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## Issue highlights

Tax residency of untaxed entities



## this issue

Hiding your  
money in USA  
and think no  
exchange of  
info? Hold your  
horses...

WHY IS OECD SO TEPID ABOUT USA  
NOT EXCHANGING INFORMATION



The United States has undertaken automatic information exchanges pursuant to FATCA from 2015 and entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.



Global Forum on Transparency  
and Exchange of Information for Tax Purposes

As at June 2018

### AEOI: STATUS OF COMMITMENTS

The table below summarises the intended implementation timelines of the new standard<sup>1</sup>

JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2017 (49)
Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus <sup>2</sup> , Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, United Kingdom
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018 (53)
Andorra, Antigua and Barbuda, Aruba, Australia, Austria, Azerbaijan <sup>3</sup> , The Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curacao, Dominican Republic, Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Lebanon, Macau (China), Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Nue, Pakistan <sup>1</sup> , Panama, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay, Vanuatu
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2019/2020 (4)
Albania (2020), Maldives (2020), Nigeria (2019), Peru (2020)
DEVELOPING COUNTRIES HAVING NOT YET SET THE DATE FOR FIRST AUTOMATIC EXCHANGE (43)
Armenia, Benin, Botswana, Burkina Faso, Cambodia, Cameroon, Chad, Côte d'Ivoire, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Former Yugoslav Republic of Macedonia, Gabon, Georgia, Guatemala, Guyana, Haiti, Jamaica, Kazakhstan, Kenya, Lesotho, Liberia, Madagascar, Mauritania, Moldova, Mongolia, Montenegro, Morocco, Niger, Papua New Guinea, Paraguay, Philippines, Rwanda, Senegal, Serbia, Tanzania, Thailand, Togo, Tunisia, Uganda, Ukraine

<sup>1</sup> The United States has undertaken automatic information exchanges pursuant to FATCA from 2015 and entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.



## Shifted accounts to USA as a CRS solution? Congress introducing a national b.o. directory accessible by foreign authorities

**FATCA Reciprocal Reporting is hobbled** by two issues (1) No information on beneficial owner. is available at Federal level (and likely not even at State level), and (2) Limitations on which countries are deemed “appropriate” to send information, despite the FATCA Model 1A. See “Rev Proc 2017-46”.

FinCEN's 2018 guidance to identify beneficial owners are inept as it applies only to new entities and does not cover insurers. Worse, beneficiaries of trusts are not identified. There are further loopholes, e.g. institutions are not required to look through a pooled investment vehicle to identify and verify the identity of any individuals who own 25% or more of its equity interests.

### **Counter Terrorism and Illicit Finance Act (CTIFA)**

With respect to Bob Dylan, the times are-a-changin. Republicans have drafted the CTIFA and it is well supported by Republicans, who have been against FATCA. The most notable change to the Bank Secrecy Act proposed by the CTIFA in the creation of the United

States' first national beneficial ownership directory.

**Access by foreign countries:** The directory will be accessible upon request by a federal agency on behalf of law enforcement of a foreign country.

**Beneficiaries of entities and trusts:** The Act will follow FATF in identifying beneficiaries of entities and trusts.

**Existing entities:** For corporations already in existence, the bill requires (1) an update of beneficial owner information 60 days after any changes, (2) submission of an annual filing to FinCEN containing beneficial owners and their name, address, and passport number.

**Foreign owned entities:** If beneficial owner is foreign, the applicant certifies (i) it has a verified photo identity, (ii) the name, address, and identity of the foreign beneficial owner, (iii) retain this information for 5 years after the entity has ceased to exist.

U.S. on Course to Land on European Tax Blacklist: EU Official

If the U.S. doesn't agree by June 2019 to exchange the bank account details of non-U.S. citizens with governments around the world, it will be placed on the European Union's tax haven blacklist.

The U.S. is on the clock as the 2019 deadline nears for adopting and applying the Organization for Economic Cooperation and Development's common reporting standard, Valere Moutarlier, the EU's head of direct taxation, told a new European Parliament tax investigative committee May 15.

The Paradise Papers panel was set up in March following a data leak of more than 13 million files detailing the way wealthy individuals and large companies avoid taxes via offshore structures, such as trusts.

"We have transparency criteria that is very clear that the June 2019 deadline must be respected," said Moutarlier, a director at the European Commission's Directorate-General for Taxation and Customs Union, in response to numerous questions from EU lawmakers about why the U.S. isn't already on the blacklist.



## "EU Code of Conduct Group (business taxation) The hidden power in the EU to blacklist, grey list and sanction uncooperative tax havens

The EU Commission has taken over from the OECD pressurizing non-CRS participants to implement the Common Reporting Standard. They have drawn up scoreboard of all 241 country and jurisdictions for tax purposes. They excluded 28 EU members states, 48 UN listed least developed countries, countries with no economic data (e.g. Christmas Island) and five 3rd party countries with tax transparency agreement with EU (e.g. Switzerland). They then assessed the remaining 160 countries on three factors (1) Economic ties with EU (trade, FDI, EU affiliates), (2) Financial activity in country (FDI, interest, dividends, royalty flows), and (3) Stability to see if the jurisdiction would be considered by tax avoiders as a safe place to place their money, (corruption, regulatory control).

They removed 60 countries from countries that did score high in any of the 3 selection criteria.

The Commission assessed the remaining jurisdictions on the potential risk level facilitating tax avoidance and listed the countries which failed two of the following three criteria (a) **Transparency:** committed to CRS, (b) **Fair tax competition:** no preferential tax regime and applies anti-BEPS, (c) **Real Economic Activity:** No corporate income tax or allowing booking of untaxed profits without economic activity allowing artificial tax structures.

**Black list:** refuses to engage with the EU or to address tax good governance shortcomings.

**Grey list:** promised to rectify risk shortfalls but will be monitored by EU.

### 7 jurisdictions

American Samoa, Guam, Namibia, Palau, Samoa, Trinidad and Tobago, US Virgin Islands

25 May 2018

### 65 jurisdictions

Albania, Andorra, Anguilla, Antigua and Barbuda, Armenia, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, Bosnia and Herzegovina, Botswana, British Virgin Islands, Cabo Verde, Cayman Islands, Cook Islands, Dominica, Republic of Korea, Curacao, United Arab Emirates, Faroe Islands, Fiji, Granada, Greenland, Guernsey, Hong Kong, Jamaica, Jersey, Jordan, Lichtenstein, Labuan Island, Macao SAR, Qatar, Former Yugoslav Republic of Macedonia, Malaysia, Maldives, Isle of Man, Marshall Islands, Morocco, Mauritius, Mongolia, Montenegro, Nauru, Niue, New Caledonia, Oman, Panama, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Serbia, Seychelles, Switzerland, Swaziland, Taiwan, Thailand, Tunisia, Turkey, Turks and Caicos Islands, Uruguay, Vanuatu, Vietnam

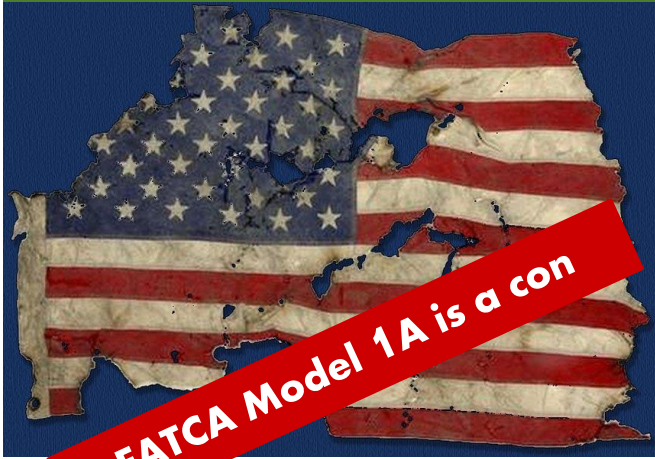
Black list (Annex I)  
Grey list (Annex II)

Moved from black list to grey list  
Bahamas and Saint Kitts and Nevis



CRSTimes  
CRS Expert





**OECD is satisfied that USA has entered 1A Intergovernmental Agreements for some insignificant reciprocal reporting as well as a political commitment to achieve equivalent levels of reciprocal exchange of information.**

**Facts on the ground are indicative the OECD is being conned**

The United States has undertaken automatic information exchanges pursuant to FATCA from 2015 and entered into Intergovernmental Agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into acknowledge the need for the USA to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions, including a political commitment to pursue the adoption of regulations and to advocate and support

directive more than ten years ago.

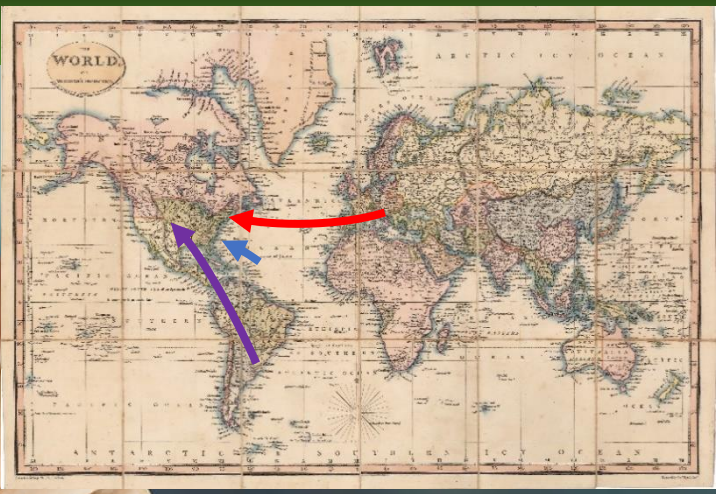
Unacknowledged by the OECD, is that Congress maintains a political biased list of countries that the US regards as appropriate provide information to. This is updated annually with one or two additions.

**See Rev Proc 2017-46 which has only around 40 countries, compared to the 100+ IGA Model 1A.**

relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.

There is no chance Congress will approve automatic exchange of information. The reciprocal IGA information is restricted to depository interest held by individuals, with no reporting on capital value. Furthermore, US banks offer CRS evaders zero interest deposits or products that simulate interest, as was done to avoid the EU Savings tax

**“After how many more years of no progress on the political commitment will appeasement by the OECD no longer be acceptable?”**



CRS-territory based wealth manager managing assets held in USA

Shift Maintenance of an Account to USA

CRS Commentary page 208 par (5) - A Reporting Financial Institution advises a customer to maintain an account with a "Related" Entity in a non-Participating Jurisdiction that enables the Reporting Financial Institution to avoid reporting while offering to provide services and retain customer relations as if the account was maintained by the Reporting Financial Institution itself. In such a case, the Reporting Financial Institution should be considered to maintain the account and have the resulting reporting and due diligence requirements.

than 50% of the vote Entity.

The OECD to tackle this simple, loophole simply needs to remove the word "Related" from the anti-avoidance clause.

Jurisdiction managers manage assets held in the USA?

Answer: Yes, banks have set up entities where they did not obtain a banking license. It was easy to obtain an investment advisory license. Other banks have closed their subsidiaries or branches in tax havens. These banks often advised unregulated clients to simply move their accounts to the USA. However, the bank continues to manage the portfolios of these client whose accounts are now with well know US custodians. The asset managers brazenly place on their website that the assets are custodied with strong FIs such as Pershing, USA

Wh

As the above clause naively restricted anti-avoidance to a related entity, FIs merely advised clients to switch account to an unrelated entity. Easier still, the account can be moved to an associated FI which is not necessarily a related entity because the CRS defines Related Entities as generally where one Entity that controls another Entity or two or more Entities that are under common control. Control is defined to include direct or indirect ownership of more



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