and subsequent collection of beneficial ownership information by the IRS which is the main source of beneficial ownership information. It is therefore recommended that the United States strengthen its measures to ensure the availability of beneficial ownership information in practice.

41. Overall the availability of ownership information was confirmed in the US's EOI practice. During the review period, the United States received 562 requests that included a request for ownership information of one or more entities. Of these requests, 312 related to corporations, 48 to partnerships, 27 to trusts, six to charities, and 219 to others including LLCs. Frequently, requests

related to ownership (legal or beneficial) of several entities or arrangements that could be of different types. Some of these ownership requests related to beneficial ownership information; however, no precise statistics are available. The United States provided full or partial responses to 92% of the received requests that included a request for ownership information (see further section C.5). Two peers reported a limited number of cases where the requested information was not provided. The reasons for these individual failures are consistent with the conclusions made below in sections A.1.1 and A.1.3.

42. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	Certain beneficial ownership information (i.e. identification of the responsible party) is required to be provided by companies (including LLCs) and partnerships upon registration with the IRS. However, not all beneficial owners are required to be identified in line with the standard. Beneficial ownership information is also required to be available with certain financial institutions (including banks) but the requirements to identify the beneficial owner(s) of a customer are not fully in line with the standard. Further, all entities are not required to engage such a financial institution.	The United States should take further measures to ensure that all beneficial owners of relevant entities and arrangements are identified in line with the standard.
	Although the United States law requires identification of the settlor, the trustee, beneficiaries, and any person who exercises control over the trust through a combination of obligations imposed primarily under the state law, federal tax law, and common law; none of these obligations explicitly requires identification of all the beneficial owners of trusts as required under the standard (i.e. including the identity of any other natural person exercising ultimate effective control over the trust through a chain of entities or arrangements).	The United States should ensure that all beneficial owners of trusts are required to be identified in line with the standard.
Determination: In place but certain aspects of the legal implementation of the element need improvement.		

Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Although certain beneficial ownership information in respect of companies, partnerships and trusts is required to be reported to the IRS, supervisory measures to ensure that the beneficial ownership information is adequate, accurate and up to date are not sufficient.	The United States should strengthen its measures to ensure the availability of beneficial ownership information in practice in line with the standard.
	Federal tax law requiring all single-member foreign-owned LLCs to report and maintain ownership information is very recent, untested, and covers new persons who were previously not required to register and report to the IRS.	The United States should monitor the implementation of the new law to ensure that legal ownership information of all single-member LLCs is available.
Rating: Partially Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

43. As described in the 2011 report, US state laws provide for the creation of corporations and LLCs (with the exception of American Samoa, which does not allow for the creation of LLCs). The table below gives an overview of the number of companies (including LLCs) registered in the four states estimated to have the highest number of incorporated entities and in four other popular states for corporate formation for which these statistics were available:

Number of companies and LLCs registered in selected states

State	Corporation	LLCs	Foreign companies
California	771 990	556 403	94 980
Delaware	287 471	794 693	12 171
Florida	782 932	1 006 719	59 240
Nevada	78 894	167 918	20 325
New York	1 007 517	775 453	200 040
South Dakota	44 514	47 142	33 233
Texas	384 904	781 305	132 768
Wyoming	1 668	5 757	898

44. An LLC with more than one member is by default treated as a partnership for federal income tax purposes. An LLC can also opt to be taxed as a corporation for federal income tax purposes. Because of the hybrid nature of these multi-member entities, combining aspects of both corporations and partnerships, LLCs of this type are generally discussed in this report under section A.1.3 (Partnerships).

45. The 2011 report concluded that legal ownership information in respect of domestic and foreign corporations is required to be available in line with the standard and that these rules are properly implemented to ensure availability of ownership information in practice. There are no changes in the relevant rules or practices in respect of corporations since the first round review.

46. Under the 2016 ToR, beneficial ownership information on companies should be available. The main source of information on beneficial owners is the IRS. Domestic and foreign corporations, including LLCs (regardless of whether the LLC elects or defaults to be taxed as a corporation or as a partnership) are required to provide some beneficial ownership information when registering with the IRS as well as when filing annual tax information, namely by providing the identity of a “responsible party”. However, the definition “responsible party” is not fully in line with the standard, as such not all beneficial owners of an entity are identified. Further, supervision of these obligations is currently not adequate to ensure availability of beneficial ownership in practice. Information on beneficial owners of companies is also available with certain financial institutions (including banks). However, companies are not required to engage these financial institutions.

47. The following table⁴ shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies:

Type	State company law	Federal tax law	AML law
Corporation	Legal – all Beneficial – none	Legal – all Beneficial – some	Legal – some Beneficial – some
LLC (to the extent the LLC elects or defaults to be taxed as a corporation)	Legal – all Beneficial – none	Legal – all Beneficial – some	Legal – some Beneficial – some
Foreign corporation	Legal – all Beneficial – none	Legal – all Beneficial – some	Legal – some Beneficial – some

4. The table shows each type of company and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every company of this type is required to maintain ownership information in line with the standard and that there are sanctions and appropriate retention periods. “Some” in this context means that a company will be required to maintain a portion of this information under applicable law.

Legal Ownership and Identity Information Requirements

48. The 2011 report concluded that legal ownership information in respect of domestic and foreign corporations is required to be available in line with the standard. There are no changes in the relevant rules or practices since the first round review.

49. As described in the 2011 report, all corporations are required under the state laws to maintain records of all their shareholders.

50. In addition, under the federal tax law, certain ownership information must also be reported as part of the income tax return that corporations file (Form 1120, US Corporation Income Tax Return). In particular, corporations must report ownership information, including the identity of any person (legal or natural) that directly owns at least 20% or directly or indirectly owns at least 50% of the total voting power of the corporation. Ownership information on corporations is also collected through reporting requirements related to specific transactions that occur between a corporation and other person or entity (e.g. dividend distributions, payments for services, interest payments and taxable mergers and acquisitions). In particular, any domestic corporation (including any LLC taxed as a corporation) that pays dividends aggregating more than USD 10 in any year to a US non-exempt recipient is required to make a return of such amounts and file that return with the IRS and provide a copy to the dividend recipient. In addition, there are separate reporting requirements for certain payments made to foreign persons.

51. Certain information is also required to be available with state registers and registered agents. However, this does not include complete and updated ownership information. Upon incorporation, companies have to provide their articles of incorporation, which must set forth the name and address of each legal incorporator, as well as the name and address of the entity's registered agent in the state for service of legal process. Companies' annual filings with a state register typically include the principal office address, and the names and addresses of officers, directors and LLC managers or members.

52. The rules described above also apply to foreign corporations with a sufficient nexus to the United States as defined under the 2016 ToR. As concluded in the 2011 report, these obligations ensure that legal ownership information in respect of foreign companies with sufficient nexus with the United States is required to be available. There are no changes in the relevant rules or practices since the first round review.

53. In addition, while the US does not rely exclusively on ownership information gathering performed as a result of financial services, US banking rules and regulations require that CDD be performed and CDD information be made available upon request for all companies that use US financial

institutions. This data complements, and in some cases overlaps, the ownership information collected through the tax system.

54. The US law contains several rules for retention of ownership information on companies. The retention period for information required to be kept based on state law (such as identification of companies' shareholders) is at least three years but may vary based on the state of registration. Ownership information that an entity files with the IRS on tax returns is kept for varying periods as determined by IRS documentation retention rules. The documentation retention rules are separate and apart from the statute of limitations. Partnership returns filed with the IRS are maintained by the IRS for at least six years, and corporate returns are maintained by the IRS for 50 years; much of the information from these returns is retained indefinitely on the IRS Integrated Data Retrieval System (IDRS). Companies are required to keep information for purposes of the federal tax law generally for three years which period can be extended for various purposes, the most notable being substantial omission of income which extends the statute of limitations to six years. Companies, in practice, typically maintain records for at least six years as they may be relevant for future tax assessments or in order to rebut a reassessment of tax. Professional associations often recommend that companies retain records much longer depending on what those records cover. In addition, corporations are subject to minimum record retention rules by virtue of having to defend shareholder actions and other related state-based requests for ownership information.

55. These retention requirements run irrespective whether the company has ceased to exist or conduct business. It is the responsibility of the representatives of the taxpayer or if liquidated of the liquidator to keep the information as required under the law (see also section A.2).

56. It is not clear that the documentation retention rules necessarily cover all companies, in all circumstances, to maintain ownership information for five years as required under the standard. The main statutory rule under the tax law is three years and not all state laws require companies to keep ownership information for five years. As noted by US officials, most companies are likely, in practice, to retain documentation (including ownership information) for at least six years (due to the federal income tax statute of limitations) and the IRS does keep information that it filed with it for more than five years; however, the United States should strengthen its retention requirements in respect of ownership information.

57. It is also noted that although the EOI practice in respect of legal ownership information is generally good, one peer reported two cases where legal ownership information of corporations was not maintained and therefore not provided. The two requests were received in June 2015 relating to investigations for the 2010, 2011, 2012, and 2013 tax years. Both entities were dissolved

in 2014. It is not clear whether the information was not maintained as a result of the documentation retention rules or as a result of a tax return not being filed with the IRS as the two entities involved did not file the required returns in violation of US tax law. Nevertheless, the US EOI Programme did pursue and obtain other useful information from the entities' registered agents which was exchanged with the requesting party.

58. In the case of a breach of the relevant requirements to maintain legal ownership information adequate administrative and, in severe cases, criminal sanctions may be applied under federal and state laws.

Implementation of obligations to keep legal ownership information in practice

59. The 2011 report concluded that relevant legal requirements as they applied to companies were properly implemented in practice and consequently no recommendation was given. There have been no significant changes made in the supervisory and enforcement practice.

60. The main source of legal ownership information in practice is the information filed with the federal tax authorities and the entities themselves.

Practical availability of information with the tax administration

61. Supervision of legal ownership requirements is carried out by the IRS mainly through tax filing obligations and tax audits.

62. The table below sets out the number of federal tax returns filed with the IRS in 2014 to 2016.

Number of federal tax returns filed with the IRS

in thousands (000)

	2014	2015	2016
Individuals	147 445	149 941	160 711
Corporations	2 221	2 216	2 208
Trusts & Estates	3 206	3 203	3 207
Partnerships	3 799	3 883	4 006
S Corporations ^a	4 643	4 717	4 832

Note: a. A corporation that has elected under Subchapter S of the I.R.C. to be taxed as a pass-through entity.

63. The statistics available from the IRS on the number of federal income tax returns filed do not correspond to statistics available from non-IRS sources on the total number of entities and arrangements registered at the

state level (see also the table above in respect of selected states). US officials explained that this discrepancy is likely attributed to a number of key factors. Disregarded entities do not have income tax obligations that are separate from the single-owner of the entity, and groups of related entities can file consolidated tax returns. The filing requirements of a single-member LLC are not tracked separately but are made part of either the individual or entity that is its sole owner. In the cases of a single-person ownership, the LLC is not considered separate and apart from the single owner. For individuals, the LLC is required to be captured on Form 1040; for entities, the LLC would be part of a consolidated Form 1120. This means that there is no one-to-one comparison of the number of entities registered with the number of entity returns filed.

64. The US authorities have stated that IRS statistics on the tax filing rates of entities and individuals that are subsumed by single-member filing, when compared with IRS statistics on the number of entities registered with the IRS, are consistent with the explanation. Accordingly, while there are factors that explain the discrepancy between the total number of entities estimated to be registered at the state level and the number of entities registered and filing with the IRS, the result is that it is difficult to determine with certainty the degree of compliance with entity tax filing requirements.

65. Tax returns are routinely selected for audit based on an automatic scoring system which flags returns with a higher potential for adjustment in examination. Tax returns that are flagged are then reviewed for audit potential. Tax audits, generally, will focus on specific issues and not audit the entire return; however, there are some cases where the entire return will be audited. The IRS does not keep statistics on the number of audits that focused on the availability of legal ownership information. However, ownership information will necessarily be pertinent to the analysis conducted in many entity audits. Evaluation of the accuracy of such information is relevant to, for example, examinations utilising information obtained through FATCA filings. In addition to tax audits, the IRS has introduced a compliance campaign process for large and international taxpayers focusing on current issues of interest. Through this process, the IRS decides which compliance issues present a risk which requires a response in the form of one or multiple treatment streams to achieve compliance objectives.

66. In the IRS' fiscal year 2016, the IRS audited nearly 1.2 million tax returns, representing approximately 0.6% of all returns filed with the IRS for year 2015. This is the lowest percentage of tax returns audited by the IRS in the past decade. For instance, in the 2009 fiscal year, the IRS audited over 1.8 million tax returns, representing approximately 0.9% of all returns filed with the IRS for year 2008. Although the audit rate has decreased, US officials maintain that the IRS has become increasingly adept at identifying potential tax violations, as is evidenced by the increase in the amount of

recovered taxes (see chart below). Further, the IRS carries out other supervisory activities in addition to audits (e.g. issued-based campaigns, soft letters, offshore voluntary disclosure programmes, and semi-automated procedure discussed below). Finally, US officials provide that the US tax system is founded on a long-standing strong rule of law and that substantial civil and criminal penalties are imposed for federal tax violations (see chart below).

67. The IRS carries out other supervisory activities such as the use of the semi-automated procedure to verify tax returns. In addition to receiving information on self-reported income and tax on returns filed by taxpayers, the IRS gathers independent information about income received and taxes withheld from information returns filed by employers and other third parties. With its automated programme, the IRS matches these information returns to tax returns to identify non-filers, construct tax returns based on third-party information, and assess additional tax, interest and penalties (see also section A.2).

68. Taxpayers sign their federal income tax returns under penalties of perjury, declaring generally that they have examined their return, including accompanying schedules and statements, and to the best of their knowledge, it is true, correct and complete, and they are subject to civil fines, imprisonment, or both for providing false information.

69. There are also substantial civil and criminal penalties applied under federal tax law for non-compliance with the tax filing and information reporting requirements of entities and individuals. For fiscal years 2014-16 (ending 30 September each year), the IRS collected the following in additional taxes and penalties (all figures in USD):

Amount of additional taxes and penalties collected by the IRS

	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016
Tax assessments in addition to that indicated on tax return	35.4 billion	35.6 billion	37.4 billion
Additional tax for returns not timely filed	14.2 billion	14.5 billion	12.5 billion
Additional tax on delinquent returns	1.9 billion	2.3 billion	2.3 billion
Civil tax penalties	25.6 billion	24.1 billion	27.3 billion
Total of additional tax assessments and penalties	77.1 billion	76.5 billion	79.5 billion

70. For the same period, the IRS conducted the following numbers of criminal tax investigations and referrals in respect of entities and individuals:

Number of criminal sanctions applied by the IRS

	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016
Criminal tax investigations completed	4 606	4 486	3 721
Criminal tax investigations resulting in referrals to prosecutions	3 478	3 289	2 744
Criminal referrals resulting in indictments	3 272	3 208	2 761
Criminal referrals resulting in convictions	3 110	2 879	2 671
Criminal referrals resulting in incarcerations	2 601	2 498	2 156

Practical availability of information required to be kept by companies

71. States' laws generally require corporations to keep a ledger that shows the name and address of each shareholder, as well as the number and class of shares held by each. This requirement is implemented typically as part of a corporation's legal duty to make a shareholder list available for purposes of its required annual meeting. Further, the company and its representatives are liable for any distribution of dividends where such distribution was improperly made in violation of the statute. As a practical matter, it is difficult to foresee a situation where a company would not be aware of its legal owners, as exercise of shareholders' rights and related legal safeguards in-built in the US law require that legal ownership information is available with a company.

72. In addition to legal safeguards, practical availability of information required to be kept by companies is mainly ensured by supervision undertaken by the IRS through tax reporting and tax audits (see discussion above).

73. Certain monitoring of companies' compliance with their record keeping obligations is carried out indirectly through their filing requirements with state registers (see below).

74. Finally, states require every registered entity to have a registered agent designated in the jurisdiction of organisation. The primary purpose of this requirement is to provide an agent for official service of process, including for delivery of tax and other official notices. While registered agents are not generally required to maintain legal or beneficial ownership information, the corporation is required to provide its registered agent with the name, address, and phone number of a natural person who is an officer, director, employee, or agent of the corporation who is authorised to receive communications from the registered agent. A corporation's failure to provide correct information can constitute an offense that results in the imposition of civil and criminal (e.g. perjury) penalties applied at the state level.

Practical availability of information with the state registries

75. The United States does not have a single national-level business register. Nevertheless, procedures for registration and organisation of companies are generally uniform across all the US states, the District of Columbia and territories.

76. The individual Secretary of State of each state is responsible for monitoring the registration and record maintenance requirements that each legal entity is subject to by virtue of being organised in that particular state or conducting business therein. Generally, these compliance programmes, combined with other mandatory state filings (e.g. payment of registration and excise taxes) and state administrative dissolution actions that are triggered upon an entity's continued non-compliance, play a key part in ensuring that entities comply with state-specific tax and registry requirements. It is nevertheless noted that state registers do not conduct inspections of information kept by companies or registered agents and rely on information provided by the registered entities. Once the information is filed with the register, the information is checked for completeness.

77. In most states, companies are required to file annual reports with the state register. Information provided in an annual return typically includes the principal office address, and the names and addresses of officers, directors and LLC managers or members. According to the US authorities, the level of compliance is considered good. State laws impose late fees on non-compliant entities, and most states will administratively dissolve an entity for failure to timely file an annual report with the Secretary of State.

78. To sum up overall implementation of obligations to keep legal ownership information in practice, availability of legal ownership information is generally adequately ensured through the combination of supervisory and enforcement measures taken by the government authorities and legal safeguards. While the number of entities in respect of which tax returns are filed with the IRS cannot be verified on state level on an entity-by-entity basis, there are factors that explain this discrepancy. Nevertheless, the result is that it is difficult to determine with certainty the degree of compliance with entity tax filing requirements. Moreover, the proportion of taxpayers subject to tax audits appears low (less than 1%). It is acknowledged that the IRS conducts more than 1 million audits per year, the IRS compliance programme is sophisticated and multifaceted and that substantial civil and criminal penalties are imposed for federal tax violations; however, the number of audited companies raises concerns. The United States should therefore strengthen its supervisory and enforcement measures to ensure that legal ownership information is being maintained by companies in line with the standard in all cases. It is nevertheless noted that in addition to tax supervision the availability of legal ownership is supported by vested interest of companies to

keep the information themselves and measures taken at the state level, unlike ensuring the practical availability of accounting information.

Beneficial ownership information

79. Under the 2016 ToR, beneficial ownership on companies should be available. The following sections of the report deal with the requirements to identify beneficial owners of companies and their implementation in practice.

Requirements to identify beneficial owners of companies

80. Beneficial ownership information is primarily required to be maintained by either the IRS or financial institutions pursuant to AML obligations if such financial institution is engaged by the company. Professionals that may be relevant, but are not required, for establishment or administration of a corporation such as lawyers, accountants, auditors and trust and company service providers (other than trust companies) are not subject to comprehensive AML requirements in the United States. With respect to state registries, in general, entities are not required to provide beneficial ownership information as part of the registration or periodic-filing process.

Tax obligations

81. All companies formed in the United States are generally subject to a registration requirement at the federal level under the I.R.C., whereby entities must obtain an EIN from the IRS.

82. Entities must have an EIN if they are subject to a federal tax filing requirement with the IRS, including any information reporting requirements. In general, the IRS assigns an EIN for use by employers, sole proprietors, corporations, partnerships, non-profit associations, trusts, estates, government agencies, certain individuals and other business entities for federal tax filing and reporting requirements.

83. Foreign companies that have a federal tax filing obligation, which generally is triggered if they are engaged in a US trade or business, are required to obtain an EIN and file tax returns. The same rules as described in respect of other companies therefore apply. The concept of being “engaged in a US trade or business” for US federal income tax purposes is very broad and includes having headquarters in the United States or situations where a foreign person has only completed isolated transactions in the United States.

84. EINs are obtained by filing Form SS-4 with the IRS. This form requires the following information: (i) legal and trade name; (ii) mailing address; (iii) county and state where principal business is located; (iv) type

of entity; (v) if a corporation, the state or foreign country of incorporation; (vi) date business was started; and (vii) name and taxpayer identification number (SSN or ITIN)⁵ of the entity’s “responsible party”.

85. Effective with tax year 2017, the definition of “responsible party” has been revised.⁶ According to the new definition, for entities (other than those with shares or interests traded on a public exchange, or which are registered with the SEC, tax-exempt organisations or government entities), “responsible party” is “the person who ultimately owns or controls the entity or who exercises ultimate effective control over the entity. The person identified as the responsible party should have a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. Unless the applicant is a government entity, the responsible party must be an individual (i.e. a natural person), not an entity.”

86. Pursuant to the requirement to identify and report taxpayers’ responsible parties federal tax law ensures that certain beneficial ownership information is available in respect of all relevant entities and arrangements. However, the requirement does not ensure that beneficial owners are identified in all cases in line with the standard.

87. Firstly, the definition applied under the Form SS-4 only requires the identification of one beneficial owner. Secondly, although the requirement to identify an individual who directly or indirectly controls the entity is generally in line with the requirements of the standard, it does not ensure that in cases where, as required by the definition of “beneficial owner” in the 2016 ToR⁷, different individuals exercise control based either on controlling ownership interest or through other means than ownership or based on formal position held within the company, that the individual identified as

5. Only individuals can obtain an SSN and ITIN. Individuals can obtain an ITIN, only after they have been vetted by providing identifying documentation which may include a passport or other foreign-issued identity documents.
6. For tax years prior to 2017, “responsible party” of an entity (other than an entity with shares or interests traded on a public exchange, or which are registered with the SEC, tax-exempt organisations or government entities) was defined as “the individual who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. The ability to fund the entity or the entitlement to the property of the entity alone, however, without any corresponding authority to control, manage or direct the entity (such as in the case of a minor child beneficiary) doesn’t cause the individual to be a responsible party.”
7. See 2016 ToR, footnote 8, as explained through the sources of the standard in respect of that definition set out in para. 21 of 2016 ToR.

the beneficial owner will be the person with ultimate effective ownership or control. The beneficial owner can be identified as the individual holding a formal position within the company (such as senior management official) without a need to verify whether any other individual that exercises control over the company based on controlling ownership interest or through other means. Given the complexity of some ownership and control structures, the requirements of Form SS-4 may frequently lead to identification of the individual holding a formal position within the company as the beneficial owner instead of identification of the individual at the end of the ownership chain or who exercises ultimate effective control through other means than ownership. The concern is further heightened by the lack of explicit requirement to understand the ownership and control structure of the company.

88. Already registered companies and any new companies registered in tax year 2017 and subsequently are required to identify their responsible party in accordance with the new definition. The new definition of responsible party was released to the public on 11 December 2017 as part of the revised instructions to Form SS-4. Any entity thereafter filing Form SS-4, or an update to SS-4 information previously filed, must follow the revised instructions, including the new definition. If the amended definition requires a change of the reported responsible party, the new responsible party has to be reported by the company to the IRS within 60 days of the change in responsible party. The US is unable to ascertain on an aggregate basis the number of SS-4s filed with the responsible party provided.

89. Any subsequent change of the responsible party is required to be reported by the entity to the IRS within 60 days of such change. However, in cases where an individual with ultimate control has changed, but who has not been identified as the responsible party, the change is not required to be reported to the IRS. US officials maintain that in these circumstances, the person identified as the responsible party is still the responsible party and that in those instances where control has changed and has impacted the identification of the responsible party; the entity is required to identify a new responsible party (i.e. beneficial owner).

90. As already described in the 2011 report, entities that fail to obtain an EIN are subject to a number of sanctions under the I.R.C., and other federal law. These sanctions may include administrative fines and criminal penalties in appropriate cases. Also, US officials advise that it would be very difficult for an entity to enter into any financial relationship, accept and/or provide payments without an EIN as the EIN is required to be provided on a number of administrative forms for communication with federal and state authorities. An EIN must be provided to covered financial institutions under AML rules for all legal entity customers establishing a bank account with such an institution. Further, providing incorrect information to the IRS is subject to

sanctions, including those related to the filing of inaccurate tax returns, and the imposition of perjury penalties.

91. In addition to the identification of a responsible party, some information relevant for the identification of beneficial owners is required to be available to the IRS through other tax filing obligations, for instance, through filing of various schedules that are attached to the corporate tax return (Form 1120). As described above and in the 2011 report, these filing requirements contain direct legal ownership information, and in certain cases also indirect legal ownership information as well as identification of representatives of the company. Also in case of foreign-owned US entities with more than one owner, the corporation must report whether any foreign person owns, directly or indirectly, at least 25% of the corporation and for single-member LLCs, the owner of that LLC is identified (see section A.1.3 for further information). However, the scope of relevance of this information will depend on circumstances of the particular case. Therefore these tax rules may not sufficiently cover situations where foreign persons are involved in the ownership chain of domestic entities or where control is exercised through other means than legal ownership.

92. The IRS can also obtain information relevant for identification of beneficial owners from an entity through its information-collection powers, including by issuing a summons to the entity (see discussion in section B.1). Nevertheless, entities are not required to identify and maintain information on their beneficial owners and therefore the information may not be readily available with the entities.

93. To sum up, while the IRS collects some beneficial ownership information, it is not the case that all beneficial owners of an entity, as defined under the standard, are required to be identified under federal tax law in all cases.

AML obligations

94. Where a company engages a financial institution covered by AML and CDD obligations, the financial institution is required to identify the beneficial owners of the company. Covered financial institutions are banks, brokers or dealers in securities, mutual funds, futures commission merchants (FCMs), trust companies operating as a business, and introducing brokers in commodities (IBs).

95. Upon opening an account the financial institution is required to identify its customer which includes identification and verification of the customer's beneficial owner. Pursuant to the BSA regulations, a "beneficial owner" means:

- a. each individual, if any, who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more of the equity interests of a legal entity customer

- b. a single individual with significant responsibility to control, manage, or direct a legal entity customer, including: (a) an executive officer or senior manager; or (b) any other individual who regularly performs similar functions.

96. Requirements to identify beneficial owners of entities under the BSA regulations are to large extent in line with the standard. However, they do not ensure identification of the beneficial owner in some cases. When applying the US rules, each natural person who may control the legal person through 25% or more ownership interest will be identified, as well as a natural person who holds a senior managing position. However, the US rules contain only limited elements to cover situations where beneficial ownership is established through other means than controlling ownership interest or other means than a senior managing position. Further, in addition to the persons identified as exercising control through 25% or more ownership interest, the US rules only require one natural person with significant responsibility to control, manage, or direct the customer to be identified. Proper identification and verification of the beneficial owner may be further hindered by the lack of specific obligation on financial institutions to understand the ownership and control structure of legal entity customers, but financial institutions must monitor such under AML risk-analysis requirements.

97. The requirements on financial institutions to identify beneficial owners of their customers were set forth in the BSA Regulations published in May 2016. Financial institutions must comply with the new rules by 11 May 2018. While the new rules apply to legal entity customers that open new accounts going forward from 11 May 2018, for existing customers the new rules provide that institutions should obtain beneficial ownership information, in the course of their normal monitoring activities, the institution detects information relevant to assessing or re-evaluating the risk of such customer (see further section A.3).

98. The above requirements apply equally in respect of domestic as well foreign companies which open an account with a covered financial institution. As described above, professionals that may be relevant but that are not required for establishment or administration of a company such as lawyers, accountants, auditors and trust and company service providers (other than trust companies) are not subject to comprehensive AML requirements in the United States. As such, there are no requirements on these professionals to identify the beneficial owners of foreign companies with sufficient nexus with the United States. Therefore the AML law obligations do not cover all foreign companies with sufficient nexus with the United States. However, foreign companies with sufficient nexus with the United States are subject to similar federal tax filing requirements as companies formed in the US and are required to provide responsible party information through the SS-4, and other tax filing requirements (see discussion above).

99. In conclusion, in addition to the identification of the company's responsible party under the tax law described above, information on some beneficial owners of a company is required to be available with financial institutions covered under the amended rules of the BSA Regulations. However, companies are not required to engage a financial institution in the United States and the required identification of the beneficial owner does not fully comply with the standard. It is therefore recommended that the US take further measures to ensure that all beneficial owners of companies (i.e. domestic and foreign companies with sufficient nexus with the United States) are identified in line with the standard. It is nevertheless noted that the required CDD obligation of covered financial institutions and the obligation to identify and report taxpayers' responsible parties under the tax law will provide a significant amount of information relevant for the identification of beneficial owners as required under the standard and provide for their appropriate identification in certain cases.

Implementation of obligations to keep beneficial ownership information in practice

100. Practical availability of identification of beneficial owners is to be ensured through implementation of the federal tax laws and AML obligations of covered financial institutions.

Implementation of obligations to identify beneficial owners under the tax law

101. Supervision of obligations under the tax law to file or maintain information relevant for identification of beneficial owners is carried out in the same manner as in respect of other tax obligations described above.

102. Availability of adequate, accurate and up to date information in respect of responsible parties as reported pursuant to SS-4 form is supervised through the filing process of the form. The form can be filed either electronically or in physical form. About 80% of filings of the form are done electronically. If the form is filed electronically, the IT application for completing the form ensures that a name of the responsible party is provided in all cases.

103. The current supervisory mechanism is not adequate in three aspects:

- it is not ensured that correct and complete identification of the responsible party is provided in all cases – it is not ensured that the name of the responsible party relates to an individual. Further, the form can be filled out without providing the responsible party's tax identification number and if the number is provided there are limited verification mechanism to ensure that it is actually an existing tax identification number

- no verification mechanism or procedure exists to check whether the identification of the responsible party provided by the taxpayer is correct, i.e. whether the person reported in the form is actually identified in line with the definition of the responsible party
- no supervisory mechanism is yet implemented to ensure that a person updates their responsible party information.

104. Sanctions have not yet been applied for failing to provide responsible party information or failing to update such information. The US authorities have acknowledged the gaps with the new requirements and are exploring a range of potential solutions.

105. To sum up, appropriate measures are not being undertaken to ensure practical availability of the beneficial ownership information in all cases. Therefore, it is recommended that the US strengthen its measures to ensure the availability of beneficial ownership information on companies (i.e. domestic companies and foreign companies with sufficient nexus with the United States).

Implementation of obligations to identify beneficial owners under the AML law

106. The financial institutions' obligations under the AML law, including their CDD obligations, are supervised by federal and state regulatory authorities as described in section A.3.

107. The requirement to identify beneficial owners of financial institution's account-holders has to be implemented by 11 May 2018. Supervision of the new rules will be carried out by the federal and/or state regulatory authorities. It is expected that supervision of the beneficial ownership requirements will be carried out as part of the regulatory authorities' supervisory activities (see further section A.3).

ToR A.1.2. Bearer shares

108. The 2011 report concluded that none of the 50 states allow for the issuance of bearer shares. There has been no change in this respect since the first round review. Also, although not specifically indicated in the 2011 report, the District of Colombia and the five US territories also prohibit the issuance of bearer shares.

ToR A.1.3. Partnerships

109. All US states allow for the creation of general partnerships and limited partnerships. Also, many states allow for the creation of limited liability partnerships (LLPs). Following the same approach as taken in the 2011 report, LLCs are dealt with for the purposes of this report under the heading of partnerships.

Identity of Partner Information Requirements

110. The 2011 report concluded that ownership information in the case of partnerships was required to be available in any case where the partnership was subject to federal tax filing requirements. This would be the case for all partnerships formed under US law or that carry on business or has income, deductions, or credits for US federal income tax purposes. There are no changes in the relevant rules since the first round review. The 2011 report identified a gap in respect of legal ownership information of single-member LLCs. Since then the United States has taken steps to address the issue.

111. As described in the 2011 report, ownership information is reported to the IRS as part of the standard annual tax return that domestic partnerships and foreign partnerships that have US income, deductions, or credits for tax purposes are required to file (Form 1065). All the partners of a partnership are identified in Schedule K-1 of this form.

112. Except for general partnerships, all other partnerships (limited partnerships, limited liability partnerships and limited liability limited partnerships) are required to file their formation certificate including identification of their general partners with the relevant state's Secretary of State in which the partnership is formed. Partnerships are generally required by state law⁸ to update this information either on an annual basis or upon a change in the general partners.

113. Identification of partners in a partnership is required to be available also with the partnership in order to meet the various tax reporting requirements with respect to ownership information as described above. In addition, state laws typically require that the partnership have available, upon the request of any partner, the full name and address of each partner.

114. The same retention requirements apply to partnerships under the tax law as in respect of other types of entities. The retention requirement of information required to be kept by the partnership under the tax law follows the

8. The Uniform Partnership Act has been adopted by almost all states, including California, Delaware, Florida, Nevada, Pennsylvania, South Dakota, Texas and Wyoming.

statute of limitations which is generally three years but can be extended. The possibility of an extension typically results in retention of the relevant information for at least six years (see further section A.1.1 and A.2) which is also how long the IRS is required to keep this information under record-retention rules, and the IRS retains much of this information indefinitely in electronic form. In addition, retention rules are contained in state laws, and partnerships are subject to minimum record retention rules by virtue of having to defend partners' actions and other related state-based requests for ownership information. These retention requirements run irrespective whether the partnership ceased to exist or conduct business. It is the responsibility of the representatives of the partnership, or if liquidated of the liquidator, to keep the information as required under the law. The combination of the above retention rules contained at the state and federal level generally ensure that the ownership information is required to be kept for at least five years and irrespective whether the partnership ceased to exist. However, as with companies, it is not clear that the documentation retention rules necessarily cover all partnerships, in all circumstances, to maintain ownership information for five years as required under the standard. As noted by US officials, partnerships typically retain documentation (including ownership information) for at least six years (due to the federal income tax statute of limitations) and the IRS keeps information that it is filed with it for at least six years; however, the United States should strengthen its retention requirements in respect of ownership information.

115. Adequate sanctions are applicable under the federal tax law in the case of breach of the relevant rules. These sanctions include administrative as well as criminal penalties for wilful acts. For instance, failure to file a return (including Form 1120) incurs a penalty up to 25% of the tax owed (I.R.C. §6651). Where a false corporate tax return is filed wilfully, criminal penalties of up to USD 500 000 and three years of imprisonment may be imposed (I.R.C. § 7206). Further sanctions are provided under state laws.

Legal ownership requirements in respect of LLCs

116. LLCs with more than one member are taxed either as partnerships or as corporations. The income of LLCs with more than one member is generally not taxed directly, but as with partnerships, is passed through to the owners to the extent the LLC does not elect to be taxed as a corporation. The same federal tax rules as described above apply in respect of LLCs with more than one member as in respect of partnerships or corporations. As concluded in the 2011 report, these rules require the availability of legal ownership on these entities in line with the standard.

117. For federal tax purposes, an LLC with only one member is disregarded as an entity separate from its member, unless that entity makes an

affirmative election to be classified as a corporation. Where the LLC is disregarded as an entity, then the owner is treated as owning the LLC's assets directly and the LLC's income and other tax information will be subject to reporting on the member's own income tax return. This return collects legal ownership information, including the member's name, address, identifying number (SSN, ITIN or EIN), country of citizenship, and country of tax residence. Prior to 2017, if the single member was not a US citizen or resident or was a foreign corporation, and if that member had no US-source income or income effectively connected with the conduct of a US trade or business, the member (and the LLC) may not have been subject to an income tax return filing requirement with the IRS. Consequently, the 2011 report concluded that the United States should take all necessary steps to ensure that information concerning the owners of single-member foreign-owned LLCs is available.

118. In order to address this gap, the United States issued new regulations. Effective for taxable years that begin after 31 December 2016, all single-member LLCs considered for tax purposes as disregarded entities that are wholly owned by one foreign person are required to report ownership and transactional information to the IRS (T.D. 9796, 81 F.R. 89849 (13 December 2016), 2017-3 I.R.B. 380). Under these rules, such entities are treated as domestic corporations separate from their owners for the limited purpose of the reporting, record maintenance, and associated compliance requirements that apply to 25% foreign-owned domestic corporations. Accordingly, while under previous law, a single-member foreign-owned LLC with no US tax nexus could have no reporting obligations to the IRS, it is now required to register with the IRS (by obtaining an EIN though completing SS-4 form) and is subject to tax filing requirements. Under the new filing requirements, LLCs are required to file Form 5472 (Information Return of a 25% Foreign-Owned US Corporation or a Foreign Corporation Engaged in a US Trade or Business), which includes identification of their foreign owner and transactional information.

119. The amendments ensure that legal ownership information on all LLCs, including single-member foreign-owned LLCs, is required to be available in line with the standard.

Implementation of obligations to keep partner information in practice

120. The 2011 report did not identify an issue in respect of implementation of the relevant rules in practice and concluded that they are properly implemented to ensure availability of the relevant information in practice. There has been no relevant change in the United States practice in this respect.

121. The main source of legal ownership information in practice is the information filed with the federal tax authorities and the entities themselves.

Implementation of the relevant obligations is ensured in the same way as in the case of companies, mainly through tax filing obligations and audits. Consequently, the concerns regarding the tax filing rate and low proportion of partnerships subject to a tax audit also arise here (see further section A.1.1). As such, the United States should strengthen its supervisory and enforcement measures to ensure that legal ownership information is being maintained by partnerships in line with the standard in all cases.

122. The new requirements imposed on single-member foreign-owned LLCs are implemented through already existing supervisory and enforcement measures. However as these changes are very recent (i.e. effective for taxable years that begin after 31 December 2016) and cover new persons who were previously not required to register and report to the IRS, the United States is recommended to monitor the implementation of the new law to ensure that legal ownership information is available in respect of all single-member LLCs.

123. One peer reported two EOI cases where legal ownership information in respect of two LLCs was not provided or provided only partially. It is understood that causes of these two failures related to the issues described above and therefore measures to address them have been taken (i.e. an obligation to keep legal ownership information in respect of all LLCs) or are recommended (i.e. measures to improve practical availability of the ownership information).

Beneficial ownership information

124. As in the case of companies, the main source of beneficial ownership information on partnerships, including LLCs that default as partnerships, is requirements under the federal tax obligations.

125. Partnerships and LLCs must initially register with the IRS by obtaining an EIN associated with the entity by filing Form SS-4. This form requires identifying the entity's "responsible party". As pointed out in section A.1.1, the requirement to identify an individual who directly or indirectly controls the entity is generally in line with the standard. However, the definition of "responsible party" does not ensure that in cases where different individuals exercise control based on controlling ownership interest, through means other than ownership or based on formal positions held within the partnership, the person identified as the "responsible party" will be the person with ultimate effective ownership or control. Also, as pointed out in section A.1.1, the definition of the responsible party as applied under the Form SS-4 collects only one beneficial owner and consequently not all beneficial owners of a partnership may be identified.

126. The above requirements apply equally in respect of domestic as well as foreign partnerships that have income, deductions or credits for tax purposes in the United States or carry on business therein.

127. As in the case of companies, beneficial ownership information is required to be available with covered financial institutions if engaged by the partnership. However, as discussed in section A.1.1, covered financial institutions are required to identify each natural person who controls directly or indirectly the legal person through 25% or more ownership interest via any contract, arrangement, understanding, relationship, or otherwise, as well as a natural person who holds a senior managing position. However, the US rules contain only limited elements to cover situations where beneficial ownership is established through other means than controlling ownership interest or a senior managing position. Further, the US rules only require one natural person with significant responsibility to control, manage, or direct the customer to be identified. As such, the conclusions made under section A.1.1 apply.

128. In view of these considerations, it is recommended that the United States take appropriate measures to ensure that all beneficial owners of a partnership (i.e. either a domestic partnership or a foreign partnership that have income, deductions or credits for tax purposes in the United States or carry on business therein) are identified in line with the standard.

Implementation of obligations to keep beneficial ownership information in practice

129. Implementation of the rules concerning availability of beneficial ownership information is to be supervised in the same way as in the case of companies.

130. As discussed in section A.1.1, appropriate measures are not being undertaken to ensure practical availability of the beneficial ownership information through the SS-4 filing requirements in all cases. Therefore, it is recommended that the United States strengthen its measures to ensure the availability of beneficial ownership information on partnerships (i.e. either domestic partnerships or foreign partnerships that have income, deductions or credits for tax purposes in the United States or carry on business therein) in this respect.

131. In respect of EOI practice during the period under review, a peer reported one case where beneficial ownership in respect of a LLC was not satisfactorily provided (only the list of managers was available). Measures are recommended above to address this concern. It is acknowledged that this concern was only in relation to one case out of the 562 EOI requests the US received that sought ownership information.

ToR A.1.4. Trusts

132. Trusts can be created under the state laws of the United States.

Identification of Settlor(s), Trustee(s) and Beneficiary(ies) Requirements

133. The 2011 report determined that ownership information of trusts (i.e. identification of the settlor, trustee and all beneficiaries) is required to be available in line with the standard. There are no changes in the relevant rules since the first round review.

134. Availability of information on trusts is mainly based on federal tax law and obligations of the trustee under the state law and common law principles. Under both common law applicable to US trusts and the statutory law of each state, a trustee owes fiduciary obligations to the trust beneficiaries. In order to fulfil its fiduciary duties in respect of trusts, a trustee must generally know the identity of any other trustee, settlor(s), all beneficiaries, and any other person who exercises control over the trust. Those fiduciary obligations include, without limitation, the duty to administer the trust in the best interest of the beneficiaries, the duty of loyalty to the beneficiaries, the duty of prudent administration, the duty to keep records of the administration of the trust and the duty to account to the beneficiaries with regard to each action and transaction of the trust. While the obligation to identify the beneficiaries and other persons who exercises control over the trust and keep this information current is not expressly stated in US codified law, it is implied through other formal fiduciary obligations and case law, as well as in the Uniform Trust Code which codifies the common law of trusts or the trust law of each state providing for fiduciary duties similar to those of the Uniform Trust Code. Thus, this obligation is enforceable because it would not be possible for trustees to satisfy any of these fiduciary obligations without knowing the identity of all such persons. A trustee's breach of any of these duties subjects the trustee to sanctions and the obligation to pay damages to the beneficiaries.

135. As described in the 2011 report, further identifying information on the trustee and beneficiaries is required to be available based on the federal tax rules covering domestic and foreign trusts. In the case of a domestic trust, the trustee is required to file the appropriate tax form(s) with the IRS, including Form 1041, US Income Tax Return for Estates and Trusts, and Form 56, Notice Concerning Fiduciary Relationship. In the case of a foreign trust, Form 3520-A, Annual Information Return of Foreign Trust with a US Owner, must be filed with the IRS. Together, these forms include identification of the trustees and all beneficiaries that have received distributions. While these forms typically do not include identification of the settlor, may not include all of the beneficiaries, and would not include other persons who exercise control

over the trust, the trustee would be required to maintain this information in order to fulfil fiduciary obligations under the common law.

136. Under AML laws, a covered financial institution must identify trustees who open an account on behalf of a trust. In addition, trust companies are considered financial institutions and are covered by the new BSA Regulations. However, as noted above, trust service providers (other than trust companies) are not covered by AML obligations. The new BSA Regulations establish a requirement for financial institutions located in the United States to identify and verify the beneficial owner(s) of their legal entity customers. However, while these rules require the identification of trustees, they do not require identification of the settlor of the trust and beneficiaries of the trust. The same rules apply to covered financial institutions (such as banks) if a trust opens an account with covered institution in the United States. In that case the financial institution is required to identify the trustee of the trust but not the settlor and the beneficiaries (see further below and section A.3). In practice, financial institutions obtain all or parts of the trust document prior to establishing a financial relationship with a trust, and that information will identify the settlor/grantor, trustee, name and date of the trust and the trustee's powers.

137. The same record retention requirements apply to trustees under the federal tax law as in respect of other types of taxpayers, as discussed in section A.1.1. That is, trusts are required to maintain information for purposes of federal tax law for at least three years and up to six years with respect to tax filings made to the IRS. The IRS is also required by documentation retention rules to maintain trust tax returns for six years (and much of the information from these returns is retained indefinitely on IDRS), and covered financial institutions are required to maintain records under AML laws for at least five years. In addition, in order for a trustee to properly administer a trust in accordance with state law and in compliance with the trustee's fiduciary obligations, the trustee would be required to retain information regarding the settlor, trustee, beneficiaries, and any other person who exercises control over the trust for at least several years after the death of each such persons and for several years after the termination of the trust. The exact period depends on particular circumstances of the trust but normally the trustee keeps the information for at least five years after the termination of the trust, as was also confirmed by the US authorities. In view of all these obligations, trust ownership information should be maintained for at least five years after the trust ceased to exist.

138. Adequate sanctions and enforcement provisions are applicable under the federal tax law, state law as well as common law. For instance under the federal tax law, failure to file a return incurs a penalty up to 25% of the tax owed (I.R.C. §6651); in cases of negligence or substantial understatement of tax there is an addition to tax of 20%; and in cases of civil fraud, the addition is 75% (I.R.C. §6662 and §6663).

Implementation of obligations to keep trust ownership information in practice

139. The 2011 report concluded that relevant legal requirements as they applied to trusts were properly implemented in practice. There has been no change in practice since this report.

140. The main source of ownership information on trusts in practice is the information filed with the federal tax authorities and the trustees themselves. Supervision and enforcement of trustees' obligations under the tax law is the same as in respect of other persons as described in section A.1.1. For the 2016 fiscal year, 0.1% (3 284) of all estate and trust income tax returns were audited. The concerns outlined in section A.1.1 regarding the tax filing rate and low proportion of trusts subject to a tax audit also arise here and therefore the United States should strengthen its supervisory and enforcement measures to address them; however, US authorities have pointed out that most trusts have an account with a financial institution and consequently also are subject to AML enforcement. Certain enforcement of fiduciary duties is also possible under the state law and common law. However, this will require active enforcement of these duties by the beneficiaries and therefore does not represent adequate enforcement mechanism in all cases. As a practical matter, the availability of legal ownership information on trusts has not posed any problems for exchange of information purposes during the reviewed period as confirmed by peers.

Beneficial ownership information

141. Availability of beneficial ownership information on trusts is based mainly on obligations under federal tax law and formal fiduciary obligations imposed on trustees under common law principles, case law, and the Uniform Trust Code, which codifies the common law of trusts (or under the state's equivalent trust law). All domestic trusts (with a few limited exceptions, such as a grantor trust⁹), foreign trusts with a financial presence in the US (such as holding a bank account with a US bank) and foreign trusts with a US tax liability or with a beneficiary that has a US tax liability are required to obtain an EIN for the trust by filing Form SS-4 with the IRS. The EIN must be provided to each financial institution or other entity in order to open a bank account or purchase property in the name of a trust.

142. As discussed in section A.1.1, the Form SS-4 requires identification of a responsible party. The definition of "responsible party" as it applies to trusts is a grantor, owner, or trustor. Further, the trustee is identified separately

9. Grantor trusts have the option of using the grantor's SSN, rather than the trust's EIN, for federal tax reporting and filings.

on Form SS-4, as well as on Form 56, Notice of Fiduciary Relationship. Beneficiaries can be identified through other federal tax filing requirements such as upon distribution of trust assets on Form 1041, US Income Tax Return and Estates and Trusts. Although information on parties of a trust will normally be available to the IRS, there are no explicit obligations under federal tax law to identify all beneficial owners of a trust including any other natural persons exercising ultimate effective control over the trust.

143. While there is no explicit obligation either in common or state law that obliges trustees to gather and retain beneficial information as defined by the standard, as described above, the trustee is required under state law, common law principles, case law, and the Uniform Trust Code to know the settlor, beneficiaries, and any person who exercises control over the trust, in order to comply with his/her duties. However, these obligations do not require the trustee to identify any other natural person exercising ultimate effective control over the trust including through a chain of control/ownership, i.e. there is no obligation for the trustee to identify the natural persons behind an entity or arrangement (which can be a settlor, beneficiary or in other relation to the trust) exercising ultimate effective control over the trust.

144. As already noted above, certain beneficial ownership information may also be held by financial institutions (including trust companies) pursuant to AML obligations. However, while the US AML rules ensure identification of trustees (who can then identify settlors, beneficiaries, and any other person who exercises control over the trust), the AML rules do not ensure identification of beneficial owners of account-holders which are trusts. According to the US AML rule, a trustee is considered to be the legal as well as beneficial owner of a trust and covered financial institutions are required to verify the identity of such trustee. In practice, financial institutions obtain all or parts of the trust document prior to establishing a financial relationship with a trust that identifies the trustees and any other person involved with the trust's powers. However, there are no explicit obligations imposed on covered financial institutions to identify and verify the identity of settlor(s), protector(s), the beneficiaries or classes of beneficiaries and any other trustee or natural persons exercising control over the trust property, as is required under the standard. Nevertheless, these obligations are imposed under state fiduciary obligations on trustees and some beneficial ownership information on trusts is available with the IRS.

145. To conclude, the US law requires identification of the settlor, the trustee, beneficiaries, and any person who exercises control over the trust through a combination of obligations imposed primarily under the state law, federal tax law, and common law. Trustees of trusts with a sufficient US nexus or trusts having an account with a covered financial institution (including banks and trust companies) are required to be identified based on the federal tax law and AML obligations. However, none of these obligations

explicitly requires identification of all the beneficial owners of trusts as required under the standard (i.e. including the identity of any other natural person exercising ultimate effective control over the trust through a chain of entities or arrangements). It is therefore recommended that the US take appropriate measures to ensure that all beneficial owners of a trust are required to be identified, in line with the standard.

Implementation of obligations to keep beneficial ownership information in practice

146. Practical availability of the identification of beneficial owners of trusts is ensured primarily through supervision of the federal tax law obligations. Supervision of the obligation to identify and report the responsible party of a trust is carried out in the same manner as in respect of other types of taxpayers. As discussed in section A.1.1, these supervisory measures are not adequate to ensure practical availability of the beneficial ownership information in all cases and therefore improvement is recommended.

147. Information on trustees should be also available with covered financial institutions pursuant to AML rules. These rules have to be implemented by 11 May 2018. It is expected that supervision of the beneficial ownership requirements will be carried out as part of the regulatory authorities' supervisory activities (see further section A.3).

148. Certain enforcement of fiduciary duties is possible under the state law and common law. In practice, trustees will need to know all the persons with decision-making authority over the trust in order for them to fulfil their fiduciary obligations. However, this will require active enforcement of these duties by the beneficiaries and therefore may not represent adequate enforcement mechanism in all cases.

149. In practice, the US EOI statistics indicate that implementation of obligations to keep beneficial ownership information on trusts is not a concern and no peers have raised any issue in this regard. All requests received during the review period concerning trusts were responded to fully. Therefore, it appears that the gap identified above is of limited scope and has not impacted exchange of information practice during the review period.

ToR A.1.5. Foundations

150. The 2011 report concluded that it is not possible to form a foundation in the United States as a distinct legal entity, by that name. Organisations may be referred to as “foundations”; however, these are frequently formed as companies or trusts and are subject to the rules described above. There has been no change in this respect since the first round review.

A.2. Accounting records

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

151. The 2011 report concluded that the legal and regulatory framework and its implementation in practice generally ensure the availability of accounting information in line with the standard. The United States was however recommended to introduce an obligation to maintain accounting information with respect to single-member foreign-owned LLCs.

152. In order to address the recommendation, the United States issued regulations in 2016, effective for taxable years beginning after 31 December 2016. Under these new regulations, these LLCs are now required to apply for an EIN (using Form SS-4) and annually file Form 5472, which report ownership and transaction information, with the IRS. These LLCs are also required to maintain accounting records sufficient to enable appropriate filing of these forms which require them to keep accounting records in line with the standard. As these rules are very recent and cover new persons who were previously not required to register and report to the IRS, the United States is recommended to monitor their implementation in practice.

153. Implementation of accounting requirements in practice is ensured mainly through the IRS's system of tax audits and tax filing obligations. Tax audits generally target specific issues and will not typically examine the entire return; however, where accounting records are examined as part of the audit, the quality of these records is evaluated to determine the degree of reliance that can be placed on them in assessing tax compliance. It is normal IRS practice for a tax examination to evaluate a taxpayer's internal controls for purposes of determining the accuracy and reliability of a taxpayer's books and records. Availability of accounting records is also indirectly supervised by tax filing requirements as accounting information has to be maintained for purposes of filing the annual corporate and partnership income tax returns, as well as the annual reporting of transactional information on other tax returns, such as Form 5472.

154. Although supervisory and enforcement measures are in place, they do not ensure availability of accounting information (including underlying documentation) in all cases. The number of federal income tax returns filed with the IRS does not correspond to statistics available from non-IRS sources on the total number of entities and arrangements registered at the state level. While there are factors that may explain the discrepancy, the result is that it is difficult to determine with certainty the degree of compliance with tax filing requirements. Moreover, although the IRS carries out significant number of supervisory activities, the proportion of taxpayers subject to tax

audits appears low and it is not clear to which extent these supervisory activities verify the availability of accounting information, including underlying documentation. The United States is therefore recommended to strengthen its measures to ensure that accounting information is being maintained by relevant entities (including single-member LLCs) and arrangements in line with the standard in all cases.

155. During the review period, the United States received 1 037 requests that included a request for accounting information of one or more entity types. Of these requests, 669 related to corporations, 62 to partnerships, 238 to LLCs, six to charities, 291 to individuals and 23 to trusts. The requested information is in the majority of cases obtained from the respective entity unless it is contained in the person's tax return. The United States provided full or partial responses to 91% of the received requests that included a request for accounting information. In the 30 (22%) of the 134 cases where the United States did not exchange accounting information, LLCs were among the entities involved in the request. US authorities indicate that because of legal changes resulting in a new filing requirement (Form 5472) for these entities, the cause of these failures has been addressed. Although peers cited delays in obtaining accounting records from the United States, no specific concerns in respect of the availability of accounting information were reported except for two peers. The two peers pointed at a few cases where the requested accounting information was not provided because it was not available any more with the obligated entity (see further section C.5).

156. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		

Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Federal tax law subjects all single-member foreign-owned LLCs to tax filing obligations and requires them to maintain accounting information. These requirements are very recent and cover new persons who were previously not required to register and report to the IRS.	The United States should monitor the implementation of the new requirements to ensure that accounting records and underlying documentation of all single-member foreign-owned LLCs are available.
	Although the IRS carries out significant number of supervisory activities, the extent to which they ensure availability of accounting information is not clear, particularly in respect of underlying documentation.	The United States should strengthen its measures to ensure that accounting information is being maintained by relevant entities (including single-member LLCs) and arrangements in line with the standard in all cases.
Rating: Largely Compliant		

ToR A.2.1. General requirements and A.2.2 Underlying documentation

157. The 2011 report concluded that the United States' legal and regulatory framework generally ensures the availability of accounting information in line with the standard.

158. The main source of accounting obligations in the United States is the federal tax law. Other federal law and state law provisions are also relevant.

159. As described in the 2011 report, corporations, partnerships and LLCs must provide, as a schedule to their annual tax return, a balance sheet that agrees with their books and records, as well as a schedule that reconciles their income or loss per their books of account with income per their annual return. Domestic and foreign corporations, domestic and foreign partnerships, and LLCs classified as either a corporation or partnership (excluding single-member foreign-owned LLCs with no US income tax filing

requirement) are required to maintain books and records at all times available for inspection by authorised IRS personnel. These books and records must correctly explain all transactions, enable the financial position to be determined with reasonable accuracy at any time and allow financial statements to be prepared. The tax law requirements are further supported by state laws. “Appropriate” records for the purposes of state laws are generally records that permit financial statements to be prepared which fairly present the financial position and transactions of the corporation. The accounting obligations of single-member foreign-owned LLCs are discussed below.

160. Accounting obligations of domestic trusts and of foreign law trusts having a US resident trustee continue to be in line with the standard. In order to properly administer the trust in accordance with state law and the trustee’s fiduciary obligations, the trustee must maintain adequate books and records. Even where a trust is created pursuant to foreign law, the administration of the trust may be governed by the law of the state in which the trust is administered, which is often considered to be the state where the trustee is resident. Further, the trust may be considered a domestic trust for federal income tax purposes and therefore covered by accounting obligations similar to those described above in respect of legal entities.

161. The 2011 report indicated that there may be limited circumstances where a trustee resident in the US acting as the trustee of a foreign trust was not subject to any US rules regarding the maintenance of accounting information and the United States was recommended to consider whether any refinements are necessary. No changes to the relevant legal provisions have been introduced since the 2011 report. Nevertheless, it is noted that the trustee in these circumstances would be subject to the jurisdiction of a US court and the IRS summons power, as well as the requirement to file an FBAR. As a practical matter, the availability of accounting information in the possession or control of a US resident trustee of a foreign trust has not posed any problems for exchange of information purposes during the period under review as was also confirmed by peers. The US does not maintain statistics on the number of EOI requests that relate to a foreign trust with a US resident trustee; however, the United States has indicated that it received 34 requests during the review period that related to a foreign trust, of which 30 also related to a US trust. Therefore it appears that the potential gap is of very limited scope (if any) and does not impact exchange of information practice.

162. The 2011 report identified a legal gap with respect to single-member foreign-owned LLCs. These LLCs had no tax filing obligation with the IRS because, as disregarded entities, they did not themselves incur income tax liability; rather, their income flowed through to their foreign owner. As these LLCs were not subject to any US reporting requirements, these entities were not subject to the I.R.C.’s general record maintenance requirement.

163. In order to address this gap, the United States amended its federal tax regulations in 2016, effective for taxable years that begin after 31 December 2016, to treat a single-member foreign-owned LLC as a domestic corporation separate from its owner for the limited purpose of the reporting, record maintenance, and associated compliance requirements that apply to other reporting corporations. Single-member foreign-owned LLC are now subject to two obligations. First, these LLCs are required to annually report ownership and transactional information on Form 5472. Form 5472 requires a description of all monetary and non-monetary transactions between the reporting corporation and any foreign related party, and its principal business activity, relationship, and principal countries where business is conducted. The second obligation on these LLCs is to maintain all information, documents, and other records relevant to determining the correct US tax treatment of transactions with foreign related parties. To be deemed sufficient, such records must include (i) original entry books and transaction records; (ii) cost data from which the reporting corporation can compile and supply within a reasonable time, material profit and loss statements with respect to US-connected products or services; (iii) pricing documents; (iv) financial documents filed with financial institutions or foreign governments; (v) ownership and capital structure records; (vi) records of loans, services and other non-sales transactions; and (vii) records relating to conduit financing arrangements. Reporting corporations are required to maintain accounting records within the United States, unless the entity is able, within 60 days of a request by the IRS, to deliver the records to the IRS or move the records to the United States in the control of an identified custodian at an identified location. Therefore all single-member foreign-owned LLCs are now subject to federal tax filing requirements, are associated with an EIN and must maintain accounting records in line with the standard.

164. As provided in the 2011 report, for federal income tax purposes, the basic rule is that taxpayers are required to retain the required accounting books and records so long as the contents thereof may become material in tax administration. The generally applicable period of limitations for assessment is three years from the date the return is due, or if the return is filed after the due date, three years from the date the return is actually filed. However, the period of limitations for assessment on individual tax items (e.g. credits, deductions, etc.) is often greater than three years. In particular, if there is a substantial omission from gross income on the return. In such a case, the period of limitations for assessment is six years. As noted in section A.1.1, the IRS keeps entity returns for at least six years and as long as 50 years, depending on the entity type, the IRS keeps some return information indefinitely on an electronic basis. Because these returns could be used as evidence against a taxpayer, taxpayers are incentivised to keep any records beyond minimum retention periods.

165. The 2011 report concluded that although the rule under US tax law provided that underlying documents must be maintained for so long as the contents thereof may become material in tax administration, an express rule requiring the maintenance of underlying documentation for five years was absent. While a balance sheet and income statement were reported to the IRS with each annual return, the consequences for choosing not to maintain other underlying accounting information would in some cases depend on the circumstances of that case. The report provided that the United States should consider whether its federal income tax rules that require the maintenance of underlying documents for so long as the contents thereof may become material in tax administration ensure effective exchange of information.

166. The same retention requirements under the federal tax law apply also in respect of entities or arrangements which cease to exist. Generally, federal tax obligations continue to apply to entities that cease to operate, including because the entity is dissolved, wound down, or struck off the register. Therefore legal successors or former representatives of entities that cease to operate are required to retain records for as long as there is a possibility of a tax liability.

167. In addition to the federal tax rules, separate record retention requirements are contained under state laws. Each state has separate record retention requirements which determine who is responsible for maintaining such information. For instance, in the case of winding down an entity, the directors or officers may be held responsible for retention of records. Where an entity is liquidated because of a merger or a successor interest, state law identifies who is the successor responsible for maintaining information.

168. No changes have been made to the relevant federal tax law since the 2011 report. Further, a few concerns regarding the retention of accounting records arose during the period under review. Two peers reported that the requested accounting information was not provided because it was not available any more. One peer pointed out that in some cases only partial information was provided due to the retention periods for records in the United States which generally provide for the retention period of three years. The other peer reported one case where the IRS was unable to provide accounting records for an inactive LLC (see also below section on implementation of accounting requirements in practice). As it appears that the existing retention rules do not necessarily ensure that accounting information (including underlying documentation) is retained for five years as required under the standard in all cases, the United States should strengthen its retention rules to address this concern. It is nevertheless noted that the circumstances where retention of accounting documents may not be required are rather limited, as accounting records could not be provided in only two cases during the review period and there are incentives for taxpayers to retain records, including

underlying documentation, for at least six years because of the possible assertion of a substantial omission from gross income by the IRS which extends the period of limitations and further retention rules are provided under state laws which can address the gap in certain cases.

169. Failure to maintain accounting records is subject to a wide range of civil and criminal penalties which provide for sufficient enforcement in cases of non-compliance. As described in the 2011 report, the Internal Revenue Code sets forth more than 100 different civil and criminal penalties the IRS can impose for a wide variety of taxpayer delinquencies. Further sanctions are provided under state laws.

Implementation of accounting requirements in practice

170. The 2011 report did not identify an issue concerning the implementation of accounting requirements in practice.

171. Supervision of accounting requirements (including maintenance of underlying documentation) is carried out mainly through a system of tax audits, self-reporting, whistle-blower programmes, and other compliance-based initiatives that ensure tax filing obligations are complied with. US authorities also note that the US tax system is well-established and founded on a long-standing strong rule of law, which combined with resulting behavioural norms, ensures positive rates of voluntary compliance with federal income taxation laws.

172. Accounting information has to be filed with the annual corporate and partnership income tax returns, as well as the annual reporting of transactional information on other tax returns, such as Form 5472. As detailed in section A.1, the IRS receives annually about 7 million tax returns of companies, 4 million in respect of partnerships and 3.2 million tax returns of trusts (and estates). It is difficult to conclude on the proportion of companies, partnerships and trusts registered in the United States which file their tax returns as legal entities and arrangements are registered on the state level and there are no official statistics concerning filings to state registrations that are kept on a federal basis. While there are factors that explain the discrepancy between the total number of entities estimated to be registered at the state level and the number of entities registered and filing with the IRS, the result is that it is difficult to determine with certainty the degree of compliance with entity tax filing requirements.

173. Tax audits generally focus on specific issues where a tax risk is identified. However, there are some audits where the entire return and underlying documents will be audited. Where accounting records are examined as part of the audit, the quality of these records is evaluated to determine the degree of reliance that can be placed on them in assessing tax compliance. The IRS does not keep statistics on the number of audits that focused specifically on the availability of accounting information. US authorities have stated

that it is very unusual to have an audit where the availability or accuracy of accounting information is not at least implicitly at issue. Where the taxpayer does not have records that justify positions taken, adjustments are made accordingly. It is standard IRS practice for a tax examination to evaluate a taxpayer's internal controls for purposes of determining the accuracy and reliability of a taxpayer's books and records and, to this end, examiners must familiarise themselves with a taxpayer's day-to-day operations with respect to customers, suppliers, management, sales, work performed, pricing, location, employees, assets used, production and record-keeping (see e.g. I.R.M. 4.10.3.5 and I.R.M. 4.10.3.5.3.2).

174. It is expected that supervision of accounting obligations of entities or arrangements that have a limited tax link with the United States is not that frequent despite having sufficient nexus with the United States under the standard. Typically in these cases where the information is not with the IRS, accounting information will be primarily kept with management or representatives of these entities or arrangements who can be all non-residents. In these situations supervision of accounting obligations may be difficult in particular where the non-resident person is not contactable or denies conducting any business. However, the United States has utilised its access powers to obtain information located offshore.

175. For the 2016 fiscal year, the IRS audited nearly 1.2 million tax returns, representing approximately 0.6% of all returns filed with the IRS in calendar year 2015. While this is the lowest percentage of tax returns audited by the IRS in the past decade, the IRS audits more than 100 000 companies per year, and the amount of recovered taxes continues to increase. The proportion of audited returns is slightly higher in respect of corporate income tax returns where 1.1% of 2015 returns was audited in 2016. The table below indicates IRS audit statistics for fiscal years ending 2014-16.

Number and types of audits conducted by the IRS

	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016
Number (and percentage) of tax returns audited	1.4 million (0.7%)	1.4 million (0.7%)	1.2 million (0.6%)
Number (and percentage) of corporate income tax returns audited	42 877 (1.3%)	44 213 (1.3%)	37 508 (1.1%)
Number of corporate income tax returns audited by field audit	38 666	39 894	34 291
Number of corporation income tax returns audited by correspondence exam	3 556	5 229	3 217
Number of domestic corporations audited	25 905	24 761	21 136
Number of S corporations audited	16 317	18 595	15 869
Number of foreign corporations audited	655	857	503

176. Although the audit rate has decreased, US officials maintain that the IRS has become increasingly adept at identifying potential tax violations. This can be evidenced by the increase in recovered taxes. Further, the IRS carries out other supervisory activities such as the use of the semi-automated procedure to verify tax returns as well as other compliance-based measures (e.g. issue-based campaigns and soft letters) to ensure compliance with the law. In addition to traditional examinations, the IRS conducts a significant amount of other compliance activities which include summary assessments for math or clerical errors; Automatic Underreporter which uses third party documents submitted to IRS to cross-check tax filings; IRS programmes to stop identity theft and refund fraud; Automated Substitute for Return, which allows IRS to file substitute returns for delinquent filers; and compliance campaigns. Finally, US officials provide that the US tax system is founded on a long-standing strong rule of law and that substantial civil and criminal penalties are imposed for federal tax violations. As described in section A.1.1, if deficiencies are identified the IRS adequately applies enforcement measures including administrative sanctions or ultimately criminal penalties (see the Table on Amount of additional taxes and penalties collected by the IRS and the Table on Number of criminal sanctions applied by the IRS).

177. In addition to the supervision through federal tax obligations, states also verify compliance with obligations imposed pursuant to state tax laws. Also, as stated above, corporations, LLCs, partnerships, and trustees have incentives to maintain records (including underlying documentation) under state commercial laws.

178. As described above, the federal tax law which requires all single-member foreign-owned LLCs to report and maintain accounting information is effective for taxable years that begin after 31 December 2016. Therefore there is limited experience with its implementation in practice. Although US authorities have confirmed that it will be supervised through the same measures as other tax law obligations the obligations cover new persons who were previously not required to register and report to the IRS and may have no other tax link with the United States than the new obligations to maintain accounting information. It is therefore recommended that the United States should monitor the implementation of the new requirements to ensure that accounting records and underlying documentation of all single-member foreign-owned LLCs are available.

179. To sum up, the United States' supervision and enforcement is generally adequate to ensure availability of accounting information. However, certain improvement is needed. The main supervisory and enforcement tools, i.e. filing of tax returns and tax audits, may not ensure availability of accounting information in all cases. The number of tax returns filed with the IRS does not correspond to statistics available from non-IRS sources on the total number of

entities and arrangements registered at the state level. While there are factors that may explain this discrepancy, the result is that it is difficult to determine with certainty the degree of compliance with tax filing requirements. Moreover, although the IRS carries out significant number of supervisory activities, the proportion of taxpayers subject to tax audits appears low and it is not clear to which extent these supervisory activities verify the availability of accounting information, including underlying documentation. Although EOI practice over the review period does not suggest a systemic issue, two peers reported failures to obtain the requested accounting information. The United States is therefore recommended to strengthen its measures to ensure that accounting information is being maintained by all relevant entities and arrangements in line with the standard in all cases. Because the obligations on all single-member foreign-owned LLCs to report and maintain accounting information comes into effect only recently, the United States is recommended to monitor its implementation.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account-holders

180. In terms of banking information, the 2011 report concluded that banks' record keeping requirements and their implementation in practice were in line with the standard. The relevant provisions are contained in the BSA, and associated regulations. The BSA is administered by FinCEN. FinCEN has delegated BSA examination authority to other federal and state regulatory authorities. These authorities take adequate supervisory and enforcement measures to ensure banks' compliance with their record keeping obligations.

181. New rules with respect to CDD require banks to identify and verify beneficial owner(s) of their customers that open new accounts going forward from 11 May 2018. Banks are also required to update beneficial ownership information on existing customers in the course of their normal monitoring activities. Although beneficial ownership information will be available to large extent, not all beneficial owners of all account-holders will be identified and verified as the new rules are not fully in line with the standard. The United States is therefore recommended to address the identified gaps in this respect.

182. In the case of breach of these obligations, administrative and criminal sanctions apply. Supervision of banks' beneficial ownership obligations is to be carried out generally in the same manner as the supervision of other CDD obligations. However, as the new rules bring substantive broadening of banks' obligations to identify beneficial owners of account-holders and they are applied only since May 2018, the United States is recommended to monitor their proper implementation.

183. Availability of banking information was confirmed in EOI practice. During the review period, the United States received 677 requests related to banking information. There was no case where the information was not provided because the information required to be kept was not available with the bank. No concerns in this respect were reported by peers either.

184. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	The United States has introduced rules requiring banks to identify beneficial owners of customers that are entities. These rules ensure that beneficial ownership is available in respect of all account-holders except in certain limited cases. In particular, there may be cases where the person identified may not be the beneficial owner as defined under the standard; where the account holder is controlled by a trust (or any arrangement considered as a trust under applicable US law) the beneficial owner will be considered the trustee (or the person considered to be the trustee under applicable US law); or beneficial ownership information may not be necessarily available in respect of some pre-existing accounts where the identification of the account-holder has not yet been updated.	The United States should ensure that beneficial ownership information is available in line with the standard for all account-holders that are entities.
	The US rules do not ensure identification by banks of all beneficial owners of account-holders who are trusts (or any arrangement considered as a trust under applicable US law). According to the US rules banks are required to identify only a trustee (or the person considered to be the trustee under applicable US law) of the trust where the account is opened in the name of the trust.	The United States should ensure that banks identify and verify the identity of all beneficial owners of a trust which have an account with a bank in the United States in line with the standard.
Determination: The element is in place, but certain aspects of the legal implementation need improvement.		

Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Federal rules which require banks to identify and verify beneficial ownership of legal entity customers bring substantive broadening of banks' obligations to identify beneficial owners of account-holders. As the new obligations only took effect from May 2018, their implementation in practice is not yet tested.	The United States should monitor the new obligations to identify beneficial owners of banks' account-holders to ensure they are properly implemented in practice.
Rating: Largely Compliant		

ToR A.3.1. Record-keeping requirements

185. The 2011 report concluded that banks' record keeping requirements and their implementation in practice are in line with the standard.

186. The main record keeping requirements are contained in the BSA and associated regulations. The BSA generally requires financial institutions to assist government agencies in the detection and prevention of money laundering and other related financial crimes (including tax evasion) by performing CDD on account-holders, maintaining required records, and filing reports. Banks are required to keep transactional and identity information in respect of their accounts. These records include deposit slips, account statements, cheques, transfer orders, bank account contracts, signature cards, and CIP documentation. Records are required to be retained for a period of at least five years from either the date the account was closed or the date of the transaction, depending on the type of record. Sanctions for failure to maintain these records are available under the BSA.

187. The BSA is administered by FinCEN. FinCEN has delegated BSA examination authority to federal and state regulatory authorities. Banks, savings and loan associations and credit unions are generally supervised by at least one of the four federal bank regulatory agencies (the Board of Governors of the Federal Reserve, the OCC, the FDIC, or the National Credit Union Administration). Due to its role as the provider of deposit insurance, the FDIC also supervises banks that are primarily overseen by the OCC or the Federal Reserve. Foreign banks are regulated by the Federal Reserve, the OCC, and/or the states. State regulators share oversight responsibility with relevant federal agencies. The SEC is the federal regulator of the securities market and many market participants. Finally, the Commodity Futures Trading Commission is the federal regulator for futures commission merchants, introducing brokers in commodities, commodity trading advisors, and commodity pool operators.

188. The regulatory authorities are required to conduct supervision of their supervised entities generally on a fixed cycle (12-18 months). In most cases this involves an on-site visit of varying duration, and for the largest banks, the regulatory authorities' staff is embedded in the banks' premises. The supervision conforms to the Federal Financial Institutions Examinations Council Manual requirements, focusing on a financial institution's compliance with laws and regulations. Examinations are tailored based on the financial institution's risk profile.

189. Based on the federal and state regulatory authorities' findings, banks generally apply BSA CIP obligations in compliance with the CIP and other CDD elements prescribed for the banking sectors. Common areas for improvement typically include developing stronger knowledge of the purpose of the relationship with their customers, improving monitoring systems through validation and testing and aligning them with their risk profile.

190. Where deficiencies are identified, the federal or state regulatory agencies take a variety of enforcement measures to remedy the failure and prevent it from happening again. Enforcement measures mainly consist of warning letters and application of administrative monetary penalties. For instance, in 2015, the Federal Reserve issued 12 formal enforcement actions, the FDIC issued 21 and the OCC issued 8 actions. Also, from 2009-15, financial institutions paid more than USD 5 billion in penalties and fines for non-compliance with the BSA and associated regulations.

ToR A.3.1. Beneficial ownership information on account-holders

191. Banks are required to have a CIP which sets out a risk-based procedure for verifying the identity of each customer. The procedures must enable the banks to form a reasonable belief that it knows the true identity of each customer. As part of the CIP, a bank must collect (at a minimum) the following identifying information about a customer at the time the customer seeks to open an account: (i) name; (ii) date of birth; (iii) a residential or business street address, a principal place of business, local office or other physical location; and (iv) for US persons (individuals as well as legal entities and arrangements formed in the United States), a US TIN (which include an EIN) if an entity; or, for non-US persons, one or more of the following: a US TIN (which may include an EIN), passport 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.

192. The CIP must also contain three types of risk-based procedures for verification. The first type is verification through documents, such as certified articles of incorporation, a government-issued business license, a partnership

agreement, or trust instrument. The second type of verification uses non-documentary methods, such as contacting a customer, comparing the information provided by the customer with information obtained from a consumer reporting agency, public database or other source, or checking references with other financial institutions. The third type of verification is additional verification for certain customers in cases where an account is opened by a customer that is not an individual and the bank cannot verify the customer's true identity using the other two verification methods. In these cases, the bank may obtain information about individuals with authority or control over the account.

193. Prior to the issuance by FinCEN of new rules on 11 May 2016, financial institutions were not explicitly required to identify and verify the identity of the beneficial owners of their customers, except in limited specific circumstances.¹⁰ Nonetheless, US officials advised that many financial institutions were collecting beneficial ownership information (although not verifying such information) in order to comply with their obligations under the BSA and associated regulations.

194. On 11 May 2016, FinCEN published rules, set forth in the BSA Regulations, that establish a requirement for financial institutions located in the US to identify and verify the beneficial owner(s) of their customers; and codify, clarify, consolidate and strengthen existing CDD regulatory requirements and supervisory expectations.

195. Banks and other covered financial institutions (i.e. brokers or dealers in securities; mutual funds; futures commissions; and merchants and introducing brokers in commodities) must comply with the new rules by 11 May 2018. While the new rules apply to legal entity customers that open new accounts going forward from 11 May 2018, institutions are also required to obtain beneficial ownership information on existing customers when, in the course of their normal monitoring activities, the institution detects information relevant to assessing or re-evaluating the risk of such customer. Such information could include a significant and unexplained change in customer activity or other information indicating a possible change in beneficial ownership.

196. The new rules explicitly require a covered financial institution to identify and verify, as part of its AML programme, the identity of the beneficial owner(s) of all “legal entity customers” at the time a new account is

10. The limited circumstances in which financial institutions were required to obtain beneficial ownership were: correspondent accounts that were payable – through accounts and private banking accounts for non-US clients above USD 1 million in value.

opened, unless the customer is exempted.¹¹ “Legal entity customer” means a corporation, LLC, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account.

197. Pursuant to the new rules, a “beneficial owner” means:

- a. each individual, if any, who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more of the equity interests of a legal entity customer
- b. a single individual with significant responsibility to control, manage, or direct a legal entity customer, including: (a) an executive officer or senior manager; or (b) any other individual who regularly performs similar functions.

198. Also, if a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, 25% or more of the equity interests of a legal entity customer, the trustee is considered the beneficial owner of the legal entity customer.

199. Covered financial institutions can comply with the new rules either by having the individual opening the account complete a FinCEN Certification Form or by other means of obtaining information required by that form. The form requires: (a) the name and title of the individual opening the account; (b) the name and address of the legal entity for which the account is being opened; and (c) for each 25% or more owner of the legal entity and one individual with significant responsibility for managing the legal entity: name, date of birth, address (residential or business), SSN for US persons, and passport number, country of issuance or other similar identification for foreign persons. The individual opening the account must certify, to the best of the individual’s knowledge, the accuracy of the information. Currently, the BSA does not contain sanctions for providing false information to a bank.¹² As this may raise concerns about the accuracy of the identification of beneficial owners as

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11. There are a limited number of legal entities exempted from the definition of “legal entity customer” including financial institutions regulated by a federal regulator, banks regulated by a state regulator, any entity registered with the SEC under the Securities Exchange Act of 1934, and a foreign financial institution established in a jurisdiction where the regulator of the institution maintains beneficial ownership information regarding the institution.
 12. Providing false information to a bank is not considered to be bank fraud. However, if the IRS or law enforcement is conducting an investigation and the individual, who provided false information to the bank, provides false information to the IRS or law enforcement, this would be considered perjury or violate

provided by the customer, this puts additional importance on the verification measures carried out by banks and their supervision.

200. Covered financial institutions are required to verify the identity of each beneficial owner identified, according to risk-based procedures. The verification procedures for beneficial owners are very similar to those for individual customers under a financial institution's CIP, as discussed above. A covered financial institution may rely on the information supplied by the legal entity customer provided that the institution has no knowledge of facts that would reasonably call into question the reliability of such information. Whether a financial institution has such knowledge would depend on the facts and circumstances of the particular case and risk profile of the customer.

201. If a financial institution cannot form a reasonable belief that it knows the true identity of a customer, the institution should not open an account or should close an account, after attempts to verify a customer's identity have failed.

202. The new rules also explicitly require covered financial institutions to implement and maintain appropriate risk-based procedures for conducting ongoing customer due diligence, to include: understanding the nature and purpose of the customer relationships; and conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, including beneficial ownership. As such, covered financial institutions are required to update ownership information when, in the course of their normal monitoring of the customer relationship or of transactions, they detect information relevant to assessing or re-evaluating the risk of such customer. Such information could include, for example, a significant and unexplained change in customer activity or other indication of a possible change in the customer's beneficial ownership.

203. Covered financial institutions are required to establish procedures for making and maintaining a record of all beneficial ownership information obtained under the new rules. At a minimum, these records must include: (a) for identification, any identifying information obtained by the institution in the identification process; and (b) for verification, a description of any document relied on, of any non-documentary methods, and the results of any measures undertaken, and the resolution of each substantive discrepancy. Identification records must be retained for five years after the date the account closes and verification records must be retained for five years after the record is made.

the law against making fraudulent or false statements to the IRS and the individual would be subject to sanctions.

204. Financial institutions may only rely on the CDD performed by third parties, provided that: (a) such reliance is reasonable under the circumstances; (b) the other financial institution is subject to US AML requirements and is regulated by federal regulator; and (c) the other institution enters into a contract requiring it to certify annually to the financial institution that it has implemented its AML programme and that it or its agents will perform the specified requirements of the bank's CIP. There are no specific obligations on relying financial institutions to immediately obtain core CDD information from the financial institution they are relying upon as required under the standard. The United States is therefore recommended to address this gap. The gap is nevertheless mitigated by the fact that the relying financial institution remains responsible for compliance with its CDD obligations and for providing the required CDD information at any moment. It is noted that this situation did not have a negative impact on the availability of banking information requested during the period under review.

205. There are a variety of civil and criminal sanctions applicable to covered financial institutions for violations of the BSA and associated regulations, including failure to establish a written CIP; failure to comply with CDD requirements; and failure to comply with record keeping requirements.

206. Although the US has introduced beneficial ownership requirements for covered financial institutions, a number of concerns exist:

- the requirement to identify beneficial owners may not ensure identification of the beneficial owner in line with the standard in some cases (as already described in section A.1.1.) – the US rules (as described above) contain only limited elements to cover situations where beneficial ownership is established through other means than controlling ownership interest or position in senior management of the customer. Further, the US rules only require one natural person with significant responsibility to control, manage, or direct the customer to be identified.
- the definition of “legal entity customer” is restrictive – the definition of “legal entity customer” does not include all types of legal entities and arrangements that may open and/or hold an account with a US bank. For instance, a trust (other than a statutory trust) or a foreign foundation opening an account in a US bank would not fall under the bank's beneficial ownership requirements.
- beneficial ownership information may not be necessarily available on all pre-existing accounts – banks should obtain beneficial ownership information on pre-existing accounts when in the course of their normal monitoring activities, they detect information relevant to assessing or re-evaluating the risk of such customer.

- account-holders controlled by trusts – where a trust (or any arrangement considered as a trust under applicable US law) owns directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, 25% or more of the equity interests of a legal entity customer, the trustee (or the person considered to be the trustee under applicable US law) is considered the beneficial owner of the legal entity customer.
- the lack of an explicit obligation to understand the ownership and control structure of the account-holder – proper identification and verification of the account-holder's beneficial owner can be hindered by the lack of an explicit obligation to understand the ownership and control structure of the customer. However, US AML authorities indicated that understanding the ownership and control structure of an account-holder should be part of banks' obligation to understand the nature and purpose of the customer relationship.
- the lack of sanctions for providing false information to a bank – Banks can rely on the information supplied by the customer for identification of its beneficial owners provided that the institution has no knowledge of facts that would reasonably call into question the reliability of such information. However, the BSA does not contain sanctions for providing false information to a bank and banks are not required to gather sufficient information to verify reliability of the provided information. Although it is noted that the verification process typically carried out by banks uses multiple sources for verification of identification which allow assessing the veracity of the information provided. If a bank discovers that false or misleading information was provided by the customer and therefore proper CDD cannot be completed, the bank is required not to open a bank account or to close it if already opened.

207. In summary, the US has introduced beneficial ownership requirements for banks which ensure that beneficial ownership is available in respect of all account-holders except in certain limited cases. There are also enforcement measures and retention requirements in place to support effective implementation of the relevant requirements. Therefore these beneficial ownership requirements ensure to a large extent the availability of beneficial ownership information on account-holders in line with the standard. Despite the overall requirements for the availability of beneficial ownership information being in place, there are areas where improvement is needed. In particular, there may be cases where the person identified may not be the beneficial owner as defined under the standard; where the account holder is controlled by a trust (or any arrangement considered as a trust under applicable US law) the beneficial owner will be considered the trustee (or the

person considered to be the trustee under applicable US law); or beneficial ownership information may not be necessarily available in respect of some pre-existing accounts where the identification of the account-holder has not yet been updated during monitoring activities. It is therefore recommended that the US take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all account-holders. The implementation of CDD rules is adequately ensured and is evidenced in practice; however, the relevant beneficial ownership requirements are only recently coming into effect and their implementation is therefore not yet tested (see discussion below).

208. The US law does not ensure identification of all beneficial owners of account-holders which are trusts (or any arrangement considered as a trust under applicable US law). According to the US rule, covered financial institutions are required to verify the identity of the trustee (or the person considered to be the trustee under applicable US law). However, there are no obligations on covered financial institutions to verify the identity of settlor(s), protector(s), the beneficiaries or classes of beneficiaries and any other trustee or natural persons exercising control over the trust property, as is required under the standard. US officials maintain that it is only necessary for banks to verify the identity of one trustee of each trust customer due to: (i) security issues; (ii) institutions typically collect the trust deed, which will identify the trustees, settlor, any protector, and all beneficiaries by name or class; and (iii) trustees have a fiduciary obligation to know the identity of all the other parties to the trust. Further, the disclosure obligations towards a bank can be overridden by the terms of the trust. It is therefore recommended that the US takes appropriate measures to ensure that banks identify and verify the identity of all beneficial owners of a trust in line with the standard.

Implementation of obligations to keep beneficial ownership information in practice

209. Banks must comply with the new rules by 11 May 2018. Supervision of the new rules will be carried out by the federal and/or state regulatory authorities. The supervision of the beneficial ownership requirements will be carried out as part of the regulatory authorities' supervisory activities.

210. FinCEN is responsible for the AML/CFT supervision of the financial sector, working in co-operation with the sectorial supervisors to which it has delegated BSA examination authority. Most of the AML/CFT supervision is conducted by the federal authorities but the states are also involved in AML/CFT supervision. The US supervisory framework for the banking sector is well developed and considerable supervisory resources are applied.

Federal supervisory authorities¹³ are required to conduct supervision of their supervised entities generally on a fixed cycle. These reviews mostly include on-site examinations and are scheduled on a rules-based (12-18 month) cycle. Regardless of the individual bank risk profile, the supervisory programme systematically covers all entities subject to the prudential supervision of the relevant regulator. For the largest banks, the supervisory authority's staff is embedded in the banks' premises, fostering immediate co-operation and dialogue on risk and controls. A similar approach is generally followed by state bank regulators. The supervisory process has resulted in identifying, remedying and sanctioning failures to comply with the AML/CFT requirements. In the banking and securities sectors, FinCEN has brought enforcement actions. Each federal and state regulator also pursue their own action in parallel with FinCEN and extending also to criminal enforcement measures exercised by the Department of Justice.

211. Although already existing AML/CFT procedures are generally well implemented across the banking sector, the new rules bring substantive broadening of obligations to identify beneficial owners of account-holders and therefore will require adjustments in banking processes and practices to ensure their implementation. The new obligations are also applied only since May 2018 and therefore their implementation in practice is not yet tested. In view of the above the United States is recommended to monitor the new obligations to identify beneficial owners of banks' account-holders to ensure they are properly implemented in practice.

13. These authorities mainly include FINCEN, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency and National Credit Union Administration.

Part B: Access to information

212. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information; and whether rights and safeguards are compatible with effective EOI.

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

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

213. As concluded in the 2011 report, the IRS has broad access powers to obtain all types of relevant information including ownership, accounting and banking information from any person both for domestic tax purposes and in order to comply with obligations under the United States' EOI agreements. The tax authority's broad access powers can be used for EOI purposes, regardless of domestic tax interest. Access powers are available also in cases where information is requested for criminal tax purposes. In the case of failure to provide the requested information, the tax administration has adequate powers to compel the production of information.

214. The IRS' access powers are also effectively used in practice. Where the requested information is not already at the disposal of the tax administration, the IRS typically attempts first to request the information through informal means, usually through the issuance of an IDR to the party in possession of the information. Where information cannot be obtained through an IDR, the IRS issues a summons. In addition, a substantial amount of ownership, accounting and banking information is already at the disposal of the tax administration in its databases or other government sources. Accordingly, no issue in respect of the scope of the tax administration's access powers arose during the period under review.

215. A few peers expressed concerns about timeliness of the provision of the requested information as well as concerns regarding the scope of the IRS' access powers. These concerns seem to be caused mainly by issues discussed in element C.5 as the requested information was accessible by the IRS and was provided in several other cases during the review period (see further sections C.5.1 and C.5.2).

216. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

***ToR B.1.1. Ownership, identity and bank information and
ToR B.1.2 Accounting records***

217. The tax administration has broad access powers to obtain all types of relevant information including ownership, accounting and banking information from any person both for domestic tax purposes and in order to comply with obligations under the US EOI agreements.

218. The 2011 report concluded that appropriate access powers are in place for EOI purposes. There has been no change in the relevant rules of the United States law since then.

219. The main formal IRS access power is the power to issue a summons, a document that is part of a formal legal procedure that entails the power to compel. The IRS can summon a taxpayer, an officer or employee of a taxpayer, a person having possession, custody, or control of the taxpayer's records, and any other person in possession, custody, or control of relevant and material evidence. The summons power has a broad scope, including, among others, the power to examine books, papers, records, or other data of taxpayers and third parties and to obtain testimony under

oath (I.R.C. § 7602). To be valid and enforceable, summonses must (i) seek information that may be relevant to the investigation (domestic or foreign, if in the EOI context), (ii) be issued pursuant to a proper purpose, (iii) seek information that the IRS does not already possess, and (iv) comply with administrative steps required in the I.R.C. (United States v. Powell, 379 US 48 (1964)).

220. The IRS can also obtain information through informal means typically through an IDR. An IDR is an official request for information issued to third parties by the IRS. Although it does not carry the compulsory force of a summons, it is the main means of obtaining information for EOI purposes.

221. There are no specific conditions for use of these powers for EOI purposes pursuant to a valid EOI request (e.g. United States v. A.L. Burbank & Co., 525 F.2d 9 (2d Cir. 1975)). Accordingly, the use of access powers for EOI purposes is not subject to any additional criteria other than stipulated by the EOI instrument under which the information is requested. The legal regime used by IRS to obtain information requested for EOI purposes is part of the IRS's broad administrative and legal powers to access information which are used also for domestic tax purposes. These access powers can be used by the IRS for EOI purposes to obtain information which is under the possession, custody, or control of persons in the United States, including the US territories. These access powers apply regardless of the type of the requested information (e.g. ownership, accounting or banking information).

222. The IRS is authorised to issue a summons to obtain information, including banking information that does not identify a specific taxpayer. This summons (a “John Doe summons”) must meet the standard four-part Powell test that applies to all IRS summonses (i.e. seek information that may be relevant, be issued pursuant to a proper purpose, seek information not already in the IRS' possession, and the IRS must have followed all required administrative steps). A John Doe summons must also meet three additional requirements: (i) the summons must relate to the investigation of a particular person or ascertainable group or class of persons; (ii) there must be a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law; and (iii) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) must not be readily available from other sources (I.R.C. § 7609(f)). A John Doe summons is issued upon approval by a US district court in an *ex parte* proceeding. The same requirements for issuance of a John Doe summons in the domestic context apply for John Doe summons issued pursuant to a valid EOI request. Availability of a

John Doe summons for EOI purposes was confirmed in several court cases over the last few years.¹⁴

223. As pointed out by a peer and the United States, access to the contents of an e-mail account is subject to additional conditions. On the primary basis of the right to be free from unreasonable searches and seizures as set forth in the Fourth Amendment to the US Constitution, the Stored Communications Act prohibits the US government from obtaining the contents of an e-mail account from an internet service provider without a search warrant issued in a criminal case upon probable cause (18 U.S.C. § 2703; see also IRS Policy Statement 4-120, I.R.M. 1.2.13.1.37). The courts have upheld the Stored Communications Act on numerous occasions, ruling that persons have a reasonable expectation of privacy in their e-mails.¹⁵ Nevertheless, the IRS can issue a summons in a civil tax matter (including for EOI purposes) to an internet service provider to obtain subscriber information about an e-mail account, which includes subscriber name, address, connection records, and source of payment for service. The IRS can then exercise its access powers to request further information directly from the subscriber (or other record-keeper) to provide the requested information. The EOI Programme has obtained e-mail subscriber information in an EOI context, and the United States is currently in the process of submitting court documents to obtain e-mail content for an EOI partner.

Access to ownership and accounting information in practice

224. A large amount of ownership and accounting information is already at the disposal of the tax administration in its databases and other government sources. Main sources relevant for EOI purposes include:

- internal tax databases – these databases allow retrieving of the relevant information from information obtained for domestic tax purposes. The contained information mainly includes ownership and accounting information from taxpayers/registrants and information from tax filings and audits. The main database used for EOI purposes is the Integrated Data Retrieval System (IDRS), which contains comprehensive federal income tax information relating to all US taxpayers. The database includes identifying data, filings of tax

14. E.g. In *Re Tax Liabilities of John Does*, 2013 US Dist. LEXIS 146255 (N.D. Cal. 2013); Tax Division Announcement of 29 July 2013, at 2013 TNT 146-38; In the Matter of the Tax Liabilities of John Doe, Case No. 13-mc-00657 (W.D. Tex. 2013); In the Matter of the Tax Liabilities of John Doe, Case No. 13-mc-00232 (W.D. Tex. 2013); and In the Matter of the Tax Liabilities of John Does, Case No. 3:17-mc-00094 (W.D. Tex. 2017).

15. See, e.g. *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010).

and information returns, account payment information, and details regarding the status of IRS compliance and enforcement actions such as civil and criminal investigations, tax re-assessments, and collection activities. In addition the IRS commonly uses the following research tools:

- “yK1” – an internal IRS software tool and database allowing users to visualise relationships between payers and payees according to tax and information returns filed with the IRS
- “Compliance Data Warehouse Graph Database” – an internal IRS software tool and database allowing users to visualise relationships between applications for and uses of US TINs according to TIN applications and other information returns filed with the IRS and the US Social Security Administration.
- other government sources –
 - State Data Exchange Programs – The IRS has entered separate agreements with each of the 50 states, the District of Columbia, and each of the territories pursuant to I.R.C. Section 6103(d), which allows the IRS to obtain information for specified purposes (including for EOI purposes) directly from the tax department of each of these jurisdictions (and vice versa)
 - FinCEN – the IRS can obtain from FinCEN, upon request, several types of information required to be available based on the BSA or other AML regulations. This information mainly includes Form 114, Report of Foreign Bank and Financial Accounts (FBAR form) or Suspicious Activity Reports (SAR). FBAR is required under the BSA to be filed annually by each person having a financial interest in or signature or other authority over one or more foreign financial accounts with an aggregate value of USD 10 000 or more. An SAR is filed with FinCEN by a US financial institution to report information regarding financial transactions that are suspected of association with money laundering, terrorism financing, or other crimes
 - Department of Homeland Security – maintains customs and travel records
 - Department of State – keeps passport information, among other types of information.
- commercial databases – the most relevant databases are:
 - “Accurint” – a commercial database that provides a full suite of investigative tools to government entities. Accurint affords

access to records generated by federal, state, and local government and law enforcement agencies, through which users may locate and verify the identity of persons (both natural and legal), visualise complex relationships, and review detailed assets, corporate filings, and criminal record information

- “Capital IQ” – a global database containing a wide variety of analytical data related to public and private companies
- “PACER” (Public Access to Court Electronic Records) – a database providing access to case and docket information from the US federal court system
- state company registries
- third-party record keepers (e.g. banks)
- registered agents
- entities and individuals who are the subject of an EOI request.

225. According to the US authorities, it is difficult to quantify in how many cases the requested information is already in the possession of the tax administration, as one request can relate to multiple persons and usually relates to different types of information that has to be obtained from different sources and may require crosschecking from different sources. Nevertheless, at least part of the requested information is frequently already available in the tax databases or other databases such as Accurant. This is also the case where beneficial ownership information is requested.

226. As described in the 2011 report, where the requested information is not already at the disposal of the tax administration, the IRS will use its access powers to obtain the requested information. The IRS typically attempts first to request the information through informal means, usually through the issuance of an IDR to the party in possession of the information. The IDR, although an official IRS request, does not carry the same compulsory force as a summons. Where information cannot be obtained by an IDR, the IRS issues a summons under I.R.C. § 7602 et seq. Summonses are required to be issued to access some banking information and in cases where the information is not provided through an IDR and powers of compulsion become necessary. During the period under review, the requested information was obtained through a summons in only about 16% of cases, and the majority of those cases (77%) requested banking information. In the remaining cases (84%), the requested information was already available to the tax administration or was obtained through an IDR.

227. Where information is already in the possession of the IRS the requested information can be retrieved within days as no formal procedure

is required. Where information is obtained through an IDR, the information holder is typically given 30 days to provide the information. The deadline can be extended based on a reasoned request by the information holder (e.g. in the case of retrieving specific information not readily available or in the case of other objective reasons for delay in provision of the information such as hospitalisation of the information holder). In practice the information is typically obtained pursuant to IDR within 30 to 120 days, and the IRS frequently provides partial replies of information it has received in the interim.

228. The issuance of a summons is the beginning of a formal legal procedure requiring several administrative steps. These steps include preparation of the summons document and approval by the responsible IRS manager(s). In a very limited number of cases, summonses (but not bank summonses) require approval by a legal counsel allocated to the particular IRS branch. These are non-routine cases related to various types of information. Where the incoming EOI request relates to a criminal investigation, the EOI Programme seeks assistance from the IRS Criminal Investigation division, which has specialised knowledge about gathering relevant evidence to support a criminal tax case. Although the procedure for the issuance of summonses for administrative and criminal purposes does not differ substantially, seeking this assistance typically increases the time required for the EOI Programme to reply to such requests. Response times can take a few days up to several months or more in the more complex cases. The United States typically will invoke such procedures only when required or when the powers of compulsion become necessary.

229. In practice where the requested information is not obtained through an IDR, the issuance of a summons and the provision of the requested information should not take significantly longer than in cases where the information is obtained by an IDR. However, delays may be encountered typically due to the complexity of the case, objective obstacles on the side of the information holder, or infrequent legal challenges. The IRS has reviewed the procedures and has implemented measures to improve; to this end it has implemented the electronic review and approval of draft summonses by EOI management, removed the requirement for some summonses (including most summonses for bank information) to be reviewed by Chief Counsel, and implemented arrangements for banks to respond to summonses electronically (and, in some cases, to accept the electronic service of summonses).

230. As described in section C.5.1, a few peers expressed concerns about the timeliness of the provision of the requested information. Although the main reasons for delays in the provision of this information are linked to aspects of the standard covered under element C.5 (such as resources and procedures for the exchange of information) it appears that a contributing factor to the length of response times is also the administrative steps and timelines

involved in obtaining the requested information which in some cases may be laborious and time consuming. The United States is continually analysing its procedures and has already taken several measures during the review period to address these concerns as described above and further in section C.5. Nevertheless, given that these measures have not yet had a significant impact on EOI in practice as evidenced in an increase of response times over the review period, the United States should monitor measures implemented to improve the efficiency of obtaining the requested information and take further measures, if considered necessary, to ensure obtaining of the requested information in an effective manner.

231. There was no case during the period under review where the United States failed to obtain ownership or accounting information for EOI purposes due to an inability to access such information. This has also been generally confirmed by peers. Nevertheless, a few peers referred to particular cases that raised their concerns regarding the scope of the IRS access powers. Two peers identified an issue in respect of access to simple identification information (such as certification of address and tax residency status) and two other peers questioned access to information held by a specific type of information holders (a non-governmental organisation and a state registry). As concluded in the 2011 report and confirmed during the current review, the IRS has broad access powers that allow obtaining all types of information in line with the standard. Reasons why the referred pieces of information were not provided relate partly to a form of the requested information which is not used in the domestic context (e.g. certified confirmation of address issued by a public organisation). Further, in one of these cases the requesting jurisdiction did not provide the necessary clarification requested by the United States. Finally, the raised concerns seem to be caused mainly by communication aspects of exchange of information and other issues covered under element C.5 (see further section C.5.1 and C.5.2).

Access to banking information in practice

232. Access to information held by banks follows generally the same rules as in respect of other types of information. The IRS is permitted to seek bank records from financial institutions with an IDR unless the taxpayer is an individual or partnership with five or fewer individuals, in which case the IRS must issue a summons in order to obtain the requested information. As most of the requests for banking information related to individuals, such information was required to be obtained through a summons (I.R.C. §§ 7602 and 7609). Summonses for routine banking information, such as transaction records, do not require review by an IRS legal counsel as the process for issuing such summons has been standardised. Once a summons is issued, the information sought must be produced generally within 30 days. Requests for

banking information do not take any longer to process than requests for other types of information and, in practice, banks typically respond earlier than the 30 day response time.

233. No specific identifiers are required to be provided to banks. Whether in the form of a summons or an IDR, an IRS request for information submitted to a bank or other financial institution must nevertheless provide sufficient information to allow the financial institution to identify the account with a degree of certainty. The types of information that could be useful in these circumstances include the account number, name of account-holder, address of account-holder, account-holder's date of birth, and TIN (e.g. SSN or EIN) of the account-holder. As pointed out above, the IRS is also authorised, under certain circumstances, to issue a John Doe summons to obtain banking information when a taxpayer's identity is not readily available.

234. Over the reviewed period there was no case where the requested banking information was not provided because of a lack of access powers. In one case reported by a peer, banking information provided by the United States related only to part of the period for which the information was requested. US authorities explained that the requested information in respect of the referred period is routinely provided, but an error occurred in this specific case. Measures have been taken to ensure the error does not happen again.

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

235. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

236. The 2011 report concluded that the powers held by the IRS to obtain information can be used to respond to a request for EOI in tax matters regardless of whether the IRS has any need for the information for its own tax purposes. There has been no change in the applicable rules in this respect since the first round review. The IRS access powers can also be used regardless of lapse of the statute of limitation in respect of the particular tax period in the United States if the information is requested pursuant to a valid EOI request.

237. The United States' ability to provide information regardless of domestic tax interest has also been confirmed by courts and confirmed in practice. The majority of EOI requests received by the United States during the period under review requested information relating to a person that was not a US taxpayer and in which the United States had no domestic tax interest in obtaining the requested information. There was no case where the domestic

tax interest restriction prevented the IRS from accessing and providing the requested information. This was also confirmed by peers.

ToR B.1.4. Effective enforcement provisions to compel the production of information

238. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

239. As concluded in the 2011 report, the United States has in place effective enforcement provisions to compel the production of information and these provisions are adequately applied in practice. There has been no change in these provisions or the IRS practice since then.

240. If any person is summoned under federal tax laws to appear, testify, or produce books, papers, records, or other data, the US District Court for the district in which such person resides or is found has jurisdiction to compel compliance (I.R.C. §§ 7604 and 7609). Conviction for failure to comply with an administrative summons is punishable by a fine of up to USD 1 000 or a prison sentence of up to 1 year, or both, together with the costs of prosecution (I.R.C. § 7210). Further, in the event that a summoned party does not comply with a US court's order to produce, the US court has inherent powers (under US common law) to impose so-called "civil contempt" sanctions until the summoned person complies with the court's enforcement order. Civil contempt sanctions that are routinely imposed for failure to comply with an administrative summons commonly include daily monetary penalties, imprisonment, attorneys' fees, and/or court costs.

241. The IRS can also use search and seizure powers. The IRS ordinarily does not need to use these powers to obtain information, but it can conduct searches of persons or premises to obtain evidence of crimes, including the seizure of documents, if a search warrant is obtained from an appropriate judicial authority or where there are exigent circumstances that negate the necessity of obtaining a search warrant.

242. In practice, cases where a person fails to provide information requested through summonses are rare in the EOI context. In cases where the person refuses to co-operate, the IRS uses its compulsory powers to ensure that the requested information is obtained and provided. No concerns in this respect were reported by peers.

ToR B.1.5. Secrecy provisions

243. The 2011 report concluded that secrecy provisions contained in the United States law are in line with the standard. There has been no change in these rules since the first round review.

244. The confidentiality of bank account information is generally defined and delimited by the Right to Financial Privacy Act (12 U.S.C. § 3401-22). This statute generally prohibits disclosure of banking information to federal government authorities without notice to the customer; the notice must also inform customers of their right to challenge the request in court. However, there are numerous exceptions including for access to banking information for tax purposes pursuant to the I.R.C. (12 U.S.C. § 3413(c)). The most commonly used procedure for obtaining financial records from banks for federal tax purposes is the administrative summons procedure authorised by I.R.C. §§ 7602 and 7609.

245. The attorney-client privilege rule under US law preserves confidential communications between attorneys and their clients that are disclosed for the purpose of furnishing or obtaining legal advice or assistance. As concluded in the 2011 report, to the extent that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, an EOI request for information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule. In addition, communications are not privileged when communications between an attorney and client are used to further a crime or fraud.

246. In practice, information is routinely obtained from banks and it is common for non-privileged information to be supplied by legal professionals acting on behalf of their clients as their legal representatives. There was no case during the period under review where banking secrecy or attorney-client privilege was an impediment to obtaining the requested information. No concerns in this respect were reported by peers.

B.2. Notification requirements, rights and safeguards

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

247. Rights and safeguards contained in the United States' law remain compatible with effective exchange of information.

248. As described in the 2011 report, when the IRS uses its summons authority to acquire information from third parties, it is generally required to give prior notice to the taxpayer in respect of whom the information is requested. However, there are exceptions from the notification requirement. There has been no change in the applicable rules since the first round review. There is no notification requirement where the requested information is obtained through an IDR or internal means.

249. The United States law does not allow for an appeal of an information request per se. Appeals are only allowed when the IRS collects the information via a summons. In these cases, the taxpayer on whom the information is requested has the right to challenge the summons by filing a petition with a federal court to “quash” the summons or by opposing an action initiated by the IRS to enforce the summons. The grounds for quashing a summons are narrowly drawn and the use of summons for EOI purposes is well established.

250. During the period under review, very few summonses for EOI purposes were challenged. Compatibility of the United States’ rights and safeguards with effective EOI was also generally confirmed by peers.

251. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

ToR B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

252. The rights and safeguards that apply to persons in the requested jurisdiction should be compatible with effective EOI.

253. The 2011 report concluded that rights and safeguards contained in the United States’ law are compatible with effective EOI. There has been no change in the relevant rules or practices since then.

Notification requirements

254. US law does not require the IRS to notify a taxpayer, subject of an EOI request, before (or after) the requested information is exchanged in cases where the requested information is obtained through an IDR or internal means.

255. When the IRS uses its compulsory summons authority (as opposed to an IDR) to acquire information from third parties, it is generally required to give prior notice to the taxpayer in respect of whom the information is requested (I.R.C. §§ 7602(c)(1) and 7609). However, there are exceptions from the notification requirement if the information is sought in a criminal case or if there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information by other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records (I.R.C. § 7609(g)). To utilise the exception, the IRS must obtain an ex parte court order. In the application for the exception the IRS is required to provide the Court with an explanation of the reasons why the exception should apply in the particular case. In EOI cases this involves co-ordination with the requesting jurisdiction so that the application is sufficiently founded and the exception can be granted. Courts on average take one or two weeks after documents are filed in court to process such cases.

256. Two peers indicated that during the current period under review they initially asked for an exception from the notification each in respect of one request. In both cases sensitive investigations were ongoing in the requesting jurisdiction. However, formal procedure to utilise the exception was not launched. One peer agreed to proceed with the request regardless of the notification and one withdrew its request before the formal procedure to utilise the exception was launched. As described above, the US law allows for exceptions from prior notification. It is nevertheless noted that grounds for these exceptions may not necessarily cover all cases where exceptions should be granted under the standard, in particular where a request is of an urgent matter. Further, the IRS has wide experience with utilising these exceptions in the domestic context; however, they have been used only rarely in the EOI context and there was no such case during the current period under review. Given these concerns the United States should monitor utilisation of exceptions from prior notification in the EOI context and, if necessary, take measures to ensure that exceptions from prior notification as foreseen under the standard are effectively applied in EOI practice. Efficient application of justifiable exceptions also requires appropriate communication between the requested and requesting competent authority (see further section C.5.2).

257. Where the IRS issues a John Doe summons to obtain information in respect of taxpayers who are not individually identified (e.g. when responding to a group request), taxpayers subject of the request are not required to be notified.

258. Taxpayers who are the subject of an EOI request do not have any rights to post exchange notification under US law.

Appeal rights

259. As described in the 2011 report, United States law does not allow for an appeal of an information request per se. Appeals are only allowed when the IRS collects the information via a summons. In these cases, the taxpayer on whom the information is requested has the right to challenge a summons by filing a petition with a federal court to “quash” the summons or by opposing an action initiated by the IRS to enforce the summons. The petition must be filed within 20 days of service of the summons.

260. The grounds for quashing a summons are narrowly drawn under US law. Federal courts adjudicate quash claims in a summary proceeding, evaluating the broad IRS summons power against the four factor requirements set forth in the Powell court case described in section B.1.1.¹⁶ The summary proceedings are based largely on supporting affidavits or declarations provided by the IRS. Based on long standing precedents and IRS robust experience with the proceedings, no additional information beyond that contained in a valid EOI request is typically required to be provided by the requesting jurisdiction.

261. According to the United States authorities very few summonses issued on behalf of EOI partners are challenged. The United States authorities estimate that it is less than five cases per year on average. The frequency of challenges during the period under review did not differ from previous years. Where summonses are challenged, the requested information is typically not provided within 90 days and its provision may be temporarily delayed. Given the well-established precedents and broad access powers of the IRS, there was no case during the current period under review where summonses issued for EOI purposes were quashed (i.e. successfully challenged in a US court).

16. To be valid and enforceable, any summons must (1) seek information that may be relevant to the investigation, (2) be issued pursuant to a proper purpose, (3) seek information that the IRS does not already possess, and (4) comply with administrative steps required in the I.R.C. *United States v. Powell*, 379 US 48 (1964).

Part C: Exchanging information

262. Sections C.1 to C.5 evaluate the effectiveness of the United States' EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether the United States could provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

263. The 2011 Report concluded that the United States network of EOI mechanisms was in line with the standard and provided for effective exchange of information.

264. The United States has a broad network of EOI agreements in line with the standard. The United States' EOI network covers 129 jurisdictions through 95 bilateral agreements and the Multilateral Convention.¹⁷ Out of these EOI relationships (based on EOI instruments either in force or signed), all but one provide for EOI in line with the standard.¹⁸

265. Out of the 129 jurisdictions, the United States has an EOI instrument in force with 91 of them. Since July 2010, no EOI agreement (requiring ratification in the United States), including the 2010 Protocol to the Multilateral Convention, has been ratified by the United States. This substantive delay in ratification affects four DTCs, four DTC Protocols and the 2010 Protocol

17. Legally, the US has an EOI relationship with another jurisdiction only if both jurisdictions have ratified the underlying EOI instrument (i.e. DTC, TIEA, or Multilateral Convention). A list of such jurisdictions is published by the IRS in a Revenue Procedure issued most recently in September 2017 (2017-46).

18. The EOI relationship not in line with the standard is with Trinidad and Tobago.

to the Multilateral Convention. In view of this, the United States is recommended to speed up the ratification of its signed EOI agreements and, in particular, the 2010 Protocol to the Multilateral Convention, so that all its EOI relationships are brought into force expeditiously.

266. In practice, the United States' EOI agreements are applied in line with the standard. No issue in this respect was identified in the first round review and no issue was identified during the current period under review. The United States provides information to the widest possible extent, including pursuant to group requests. This was also generally confirmed by peers. Three peers reported concerns related to individual cases; however, this does not represent a systemic issue as the requested information was frequently provided in other similar cases. It appears that the few cases of concern were impacted by aspects negatively affecting EOI in general (e.g. workload of the EOI Programme) which are analysed under element C.5 and do not specifically relate to the United States interpretation of its EOI instruments (see further section C.5.2).

267. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	Since July 2010, the United States has not ratified any signed EOI agreement that requires US ratification. Of these EOI instruments, only the ratification of the 2010 Protocol to the Multilateral Convention and the DTC with Viet Nam directly impacts the US ability to exchange to the standard. It is noted that the United States is able to enter into a TIEA without going through a domestic ratification process. Nevertheless, as a result the United States currently does not have an EOI relationship in force with 38 out of 129 its EOI partners. While peers have not indicated that this has been an issue, the absence of ratification would prevent EOI in practice with these partners.	The United States should ratify its signed EOI agreements, including the 2010 Protocol to the Multilateral Convention, expeditiously so that all its EOI relationships are in force and, in the meantime, expeditiously pursue any alternative means to ensure effective EOI arrangements that meet the standard are in force with affected jurisdictions.
Determination: The element is in place, but certain aspects of the legal implementation need improvement		

Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Largely Compliant		

ToR C.1.1. Foreseeably relevant standard

268. Exchange of information mechanisms should allow for EOI on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2011 report indicated that all of the United States' EOI relationships allow for EOI in line with the standard of foreseeable relevance. This continues to be the case.

269. The United States' EOI agreements are generally patterned on the OECD Model Taxation Convention or the Model TIEA. All but five of the agreements use the specific language "foreseeably relevant" or an alternative wording that is consistent with the standard (e.g. is necessary, is relevant, may be relevant, is pertinent, or relevant and necessary). Agreements signed or amended after 2005 use the specific "foreseeably relevant" wording as is the case also for the Multilateral Convention.

270. The United States DTC with Switzerland, signed in 1996, allows for exchange of information "necessary for carrying out the provisions of the present Convention or for the prevention of tax fraud or the like." This wording may restrict effective EOI and is not in line with the standard. The United States and Switzerland signed a protocol to the DTC on 23 September 2009 that uses the OECD model wording and allows EOI to the widest possible extent as required under the standard. The protocol was approved by the Swiss Parliament on 19 June 2010. However, the protocol is not yet ratified by the United States. The United States and Switzerland are parties to the Multilateral Convention, which provides for EOI in line with the standard. However, as the United States has not ratified the 2010 Protocol to the Multilateral Convention, it cannot exchange information with Switzerland under the Protocol until it is ratified by the United States. The restrictive wording of the DTC led to requests for clarifications in several cases. Nevertheless, because the United States did not decline any requests from Switzerland during the review period, the impact was negligible.

271. The United States TIEAs with Barbados, Guyana, Jamaica, and Trinidad and Tobago provide that "the Contracting States shall exchange

information to administer and enforce the domestic laws of the Contracting States concerning taxes covered by this Agreement” or a variation of this wording. Although neither the phrase “foreseeably relevant” nor an alternative is specifically contained in these agreements, all four agreements have been mutually interpreted consistent with the standard. In addition, the United States can exchange information with Barbados, Jamaica, and Trinidad and Tobago under a DTC which includes the specific foreseeably relevant language as contained in the OECD Model DTC. Finally, the United States has an EOI relationship with Barbados and Jamaica under the Multilateral Convention which allows exchange of information in line with the standard upon its coming into force in both EOI partners.

272. Concerning the practical application of the criteria of foreseeable relevance, the 2011 report did not identify an issue as information required by the United States to be included in incoming requests does not go beyond what is required under Article 5(5) of the Model TIEA. No change has been encountered in this respect since the first round review. This was also confirmed by peers.

273. The United States does not require its partner jurisdictions to complete a standardised template for the formulation of requests and instead receives and accepts requests in a wide variety of formats if they conform to the information required to be included in an EOI request as listed in Article 5(5) of the Model TIEA. Identification of the taxpayer can be done by providing a number of indicators. Typically more than one identifier is necessary to uniquely identify the taxpayer. Providing the taxpayer’s US TIN and date of birth, although not necessary, nevertheless facilitates handling of the request and speeds up providing of the requested information.

274. During the period under review, the United States requested clarifications in respect of 425 incoming requests representing about 16% of incoming requests. Clarifications were typically of a non-substantive nature. Clarifications were made to determine whether the tax at issue was a tax covered by the EOI instrument, to ascertain the tax years at issue, to establish the relationship between the tax examination and the information requested, or to verify that the statute of limitations in the requesting jurisdiction has not expired in cases where information in respect of old tax periods was requested.

275. If it is unclear whether the foreseeable relevance standard has been met, the United States requests additional information or clarifications from the requesting jurisdiction to resolve the identified issues. The EOI Programme communicates any such issues to the requesting jurisdiction and attempts to resolve them before declining a request. Over the review period, the United States declined 20 EOI requests (0.75% of all received requests) because they did not meet the foreseeable relevance standard.

276. Two peers each reported a case where the requested information was not provided due to clarifications requested by the United States. In one case the clarification was requested several months after the request was sent and considering the time elapsed since the request had been sent and possible overly broad in scope of the request pointed by the United States; in this case, the requesting jurisdiction decided not to pursue the request. In the second case, the United States required further information to establish a closer link between the taxpayer under investigation in the requesting jurisdiction and the person in respect of whom the information was requested. Subsequently, only information related directly to the taxpayer under investigation in the requesting jurisdiction was provided. It appears that the reported two cases were impacted by aspects negatively affecting EOI in general (e.g. workload of the EOI Programme), which are analysed under element C.5 and do not specifically relate to the United States interpretation of the foreseeable relevance standard. The second case also highlights the importance of appropriate communication between Competent Authorities (see further section C.5.2). It is also noted that the EOI Programme has made significant efforts to ensure regular and constructive communications with foreign competent authorities regarding both specific requests and issues affecting the overall EOI Programme.

Group requests

277. None of the United States EOI agreements or domestic law contains language prohibiting group requests. The United States interprets its agreements and domestic law as allowing it to provide information requested pursuant to group requests in line with Article 26 of the OECD Model Tax Convention and its commentaries.

278. The information required to be provided in a valid group request mirrors information required under Article 5(5) of the Model TIEA and specified in Paragraph 5.2 of the Commentary to Article 26 of the 2012 Update to the OECD Model Tax Convention.

279. Incoming group requests require the issuance of a John Doe summons to the person in possession or control of the information about an ascertainable group. The statutory conditions for the issuance of a John Doe summons are consistent with the requirements for a group request to meet the standard of foreseeable relevance as also confirmed in practice (see further section B.1.1).

280. In most respects, the basic process and procedures for responding to group requests generally follow those applicable to ordinary, non-group requests. Nevertheless, because the John Doe summons legal procedures require the involvement of IRS Chief Counsel and the US Department of Justice and approval by a district court, it takes additional processing time to respond to group requests. Upon receipt of a petition by the Department of

Justice, district courts have taken on average less than one week to issue an order approving the summons. After obtaining the court's approval, the IRS issues the summons to the record keeper to obtain the information requested.

281. During the review period, the United States received 10 group requests. Several of these requests required the issuance of a John Doe summons. While the co-ordination involved in formulating a valid John Doe summons caused the processing time of these group requests to exceed the usual time in which an incoming request is processed, the IRS did not encounter any particular difficulties in processing those requests. No concerns in this respect were raised by peers.

ToR C.1.2. Provide for exchange of information in respect of all persons

282. The 2011 report concluded that all of the United States' EOI relationships allow for EOI with respect to all persons and there is no change in this respect.

283. Where some of its older DTCs do not explicitly provide that the EOI provision is not restricted by Article 1 (Persons Covered), the United States has advised that it interprets the EOI provision to allow exchange with respect to all persons regardless of their residence if the respective treaty provides for EOI for the purposes of domestic tax laws.

284. In addition to EOI under DTCs, the United States can exchange information in respect of all persons under all of its TIEAs and under the Multilateral Convention.

285. No restriction in respect of persons on whom information can be exchanged has been experienced in practice. Accordingly no issue in this respect was raised by peers either.

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

286. The OECD Model Tax Convention Article 26(5) and the Model TIEA Article 5(4), which are authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

287. As concluded in the 2011 report, the United States has access to bank information for tax purposes and is able to exchange this type of information when requested on a reciprocal basis irrespective of whether its agreements contain the equivalent of Article 26(5).

288. All of the United States' TIEAs, except one, contain wording akin to Model TIEA Article 5(4). The 2011 report noted that the United States' TIEA with Costa Rica limits the exchange of bank information to cases of tax fraud as defined under Costa Rican law, which is not in line with the standard. However, both jurisdictions are Parties to the Multilateral Convention and therefore the United States can exchange information with Costa Rica in line with the standard once the 2010 Protocol to the Multilateral Convention is in force in the United States. In addition, the United States and Costa Rica have recently signed a new TIEA that allows for exchange to the standard.

289. Out of the 62 DTCs the United States has entered, 38 do not contain Model Article 26(5).¹⁹ Out of these 38 jurisdictions, Kazakhstan and Trinidad and Tobago have been identified in Global Forum peer reviews as having domestic restrictions on access to banking information which will restrict EOI under these two DTCs and Austria cannot exchange banking information under treaties without Model Article 26(5). As Kazakhstan, Austria and the United States are Parties to the Multilateral Convention, this will not be a concern once the 2010 Protocol to the Multilateral Convention is in force in the United States. However, no such alternative EOI instrument exists for EOI between the United States and Trinidad and Tobago and therefore the EOI relationship is not in line with the standard. The United States should continue to work with this EOI partner to ensure that the EOI relationship is to the standard. Further, five jurisdictions out of the 38 jurisdictions with which the US DTCs do not contain Model Article 26(5) have not yet been reviewed by the Global Forum and may have restrictions in access to certain types of relevant information which would limit effective EOI under

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19. These 38 DTCs are with Australia, Austria, Barbados, China, Cyprus*, Czech Republic, Egypt, Greece, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Mexico, Morocco, Norway, Pakistan, Philippines, Portugal, Romania, Russia, Slovakia, Slovenia, South Africa, Sri Lanka, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, the United Kingdom and Venezuela.

* 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 (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union 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.

the respective DTCs.²⁰ Out of these five jurisdictions, Tunisia is a Party to the Multilateral Convention and the United States will be able to exchange information in line with the standard with this partner under the Multilateral Convention once the 2010 Protocol to the Multilateral Convention is in force in the United States. Nevertheless restrictions in the United States' treaty partner's domestic laws may limit effective EOI under the remaining four DTCs, and the United States should therefore ensure that its EOI relationships are in line with the standard.

290. The United States DTCs with Luxembourg and Switzerland do not contain Model Article 26(5) but the United States signed protocols with these two jurisdictions containing wording of Model Article 26(5) and all three jurisdictions are parties to the Multilateral Convention. As Luxembourg and Switzerland cannot exchange banking information under treaties without Model Article 26(5) up to the standard, the EOI relationships with those two jurisdictions are not in line with the standard until the United States ratifies the 2010 Protocol to the Multilateral Convention or protocols to the two DTCs (see further section C.1.8).

291. As stated above, the United States is a Party to the Multilateral Convention. Although the original Convention has been in force in the United States since April 1995, the 2010 Protocol to the Multilateral Convention, containing wording akin to Model Article 26(5), was signed by the United States in May 2010 but remains to be ratified. Since the United States does not have a domestic restriction to provide all types of information as foreseen under Model Article 26(5), it interprets its obligations under the Multilateral Convention as including the obligation to provide information covered under the Model Article 26(5) on a reciprocal basis.

292. During the period under review, the United States received 677 requests for banking information. Most of these requests related to bank accounts of individuals. There was no case where the requested information was not provided because it was held by a bank, another financial institution, a nominee or person acting in an agency or a fiduciary capacity or because it related to ownership interests in a person. No issue has been reported by peers in this respect (see further sections B.1 and C.5).

ToR C.1.4. Absence of domestic tax interest

293. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. Such obligation is explicitly contained in the OECD Model Tax Convention Article 26(4) and the Model TIEA Article 5(2).

20. These five jurisdictions are Egypt, Sri Lanka, Thailand, Tunisia and Venezuela.

294. As concluded in the 2011 report, there is no limitation in the United States' domestic law that prevents EOI absent a domestic tax interest. The United States also does not require that its agreements contain the equivalent of Model Article 26(4) in order to provide information regardless of domestic tax interest if the treaty partner can exchange information regardless of the domestic tax interest as well. Further, all of the United States' TIEAs contain wording akin to Model TIEA Article 5(2).

295. Out of the 62 DTCs the United States has entered, 36 do not contain Model Article 26(4).²¹ Out of these 36 jurisdictions, Kazakhstan and Trinidad and Tobago have been identified in Global Forum peer reviews as having domestic restrictions on use of access powers regardless of domestic tax interest which will restrict EOI under these two DTCs. As already concluded under C.1.3, as Kazakhstan and the United States are Parties to the Multilateral Convention, there is no concern in respect of the US EOI relationship with Kazakhstan once the 2010 Protocol to the Multilateral Convention is in force in the United States. However, no such alternative EOI instrument exists for EOI between the United States and Trinidad and Tobago. Therefore the EOI relationship is not in line with the standard, and the United States should ensure that the EOI relationship is to the standard. Further, the same five jurisdictions as under C.1.3 with which the US DTCs do not contain Model Article 26(4) have not yet been reviewed by the Global Forum and may have restrictions in access to certain types of relevant information which would limit effective EOI under the respective DTCs. As indicated above, one out of these five jurisdictions, Tunisia, is a Party to the Multilateral Convention, and the United States will be able to exchange information in line with the standard under the Multilateral Convention once the 2010 Protocol to the Multilateral Convention is in force in the United States. Nevertheless restrictions in the United States' treaty partner's domestic laws may limit effective EOI under the remaining four DTCs, and the United States should therefore ensure that its EOI relationships are in line with the standard.

296. As stated above, the United States is a Party to the Multilateral Convention but the 2010 Protocol to the Multilateral Convention, containing wording akin to Model Article 26(4), remains to be ratified. Since the United States does not have a domestic restriction to provide information regardless of domestic tax interest as foreseen under Model Article 26(4) it interprets its obligations under the Multilateral Convention as including the obligation to provide information pursuant to the Model Article 26(4) on a reciprocal basis.

21. These 36 DTCs are with Australia, Austria, China, Cyprus, Czech Republic, Egypt, Estonia, Germany, Greece, India, Indonesia, Israel, Italy, Jamaica, Kazakhstan, Korea, Latvia, Lithuania, Mexico, Morocco, the Netherlands, Norway, Pakistan, Portugal, Romania, Russia, Slovakia, South Africa, Sri Lanka, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, and Venezuela.

297. In practice, most incoming EOI requests relate to a person that is not a US taxpayer and in which the United States has no domestic tax interest in obtaining the requested information. The United States responds to all valid requests for information consistent with the international standard whether it has or does not have a domestic tax interest in obtaining the requested information. Accordingly, no concerns in this respect were reported by peers.

ToR C.1.5. Absence of dual criminality principles

298. All of the United States' EOI agreements, except for one, do not contain restrictions limiting EOI in criminal matters or based on dual criminality principle. As pointed out in the 2011 report, the United States' TIEA with Costa Rica requires that bank information can only be exchanged where the case involves tax fraud as defined under Costa Rican law. Although the TIEA is not in line with the standard, both jurisdictions are Parties to the Multilateral Convention and therefore the United States will be able to exchange information with Costa Rica in line with the standard once the 2010 Protocol to the Multilateral Convention is in force in the United States. In addition, the United States and Costa Rica have recently signed a new TIEA that allows for exchange to the standard.

299. There has been no case during the reviewed period where the United States declined a request because of a dual criminality requirement as has been confirmed by peers.

ToR C.1.6. Exchange information relating to both civil and criminal tax matters

300. All of the United States' EOI agreements provide for EOI in both civil and criminal tax matters. As concluded in the 2011 report, the United States is able to exchange information in both civil and criminal matters pursuant to its agreements in line with the standard.

301. Generally the same procedures apply in respect of EOI for civil and criminal tax matters. In criminal tax cases, the EOI Programme may seek assistance from the IRS Criminal Investigation division, which has specialised knowledge about gathering relevant evidence to support a criminal tax case.

302. About 1% of requests received during the review period related to criminal tax cases. There has been no case where the United States declined to provide information because the requested information could not be provided for criminal tax purposes.

303. One peer reported that in one case the US preferred to use a Mutual Legal Assistance (MLA) instrument for exchange of information as the case was considered by the United States to be very sensitive. The United States

authorities confirmed that the United States does not require use of a specific instrument for EOI in criminal matters even if the requesting jurisdiction indicates that the information will be used in criminal tax proceedings. As no other such case was reported by peers it appears that the referred case represents a one-off situation. The possible explanation is the complexity of the criminal case and the use of tax information outside the scope of the exchange agreement (see further section C.5). Further peer inputs confirmed the United States practical ability to provide information requested for criminal tax purposes.

ToR C.1.7. Provide information in specific form requested

304. As concluded in the 2011 report, there are no restrictions in the United States' EOI agreements that would prevent the United States from providing information in a specific form, as long as this is consistent with US law and its administrative practices. In addition, many of the United States' TIEAs include requirements that information be provided in specific enumerated forms (such as deposition of witnesses).

305. In practice, the United States' Competent Authority provides information in the requested form in line with the standard (i.e. to the extent possible under the jurisdiction's domestic laws and practices). The US Competent Authority can, in particular, provide certified copies of certain original documents or provide information in the form of depositions of witnesses. Input received from peers confirms that the United States is able to respond to requests in accordance with the standard.

ToR C.1.8. Signed agreements should be in force

306. The United States' has a broad EOI network covering 129 jurisdictions through 95 bilateral agreements and the Multilateral Convention. Out of these 129 jurisdictions the United States has an EOI instrument in force with 91 of them.

307. Out of the 38 jurisdictions with which the United States does not have EOI relationship that is in force:

308. Eight are solely based on the original Multilateral Convention, which the United States has ratified and the United States will be able to exchange information with these jurisdictions once the 2010 Protocol is ratified by the United States or there is a meeting of the minds as to the application of the original Multilateral Convention²²;

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22. The United States can exchange information under the Multilateral Convention with all jurisdictions that have (i) signed and ratified the original Multilateral Convention and are a member of the OECD or the Council of Europe; (ii) signed

309. Twenty-eight are solely based on the Multilateral Convention amended by the 2010 Protocol which has not been ratified by the United States.²³ The United States signed the 2010 Protocol to the Multilateral Convention in May 2010. The Protocol was submitted to the US Senate for ratification in May 2012, was considered at a Senate Foreign Relations Committee (SFRC) hearing held in October 2015, and was approved by the SFRC and forwarded for full Senate approval and ratification in February 2016 and in January 2017. However, the Protocol was not acted upon and was, in both occasions, referred back to the SFRC for further consideration;

310. EOI relationship with Chile is based on a DTC, signed in February 2010, and the amended Multilateral Convention, both of which the United States has not yet ratified. However, the United States will be able to exchange information with Chile under the Multilateral Convention once a meeting of the minds has been reached concerning the application of the Multilateral Convention;

311. EOI relationship with Viet Nam is solely based on a DTC signed in July 2015, which has not yet been ratified by the United States;

312. Out of the 36 jurisdictions with EOI relationship with the United States solely based on the amended Multilateral Convention, 10 have not yet ratified the amended Convention.²⁴ Consequently, having an EOI relationship in force with these jurisdictions requires ratification of the Multilateral Convention also by these other jurisdictions.

and ratified the 2010 Protocol to the Multilateral Convention and are a member of the OECD or the Council of Europe; or (iii) had the Multilateral Convention extended to them pursuant to Article 29 of the Convention by a jurisdiction under (i) or (ii). If the jurisdiction was not a Party to the Multilateral Convention prior to its amendment by the Protocol, the United States and the jurisdiction must reach a meeting of the minds on the application of the Multilateral Convention prior to exchanging information under the Multilateral Convention. The United States is prepared to exchange information with any such jurisdiction under the Multilateral Convention. These eight jurisdictions are Albania, Andorra, Anguilla, Armenia, Georgia, Montserrat, San Marino and Turks and Caicos Islands. Note that Armenia has not yet ratified the Multilateral Convention.

23. These 28 jurisdictions are Bahrain, Belize, Brunei Darussalam, Burkina Faso, Cameroon, Cook Islands, El Salvador, Gabon, Ghana, Guatemala, Kenya, Kuwait, Lebanon, Malaysia, Nauru, Nigeria, Niue, Qatar, Saint Kitts and Nevis, Saint Vincent and Grenadines, Samoa, Saudi Arabia, Senegal, Seychelles, Singapore, Uganda, United Arab Emirates and Uruguay.
24. These 10 jurisdictions are Armenia, Bahrain, Brunei Darussalam, Burkina Faso, El Salvador, Gabon, Kenya, Kuwait, Qatar and the United Arab Emirates.

313. In addition to EOI instruments establishing an EOI relationship, the United States has signed two DTCs substituting already existing DTCs and four DTC protocols which remain to be ratified by the United States.²⁵ All of these have been pending for at least five years. Of the two DTC replacements and four DTC protocols pending ratification, the United States currently has a bilateral instrument in effect with all but two (Luxembourg and Switzerland) that allows exchange to the standard, and the United States can exchange with Luxembourg and Switzerland under the Multilateral Convention once the 2010 Protocol to the Multilateral Convention is ratified by the United States.

314. Since the last review, TIEAs have entered into force between the United States and Argentina, Brazil, Colombia, Hong Kong, Mauritius, Panama, and Saint Lucia. Unlike DTCs, protocols to DTCs and the Multilateral Convention, TIEAs are considered executive agreements and do not require ratification by the United States after signing in order to enter into force.

315. To sum up, the United States does not have an EOI relationship in force with 38 out of 129 its EOI partners which represents significant portion of its EOI partners. Since July 2010, the United States has not ratified any signed EOI agreement, including the 2010 Protocol to the Multilateral Convention. This substantive delay in ratification affects two new DTCs, two replacement DTCs, four DTC Protocols and the 2010 Protocol to the Multilateral Convention.²⁶ Of these instruments, only two directly impact exchange to the standard (i.e. the 2010 Protocol to the Multilateral Convention and the DTC with Viet Nam). The United States indicated its willingness to enter into TIEA negotiations with jurisdictions where ratification of the 2010 Protocol to the Multilateral Convention is required to establish EOI relationship in line with the standard. Nevertheless in view of the significant portion of EOI partners with which the United States currently does not have an EOI relationship in force, the United States is recommended to ratify its signed bilateral and multilateral EOI agreements expeditiously so that all its EOI relationships are in force. In light of the delay so far encountered in ratification of the 2010 Protocol to the Multilateral Convention, the United States should expeditiously pursue any alternative means to ensure effective EOI arrangements that meet the standard are in force with affected jurisdictions, including entering into a TIEA.

25. These two DTCs are with Hungary and Poland. The four DTC protocols are with Japan, Luxembourg, Spain and Switzerland.

26. These four DTCs are with Chile (signed in February 2010), Hungary (signed in February 2010), Poland (signed in February 2013) and Viet Nam (signed in July 2015). The four DTC protocols are with Japan (signed in January 2013), Luxembourg (signed in May 2009), Spain (signed in January 2013) and Switzerland (signed in September 2009).

316. The following table summarises outcomes of the analysis under element C.1 in respect of the United States' bilateral EOI mechanisms (i.e. regardless of whether the United States can exchange information with the particular treaty partner also under a multilateral instrument):

Bilateral EOI mechanisms

A	Total number of DTCs/TIEAs	$A = B + C$	95
B	Number of DTCs/TIEAs signed but not in force	$B = D + E$	5
C	Number of DTCs/TIEAs signed and in force	$C = F + G$	90
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard	D	5
E	Number of DTCs/TIEAs signed (but not in force) and not to the Standard	E	0
F	Number of DTCs/TIEAs in force and to the Standard	F	84
G	Number of DTCs/TIEAs in force and not to the Standard	G	6

ToR C.1.9. Be given effect through domestic law

317. The United States has in place domestic legislation necessary to comply with the terms of its EOI agreements.

318. Effective implementation of EOI agreements in domestic law has been confirmed in practice as there was no case encountered where the United States was not able to obtain and provide the requested information due to unclear or limited effect of an EOI agreement in the United States' law. Also, no issue in this regard was reported by peers.

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

The jurisdiction's network of information exchange mechanisms should cover all relevant partners

319. The United States has an extensive EOI network covering a total of 129 jurisdictions through 62 DTCs, 33 TIEAs and the Multilateral Convention. The United States' EOI network encompasses a wide range of counterparties, including all of its major trading partners, all the G20 members and all OECD members.

320. The first round review did not identify any issue in respect of the scope of the United States' EOI network or its negotiation policy.

321. Since the first round review the United States' treaty network has been broadened from 84 jurisdictions to 129. This is through the significant increase in the number of the Multilateral Convention Parties and the broadening of the network of the United States' bilateral agreements. Since

the cut-off date of the first round review in February 2011, the United States has signed two new DTCs and 10 new or amended TIEAs four of which with jurisdictions previously without bilateral EOI relationship.²⁷ The number of signatories to the Multilateral Convention rose from 27 in February 2011 to 116 in April 2018 which further broadens the United States' treaty network.

322. The United States has in place an active negotiation programme which includes renegotiating of existing DTCs and TIEAs to ensure that they are up to date and in line with international standards and expansion of already existing treaty network so that all relevant partners are covered. Negotiations or renegotiations of bilateral agreements are currently ongoing with several jurisdictions. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such a relationship the United States is recommended to maintain its negotiation programme so that its EOI network continues to cover all relevant partners.

323. The United States' willingness to enter into EOI agreements without insisting on additional conditions was also confirmed by peers as no jurisdiction has indicated that the United States had refused to enter into or delayed negotiations of an EOI agreement.

324. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework		The United States should continue to develop its EOI network with all relevant partners.
Determination: In place		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

27. These four jurisdictions are Argentina; Hong Kong, China; Mauritius and Viet Nam.

C.3. Confidentiality

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

325. The 2011 report concluded that all of the United States' EOI agreements have confidentiality provisions in line with the standard. This is also the case for all of the United States' EOI agreements and Protocols to EOI Agreements signed since the first round review.

326. There are adequate confidentiality provisions protecting tax information in the United States' domestic tax laws. These provisions also apply to information exchanged under the United States' EOI instruments unless the respective EOI instrument stipulates different rules.

327. The above confidentiality rules also cover incoming EOI request letters. The competent authority's letters are not disclosed. If a court proceeding, under US domestic law, necessitates the disclosure of the competent authority letter itself, the EOI Programme may disclose the letter unless the requesting jurisdiction otherwise specifies.

328. While obtaining information which is not at the disposal of the tax administration the IRS requests the information through an IDR or based on summons. In the limited number of cases where information is obtained through a summons, the information holder is provided with a notice required to include the taxpayer's name and contact information and the tax years involved. The disclosure of these items of information is typically necessary to identify the pertinent documents requested and is legally required to be included in the summons notice for the summons to be enforced in court proceedings. Nevertheless, disclosure of this information may not always be necessary to the description of the requested information. The United States is therefore recommended to ensure that only the minimum information necessary to obtain the requested information is disclosed to information holders. It is nevertheless noted that the disclosure of the name of the taxpayer and the tax year to which information relates is usually necessary to describe the requested information and that in the majority of cases the requested information is obtained through alternative means (e.g. an IDR).

329. The applicable rules are properly implemented in practice to ensure confidentiality of the received information. The IRS has in place policies and procedures to ensure that confidential information is clearly labelled and stored. The received information is kept either physically in locked archives or stored electronically with access restricted to authorised employees. Adequate security and operational controls are deployed in an appropriate manner, with the exchanged information adequately protected. Accordingly,

no case of breach of confidentiality has been encountered in the EOI context and no such case or concerns have been reported by peers either.

330. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework	A summons notice requires disclosure of the name of the taxpayer, the taxpayer's contact information and the tax year to which the requested information relates. While the disclosure of the name of the taxpayer and the tax year to which information relates is usually necessary to describe the requested information, and in the majority of cases the requested information is obtained through alternative means (e.g. an IDR), nevertheless the disclosure of this information may not always be necessary to the description of the requested information.	The United States should ensure that only the minimum information necessary to obtain the requested information is disclosed to information holders.
Determination: In place		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

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

331. The 2011 report concluded that the United States EOI instruments have confidentiality provisions in line with Article 26(2) of the OECD Model Tax Convention. All of the United States' EOI agreements and Protocols to EOI agreements signed since the first round review contain wording akin to Article 26(2) of the Model DTC as well and therefore ensure confidentiality of exchanged information in line with the standard.

332. As concluded in the 2011 report, there are adequate confidentiality provisions protecting tax information contained in the United States' domestic laws which are supported by administrative and criminal sanctions applicable in the case of breach of these obligations (e.g. per I.R.C. § 7213, the wilful unauthorised disclosure of returns or return information is a felony punishable by a fine of up to USD 5 000 or imprisonment of up to 5 years, or both). The main confidentiality rules in the EOI context are section 6105 and section 6103 of the I.R.C. Section 6105 provides that information exchanged under a bilateral or multilateral DTC, TIEA, or other agreement providing for the exchange of tax information or for mutual assistance in tax matters shall not be disclosed to the extent treated as confidential under the treaty or agreement. Section 6103 provides for the confidentiality of all tax returns and other information obtained for the administration of tax laws unless disclosure is specifically authorised under Section 6103 (see further section C.3 in the 2011 report). I.R.C. section 6103 also imposes administrative and physical safeguard requirements to prohibit recipients of tax returns and return information from using or disclosing the information in an unauthorised manner, and it requires the maintenance of records and the production of official reports that detail the purposes for which certain disclosures were made to assist in oversight.

333. The above confidentiality rules also cover incoming EOI request letters. The competent authority's letters are not disclosed. If a court proceeding, under US domestic law, necessitates the disclosure of the competent authority letter itself, the EOI Programme may disclose the letter unless the requesting jurisdiction otherwise specifies. Before disclosing the letter, the EOI Programme will inform the requesting jurisdiction of the procedure and ask whether it objects the disclosure. Based on the information provided by the United States authorities, in the limited number of cases where court proceedings were initiated in the EOI context during the current period under review, the EOI letter was not disclosed. Information made available to the taxpayer in the context of court proceedings is the minimum information necessary to meet the Powell standard and would not normally include the EOI request letter. The Powell standard requires that the information requested be relevant, requested for a valid purpose, not already in the IRS's possession, and that all administrative steps are followed (see further section B.1.1 and B.2). In a typical court proceeding involving EOI matters, US courts require only that the US Competent Authority provide a declaration to the court that includes the minimal information necessary from the incoming letter but not the letter itself.

334. As described in section B.1, for obtaining information which is not at the disposal of the tax administration, the IRS requests the information through an IDR or a summons. In cases where information can be obtained through an IDR, only information necessary to obtain the requested

information is required to be provided to the taxpayer or the information holder. This information typically includes a description of the requested information and a short description of the purpose for which the information is requested by the IRS (e.g. for tax or EOI purposes).

335. Where information has to be obtained through a summons, which constituted 16% of the EOI cases during the review period, the information holder is provided with the summons notice which includes the taxpayer's name and contact information, the tax years involved, the name of the requesting jurisdiction, the name of the treaty or TIEA under which the underlying request for information was made, and the description of the requested information. For a summons to be enforceable there is a legal obligation to provide this information in order to initiate formal court procedures. Although in the majority of the cases the name of the taxpayer and the tax year to which the requested information relates are a necessary part of the description of the requested information, this may not be necessary in all cases (e.g. where the taxpayer under investigation is not the direct party of the transaction or contract to which the information relates). The requirement to include in all cases the name of the taxpayer, the taxpayer's contact information and the tax years involved therefore goes beyond the standard and the United States is recommended to take measures to address this concern. It is nevertheless noted that the disclosure of the name of the taxpayer and the tax year to which information relates is usually necessary to describe the requested information and that in the majority of cases (84% of cases during the reviewed period) the requested information is obtained through internal means or an IDR. In practice, no peer has expressed any concerns about disclosures in this context.

336. The IRS can serve a summons without identifying the taxpayer only if the taxpayer's name is not readily available (I.R.C. § 7609(f)). Any summons that does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the IRS obtains authorisation to serve the summons. These summonses are referred to as John Doe summons (see further section B.1 and C.1).

337. There is no requirement to notify a taxpayer upon the issuance of a John Doe summons, either before or after the issuance of the summons. The court proceedings relating to the John Doe summons are matters of public record unless the US government requests that a particular summons be filed under seal. In practice, the EOI Programme informs treaty partner jurisdictions of the ability to file such a motion to seal. During the review period, there was no EOI partner that requested the filing of a motion to seal. Outside of the review period there has been such a request and in that case the motion to seal the John Doe summons was granted.

Practical measures to ensure confidentiality of the information received

338. As concluded in the 2011 report, the tax administration has in place appropriate policies and procedures to ensure confidentiality of the exchanged information.

339. Information received under all EOI instruments is classified in accordance with security rules prescribed under the National Archives and Records Administration Act (NARA), labelled as protected under the particular treaty and stored at the federal level in archives of the EOI Programme. The IRS applies a “clean desk policy” as set forth in I.R.M. 10.2.14. (Methods of Providing Protection). The policy applies to all data left out in work areas, on credenzas, desk tops, fax/copy machines, conference rooms, and in-out baskets. All information received electronically is saved in secure IT systems. Only authorised staff has access to such systems and their access is traceable in order to make it possible to know what information was accessed. The EOI Programme buildings are closed off, with alarm systems and many are protected by security guards. The EOI Programme’s buildings are only accessible with an I.D. card and a personal entry card which every employee has to have to enter the building.

340. The EOI request and supporting documentation are not disclosed outside of the EOI Programme. If the requested information is obtained through field offices, the EOI Programme sends to the field office an instruction letter containing information from the EOI request (but not the letter itself) together with necessary information to obtain the information.

341. When foreign data requested by the IRS is received by the US Competent Authority, the information is submitted to the respective field office which requested the information through secured internal communication channels and the information is handled in accordance with the confidentiality rules described above. In all cases the information is marked as obtained through EOI and protected under the particular treaty under which it was received.

342. All information is exchanged with EOI partners either by a secure e-mail system that uses encrypted e-mail attachments or through trackable mail in cases where a treaty partners prefers this way of communication.

343. The United States’ general approach to information security management is in line with the ISO-27001 and other international standards. Adequate planning, security and risk assessment processes are in place in conformity with internationally accepted good practices. Adequate security and operational controls are deployed in an appropriate manner, with the exchanged information adequately protected. The EOI Programme uses the electronic Inventory Management System (IMS) to track the status of all requests and to record all subsequent correspondence, research, and other

activities relating to the request. To safeguard this electronically maintained information, the EOI Programme follows specific IRS-wide safeguards that are aimed at ensuring the appropriate use of and access to such information. In particular, I.R.M. 10.8.1.4.12.1 provides that every “Federal Information Security Management Act” reportable system must have a security plan that at a minimum is consistent with IRS guidance and templates. Such plans are regularly reviewed and updated to address necessary changes to the information system and environment of operation, as well as problems that have been identified during plan implementation or security control assessments. The IRS also maintains policies and procedures that audit user access and use to detect unauthorised access to confidential information. In addition to IRS policies and procedures for internal assessments and monitoring programmes, there are also external audits by various oversight bodies such as the US Government Accountability Office and the US Treasury Inspector General for Tax Administration.

344. No case of breach of the confidentiality obligation in respect of the exchanged information has been encountered by the United States authorities and no such case or concern in this respect has been indicated by peers. One peer reported that a request sent to the United States’ Competent Authority through regular post was not received. It is not clear why this request was not received but may be due to the reorganisation of the EOI Programme subsequent to the closure of EOI Tax Attaché overseas posts (see element C.5 for further discussion). To address the issue, both partners have moved to communication through electronic means which reduces risks of lost or misplaced EOI communication in the future.

ToR C.3.2. Confidentiality of other information

345. The confidentiality provisions in the US EOI agreements and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for information, background documents to such requests, and any other documents reflecting such information, including communications between the requesting and requested jurisdictions and communications relating to the request that occur within the tax authorities of either jurisdiction.

346. In practice, the EOI Programme maintains confidentiality with respect to all communications with other competent authorities. This confidentiality is observed without regard to whether the information is in written form or communicated orally, and it extends to the incoming EOI request letter. The EOI Programme also protects references in other documents to confidential competent authority communications, including such references in advice by government attorneys.

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

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

ToR C.4.1. Exceptions to requirement to provide information

347. As concluded in the 2011 report, all of the United States' EOI agreements contain provisions on the rights and safeguards of taxpayers and third parties in line with the standard. Each of the United States' EOI instruments allow for exception from the obligation to provide the requested information akin to the exemption in article 26 (3) of the OECD Model Tax Convention.

348. As discussed in Part B, the scope of protection of information covered by this exception in the United States' domestic law is consistent with the international standard.

349. During the period under review there was no case where a person refused to provide the requested information because of professional privilege. The United States did not decline to provide any requested information during the period under review because it was covered by legal professional privilege or any other professional secret and no peer indicated any issue in this respect.

350. One peer reported a case where information was not provided because it was subject to trade secrets. The standard allows for discretion not to supply information that would disclose any trade secret or trade process in certain limited circumstances. The Commentary to OECD Model Article 26 states that secrets mentioned in Model Article 26(3) (including trade secrets) should not be taken in too wide a sense. The Commentary further continues that although financial information, including books and records, does not by its nature constitute a trade, business or other secret, in certain limited cases, the disclosure of financial information might reveal a trade, business or other secret. For instance, a request for information on certain purchase records may raise such an issue if the disclosure of such information revealed the proprietary formula used in the manufacture of a product. Based on the available information, information requested in the case reported by the peer falls within that category and therefore the US' exercise of discretion not to exchange that particular piece of the requested information is in line with the standard.

351. The table of determinations and ratings therefore remains unchanged as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: In place		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

352. In order for EOI to be effective, jurisdictions should request and provide information under their networks of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or providing an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure the quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

353. The 2011 report concluded that a number of the United States partners have pointed to delays in obtaining information and suggested that the procedures for responding to requests, which require a number of steps, appear to inhibit response times. Consequently, the United States was recommended to 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 as warranted.

354. Several changes have taken place since the first round review which have impacted the efficiency of EOI practice over the reviewed period:

- loss of staffing and hiring of new personnel – in 2014 and 2015, the EOI Programme²⁸ experienced staffing losses. These losses mainly related to the closure of offices of overseas Tax Attachés and the loss of experienced employees deployed in these posts. Further staffing turnover was caused by the loss of some experienced employees to other opportunities and resulting staffing changes. The staffing of the EOI Programme has been continually assessed and adjustments were made during and after the review period, and additional hiring is planned during the course of 2018. As a result, the EOI Programme is currently staffed with 22 full-time employees dedicated to EOIR. This represents a decrease from 24 full-time employees at the time of the 2011 report.
- reorganisation of the EOI work – during 2015, the organisation of the EOI Programme underwent a substantive change. Offices of overseas Tax Attachés were closed and the EOI Programme was reorganised from two EOI teams and the Tax Attachés offices to four EOI teams each with its own manager under the supervision of the EOI Programme Manager.
- adjustments in the summons process – the internal process for issuing summonses has been continually improved since 2012. These changes include implementing the electronic review and approval of draft summonses by EOI management, removing the requirement for some summonses (including most summonses for bank information) to be reviewed by IRS Chief Counsel, and implementing arrangements for banks to respond to summonses electronically (and, in some cases, to accept the electronic service of summonses). The EOI Programme and Chief Counsel continually assess whether additional types of draft summonses need not be reviewed by Counsel.
- enhancements to the EOI database (IMS) – in March 2015, the EOI Programme released an updated and enhanced version of its electronic case-management system (IMS), and further enhancements are also planned for implementation.

28. The EOI Programme is a business unit of the Large Business and International Division (LB&I), with primary responsibility within the IRS for the administration of EOIR as well as for certain other exchanges of information under the various international exchange agreements to which the United States is a Party. The EOI Programme does not have primary responsibility over exchanges, administered by the AEOI Programme or the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC).

- revised EOI guidance – in September 2014, the IRS published a revised and amplified version of its official employee guidance on processing incoming and outgoing EOI requests (I.R.M. 4.60.1 – Exchange of Information). In particular, the updated guidance addresses processing timelines, internal and external communication protocols, and other practices to ensure effective exchange of information.

355. Despite certain positive steps taken by the United States to address the concerns raised in its 2011 report, the overall impact during the review period of these developments on the efficiency of the exchange of information practice was not positive. It is acknowledged that a significant portion of requests received by the United States can be classified as complex requests and that demands on the EOI Programme have increased. Nevertheless, the time taken to provide a substantive response to a request does not ensure effective exchange of information in all cases. This was also pointed out by a few peers. The US response times have increased since the first round review from 51% of requests responded to within 90 days to 30% in the current period under review. This negative trend continued throughout the current review period. The United States is therefore recommended to speed up the provision of the requested information.

356. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
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 implementation of EOIR in practice.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	The United States response times have increased since the first round review, as well as throughout the current period under review, with 30% of requests received during the current period responded to within 90 days. Although the United States took certain positive steps the time taken to provide a response to a request does not ensure effective exchange of information in all cases as was also pointed out by a few peers.	The United States should speed up the provision of the requested information.
Rating: Largely Compliant		

ToR C.5.1. Timeliness of responses to requests for information

357. Over the period under review (1 January 2014 to 31 December 2016), the United States received a total of 2 633 requests for information. The following table relates to the requests received during the period under review and gives an overview of response times of the United States in providing a final response to these requests, together with a summary of other relevant factors impacting the effectiveness of the United States exchange of information practice during the reviewed period:

Response times in the United States

		2014		2015		2016		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C]	1 035	39.3	787	29.8	811	30.8	2 633	100
Full response: ≤90 days		519	50.1	158	20.1	118	14.5	795	30.2
(cumulative) ≤180 days		722	69.8	340	43.2	272	33.5	1 334	50.7
(cumulative) ≤1 year	[A]	896	86.6	540	68.6	579	71.4	2 015	76.5
> 1 year	[B]	135	13.0	213	27.1	141	17.4	489	18.6
Declined for valid reasons		15	1.5	9	1.2	19	2.6	43	1.7
Status update provided within 90 days (for responses sent after 90 days)		432	86.2	568	91.6	674	100	1 674	93.3
Requests withdrawn by requesting jurisdiction		26	2.5	37	4.9	18	2.5	81	3.2
Failure to obtain and provide information requested		19	1.8	9	1.2	7	1.0	35	1.4
Requests still pending at date of review	[C]	4	0.4	31	3.9	91	11.2	126	4.8

Notes: Requests are counted as per the number of request letters, i.e. an incoming request is counted as one even if it seeks information relating to multiple taxpayers, seeks different types of information or requires that information be obtained from multiple sources.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

358. The average response times have declined since the first round review from 51% of requests responded to within 90 days to 30% in the current period under review. The proportion of requests responded to within 180 days has also declined from 76% in the first round to 51% in the current review period. The timeliness of responses also declined during the current period under review from 50% responded within 90 days during the first year under review to 14% during the last year.

359. The decline of timeliness of responses was caused by several factors:

- loss of staffing and resulting reorganisation of the EOI Programme – In 2014 and 2015, the EOI Programme experienced staffing losses mainly related to the closure of four offices of Tax Attachés located

in Beijing, Frankfurt, London and Paris and the loss of nine experienced employees deployed in these posts. In 2014, collectively, the posts handled 74% of the incoming EOI requests and in 2015, the posts handled 38% of incoming EOI requests. All the posts' operations came to a close by 1 January 2016. The closures required all cases to be shipped to the EOI headquarters in Washington, DC, which led to delays and created a backlog impacting timeliness of responses in the following years. Further staffing turnover was caused by expanding of the United States EOI Programme and loss of some experienced employees to other opportunities.

- increased complexity of received requests – several received requests represented “bulk requests” related to a number of taxpayers. Further, about 1% of requests related to criminal cases where co-operation with the IRS's Criminal Investigation division and the Department of Justice was required. Overall, according to the US authorities about 10% of received requests can be qualified as complex requiring obtaining and compiling information from multiple sources and involving interaction with several third parties or taxpayers subject to the request.

360. Reasons for requests not being responded to within 90 days do not relate to a particular type of information requested (e.g. ownership or accounting information) or to a particular type of investigative measures required to be used. Nevertheless, as pointed out in section B.1.1, the use of a summons, in certain cases, may take additional time.

361. Four peers commented on the length of response times taken by the United States to provide final responses. Although these inputs acknowledged the quality of the received responses, they pointed out several cases where the long response time prevented effective EOI and led, in several cases, to the closure of the domestic case. Several other peers referred to cases pending for a significant period of time. On the other hand, it is noted that some response times were negatively impacted by time taken by the requesting jurisdiction to provide clarifications requested by the United States.

362. Three percent of requests received by the United States during the review period were subsequently withdrawn by the requesting jurisdiction. In several cases this was caused by expiry of the statute of limitations or other procedural deadlines in the requesting jurisdiction which caused the requested information to no longer be relevant. In some other cases the requesting jurisdiction obtained the information from other sources.

363. Of those requests received during the review period, 5% are in the process of being responded to. These requests do not relate to a particular type of information (e.g. banking or ownership information). Most of these requests were received during the last year of the period under review. The

requests are still being processed due to reasons impacting timeliness of the US responses in general as described above.

364. The United States recognises the continuing need to increase the timeliness of its responses to EOI requests received and has taken several measures to address these concerns. As described in section C.5.2, (i) the EOI Programme is in the continuous process of adjusting personnel hiring and training needs to respond to the number and complexity of incoming and outgoing EOI requests; (ii) IRS's EOI guidance (I.R.M. 4.60.1) has been revised and continues to be analysed for necessary revision; (iii) the EOI Programme released an updated and enhanced version of its electronic case-management system (IMS) and its further enhancements are also planned for implementation; (iv) steps have been taken to shorten the time needed to process a summons; and (v) the EOI Programme has made structural and organisational improvements resulting in greater centralisation of programme leadership and review functions. The United States has also recently contacted all of its peers who provided their input to address their comments and to facilitate EOIR co-operation in the future. The United States has indicated that it will continue with these communications with the intent of continually enhancing its relationships and enhancing its consistency in the timely provision of information.

365. It is acknowledged that a portion of requests received by the United States can be classified as complex requests and therefore a quality response to these requests requires a longer period. Nevertheless as the US response times have increased since the first round of reviews as well as throughout the current period under review and the time taken to provide substantive response to a request does not ensure effective EOI in all cases (as also pointed out by peers), the United States should speed up the provision of the requested information.

366. Out of the 2 633 EOI requests received during the peer review period, the United States declined a total of 43 requests representing 2% of all received requests during that period. The EOI Programme declines a request primarily if there is no underlying EOI instrument in effect, the taxes to which the request relate are not covered by the exchange instrument, or the statute of limitations in the requesting jurisdiction has expired. Further, as discussed in section C.1.1, the United States interpretation of the foreseeable relevance is in line with the standard. Before declining a request, the EOI Programme attempts to remedy all issues that can be resolved by communicating the specific issues to the requesting jurisdiction and requesting additional information or clarifications as needed.

367. Four peers indicated that the United States declined to provide parts of the requested information. The reasons for not fully replying included the disproportionate difficulty in obtaining the requested information or no

practice for obtaining such information. These reasons can be attributed to factors described above and in section C.5.2 and communication aspects in particular. Since then the United States contacted these peers to discuss these specific requests and to facilitate co-operation in similar cases in the future (see further section C.5.2).

368. During the period under review the United States provided status updates in 93% of cases where required under the standard. The percentage of status updates sent in line with the standard increased over the review period from 86% in the first year to 100% in the last year. Status updates are provided by the EOI Programme analyst handling the case typically by email or a phone call where no protected data are required to be disclosed. The EOI Programme analyst usually provides a description of the steps taken, reason for not providing the information within 90 days, and the expected timeframe within which the information will be provided. This way of communication also allows closer co-ordination with the requesting jurisdiction in complex cases.

369. The systematic provision of status updates within 90 days since receipt of the request is required in the EOI Manual (I.R.M. 4.60.1.2.2.1) and the 90-day deadline is tracked in the EOI database (IMS). The US is in the process of updating the EOI database so that it provides the EOI Programme analyst assigned to a case and front-line manager an automatic reminder prior to the 90-day deadline for provision of the requested information or of a status update as contained in the EOI Manual.

370. Although peer input on the provision of status updates is rather mixed, most peers confirmed the systematic provision of status updates by the United States. There appears to be a discrepancy between the statistics kept in the EOI database and some received peer inputs. The United States has contacted the relevant peers to ensure that appropriate bilateral processes for provision of status updates are in place.

371. In 35 cases the United States did not obtain and provide the requested information, which represents 1% of all requests received during the reviewed period. This figure includes cases where a negative answer was provided because the information holder or the US taxpayer subject of the request was not identified. There does not appear to be a pattern which would indicate systemic failures to obtain certain types of information or information related to certain types of persons. The reasons for these failures can be attributed to the factual circumstances of the case. A few cases may have been further impacted by the factors described above and in section C.5.2 which also have negative impact on timeliness of the US responses.

372. Four peers referred to cases where the requested information was not provided. These cases relate to issues with the practical availability of information covered under element A.1 and A.2 and are further dealt with there.

ToR C.5.2. Organisational processes and resources

373. The 2011 report concluded that 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 as warranted.

374. Several changes have happened since the first round review which have impacted processes and resources relevant to exchange of information:

- loss of staffing and hiring of new personnel – as mentioned in section C.5.1, in 2014 and 2015 the EOI Programme experienced staffing losses mainly related to the closure of the offices of overseas Tax Attachés. Further staffing turnovers were caused by expansion of the United States EOI Programme or loss of some experienced employees to other opportunities. The staffing of the EOI Programme is continually assessed and adjustments were made during and after the review period. The process of hiring and training of new EOI personnel has continued with the intake of eight temporary employees in May 2017 and the announcement of nine permanent full-time vacancies in August 2017. As a result, the EOI Programme is currently staffed with 22 full-time employees dedicated to exchange of information upon request, and additional hiring is planned during the course of 2018. This represents a decrease from 24 full-time employees at the time of the 2011 report.
- reorganisation of the EOI work – during 2015, the organisation of the EOI Programme underwent substantive change. The offices of overseas Tax Attachés were closed and the EOI Programme was reorganised from two EOI teams and the Tax Attaché offices to four EOI teams each with its own manager under the supervision of the EOI Programme Manager overseeing all four teams. Each incoming request is reviewed by the EOI Programme Manager and allocated to the particular EOI team according to the requesting jurisdiction.
- adjustments in the summons process – the internal process for issuing summonses has been continually improved since 2012. These changes include implementing electronic review and approval of draft summonses by EOI management, removing the requirement for some summonses (including most summonses for bank information) to be reviewed by IRS Chief Counsel, and implementing arrangements for banks to respond to summonses electronically (and, in some cases, to accept the electronic service of summonses). Further improvements are in the process of being implemented such as the electronic service of summonses also to other information holders than banks and electronic receiving of their responses, and the EOI

Programme and Chief Counsel continually assess whether additional types of draft summonses need not be reviewed by Counsel.

- enhancements to the EOI database (IMS) – in March 2015, the EOI Programme released an updated and enhanced version of its electronic case-management system (IMS), and further enhancements are also planned for implementation. The revised system is a web-based application that streamlines the input and maintenance of information and statistics pertinent to every EOI request. The revised system now allows employees to view a summary of the dates of each step in handling EOI requests (such as contacts with requesting jurisdiction, internal allocation of requests, dates of status updates) and it allows EOI officials to input follow-up dates and related notes to memorialise planned future actions. The EOI Programme is currently collaborating with the IRS IT department to identify and implement additional system features and usability enhancements including automatic alerts for provision of status updates.
- the revised EOI guidance – in September 2014, the IRS published a revised and amplified version of its official employee guidance on processing incoming and outgoing EOI requests (I.R.M. 4.60.1 – Exchange of Information). The revised guidance expands and updates previously existing I.R.M. provisions on EOI and outlines clear and comprehensive EOI processing procedures that apply to all IRS employees. In particular, the updated guidance addresses processing timelines, internal and external communication protocols, and other practices to ensure effective EOI. All affected IRS personnel, both within the EOI Programme and throughout other affected IRS business units, have received training on the revised guidance through in-person meetings, conferences, and online instructional courses. The EOI Programme continues to update these official procedures as needed to account for procedural and administrative changes.

375. Loss of staffing of the EOI Programme and closure of the overseas Tax Attachés posts in particular had a negative impact on the effectiveness of the exchange of information and led to a backlog which has impacted timeliness of responses throughout the period under review. Current statistics for 2017, albeit outside the review period, indicate that some of the positive steps described above are taking hold. For the cases the EOI Programme has closed for 2017, it closed 35% within 90 days and 66% within 180 days. Moreover, while the EOI Programme closed 711 requests during 2016, it closed 1 056 in 2017, an increase of 49%. The United States has indicated that it is taking further important steps to improve the effectiveness of its EOI Programme so that the requested information can be provided in a timely manner more regularly despite legal and administrative procedures which require a number of

steps to obtain the information. Although it is not possible within the review period to fully evaluate positive measures recently taken by the United States, issues regarding timeliness identified in the 2011 report were not completely addressed and the timeliness of responses even decreased during the period under review. Therefore, further measures are recommended to speed up the provision of the requested information.

Incoming requests

376. The 2011 report concluded that the United States' organisational processes and resources in respect of handling incoming requests were in line with the standard. The report nevertheless recommended that 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 where warranted.

377. Since the first round review several changes have taken place as mentioned above. Further, to increase efficiency of the exchange of information the United States has conducted a comprehensive analysis of its procedures for processing EOI requests and has taken several measures described above.

378. There has not been a substantive change in the delegation of the Competent Authority for EOI purposes. The United States makes current information and contact information about its Competent Authority available to its treaty partners in the Global Forum Competent Authorities Database. Detailed information about who has been delegated to act as the US Competent Authority is also made available in I.R.M. 4.60.1, and EOI Programme personnel routinely discuss such information with EOI partners through conference calls, correspondence (including e-mail), and in-person meetings.

379. Currently 22 full-time employees serve in the EOI Programme handling all incoming and outgoing EOI requests (including in respect of the US territories). These 22 employees are split into four teams of four to eight employees. Each team is headed by an EOI front-line manager and is responsible for handling requests from allocated EOI partners. Three EOI teams are co-located with the EOI Programme Manager and based in the Washington, DC. area and one team is based in Plantation, Florida. All teams (and their managers) are under the supervision of the EOI Programme Manager.

380. In addition to these 22 employees, the EOI Programme receives assistance, as needed, from IRS field personnel, other employees located in IRS Headquarters in Washington, DC. and throughout the United States and the IRS Office of Chief Counsel. For the limited number of EOI cases that are litigated, the EOI Programme also receives litigation assistance from the US Department of Justice. All EOI employees have experience and a background in accounting, law, or economics.

381. Most EOI employees are hired from within the IRS, although this is not required. To be hired to work in the EOI Programme, personnel must generally have extensive tax compliance experience in the IRS as a revenue agent, revenue officer, or other related position. Personnel experienced in international tax issues and concepts (e.g. tax treaties, transfer pricing, or tax residency) are also helpful for selection. After selection for the programme, all employees receive new-hire training, routine classroom training (virtual), continuing professional education, and on-the-job training on EOI policies and procedures.

382. The main procedural steps for handling incoming EOI requests remain the same as described in the 2011 report. All procedural steps are tracked and monitored through the IMS.

383. About 90% of EOI requests received during the period under review were handled exclusively by the EOI Programme analysts. In the remaining 10% of requests, the EOI Programme analysts required assistance from another IRS business unit. Assistance from other IRS units is requested in cases where: (i) a domestic civil or criminal examination is open for the individual or entity in possession of the requested information; (ii) the information must be obtained in person; (iii) issued summonses have to be physically delivered to the person holding the information; or (iv) the EOI Programme is in need of specialised topical knowledge (e.g. for certain requests to charities and foundations or for group requests requiring the assistance of Chief Counsel in issuing a summons).

384. The United States acknowledges the importance of the EOI Programme and continuously works on adjusting its workload and improving the efficiency of processes involved in obtaining and exchanging the requested information. Nevertheless as pointed out in section C.5.1, the timeliness of responses does not ensure effective exchange of information in all cases and therefore the United States should take further measures to appropriately balance staffing and resources devoted to the EOI Programme and the administrative steps and procedural requirements necessary to obtain and provide the requested information. This concern negatively impacts the communication aspects of exchange of information as particularly referred in sections C.5.1 (declined requests), C.1.1 and B.1 (access and provision of all requested information), and B.2 (notification practice). Communication aspects of exchange of information require resources so that all aspects of exchange of information, including appropriate understanding of the context of the case, of the requested information and of the relevant processes in the requested as well as requesting jurisdiction, are properly communicated and mutually understood.

Outgoing requests

385. The 2016 ToR cover also requirements to ensure the quality of requests made by the assessed jurisdiction.

386. The United States has a vast experience with requesting information pursuant to its EOI instruments. EOIR has been frequently used to obtain tax-relevant information for decades and the United States has developed a robust EOI Programme for that purpose. During the period under review the United States sent 692 requests for information related to direct taxes. The number of requests is counted per the number of EOI request letters regardless of the number of taxpayers concerned.

Processing outgoing requests

387. The procedures for processing outgoing EOI requests are set forth in I.R.M. 4.60.1. In particular, I.R.M. 4.60.1.1.3.1 provides a brief overview of the procedures for processing outgoing requests, while I.R.M. 4.60.1.2.1 sets forth more detailed procedures that apply to outgoing EOI requests.

388. The initiating IRS office is required to submit the request for information to the EOI Programme in writing, and it must provide all the required information to complete the request as specified in I.R.M. 4.60.1.2.1(4). For this purpose, the EOI Programme typically provides a template to IRS employees to make such a request, which is designed to ensure that all information needed to process an outgoing request is provided. All outgoing requests must be signed by an appropriate management official, which is usually the first-level manager in the office of the initiating IRS business unit.

389. Once the EOI Programme officially receives a complete request from another IRS business unit, it is assigned to an EOI Programme analyst. The EOI Programme analyst enters all information about the request, including the scanned documents received, into IMS. The EOI Programme analyst is responsible for reviewing the request and ensuring that (i) it relates to a country with which the United States has an exchange instrument; (ii) it relates to taxes covered by the exchange instrument; and (iii) the nature of the request is fully in accordance with the terms of the instrument. If so, the EOI Programme analyst then prepares an official request using the appropriate format and submits the request to his or her front-line manager for review.

390. After the EOI Programme front-line manager reviews the request, it is then submitted to the EOI Programme Manager, who reviews it, signs it on behalf of the US Competent Authority, and sends it to the foreign competent authority. In very limited instances when the information requested is routine in nature (e.g. an address or confirmation of tax residence), the EOI front-line manager can sign the request on behalf of the US Competent Authority and

send it to the foreign competent authority without having to submit it to the EOI Programme Manager for review and signature.

391. Further to the procedural rules contained in the I.R.M. 4.60.1.2.1, the EOI Programme maintains information on its IRS Intranet pages that it makes available to IRS personnel, such as links to helpful information and documents which summarise the procedures an IRS field employee must follow to submit an outgoing request for information to the EOI Programme.

392. When the EOI Programme receives a request for clarification from an exchange partner regarding an EOI request transmitted by the United States, the clarification request is provided directly to the EOI Programme analyst assigned to the original request. The analyst reviews the request, gathers any information required to respond (consulting with EOI management and/or the IRS requesting field office as appropriate), and provides the requested clarification to the partner jurisdiction. During the review period, it took an average of one week for the EOI Programme to respond to all clarification requests.

Information to be included in outgoing requests

393. Information required to be included in the United States' outgoing requests follows information as outlined in Article 5(5) of the Model TIEA (I.R.M. 4.60.1.2.1). In addition, the request typically includes tax years under IRS examination or investigation; location of the information requested, including sufficient identifying information (e.g. name, address, and date of birth (if available)) pertaining to the individual or entity in possession of the information; and any statute of limitations, court date, or similar dates by which the information is required (I.R.M. 4.60.1.2.1(4)).

394. The EOI Programme provides a template to IRS employees for use when preparing a request for information. This template is designed to ensure that IRS business units initiating an outgoing request provide all information to the EOI Programme that is needed to process such a request. If a requested jurisdiction asks that a specific template be used for the request, the EOI Programme makes every effort to use it, barring any disclosure concerns or other issues that may arise in using the template.

395. The following table summarises the number of outgoing requests made, requests for clarifications received by the United States, and the clarifications provided by the United States.

Number of outgoing requests and clarifications

	2014	2015	2016	Total
Number of outgoing requests	266 (100%)	231 (100%)	195 (100%)	692 (100%)
Number of requests for clarifications received	18 (7%)	11 (5%)	11 (6%)	40 (6%)
Number of responses for clarifications sent	18 (100%)	11 (100%)	11 (100%)	40 (100%)

396. As indicated in the table above, during the period under review the United States received requests for clarification in respect of 6% of outgoing requests. All requests for clarification were responded to.

397. There appears to be no systemic pattern in the need for these clarifications. EOI Programme analysts assigned to process an outgoing request routinely consult with the requested jurisdiction to confirm that the information provided in the outgoing request is sufficient to allow the requested jurisdiction to respond. The majority of clarification requests did not relate to the foreseeable relevance of the request. Frequently clarification requests sought confirmation as to whether the information requested related to a civil or criminal investigation or whether the requested information was still required (e.g. due to a significant amount of time needed to obtain the requested the information). In some cases requests for clarification aimed to facilitate the correct identification of the taxpayer. Further requests for clarification were aimed at confirmation of the requested information or co-ordination in processing of the request as complex information was requested. No concerns were reported by peers as they are generally satisfied with the quality of the United States' requests.

Communication

398. The United States prefers receiving requests in English. If the request is not in English, the requesting competent authority will be asked to translate the request. If the requesting jurisdiction is unable to translate the request to English, the United States may use internal processes to translate the request; however, this may result in delays in processing the request. The United States also sends outgoing requests in English as agreed with the particular treaty partner.

399. Internal communication in which the EOI Programme communicates with other IRS offices is conducted via secured internal e-mail, by telephone, or sometimes in person to facilitate all aspects of processing EOI requests.

400. Communication tools used for external communication with other competent authorities differ depending on the partner jurisdiction. During the review period, the EOI Programme generally sent outgoing requests or the US responses to EOIR requests to its exchange partners through trackable

mail. However, the United States has made increasing use of a secure e-mail system that incorporates encrypted e-mail attachments. Once the exchange partner confirms receipt of the e-mail, a password is sent to allow the foreign jurisdiction to open the attachments containing the exchanged documents. The IRS is actively expanding the number of jurisdictions for which encrypted attachments can be used. Exchange of information with the United States' main EOI partners is currently carried out via secured electronic means.

ToR C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

401. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI in the United States.

Annex 1: List of in-text recommendations

The assessment team or the PRG may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. A list of such recommendations is presented below.

- Section A.1.1, A.1.3: The United States should strengthen its retention requirements in respect of ownership information.
- Section A.1.1, A.1.3 and A.1.4: The United States should strengthen its supervisory and enforcement measures to ensure that legal ownership information is being maintained by companies, partnerships and trusts in line with the standard in all cases.
- Section A.2.1 and A.2.2: The United States should strengthen its retention rules so that they ensure that accounting information (including underlying documentation) is retained for five years as required under the standard in all cases.
- Section A.3.1: The United States should introduce an obligation on relying financial institutions to immediately obtain core CDD information from the financial institution they are relying upon.
- Section B.1.1 and B.1.2: The United States should monitor measures implemented to improve the efficiency of obtaining the requested information and take further measures, if considered necessary, to ensure obtaining of the requested information in an effective manner.
- Section B.2.1: The United States should monitor utilisation of exceptions from prior notification in the EOI context and if necessary take measures to ensure that exceptions from prior notification as foreseen under the standard are effectively applied in EOI practice.

- Section C.1.3 and C.1.4: The United States should work with Egypt, Sri Lanka, Thailand, Trinidad and Tobago and Venezuela to ensure that their EOI relationships are in line with the standard.
- Section C.2: The United States is recommended to maintain its negotiation programme so that its exchange of information network continues to cover all relevant partners.
- Section C.5.2: The United States should take further measures to appropriately balance staffing and resources devoted to the EOI Programme and the administrative steps and procedural requirements necessary to obtain and provide the requested information.

Annex 2: List of United States' EOI mechanisms

Bilateral international agreements for the exchange of information

EOI partner	Type of agreement	Date signed	Date entered into force
Antigua and Barbuda	TIEA	06-Dec-01	10-Feb-03
Argentina	TIEA	23-Dec-16	13-Nov-17
Aruba	TIEA	21-Nov-03	13-Sep-04
Australia	DTC (+ Protocol)	06-Aug-82	31-Oct-83
Austria	DTC	31-May-96	01-Feb-98
Bahamas	TIEA	25-Jan-02	31-Dec-03
Bangladesh	DTC	26-Sept-04	07-Aug-06
Barbados	DTC (+ Protocols)	31-Dec-84	28-Feb-86
	TIEA	03-Nov-84	03-Nov-84
Belgium	DTC (+ Protocol)	27-Nov-06	28-Dec-07
Bermuda	DTC	11-Jul-86	02-Dec-88
	TIEA	02-Dec-88	02-Dec-88
Brazil	TIEA	20-Mar-07	19-Mar-13
British Virgin Islands	TIEA	03-Apr-02	10-Mar-06
Bulgaria	DTC (+ Protocols)	23-Feb-07	15-Dec-08
Canada	DTC (+ Protocols)	26-Sep-80	16-Aug-84
Cayman Islands	TIEA	29-Nov-13	14-Apr-14
Chile	DTC	04-Feb-10	Not in force
China (People's Republic of)	DTC (+ Protocols)	30-Apr-84	21-Nov-86
Colombia	TIEA	30-Mar-01	30-Apr-14
Costa Rica	TIEA	15-Mar-89	12-Feb-91
	TIEA	01-Apr-18	Not in force

EOI partner	Type of agreement	Date signed	Date entered into force
Curaçao	TIEA	17-Apr-02	22-Mar-07
Cyprus	DTC	19-Mar-84	31-Dec-85
Czech Republic	DTC	16-Sep-93	23-Dec-93
Denmark	DTC (+ Protocols)	19-Aug-99	31-Mar-00
Dominica	TIEA	01-Oct-87	09-May-88
Dominican Republic	TIEA	07-Aug-89	12-Oct-89
Egypt	DTC	24-Aug-80	31-Dec-81
Estonia	DTC	15-Jan-98	30-Dec-99
Finland	DTC (+ Protocol)	21-Sep-89	30-Dec-90
France	DTC (+ Protocols)	31-Aug-94	30-Dec-95
Germany	DTC (+ Protocols)	29-Aug-89	21-Aug-91
Gibraltar	TIEA (+ Protocol)	31-Mar-09	22-Dec-09
Greece	DTC (+ Protocol)	20-Feb-50	30-Dec-53
Grenada	TIEA	18-Dec-86	13-Jul-87
Guernsey	TIEA (+ Protocol)	19-Sep-02	30-Mar-06
Guyana	TIEA	22-Jul-92	27-Aug-92
Honduras	TIEA	27-Sep-90	11-Oct-91
Hong Kong (China)	TIEA	25-Mar-14	20-Jun-14
Hungary	DTC	12-Feb-79	18-Sep-79
	DTC	04-Feb-10	Not in force
Iceland	DTC (+ Protocol)	23-Oct-07	15-Dec-08
India	DTC (+ Protocol)	12-Sep-89	18-Dec-90
Indonesia	DTC (+ Protocols)	11-Jul-88	30-Dec-90
Ireland	DTC (+ Protocols)	28-Jul-97	17-Dec-97
Isle of Man	TIEA (+ Protocol)	03-Oct-02	26-Jun-06
Israel	DTC (+ Protocols)	20-Nov-75	30-Dec-94
Italy	DTC (+ Protocol)	25-Aug-99	16-Dec-09
Jamaica	DTC (+ Protocol)	21-May-80	29-Dec-81
	TIEA	18-Dec-86	18-Dec-86
Japan	DTC (+ Protocols)	06-Nov-03	30-Mar-04
Jersey	TIEA (+ Protocol)	04-Nov-02	26-Jun-06
Kazakhstan	DTC (+ Protocol)	24-Oct-93	30-Dec-96
Korea	DTC	04-Jun-76	20-Oct-79

EOI partner	Type of agreement	Date signed	Date entered into force
Latvia	DTC	15-Jan-98	30-Dec-99
Liechtenstein	TIEA (+ Protocol)	08-Dec-08	04-Dec-09
Lithuania	DTC	15-Jan-98	30-Dec-99
Luxembourg	DTC (+ Protocol)	03-Apr-96	20-Dec-00
Malta	DTC	08-Aug-08	23-Nov-10
Marshall Islands	TIEA	14-Mar-91	14-Mar-91
Mauritius	TIEA	27-Dec-13	29-Aug-14
Mexico	DTC (+ Protocols)	18-Sep-92	28-Dec-93
	TIEA	09-Nov-89	18-Jan-90
Monaco	TIEA	08-Sep-09	11-Mar-10
Morocco	DTC	01-Aug-77	30-Dec-81
Netherlands ^a	DTC (+ Protocols)	18-Dec-92	30-Dec-93
New Zealand	DTC (+ Protocol)	23-Jul-82	02-Nov-83
Norway	DTC (+ Protocol)	03-Dec-71	29-Nov-72
Pakistan	DTC	01-Jul-57	21-May-59
Panama	TIEA	30-Nov-10	18-Apr-11
Peru	TIEA	15-Feb-90	31-Mar-93
Philippines	DTC	01-Oct-76	16-Oct-82
Poland	DTC (+ Protocol)	08-Oct-74	22-Jul-76
	DTC	02-Feb-13	Not in force
Portugal	DTC	06-Sep-94	18-Dec-95
Romania	DTC	04-Dec-73	26-Feb-76
Russia	DTC (+ Protocol)	17-Jun-92	16-Dec-93
Saint Lucia	TIEA	30-Jan-87	05-May-14
Sint Maarten	TIEA	17-Apr-02	22-Mar-07
Slovak Republic	DTC	08-Oct-93	30-Dec-93
Slovenia	DTC	21-Jun-99	22-Jun-01
South Africa	DTC	17-Feb-97	28-Dec-97
Spain	DTC (+ Protocol)	22-Feb-90	21-Nov-90
Sri Lanka	DTC (+ Protocol)	14-Mar-85	12-Jul-04
Sweden	DTC (+ Protocol)	01-Sep-94	26-Oct-95
Switzerland	DTC (+ Protocols)	02-Oct-96	17-Dec-97
Thailand	DTC	26-Nov-96	15-Dec-97

EOI partner	Type of agreement	Date signed	Date entered into force
Trinidad and Tobago	DTC	09-Jan-70	30-Dec-70
	TIEA	11-Jan-89	09-Feb-90
Tunisia	DTC (+ Protocol)	17-Jun-85	26-Dec-90
Turkey	DTC	28-Mar-96	19-Dec-97
Ukraine	DTC	04-Mar-94	05-Jun-00
United Kingdom	DTC (+ Protocol)	24-Jul-01	31-Mar-03
Venezuela	DTC (+ Protocol)	25-Jan-99	30-Dec-99
Viet Nam	DTC	07-Jul-15	Not in force

Note: a. There is also a separate TIEA with the Kingdom of the Netherlands covering Bonaire, Sint Eustatius and Saba (BES islands).

Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention)²⁹. The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The United States signed the 1988 Convention on 28 June 1989 and the 2010 Protocol amending the 1988 Convention on 27 May 2010. The Multilateral Convention entered into force in respect of the United States on 1 April 1995. The amending Protocol has not yet been ratified by the United States.

29. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

As of 25 April 2018, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Armenia, Bahamas, Bahrain, Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Gabon, Jamaica, Kenya, Kuwait, Morocco, Peru, Philippines, Qatar, Turkey (the instruments of ratification were deposited on 26 March 2018, for an entry into force on 1 July 2018), United Arab Emirates and the United States (the 1988 Convention in force on 1 April 1995, the amending Protocol signed on 27 May 2010).

The United States can exchange information under the Multilateral Convention with all jurisdictions that have (i) signed and ratified the original Multilateral Convention and are a member of the OECD or the Council of Europe; (ii) signed and ratified the 2010 Protocol to the Multilateral Convention and are a member of the OECD or the Council of Europe; or (iii) had the Multilateral Convention extended to them pursuant to Article 29 of the Convention by a jurisdiction under (i) or (ii). If the jurisdiction was not a Party to the Multilateral Convention prior to its amendment by the Protocol, the United States and the jurisdiction must reach a meeting of the minds on the application of the Multilateral Convention prior to exchanging information under the Multilateral Convention. The United States is prepared to exchange information with any such jurisdiction under the Multilateral Convention.

Consequently, the United States can exchange information upon request under the original Multilateral Convention with the following 19 jurisdictions: Aruba, Azerbaijan, Belgium, Curaçao, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, Italy, Netherlands, Norway, Poland, Sint Maarten, Spain, Sweden, Ukraine and United Kingdom.

The US can exchange information under the Multilateral Convention with Australia, Croatia, Luxembourg, and Moldova, as it has reached a meeting of the minds as to the application of the Multilateral Convention with each.

Annex 3: Methodology for the Review

The reviews are based on the 2016 Terms of Reference, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 25 April 2018, United States' EOIR practice in respect of EOI requests made and received during the three year period from 1 January 2014 until 31 December 2016, United States' responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by the United States during the on-site visit that took place from 6 to 9 November 2017 in Washington, DC., United States.

List of laws, regulations and other materials received

Tax laws

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

Corporation laws

- Model Business Corporation Act (2016 Revision)
- California Corporations Code
- Delaware General Corporations Law
- New York Business Corporations Law
- Nevada Private Corporations Law

Florida Business Corporations Act
 South Dakota Corporations Law
 Texas For-Profit Corporations Law
 Securities Exchange Act of 1934
 Securities Act of 1933
 Wyoming Business Corporation Act
 Bank Secrecy Act

Limited liability company laws

Revised Prototype Limited Liability Company Act (May 1, 2011)
 Uniform Limited Liability Company Act (Last Amended 2013)
 California Revised Uniform Limited Liability Company Act
 Delaware Limited Liability Company Act
 Florida Revised Limited Liability Company Act
 Nevada Limited Liability Companies Law
 New York Limited Liability Company Law
 South Dakota Uniform Limited Liability Company Act
 Texas Limited Liability Companies Law
 Wyoming Limited Liability Company Act

Partnership laws

Uniform Partnership Act (1997)
 Uniform Limited Partnership Act (2001)
 California Uniform Partnership Act of 1994
 California Uniform Limited Partnership Act of 2008
 Delaware Revised Uniform Partnership Act
 Delaware Limited Partnerships Law
 Florida Partnership Act
 Florida Revised Uniform Limited Partnership Act of 2005
 Nevada Partnership Law

Nevada Uniform Limited Partnership Act (2001)
 New York Partnership Law
 New York Revised Limited Partnership Act
 South Dakota Partnerships Law
 South Dakota Uniform Limited Partnership Act
 Texas General Partnerships Law
 Texas Limited Partnerships Law
 Wyoming Partnerships Law
 Wyoming Limited Partnerships Law

Trusts

Restatement Third, Trusts
 Uniform Trust Code (2000)
 Restatement (Second) of Conflict of Laws
 Relevant case law
 California Trust Law
 Delaware Trusts Law
 Florida Common-Law Declarations of Trust Law
 Nevada Trusts Law
 New York Trusts Law
 South Dakota Uniform Trusts Act
 Texas Trust Code
 Wyoming Uniform Trust Code

Authorities interviewed during on-site visit

US Treasury Department
 Internal Revenue Service
 Financial Crimes Enforcement Network (FinCEN)
 US Department of Justice, Tax Division
 Delaware Secretary of State, Division of Corporations

Current and preview reviews

This report provides the outcomes of the second peer review of the United States' implementation of the EOIR standard conducted by the Global Forum. The United States previously underwent the EOIR peer review in 2011 conducted according to the ToR approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. The combined review covered United States' EOIR practice in the period from 2007 to 2009 and its outcomes were adopted by the Global Forum in June 2011.

Information on each of United States' reviews is listed in the table below.

Review	Assessment team	Period under review	Legal Framework as of (date)	Date of adoption by Global Forum
2011 report	Ms Monica Bhatia, Ministry of Finance, Government of India; Ms Roberta Poza Cid, Spanish Ministry of Finance; Mr Dónal Godfrey and Mr Andrew Auerbach from the Global Forum Secretariat	1 January 2007 to 31 December 2009	February 2011	June 2011
2018 report	Mr Sebastian Baumann, Federal Ministry of Finance, Germany; Mr Neil Cossins, Australian Taxation Office, Australia; and Mr Andrew Auerbach, Ms Kaelen Onusko and Mr Radovan Zidek from the Global Forum Secretariat	1 January 2014 to 31 December 2016	25 April 2018	13 July 2018

Annex 4. Jurisdiction’s response to the review report³⁰

The United States wishes to thank the Global Forum Secretariat, the assessment team, and the Peer Review Group for their work in developing the U.S. Report. The United States has a longstanding commitment to the exchange of information through its expansive bilateral tax treaty and tax information exchange agreement network and is committed to maintaining a broad exchange of information network with all interested and appropriate partners. We look forward to working with our peers to maintain a comprehensive network of exchange instruments in force.

The United States has recently taken several measures to strengthen the availability of ownership information and is dedicated to providing accurate, expeditious and comprehensive responses and status updates to the exchange of information requests sent by our partners. For each of the approximately 1 000 requests we receive annually, we strive to provide maximally responsive information in all instances that our exchange instruments allow. To that end, we have implemented significant changes to improve the effectiveness of our program throughout the review period and believe that our efforts and commitment to our EOI Programme are demonstrated by our statistics, both during the review period and thereafter.

A core benefit that comes from participating in the Global Forum’s peer review process is that we can receive feedback from our exchange partners regarding what is working well and what can be improved in our EOI procedures and relationships, conduct a detailed self-assessment of our legal framework and the practical operation of our program, and collaborate on ways to improve exchange of information for all Global Forum members. The United States looks forward to continuing its important work with our EOI partners, which we recognize will result in increased global tax compliance for all of us.

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

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, Latvia, Lithuania, 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 Union 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 Review Report on the Exchange of Information on Request UNITED STATES 2018 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

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

This report contains the 2018 Peer Review Report on the Exchange of Information on Request of United States.

Consult this publication on line at **<https://doi.org/10.1787/9789264302853-en>**.

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